

**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)

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JOINT MEMORANDUM IN SUPPORT OF CONSENT ORDER

**TOPIC B5 ISSUE 103
RELATING TO
APPENDIX N**

3 February 2022

Judicial Officer: Judge Borthwick

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WILKINS FARMING CO
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**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 joint memorandum relates to appeals against Southland Regional Council's decision on the proposed Southland Water and Land Plan (**pSWLP**), in respect of one provision relating to Topic B5 Farming.
- 2 The parties participated in informal discussions on these appeals prior to mediation (which was vacated).
- 3 During these discussions the parties reached agreement on the resolution of Issue 103 (Appendix N).
- 4 This joint memorandum is filed in support of a draft consent order to resolve the appeal by Heritage New Zealand Pouhere Taonga in relation to Appendix N.
- 5 This joint memorandum has been signed by the Appellant, the Respondent, and each of the section 274 parties.

The changes agreed, the rationale for the same, and draft Consent Orders

- 6 The changes to Appendix N, as agreed between the parties, are detailed in the draft Consent Order included at **Appendix 1** to this joint memorandum.
- 7 The changes, including the rationale for the same, are also explained in more detail in the affidavit of Matthew McCallum-Clark dated 2 February 2022, attached as **Appendix 2** to this joint memorandum. This affidavit provides an evaluation of the agreed changes in terms of section 32AA of the Act and (where relevant) the higher order policy documents, including in particular the National Policy Statement for Freshwater Management 2020 (**NPSFM**).
- 8 Counsel also record at the outset, that the parties, throughout mediation and informal discussions, were cognisant of the findings in the Court's Interim Decisions¹ and are satisfied that all changes agreed to are consistent with those findings and/or, within the bounds of scope, bring the pSWLP closer to the direction in those decisions.

¹ [2019] NZEnvC 208, [2020] NZEnvC 93, [2020] NZEnvC 110, and [2020] NZEnvC 191.

Details of appeals

- 9 The sub-sections below detail the provision that was appealed, who appealed it, what the appellant sought, and who joined the appeal as section 274 parties.
- 10 As the rationale for the changes agreed and an analysis in line with section 32AA has been provided in the affidavit of Matthew McCallum-Clark, such detail is not reproduced here. Rather, cross-referencing to that reasoning is provided to assist with readability of the suite of documents filed in support of orders being made by consent.

Issue 103 – Appendix N

- 11 Appendix N sets out the requirements for Farm Environment Plans.
- 12 Appendix N was appealed by Heritage New Zealand Pouhere Taonga (**Heritage New Zealand**), Southland Fish and Game Council, and Te Rūnanga o Ngai Tahu, Hokonui Rūnaka, Waihopai Rūnaka, Te Rūnanga o Awarua & Te Rūnanga o Ōraka Aparima (**Ngā Rūnanga**).
- 13 The appeals by Southland Fish and Game Council and Ngā Rūnanga remained unresolved as at 19 November 2021. Accordingly, this joint memorandum relates only to the appeal by Heritage New Zealand and consent orders are sought only in relation to that appeal.
- 14 Heritage New Zealand sought to include a requirement for the location of any known and recorded heritage sites to be shown in Farm Environment Plans.
- 15 The parties are satisfied that the appeal by Heritage New Zealand is sufficiently separate from those by Southland Fish and Game Council and Ngā Rūnanga that it is appropriate for this appeal to be resolved by way of consent while those other appeals remain unresolved.
- 16 The following parties joined Heritage New Zealand's appeal as section 274 parties in relation to this aspect of Appendix N:
- (a) Federated Farmers of New Zealand; and
 - (b) Ngā Rūnanga.
- 17 Through discussions the parties agreed to amend Appendix N as set out in the draft consent order and paragraph [14] of the affidavit of Matthew McCallum-Clark in relation to Topic B5.

18 The rationale for the changes agreed are also included in that affidavit at paragraphs [15] – [20].

Orders sought

- 19 All parties are satisfied that all matters proposed for the Court's endorsement are within the scope of submissions and appeals, fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.
- 20 For the avoidance of doubt, the parties are satisfied that the amendments give effect to the National Policy Statement for Freshwater Management 2020, insofar as there is scope to do so.
- 21 The parties are also satisfied that the changes appropriately respond to the direction from the Court in its Interim Decisions.²
- 22 The parties therefore respectfully request that the Court make the orders sought in **Appendix 1** to this memorandum.
- 23 No party has any issue as to costs.
- 24 For completeness, it is noted that the order, if granted, resolves the appeal by Heritage New Zealand in relation to Appendix N, however the Appendix remains under appeal by Southland Fish and Game Council and Ngā Rūnanga (by way of Topic B5 Issues 104 – 113).

DATED this 3rd day of February 2022



.....
P A C Maw / A M Langford

Counsel for Southland Regional Council

² [2019] NZEnvC 208, [2020] NZEnvC 93, [2020] NZEnvC 110, and [2020] NZEnvC 191.

Vanilla b.M. Owen

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C Owen

Counsel for Heritage New Zealand Pouhere Taonga

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S Gepp

Counsel for Southland Fish and Game Council

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J Winchester / S Lennon

Counsel for Ngā Rūnanga

.....

R Gardner

Counsel for Federated Farmers of New Zealand

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C Owen

Counsel for Heritage New Zealand Pouhere Taonga



.....

S Gepp

Counsel for Southland Fish and Game Council

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J Winchester / S Lennon

Counsel for Ngā Rūnanga

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R Gardner

Counsel for Federated Farmers of New Zealand

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C Owen

Counsel for Heritage New Zealand Pouhere Taonga

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S Gepp

Counsel for Southland Fish and Game Council

Adelene Lennon

.....

J Winchester / S Lennon

Counsel for Ngā Rūnanga

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R Gardner

Counsel for Federated Farmers of New Zealand

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C Owen

Counsel for Heritage New Zealand Pouhere Taonga

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S Gepp

Counsel for Southland Fish and Game Council

.....
J Winchester / S Lennon

Counsel for Ngā Rūnanga



.....
P Wilson.

~~R Gardner~~

~~Counsel~~ for Federated Farmers of New Zealand

Appendix 1 – Draft consent order

**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

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COUNCIL & INVERCARGILL CITY COUNCIL**
(ENV-2018-CHC-31)

DAIRYNZ LIMITED
(ENV-2018-CHC-32)

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CONSENT ORDER

**TOPIC B5 ISSUE 103
RELATING TO
APPENDIX N**

Judicial Officer: Judge Borthwick

H W RICHARDSON GROUP
(ENV-2018-CHC-33)

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(ENV-2018-CHC-44)

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**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

- [A] Under section 279(1) of the Resource Management Act 1991, the Environment Court, by consent, orders that the appeal is allowed in accordance with Annexure A to this Order.
- [B] Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

- 1 Heritage New Zealand Pouhere Taonga (**Heritage New Zealand**) has appealed Appendix N of the proposed Southland Water and Land Plan in respect to Topic B5.
- 2 The Court has read and considered the joint memorandum of the parties dated 3 February 2022, which proposes to resolve Heritage New Zealand's appeal.
- 3 The Court has also read and considered the affidavit of Matthew McCallum-Clark dated 2 February 2022, which provides an analysis of the changes proposed by the parties in terms of section 32AA of the Resource Management Act 1991 (**Act**).
- 4 The following parties gave notice of their intention to become parties under section 274 of the Act and have signed the joint memorandum of the parties dated 3 February 2022:
 - (a) Federated Farmers of New Zealand; and
 - (b) Te Rūnanga o Ngai Tahu, Hokonui Rūnaka, Waihopai Rūnaka, Te Rūnanga o Awarua & Te Rūnanga o Ōraka Aparima (**Ngā Rūnanga**).
- 5 The Court notes that Appendix N was also appealed by Southland Fish and Game Council and Ngā Rūnanga. The appeals by Southland Fish and Game Council and Ngā Rūnanga remained unresolved. Accordingly, this consent order relates only to the appeal by Heritage New Zealand.
- 6 The Court is making this order under section 279(1)(b) of the Act; such order being by consent pursuant to section 297, rather than representing a decision or determination on the merits. The Court understands that for the present purposes that:
 - (a) all parties to the proceedings have executed the memorandum requesting this order;
 - (b) all parties are satisfied that all matters proposed for the Court's endorsement are within the scope of submissions and appeals, fall within the Court's jurisdiction, and conform to relevant

requirements and objectives of the Act, including in particular Part 2.

Order

- 7 Therefore, the Court orders, by consent, that the proposed Southland Water and Land Plan be amended as set out in **Annexure A** to this Order.
- 8 The Order resolves Heritage New Zealand's appeal as it relates to Appendix N.
- 9 There is no order as to costs.

DATED this day of 2022

J E Borthwick
Environment Judge

ANNEXURE A

Topic B5 – Agreed changes to provision(s)

Amended text for Appendix N (deleted text in ~~strikeout~~, new text underlined):

Appendix N – Farm Environmental Management Plan Requirements

...

Part B – Farm Environmental Management Plan Default Content

...

3. The FEMP contains a map(s) or aerial photograph(s) of the landholding at a scale that clearly shows the locations of:

...

(k) any heritage site recorded in the relevant district plan, on the New Zealand Heritage List/Rāranġi Kōrero or on the New Zealand Archaeological Association website; and

...

Appendix 2 – Affidavit of Matthew McCallum-Clark dated 2 February 2022

**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**
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AFFIDAVIT OF MATTHEW MCCALLUM-CLARK

**TOPIC B5 ISSUE 103
RELATING TO
APPENDIX N**

2 February 2022

Judicial Officer: Judge Borthwick

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(ENV-2018-CHC-50)**

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

I, Matthew Eaton Arthur McCallum-Clark, of Christchurch, Consultant, solemnly and sincerely affirm:

- 1 My qualifications and experience are Statement of Evidence in Chief dated 14 December 2018.
- 2 While this affidavit in part records the reasoning and conclusion of the experts involved in the direct negotiations, in places I express my professional opinion. For this material, I confirm that I have read and am familiar with the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2014. I agree to comply with that Code. Other than where I state that I am relying on the evidence of another person, my opinions are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 3 This affidavit provides an evaluation in accordance with section 32AA of the Resource Management Act 1991 (**Act**) to accompany the draft consent order to which this affidavit relates.¹ Within the context of the section 32AA assessment, I have also assessed the higher order policy documents.

Introduction

- 4 This affidavit relates to Issue 103 (Appendix N) of Topic B5 where an outcome has been agreed between the parties.
- 5 In this affidavit I first set out the relevant legal tests under s32AA of the Act and then provide an evaluation in accordance with s32AA for the change agreed to Appendix N.

Section 32AA of the Act

- 6 Section 32AA of the Act requires:
 - (1) *A further evaluation required under this Act—*
 - (a) *is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and*
 - (b) *must be undertaken in accordance with section 32(1) to (4); and*

¹ Minute of the Environment Court dated 22 October 2020, at [12].



(c) *must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and...*

7 The core of section 32 of the Act is in sub-section (1), which requires a decision-maker to (relevantly):

...

(b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*

(i) *identifying other reasonably practicable options for achieving the objectives; and*

(ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*

(iii) *summarising the reasons for deciding on the provisions; and*

...

8 Sub-section (2) specifies how the analysis under section 32(1)(b)(ii) is to be undertaken. In summary, this requires an assessment of the benefits and costs of the environmental, economic, social and cultural effects anticipated from the implementation of the provisions, and an assessment of the risk of acting or not acting if there is uncertain or insufficient information.

9 Section 32(3) is not relevant given the proposed Southland Water and Land Plan (**pSWLP**) is not an amending proposal, rather it is a whole new plan.

10 Section 32(4) may be relevant where the provision is a rule and will impose a greater or lesser restriction on an activity to which a national environmental standard applies than the existing restrictions in that standard.

Evaluation in accordance with section 32AA

11 In accordance with the requirements of sections 32(1) and 32(2), in relation to the change agreed to Appendix N I:

(a) list the most relevant objectives;

(b) explain the “other reasonably practicable options” for achieving the objectives;

(c) summarise the reasons for the changes agreed; and

- (d) provide an assessment of benefits, costs, and risks as required by section 32(2).
- 12 Heritage New Zealand Pouhere Taonga lodged an appeal in relation to one aspect of Appendix N of the proposed Southland Water and Land Plan (**pSWLP**). Numerous other aspects of Appendix N have been discussed between the parties in advance of mediation, and at expert conferencing, and a Joint Witness Statement has been issued on those aspects. The Joint Witness Statement version of Appendix N includes the agreed change set out below in paragraph 14.
- 13 The following parties joined this appeal as section 274 parties in relation to this aspect of Appendix N:
- (a) Federated Farmers of New Zealand; and
- (b) Te Rūnanga o Ngai Tahu, Hokonui Rūnaka, Waihopai Rūnaka, Te Rūnanga o Awarua & Te Rūnanga o Ōraka Aparima.
- 14 The agreed outcome for this aspect of Appendix N is for item (k) to be added into the list of information required to be included on a map or aerial photograph of the landholding, provided as part of the Farm Environmental Management Plan content (as shown below with new text underlined):

Appendix N – Farm Environmental Management Plan Requirements

...

Part B – Farm Environmental Management Plan Default

Content

...

3. The FEMP contains a map(s) or aerial photograph(s) of the landholding at a scale that clearly shows the locations of:

...

- (k) any heritage site recorded in the relevant district plan,
on the New Zealand Heritage List/Rārangi Kōrero or on
the New Zealand Archaeological Association website;
and

...

new

Relevant objectives

- 15 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Appendix N is the most appropriate way to achieve the objectives, the most relevant objectives are Objective 1, Objective 3 and Objective 13. These objectives are set out below:

Reasonably practicable options

- 16 Section 32(1)(b)(i) requires the identification of "other reasonably practicable options" for achieving the objectives. The reasonably practicable options I have identified and considered are the Decisions Version wording, and the agreed change shown in 'tracked changes' in paragraph 14 above.

Explanation and reasons for the changes agreed

- 17 The change agreed between the parties is a reflection of the requirement for the pSWLP to address historic heritage in order to give effect to the objectives of the pSWLP following the Court's interim decision.²
- 18 Overall, the parties considered that including this reference to historic heritage sites within Appendix N would ensure consistency across the pSWLP. By requiring Farm Environment Management Plans (**FEMP**) to record the location of any historic heritage site, appropriate management and protection can then be provided to those sites.

Benefits, costs and risk assessment

- 19 With respect to the assessment of benefits, costs and risks set out in section 32(2), I am of the opinion that there is little to no difference in the benefits and costs between each option. Given the existing need to protect historic heritage sites under district plans and other legislation, the identification of them in a FEMP is only a very minor additional obligation. There is likely to be cultural and social benefits from this identification leading to appropriate management and protection, which may have inadvertently been compromised without identification.

² First Interim Decision [2019] NZEnvC 208 at [150].



20 Overall, having considered the options, the wording of the provision agreed by the parties (and set out at paragraph 14 above) is considered to be the most appropriate way to achieve the objectives of the pSWLP.



.....
Matthew McCallum-Clark

Affirmed at Kaiapoi)
this 2nd day of February)
2022, before me:)



.....
A Solicitor/Deputy Registrar of the High Court of New Zealand/
Justice of the Peace

Toni Laura Dempsey
Solicitor
Christchurch