

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

UNDER the Resource Manament 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 IN
RESPONSE TO MEMORANDUM OF COUNSEL FOR DAIRYNZ LIMITED
AND FONTERRA CO-OPERATIVE GROUP LIMITED
16 December 2021**

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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)

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 is filed on behalf of Southland Regional Council (Council) in response to the Joint Memorandum filed by DairyNZ Limited (**DairyNZ**) and Fonterra Co-Operative Group Limited (**Fonterra**) dated 13 December 2021.
- 2 In that memorandum Counsel for DairyNZ and Fonterra advises that their water quality expert, Mr Justin Kitto, is to be replaced by Dr Craig Depree for the purpose of this proceeding.
- 3 The only explanation given for the replacement was “[d]ue to priority workstreams”.
- 4 It is submitted that simply *advising* the Court and parties of the change in expert witness at this stage in the proceeding, noting that joint witness conferencing has now been concluded, is procedurally improper. Issues of prejudice are likely to arise as conferencing has now been concluded, and parties are in the process of preparing their evidence in chief, relying on the joint witness statements that have been filed following that conferencing.
- 5 No application for leave was filed seeking to:
 - (a) excuse Mr Kitto from appearing at the hearing; or
 - (b) call a new expert witness who had not filed a will say statement nor attended expert witness conferencing.
- 6 Had such an application been filed, then parties would have had an opportunity to oppose it and raise any issues of prejudice that may arise.
- 7 Counsel has raised this issue directly with Counsel for DairyNZ and Fonterra, and invited them to file an application seeking leave. Counsel for DairyNZ and Fonterra declined to file such an application.

Directions Sought

- 8 In all these circumstances, Counsel respectfully requests the Environment Court to make the following directions:
 - (a) That DairyNZ and Fonterra must immediately seek leave from the court to:
 - (i) have Mr Kitto excused from appearing at the hearing, including giving full reasons as to his unavailability; and

- (ii) replace their water quality witness as detailed at [3] in the memorandum dated 13 December 2021.
- (b) That any party who opposes any such application must file a memorandum within 5 working days following the lodging of any such application for leave.

Dated this 16th day of December 2021



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