

**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)

**JOINT MEMORANDUM OF COUNSEL IN RELATION TO OBJECTIVES 18,
13/13A/13B, 9/9A, AND 9B
9 September 2020**

Judicial Officer: Judge Borthwick

Respondent's Solicitor
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WYNNWILLIAMS

Solicitor: P A C Maw
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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:
- (a) Southland Regional Council (**Council**);
 - (b) Heritage New Zealand Pouhere Taonga;
 - (c) Royal Forest and Bird Protection Society of New Zealand Incorporated;
 - (d) Southland Fish and Game Council;
 - (e) Aratiatia Livestock Limited;
 - (f) Horticulture New Zealand;
 - (g) Meridian Energy Limited;
 - (h) Alliance Group Limited;
 - (i) Director-General of Conservation;
 - (j) Ngā Rūnanga;¹
 - (k) Gore District Council, Southland District Council and Invercargill City Council;
 - (l) Federated Farmers of New Zealand;
 - (m) Waiau Rivercare Group;
 - (n) Ravensdown Limited;
 - (o) DairyNZ Limited;
 - (p) Fonterra Co-operative Group;
 - (q) Ballance Agri-nutrients Limited; and
 - (r) Wilkins Farming Co (**the Undersigned Parties**),
- in respect of the appeals against the Council's decision on the proposed Southland Water and Land Plan (**pSWLP**).
- 2 In its Minute dated 31 August 2020, the Court directed counsel to file a joint (preferably) memorandum by Wednesday 9 September 2020

¹ Comprising Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu (collectively **Ngā Rūnanga**).

addressing paragraphs [9], [12], [17], and [21] of the Minute. These relate to Objectives 18, 13/13A/13B, 9/9A, and 9B of the pSWLP respectively.

- 3 Following receipt of these directions, counsel for the Council liaised with the parties to ascertain their views on the issues raised in the Court's Minute. The joint position of the Undersigned Parties is set out below.

Paragraph [9] – Objective 18

- 4 The Court noted in its Minute that, in its view, "Objective 18 should be retained in some form."² However, if counsel say the objective is to be deleted, the Court directed them to succinctly but comprehensively set out the Court's jurisdiction to delete this Objective.³
- 5 The Undersigned Parties agree that Objective 18 may be retained in some form.
- 6 In order to assist the Court in relation to the form of Objective 18, the planning witnesses for all interested parties⁴ convened an informal caucusing session to discuss the wording of Objective 18. This occurred via two videoconferencing sessions, held on Thursday and Friday last week.
- 7 The planners produced a document setting out their discussion, their proposed option(s) for wording of Objective 18, and their reasons for the proposed wording. This document is attached as **Appendix A**.
- 8 The Undersigned Parties agree with the options set out in Appendix A and would have no objection to the Court adopting any of the options as set out in this document.

Paragraph [12] – Objective 13/13A/13B

- 9 At paragraph [12], the Court states that, "[u]nless other parties can persuade us to a different view, the arrangement of the objective as set out in the first Interim Decision will be confirmed subject to the words 'may be used' being substituted."

² Minute of the Environment Court dated 31 August 2020, at [5].

³ Minute of the Environment Court dated 31 August 2020, at [9].

⁴ Comprising Matthew McCallum Clark, Ben Farrell, Jane Whyte, Janan Dunning, Linda Kirk, Sure Ruston, John Kyle, and Treena Davidson.

- 10 The Undersigned Parties are not opposed to the Court's arrangement of the objective (as set out in the first Interim Decision), subject to the words "may be used" being substituted for "are used".

Paragraph [17] – Objective 9/9A

- 11 At paragraph [16], the Court states that:

Subject to what the parties say, we suggest amending clause (a) to lead with the broader term 'life-supporting capacity' and to couple this with the related 'aquatic ecosystem health'. Secondly, to clearly differentiate each of the listed attributes as show next:

The quantity of water in surface waterbodies is managed so that:

- (a) the life-supporting capacity and aquatic ecosystem health, the values of outstanding natural features and landscapes, the natural character and the historic heritage values of waterbodies and their margins are safeguarded;

...

- 12 The Court directed any party who opposed the above amendment to Objective 9/9A to file and serve a memorandum giving reasons.
- 13 The Undersigned Parties are not opposed to the Court's amendments to Objective 9/9A as set out above.

Paragraph [21] – Objective 9B

- 14 At paragraphs [20] to [21], the Court states:

[20] As we record at paragraph [180] of the first Interim Decision we intend the meaning of "sustainable and effective" to refer to both the infrastructure and the manner of its development relative to the environment. If development is neither sustainable nor effective, it will be contrary to this objective.

[21] It may be that the Interpretation [Statement] now puts the issue beyond doubt. However, if that is not the

case, or a party does not accept that sustainable and effective has the meaning set out above at paragraph [20], the drafting is not as the court intended. ...

- 15 Counsel were directed to file a memorandum if they disagree with the meaning of the Objective as set out at paragraph [20] of the Minute and in light of the Interpretation Statement.
- 16 The Undersigned Parties do not disagree with the meaning of the Objective as set out at paragraph [20] of the Minute and in light of the Interpretation Statement.

DATED this 9th day of September 2020



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



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for **C Owen**
Counsel for Heritage New Zealand Pouhere Taonga

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S Gepp
Counsel for Royal Forest and Bird Protection Society of New Zealand
Incorporated and Southland Fish and Game Council

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- 16 The Undersigned Parties do not disagree with the meaning of the Objective as set out at paragraph [20] of the Minute and in light of the Interpretation Statement.

DATED this 9th day of September 2020

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P A C Maw / A M Langford

Counsel for the Southland Regional Council

.....

C Owen

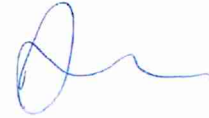
Counsel for Heritage New Zealand Pouhere Taonga



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S Gepp

Counsel for Royal Forest and Bird Protection Society of New Zealand
Incorporated and Southland Fish and Game Council



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D Allan

Counsel for Aratiatia Livestock Limited

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H Atkins

Counsel for Horticulture New Zealand

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S Christensen

Counsel for Meridian Energy Limited and Alliance Group Limited

.....

D van Mierlo / P Williams

Counsel for Director-General of Conservation

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J Winchester / S Lennon

Counsel for Ngā Rūnanga

.....

D Allan

Counsel for Aratiatia Livestock Limited



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H Atkins

Counsel for Horticulture New Zealand

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S Christensen

Counsel for Meridian Energy Limited and Alliance Group Limited



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D van Mierlo / P Williams

Counsel for Director-General of Conservation



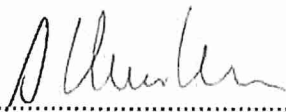
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J Winchester / S Lennon

Counsel for Ngā Rūnanga

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D Allan
Counsel for Aratiatia Livestock Limited

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H Atkins
Counsel for Horticulture New Zealand


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S Christensen
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D van Mierlo / P Williams
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J Winchester / S Lennon
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M Garbett
Counsel for Gore District Council, Southland District Council and Invercargill
City Council

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J Winchester / S Lennon
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M. Garbett

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Clare Kenyon

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C Lenihan
Counsel for Federated Farmers of New Zealand

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R Donnelly
Counsel for Waiau Rivercare Group

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M Christensen
Counsel for Ravensdown Limited

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B Matheson / K Forward
Counsel for DairyNZ Limited and Fonterra Co-operative Group

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V Hamm
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M Garbett

Counsel for Gore District Council, Southland District Council and Invercargill
City Council

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C Lenihan


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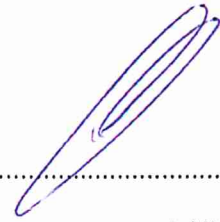
Counsel for Ravensdown Limited



.....

B Matheson / K Forward

Counsel for DairyNZ Limited and Fonterra Co-operative Group

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke, positioned above a dotted line.

A Hitchcock
Counsel for Wilkins Farming Co

Appendix A

Objective 18

Council Decisions Version (tracked from notified)

All activities operate in accordance with at “good ~~(environmental)~~ management practice” or better to optimise efficient resource use, safeguard the life supporting capacity of and protect the region’s land, and soils, and maintain or improve the water from quality and quantity of the region’s water resources. ~~degradation.~~

Interim Decision version

All persons will demonstrate improved land use and water management practice.

Discussion

The planners agreed that behaviour change is an appropriate focus for this objective. Concerns were raised by planners about the Interim Decision version as it lacks a reference point for the start point for improvement or the amount of improvement required. The planners considered the objective could be interpreted such that a person already performing very well would (inefficiently) be required to make further improvement, and a poorly performing person could make a very modest improvement and claim to be meeting this objective.

Two options were raised by the planners:

1. Maintain deletion of the objective, with the behaviour change concept being captured in new or revised policy (as discussed in Ben Farrell’s affidavit).
2. Making the outcome of the objective more specific by blending the Interim Decision version with the Council Decision Version:

All persons implement environmental practices that optimise efficient resource use, safeguard the life supporting capacity of the region’s land and soils, and maintain or improve the quality and quantity of the region’s water resources.

Two further sub-options are (each being supported by some of the planners, and opposed by others):

- (a) to replace “persons” with “resource users”; and
- (b) to replace “optimise” with “demonstrate”.

This blended objective is preferred, due to the higher level of specificity of the outcome, who it applies to, and the clear move away from concepts such as ‘good management practice’ and ‘best practicable option’. The option is also preferred, as it appears to be clearly within the scope of the appeals.

It was further noted by the planners that all policies that impose obligations on farming, community and industrial land users and dischargers are subject to substantive appeal, such that reinforcing the behaviour change elements of those policies is clearly available and can be included with a degree of detail appropriate to the industry or kind of activities being managed.