

**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 THE DAIRY INTERESTS IN  
RESPONSE TO THE COURT MINUTE DATED 10 FEBRUARY 2023  
RELATING TO THE FIFTH INTERIM DECISION**

**13 February 2023**

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**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**) and relates to the Court's Minute dated 10 February 2023 (**the Minute**).
- 2 At paragraphs [12] and [16] of the Minute, the Court directs parties that hold the view that the Court cannot advance one or more of the provisions prior to the High Court's decision, to file a memorandum giving reasons for those views.
- 3 At paragraphs [13] and [15] of the Minute, the Court also directs parties that disagree with the Council's position with respect to scope or responses to questions/ directions at paragraphs 231, 279, 313, 314, 375, 397-399 and 455 of the Fifth Interim Decision to file a memorandum outlining the areas of disagreement.
- 4 This memorandum responds to both directions and sets out the position of the Dairy Interests.

### **Implications of the High Court Appeals**

- 5 As no stay of proceedings has been sought in the High Court, the Dairy Interests acknowledge that it is open to this Court to manage the proceedings before it as it sees fit. The Dairy Interests note the Court's preliminary view at paragraph [9] of the Minute, and support this approach with respect to Rule 24
- 6 Further, the Dairy Interests respectfully consider that the listed provisions – Rules 20, 20A, 20B<sup>1</sup>, 24, 25 and 35B should not be advanced until such time as the High Court appeals have been resolved for the following reasons:
  - 6.1 The rules are interrelated in so far as Rule 24 manages the incidental farming discharges associated with the listed farming land use permitted activity rules.
  - 6.2 Advancing all associated farming provisions at the same time will promote consistent outcomes and should ensure no internal conflict within the proposed Plan. If, subject to the High Court's determination, incidental farming discharges are required to obtain resource consent, there may be consequential amendments required to the farming land use rules, and potentially the Appendix N framework. This is because the land use activities include conditions aimed at managing incidental farming discharges.

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<sup>1</sup> As per the Dairy Interests' final relief, they do not consider that a separate rule to manage pasture-based wintering is required in addition to Rule 20. They do not support the Court's version of Rule 20B.

- 6.3 Requiring landowners to prepare farm environment plans (**FEMPs**) in advance of confirmation as to whether incidental farming discharges require a resource consent to be obtained may generate inefficiencies, both resourcing at Council staff/ industry professional level and unnecessary duplication for landowners.
- 6.4 Compared to the status quo, the proposed Plan provisions are likely to generate a significant work programme in the farming community. It is submitted that clear guidance on whether the entire farming activity (including any incidental discharge) is permitted is critical to implementation.

#### **Alignment/ disagreement with the Council's position**

- 7 Unfortunately, in the time afforded, Counsel has been unable to confirm instructions in relation to the Dairy Interests response to all questions/ directions outlined in the Memorandum of Counsel for the Council dated 9 February 2023 (**the Council Memorandum**).
- 8 The above said, the Dairy Interests have advanced the following matters:
- 8.1 The Dairy Interests agree with the Council that it would not be appropriate for supplementary evidence on Rule 24 to be prepared or for discussions regarding a controlled activity classification for Rule 24 to be advanced prior to resolution of the High Court appeals.
- 8.2 The Dairy Interests are neutral as to whether a FEMP ought to be included as a condition of Rule 25(a) and (b). For the avoidance of doubt, the Dairy Interests do not support pasture-based wintering being included in Rule 25 for the reasons outlined in evidence and legal submissions.
- 8.3 The Dairy Interests agree with the Council's position with respect to Rule 25(b)(iii) as set out at paragraphs [32 – 34] of the Council Memorandum.
- 8.4 The Dairy Interests, while interested, do not have scope to participate in the provisions relating to sacrifice paddocks, and therefore will not be commenting on the same.
- 8.5 The Dairy Interests agree with Council and support use of the term 'setback' rather than 'buffer', in relation to Appendix N.
- 9 The Dairy Interests are interested in the Ngā Rūnanga response to the Court's directions as to whether they wish to pursue the cultural indicators of health and hauora in the context of Schedule X. Counsel anticipates being able to seek further directions (if any) in relation to this issue following receipt of the Ngā Rūnanga memorandum in due course.

**Dated** 13 February 2023



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**Katherine Forward**

Solicitor for DairyNZ Limited and on behalf of Counsel for Fonterra Co-operative Group Limited.