

**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 PARTIES' POSITION ON MATTERS AGREED IN 10
DECEMBER 2021 JOINT WITNESS STATEMENT
8 February 2022**

Judicial Officer: Judge Borthwick

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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, 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 (**pSWLP**).
- 2 It responds to the direction at paragraph [21](b) of the Minute dated 28 January 2022, which required that the Council advise what further matters agreed by the planners in their 10 December 2021 Joint Witness Statement (**10 December JWS**) the parties propose be settled by consent.
- 3 Counsel has liaised with the parties as to whether:
 - (a) The parties agree with the position reached by the planners in the 10 December JWS; and
 - (b) The parties seek that those matters be settled by way of an “all of parties case”.

Parties responses/position

- 4 A summary of the parties' positions on the above is set out in the table below.
- 5 In all cases (except as detailed in paragraph 6 below), where parties support the agreed wording from the 10 December JWS, the parties agree with those matters being settled by way of an “all of parties case”.
- 6 In relation to the proposed new definition for stick raking, Southwood Export Limited would prefer this issue be resolved by consent order as opposed to an “all of parties case”. Rayonier New Zealand Limited is also amenable to resolution of this issue by way of consent order.

Matters addressed/agreed in the 10 December JWS		
<i>Topic</i>	<i>Provisions</i>	<i>Parties' position</i>
B2	Policy 13	All parties agree with 10 December JWS wording
B2	Policy 15A	All parties agree with 10 December JWS wording
B2	Policy 15B	All parties agree with 10 December JWS wording
B2	Policy 15C	All parties agree with 10 December JWS wording

Matters addressed/agreed in the 10 December JWS		
Topic	Provisions	Parties' position
B2	Rule 5 (partially agreed)	The 10 December JWS (at [22](a)) states that the addition to Rule 5 is not agreed. ¹ The addition was sought by Southland Fish and Game Council. No evidence has been put forward on Rule 5 by the appellant, and it has subsequently advised (when liaising for the purposes of this memorandum) that it agrees with the 10 December JWS in relation to this Rule. It is not clear whether the addition is still sought. Counsel for the Council considers clarification is needed as to whether this change is still sought.
B2	Rule 13	All parties agree with 10 December JWS wording
B2	Rule 14	All parties agree with 10 December JWS wording
B2	Rule 15	All parties agree with 10 December JWS wording
B2	Rule 40	All parties agree with 10 December JWS wording
B2	Appendix E (partially agreed)	All parties agree with 10 December JWS wording
B3	Rule 51 (partially agreed)	Some parties do not support the 10 December JWS agreed wording: <ul style="list-style-type: none"> - Director-General of Conservation - Forest and Bird - Fish and Game - Federated Farmers
B3	Rule 74	Federated Farmers does not support the 10 December JWS agreed wording.
B5	Policy 16	All parties agree with 10 December JWS wording. ²
B5	Rule 20	Some parties do not support the 10 December JWS agreed wording: <ul style="list-style-type: none"> - Forest and Bird - Fish and Game - Wilkins - Federated Farmers
B5	New Rule 20A (partially agreed)	Some parties do not support the 10 December JWS agreed wording: <ul style="list-style-type: none"> - Forest and Bird - Fish and Game - Wilkins - Ngā Rūnanga - Federated Farmers

¹ The addition being the underlined and highlighted sub-clause 4 in the 10 December JWS.

² Note that the Director-General of Conservation, DairyNZ Ltd and Fonterra Co-operative Group Ltd's support for the 10 December JWS wording is subject to minor amendment as shown in Statement of Evidence of Gerard Willis dated 20 December 2021 and 4 February 2022.

Matters addressed/agreed in the 10 December JWS		
Topic	Provisions	Parties' position
B5	New Rule 20B³	Some parties do not support the 10 December JWS wording: <ul style="list-style-type: none"> - Forest and Bird - Fish and Game - Wilkins - DairyNZ Ltd - Fonterra Co-operative Group Ltd - Federated Farmers
B5	Definition - Critical source area	Some parties do not support the 10 December JWS agreed wording: <ul style="list-style-type: none"> - Forest and Bird - Fish and Game - Ballance Agri-Nutrients Ltd - DairyNZ Ltd - Fonterra Co-operative Group Ltd
B5	Definition - Ephemeral rivers	Some parties do not support the 10 December JWS agreed wording: <ul style="list-style-type: none"> - Director-General of Conservation - Forest and Bird - Fish and Game
B5	Rule 25 (partially agreed)	Some parties do not support the 10 December JWS agreed wording: <ul style="list-style-type: none"> - Forest and Bird - Fish and Game - Federated Farmers
B5	Definition - Cultivation	Federated Farmers does not support the 10 December JWS agreed wording
B5	New Definition - Stick raking	All parties agree with 10 December JWS wording.
B5	Rule 35A	Federated Farmers does not support the 10 December JWS agreed wording.
B5	Policy 18	Federated Farmers does not support the 10 December JWS agreed wording.
B5	Rule 70 (partially agreed)	Some parties do not support the 10 December JWS agreed wording: <ul style="list-style-type: none"> - Director-General of Conservation - Federated Farmers
B5	New Definition - Stock Unit	All parties agree with 10 December JWS wording

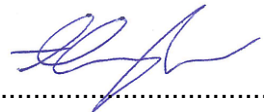
³ Note that the 10 December JWS suggested Rule 20B as an option, rather than as an agreed outcome. Accordingly, it is expected that some parties would not support the wording as proposed in the 10 December JWS.

Matters addressed/agreed in the 10 December JWS		
Topic	Provisions	Parties' position
B5	Appendix N	Some parties do not support the 10 December JWS agreed wording: <ul style="list-style-type: none"> - Director-General of Conservation - Forest and Bird - Fish and Game - DairyNZ Ltd - Fonterra Co-operative Group Ltd
B5	New Schedule X	All parties agree with the inclusion of the proposed new Schedule X. Dr Depree has produced a map for inclusion as Schedule X in his evidence dated 20 December 2021. The Council's witness, Dr Snelder, is also producing a map for inclusion as Schedule X. Counsel for the Council proposes that the question of whether there is agreement on this issue be revisited after all evidence has been filed.
B5	New Definition - No till cultivation	Some parties do not support the 10 December JWS agreed wording: <ul style="list-style-type: none"> - Director-General of Conservation - Forest and Bird - Fish and Game - Federated Farmers - Council
B5	New Definition - Spray and pray	Some parties do not support the 10 December JWS agreed wording: <ul style="list-style-type: none"> - Director-General of Conservation - Forest and Bird - Fish and Game - Federated Farmers - Council
B5	New Definition - Hoof and tooth	Some parties do not support the 10 December JWS agreed wording: <ul style="list-style-type: none"> - Director-General of Conservation - Forest and Bird - Fish and Game - Federated Farmers - Council
B5	New Definition - Minimum till cultivation	Some parties do not support the 10 December JWS agreed wording: <ul style="list-style-type: none"> - Director-General of Conservation - Forest and Bird - Fish and Game - Federated Farmers - Council

Matters addressed/agreed in the 10 December JWS		
Topic	Provisions	Parties' position
B5	New Definition – Minimise	All parties ⁴ agree with 10 December JWS wording

- 7 Counsel notes that while there are a number of provisions which parties do not support, it may be that the particular parts of the provisions which are not supported are limited/minor. The scale of the remaining disagreement on these provisions will become clear following the filing of the parties' memoranda setting out the changes to provisions being pursued on 22 February 2022.

DATED this 8th day of February 2022



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

⁴ Counsel notes that this definition was overlooked when seeking parties' advice on their positions and was subsequently raised by a party in its response (which was copied to all parties). While no party sought to change their response after this, it is noted for completeness that it is possible some parties do not agree with this definition.