

**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)

(Continued next page)

**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL
REGARDING TRANCHE 1 HEARING
9 February 2022**

Judicial Officer: Judge Borthwick

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

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL CITY 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 At paragraphs [19] and [20] of its Minute dated 28 January 2022, the Court directed the Council to, having conferred with the parties, file a memorandum addressing the following:
 - (a) the parties' response(s) to the Court's proposal for an "all of parties case";
 - (b) whether all of the time allocated for the hearing is still required and if not, giving an indication of the parties' preferred hearing date; and
 - (c) if the parties propose any further directions for the smooth and effective running of the hearing.
- 3 Counsel has liaised with the parties in relation to the above and summarises the parties' position(s) below.

Parties' response(s) to proposal for "all of parties case"

- 4 The Council understands an "all of parties case" to involve the streamlining of evidence, through the calling of a limited number of witnesses who represent the group¹ and speak to the agreed outcome of the Joint Witness Statement.
- 5 While the Council notes that there are a number of details which will need to be considered/addressed in terms of how this will practically work,² it agrees that such an approach should be an efficient way to hear the newly agreed issues and will make use of the energy parties put into their participation in the expert conferencing, and therefore would result in efficiencies for all.

¹ Being the signatories of the Joint Witness Statement.

² Such as who would give evidence on behalf of all parties, and how that evidence would be presented/approached.

- 6 On this basis, the Council supports, in principle, the Court’s proposal to hear the issues now agreed between the parties³ by way of an “all of parties case”.
- 7 Unless specifically noted below, all parties from whom a response was received as at the time of filing of this memorandum agree with the Council’s position set out above.
- 8 Aratiatia Livestock Limited agrees with the Council’s position above, provided the outstanding issues are addressed in sufficient depth.
- 9 Ballance Agri-Nutrients Limited would prefer that the agreed issues are resolved by consent orders, however it considers an “all of parties case” is preferable to a full hearing on the basis that it would involve streamlining evidence and result in a more efficient hearing process.
- 10 DairyNZ Limited and Fonterra Co-operative Group Limited agree with the Council’s position regarding an “all of parties case” for those issues agreed after 19 November 2021, and further consider that where there have been proposals for minor amendments to these agreements, they can also be dealt with on “all of parties” basis – where a proposal is accepted by the other parties.
- 11 Rayonier New Zealand Limited would be amenable to resolution of the forestry appeals by consent order if that approach is practicable and efficient for the Court and parties.
- 12 Southwood Export Limited considers the issues in its appeal are confined, and that given that issues in dispute are resolved as a result of the expert witness conferencing,⁴ the section 274 parties and Appellant agree that this matter is capable of being resolved by consent order so that the Court’s time is not unnecessarily taken up at a hearing.

³ That is, all those issues which were agreed as between the experts in the Joint Witness Statement dated 10 December 2021, and which have now been confirmed by the parties as their position.

⁴ Counsel for the Council notes that it is not clear at this stage whether the issues in dispute have in fact been resolved. Refer to the Memorandum dated 8 February 2022 which records that Federated Farmers does not support the agreed wording for the definition of “cultivation”. Counsel for Southwood Export Limited has sought clarification on this issue from counsel for Federated Farmers.

Hearing time required

- 13 The parties note that significant progress has been made through expert conferencing to narrow the issues that remain in dispute. Accordingly, it is expected that the full 4 weeks of hearing time currently set aside will not be required.
- 14 However, Counsel does not consider it will be in a position to give an accurate estimate of the time required for hearing until 25 February, for the following reasons:
- (a) It is not yet certain how the hearing will proceed (e.g., whether the hearing will proceed as usual with all parties presenting evidence, whether it will be heard in part as an “all of parties case” and in part as a disputed hearing, or whether consent orders could be filed for some agreed issues), how/what evidence will be presented, and whether some or all witnesses will need to be cross-examined.⁵
 - (b) Evidence in chief for the Council is not due until 11 February 2022.
 - (c) Rebuttal evidence for the appellants and section 274 parties is not due until 22 February 2022.
 - (d) The parties are to file memoranda on 22 February 2022 setting out their final position on the changes to provision being pursued.
- 15 Until each of the above steps has occurred, Counsel considers it is premature to narrow the time being allowed for the hearing.
- 16 Further to the above, Counsel notes that having some room for movement in the hearing timetable may be advantageous given the predicted levels of COVID in the community at the time of the hearing. Counsel anticipates that the expected levels of COVID in the community at the time of the hearing will be known with greater certainty by late February.
- 17 For these reasons, and with the support of the parties, Counsel seeks a direction for the Council to advise an accurate estimate of the time

⁵ It is noted that these questions are expected to be addressed at the Judicial Conference set down for Thursday 10 February 2022.

required for hearing, and if necessary any preferred hearing dates, on 25 February 2022.

- 18 In relation to preferred hearing dates, Counsel notes that some parties have indicated a preference for particular dates, should the hearing time be shortened.⁶ Counsel will address these requests/preferences when responding to the Court as sought in paragraph 17 above.

Further directions for the smooth and effective running of the hearing

- 19 To ensure the smooth and effective running of the hearing, in addition to the extension sought above for reporting the estimated time required for hearing, the parties seek the further directions as detailed below.

Provision of AVL facilities

- 20 It seems inevitable that some witnesses, counsel, or the Court will be impacted by COVID during the hearing period (be it self-isolation requirements or being unwell). Accordingly, the parties seek additional flexibility around the use of AVL, particularly for expert witnesses.⁷
- 21 The parties also seek confirmation that parties / their representatives will have AVL facilities available to them to observe the hearing remotely. It is important that counsels' clients are able to observe the hearing and provide instructions in a timely manner if they are not able to attend in person.

Hearing schedule

- 22 In order to assist with parties' arrangements for the hearing, Counsel proposes to liaise with the parties and file a draft hearing schedule,

⁶ The following preferences have been expressed:

- The Director-General of Conservation and Rayonier New Zealand Limited would prefer to retain (at least) the first two weeks of the hearing (14 – 25 March).
- DairyNZ Limited and Fonterra Co-operative Group Limited would also prefer that the hearing occur in the earlier phase of the period originally set down (i.e., the weeks beginning 14 and 21 March).
- Forest and Bird and Fish and Game's counsel has availability issues on 15 and 16 March and so has filed a memorandum seeking that that unavailability be accommodated – see Memorandum dated 4 February 2022.
- Ngā Rūnanga would prefer to avoid hearing time in April due to the tītī season.

⁷ The Court directed that expert witnesses are to attend the hearing in person, unless directed otherwise (at paragraph [4] of the Record of Pre-Hearing Conference dated 22 October 2021). The Court contemplated regional lockdowns as a reason for such other directions, rather than COVID being widespread in the community. It is respectfully submitted that the current situation warrants alternative directions.

setting out the order for parties' submissions and witnesses, and estimated times required for cross-examination, on 4 March 2022.

- 23 The parties support this proposal, although it is noted that counsel for Federated Farmers and Wilkins Farming Company Limited, and Mr English would prefer that the hearing schedule is filed earlier (e.g. 25 February 2022). Counsel for the Council does not consider there is sufficient time to liaise with the parties and prepare a detailed hearing schedule in the time available between 22 and 25 February, particularly given its existing filing requirements during that period.⁸

Consent orders

- 24 Southwood Export Limited seeks that its appeal be resolved by way of consent orders. Rayonier New Zealand Limited is also open to the resolution of its appeal by way of consent orders rather than hearing. Accordingly, Southwood Export Limited seeks a direction for a date by which such consent orders are to be filed.

Directions sought

- 25 Counsel respectfully seeks the following directions:
- (a) The Council is to, having liaised with the parties, file a memorandum advising an accurate estimate of the time required for hearing, and if necessary any preferred hearing dates, by 25 February 2022.
 - (b) That AVL facilities be available for any witness or counsel to participate in the hearing, should they require it.
 - (c) That AVL facilities be available for parties / their representatives to observe the hearing remotely.
 - (d) The Council is to, having liaised with the parties, file a memorandum enclosing a draft hearing schedule setting out the order for parties' submissions and witnesses, and estimated times required for cross-examination, by 4 March 2022.

⁸ Counsel is required to prepare and file the remainder of the common bundle on 25 February, and (if the directions sought are granted) a Memorandum setting out the expected time required for hearing.

- (e) If the Court is amenable to receiving further applications for consent orders, that the Court set a date by which such applications are to be filed.

DATED this 9th day of February 2022



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