

**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 TOPIC B6
27 November 2020**

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.
- 2 At paragraph [15] of the Minute dated 22 October 2020, the parties were directed to respond to the Court's ADR suggestions for Topic B6, as set out at paragraph [5] of that Minute.
- 3 In the Memorandum dated 9 November 2020, Counsel advised that it was conferring with the parties who have an interest in Topic B6 in relation to this direction. The Regional Council was subsequently directed to report back to the Court on this matter by 27 November 2020.¹
- 4 Counsel has conferred with the parties who have an interest in Topic B6, to explore whether agreement can be reached as to which issues in Topic B6 the parties consider are suitable for mediation.
- 5 Responses to Counsel's correspondence were received from the following parties:
 - (a) Aratiatia Livestock Limited (**Aratiatia**);
 - (b) Federated Farmers of New Zealand (**Federated Farmers**);
 - (c) Meridian Energy Limited (**Meridian**);
 - (d) Ngā Rūnanga;²
 - (e) Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest & Bird**);
 - (f) Southland Fish and Game Council (**Fish & Game**);
 - (g) Transpower New Zealand Limited (**Transpower**);
 - (h) Director-General of Conservation (**Director-General**);
 - (i) Invercargill City Council Water Manager (**ICC Water Manager**);

¹ Minute of the Environment Court dated 16 November 2020 at [2].

² Comprising Te Rūnanga o Ngāi Tahu, Hokonui Rūnaka, Waihopai Rūnaka, Te Rūnanga o Awarua and Te Rūnanga o Oraka Aparima.

- (j) Oil Companies;³
- (k) Territorial Authorities;⁴ and
- (l) Waiau Rivercare Group Incorporated.

6 No responses were received from the following parties:

- (a) Buckingham, O;
- (b) Cockburn, G & R;
- (c) English, H;
- (d) Kempthorne, R; and
- (e) Willans, M & T.

7 References in the balance of this Memorandum to the views of “the Parties” refer only to the views of those parties from whom responses were received.

Parties’ views

8 Counsel has prepared a table setting out the issues, with the Parties that have expressed an interest in each issue noted in the right-hand column. This table is attached as **Appendix A**.

9 The Parties seek mediation on all issues that they (individually) have an interest in, except where specifically noted in Appendix A.

10 The Council considers that mediation is appropriate for many of the issues. Where mediation is not supported, this is noted in Appendix A.

11 Counsel notes that, for all other issues that they are not an appellant on, Ngā Rūnanga advised it is content to abide by agreements reached between the parties and/or the decision of the Court in relation to whether the other issues proceed to mediation.

12 The Director-General of Conservation also advised that he will abide any agreement reached between parties and/or the Court’s determination

³ Comprising Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited.

⁴ Comprising Gore District Council, Southland District Council, and Invercargill City Council.

with regard to the possible mediation of any impasse as to which matters are to proceed to mediation.

Directions

13 Accordingly, Counsel for the Council respectfully seeks directions that:

- (a) mediation be set down prior to any hearing for Topic B6 in relation to the following issues:⁵
 - (i) all of the water takes sub-topic (being issues 1 through 11 inclusive);
 - (ii) issues 12 and 13;
 - (iii) issue 15;
 - (iv) issue 17; and
 - (v) issue 19.
- (b) the remaining issues, being issues 14, 16, and 18, be referred directly to hearing (following mediation as sought above).

DATED this 27th day of November 2020



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

⁵ Following the numbering provided in Appendix A.

Appendix A

Issue number	B6 Infrastructure - Issues	Provisions	Appellants	Parties that support mediation
	Sub-topic – water takes			
1	Should Policy 26 be amended to address the issue of reverse sensitivity in relation to renewable electricity activities?	Policy 26	Meridian	Aratiatia Federated Farmers Meridian Regional Council Waiau Rivercare Group
2	Does Policy 26 give preference to new generation activities in addition to existing renewable sources?	Policy 26	Ngā Rūnanga	Aratiatia Federated Farmers Fish & Game Forest & Bird Meridian Ngā Rūnanga Regional Council Waiau Rivercare Group

3	Should Policy 26A be amended to enable adverse effects on the environment to, where practicable, be avoided, remedied or mitigated?	Policy 26A	Transpower	Aratiatia Director-General Federated Farmers Fish & Game Forest & Bird ICC Water Manager Meridian Regional Council Territorial Authorities Transpower Waiau Rivercare Group
4	Should the management of effects from infrastructure be considered under “effects management” policies of the pSWLP?	Policy 26A	Forest & Bird	Aratiatia Director-General Federated Farmers Fish & Game Forest & Bird ICC Water Manager

				<p>Meridian</p> <p>Oil Companies</p> <p>Regional Council</p> <p>Territorial Authorities</p> <p>Transpower</p> <p>Waiau Rivercare Group</p>
5	Does the ability under Policy 26A to remedy or mitigate effects conflict with requirements to maintain water quality?	Policy 26A	Forest & Bird	<p>Aratiatia</p> <p>Director-General</p> <p>Federated Farmers</p> <p>Fish & Game</p> <p>Forest & Bird</p> <p>ICC Water Manager</p> <p>Meridian</p> <p>Oil Companies</p> <p>Regional Council</p> <p>Territorial Authorities</p> <p>Transpower</p>

				Waiau Rivercare Group
6	Should Policy 26A be amended to “enable” rather than “provide for” the effective development, operation, maintenance and upgrading of infrastructure?	Policy 26A	Fish & Game	Aratiatia Director-General Federated Farmers Fish & Game Forest & Bird ICC Water Manager Meridian Regional Council Territorial Authorities Transpower Waiau Rivercare Group
7	Is there sufficient clarity as to what constitutes effective development, operation, maintenance and upgrading of regionally significant infrastructure and what is not already covered by the definition of “critical infrastructure”?	Policy 26A	Ngā Rūnanga	Aratiatia Director-General Federated Farmers Fish & Game Forest & Bird

				ICC Water Manager Meridian Oil Companies Regional Council Territorial Authorities Transpower Waiau Rivercare Group
8	Should Rule 49(ab) be extended to address the damming and diversion of surface water?	Rule 49ab	Meridian	Aratiatia Federated Farmers Fish & Game Forest & Bird Meridian Regional Council Waiau Rivercare Group
9	Should Rule 49(ab)(vii) be amended to exclude activities undertaken for the purpose of infrastructure construction, maintenance or	Rule 49ab	Meridian	Aratiatia Federated Farmers Fish & Game

	repair in connection with the Manapōuri Hydro-electric scheme?			Forest & Bird Meridian Regional Council Waiau Rivercare Group
10	Should Rule 49(ab) be listed in the exclusions under Rule 52(a) and 52(b)?	Rule 52	Meridian	Aratiatia Federated Farmers Fish & Game Forest & Bird Meridian Regional Council Waiau Rivercare Group
11	Should there be a new Rule 52(a)(iii) which provides a discretionary activity status where the permitted activity criteria under Rule 49(ab) is unable to be met?	Rule 52	Meridian	Aratiatia Federated Farmers Fish & Game Forest & Bird Meridian Regional Council

				Waiau Rivercare Group
	Sub-topic – Waiau/Manapōuri			
12	Should Policy 26 be amended to require increases to the minimum flow requirements in the Waiau River?	Policy 26	Aratiatia Federated Farmers	Aratiatia Federated Farmers Fish & Game Forest & Bird Meridian Regional Council Waiau Rivercare Group
13	Should all abstraction, diversion, damming and use of water from the Waiau catchment, except as provided by Rules 49, 50 or 51 or RMA s 14(3), be a non-complying activity?	Rule 52	Forest & Bird	Aratiatia Federated Farmers Fish & Game Forest & Bird Meridian Regional Council Waiau Rivercare Group

14	What is the appropriate activity status for water takes for the Manapōuri Hydro-electric Generation Scheme?	Rule 52A	Aratiatia Forest & Bird Federated Farmers Ngā Rūnanga	Aratiatia Director-General Federated Farmers Ngā Rūnanga Waiiau Rivercare Group <i>NB that Forest & Bird, Fish & Game, and Meridian consider this issue is not suitable for mediation.</i> <i>NB also that the Regional Council will abide the decision of the parties/Court on this issue and not participate in mediation.⁶</i>
15	Should Rule 52A be extended to apply to the Monowai Hydro-electric Generation Scheme?	Rule 52A	Meridian	Aratiatia Director-General Federated Farmers Fish & Game Forest & Bird

⁶ In accordance with the Memorandum of Counsel for Southland Regional Council dated 21 December 2018.

				Meridian Regional Council Waiau Rivercare Group
16	In the event a flow and level regime for the Waiau catchment has been established in accordance with the First Schedule of the RMA and the appellant makes an application that conforms to the established regime, should the Southland Regional Council reserve control to impose a different regime than that determined via the First Schedule process?	Rule 52A	Meridian	Aratiatia Director-General Federated Farmers Meridian Waiau Rivercare Group <i>NB that the Regional Council considers this issue is not suitable for mediation due to its close relationship with issue 14.</i>
17	Should the effects of the activity on mahinga kai, taonga species, and the spiritual and cultural values and beliefs of tangata whenua be considerations when processing resource consent applications in relation to the Manapōuri Hydro-electric Generation Scheme?	Rule 52A	Ngā Rūnanga	Aratiatia Director-General Federated Farmers Fish & Game Forest & Bird Meridian

				Ngā Rūnanga Regional Council Waiau Rivercare Group
18	Should a new Rule 52B provide a discretionary activity status instead of non-complying in the event the conditions of Rule 52A are not met?	New Rule 52B	Meridian	Aratiatia Director-General Federated Farmers Fish & Game Forest & Bird Meridian Waiau Rivercare Group <i>NB that that Regional Council considers this issue is not suitable for mediation due to its close relationship with issue 14.</i>
19	Should the exclusion for Waiau/Manapōuri be deleted?	Appendix E	Ngā Rūnanga Aratiatia	Aratiatia Director-General Federated Farmers Fish & Game

				Forest & Bird Meridian Ngā Rūnanga Regional Council Waiau Rivercare Group
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