

**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)

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

**25 May 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 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 Royal Forest and Bird Protection Society of New Zealand Inc ("Forest & Bird") and Southland Fish and Game Council ("Fish & Game") and responds to the Court's directions of 13 April and 22 May directing parties to identify their preferred relief for Rule 78 of the pSWLP.
2. This Memorandum also raises a procedural issue with respect to the Joint Witness Statement dated 23 May 2023.

### Policy 30

3. The Court's 6<sup>th</sup> Interim decision approved Policy 30:

[243] For the reasons given, we find that Policy 30 in the form set out in the October Consolidated Plan (Final SRC Changes) is approved.

4. The Court's 6<sup>th</sup> Interim decision included the following direction:

[245] Finally, the parties are directed to confer on whether the policy heading is to be amended to better align it with the Rule 78 heading and reflect Mr McCallum Clark's evidence about a change in approach and perception from 'drains' to 'watercourses'.

5. Forest & Bird and Fish & Game support amendment of the Policy 30 heading to "Policy 30 Weed and sediment removal from artificial watercourses and modified watercourses".

### Rule 78

6. With respect to Rule 78, Forest & Bird and Fish & Game support the Rule set out in Appendix 2 of the Joint Witness Statement - Planning dated 23 May 2023.
7. Forest & Bird and Fish & Game would also support additional matters of discretion relating to:

- i. The flood conveyance and land drainage outcomes to be achieved, with reference to the watercourse's historically modified dimensions (level, bed depth and width) and extent and nature of material(s) proposed to be removed; and
- ii. Efficiency gains and consistency of good practice that may be achieved through a network or global (multi-waterbody) consent application.

Joint Witness Statement dated 23 May 2023

8. Forest & Bird and Fish & Game give notice that they oppose admission of parts of the JWS titled "Attachment 1: Example of strengthened permitted activity rule for removal of aquatic weeds and plants and sediment from modified watercourses on farms", "Appendix XX Practices for the Removal of Aquatic Weeds and Plants and Sediment from any Modified Watercourse" and "Attachment 1 to the JWS – Strengthening the Permitted Activity Rule" on the basis that this content is not Joint Witness Statement evidence and therefore not provided in accordance with the Court's directions. As such, it should not be admitted.
9. The JWS records that Appendix 1 (which Counsel understands to comprise the three documents referred to above, despite the use of "Attachment" rather than "Appendix") was provided one hour before the JWS was due to be filed, and that Mr McCallum-Clark, Ms Kirk, Mr Farrell and Ms Davidson have not been given an opportunity to review or comment on it.
10. While it is not unusual for a JWS to include material produced by individual witnesses, that material is generally provided in advance for the other witnesses to consider, and the other witnesses are able to

record their views on it. The Appendix 1 material is the relief and supporting reasons preferred by one witness, which other witnesses participating in the conference have not had the ability to review and comment on.

11. As such, this material does not form part of a "Joint" Witness Statement.

12. The following aspects of this proceeding are relevant to the admissibility of the Appendix 1 material:

- a. Where a party wished to call evidence on Rule 78, it had the opportunity to do so in February 2022. All other parties with an interest in this provision produced evidence in accordance with the Tranche 1 evidence exchange timetable. Federated Farmers did not produce evidence on Rule 78 in accordance with the Tranche 1 evidence timetable.
- b. The Court's directions following the recall of part of the Sixth Interim Decision specified expressly that there would not be further evidence on Rule 78 other than in the form of a Joint Witness Statement. In that context, it was incumbent on parties to ensure that their witnesses produced material that the witness sought to include in the Joint Witness Statement in a manner and timeframe that would enable it to be considered as part of expert witness conferencing. Material not provided in that way is not Joint Witness Statement evidence, it is simply evidence from a single witness (for which leave was not sought or given), in the guise of Joint Witness Statement evidence.

13. Admitting this material results in prejudice to parties whose witnesses were not provided with the material in time to comment on it.

14. Counsel wishes to address this matter at the commencement of the hearing on 29 May 2023.



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Sally Gepp

Counsel for Southland Fish and Game Council

and the Royal Forest and Bird Protection Society of New Zealand Inc

Date: ~~25 May 2023~~