

**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 REFINEMENTS TO TIMETABLE FOR TRANCHES 2 AND 3
4 February 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 appeals against the Council's decision on the proposed Southland Water and Land Plan (**pSWLP**).

Background

- 2 On 2 December, in accordance with Court directions, Counsel filed a proposed timetable for the determination of any preliminary jurisdictional issues in relation to Tranches 2 and 3 and pre-hearing steps for the same.
- 3 On 21 December 2021, Counsel filed a further memorandum providing alternative options for timetables for Tranches 2 and 3.
- 4 The Court responded by Minute dated 23 December 2021, directing:
- (a) The hearing of Tranche 3 is to follow Tranche 2 unless the Council satisfies the Court on a robust basis that the subject matter is sufficiently unrelated to justify the reverse order, and there is good reason for them to be dealt with out of sequence.
 - (b) If expert conferencing is sought, it is to be conducted concurrently with other steps in the timetable and may need to be conducted without a Court appointed facilitator.
 - (c) The Council to consult with the parties on amendments to the previously proposed timetable that are considered necessary as a result of the Court's 23 December directions, and file further proposed timetabling for Tranches 2 and 3 no later than 4 February 2022. Specifically, the timetabling is to propose specific dates, including an indicative date for the Court's determination of the Tranche 2 jurisdictional matter.
 - (d) The proposed amended timetable is to allow for the Tranche 2 preliminary jurisdictional steps (being legal submission from the appellant, section 274 parties, and respondent, and reply by the appellant and section 274 parties) to commence no later than 11 February 2022 and finishing on 11 March 2022. The directions also include specifics regarding the submissions and materials to be provided to the Court.

- (e) The proposed amended timetable is to allow time for the hearing of the Tranche 2 preliminary jurisdictional matter, as it is anticipated it will not be decided on the papers.
- (f) The Council to advise, after consulting with the parties, whether it is considered necessary that a Tranche 1 decision be issued before Tranches 2 and 3 are heard.

Proposed amended timetable

- 5 Counsel prepared a proposed amended timetable, which makes the changes required by the directions set out in paragraph 4 above, and has liaised with the parties as to the same.
- 6 The proposed amended timetable set out in **Appendix 1** is agreed as between the parties.
- 7 For completeness, it is noted that:
 - (a) In relation to 4(a), pursuant to the proposed amended timetable both Tranche 2 and 3 will be ready to be heard on or after 15 August 2022. The parties confirm that the Tranche 2 and 3 matters are unrelated¹ and that there is no reason for them to be heard in a particular order.
 - (b) In relation to 4(b), time has been allowed in the timetable for expert conferencing to occur, if required. It is not known at this stage whether expert conferencing will be necessary, nor will it be known until evidence has been filed on these matters. If the parties consider, on 1 July 2022, that expert conferencing is not required, the two steps that follow will not be required. For the sake of simplicity and certainty, it is proposed that the timetable remain unchanged even if it is determined (on 1 July 2022) that no expert conferencing is to occur.
 - (c) In relation to 4(c), specific dates have been proposed. An indicative date has also been inserted for the Court's determination of the Tranche 2 jurisdictional matter.

¹ Tranche 2 relates to Policy 42 (Consideration of water permit applications), Rule 49 (Abstraction, diversion and use of surface water), and Appendix L.5 (Groundwater allocation). Tranche 3 relates to Policy 26 (Renewable energy), Rule 52A (Manapōuri Hydro-electric Generation Scheme), and proposed new Rule 52B.

- (d) In relation to 4(d), these steps are timetabled as required.
- (e) In relation to 4(e), it is estimated that, if the Court wishes to hold a hearing rather than determine the issue on the papers, one day of hearing time would be required. Counsel considers that there will be sufficient surplus time remaining within the period already set down for the Tranche 1 hearing (14 March to 14 April) for the Tranche 2 jurisdictional matter to be heard.²
- (f) In relation to 4(f), the parties agree that it is not necessary for the Tranche 1 decision to be issued before Tranches 2 and 3 are heard.

Directions sought

8 Counsel seeks that the timetable in **Appendix 1** be confirmed.

DATED this 4th day of February 2022



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

² It is noted that the length of time required for the Tranche 1 hearing is to be addressed in a separate Memorandum to be filed on Wednesday 9 February 2022.

Appendix 1 – Proposed amended timetable for Tranches 2 and 3

Date	Action	Time since previous step
11 February 2022	Legal submissions of Appellant(s) in relation to Tranche 2 preliminary jurisdictional issue	
18 February 2022	Legal submissions of Section 274 Parties in relation to Tranche 2 preliminary jurisdictional issue	Due 1 week after previous step
4 March 2022	Legal submissions of Respondent in relation to Tranche 2 preliminary jurisdictional issue	Due 2 weeks after previous step
11 March 2022	Legal submissions of Appellant and section 274 parties in reply in relation to Tranche 2 preliminary jurisdictional issue	Due 1 week after previous
One (1) day during the period 14 March – 14 April 2022	Hearing (1 day) on Tranche 2 preliminary jurisdictional matter	
6 May 2022 (indicative) ³	Decision of the Court on preliminary jurisdictional issues	Due 3 weeks after 14 April
13 May 2022	If decision on preliminary jurisdictional matters is issued earlier than Friday 15 April 2022, parties are to confirm, by way of reporting memorandum from the Regional Council, the	Within five working days of receipt of decision on the preliminary jurisdictional issues

³ Note: if a decision is not released on or before this date, changes will be required to the subsequent dates in this timetable.

	appropriateness of the dates in the remainder of the timetable	
27 May 2022	Appellant EIC for Tranches 2 and 3	Due 3 weeks following release of Court decision on jurisdictional issues OR filing of the reporting memorandum by the Regional Council as per the above step
3 June 2022	Section 274 parties' evidence for Tranches 2 and 3	Due 1 week after previous step
17 June 2022	Regional Council evidence for Tranches 2 and 3	Due 2 weeks after previous step
24 June 2022	Appellant and s 274 parties' rebuttal evidence for Tranches 2 and 3	Due 1 week after previous step
1 July 2022	Regional Council to confer with parties and file Memorandum reporting on topics to be referred to expert conferencing (if any) and time required	Due 1 week after previous step
8 July 2022	Regional Council to confer with parties and circulate agenda for expert conferencing (if required)	Due 1 week after previous step
15 July 2022	Expert Conferencing (if required)	To commence 1 week after agenda circulated
29 July 2022	Memo to Court setting out changes to provisions being pursued by parties	Due ~2 weeks after conferencing concludes / JWS filed
On or after 15 August 2022	Hearing commences, with Tranches 2 and 3 to be heard either sequentially or separately	2 weeks after previous step