

**IN 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 LIMITED

(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 DAIRYNZ LIMITED, AND
FONterra CO-OPERATIVE GROUP LIMITED IN RELATION TO A
CHANGE OF EXPERT WITNESS**

16 December 2021

Solicitor acting:
Katherine Forward
Duncan Cotterill
PO Box 5, Christchurch
Phone +64 3 379 2430
Fax +64 3 379 7097

katherine.forward@duncancotterill.com

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)

STONY CREEK STATION LIMITED

(ENV-2018-CHC-42)

THE TERRACES LIMITED

(ENV-2018-CHC-43)

CAMBELL'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 NGĀI TAHU, HOKONUI RUNAKA, WAIHOPAI
RUNAKA, TE RUNANGA O AWARUA & TE RUNANGA O
ORAKA APARIMA**

(ENV-2018-CHC-47)

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 joint Memorandum is filed on behalf of DairyNZ Limited and Fonterra Co-operative Group Limited (**the Dairy Interest parties**) regarding the Dairy Interest parties change of water quality expert.
- 2 On 13 December 2021, Counsel filed a memorandum notifying the Court and parties that the Dairy Interest parties intend to call science and water quality evidence from Dr Craig Depree who will replace Mr Justin Kitto. Mr Kitto attended the earlier science/ water quality expert conferences, was a party to Joint Witness Statements (JWS) and prepared a Will Say statement in advance of the most recent round of science/ water quality conferencing.
- 3 The purpose of this memorandum is to address feedback received from other parties¹ in response to our memorandum of 13 December and to provide further particulars for the resulting change in witness.

Reason for change in witness

- 4 The Dairy Interest parties have elected to call Dr Depree as they consider his significant expertise, in particular his involvement in review of and feedback on the Council's Freshwater Planning Process under the National Policy Statement for Freshwater Management 2020, will provide the Court with best evidence to address the outcomes of the November science/ water quality JWS. These matters were referred to in our earlier memorandum as "*priority workstreams*" for Dr Depree.
- 5 Mr Kitto's position with respect to hauora was sign posted at the November science/ water quality conference in the following statement in response to question 4 in the JWS:

"J.A.K has not been able to consider Bartlett et al (2020) report in its entirety and is not able to comment at this time on this topic. This view is held for all questions where haoura is discussed".

Concerns raised by other Parties

- 6 While no longer calling Mr Kitto as a water quality witness, the Dairy Interest parties will make him available for questions from the Court and the parties in relation to all JWSs that he has been party to. Counsel would be grateful if appropriate prior notice of if and when Mr Kitto may be required can be provided so that the necessary arrangements can be made.

¹ Specifically, email of Counsel for Forest and Bird and Fish and Game dated 15 December 2021, and memorandum of Counsel for Southland Regional Council filed earlier this morning, dated 16 December 2021.

7 Counsel considers that this pathway presents the most efficient use of resources, will avoid duplication of evidence and significantly reduces the potential for prejudice to other parties resulting from the change in witness.

In response to paragraph 7 of Counsel for the Canterbury Regional Council's memorandum, Counsel did not consider it necessary to file an application for leave to change a witness in advance of evidence exchange, provided adequate steps are taken to mitigate against prejudice to the Court and the parties as above. If the Court disagrees and considers an application for leave is required, Counsel will attend to this as directed.

Dated 16 December 2021



Katherine Forward

Solicitor for DairyNZ Limited and Fonterra Co-operative Group Limited.