

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

UNDER the Resource Management 1991

IN THE MATTER of 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 IN
RESPECT OF WETLAND DEFINITIONS
12 December 2018**

Judicial Officer: Judge Hassan and Judge Borthwick

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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 Act 1991
(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 Ngā Rūnanga confirmed that (for the purpose of case management) the two matters that are principally at issue for Ngā Rūnanga concerning wetlands are:¹
 - (a) Do the relevant objectives use the terms consistently and deliberately, having regard to their definitions?
 - (b) What is the meaning of “wetland” and “natural wetland”?
- 3 In its Minute dated 29 November 2018, the Court directed that:
 - (a) If Ngā Rūnanga is seeking confirmation that the terms are being used in a consistent and deliberate manner (i.e., paragraph (2)(a), above), then by Wednesday 12 December 2018 the Regional Council will file a memorandum/affidavit providing a succinct but comprehensive response to the same.

Do the relevant objectives use the terms consistently and deliberately, having regard to their definitions?

- 4 Counsel submits that the relevant objectives do use the terms consistently and deliberately, having regard to their definitions. Section 7.2 of the Initial Planning Statement includes an assessment of the provisions relating to wetland controls in the pSWLP.²
- 5 The definition of “wetland” in the pSWLP is directly from section 2 of the RMA and is intended to be broad enough to capture all types of wet areas of land that support natural ecosystems of plants and animals. This will capture all wetlands including constructed, artificial, and minor wetlands.

¹ Memorandum of Counsel for Ngā Rūnanga dated 5 December 2018 responding to Court's Minute dated 29 November 2018 regarding wetlands.

² Initial Planning Statement, Section 7.2 at 205-217.

- 6 In contrast, the terms “natural wetland” and “regionally significant wetland” refer only to a sub-set of those wetlands that will be captured by the broad RMA definition of “wetland”.
- 7 Reference to these three “types” of wetland in the pSWLP provisions is deliberate and reflects the Council’s intention in respect of the intended use and level of regulation of the different “types” of wetlands.
- 8 In some circumstances, it is appropriate to consider all wetlands, including artificial and minor wetlands (e.g. in the objectives), and in other situations the policies and rules are more focussed. For example, the effects of activities can be regulated by the pSWLP rules and the activity status of a rule may differ depending on the particular type of wetland concerned (e.g. by only regulating a particular activity in respect of natural wetlands i.e. Rule 70(a), or, by requiring larger setbacks from regionally significant wetlands i.e., Rule 20(a)(iii)(4) and (5)).
- 9 Turning to the Topic A provisions, the objectives in the pSWLP only use the term “wetland”, which is included in Objectives 14 and 17, which provide as follows:³

Objective 14 - The range and diversity of indigenous ecosystem types and habitats within rivers, estuaries, wetlands and lakes, including their margins, and their life-supporting capacity are maintained or enhanced.

Objective 17 - The natural character values of wetlands, rivers and lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats, are protected from inappropriate use and development.

- 10 It is submitted that in light of the Council’s functions in section 30 of the RMA,⁴ and the relevant higher order documents, that the use of the RMA’s broad definition of “wetland” is appropriate for these high-level objectives in the pSWLP.

³ We note that Policy 11 refers to “Peat Wetlands”, being the relevant Physiographic Zone as defined by the pSWLP, and not to the definition of “wetland” in the RMA (and as set out in the pSWLP).

⁴ Including the Council’s functions to: control land for the purpose of the maintenance and enhancement of the quality and quantity of water in water bodies and ecosystems in waterbodies (s 30(1)(c)(ii), (iii) (iiia)); control the taking, use, damming and diversion of water and the quantity, level and flow of water in any water body (s30(1)(e)); control discharges of contaminants to water - noting that “water bodies” includes wetlands under s 2 of the RMA.

- 11 The term “wetland” is not used in any of the other provisions that form part of the Topic A hearing. Further, the terms “natural wetland” and “regionally significant wetland” are not used in any of the provisions that form the substance of the Topic A hearing.

Topic B provisions

- 12 For completeness, in respect of the remainder of the pSWLP provisions, which will be heard as part of Topic B, these terms are used in the following provisions in the pSWLP (as set out in the Initial Planning Statement):⁵
- (a) Regionally Significant Wetland (noting that although this term is not defined in the glossary, Appendix A identifies the regionally significant wetlands and sensitive waterbodies in Southland):
 - (i) Policy 16.
 - (ii) Rules 20, 51, and 70.
 - (b) Natural wetland:
 - (i) Policies 18, 20, 21, 32, 33, 34.
 - (ii) Rules 5, 6, 8, 13, 14, 18B, 20, 25, 26, 27, 28, 29, 32B, 32C, 33, 33A, 35, 35A, 36, 37, 38, 40, 41, 42, 43, 46, 48, 49, 50, 51, 54, 59, 70, 74.
 - (iii) Appendices E, K, and N.
 - (c) Wetland:
 - (i) Policies 16, 18, 20, 21, 32, 33, and 34.⁶
 - (ii) Rules 5, 6, 8, 13, 14, 15, 16, 18A, 18B, 20, 25, 26, 27, 28, 29, 32B, 32C, 33, 33A, 35, 35A, 36, 37, 38, 40, 41, 42, 43, 46, 48, 49, 50, 51, 52A, 54, 55, 56, 57, 58, 59, 65A, 66, 69, 70, 74, 76, and 79.

⁵ Initial Planning Statement at 326 (regionally significant wetland), 342 (natural wetland), 348 (wetland).

⁶ The Initial Planning Statement includes Policy 11 as referring to the definition of “wetland”. However, Policy 11 refers to “Peat Wetlands”, being the relevant Physiographic Zone as defined by the pSWLP, and not to the definition of “wetland” in the RMA (and as set out in the pSWLP).

(iii) Appendices A, B, E, K, L.2, N.

DATED this 12th day of December 2018



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