

**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)

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

22 November 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 is filed on behalf of the Southland Regional Council (**Council**) in respect of the appeals on the Proposed Southland Water and Land Plan (**pSWLP**), specifically Tranche 3 of the pSWLP appeals.
- 2 At the hearing on Tranche 3 of the appeals during the week of 14 November 2022, the Court directed counsel for the Council to report to the Court on 21 November 2022, in respect of the following matters:
 - (a) Whether Rule 52A of the pSWLP would be revisited (and re-notified) as part of Plan Change Tuatahi;
 - (b) Whether further mediation or expert witness conferencing is necessary to advance the drafting of Policy 26, Rule 52A and Appendix E of the pSWLP;
 - (c) Whether further planning evidence is required and if so, the timing for filing that further planning evidence; and
 - (d) Whether the hearing on 13-15 December 2022 is required.

Plan Change Tuatahi

- 3 It is the Council's intention to reconsider the planning framework, including the activity status within Rule 52A.

Expert witness conferencing

- 4 The parties, other than Southland Fish and Game Council, Fish & Game, and Aratiatia Livestock Limited, whose separate positions are set out at paragraph 9 below, consider that two parallel drafting exercises should be pursued through expert witness conferencing, as follows:
 - (a) Those parties' planners supporting restricted discretionary activity status (i.e., Meridian Energy Limited, Ngā Rūnanga and the Director-General of Conservation) participate in expert conferencing with a view to refining the drafting of Policy 26 and Rule 52A.
 - (b) Those parties' planners supporting fully discretionary activity status (i.e., Aratiatia Livestock Limited, Fish & Game and Forest & Bird) participate in expert conferencing in respect of a discretionary Rule 52A with policy support in Policy 26, following receipt of the Joint

Witness Statement prepared by those participating in expert conferencing on the restricted discretionary activity.¹

- 5 The planners should also conference on (and address in the resulting Joint Witness Statements) their intentions behind the redrafting of Rule 52A.
- 6 As the Council remains neutral with respect to the activity status of Rule 52A, the Council's planning witness, Mr McCallum-Clark, could participate in both expert witness conferencing sessions with a view to providing input on the appropriateness of the drafting, regardless of the activity status.
- 7 Counsel do not consider that the expert conferencing needs to be facilitated.
- 8 Following receipt of the joint witness statements, parties are to advise whether they support either position (i.e., the restricted discretionary drafting and/or the discretionary drafting with policy support). At this juncture, Mr Donnelly will also be in a position to advise whether his clients' interests are able to be supported by another party, such that the hearing can be re-convened on 13-15 December 2022, in his absence.

Position of Southland Fish and Game Council, Forest & Bird, and Aratiatia Livestock Limited

- 9 Southland Fish and Game Council, Forest & Bird and Aratiatia do not support the process proposed above. They are concerned at the additional time and cost that the process will incur, when their positions and their witnesses' opinions as to the most appropriate wording have not changed. They consider that Meridian Energy Limited, as the party whose witness has conceded amendments are required to the wording it had put forward, should provide the amended wording it now supports, and that Ngā Rūnanga and the Director-General of Conservation should identify whether they also support the amended wording. They will not be in a position to identify whether they consider further planning evidence is required until the amended wording and the extent of support for that wording is clarified. Similarly, they are not in a position to identify the extent to which cross-examination may be required until

¹ Aratiatia considers Policy 26 does not need amendment, although it is open to considering proposals.

they understand what Ms Whyte will propose, and whether Ms Davidson and Ms Kirk support the amended wording.

- 10 Southland Fish and Game Council, Forest & Bird and Aratiatia have no objection to seeking to refine the minor differences in preferred wording as between the parties supporting discretionary activity status for Rule 52A. Southland Fish and Game Council advises that Mr Farrell is happy to contact the other planners in that regard once he has recovered from Covid.
- 11 In addition, Southland Fish and Game Council wishes to record that if the Council's procedure is preferred, Mr Farrell would not be available for expert witness conferencing in the week of 28 November.

Reconvened hearing

- 12 When the hearing reconvenes, either in December or in the new year, counsel considers it would be useful for the various planning witnesses to be "hot-tubbed" for each joint witness statement (i.e., the planners for Meridian Energy Limited, Ngā Rūnanga and the Director-General of Conservation are "hot-tubbed" together, and the planners for Aratiatia Livestock Limited, Fish & Game and Forest & Bird are "hot-tubbed" together, with Mr McCallum-Clark available to participate in both rounds of questioning).
- 13 Doing so may result in greater efficiencies with respect to cross-examination of witnesses and may avoid the need to revisit the material in earlier evidence briefs that may well be superseded as a result of the further expert witness conferencing. However, if parties have questions for individual planning experts following "hot-tubbing", parties will be able to cross-examine those experts separately.

Directions sought

- 14 Counsel for the Council has liaised with other counsel regarding the content of this Memorandum.
- 15 Counsel for the Council respectfully seeks the following directions:
 - (a) Planners for Meridian Energy Limited, Ngā Rūnanga and the Director-General of Conservation are directed to participate in expert witness conferencing, with a Joint Witness Statement to be filed by **30 November 2022**.

- (b) Planners for Aratiatia Livestock Limited, Fish & Game and Forest & Bird are directed to participate in expert witness conferencing, with a Joint Witness Statement to be filed by **6 December 2022**.
- (c) Mr McCallum-Clark is directed to participate in both expert witness conferencing sessions.
- (d) All parties are directed to advise whether they support the drafting set out in the resulting Joint Witness Statements by **7 December 2022**.
- (e) Mr Donnelly is directed to advise the Court and parties whether his clients' interests are able to be supported by another party by **8 December 2022**.
- (f) Pending Mr Donnelly's response, the hearing will proceed on **13-15 December 2022** or alternatively at the earliest available date in 2023.

DATED this 22nd day of November 2022



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