

**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 **SOUTHWOOD EXPORT LIMITED AND OTHERS**
Appellants in ENV-2018-CHC-46

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

**JOINT MEMORANDUM OF COUNSEL FOR PARTIES TO THE APPEALS
FILED BY RAYONIER NEW ZEALAND LIMITED AND SOUTHWOOD
EXPORT LIMITED (TOPIC B5 - FORESTRY)**

Date: 8 March 2022

Judicial Officer: Judge Borthwick

MAY IT PLEASE THE COURT

- 1 This Joint Memorandum of Counsel is filed on behalf of the parties to the appeals filed by Rayonier New Zealand Ltd (**Rayonier**) and Southwood Export Ltd and Others (**Southwood Export**) in response to the Court's Minute of 3 March (Provisions agreed following expert conferencing) and the directions at paragraph 11 regarding Topic B5 – Forestry.

Directions of the Court

- 2 The Court directed that the parties to the Rayonier and Southwood Export appeals are to:
 - (a) confirm their interest in these proceedings is limited to the definition of 'cultivation' and secondly, confirm a proposed new definition of 'stick raking or slash raking';
 - (b) advise whether the court is correct that these amendments exclude forestry from rule 25?; and
 - (c) if so:
 - (i) identify other provisions that apply (if any) to forestry;
 - (ii) confirm that resolution of the above definitions concludes the forestry topic.

Parties to the appeals by Rayonier and Southwood Export

- 2 The remaining s274 parties to the appeals filed by Rayonier and Southwood Export are collectively¹:
 - (a) Southland Fish and Game Council;
 - (b) Director-General of Conservation²;

¹ Peter Chartres, Campbell's Block, Stoney Creek Station Ltd filed s274 notices on the Rayonier and/or Southwood Export appeals however Counsel understand these parties have withdrawn from the proceedings.

² The Director-General joined all the Rayonier appeal and part of the Southwood Export appeal as a s274 party in respect of the definition of 'cultivation'.

- (c) Royal Forest and Bird Protection Society of New Zealand Incorporated; and
- (d) Federated Farmers of New Zealand (**Federated Farmers**).

Parties' response to the Court's directions regarding the forestry topic

Confirm interest in these proceedings is limited to the definition of 'cultivation' and secondly, confirm a proposed new definition of 'stick raking or slash raking'

- 3 Rayonier and Southwood Export advise that the relief sought in these proceedings is limited to the scope of the definition of 'cultivation' and a proposed new definition of 'stick raking or slash raking'.
 - 4 By way of context, Rayonier's appeal seeks that herbicide spraying be removed from the definition of "cultivation" or alternatively that the term "crop" in the definition of "cultivation" be defined as specific to agricultural practices excluding forestry.
 - 5 Rayonier's s274 party notice on the appeal filed by Southwood Export supports amendment to the definition of 'cultivation' to exclude stick raking (also known as windrowing).
 - 6 Southwood Export's appeal seeks that the definition of 'cultivation' be amended to exclude the activity of 'stick raking' and 'herbicide spraying', or alternatively that Rule 25(a)(iv) be amended so that the 20 degree slope restriction in Rule 25 does not apply to aerial spraying associated with forestry.
 - 7 Both Rayonier and Southwood Export filed s274 notices on appeals by other parties that sought to make the provisions of Rule 25 more restrictive. These s274 notices were filed to cover the situation where their appeal relief was not agreed by other parties or granted by the Court.
 - 8 In light of the amendments agreed in the Planning (Forestry) JWS, Rayonier no longer seeks to pursue its s274 interest in Rule 25. However, Southwood Export Limited wishes to reserve its position on Rule 25 subject to the Court's interim decisions on the appeals regarding the cultivation definition.
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- 9 Federated Farmers is a s274 party. It has an appeal on Rule 25 and the definition of cultivation. Its appeal remains outstanding. In its evidence in chief circulated on 21 December 2021 it proposed a series of amendments to the definition. It has proposed an alternative approach to resolving its concerns in its memorandum of 22 February 2022. It confirms that neither approach affect the amendments agreed in the Planning (Forestry) JWS.
- 10 No other s274 party has an interest by way of appeal in the definition of cultivation.
- 11 The abovementioned s274 parties have interests by way of appeal and/or s274 interested party notice regarding other provisions of the proposed Southland Water and Land Plan. However these appeals and/or s274 notices are unrelated to the forestry topic.

Advise whether the court is correct that these amendments exclude forestry from Rule 25?

- 12 The Court is generally correct that the amendments agreed in the Planning (Forestry) JWS exclude forestry from Rule 25 because aerial spraying, and stick raking or slash raking are the primary and most common activities associated with forestry cultivation .
- 13 There are other less common activities undertaken from time-to-time to prepare land for planting or replanting trees that will remain subject to Rule 25. These activities include:
- (a) Sick raking or slash raking activities that break up the soil profile or the disturbance of the stumps of the harvested plantation forest trees. These activities are expressly excluded from the definition of 'stick raking and slash raking' agreed in the Planning (Forestry) JWS; and
 - (b) Other activities referred to in the NES-Plantation Forestry definition of "mechanical land preparation" such as root-raking, discing, ripping, and mounding the soil into raised areas.³ These

³ Refer to Regulation 3 (Interpretation), Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017

activities also have potential to break up the soil profile and have not been excluded from the definition of cultivation.

- 14 Counsel for Rayonier and Southwood Export can confirm that the Planning (Forestry) JWS does not exempt the activities at 11(a) and (b) above from the Rule and therefore Rule 25 will continue to apply to them.

Identify other provisions that apply (if any) to forestry

- 15 There are multiple other provisions in the pSWLP that potentially apply to forestry depending on the particular circumstances of the case however none of these are subject to appeal by Rayonier or Southwood Export. Further details of these rules can be provided if they are required by the Court.


Confirm that resolution of the above definitions concludes the forestry topic

- 16 Counsel for the parties to the Rayonier appeal and Southwood Export Limited appeal can confirm that resolution of the above definitions as they relate to forestry activities concludes the forestry topic if the Court is minded to grant the revised relief as described in the Planning (Forestry) JWS.

DATED at Christchurch this 8th day of March 2022

Kristy Rusher
Counsel for Southwood Export Limited and Others

Pene Williams
Counsel for Director-General of Conservation



Bron Carruthers
Counsel for Federated Farmers of New Zealand

Sally Gepp

Sally Gepp
Counsel for Southland Fish and Game Council

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Counsel for Forest and Bird Protection Society of New Zealand Incorporated

Chris Fowler

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Counsel for Rayonier New Zealand Limited

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