

**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)

(Continued next page)

**MEMORANDUM OF COUNSEL FOR THE SOUTHLAND REGIONAL
COUNCIL**

1 May 2023

Judicial Officer: Judge Borthwick

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ARATIATIA LIVESTOCK LIMITED
(ENV-2018-CHC-29)

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**) regarding the appeals on the proposed Southland Water and Land Plan (**pSWLP**).
- 2 The court issued its sixth interim decision on 23 March 2023.¹ Following the pre-hearing conference on 13 April 2023, the Court directed:
 - (a) The Regional Council, having conferred with the parties, to file a memorandum on 1 May 2023 identifying any provisions that the court has yet to make a final decision on with Tranche 1; and
 - (b) Policy 30 and Rule 78 excepted, the Regional Council, having conferred with the other parties, to file a memorandum on 1 May 2023 responding to changes proposed by the court in relation to the provisions (the subject of the sixth interim decision).
- 3 Counsel for the Council has conferred with the parties as directed and the responses are set out in turn below.²

Position of the Dairy Interests

- 4 Aside from Policy 16A, which is addressed separately below, the Dairy Interests continue to support their own version of the provisions as provided by Mr Willis. However, they do not wish to advance this further by way of hearing, additional conferencing, or evidence exchange. They await the final decision of the Court on these matters.

Court's suggested alternative wording for Policies 15A and 15B

- 5 The Council and parties³ support the court's version of Policies 15A and 15B as regards residual effects. No other party responded with an alternative view.

¹ [2023] NZEnvC 051.

² For completeness, responses were received from the Dairy Interests, the Director-General of Conservation, Forest and Bird, Fish and Game, Federated Farmers, Meridian Energy Ltd, Ngā Rūnanga, the Territorial Authorities, Transpower, Ballance Agri-Nutrients Ltd and Ravensdown.

³ Director-General of Conservation, Royal Forest and Bird Protection Society of New Zealand Incorporated, Southland Fish and Game Council, Federated Farmers, Meridian Energy Ltd, Ngā Rūnanga, the Territorial Authorities, Transpower, Ravensdown, and Ballance Agri-Nutrients Ltd.

Court’s suggested alternative wording for Policy 15B(2)

- 6 The Council and parties⁴ support the court’s version of Policy 15B. For completeness, counsel for the Director-General has confirmed that the Court’s version of Policy 15B addresses the concerns raised by the Director-General.⁵ Likewise, counsel for Ngā Rūnanga has confirmed that his client is content with the wording changes proposed by the Court. No other party responded with an alternative view.

Court’s suggested alternative wording for Rule 15(ab)

- 7 The Council and parties⁶ are comfortable with the deletion of sediment cover from Rule 15(ab). No other party responded with an alternative view.

Court’s suggested alternative wording in Appendix E

- 8 The Council and parties⁷ are comfortable with the court’s suggested wording for Appendix E. No other party responded with an alternative view.

Policy 16A

- 9 The Court notes at paragraph [156] of the sixth interim decision that the pSWLP does not define ‘industrial and trade processes’ (as used in the policy’s heading) or ‘industrial trade processes’ (as used in the Council’s final preferred wording of the policy, which the Court approves with minor amendments). It therefore presumes that the pSWLP relies on the definition of “industrial or trade process” in the RMA.
- 10 The Council was directed at paragraph [175] of the sixth interim decision, to confer with the parties and report to the Court, advising:

⁴ Director-General of Conservation, Royal Forest and Bird Protection Society of New Zealand Incorporated, Southland Fish and Game Council, Federated Farmers, Meridian Energy Ltd, Ngā Rūnanga, the Territorial Authorities, Transpower, Ravensdown, and Ballance Agri-Nutrients Ltd.

⁵ [2023] NZEnvC 051 at [145]-[146].

⁶ Director-General of Conservation, Royal Forest and Bird Protection Society of New Zealand Incorporated, Southland Fish and Game Council, Federated Farmers, and Ngā Rūnanga.

⁷ Director-General of Conservation, Royal Forest and Bird Protection Society of New Zealand Incorporated, Southland Fish and Game Council, Federated Farmers, and Ngā Rūnanga.

- (i) whether the RMA definition for “industrial or trade process” applies to this policy; and
- (ii) whether there is scope to make the changes suggested by the Court.

“Industrial or trade process”

- 11 The Council considers that the RMA definition for “industrial or trade process” applies to Policy 16A.
- 12 Throughout the pSWLP there are various references to both ‘industrial *and* trade process(es)’⁸ and ‘industrial *or* trade process(es)’⁹, in provisions which are under appeal and provisions which are not.
- 13 Having reviewed the notified pSWLP, the Section 32 Report, the Section 42A Report, the Report and Recommendations of the Hearing Commissioners, and the Decisions Version of the pSWLP, the Council is comfortable that the differing use of “and” and “or” is not deliberate, but that it was always intended to address the same activities as those addressed in the RMA definition of “industrial or trade processes”. Further, the Council confirms that the use of “industrial trade processes” rather than “industrial or trade processes” in its final relief was a typographical error.
- 14 Scope for the amendments to Policy 16A derives from the submission by Fonterra Limited, which uses the word “and”. However, given the intent expressed above, the Council considers it could amend the references to ‘industrial *and* trade process(es)’ in Policy 16A, Rule 34, and the definition of “Community Sewerage Scheme” to ‘industrial *or* trade process(es)’ for consistency and to make it explicit that the RMA definition applies, in accordance with clause 16(2) of Schedule 1 of the RMA.

⁸ Policy 16A, Rule 34, and definition of “Community Sewerage Scheme”.

⁹ Rule 32C, Rule 38, and definitions of “effluent” and “water demand management strategy”.

- 15 Counsel for the Dairy Interests has confirmed that they are comfortable with the Council's position outlined above, and no other party has expressed concern (with many¹⁰ specifically noting their support).

“and sediment”

- 16 With respect to the addition of the phrase “and sediment”, the Council considers this is consequential to the addition of the phrase “Subject to Policies 15A and 15B”, which in turn, were policies strengthened as a result of the changes made to Objectives 1, 2 and 6 and the addition of the interpretation statement regarding the intrinsic link between sediment quality in waterbodies with water quality. The strengthening of Policies 15A and 15B makes it clear that these policies always apply, but that the more specific policies, such as Policy 16A, provide additional guidance for specific activities.
- 17 The Dairy Interests, Director-General, Forest and Bird, Fish and Game, and Ballance confirmed they agree with the Council's position above, and no party raised any concerns in relation to the same.

Rule 78 and Policy 30 – policy heading

- 18 The parties understand that these provisions will be referred to expert conferencing. Accordingly, the parties have not addressed the court's proposed amendments to these provisions and will await the outcome of further expert conferencing.

Any amended provisions not yet addressed

- 19 The Court directed the Council to draw its attention to any amended provisions that it has yet to address. The Council has identified that Policy 3 has yet to be determined by the Court (specifically, the addition

¹⁰ Director-General of Conservation, Royal Forest and Bird Protection Society of New Zealand Incorporated, Southland Fish and Game Council, Federated Farmers, Ngā Rūnanga, and Ballance Agri-Nutrients Ltd.

of the words “and their related habitats”.¹¹ No other provisions have been identified by the parties.

DATED this 1st day of May 2023

A handwritten signature in blue ink that reads "P. Maw".

.....
P A C Maw / I F Edwards
Counsel for the Southland Regional Council

¹¹ *Aratiatia Livestock Limited v Southland Regional Council* [2019] NZEnvC 208 at [326].