

**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 SOUTHLAND REGIONAL COUNCIL  
REGARDING TIMETABLE FOR TRANCHES 2 AND 3  
2 December 2021**

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Judicial Officer: Judge Borthwick

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**WYNNWILLIAMS**

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

**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**  
(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 In the Record of Pre-Hearing Conference dated 22 October 2021, the Council was directed to, in consultation with the relevant parties, file a reporting memorandum within ten working days after the exchange of Will Say statements, setting out the following:<sup>1</sup>
  - (a) any jurisdiction challenge and related directions required;
  - (b) a proposed timetable for evidence exchange;
  - (c) proposed dates and directions for expert conferencing; and
  - (d) any other matters parties wish to raise.
- 3 The final Will Say statements, pursuant to the amended timetable,<sup>2</sup> were filed on Friday 19 November 2021. Accordingly, this Memorandum is required to be filed by 3 December 2021.
- 4 Counsel for the Council has consulted with the parties as to the above matters, seeking their responses be provided by 12pm on Wednesday 1 December. As at the time of filing, responses had been received from the following parties:<sup>3</sup>
  - (a) Aratiatia Livestock Limited (**Aratiatia**);
  - (b) Director-General of Conservation;
  - (c) Hamish English;
  - (d) Meridian Energy Limited (**Meridian**);
  - (e) Ngā Rūnanga;

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<sup>1</sup> Record of Pre-Hearing Conference dated 22 October 2021 at [24].

<sup>2</sup> Noting that the timetable was extended in the Minute dated 2 November 2021 at [10](e) and (f).

<sup>3</sup> Responses were not received from Owen Buckingham (although it is noted that his standing to participate in the topic is still subject to Court determination), Dairy Holdings Limited, Federated Farmers of New Zealand, Southland Fish and Game Council, Royal Forest and Bird Protection society of New Zealand Inc, Robert Kempthorne, the Territorial Authorities, and Murray and Tania Willans.

- (f) Wilkins Farming Company Limited (**Wilkins**);
- (g) Invercargill City Council Water Manager; and
- (h) Waiau Rivercare Group.

5 Counsel provides the position of the Council and those parties who responded below.

### **Jurisdictional challenges and related directions**

#### *Topic B1 (Tranche 2)*

- 6 As has previously been communicated to the Court and parties, the Council considers there is a jurisdictional issue as to the appeal of Wilkins in relation to two issues in Topic B1.<sup>4</sup>
- 7 In relation to Issue 6, Counsel for the Council considers that, on the face of Wilkins' original submission, there does not appear to be scope for the amendments sought in its notice of appeal nor the relief sought in its Memorandum dated 29 October 2021.
- 8 In relation to Issue 17, Counsel for the Council considers that Wilkins' appeal seeks changes to the pSWLP which are wider in scope than its original submission.
- 9 As Wilkins are the only appellant on these issues,<sup>5</sup> Counsel for the Council considers it is appropriate that these jurisdictional questions be dealt with by way of a preliminary determination as to scope in advance of evidence exchange. The Director-General of Conservation agrees, to the extent that she has an interest in the matter, that these issues should be resolved prior to evidence exchange. All other parties either expressed no opinion or noted they would abide the Court's directions in relation to this issue.

#### *Topic B6 (Tranche 3)*

- 10 Meridian raises a jurisdictional issue in relation to Topic B6 as follows:

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<sup>4</sup> Memorandum of Counsel for Southland Regional Council dated 13 October 2021 at [7]-[9].

<sup>5</sup> Note that Southland Fish and Game Council have an appeal in relation to Policy 42, however this issue has been resolved in principle, subject to the Wilkins appeal.

In relation to Topic B6 Issue #12 - Policy 26, Meridian considers that the relief sought in the Aratiatia Livestock Limited notice of appeal goes beyond what was sought in Aratiatia's submission and Meridian will argue that part of the relief being sought by Aratiatia is therefore out of scope. In particular Meridian will argue that the [bolded] part of the Aratiatia relief below as contained in its notice of appeal goes beyond what was sought in its submission and is therefore beyond the Court's jurisdiction on appeal:

*“Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapouri hydro-electric facilities in the Waiau catchment), and the national, regional and local benefits relevant to renewable electricity generation activities when:*

*1) allocating surface water for abstraction, damming, diversion and use; and*

*2) considering all resource consent applications for surface water abstractions, damming, diversion and use whilst, in the context of the Manapouri hydro-electric scheme, having regard to:*

*3) The potential to avoid, remedy or mitigate any adverse effects on the mauri of the Waiau River system; and*

***4) The opportunity to reverse or reduce the damage which the operation of the scheme has caused within the catchment by increasing the minimum flow requirements at the Mararoa Weir as specified in consents relating to the scheme”.***

Meridian accepts that other aspects of the relief sought by Aratiatia in its notice of appeal in relation to Policy 26 are within scope. Meridian also notes that it has its own appeal in relation to Policy 26, and that the Council and other parties will be promoting changes to the Policy from the Decisions version. Because Policy 26 will be the subject of evidence and

submissions that are within scope, and because the jurisdictional issue Meridian will raise is narrow, Meridian does not consider that the issue of whether or not the [bolded] relief sought by Aratiatia is within jurisdiction on appeal needs to be resolved as a preliminary matter, and will be most conveniently and efficiently addressed at the same time as the Court's overall consideration of the most appropriate wording of the Policy. If the Court prefers to have the issue dealt with ahead of the substantive consideration of Topic B6 the steps and timetable [Council] have proposed to resolve the B1 jurisdictional issue would be appropriate for this issue also.

- 11 Aratiatia, the Director-General of Conservation, and Ngā Rūnanga agree that the matter raised by Meridian would most efficiently be addressed during the substantive hearing. No other party expressed an opinion on the matter.

#### **Proposed timetable for evidence exchange**

- 12 An agreed proposed timetable for the hearing of preliminary jurisdictional issues, the exchange of evidence, expert conferencing (if required), and hearing for Tranches 2 and 3 is attached as **Appendix A**.

#### **Proposed dates and directions for expert conferencing**

- 13 The Council, Meridian, and the Director-General of Conservation agree that expert conferencing, if it is required, should occur after evidence exchange. Counsel for these parties consider that because mediation has already occurred in relation to both Topics B1 and B6, there is little utility in conducting expert conferencing in advance of evidence exchange. On this basis, these parties propose that the topics for expert conferencing be determined after evidence exchange. A step for this has been inserted in the proposed timetable.
- 14 Ngā Rūnanga consider that the same procedure that was followed for Tranche 1 should be followed for Tranches 2 and 3, that is: Will Say statements, followed by expert conferencing, then evidence exchange. Ngā Rūnanga's counsel consider this process should ensure the number of issues to be covered in evidence in chief is narrowed. Respectfully, Counsel for the Council disagrees for the reasons set out at 13 above.

**Any other matters**

- 15 Counsel for Mr English advised that Mr English does not intend to raise any jurisdictional issues and will abide the Court's decision on any matter which proceeds to a preliminary determination.
- 16 Counsel for Mr English also advised that Mr English is unlikely to engage an expert to participate in expert witness conferencing.
- 17 No parties raised any other matters for the Court to consider.

**Directions sought**

- 18 Counsel for the Council seeks the following directions:
  - (a) That the jurisdictional issues in relation to Topic B1 (Tranche 2) be heard in advance of evidence exchange;
  - (b) That the jurisdictional issue in relation to Topic B6 (Tranche 3) be addressed during the substantive hearing; and
  - (c) That the timetable in Appendix A be confirmed.

**DATED** this 2<sup>nd</sup> day of December 2021



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



### Appendix A – Proposed Timetable for Tranches 2 and 3

Date	Action	Time since previous step
11 February 2022	Legal submissions of Appellant(s) in relation to preliminary jurisdictional issues	
18 February 2022	Legal submissions of Section 274 Parties in relation to preliminary jurisdictional issues	Due 1 week after previous step
4 March 2022	Legal submissions of Respondent in relation to preliminary jurisdictional issues	Due 2 weeks after previous step
11 March 2022	Legal submissions in reply	Due 1 week after previous
	Decision of the Court on preliminary jurisdictional issues (anticipated to be a decision on the papers)	
TBC	If decision on preliminary jurisdictional matters is issued earlier than Friday 15 April 2022, parties are to confirm, by way of reporting memorandum from the Regional Council, the appropriateness of the dates in the remainder of the timetable	Within five working days of receipt of decision on the preliminary jurisdictional issues
TBC	Appellant EIC	Due 3 weeks following release of Court decision on jurisdictional issues OR filing of the reporting memorandum by the Regional Council as per the above step

TBC	Section 274 parties' evidence	Due 1 week after previous step
TBC	Regional Council evidence	Due 2 weeks after previous step
TBC	Appellant and s 274 parties' rebuttal evidence	Due 1 week after previous step
TBC	Regional Council to confer with parties and file Memorandum reporting on topics to be referred to expert conferencing and time required	Due 1 week after previous step
TBC	Regional Council to confer with parties and circulate agenda for expert conferencing	Due 1 week after previous step
TBC	Expert Conferencing	To commence 1 week after agenda circulated
TBC	Memo to Court setting out changes to provisions being pursued	Due ~2 weeks after conferencing concludes / JWS filed
TBC	Hearing commences (not before 1 June 2022) with Topics B1 and B6 to be heard sequentially	2 weeks after previous step