

**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)

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**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL  
REGARDING EXPERT CONFERENCING  
27 March 2019**

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Judicial Officer: Judge Borthwick and Judge Hassan

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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 This Memorandum addresses the details required for expert conferencing to be set down, as directed by the Court in its Minute dated 20 March 2018, including:
  - (a) the number of persons anticipated to attend each conference;
  - (b) the sequencing of conferences;
  - (c) the availability of experts for conferencing on the dates indicated;
  - (d) the estimated time required for conferencing;
  - (e) facilities required; and
  - (f) the most suitable location for conferencing.
- 3 In accordance with paragraph [11(h)] of the Court's Minute dated 20 March 2019, Counsel for the Council has conferred with the parties in relation to the details requested and file this Memorandum recording the parties positions.

**Parties' positions on conferencing**

- 4 On Friday 22 March 2019, Counsel for the Council sent an email to all parties addressing the details requested in the Court's Minute.
- 5 Counsel for the Council proposed that there were two topics which would benefit from expert witness conferencing:
  - (a) Surface water quality and freshwater ecology; and
  - (b) Water quality – lakes.
- 6 Counsel for the Council also set out that it does not consider that there is any opposing technical evidence in respect of groundwater quality (Ewen Rodway), climate science (Jennifer Purdie), physiographic risk limitations (Ton Snelder), water quality risk classifications associated with physiographic zones (Ewen Rodway), and biodiversity and wetlands (Kelvin Lloyd, Brian Rance). Counsel also did not propose conferencing between the cultural experts (Ailsa Cain and Michael Skerrett).

- 7 Further, Counsel advised that it considers that an expert conference of the planning witnesses will not be effective or efficient, given the diverse views and issues contained in the planning evidence. Counsel considers that while there may be a number of appropriate or acceptable planning responses, these responses are largely driven by differences in philosophical views between parties. Accordingly, Counsel considers that it would be more appropriate for mediation to occur on any relatively discrete issues, rather than expert conferencing of the planning witnesses.
- 8 Some parties also suggested discrete topics that they considered suitable for mediation ahead of the hearing. This is discussed further below. Most parties either agreed and/or were comfortable with this approach, or advised that they had no comments in relation to the proposed topics and approach to conferencing and mediation.
- 9 The exception to this general position was by Meridian Energy Limited (**Meridian**) and the Territorial Authorities - Gore District Council, Southland District Council and Invercargill City Council (**Territorial Authorities**). Their respective positions are set out below.
- 10 Meridian agreed with the proposed expert conferencing relating to water quality as proposed by Counsel for the Council. However, on the matter of expert planning conferencing Meridian considers “there would be benefits for planning experts to conference on the relatively confined points of difference on the preferred wording of Objective 10” of the pSWLP. Meridian considers that this planning conferencing on Objective 10 could be completed within a relatively short period of time of between 1 and 2 hours.
- 11 Meridian proposes that the planning conference on Objective 10, if agreed, would involve Matthew McCallum-Clark (Council); Treena Davidson (Ngā Runanga), Ben Farrell (Fish and Game; Forest and Bird) and Jane Whyte (Meridian). Counsel for the Council notes that Linda Kirk has also given expert planning evidence on behalf of the Director-General of Conservation in respect of Objective 10.
- 12 Further, Meridian does not consider mediation on Objective 10 is appropriate at this time given its interrelationship with other objectives and policies in the pSWLP.

- 13 The Territorial Authorities consider that there should be provision for planners to conference. Counsel for the Territorial Authorities considers that “the Court [would] want to know at least why the planners have recommended different wording for the objectives, and whether the experts can agree on any more of the wording before the hearing.”
- 14 Given the widespread agreement in relation to the proposed conferencing topics, Counsel for the Council respectfully requests that the Court direct conferencing and mediation as per paragraph 28, below.

#### **Details requested by Court**

- 15 Accordingly, in light of the responses from parties, the details requested by the Court are as follows.

#### *Conferencing topics and number of persons attending each conference*

- 16 The following topics are proposed for expert conferencing:
- (a) Surface water quality and freshwater ecology:
    - (i) Eight attendees, comprising: Roger Hodson, Russell Death, Kate McArthur, Jane Kitson, Mark James, Justin Kitto, Susan Bennett, and Emily Funnell.
  - (b) Water quality – lakes:
    - (i) Two attendees, comprising: Nicholas Ward and Jane Kitson.
- 17 In relation to the water quality – lakes conference, Counsel proposed that, as this relates to a minor issue identified between the evidence of Nicholas Ward and Jane Kitson, this topic could be dealt with by way of direct discussion (e.g. meeting or telephone) between the two experts rather than formal expert conferencing with a Commissioner present. Counsel for Ngā Rūnanga agrees with this approach, and no other party objected to it.

#### *Sequencing*

- 18 Given the topics proposed for conferencing, Counsel considers that no particular sequencing is required.

*Availability of experts for conferencing*

- 19 Parties have advised as to the availability of expert witnesses between 9 April to 18 April 2019, and 29 April to 3 May 2019.<sup>1</sup> The availability issues that have been advised by parties in relation to the proposed conferencing topic for surface water quality and freshwater ecology are set out in **Appendix A**.
- 20 Based on availability, Counsel for the Council proposes that conferencing for surface water quality and freshwater ecology occurs on Thursday 11 April 2019, commencing at 12 pm (and that evening, if required).

*Estimated time for conferencing*

- 21 Counsel considers that based on the number of experts and issues to be considered (which will form part of the agenda that is required to be filed ahead of the conference), expert conferencing in respect of surface water quality and freshwater ecology may take the entire afternoon of 11 April 2019 (i.e, 12 pm to 5 pm). Counsel notes that it is unfortunate that there is no instance where all of the relevant experts are available for an entire day.

*Facilities required*

- 22 In relation to the facilities required, parties have requested that wireless internet access be available for experts to access via laptops during the conference.

*Location*

- 23 In relation to the most suitable location for conferencing, most parties either did not express a preference or expressed a preference for Invercargill.<sup>2</sup>
- 24 Accordingly, Counsel suggests that the most suitable location for any conferencing and/or mediation is Invercargill. Further, if conferencing for surface water quality and freshwater ecology takes place on 11 April 2019, Counsel considers that Invercargill is the most suitable

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<sup>1</sup> As per the extended timetable set out in paragraph [11(b)] of the Minute dated 20 March 2019.

<sup>2</sup> Noting that Fish & Game would prefer a Christchurch location due to the direct flights for their expert, Russell Death, flying from Palmerston North.

location as Mr Hodson has an immovable prior commitment on the morning of 11 April 2019 in Invercargill.

### **Mediation**

- 25 In relation to any mediation between the parties on the provisions, parties have proposed the following topics for mediation:
- (a) Objectives 2, 9, 9A, 9B, 10, 13-13B, 14, 17, 18, and new Objective X;
  - (b) The inclusion of historic heritage in Objectives 9 and 13; and
  - (c) Policy 4.3.
- 26 Counsel for the Council agrees that mediation is appropriate/suitable for the following provisions, in light of the evidence and relatively narrow issues under appeal:
- (a) Objective 2;
  - (b) Objective 9B;
  - (c) Objective 10;
  - (d) Objective 13-13B;
  - (e) The inclusion of historic heritage in Objectives 9 & 13;
  - (f) New Objective X; and
  - (g) Policy 4.3.
- 27 Counsel for the Council has not sought indications from parties as to their availability for any such mediation at this stage.



**Directions sought**

- 28 Counsel for the Council respectfully seeks directions from the Court:
- (a) that expert witness conferencing on surface water quality and freshwater ecology takes place on the afternoon (and evening if required) of 11 April 2019 in Invercargill; and
  - (b) that mediation be set down for the topics set out in paragraph 26, above.

**DATED** this 27<sup>th</sup> day of March 2019



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

## Appendix A

### Expert Witnesses - Dates Unavailable

Expert conferencing dates	Dates unavailable (Witness and Party)
<b>Tuesday 9 April</b>	Russell Death, Southland Fish and Game Council ( <b>Fish &amp; Game</b> ) Jane Kitson, Ngā Rūnanga <sup>3</sup>
<b>Wednesday 10 April</b>	Jane Kitson, Ngā Rūnanga
<b>Thursday 11 April</b>	Roger Hodson, Council (morning only)
<b>Friday 12 April</b>	Jane Kitson, Ngā Rūnanga Emily Funnell, Director-General of Conservation ( <b>DoC</b> )
<b>Monday 15 April</b>	Kate McArthur, Royal Forest and Bird Protection Society of New Zealand ( <b>Forest &amp; Bird</b> ) Russell Death, Fish & Game Mark James, Meridian
<b>Tuesday 16 April</b>	Kate McArthur, Forest & Bird Russell Death, Fish & Game Mark James, Meridian
<b>Wednesday 17 April</b>	Kate McArthur, Forest & Bird (available after 10am) Russell Death, Fish & Game Mark James, Meridian
<b>Thursday 18 April</b>	Russell Death, Fish & Game Mark James, Meridian
<b>Monday 29 April</b>	Jane Kitson, Ngā Rūnanga Susan Bennett, Territorial Authorities
<b>Tuesday 30 April</b>	Jane Kitson, Ngā Rūnanga
<b>Wednesday 1 May</b>	Jane Kitson, Ngā Rūnanga
<b>Thursday 2 May</b>	Jane Kitson, Ngā Rūnanga
<b>Friday 3 May</b>	Jane Kitson, Ngā Rūnanga Emily Funnell, DoC

<sup>3</sup> Comprising Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu.