

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I MUA I TE KOOTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

UNDER THE Resource Management Act 1991 ("**Act**")
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 on next page)

**MEMORANDUM OF COUNSEL ADVISING OF WITHDRAWAL OF FEDERATED
FARMERS' APPLICATION FOR STAY AND SEEKING EXPERT
CONFERENCING BE VACATED**

10 MAY 2023

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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, HOKONUJ 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 Federated Farmers Southland Incorporated (**Federated Farmers**) regarding the Court's decision on Southland Regional Council's (the **Council**) application to recall parts of the Sixth Interim Decision¹ and Federated Farmers' application to stay part of proceedings (the **Recall and Stay Decision**).²
2. The Recall and Stay Decision:
 - (a) granted the Council's application to recall the parts of the Sixth Interim Decision relating to Rule 78 (including paragraphs [268]-[295]);³ and
 - (b) outlined that the Court was not minded to grant Federated Farmers' application to partially stay proceedings, subject to any party opposing the application, and set down the application for urgent hearing (subsequently scheduled for 12 May 2023).⁴
3. The Court in its Sixth Interim Decision directed parties, in relation to Rule 78, to *inter alia* propose a rule regime for maintenance of modified watercourses.⁵ In order to facilitate that direction, the Court referred Policy 30 and Rule 78 to expert conferencing.⁶
4. Following the Recall and Stay Decision, Federated Farmers:
 - (a) withdraws its application, dated 2 May 2023, to partially stay proceedings; and
 - (b) seeks to have the expert conferencing set down for 15 and 18 May 2023 vacated.

¹ *Aratiatia Livestock Limited v Southland Regional Council* [2023] NZEnvC 51.

² *Aratiatia Livestock Limited v Southland Regional Council* [2023] NZEnvC 84.

³ *Aratiatia Livestock Limited v Southland Regional Council* [2023] NZEnvC 84 at [17].

⁴ *Aratiatia Livestock Limited v Southland Regional Council* [2023] NZEnvC 84 at [15]-[16].

⁵ *Aratiatia Livestock Limited v Southland Regional Council* [2023] NZEnvC 51 at [295].

⁶ Pre-Hearing Conference of 13 April 2023, confirmed in an email from the Court on 14 April 2023 and the Court's Minute of 18 April 2023 at [8].

Withdrawal of application to partially stay proceedings

5. Federated Farmers applied for a partial stay of proceedings pending determination of:⁷
 - (a) its appeal to the High Court against the Sixth Interim Decision of the Environment Court; and
 - (b) the application by the Council to recall parts of the Sixth Interim Decision of the Environment Court filed on 28 April 2023.
6. Federated Farmers' appeal to the High Court relates solely to the aspects of the Sixth Interim Decision in which the Environment Court determined the scope of appeals on Rule 78 and its jurisdiction to amend that rule. The Environment Court's determination in this regard is set out at [265], [284] and [294] of the Sixth Interim Decision.
7. Pursuant to the Council's recall application, the Environment Court has now recalled part of the Sixth Interim decision relating to Rule 78 (including paragraphs [268]-[295]). This renders Federated Farmers appeal to the High Court nugatory and as such Federated Farmers intends to promptly withdraw its appeal to the High Court. Federated Farmers application to stay proceedings is therefore no longer relevant.
8. For these reasons, Federated Farmers withdraws its application for partial stay of proceedings. A notice of discontinuance is **attached**.

Request for directions to vacate expert conferencing

9. The Court has recalled parts of the Sixth Interim Decision relating to Rule 78 (including paragraphs [268]-[295]), and confirmed the following issues are still live and to be addressed at the May 2023 hearing:⁸
 - (a) is there scope for a different activity status in relation to Rule 78?
 - (b) is there scope for a new rule to be included in the plan limited to the sub-clauses under appeal? The status of a new rule is something other than a permitted activity;
 - (c) if there is no scope in relation to activity status per se, then whether the court allows or declines the appeals seeking new or amended subclauses to Rule 78.

⁷ Application to Stay Part of Proceedings Pending Determination of Appeal in the High Court and Application to Recall, 2 May 2023, at [1].

⁸ *Aratiatia Livestock Limited v Southland Regional Council* [2023] NZEnvC 84 at [17].

10. Counsel respectfully submits that these questions of scope must be determined prior to parties proposing a rule regime for the maintenance of modified watercourses. The experts need to understand the scope of the changes the Court can direct to meaningfully conference on Policy 30 and Rule 78.
11. Counsel also notes that the Court has now recalled [295] of the Sixth Interim Decision, which directs parties to *inter alia* propose a rule regime for the maintenance of modified watercourses. The basis for the expert conferencing therefore no longer exists.
12. Counsel is live to the fact that some experts have been engaging on Rule 78 over the past three weeks. However, if expert conferencing was to go ahead prior to resolution of the scope issue and the Court's clarification as to its interim decision on Rule 78, there is a significant risk that the product of that conferencing will not address the ultimate issue to be determined by the Court and result in additional expert conferencing on the matter.
13. Finally, counsel considers that vacating expert conferencing on Policy 30 and Rule 78 would not impact the upcoming hearing on 29 May 2023 dealing with the Appendix N sense check. The sense check Joint Witness Statement did not raise any issues with the Court's suggested edit to Appendix N to support either a permitted or controlled activity (insertion of "modified watercourse" to cl 9(b)).⁹ Regardless, counsel submits that any further edits to Appendix N required as part of the resolution of appeals on Rule 78 can be dealt with discretely from the rest of the Appendix N sense check.
14. For these reasons, Federated Farmers considers the expert conferencing set down for 15 and 18 May 2023 should not proceed.

Directions sought

15. Counsel respectfully requests the Court:
 - (a) cancel its directions regarding expert conferencing on Policy 30 and Rule 78; and

⁹ *Aratiatia Livestock Limited v Southland Regional Council* [2023] NZEnvC 51 at [289], now recalled.

- (b) vacate the urgent hearing scheduled for 12 May to consider the now withdrawn stay application.

DATED 10 May 2023

A handwritten signature in blue ink, appearing to read "M T N Campbell".

B S Carruthers / M T N Campbell

Counsel for Federated Farmers Southland Incorporated