

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

**MEMORANDUM OF COUNSEL FOR SOUTHLAND FISH & GAME
COUNCIL AND THE ROYAL FOREST & BIRD PROTECTION SOCIETY
OF NEW ZEALAND INCORPORATED**

13 February 2023

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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 & 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 & BIRD
PROTECTION SOCIETY OF NEW
ZEALAND
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

MAY IT PLEASE THE COURT

1. The Royal Forest & Bird Protection Society of New Zealand Incorporated (“**Forest & Bird**”) and Southland Fish & Game Council (“**Fish & Game**”) file this memorandum of counsel in response to Southland Regional Council’s (“**SRC**”) Memorandum of Counsel dated 9 February 2023 and the Environment Court’s Minute dated 10 February 2023, all relating to the Court’s Fifth Interim Decision on the Proposed Southland Water and Land Plan (“**pSWLP**”).¹

Matters covered in the Council’s Memorandum and Court Minute

2. With respect to comments on provisions which are the subject of a provisional decision or suggested alternative wording (Interim Decision at [483]), Forest & Bird and Fish & Game’s position is as set out in one of the tables attached as Appendix A to the Council’s Memorandum. By way of clarification, where support is indicated for the “Court Version” of Rule 24, Forest & Bird and Fish & Game were indicating support for the Court’s process to resolve Rule 24 (there is not a Court Version of Rule 24).
3. Paragraph [7] of the Court Minute relates to the parties’ views as to whether one or more of the provisions should be settled prior to a sense check of Appendix N, and directs parties are to confirm, for each of the provisions they say should settle, if they are requesting the Court issue its final decision and the Council to amend its proposed plan prior to the sense check. Forest & Bird and Fish & Game consider a final decision should issue on those provisions and are neutral as to whether the Council formally amends the pSWLP prior to the sense check.
4. Paragraph [9] of the Court Minute states that the Court has no issue with reserving its decision on Rule 24 pending the High Court decision, and that parties are to explain their views on settling the individual provisions prior to sense check. Further, paragraph [12] of the Court Minute directs all parties holding the view that the Court cannot advance one or more provision to file a memo giving reasons. The Court assumes “advance” means the Court directing the Council to amend the proposed plan.
5. On Rule 24, Forest & Bird and Fish & Game agree the Court’s decision should be reserved pending the High Court appeal but consider that the process for advancing Rule 24 should continue. By “advance” in this context, Forest & Bird and Fish & Game mean the process set out at paragraphs [279]–[282] of the Interim Decision (involving further evidence on whether future discharges of contaminants are unlikely to cause a significant adverse effect on aquatic life).
6. Forest & Bird and Fish & Game consider the other farming provisions can be advanced and should be settled, as they are not subject to the High Court appeals. Forest & Bird and Fish & Game do not understand other parties’ reasons for taking the position that the other farming provisions cannot advance, but will address this further at the pre-hearing conference once they have seen the Council and other parties’ memoranda on this point.

¹ *Aratiatia Livestock Ltd v Southland Regional Council* [2022] NZEnvC 265

7. Paragraph [13] of the Court Minute provides that any party disagreeing with the Council's scope assessment as set out in its memorandum is to identify the relevant provision. Paragraph [15] of the Court Minute further provides that any party disagreeing with the Council's position on scope or responses to questions/directions at paragraph [231], [279], [313], [314], [375], [397]–[399] and [455] of the Interim Decision are to file a memorandum identifying the provisions. In response to those matters, Forest & Bird and Fish & Game are able to advise of their substantive position in addition to identifying the provisions:
- a. Forest & Bird and Fish & Game are interested in the brief for the Appendix N sense check. They consider that development of the brief should occur first, followed by confirmation of attendees for the sense check. They disagree with the Council's approach of first confirming all attendees then developing the brief.²
 - b. Forest & Bird and Fish & Game agree with the Council's approach in relation to map production.³
 - c. In relation to Rule 20A(a)(i) and (ia), Rule 20B and Appendix N standards, Forest & Bird and Fish & Game:
 - i. Agree that there is scope to include land or percentage area controls in Rule 20B, but do not seek land or percentage area controls for pasture-based wintering, on the basis of evidence that pasture-based wintering is (relatively) preferable to intensive winter grazing and that constraining the area of pasture-based wintering could incentivise intensive winter grazing.
 - ii. Disagree with the Council's position that there is no scope to include setbacks from waterbodies for stock types other than cattle in Appendix N. However, Forest & Bird and Fish & Game do not seek to pursue relief in relation to inclusion of setbacks for waterbodies for stock types other than cattle in Appendix N, in light of the Court's decision to limit the definition of pasture-based wintering to cattle.
 - d. Forest & Bird and Fish & Game agree with the Council that a FEMP should be a requirement for permitted activities under Rule 25.
 - e. Forest & Bird and Fish & Game agree with not including the words "or on land used for pasture-based wintering" in Rule 25(b)(iii).
 - f. Forest & Bird and Fish & Game are not interested in the issues concerning sacrifice paddocks and Rule 35B, including the definition of sacrifice paddocks, the application of Rule 35B to cattle and deer, or the Council's approach for sacrifice paddocks in Appendix N.⁴

² Refer Council Memorandum at [19]–[23].

³ Refer Council's memorandum at [24]–[25].

⁴ Council's memorandum at paragraph [38].

- g. Forest & Bird and Fish & Game agree with the Council and support the Court's wording of Rule 51, and further agree with the Council that there is no scope to delete "despite any other rule in this Plan".
- h. Forest & Bird and Fish & Game support use of the term setback in relation to Appendix N.
- i. The Court's direction on Schedule X concerning Ngā Rūnanga is not applicable to Forest & Bird and Fish & Game.

Additional issue not covered in Council memorandum

- 8. Based on Counsel's consideration of the Court's Fifth Interim Decision, it appears that the Court has not issued a decision on Appendix E or Rule 78. Forest & Bird and Fish & Game submit that no further steps are required with respect to these provisions and respectfully request that the Court issue a decision on these provisions.



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Sally Gepp
Counsel for Southland Fish & Game Council
and the Royal Forest & Bird Protection Society of New Zealand Incorporated

Date: 13 February 2023