

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I TE KOTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

IN THE MATTER of the Resource Management Act 1991
(the Act)

A N D

IN THE MATTER of appeals pursuant to clause 14 of the
First Schedule to the Act

BETWEEN **Aratiatia Livestock Limited**

(ENV-2018-CHC-000029)

... (continued on last page)

Appellants

A N D **Southland Regional Council**

Respondent

**JOINT MEMORANDUM OF COUNSEL REGARDING SCOPE OF FURTHER EVIDENCE
FOLLOWING INTERIM DECISION**


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MAY IT PLEASE THE COURT:

1. This Memorandum of Counsel is filed on behalf of Ballance Agri-Nutrients Limited, Federated Farmers of New Zealand (Southland), Horticulture New Zealand, and Ravensdown Limited (“the Parties”).
2. The Parties are today jointly filing and serving evidence from Sue Ruston, in response to the Interim Decision of the Court dated 20 December 2019, and in particular the directions from the Court dated 14 February 2020. The purpose of this Memorandum is to record the Parties’ understanding of the scope of the evidence which the Court is anticipating from the parties to the appeals, and set out how the Parties have approached this.

The Parties’ understanding

3. The Parties understood from the Interim Decision, that in the first instance the Court wished to hear from parties about its interpretation of the National Policy Statement for Freshwater Management, including in particular Te Mana o te Wai and ki uta ki tai. This matter comes into focus through the Court’s discussion in the Interim Decision on “Plan scheme (architecture)”¹, concluding with seeking further submissions and evidence on whether Objectives 1 and 3 should be identified as Korowai objectives, and korowai defined as a method of plan interpretation.
4. The Court also asked parties how the pSWLP takes into account the principles of the Treaty of Waitangi (Court’s directions of 14 February 2020, paragraph [5]).
5. The Court’s directions of 14 February 2020 at paragraphs [6](a) and (b) do however include an invitation that should it be necessary to support their

¹ Paragraphs [65] – [80] of the Interim Decision.

interpretation of the plan, the parties are to propose amending the wording of the plan.

6. The Parties' understanding was that this was related to plan architecture, rather than re-evaluating the provisions which were included in the Topic A hearing. In this regard, the Parties were mindful of the Court's indications in the Interim Decision that some provisions were 'confirmed', and that it had in mind to refer the objectives and policies to either mediation or expert conferencing, but that no referral would be made until there was a settled view on the scheme of the plan.²

Scope of evidence filed by the Parties

7. The Parties were surprised at the extensive proposed amendments to the wording of the proposed Southland Water and Land Plan ("Plan) that were suggested in the Statement of Evidence of Treena Davidson dated 17 April 2020.
8. The evidence filed by the Parties with this Memorandum of Counsel addresses whether Objectives 1 and 3 should be identified as Korowai objectives, and korowai defined as a method of plan interpretation.
9. Out of an abundance of caution, the Parties' evidence also addresses the proposed deletion of Objective 2, as suggested in the Statement of Evidence of Treena Davidson dated 17 April 2020. Objective 2 was a "confirmed" provision in Annexure 1 of the Interim Decision and for obvious reasons is important to the Parties. Although confirmed provisions were subject to submissions on scheme architecture, the Parties had never anticipated that this could or would entail deletion.

² Interim Decision, paragraph [346].

10. If the Court has in mind to consider changes to other objectives and policies – as part of forming a settled view on the scheme of the plan – then the Parties would need to produce further evidence. However, the Parties are mindful that the provisions in Annexure 1 to the Interim Decision are yet to be referred to mediation or expert conferencing (or addressed through further evidence).

Conclusion

11. The Parties wish to assist the Court as efficiently as possible.
12. The Parties consider that Ms Davidson’s evidence as it relates to objectives other than Objectives 1 and 3 raises significant jurisdictional problems. Further, the Parties consider that the most efficient approach is to address Objectives 1 and 3 now, and then move to consider the other objectives and policies addressed in the Court’s Interim Decision separately, in the manner discussed in the Interim Decision.

DATED at Tauranga this 8th day of May 2020



Vanessa Jane Hamm

Counsel for Ballance Agri-Nutrients Limited

Clare Lenihan

Counsel for Federated Farmers of New Zealand (Southland)

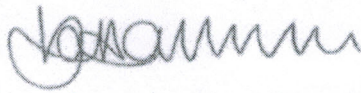
10. If the Court has in mind to consider changes to other objectives and policies – as part of forming a settled view on the scheme of the plan – then the Parties would need to produce further evidence. However, the Parties are mindful that the provisions in Annexure 1 to the Interim Decision are yet to be referred to mediation or expert conferencing (or addressed through further evidence).

Conclusion

The Parties wish to assist the Court as efficiently as possible.

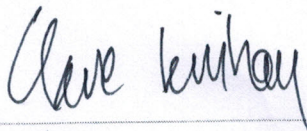
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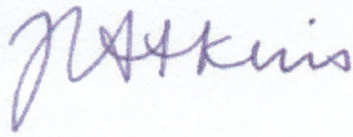
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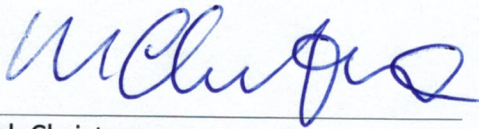
Clare Lenihan

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Helen Atkins

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Mark Christensen

Counsel for Ravensdown Limited

List of appellants

ENV-2018-CHC-26	Transpower New Zealand Limited
ENV-2018-CHC-30	Wilkins Farming Co
ENV-2018-CHC-36	Director-General of Conservation
ENV-2018-CHC-37	Southland Fish and Game Council
ENV-2018-CHC-38	Meridian Energy Limited
ENV-2018-CHC-39	Alliance Group Limited
ENV-2018-CHC-40	Federated Farmers of New Zealand
ENV-2018-CHC-41	Heritage New Zealand Pouhere Taonga
ENV-2018-CHC-47	Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima and Te Rūnanga o Ngāi Tahu
ENV-2018-CHC-50	Royal Forest and Bird Protection Society of New Zealand Incorporated