

**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)

**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL
REGARDING SCHEDULE FOR EXPERT CONFERENCING
9 November 2021**

Judicial Officer: Judge Borthwick

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

**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, 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. It

Proposed schedule for expert conferencing

- 2 At paragraphs [8] and [9] of counsel's Memorandum dated 5 November 2021 it was noted that it had not been possible to schedule conferencing on dates where all experts were available. Counsel sought an extension of time to continue to liaise with parties to find suitable dates for all conferences. The Court granted the extension until 9 November as sought.¹
- 3 Counsel contacted the parties on Monday 8 November to again seek their experts' availability, this time requesting that the reasons for any unavailability also be provided. Parties have been reminded of the need to have their witnesses available for the Court as a matter of priority and that court facilitated conferencing should take priority over other matters unless an expert had competing court commitments in a separate division of the Environment Court or a higher court.
- 4 The responses received from parties did not resolve the scheduling issues. For the most part, the reasons given did not relate to existing court commitments. Counsel has endeavoured to accommodate availability issues, however, it has not been possible to accommodate all of them. Counsel has ensured that its proposed schedule does not set down expert conferencing for any days where an expert's availability is limited due to other court commitments.
- 5 Counsel's proposed schedule for expert conferencing is attached as **Appendix A**. Where a proposed conference conflicts with an expert's availability, that is noted along with the reason for their unavailability.

Agenda for expert conferencing

- 6 In the Memorandum dated 5 November, counsel sought that the direction² to file agenda for each expert conference 5 working days prior

¹ Direction of Environment Commissioner A C E Leijnen dated 8 November 2021.

² At [11] of Minute dated 29 October 2021.

to each conference be amended. Some further explanation and an amendment to the directions sought is set out below.

- 7 Due to the short timeframe between the date for filing of the Council's response to the relief sought and Will Say statements (12 November) and the proposed commencement of conferencing (planning conferencing is proposed to begin on 17 November) it is not possible for an agenda to be prepared 5 working days in advance.
- 8 Further it is considered most appropriate for the agenda for the technical conferencing (science/water quality, farm systems, forestry, and ecology) to be determined, at least in part, by the questions which the planning experts determine need to be answered. These questions will be determined during the first planning conference on 17-19 November.
- 9 Accordingly, Counsel for the Council seeks that:
 - (a) an agenda for the planning conferences be circulated as early as possible, but no later than Tuesday 16 November;
 - (b) an agenda for the farm systems conferences be circulated by Thursday 18 November;
 - (c) an agenda for the science/water quality conferences be circulated by Monday 22 November;
 - (d) an agenda for the forestry conference be circulated by Wednesday 24 November; and
 - (e) an agenda for the ecology conference be circulated by Friday 26 November.

DATED this 9th day of November 2021



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

Appendix A - proposed schedule for expert conferencing

Expert Conference	Estimated time required	Proposed date(s) of conference
Planning	2-3 days + 2-3 days	17 – 19 November ³ 7 & 10 December ⁴
Farm systems (Appendix N (FEPs), stock exclusion)	1 day + 1 day	22 November 6 December
Science / water quality (“Schedule X” and slopes and sedimentation, ephemeral watercourses)	2-3 days + 1 day	24 – 26 November ⁵ 3 December ⁶
Forestry	1 day	29 November
Ecology (drainage maintenance and rivers and wetlands)	1 day	1 December

Note: where time required is recorded as “X day + X day”, the “+” indicates that there will be a break between conference days.

³ In relation to 17 November, Mr Farrell for Forest & Bird and Fish & Game is only available “during school hours” and Ms Cain for Ngā Rūnanga is only available “during the work day”. No reasons were provided for this.

In relation to 18 November, Ms Cain is only available in the morning. The reason given was that she is “unavailable due to travel”.

In relation to 19 November, Ms Cain is not available. The reason given was “annual leave. It will be logistically difficult for Ms Cain to participate in conferencing.” Counsel for the Council notes that Ngā Rūnanga will still be represented by their expert planner on this day.

⁴ Due to court related unavailability, no sequential dates were available following the completion of all technical conferencing that would allow the second planning conference to occur on sequential days. If planning experts’ unavailability was to change, counsel considers it would be preferable for this conference to occur on sequential days.

⁵ Mr Risk for Ballance Agri-Nutrients is not available from 24-26 November. The reason given was that Mr Risk has “pre-existing work commitments”.

⁶ Mr Kitto for DairyNZ and Fonterra is not available on 3 December. The reason given was a “scheduled personal commitment”. Counsel for DairyNZ and Fonterra indicated that they can provide further particulars on request.