

**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)

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

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**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL  
4 August 2020**

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Judicial Officer: Judge Borthwick

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**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 (**pSWLP**).
- 2 In the Reporting Memorandum filed on behalf of the Council dated 10 July 2020, a number of parties sought that the Court allow the parties to confer between themselves to explore whether agreement can be reached on the matters proposed for expert conferencing in the Minute dated 29 June 2020 and/or whether these issues can be narrowed or clarified.<sup>1</sup>
- 3 In its Minute dated 13 July 2020, the Court stated that expert conferencing will be cancelled if agreement in full has been reached by the parties on the wording of the objectives and policies of the pSWLP.<sup>2</sup> If such agreement is reached, the Council was directed to file a memorandum by Friday 31 July 2020 seeking the cancellation of expert conferencing.<sup>3</sup>
- 4 Full agreement was not able to be reached by Friday 31 July 2020. However, the parties continued to invest significant time and resources to direct negotiations, and agreement in full has now been reached on the wording of the objectives and policies of the pSWLP that remain at issue in Topic A.
- 5 This memorandum also addresses Objective 2 as set out in the Third Interim Decision of the Court.<sup>4</sup>

**Parties' position on the wording of the objectives and policies**

- 6 Counsel for the Council advises that full agreement as to the wording of the objectives and policies that remain at issue in Topic A has been reached as between the parties. The wording that has been agreed is set out in **Appendix A**.

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<sup>1</sup> Memorandum of Counsel for Southland Regional Council dated 10 July 2020, at [66(b)].

<sup>2</sup> Minute dated 13 July 2020, at [4].

<sup>3</sup> Minute dated 13 July 2020, at [27(e)].

<sup>4</sup> Aratiatia Livestock Limited v Southland Regional Council [2020] NZEnvC 110.

- 7 Counsel acknowledges that the parties were not able to comply with the timeframes as set out in the Court’s Minute regarding settlement, but respectfully request that the expert conferencing set down for Thursday 6 August 2020 and Friday 7 August 2020 be cancelled, in accordance with the Court’s Minute dated 13 July 2020.

**Objective 2 as set out in Third Interim Decision**

- 8 It has been brought to Counsels’ attention by Counsel for Federated Farmers of New Zealand that there appears to be an error in Annexure 1 of the Third Interim Decision.
- 9 At the hearing held on 15 – 17 June 2020, the parties agreed to the insertion of the Interpretation Statement in the pSWLP on the basis that Objective 2 (as renumbered) remained as it is set out in the Decisions Version of the pSWLP.
- 10 In the Second Interim Decision,<sup>5</sup> the Court stated that:<sup>6</sup>

Subject to clarification as to whether the sense of the objective would be improved by amending the term “waterbodies” to “water” and secondly a minor grammatical amendment to the word ‘provide’ so that it reads ‘provides’ the decision-version of the objective will not otherwise be amended.

[footnotes omitted]

- 11 Further, the Court stated that:<sup>7</sup>

Thus, amend Objective 2 to read:

**Objective 2**

The mauri of ~~waterbodies~~ provides for te hauora o te taiao (health and mauri of the environment) and te hauora o te wai (health and mauri of the waterbody) and te hauora o te tangata (health and mauri of the people).

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<sup>5</sup> Aratiatia Livestock Limited v Southland Regional Council [2020] NZEnvC 93.

<sup>6</sup> Second Interim Decision, at [15].

<sup>7</sup> Second Interim Decision, at [16].

[footnotes omitted]

- 12 The Court directed any party that opposed the wording set out above to file a memorandum giving reasons by Friday 3 July 2020.<sup>8</sup> No party opposed the wording as set out in the Second Interim Decision (reproduced above).<sup>9</sup>
- 13 However, notwithstanding this, in Annexure 1 of the Third Interim Decision, the Court set out the following wording for Objective 2:<sup>10</sup>

**Objective 2 (renumbered and approved)**

The mauri of water will be acknowledged and protected so that it provides for te hauora o te taiao (health and mauri of the environment), ~~and~~ te hauora o te wai (health and mauri of the waterbody) and te hauora o te tangata (health and mauri of the people).

- 14 This wording includes the words “will be acknowledged and protected so that it”. This wording was proposed in the First Interim Decision, however it is not consistent with the determination of the Court as set out in the Second Interim Decision.
- 15 Accordingly, Counsel seeks clarification from the Court as to whether the additional words set out in paragraph 14 above were a clerical mistake or an error arising from an accidental slip or omission or do not correctly express what was decided and intended, or whether those words were a deliberate addition.
- 16 If those words were a mistake or error, or do not correctly reflect the Court’s intent, Counsel seeks that the Court exercises its discretion under Rule 11.10 of the District Court Rules 2014 to delete the words “will be acknowledged and protected so that it” from Objective 2 in Annexure 1 to its Third Interim Decision.

**Directions sought**

- 17 Counsel respectfully seeks the following directions:

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<sup>8</sup> Second Interim Decision, at [19].

<sup>9</sup> Minute dated 13 July 2020, at [5]

<sup>10</sup> Third Interim Decision, Annexure 1.

- (a) That the expert conferencing set down for 6 & 7 August 2020 be cancelled.
- (b) That the Court clarify whether the inclusion of the words “will be acknowledged and protected so that it” in Objective 2 in Annexure 1 of the Third Interim Decision is an error.
- (c) If Objective 2 in Annexure 1 of the Third Interim Decision does contain an error, that the Court exercises its discretion under Rule 11.10 of the District Court Rules 2014 to delete the words “will be acknowledged and protected so that it” from Objective 2 in Annexure 1 to its Third Interim Decision.

**DATED** this 4<sup>th</sup> day of August 2020



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

## Appendix A – agreed wording of Topic A provisions that remain at issue

*Note: The tracked changes shown are those of the parties only. The objectives and policies are otherwise shown as though the Court's Interim Decision tracked changes, including those changes determined by the Court in its Third Interim Decision dated 23 July 2020, are 'accepted'.*

Objective 6	<p>Water quality in each freshwater body, <u>coastal lagoon and estuary</u> will be:</p> <ul style="list-style-type: none"> <li>(a) Maintained where the water quality is not degraded; and</li> <li>(b) Improved where the water quality is degraded by human activities.</li> </ul>
Objective 9/9A	<p>The quantity of water in surface water bodies is managed so that:</p> <ul style="list-style-type: none"> <li>(a) aquatic ecosystem health, life-supporting capacity, the values of outstanding natural features and landscapes, the natural character and historic heritage values of waterbodies and their margins are safeguarded;</li> <li>(b) there is integration with objectives for freshwater quality (including the safeguarding of human health for recreation); and</li> <li>(c) provided that (a) and (b) are met, surface water is sustainably managed in accordance with Appendix K to support the reasonable needs of people and communities to provide for their economic, social and cultural wellbeing.</li> </ul>
Objective 9B	<p>Issues: Page 17:</p> <p>Some of these activities can have positive effects on the natural environment, for example, bridges and culverts allow access across a river without disturbing the bed.</p> <p>Others <u>activities, such as infrastructure, are important to enable people and communities to provide for their</u> <del>have important</del> economic, <u>cultural</u>, and social <u>wellbeing benefits, for example, erosion control works protect community assets.</u> <del>However, These</del> activities <del>in the</del></p>



	<p><del>beds of rivers and lakes</del> can also have adverse effects on the environment, including generating sediment, disturbing habitat and preventing fish passage.</p> <p>Objective 9B: The importance of Southland's regionally and nationally significant infrastructure is recognised and its sustainable and effective development, operation, maintenance and upgrading enabled.</p>
Objectives 13, 13A and 13B	<p><b><u>Land and soils may be used and developed to enable the economic, social and cultural wellbeing of the region</u></b> provided that:</p> <ul style="list-style-type: none"> <li>(a) the quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land; and</li> <li>(b) the health of people and communities is safeguarded from the adverse effects of discharges of contaminants to land and water; and</li> <li>(c) ecosystems (including indigenous biological diversity and integrity of habitats), are safeguarded.</li> </ul> <p><del>then land and soils are used and developed to enable the economic, social and cultural wellbeing of the region</del></p>
Objective 14	<p>The range and diversity of indigenous ecosystems <del>types</del> and habitats within rivers, estuaries, wetlands and lakes, including their margins, and their life-supporting capacity are maintained or enhanced.</p>
Objective 17	<p>Preserve the natural character values of wetlands, rivers and lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats <del>that are of significance to the region</del>, and protect them from inappropriate use and development.</p>
Objective 18	<p><del>All persons will demonstrate improved land use and water management practice.</del></p>

Policy 3 – Ngāi Tahu ki Murihiku taonga species	To manage activities that adversely affect taonga species, identified in Appendix M, and their related habitats.
Policy 4 – Alpine	<p>In the Alpine physiographic zone:</p> <ol style="list-style-type: none"> <li>1. avoid <del>where practicable, as a first priority,</del> risk to water quality from erosion and contaminants, <b><u>and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised</u></b> by: <ol style="list-style-type: none"> <li>i. identifying contaminant pathways to ground and surface water bodies;</li> <li>ii. requiring implementation of good management practices to manage erosion and adverse effects on water quality from contaminants transported via overland flow;</li> <li>iii. having particular regard to adverse effects of contaminants transported via overland flow when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and</li> </ol> </li> <li>2. prohibiting dairy farming <del>of cows</del> and intensive winter grazing and avoiding cultivation where contaminant losses will increase as a result of the proposed activity.</li> </ol>
Policy 5 – Central Plains	<p>In the Central Plains physiographic zone:</p> <ol style="list-style-type: none"> <li>1. avoid <del>where practicable, as a first priority,</del> risk to water quality from contaminants, <b><u>and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised</u></b> by: <ol style="list-style-type: none"> <li>i. identifying contaminant pathways to ground and surface water bodies;</li> <li>ii. requiring implementation of good management practices to manage adverse</li> </ol> </li> </ol>

	<p>effects on water quality from contaminants transported via artificial drainage and deep drainage;</p> <p>iii. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage and deep drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and</p> <p>2. avoid dairy farming <del>of cows</del> and intensive winter grazing where contaminant losses will increase as a result of the proposed activity.</p>
<p>Policy 6 – Gleyed</p>	<p>In the Gleyed physiographic zone avoid <del>where</del> <b><u>practicable, as a first priority,</u></b> risk to water quality from contaminants, <b><u>and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised</u></b> by:</p> <ol style="list-style-type: none"> <li>1. identifying contaminant pathways to ground and surface water bodies;</li> <li>2. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant; and</li> <li>3. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans.</li> </ol>
<p>Policy 7 - Bedrock/Hill Country <del>and Lignite-Marine Terraces</del></p>	<p>In the Bedrock/Hill Country <del>and Lignite-Marine Terraces</del> physiographic zone avoid <del>where</del> <b><u>practicable, as a first priority,</u></b> risk to water quality from contaminants, <b><u>and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised</u></b> by:</p>

	<ol style="list-style-type: none"> <li>1. identifying contaminant pathways to ground and surface water bodies;</li> <li>2. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant; and</li> <li>3. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans.</li> </ol>
<p>Policy 8 – Lignite-Marine Terraces</p>	<p>In the Lignite-Marine Terraces physiographic zone avoid <del>where practicable, as a first priority</del>, risk to water quality from contaminants, <u>and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised</u> by:</p> <ol style="list-style-type: none"> <li>1. identifying contaminant pathways to ground and surface water bodies;</li> <li>2. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant; and</li> <li>3. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans.</li> </ol>
<p>Policy 9 – Old Mataura</p>	<p>In the Old Mataura physiographic zone:</p> <ol style="list-style-type: none"> <li>1. avoid <del>where practicable, as a first priority</del>, risk to water quality from contaminants, <u>and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised</u> by:</li> </ol>

	<ul style="list-style-type: none"> <li>i. identifying contaminant pathways to ground and surface water bodies;</li> <li>ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage;</li> <li>iii. having particular regard to adverse effects on water quality from contaminants transported via deep drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and</li> </ul> <p>2. avoid dairy farming <del>of cows</del> and intensive winter grazing where contaminant losses will increase as a result of a proposed activity.</p>
Policy 10 – Oxidising	<p>In the Oxidising physiographic zone:</p> <ul style="list-style-type: none"> <li>1. avoid <del>where practicable</del>, <b><u>as a first priority</u></b>, risk to water quality from contaminants, <b><u>and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised</u></b> by: <ul style="list-style-type: none"> <li>i. identifying contaminant pathways to ground and surface water bodies;</li> <li>ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage, and overland flow and artificial drainage where relevant;</li> <li>iii. having particular regard to adverse effects on water quality from contaminants transported via deep drainage, and overland flow and artificial drainage where relevant when assessing resource consent applications and preparing or considering</li> </ul> </li> </ul>

	<p>Farm Environmental Management Plans; and</p> <p>2. avoid dairy farming <del>of cows</del> and intensive winter grazing where contaminant losses will increase as a result of a proposed activity.</p>
<p>Policy 11 – Peat Wetlands</p>	<p>In the Peat Wetlands physiographic zone:</p> <p>1. avoid <del>where practicable, as a first priority,</del> risk to water quality from contaminants, <u>and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised</u> by:</p> <ul style="list-style-type: none"> <li>i. identifying contaminant pathways to ground and surface water bodies;</li> <li>ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, deep drainage, and lateral drainage;</li> <li>iii. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, deep drainage, and lateral drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and</li> </ul> <p>2. avoid dairy farming <del>of cows</del> and intensive winter grazing where contaminant losses will increase as a result of a proposed activity.</p>
<p>Policy 12 – Riverine</p>	<p>In the Riverine physiographic zone:</p> <p>1. avoid <del>where practicable, as a first priority,</del> risk to water quality from contaminants, <u>and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised</u> by:</p> <ul style="list-style-type: none"> <li>i. identifying contaminant pathways to ground and surface water bodies;</li> </ul>

	<ul style="list-style-type: none"><li>ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage, and overland flow where relevant;</li><li>iii. having particular regard to adverse effects on water quality from contaminants transported via deep drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and</li></ul> <p>2. avoid dairy farming <del>of cows</del> and intensive winter grazing where contaminant losses will increase as a result of a proposed activity.</p>
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