

**BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA**

**UNDER** the Resource Management 1991

**IN THE MATTER** of 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  
REGARDING EXPERT CONFERENCING AND AMENDED TIMETABLE  
18 March 2019**

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Judicial Officer: Judge Borthwick and Judge Hassan

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**WYNNWILLIAMS**

**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 Act 1991**  
(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, SOUTHLAND  
PLANTATION FOREST COMPANY OF NZ,  
SOUTHWOOD EXPORT LIMITED**  
(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 This Memorandum addresses the proposed dates for expert conferencing and the draft amended timetable proposed by the Court in its Minute dated 14 March 2018.

**Expert conferencing**

- 3 In its Minute dated 14 March 2019, the Court directed Counsel for the Council to “*confer with the other parties and report on the topics for expert conferencing; the proposed sequencing and the availability of the experts for conferencing on the dates indicated. Further directions will then follow.*”
- 4 Counsel for the Council have liaised with the parties to the appeals in relation to expert conferencing.
- 5 As all of the evidence in chief has not yet been filed, the parties do not yet have a full understanding of the issues addressed by the evidence. Counsel seeks that the directions set out in paragraph [4] of the Court’s Minute, to report on topics for conferencing and proposed sequencing of expert conferencing, be postponed until all of the evidence in chief has been circulated.<sup>1</sup> This is so that parties can properly consider which experts should conference and on which topics, in light of the content of the evidence in chief. No party raised any issue with this approach.
- 6 Parties have advised as to the availability of expert witnesses between 25 March to 12 April 2019.<sup>2</sup> The availability issues that have been advised by parties are set out in **Appendix A**.

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<sup>1</sup> And subject to any directions from the Court in respect of the Memorandum of Counsel for the Southland Regional Council dated 13 March 2019 addressing the appeal / evidence of Southland Fish and Game Council.

<sup>2</sup> As per the draft extended timetable set out in paragraph [8(c)] of the Minute dated 14 March 2019.

**Availability of Commissioners**

- 7 The Minute confirms that Environment Commissioners are available to conference in the weeks commencing 25 March and 1 April 2019.
- 8 The draft extended timetable proposed by the Court in paragraph [8(c)] of its Minute dated 14 March 2019, provides that expert witness conferencing is to take place between 25 March to 12 April 2019.
- 9 Counsel seeks further direction as to whether Environment Commissioners are also available to conference in the week commencing 8 April 2019.

**Extended timetable**

- 10 The parties are comfortable with the extended timetable proposed in paragraph 8 of the Court's Minute dated 14 March 2019, subject to the following amendment.
- 11 Counsel consider that providing an agreed statement of facts five working days before the first expert conference may lead to inefficiencies, particularly in light of number of parties and issues involved, and as evidence-in-chief has already been filed. It is considered that the filing of agenda five working days prior to each conference, which will cover the issues resolved and unresolved issues, will be sufficient. Any specific facts underlying the issues addressed in conferencing can be recorded in the joint expert witness statement.
- 12 Accordingly, Counsel respectfully consider that the requirement to file an agreed statement of facts five working days before the first conference, (as set out in paragraph 8(b) of the proposed timetable) should be deleted.

**Proposed hearing schedule**

- 13 As previously advised, Counsel is preparing a draft schedule with a proposed order of parties for the Topic A hearing. Due to the extension for the filing of evidence, Counsel proposes to file copy of the proposed schedule with the Court by 29 March 2019, being one week after all of the evidence in chief has been circulated.

**Directions sought**

- 14 Counsel respectfully seek the following directions from the Court:

- (a) An amendment to the direction set out in paragraphs [4] and [9] of the Court's Minute, to report on topics for conferencing and proposed sequencing of expert conferencing, on Wednesday 27 March, once all of the evidence in chief has been circulated.
- (b) Confirmation as to whether Environment Commissioners are also available to conference in the week commencing 8 April 2019.
- (c) Confirmation of the proposed timetable in paragraph [8] of the Court's Minute dated 14 March 2019, subject to the deletion of the requirement to file an agreed statement of facts five working days before the first conference, (as set out in paragraph 8(b) of the proposed timetable).

**DATED** this 18<sup>th</sup> day of March 2019



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**P A C Maw / K J Wyss**  
Counsel for the Southland Regional Council

## Appendix A

### Expert Witnesses - Dates Unavailable

Expert conferencing dates	Dates unavailable (Witness, Party and expertise)
Monday 25 March	<p>Kate McArthur, Royal Forest and Bird Protection Society of New Zealand (<b>Forest &amp; Bird</b>) (water quality and ecosystem health)</p> <p>Mark James, Meridian Energy Limited (<b>Meridian</b>) (freshwater ecology)</p> <p>Ben Farrell, Southland Fish and Game Council (<b>Fish &amp; Game</b>) and Forest &amp; Bird (planning)</p>
Tuesday 26 March	<p>Russell Death, Fish &amp; Game (freshwater ecology)</p> <p>Mark James, Meridian (freshwater ecology)</p> <p>Emily Funnell, Director-General of Conservation (<b>DoC</b>) (freshwater fish values)</p> <p>Roger Hodson, Southland Regional Council (<b>Council</b>) (water quality – rivers and streams)</p> <p>Ben Farrell, Fish &amp; Game and Forest &amp; Bird (planning)</p>
Wednesday 27 March	<p>Russell Death, Fish &amp; Game (freshwater ecology)</p> <p>Mark James, Meridian (freshwater ecology)</p> <p>Emily Funnell, DoC (freshwater fish values)</p> <p>Roger Hodson, Council (water quality – rivers and streams)</p> <p>Ben Farrell, Fish &amp; Game and Forest &amp; Bird (planning)</p>
Thursday 28 March	<p>Russell Death, Forest &amp; Bird (freshwater ecology)</p> <p>Mark James, Meridian (freshwater ecology)</p> <p>Roger Hodson, Council (water quality – rivers and streams)</p> <p>Ben Farrell, Fish &amp; Game and Forest &amp; Bird (planning)</p>
Friday 29 March	<p>Mark James. Meridian (freshwater ecology)</p> <p>Emily Funnell, DoC (freshwater fish values)</p> <p>Roger Hodson, Council (water quality – rivers and streams)</p> <p>Linda Kirk, DoC (planning)</p> <p>Ben Farrell, Fish &amp; Game and Forest &amp; Bird (planning)</p>

Monday 1 April	<p>Kate McArthur, Forest &amp; Bird (water quality and ecosystem health)</p> <p>Russell Death, Fish &amp; Game (freshwater ecology)</p> <p>Mark James, Meridian (freshwater ecology)</p> <p>Kelvin Lloyd, Council (biodiversity and wetlands)</p> <p>Jane Kitson, Ngā Rūnanga (environmental science)</p>
Tuesday 2 April	<p>Kate McArthur, Forest &amp; Bird (water quality and ecosystem health)</p> <p>Kelvin Lloyd, Council (biodiversity and wetlands)</p> <p>Mark James, Meridian (freshwater ecology)</p>
Wednesday 3 April	<p>Kate McArthur, Forest &amp; Bird (water quality and ecosystem health)</p> <p>Russell Death, Fish &amp; Game (freshwater ecology)</p> <p>Mark James, Meridian (freshwater ecology)</p> <p>Jane Kitson, Ngā Rūnanga (environmental science)</p> <p>Kelvin Lloyd, Council (biodiversity and wetlands)</p> <p>John Kyle, Alliance (planning)</p> <p>Denise Anderson, Heritage New Zealand Pouhere Taonga (<b>Heritage NZ</b>) (planning)</p>
Thursday 4 April	<p>Kate McArthur, Forest &amp; Bird (water quality and ecosystem health)</p> <p>Russell Death, Fish &amp; Game (freshwater ecology)</p> <p>Mark James, Meridian (freshwater ecology)</p> <p>Jane Kitson, Ngā Rūnanga (environmental science)</p> <p>Kelvin Lloyd, Council (biodiversity and wetlands)</p> <p>Lynnette Wharf, Horticulture New Zealand (planning)</p> <p>Denise Anderson, Heritage NZ (planning)</p>
Friday 5 April	<p>Kate McArthur, Forest &amp; Bird (water quality and ecosystem health)</p> <p>Russell Death, Fish &amp; Game (freshwater ecology)</p> <p>Mark James, Meridian (freshwater ecology)</p> <p>Emily Funnell, DoC freshwater fish values</p> <p>Jane Kitson, Ngā Rūnanga (environmental science)</p> <p>Brian Rance, DoC (ecology)</p> <p>Kelvin Lloyd, Council (biodiversity and wetlands)</p> <p>Lynnette Wharf, Horticulture New Zealand (planning)</p> <p>Denise Anderson, Heritage NZ (planning)</p>
Monday 8 April	<p>Kate McArthur, Forest &amp; Bird (water quality and ecosystem health)</p>



	<p>ecosystem health)</p> <p>Russell Death, Fish &amp; Game (freshwater ecology)</p> <p>Roger Hodson, Council (water quality – rivers and streams)</p> <p>Ben Farrell, Forest &amp; Bird and Fish &amp; Game (planning)</p> <p>Lynnette Wharf, Horticulture New Zealand (planning)</p>
Tuesday 9 April	<p>Russell Death, Fish &amp; Game (freshwater ecology)</p> <p>Roger Hodson, Council (water quality – rivers and streams)</p> <p>Ben Farrell, Forest &amp; Bird and Fish &amp; Game (planning)</p> <p>Lynnette Wharf, Horticulture New Zealand (planning)</p> <p>John Kyle, Alliance (planning)</p>
Wednesday 10 April	-
Thursday 11 April	-
Friday 12 April	<p>Emily Funnell, DoC (freshwater fish values)</p> <p>Darryl Sycamore, Federated Farmers (planning)</p>