

**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)

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

(Continued next page)

**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL
17 July 2018**

Judicial Officer: Judge Hassan

**WYNN WILLIAMS
LAWYERS
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**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL DISTRICT 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, SOUTHLAND
PLANTATION FOREST COMPANY OF NZ,
SOUTHWOOD EXPORT LIMITED**
(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**).
- 2 This Memorandum addresses the following matters:
 - (a) Attendance at mediation;
 - (b) Estimated time required for mediation;
 - (c) Amendments to Appendix A of the Memorandum of Counsel for the Southland Regional Council dated 29 June 2018; and
 - (d) Further jurisdictional issues in respect of the section 274 notices filed by the Waiiau Rivercare Group and the Waiiau River Liaison Committee.

Attendance at mediation

- 3 There will be up to four people in attendance at mediation for the Southland Regional Council, depending on the topic. This will consist of the following persons:
 - (a) Southland Regional Council staff with delegated authority in respect of the mediations (Lucy Hicks or Vin Smith);
 - (b) An expert planning consultant (Matthew McCallum-Clark or Anita Dawe);
 - (c) A technical expert (Southland Regional Council staff or consultants) – as required; and
 - (d) Legal counsel – as required.

Estimated time for mediation

- 4 The estimated time required for each of the mediation topics (as proposed in the Memorandum of Counsel on behalf of the Southland Regional Council dated 29 June 2018) is as follows:
 - (a) General provisions – 2 days;
 - (b) Water Take / Use – 2 days;

- (c) Wetlands / Indigenous Biodiversity – 2 days;
- (d) Infrastructure – 4 days;
- (e) Water Quality – 2 days;
- (f) Discharges – 3 days;
- (g) Cultural / FMUs / Other – 2 days;
- (h) Bed Disturbance – 2 days;
- (i) Physiographic Policies – 2 days;
- (j) Farming – 4 days;
- (k) Cultivation – 2 days;
- (l) Wastewater – 2 days; and
- (m) Agricultural Effluent – 2 days.

Amendments to Appendix A

- 5 After filing the Memorandum of Counsel for the Southland Regional Council dated 29 June 2018, there are several amendments that Counsel considers should be made to the information set out in Appendix A of that Memorandum.
- 6 Appendix A contained a table identifying the proposed topic groupings for the appeals, along with which of the appeals are on the particular provisions (e.g. objectives, policies, rules) relate to each topic.
- 7 Counsel considers that the following amendments should be made to Appendix A:
 - (a) Objectives 13, 13A and 13B should be removed from the General topic and added to the Discharge topic, as they are more appropriately analysed as part of the Discharge topic.
 - (b) Federated Farmers should be added to the list of Appellants on Policy 16A (which is contained in the Discharges topic), as they were inadvertently left off this provision.
 - (c) Rule 35 should be removed from the Wastewater topic and added to the Agricultural Effluent topic, as it relates to the discharge of agricultural effluent to land and should be considered as part of the Agricultural Effluent topic.

- 8 A revised version of **Appendix A**, with the above changes set out in tracking for ease of reference, is annexed to this Memorandum.

Further preliminary or jurisdictional issues

- 9 As set out at paragraph 19 of the Memorandum of Counsel for the Southland Regional Council dated 29 June 2018, Counsel noted that any further jurisdictional issues in respect of section 274 notices that were served on the Council would be raised in a subsequent memorandum.
- 10 Two further jurisdictional issues have been brought to the Council's attention by various Appellants. On review, Counsel considers that it appears there may be two further jurisdictional issues relating to the following parties:
- (a) Waiau Rivercare Group; and
 - (b) Waiau River Liaison Committee.
- 11 Waiau Rivercare Group and Waiau River Liaison Committee have both lodged section 274 Notices in respect of the following appeals on the pSWLP:
- (a) Meridian Energy Limited;
 - (b) Aratiatia Livestock Limited;
 - (c) Te Runanga o Ngāi Tahu;
 - (d) Royal Forest and Bird Protection Society of New Zealand; and
 - (e) Federated Farmers of New Zealand.
- 12 Under section 274 of the RMA, the following persons may be a party to any proceedings before the Environment Court (relevantly):
- ...
 - (d) a person who has an interest in the proceedings that is greater than the interest that the general public has...
 - ...
 - (e) a person who made a submission to which the following apply:
 - (i) it was made about the subject matter of the proceedings...

Waiau Rivercare Group

- 13 The Waiau Rivercare Group did not lodge a submission on the pSWLP. As a result, the Waiau Rivercare Group is now seeking to join the above appeals on the basis that they are a person who has an interest in the proceedings that is greater than the interest that the general public has.
- 14 The Waiau Rivercare Group's section 274 Notice states that they have an interest greater than the general public because it "comprises a cross-section of our community (urban and rural)" and has letters of support from several members of the community.
- 15 As was previously raised in the Memorandum of Counsel dated 29 June 2018 (in relation to the section 274 Notice of Mr Owen Buckingham) the previous approach of the Court in relation to this determination is that the interest that qualifies a person to participate in a proceeding must be one of "some advantage or disadvantage, such as that arising from a right in property directly affected and which is not remote."¹
- 16 Further decisions have confirmed that the remoteness issue relates to legal remoteness rather than geographical,² the circumstances providing an interest in the proceedings greater than the public generally are not restricted solely to property rights, and that it is not a closed or prescribed class.³
- 17 The approach of the Court has been that an interest in the preservation of a particular environment is not sufficient to establish an interest in the proceedings greater than that of the general public.⁴
- 18 It has further been established that being a representative group of the general public does not automatically result in a greater interest. In

¹ *Purification Technologies Limited v Taupo District Council* [1995] NZRMA 197 at 204, more recently stated in *Wallace Group Limited v Auckland Council* [2017] NZEnvC 106 at [23].

² *Powerco Limited v Thames-Coromandel District Council* [2017] NZEnvC 67, at [28].

³ *Meadow 3 Limited v Queenstown Lakes District Council* EnvC C001/08, 15 January 2008.

⁴ *Purification Technologies Limited v Taupo District Council* [1995] NZRMA 197 at 204.

Mangawhai Heads Holdings Limited v Kaipara District Council, the Court relevantly stated:⁵

[13] However, the fact that MRRA is representative of a subset of the general public on issues of concern to them, and a community group does not automatically result in it having an interest "greater than the interest that the general public has". What is required is that MRRA can establish that it has some advantage or disadvantage that is not remote.

[14] Ultimately, the constitution of MRRA does not indicate that it has a specific interest in Resource Management issues. It is a community group with a broad and general purpose. There is nothing in the constitution to establish that it will experience some advantage or disadvantage that is not remote. It cannot be said that it has a greater interest than any other member of the wider community.

- 19 Although more recent caselaw has suggested that an interest that is more specific than that of the general public may go towards establishing a qualifying interest, this has generally been in the context of a particular street or neighbourhood rather than an environment such as a river.⁶ The section 274 Notice does not appear to indicate the specific area that the group is interested in, and the purpose of the group is not made clear.
- 20 In line with the above caselaw, on the face of their section 274 Notices, the Waiau Rivercare Group does not appear to meet the test to join the above listed appeals, as set out in section 274 of the RMA.

Waiau River Liaison Committee

- 21 The Waiau River Liaison Committee did lodge a submission on the pSWLP, as a signatory to the submission by the Southland River Liaison Committees. However, this submission did not submit on the parts of the pSWLP that the Waiau River Liaison Committee is now seeking to participate in.

⁵ *Mangawhai Heads Holdings Ltd v Kaipara District Council* [2011] NZEnvC 203, at [13]-[14].

⁶ *Lindsay v Dunedin City Council* [2013] NZEnvC 8; *Trustees of the Neville Crawford Family Trust v Far North District Council* [2013] NZEnvC 141.

- 22 As a result, the Waiau River Liaison Committee is seeking to join the above appeals on the basis that they are a person who has an interest in the proceedings that is greater than the interest that the general public has.
- 23 The Waiau River Liaison Committee's section 274 Notice states that they have an interest greater than the general public because "it is a Committee established by the Regional Council, comprised of rate payers adjacent to the Waiau River and its Tributaries."
- 24 As has been previously raised in relation to Mr Owen Buckingham, the Environment Court has confirmed that the "mere fact of owning land in a district" is not a sufficient interest for the purposes of section 274. In *Federated Farmers v Hastings District Council*, the Environment Court relevantly stated:⁷
- For the same reasons that allowing any ratepayer to claim an interest greater than the interest that the general public has is flawed reasoning, I simply cannot see that the mere fact of owning land in a district is sufficient interest to give a landowner the right to join an Environment Court proceeding under section 274(1)(d).
- 25 This position has been further clarified by the Environment Court in *Wallace Group Limited v Auckland Council*.⁸ This case stated that:⁹
- It is the relationship between the interest and the consequent effect of the proceedings on the interest, rather than the actual interest itself, which is important. Picking up once again on the key theme of "some advantage or disadvantage": such must be direct and not just emotional or intellectual.
- 26 As discussed above in relation to the Waiau Rivercare Group, being a representative group does not automatically qualify a group as having an interest greater than the general public has.¹⁰

⁷ *Federated Farmers of New Zealand Hawkes Bay Province v Hastings District Council* [2016] NZEnvC 141, at [17]. See also *The HB Protection Society Incorporated v Hastings District Council* EnvC W021/2009.

⁸ *Wallace Group Limited v Auckland Council* [2017] NZEnvC 106.

⁹ *Wallace Group Limited v Auckland Council* [2017] NZEnvC 106 at [25], citing *Remarkables Park Ltd v Queenstown-Lakes District Council* EnvC C26/2005.

- 27 A Planning Tribunal decision has stated that a person with official duties or responsibilities that may be affected by the outcome of the proceedings may have a qualifying interest,¹¹ but in this case the Waiau River Liaison Committee does not appear to have responsibilities that would be affected.
- 28 The Waiau River Liaison Committee is a Committee of the Council and operates under Terms of Reference. The Terms of Reference of the Committee establish it as a way for the Council to communicate with ratepayers, and it does not appear to have a specific purpose which would qualify it as having an interest greater than the general public has. Further, the Terms of Reference do not extend to being involved in planning appeals.
- 29 In line with the above caselaw and Terms of Reference, on the face of their section 274 Notice, the Waiau River Liaison Committee does not appear to meet the test to join the above listed appeals, as set out in section 274 of the RMA.

Conclusion

- 30 Accordingly, the issue of the Waiau Rivercare Group's and the Waiau River Liaison Committee's standing should be addressed prior to the commencement of mediation on the appeals that they have sought to join.
- 31 Counsel respectfully seeks that the Court issue similar directions in respect of the standing of the Waiau Rivercare Group and the Waiau River Liaison Committee as have been made in respect of Mr Buckingham.

DATED this 17th day of July 2018



.....
P A C Maw / K J Wyss
Counsel for the Southland Regional Council

¹⁰ *Mangawhai Heads Holdings Ltd v Kaipara District Council* [2011] NZEnvC 203, at [13]-[14].

¹¹ *Te Runanga O Taumarere v Northland Regional Council* PT Auckland A081/95, 21 August 1995.

Appendix A

GENERAL PROVISIONS					
General	Appellant	Objectives	Appellants	Policies	Appellants
Inclusion of ephemeral rivers	Ngāi Tahu				
Historic heritage ¹	Heritage NZ				
		2	Fish & Game Ngāi Tahu		
		13	Fish & Game Alliance Heritage NZ Ngāi Tahu Forest & Bird		
		13A	Fish & Game Alliance Forest & Bird		
		13B	Alliance Forest & Bird Fish & Game		
		18	Fish & Game Alliance Ngāi Tahu		
				13	Fish & Game Ngāi Tahu Forest & Bird
				39	Fish & Game Federated Farmers Forest & Bird
				39A	Ngāi Tahu Forest & Bird Horticulture NZ

¹ Heritage NZ have also appealed the headings of several sections which have not been explicitly included in this list

WATER TAKE/USE								
Objective	Appellant	Policies	Appellants	Rules	Appellants	Appendices	Appellants	
9	Heritage NZ Forest & Bird Fish & Game							
9A	Fish & Game Forest & Bird Heritage NZ							
11	Alliance							
		20	Ngāi Tahu Forest & Bird Fish & Game Heritage NZ Alliance					
		24	Heritage NZ					
		25	Ngāi Tahu					
		42	Alliance Fish & Game Wilkins Farming					
				50	Alliance			
				51	Forest & Bird			
				54	Wilkins Farming Fonterra			
						L.5	Wilkins Farming Director-General of Conservation	
						J	Alliance	
						K	Fish & Game	

WETLANDS / INDIGENOUS BIODIVERSITY											
Objectives	Appellants	Policies	Appellants	Rules	Appellants	Appendices	Appellants	Definitions	Appellants		
14	Forest & Bird										
17	Forest & Bird										
		32	Forest & Bird								
				74	Fish & Game Ngāi Tahu						
				74(ab)	Ngāi Tahu						
						A	Fish & Game Federated Farmers Chartres Ngāi Tahu				
						Q	Ngāi Tahu				
									Natural Wetland	Horticulture NZ	
							Wetland	Horticulture NZ			

INFRASTRUCTURE

Objective	Appellant	Policies	Appellants	Rules	Appellants	Appendices	Appellants		
9B	Fish & Game Forest & Bird Federated Farmers Ngāi Tahu								
10	Aratiatia Federated Farmers Meridian Energy Ngāi Tahu								
New x	Meridian Energy								
		26	Aratiatia Federated Farmers Ngāi Tahu Meridian Energy						
		26A	Transpower Fish & Game Forest & Bird Ngāi Tahu						
						52	Aratiatia Meridian Energy Forest & Bird		
						52A	Aratiatia Meridian Energy Federated Farmers		
						49	Meridian Energy Alliance Federated Farmers		
						New 52B	Meridian Energy		
								E	Fish & Game Aratiatia Alliance Ngāi Tahu

WATER QUALITY					
General	Appellant	Objectives	Appellants	Policies	Appellants
Measure to 2010 not 2016 standard	Ngāi Tahu				
		6	Fish & Game Ngāi Tahu Forest & Bird		
		7	Fish & Game		
				15	Ngāi Tahu Forest & Bird
				15A	Fish & Game Forest & Bird Alliance Ngāi Tahu
				15B	Fish & Game Forest & Bird Alliance Ngāi Tahu
				15C	Fish & Game Forest & Bird Alliance Ngāi Tahu

DISCHARGES

Objective	Appellant	Policies	Appellants	Rules	Appellants	Appendices	Appellants
13	Fish & Game Alliance Heritage NZ Ngāi Tahu Forest & Bird						
13A	Fish & Game Alliance Forest & Bird						
13B	Alliance Forest & Bird Fish & Game						
		14	Alliance				
		16A	Fonterra Director-General of Conservation Fish & Game Forest & Bird Ngāi Tahu Federated Farmers				
				5	Director-General of Conservation Alliance Fish & Game Ngāi Tahu		
				6	Alliance		
				9	Director-General of Conservation		
				13	Fish & Game Forest & Bird Federated Farmers		
				14	Horticulture NZ Forest & Bird Fish & Game		
				15	Ngāi Tahu Territorial Authorities Fish & Game Forest & Bird		
						G	Alliance

BED DISTURBANCE					
Policies	Appellants	Rules	Appellants	Definitions	Appellants
28	Forest & Bird Heritage NZ				
29	Director-General of Conservation Heritage NZ Forest & Bird Ngāi Tahu HW Richardson				
30	Fish & Game				
		59	Transpower Heritage NZ		
		73	Federated Farmers Heritage NZ Fish & Game		
		78	Director-General of Conservation Heritage NZ Forest & Bird Fish & Game Ngai Tahu		
				gravel	Fish & Game
				Sediment	Fish & Game

PHYSIOGRAPHIC POLICIES	
Policies	Appellants
4	Wilkins Farming Director-General of Conservation Fish & Game Alliance Federated Farmers Ngāi Tahu Forest & Bird
5	Wilkins Farming Fish & Game Alliance Federated Farmers Ngāi Tahu Forest & Bird
6	Wilkins Farming Alliance Fish & Game Forest & Bird
7	Wilkins Farming Alliance Forest & Bird
8	Wilkins Farming Alliance Forest & Bird
9	Wilkins Farming Fish & Game Alliance Federated Farmers Ngāi Tahu Forest & Bird
10	Wilkins Farming Fish & Game Alliance Federated Farmers Ngāi Tahu Forest & Bird
11	Wilkins Farming Fish & Game Alliance Federated Farmers Ngāi Tahu Forest & Bird
12	Wilkins Farming Fish & Game Alliance Federated Farmers Ngāi Tahu Forest & Bird
12A	Alliance Ngāi Tahu Wilkins Farming Fish & Game Forest & Bird Federated Farmers

FARMING

Policies	Appellants	Rules	Appellants	Appendices	Appellants	Definitions	Appellants
16	Fonterra Director-General of Conservation Forest & Bird Fish & Game Ngāi Tahu						
18	Beef & Lamb Federated Farmers Fish & Game Forest & Bird						
		20	Robert Grant Fonterra Aratiatia Wilkins Farming Dairy NZ Beef & Lamb Fish & Game Federated Farmers Stoney Creek Station The Terraces Campbells Block Chartres Ngāi Tahu Forest & Bird				
		24	Fish & Game Forest & Bird				
		35A	Federated Farmers Dairy NZ Ngāi Tahu				
		70	Beef & Lamb Fish & Game Forest & Bird Chartres				
				N	Heritage NZ Fish & Game Ngāi Tahu		
						Intensive Winter Grazing	Fish & Game Stoney Creek Station
						Significant de-vegetation	Fish & Game
						Feedlot/feedpad	Federated Farmers

CULTIVATION			
Rules	Appellants	Definitions	Appellants
25	Robert Grant Horticulture NZ Fish & Game Federated Farmers Stoney Creek Station Campbells Block Southwood Ngāi Tahu Forest & Bird		
		Spray and pray	Stoney Creek Station
		Sloping ground	Fish and Game
		cultivation	Horticulture NZ Rayonier Southwood

WASTEWATER			
Policies	Appellants	Rules	Appellants
17A	Ngāi Tahu Federated Farmers Fish & Game Forest & Bird		
		26	Ngāi Tahu
		28	Ngāi Tahu
		29	Ngāi Tahu
		33	Territorial Authorities
		33A	Territorial Authorities
		35	Federated Farmers

AGRICULTURAL EFFLUENT			
Policies	Appellant	Rules	Appellants
17	Fonterra Fish & Game Forest & Bird Ngāi Tahu		
		32B	Federated Farmers Fonterra Heritage NZ
		32D	Fonterra
		<u>35</u>	<u>Federated Farmers</u>