

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

UNDER the Resource Management Act 1991

IN THE MATTER of appeals under Clause 14 of the First Schedule of the Act

BETWEEN

TRANSPOWER NEW ZEALAND LIMITED
(ENV-2018-CHC-26)

FONTERRA CO-OPERATIVE GROUP
(ENV-2018-CHC-27)

HORTICULTURE NEW ZEALAND
(ENV-2018-CHC-28)

ARATIATIA LIVESTOCK LIMITED
(ENV-2018-CHC-29)

(Continued next page)

**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL
REGARDING TRANCHE 3 HEARING**

25 October 2022

Judicial Officer: Judge Borthwick

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WILKINS FARMING CO
(ENV-2018-CHC-30)

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL CITY COUNCIL**
(ENV-2018-CHC-31)

DAIRYNZ LIMITED
(ENV-2018-CHC-32)

H W RICHARDSON GROUP
(ENV-2018-CHC-33)

BEEF + LAMB NEW ZEALAND
(ENV-2018-CHC-34 & 35)

DIRECTOR-GENERAL OF CONSERVATION
(ENV-2018-CHC-36)

SOUTHLAND FISH AND GAME COUNCIL
(ENV-2018-CHC-37)

MERIDIAN ENERGY LIMITED
(ENV-2018-CHC-38)

ALLIANCE GROUP LIMITED
(ENV-2018-CHC-39)

FEDERATED FARMERS OF NEW ZEALAND
(ENV-2018-CHC-40)

HERITAGE NEW ZEALAND POUHERE TAONGA
(ENV-2018-CHC-41)

STONEY CREEK STATION LIMITED
(ENV-2018-CHC-42)

THE TERRACES LIMITED
(ENV-2018-CHC-43)

CAMPBELL'S BLOCK LIMITED
(ENV-2018-CHC-44)

ROBERT GRANT
(ENV-2018-CHC-45)

**SOUTHWOOD EXPORT LIMITED, KODANSHA
TREEFARM NEW ZEALAND LIMITED, SOUTHLAND
PLANTATION FOREST COMPANY OF NEW ZEALAND**
(ENV-2018-CHC-46)

**TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA,
WAIHOPAI RUNAKA, TE RUNANGA O AWARUA & TE
RUNANGA O ORAKA APARIMA**
(ENV-2018-CHC-47)

PETER CHARTRES
(ENV-2018-CHC-48)

RAYONIER NEW ZEALAND LIMITED
(ENV-2018-CHC-49)

**ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND**
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

MAY IT PLEASE THE COURT

- 1 This Memorandum of Counsel is filed on behalf of the Southland Regional Council (**Council**) in respect of the upcoming hearing on Tranche 3 of the appeals on the Proposed Southland Water and Land Plan (**pSWLP**).¹
- 2 Specifically, this Memorandum addresses:
 - (a) A proposed structure for the hearing;
 - (b) The order of opening legal submissions;
 - (c) The order of evidence; and
 - (d) The order of closing legal submissions.
- 3 Counsel also seeks directions in relation to the filing of:
 - (a) Provisions being advanced by each Party;
 - (b) A consolidated version of the pSWLP showing the alternative formulation of provisions being sought by each Party;
 - (c) a Common Bundle of Evidence;
 - (d) a Common Bundle of Documents; and
 - (e) a draft Hearing Schedule.

Structure of Hearing

- 4 Counsel for the Council has conferred with the other parties and proposes that the hearing proceed in the following manner:
 - (a) Brief opening submissions of Counsel (limited to 5 pages) setting out the key issues in contention, and the position being advanced in relation to those key issues;²
 - (b) Technical and lay evidence called by each of the parties;

¹ See Notice of Hearing dated 30 August 2022 setting down the matter for hearing during the week of 14 November 2022.

² Counsel for Aratiatia, Forest & Bird, Waiau Rivercare Group, and Fish & Game do not support the suggestion of giving brief opening submissions on the basis that those parties will not have an opportunity to respond to substantive legal submissions of key parties such as Meridian, Ngā Rūnanga and the Council. However, counsel for the Council is cognisant that time may be limited if all parties give full opening submissions and closing submissions.

- (c) Planning evidence called by those parties with planning evidence;
and
- (d) Closing legal submissions.

Order of Opening Submissions

5 The following order is proposed with respect to opening submissions:³

- (i) Southland Regional Council;
- (ii) Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu (Ngā Rūnanga);
- (iii) Meridian Energy Limited;
- (iv) Royal Forest and Bird Protection Society of New Zealand Incorporated;
- (v) Aratiatia Livestock Limited;
- (vi) Mr English;
- (vii) Southland Fish and Game Council;
- (viii) Waiau Rivercare Group Incorporated; and
- (ix) Director-General of Conservation.

The Order of Evidence

6 It is proposed that technical and lay evidence is given based on the order of opening submissions set out above.

7 Following the hearing of technical and lay evidence, it is proposed that Planning evidence is then given based on the order of parties set out above, but with the Council's planning witness Mr McCallum-Clark going last. The reasons for Mr McCallum-Clark going last are:

³ The proposed order lists the Council first, followed by the four appellants and then the various interested parties. Counsel for Meridian does not support Ngā Rūnanga giving opening submissions before Meridian on the basis that its position is different from most other parties on the issues before the Court, and that Meridian should have the opportunity to hear and respond to all parties' closing submissions, other than the Council. However, the Council considers it appropriate for Ngā Rūnanga to open its case after the Council.

- (a) The Council is taking a more limited role in this hearing, in accordance with the Memorandum of Counsel dated 21 December 2018; and
- (b) It avoids the need to recall Mr McCallum-Clark following the questioning of other planning witnesses.

The Order of Closing Submissions

- 8 It is proposed that closing submissions be given in reverse order to opening submissions.

Provisions being advanced by each Party

- 9 Counsel seeks a direction that, two weeks' prior to the hearing, each Party must file and serve a copy of the version of provisions that they intend to pursue at the hearing.

Consolidated Plan

- 10 If the Court would be assisted by the Council provided a consolidated version of the pSWLP showing the changes being pursued by each of the parties to this hearing, then the Council is agreeable to filing such a document one week prior to the hearing commencing.

Common Bundle of Evidence and Common Bundle of Documents

- 11 As some parties and witnesses are appearing remotely, it may be helpful for the Council to file a Common Bundle of Evidence and a Common Bundle of Documents prior to the hearing commencing. Those bundles could be provided two weeks prior to the hearing commencing.
- 12 Parties would need to identify documents to be included in the Common Bundle of Documents.

Draft Hearing Schedule

- 13 Once the Court has confirmed the structure of the hearing, Counsel will prepare, file, and circulate a draft Hearing Schedule. The draft Hearing Schedule could be filed one week prior to the hearing commencing.

Directions Sought

- 14 Counsel respectfully seeks the following directions:
- (a) The structure of the hearing shall proceed in the order set out at paragraph 4;

- (b) Opening submissions are to be given in the order set out at paragraph 5;
- (c) Evidence is to be heard in the order set out in paragraphs 6 and 7;
- (d) Closing submissions are to be given in reverse order to opening submissions;
- (e) Parties are to advise counsel for the Council as to the documents to be included in the Common Bundle of Documents by **27 October 2022**;
- (f) Each Party must file and serve a copy of the version of provisions that they intend to pursue at the hearing by **31 October 2022**;
- (g) The Council must file and serve a Common Bundle of Evidence and a Common Bundle of Documents by **31 October 2022**; and
- (h) The Council must file and serve a consolidated version of the pSWLP showing the changes being pursued by each of the parties to this hearing, and a draft Hearing Schedule, by **7 November 2022**.

DATED this 25th day of October 2022



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P A C Maw / I F Edwards
Counsel for the Southland Regional Council