

**BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA**

**IN THE MATTER** of the Resource Management Act 1991 ('the Act')

**AND**

**IN THE MATTER**

of an appeal under Clause 14(1) of First Schedule to the Act

**BETWEEN**

**RAYONIER NEW ZEALAND LIMITED**

Appellants in ENV-2018-CHC-49, and section 274 party to appeals: ENV-2018-CHC-40 Federated Farmers of New Zealand, ENV-2018-CHC-46 Southwood Export Limited & Others, ENV-2018-CHC-50 Royal Forest and Bird Protection Society of New Zealand Incorporated

**AND**

**SOUTHLAND REGIONAL COUNCIL**

Respondent

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**MEMORANDUM OF COUNCIL FOR RAYONIER NEW ZEALAND LIMITED**

Date: 22 February 2022

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Judicial Officer: Judge Borthwick

## **MAY IT PLEASE THE COURT**

- 1 This memorandum is filed on behalf of Rayonier New Zealand Limited (**Rayonier**) and responds to the Record of Pre-Hearing Conference dated 15 February 2022 which among other matters directed that by 22 February 2022<sup>1</sup>:
- (a) any expert witness who has not qualified themselves and evidence-in-chief as an expert, will amend providing details (tracking changes);
  - (b) All parties are to file a memorandum setting out the final version of relief pursued; and
  - (c) If referred to in evidence, counsel are to file a memorandum directing the court to relevant pages and/or paragraphs of will say statements.

### **Final version of relief pursued by Rayonier**

- 2 Counsel can confirm that Rayonier agrees with the tracked changes recorded at paragraph 8 under “Conference Outcomes” of the Joint Witness Statement from Expert Conferencing – Planning (Forestry) dated 9-10 December 2021.
- 3 The changes relate to the definition of cultivation and for ease of reference they are detailed at **Appendix A**.

### **Relevant pages and/or paragraphs of will say statements**

- 4 Three Statements of Evidence in Chief were filed on behalf of Rayonier. Each of these Statements included a Will Say Statement from the relevant witness.
- 5 The following topics and paragraphs of the Will Say Statement filed by Hamish Fitzgerald (forestry expert) are relevant to the final version of relief pursued by Rayonier:
- (a) Context – paragraphs 7-8;

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<sup>1</sup> Paragraph 42(f) of the Record of Pre-Hearing Conference

- (b) National Environmental Standards for Plantation Forestry – paragraphs 3 – 12;
  - (c) Wind rowing activity (also known as stick raking) - paragraphs 13 – 25; and
  - (d) Spraying activity - paragraphs 26 – 35.
- 6 The following topics and paragraphs of the Will Say Statement filed by Jerome Wyeth (planning expert) are relevant to the final version of relief pursued by Rayonier:
- (a) Scope of evidence – paragraphs 7-10;
  - (b) Excluding windrowing associated with a plantation forest from rule 25 - paragraphs 13 – 29; and
  - (c) Excluding herbicide spraying associated with a plantation forest from the definition of cultivation – paragraphs 30 – 41.
- 7 A Statement of Evidence in Chief was also filed by Christopher Phillips (soil erosion and sediment expert). Mr Phillips has been identified as a witness to give technical evidence in support of the agreed changes to the cultivation definition. Accordingly, Mr Phillips will be lodging an affidavit with the court shortly and that document will supersede Mr Phillips' Evidence in Chief and Will Say Statement already before the court.

**Qualification in evidence-in-chief as an expert**

- 8 Counsel has reviewed the evidence of Messrs Fitzgerald and Wyeth filed by Rayonier and considers that each witness has qualified themselves appropriately as an expert in their evidence in chief (and not simply in their Will Say Statements). However, should the Court form a different view then counsel would be grateful for further directions on this matter.

**DATED** at Christchurch this 22nd day of February 2022



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Chris Fowler  
Counsel for Rayonier New Zealand Limited

## APPENDIX A

Tracked changes recorded at paragraph 8 under “Conference Outcomes” of the Joint Witness Statement from Expert Conferencing – Planning (Forestry) dated 9-10 December 2021.

### Definition - Cultivation

Preparing land for growing pasture or a crop by mechanical tillage, direct drilling, herbicide spraying, or herbicide spraying followed by over-sowing for pasture or forage crops (colloquially referred to as 'spray and pray'), ~~but excludes: excluding any~~

- ~~a. herbicide spraying undertaken solely for the control of pest plant species;~~
- ~~b. herbicide spraying for the establishment or maintenance of plantation forestry;~~
- ~~and~~
- ~~c. stick raking or slash raking associated with a plantation forest, provided that the resulting windrows follow the contour of the land where the slope of the land is greater than 10 degrees.~~

### Definition (new) - Stick raking or slash raking

Means the use of machinery to clear slash from harvested plantation forest to enable the replanting of trees. It does not include breaking up of the soil profile or the disturbance of the stumps of the harvested plantation forest trees.