

**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 SENSE CHECK**

21 July 2022

Judicial Officer: Judge Borthwick

Respondent's Solicitor
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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.
- 2 The Court directed parties with an interest in Appendix N to confer with the Council regarding the sense check, with the Council directed to report back to the Court on Thursday 21 July 2022 proposing directions.

Purpose

- 3 Counsel consider that the purpose of the sense check is to ascertain whether Appendix N is both understandable and implementable at a practical level.
- 4 Persons who may be responsible for preparing the documentation required by Appendix N, and a representative from the Council's consents team are considered best placed to undertake the sense check.
- 5 Those conducting the sense check will not seek to relitigate the outcomes being secured through Appendix N, rather they will be checking it for readability and practical application.

Process

- 6 Counsel are generally of the view that the conferencing can occur informally.
- 7 However, counsel for Ballance considers that a facilitator would be useful. Counsel for Ngā Rūnanga and Aratiatia Livestock Limited suggested that Mr McCallum-Clark could attend the sense check conferencing, to ensure that the participants' analysis is based on a full and correct understanding of how the provisions are intended to function. However, counsel for the Council is concerned that Mr McCallum-Clark's attendance may undermine the purpose of the sense check.
- 8 Counsel considers the conferencing should occur following circulation of Mr McCallum-Clark's final reply and the s 32AA report.¹

¹ Due on 3 August 2022.

- 9 However, Forest & Bird and Fish & Game would prefer that the Court first make an interim decision on what content is needed in Appendix N to implement the pSWLP before a sense check is undertaken of the way in which those matters are set out.

Participants

- 10 As signalled in our Memorandum of 13 July, the Council considers that the number of participants should be intentionally small, if possible. The following participants have been identified:
- (a) Anna Wilkes;
 - (b) Cain Duncan;
 - (c) Bernadette Hunt;
 - (d) Sean Wilkins; and
 - (e) Bruce Halligan.
- 11 Although Mr Halligan has not given evidence in these proceedings to date, as the Consents Manager at the Council he is considered best placed to undertake the sense check for the Council, given that he and his team will be dealing with Appendix N regularly.
- 12 For completeness, we note that counsel for Ngā Rūnanga also supported the participation of Dr Ross Monaghan. However, the Council does not consider that his attendance at the sense check conferencing is appropriate.

Availability of participants

- 13 Counsel considers that if the sense check conferencing is to occur following circulation of Mr McCallum-Clark's final reply and s 32AA report, it needs to occur prior to parties presenting their closing legal submissions (on 15 August 2022).
- 14 That leaves a narrow window of time for the conferencing to take place.
- (a) Mr Halligan is available to attend conferencing on 4 or 5 August 2022.
 - (b) Ms Wilkes is available to attend conferencing on 4 or 5 August.
 - (c) Mr Duncan is available to attend conferencing on 4 or 5 August 2022.

(d) Ms Hunt and Mr Wilkins are available to attend conferencing on 5 August 2022.

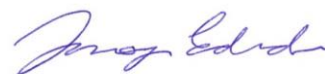
15 Given availability constraints, conferencing could occur on 5 August 2022.

Directions sought

16 Counsel seek the following directions:

- (a) That a sense check of Appendix N is conducted by the participants listed in paragraph 14 above, on 5 August 2022.
- (b) If the Court is of the view that Mr McCallum-Clark should also attend the sense check conferencing, a direction accordingly.
- (c) That a JWS be filed with the Court by Monday 8 August 2022.

DATED this 21st day of July 2022



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