

**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 DATES FOR RESUMPTION OF HEARING**

29 June 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 Tranche 1 of the appeals against the Council's decision on the proposed Southland Water and Land Plan.
- 2 The Court indicated, in its email of 27 June 2022, that it requires Mr McCallum-Clark to appear on 18 July 2022 to give his evidence in reply (setting out the provisions he supports) and to present and answer questions on the section 32AA report he is to prepare. It further directed that the Council is to propose a filing date for that evidence and section 32AA report that is at least 3 working days before 18 July 2022 (to allow reading time for the Court).
- 3 Counsel for the Council is cognisant of the need to bring this phase of the hearings of appeals on the pSWLP to a conclusion as expeditiously as possible. However, the dates indicated by the Court will not leave Mr McCallum-Clark sufficient time to finalise his evidence in reply, nor his section 32AA report.
- 4 Counsel has previously indicated that Mr McCallum-Clark would require a minimum of two weeks after hearing the final evidence to prepare final recommended provisions and a section 32AA report. The issues in dispute are complex and Mr McCallum-Clark has indicated that it will not be a simple task to prepare this material. If Mr McCallum-Clark was to appear on 18 July 2022, and allowing the Court three reading days, he would have only two days after hearing the last of the evidence on 8 July 2022 to prepare his evidence in reply and the section 32AA report. Despite best endeavours, that is simply not achievable.¹
- 5 In addition to the above, Ms Gepp has advised that she has a hearing in Nelson from 13 – 22 July 2022, with 18 July 2022 being the day on which her client is scheduled to present. This date was allocated as it accommodates the availability of her client's 4 expert witnesses following a site visit over the weekend of 16-17 July 2022. Accordingly,

¹ Mr McCallum-Clark is involved in another Environment Court hearing for the week of 27 June 2022 and will be attending (and may be giving further evidence on the JWS resulting from the farm systems and planning conferencing currently underway) the three days set down for this hearing the following week (6-8 July 2022). Accordingly, due to these commitments he is unable to 'frontload' much of the preparation of these documents.

it would be very difficult to change this hearing date, however if the Court were prepared to sit late, Ms Gepp could be available from 5 pm and would offer to limit cross-examination to not more than 30 minutes. Ms Gepp can be available on 19 and 20 July 2022 for closing submissions.

- 6 Counsel respectfully suggests that the following proposal may resolve these timing challenges: Mr McCallum-Clark could appear on 25 July 2022, with his evidence in reply and section 32AA report being filed on 20 July 2022. Closing submissions could then be given on 28 and 29 July 2022, with 3 and 4 August 2022 retained as back-up days if required.²
- 7 It is acknowledged that this will only allow two reading days for the Court, however it will also only allow Mr McCallum-Clark eight days to prepare his reply evidence and section 32AA report. It may well be that the reply evidence can be filed earlier than the 20th of July, with the section 32AA report to follow thereafter.
- 8 Regarding counsel's availability on those dates, the following is noted:
- (a) Ms Rusher for Mr English will be in the Southern Ocean on an expedition that it is not possible to reschedule during the week of 25 July 2022. Ms Rusher has confirmed that she will not need to cross-examine Mr McCallum-Clark. With respect to closing submissions, Ms Rusher has indicated she will be in a position to file short closing submissions shortly after her return on 1 August 2022, however she requests that she have an opportunity to review the hearing transcript prior to filing those written submissions. Alternatively, Ms Rusher is available on 3 and 4 August 2022.
 - (b) Ms Carruthers for Wilkins and Federated Farmers has advised that she can be available on 25 July 2022. Ms Carruthers is available on 3 and 4 August 2022 for closing submissions.
 - (c) Mr Thomsen for Beef and Lamb has revised his availability such that he can make himself available on 25 and 26 July 2022 if

² Note that based on counsels' estimates, only two days are required for closing submissions.

needed. Mr Thomsen is available on 3 and 4 August 2022 for closing submissions.

- 9 Counsel for the Council respectfully suggests that it is in the Court and the Parties' interests for Mr McCallum-Clark to have enough time to reflect on the most appropriate final provisions and prepare a considered section 32AA report.
- 10 The Council acknowledges that this may mean a delay in the decision issuing on Tranche 1, however Counsel considers that a comprehensive section 32AA report will better assist the Court with its decision-making.

DATED this 29th day of June 2022



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P A C Maw / A M Langford
Counsel for the Southland Regional Council