

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2023-

I TE KŌTI MATUA O AOTEAROA
KI ŌTAUTAHI ROHE

UNDER THE Resource Management Act 1991 ("**Act**")

IN THE MATTER OF an appeal under section 299 of the Act

BETWEEN **FONTERRA LIMITED** a duly incorporated company
having its registered office at 109 Fanshawe Street,
Auckland Central, Auckland 1010

Appellant

AND **DAIRYNZ LIMITED** a duly incorporated company
having its registered office at 605 Ruakura Road,
Hamilton 3286

Appellant

AND **SOUTHLAND REGIONAL COUNCIL** at 220 North
Rd, Waikiwi, Invercargill 9810

Respondent

**NOTICE OF APPEAL BY FONTERRA LIMITED AND DAIRYNZ LIMITED IN
RELATION TO THE ENVIRONMENT COURT'S FIFTH INTERIM DECISION ON
THE PROPOSED SOUTHLAND REGIONAL LAND AND WATER PLAN**

31 JANUARY 2023

**Russell
McAugh**

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HIGH COURT
31 JAN 2023
CHRISTCHURCH

TO: The Registrar of the High Court at Christchurch

AND TO: The Registrar of the Environment Court at Christchurch

AND TO: Southland Regional Council

AND TO: The parties to the Environment Court appeals

TAKE NOTICE pursuant to section 299 of Act, that Fonterra Limited and DairyNZ Limited will appeal the fifth interim decision of the Environment Court in *Aratiatia Livestock Limited v Southland Regional Council* [2022] NZEnvC 265 ("**Decision**") delivered and notified on 23 December 2022 **UPON THE GROUNDS** that the Decision is erroneous in law.

SCOPE OF APPEAL

1. The Appellants appeal against the findings of the Environment Court that it did not have jurisdiction to include permitted activity Rule 24 in the Southland Water and Land Plan due to the operation of section 70 of the Act.

ERRORS OF LAW

2. The Environment Court erred in law in:
 - (a) finding at [251] that Southland Regional Council, or the Environment Court on appeal, before inserting Rule 24 into the Southland Water and Land Plan, could not have been satisfied of the effects on the environment as a result of activities permitted to occur under Rule 24;
 - (b) finding at [259] that the purpose of section 70 of the Act applies to both point source discharges and diffuse discharges;
 - (c) finding at [271] that jurisdiction to include Rule 24 was not established;on the basis that:
 - (d) Rule 24 was worded in such a way that it clearly provided Southland Regional Council with certainty that significant adverse effects would not arise;
 - (e) the Environment Court erroneously interpreted section 70 of the Act as applying to all discharges and point source discharges, and in so doing failed to consider:
 - (i) the purpose and context of section 70;
 - (ii) the differences between incidental discharges from farming activities on land and the discharges considered in *King Salmon* (as discussed in the Decision); and
 - (iii) the difficulty in identifying the receiving waters for incidental discharges from farming activities on land;

- (f) the Environment Court misdirected itself by determining at [260] that the similarities between Rule 24 and section 70 of the Act and the mind of the "Southland Water and Land Plan's author" aided its interpretation of section 70 of the Act; and
- (g) The Environment Court overlooked the scope of the appeals before it. Namely, that the appeals sought to introduce a new standard into Rule 24 but did not seek to alter the balance of Rule 24.

QUESTIONS OF LAW

3. The questions of law to be decided are:

- (a) Does section 70 of the Act apply to all discharges?
- (b) In the context of section 70 of the Act, does the Environment Court have the jurisdiction to confirm permitted activity Rule 24?
- (c) Do the appeals seeking to introduce a new permitted activity standard to Rule 24 provide scope to amend the balance of Rule 24?

RELIEF SOUGHT

4. The Appellants seek:

- (a) that its appeal be allowed;
- (b) that the matter be referred back to the Environment Court for reconsideration in light of the findings of this Honourable Court; and
- (c) costs.

DATED 31 January 2023



D J Minhinnick / P G Senior

Counsel for Fonterra Limited and DairyNZ Limited

This document is filed by **Daniel Minhinnick**, solicitor for the Appellants, of Russell McVeagh. The address for service of the Appellants is Level 30, Vero Centre, 48 Shortland Street, Auckland 1010.

Documents for service on the Appellants may be left at that address for service, or may be:

- (a) posted to the solicitor at PO Box 8, Auckland 1140; or
- (b) transmitted to the solicitor at a document exchange for direction to DX CX10085; or
- (c) emailed to daniel.minhinnick@russellmcveagh.com and patrick.senior@russellmcveagh.com.