

**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 TIMETABLE FOR TRANCHES 2 AND 3
21 December 2021**

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 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 On Thursday 2 December, Counsel for the Council filed an agreed timetable for Tranches 2 & 3 of the appeals. Environment Commissioner Ross Dunlop has queried whether timetabling steps can be expedited. The purpose of this Memorandum is to provide an explanation for the dates that were proposed for the timetabling steps for Tranches 2 & 3, and to provide alternative timetabling options for the Court's consideration.

Tranche 1

- 3 By way of background, the timetable for Tranche 1 of the appeals is attached as **Appendix A**. Expert conferencing for Tranche 1 was completed on 10 December. Evidence in chief for the appellants was due on 20 December.
- 4 Many counsel at the Pre-Hearing Conference held on 19 October 2021 expressed a strong wish for January 2022 to remain free from evidence preparation and filing requirements, due to the difficulties many have faced during the last year. The Court was receptive to these requests. Accordingly, the next filing date for Tranche 1 is 4 February 2022 for section 274 parties' evidence in chief. Evidence in chief for the Council is then due on 11 February, with any rebuttal evidence for the appellants and section 274 parties due on 22 February.
- 5 The hearing for Tranche 1 commences on 14 March and runs through to 14 April, with a one-week break in the week of 28 March.

Tranche 2 & 3 timetable as proposed on 2 December

- 6 The proposed timetable for Tranches 2 & 3, filed on 2 December and set out in **Appendix B** to this memorandum, sought to avoid any party having filing requirements for Tranche 1 and Tranches 2 & 3 falling on the same day. It also avoided any evidence preparation or filing requirements falling during the Tranche 1 hearing.
- 7 Pursuant to the timetable as proposed, four weeks are required following the filing of the appellant's legal submissions on the preliminary

jurisdictional issues for all legal submissions to be filed. Following this, the Court will consider and determine the preliminary jurisdictional issues. After receipt of the Court's decision on the preliminary jurisdictional issues, fourteen weeks are required for the exchange of evidence in chief, rebuttal evidence, expert conferencing, and final hearing preparation.

- 8 On this basis, the hearing for Tranches 2 & 3 would likely begin in late July or early August 2022.
- 9 Counsel for the Council's interpretation of paragraphs [13] - [16] of the Record of Pre-Hearing Conference is that:¹
- (a) The Court acknowledges that the parties consider there are preliminary jurisdictional issues which need to be dealt with in advance of evidence exchange and expert conferencing;
 - (b) The Court does not have time to decide on such matters this year, and therefore Tranches 2 & 3 are to proceed as far as Will Say statements and then be put on hold;
 - (c) The parties are to seek directions in relation to jurisdictional issues and propose a timetable for evidence exchange on the basis that any hearing is to commence on or after 1 June 2022.
- 10 Respectfully, Counsel for the Council interprets the statement "on or after 1 June 2022" to mean that the hearing must not begin before 1 June, rather than that it must begin on or as soon as possible after 1 June. It is Counsel's understanding that the other parties, in particular Counsel for Wilkins Farming Company Ltd (**Wilkins**), the Director-General of Conservation, and Meridian Energy Limited, also interpreted the direction in the Record of Pre-Hearing Conference in the same way.
- 11 However, if the Court considers that leave is required in order to allow a timetable which provides a hearing start date other than early June, such leave is respectfully sought.

¹ Record of Pre-Hearing Conference dated 22 October 2021 at [13]-[16].

Tranche 3

- 12 The parties to Tranche 3 no longer consider there are preliminary jurisdictional issues which need to be dealt with in advance of evidence exchange and expert conferencing. Instead, the parties agree that any jurisdictional issues can be addressed and considered during the substantive hearing.
- 13 Tranche 3 can therefore be brought to hearing on 7 June with only minor changes to the timeframes for evidence exchange set out in the 2 December proposed timetable.
- 14 A proposed timetable for Tranche 3 is included in **Appendix C**. If the Court is not minded to approve the timetable as filed on 2 December, Counsel respectfully seeks that the Court approve the timetable in Appendix C for Tranche 3.

Options for Tranche 2

- 15 Three options for an amended Tranche 2 timetable are addressed below.

Option 1

- 16 On the basis of a hearing beginning on Tuesday 7 June (the first working day of the week following 1 June), and using the same timeframes between filing requirements as set out in the 2 December proposed timetable, a decision would be required on the preliminary jurisdictional issues for Tranche 2 by no later than 18 February in order for the evidence exchange timeframes to be met. However, that would result in evidence in chief for all parties and rebuttal evidence for the appellants and section 274 parties being exchanged concurrently with the Tranche 1 hearing. Feedback from parties regarding the proposed timetable was that this should be avoided wherever possible. Counsel for the Council considers that this would impose a significant workload and there is risk that neither case would be best served if witnesses (and counsel) are engaged in hearing during the day and required to prepare evidence for a related matter in the evenings.
- 17 Further, such a timetable would require legal submissions for the appellant to be filed no later than 14 January 2022, but that is on the assumption that the Court could issue a decision with significant

urgency, i.e., within a week of receiving the legal submissions in reply. Such a timetable would put significant pressure on the appellant, and we do not presume to impose a timeline upon the Court for its decision. Further, as noted above, the Court agreed that there should be no filing requirements in January 2022 for this matter.

- 18 For these reasons, Counsel respectfully considers that Option 1 is not appropriate and so has not provided a detailed timetable on that basis. For completeness, it is noted that Counsel for Meridian Energy Ltd also does not support this option, for the same reasons.

Option 2

- 19 The Tranche 2 timetable could remain unchanged from that proposed on 2 December. This has been set out in **Appendix D** for completeness.
- 20 While there are some dates where parties will have filing commitments for both Tranche 2 and 3 falling on the same day, the Council prefers this Option over Option 1.
- 21 Accordingly, if the Court is not minded to approve the timetable filed on 2 December 2021, Counsel respectfully seeks that the Court approve the timetable in Appendix D for Tranche 2.

Option 3

- 22 Wilkins has approached Council to discuss whether there is potential for its Tranche 2 matters to be resolved by agreement. In light of this, Wilkins suggests a third option, being that Tranche 2 could be placed on hold while Wilkins and the Council ascertain whether the matters are capable of resolution.
- 23 This is Wilkins' preferred Option. Mr English also supports this option.
- 24 The Council does not support this Option, and nor does the Invercargill City Council Water Manager.

Other matters

- 25 It is noted that the Court has previously directed that Tranches 2 and 3 be heard in that order.² If the Court prefers a timetable that does not

² Minute dated 4 October 2021 at [10] and Record of Pre-Hearing Conference dated 22 October 2021 at [2].

follow this sequencing, Counsel respectfully seeks that those directions be amended as required.

26 Counsel notes that:

- (a) Meridian Energy Ltd's preference is to retain the timetable as proposed on 2 December 2021.
- (b) Ngā Rūnanga's preference is to retain the timetable as proposed on 2 December 2021.
- (c) The Director-General of Conservation's preference is Option 2.
- (d) Mr English has no preference as between Options 1 or 2.
- (e) The Invercargill City Council Water Manager takes no position in relation to separating Tranches 2 and 3, but believes that matters need to have a firm timetable and hearing date set as soon as possible so there is certainty going into next year.

DATED this 21st day of December 2021



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

Appendix A – Tranche 1 timetable

Attachment A (amended)

Expert conferences	
<p>Topic B Overview Evidence from the Regional Council outlining key findings from Topic A Interim Decisions, updates to superior planning documents (e.g., NPSFM 2020), outline of other new regulations (e.g., NES Freshwater, Stock-exclusion), outline of ES' freshwater planning process, outline of fundamental issues raised in Topic B appeals</p> <p>Identify and update State of the Environment evidence.</p>	22 October 2021
<p>Parties to file tracked change relief and will-say statements</p> <p>Planners will say limited to how proposed relief implements relevant objectives and policies.</p>	29 October 2021
<p>SRC to file tracked change provisions proposed in response and will-say statements</p> <p>Planner's will-say is limited to how proposed relief implements relevant objectives and policies.</p>	12 November 2021
<p>Expert witness conferencing of technical witnesses, and planners to take place</p>	17 – 26 November or 22 November – 10 December 2021
<p>Joint Witness Statements of technical witnesses and planners to be filed</p>	<p>Within three working days of expert conference concluding or as directed by facilitating commissioner, but in any event no later than 10 December 2021</p>

Evidence timetable	
Evidence-in-chief for the appellants to be filed and served	20 December 2021
Evidence-in-chief for s 274 parties to be filed and served	4 February 2022
Evidence-in-chief for the Regional Council to be filed and served	11 February 2022
Rebuttal evidence for s 274 parties and appellants to be filed and served	22 February 2022
All parties to file a memorandum setting out changes to provisions being pursued	22 February 2022

Hearings to commence in Christchurch	
Week 1	14 March 2022
Week 2	21 March 2022
Week 3	4 April 2022
Week 4 (not sitting Good Friday 15 April)	11 April 2022

**Appendix B – Proposed Timetable for Tranches 2 and 3 as provided by
Memorandum dated 2 December 2021**

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

Appendix C – Alternate timetable for Tranche 3

Tranche 3 (Topic B6)		
Date	Action	Time since previous step
11 February 2022	Appellants' evidence in chief	
18 February 2022	Section 274 parties' evidence in chief	Due 1 week after previous step
4 March 2022	Regional Council evidence in chief	Due 2 weeks after previous step
11 March 2022	Appellant and s 274 parties' rebuttal evidence	Due 1 week after previous
27 April 2022	Regional Council to confer with parties and file Memorandum reporting on topics to be referred to expert conferencing and time required	Due 1.5 weeks after conclusion of Tranche 1 hearing (14 March to 14 April 2022)
4 May 2022	Regional Council to confer with parties and circulate agenda for expert conferencing	Due 1 week after previous step
9 May 2022	Expert Conferencing	To commence 0.5 weeks after agenda circulated
20 May 2022	Memo to Court setting out changes to provisions being pursued	Due 1.5 weeks after conferencing concludes / JWS filed
7 June 2022	Hearing commences	2 weeks after previous step

Appendix D – “Option 2”

Tranche 2 (Topic B1)		
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	2 weeks after previous step