

**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)

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**MEMORANDUM OF COUNSEL FOR THE SOUTHLAND REGIONAL  
COUNCIL - TRANCHE 1 - APPENDIX N**

**1 September 2023**

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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 Joint Memorandum of Counsel is filed in respect of Tranche 1 in response to the Court's following directions:<sup>1</sup>
- (a) the Regional Council, having conferred with the parties, is to respond to the amendment proposed to the chapeau to Pt C; and
  - (b) any party opposing the court's suggested amendments to Appendix N on the grounds of scope, is to identify the provision lacking and provide succinct but comprehensive submissions.
- 2 Southland Regional Council (**Regional Council**) has conferred with parties and records below the responses received from the parties. Unless otherwise stated, Counsel for the Regional Council has not received a response from a party.

### **Parties' responses to the chapeau of Part C of Appendix N**

- 3 The following parties agree with the amendments proposed by the Court to the chapeau of Part C of Appendix N:
- (a) The Regional Council;
  - (b) Ballance Agri-Nutrients Limited;
  - (c) DairyNZ Limited and Fonterra Co-operative Group Limited; and
  - (d) Federated Farmers of New Zealand.

### ***Forest and Bird and Fish and Game response***

- 4 Royal Forest and Bird Protection Society of New Zealand Inc (**Forest and Bird**) and Southland Fish and Game Council (**Fish and Game**) have provided the below response.
- 5 The Court's proposed amendment is to add the underlined words:
- Part C – Farm Environmental Management Plan Certification, Auditing, Review and Amendment
- Unless pt 3 and pt 4 of the Resource Management (Freshwater Farm Plans) Regulations 2023 apply, then for Farm Environmental Management Plan Certification:...
- 6 The issue raised in Forest & Bird and Fish & Game's Memorandum of Counsel dated 18 August was that clause [1(2)] of Appendix N requires

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<sup>1</sup> Minute of the Environment Court dated 25 August 2023, paragraph [7](b).

a Farm Environmental Management Plan under the pSWLP unless Freshwater Farm Plans are “required” in the Southland region under Part 9A of the RMA. Council’s interpretation of that clause is that Freshwater Farm Plans are “required” as soon as the Regulations apply in an FMU despite the fact that the regulations do not “require” a Freshwater Farm Plan to be prepared for certification for another 18 months.

- 7 The Court’s proposed amendment to Part C uses the phrase “Unless [the Regulations] apply”. The term “apply” is ambiguous, but appears to support Council’s interpretation that the Regulations only need to have commenced to apply in a FMU as a matter of law, rather than that the Regulations require a Freshwater Farm Plan be in place, in order for the pSWLP Farm Environmental Management Plan and associated 6 month timeframe to be superseded.
- 8 The outcome therefore will be that detailed at paragraph 6d of the memorandum filed on behalf of Forest & Bird and Fish & Game dated 18 August 2023. That is, if the pSWLP farm plan provisions are not made operative until a date after 1 January 2024 for the Maitara FMU, no farm plan would be required to be submitted for certification until 1 January 2026. The Regulations already “apply” for the Aparima and Fiordland FMUs, and would apply as of February 2024 for the Ōreti and Waiau FMUs, so Council’s interpretation and the Court’s amendment would mean that farm plans for those FMUs are not required until 1 January 2025 (Aparima and Fiordland) and 1 August 2025 (Ōreti and Waiau FMUs), rather than being required within 6 months of the pSWLP provisions becoming operative.
- 9 Forest & Bird and Fish & Game do not support that wording as they do not support an outcome whereby preparation of farm plans can be delayed in this manner, particular for the Maitara FMU.
- 10 This delay is of significant concern to Forest & Bird and Fish & Game, particularly as the Matarua FMU includes the Waituna catchment. The reasons for this are (in summary):
  - (a) The pSWLP was publicly notified in 2016 and is intended to drive improvement in the quality of water (where degraded) in advance of the processes under the regulations.

- (b) The Environment Court has made findings that water quality is degraded throughout much of Southland, and the farming sector may be regarded as contributing a disproportionate volume of contaminants to waterways. This contribution is having a significant effect on aquatic life.
  - (c) Farm plans are the main mechanism for driving improvement in water quality (where degraded) in advance of preparation of FMU-specific plan changes starting with Plan Change Tuatahi.
- 11 This amendment therefore does not address the concern of Forest & Bird and Fish & Game around the significant delays in preparation of farm plans that will result from Council's interpretation of Appendix N, as set out in their 18 August memorandum. It is respectfully submitted that:
- (a) The amendment proposed at paragraph 12b of their 18 August memorandum should be adopted.
  - (b) If an amendment is made to Part C of Appendix N, the wording should be that set out below:
    - Part C – Farm Environmental Management Plan Certification, Auditing, Review and Amendment
    - Unless a Freshwater Farm Plan is in place under pt 3 and pt 4 of the Resource Management (Freshwater Farm Plans) Regulations 2023, then for Farm Environmental Management Plan Certification:...
- 12 Ngā Rūnanga and the Director-General of Conservation support Forest and Bird and Fish and Game's position.
- 13 Counsel for the Council considers that the amended wording sought by Forest and Bird and Fish and Game is ambiguous as it is not clear what the phrase "is in place" means. It is not clear whether it means that a Freshwater Farm Plan has been prepared, implemented, certified, or audited, or any combination of those requirements. That ambiguity gives rise to uncertainty, as such the wording should not be adopted by the Court.

**DATED** this 1<sup>st</sup> day of September 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