

**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 THE SOUTHLAND REGIONAL
COUNCIL REGARDING SCHEDULE X MAPS**

19 June 2023

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

Introduction

- 1 This Memorandum of Counsel is filed on behalf of the Southland Regional Council (**Council**) and responds to the Court's Minute dated 7 June 2023 regarding the Schedule X maps.

Dr Snelder's supplementary evidence

- 2 The Court indicated in its Minute that, respecting the Court's findings in the fifth interim decision, supplementary evidence may be filed on the topic of DIN/DRP, and the purpose of that evidence is to explain the reason for inclusion of the DIN/DRP maps in Schedule X and whether it implements the said decision.¹
- 3 Dr Snelder has prepared a brief Statement of Evidence addressing the differences between N, TN, DIN, P, TP, and DRP, as requested by the Court during the hearing, and explaining the reason for the inclusion of the DIN/DRP maps in Schedule X.
- 4 However, the question of whether the inclusion of the DIN/DRP maps in Schedule X implements the Court's fifth interim decision is addressed in this Memorandum, rather than in Dr Snelder's evidence.

Parties' positions

- 5 A draft of Dr Snelder's evidence was circulated to all parties ahead of filing.
- 6 Royal Forest and Bird Protection Society Incorporated, Southland Fish and Game Council, and Ngā Rūnanga have agreed to Dr Snelder's evidence being admitted by consent.
- 7 Counsel for the Council has liaised with counsel for the Dairy Interests who advises that the position of the Dairy Interests is as follows:
- (a) The Dairy Interests are not satisfied that Dr Snelder's brief of evidence may be admitted by consent, specifically paragraphs 22 – 25 and the appended maps of contaminants.
 - (b) Reasons supporting this position are set out in legal submissions filed by Counsel for the Dairy Interests on 1 June 2023, which are

¹ Minute of the Environment Court dated 7 June 2023 at [6].

not proposed to be recalled. Counsel for the Dairy Interests has indicated that it is for these same reasons that she objected to related evidence being led from Ms McArthur on the same date.

- (c) Counsel for the Dairy Interests has indicated that the position of the Dairy Interests is already before the Court – refer paragraph [16] and references cited in footnote [13] of legal submissions dated 1 June 2023. On this basis the Dairy Interests do not intend to call further evidence on this issue.

Court's Fifth Interim Decision

- 8 We now turn to address the Court's question as to whether the inclusion of the DIN/DRP maps in Schedule X implements the Court's fifth interim decision.
- 9 For completeness, counsel notes that other parties have the opportunity to file legal submissions on the inclusion of the DIN/DRP maps within five working days of the supplementary evidence being filed.²
- 10 Notwithstanding the Court's findings at [62]-[65] of the fifth interim decision, the Court directed the Council to prepare individual maps for nitrogen, phosphorus, suspended sediments, MCI (<90) and *E.coli*, along with a single map for all attributes.³
- 11 In doing so, counsel understood that the Court approved the maps prepared by Dr Snelder, for inclusion in a new schedule, Schedule X.⁴ Dr Snelder's evidence included individual maps for DIN, DRP, suspended sediment, *E.coli*, MCI, TN and TP.⁵
- 12 On this basis, the maps prepared by the Council in February 2023 included DIN and DRP. The Council did not understand that maps showing catchments degraded in terms of DIN and DRP should not be included, based on the Court's fifth interim decision. However, TN and TP were inadvertently omitted from the maps, and this was addressed in counsel's Memorandum dated 24 May 2023.

² Minute of the Environment Court dated 7 June 2023 at [9].

³ *Aratiatia Livestock Limited v Southland Regional Council* [2022] NZEnvC 265 at footnote 94.

⁴ *Aratiatia Livestock Limited v Southland Regional Council* [2022] NZEnvC 265 at [84].

⁵ Statement of Evidence of Dr Antonius Snelder on behalf of the Southland Regional Council – Water Quality dated 11 February 2022, Appendix 1, pages 25-31.

DATED this 19th day of June 2023

A handwritten signature in blue ink, appearing to read "P. Maw", is positioned above a horizontal dotted line.

P A C Maw / I F Edwards
Counsel for the Southland Regional Council