

**IN 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 **DAIRYNZ LIMITED**
(ENV-2018-CHC-32)

FONTERRA CO-OPERATIVE GROUP LIMITED
(ENV-2018-CHC-27)

Appellants

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

**MEMORANDUM OF COUNSEL FOR THE DAIRY INTEREST
PARTIES REGARDING THE 25 MAY 2022 VERSION OF THE
CONSOLIDATED PLAN**

7 June 2022

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MAY IT PLEASE THE COURT

- 1 This joint Memorandum is filed on behalf of DairyNZ Limited and Fonterra Co-operative Group Limited (**the Dairy Interests**) regarding the 25 May 2022 consolidated version of the proposed Southland Water and Land Plan (**Consolidated Plan**).
- 2 The Court has requested that parties identify if the Consolidated Plan prepared by the Southland Regional Council has not correctly captured the relief sought¹.
- 3 There are errors and omissions in the Consolidated Plan in respect of the relief sought by the Dairy Interests as outlined below.

Policy 15B (1) – page 40

- 4 The relief sought by the Dairy Interests, consistent with the agreement reached during mediation, and as set out under the heading 'B2 – Discharges' in the Planning Joint Witness Statement dated 10 December 2021 (**JWS**) and the Supplementary Evidence of Mr Willis dated 20 May 2022², has not been included. The Dairy Interests seek the following relief:

1. ~~avoiding where practicable and otherwise remedying or mitigating any adverse effects of new point source discharges to surface water on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines beyond the zone of reasonable mixing; and~~

Policy 18 – page 50

- 5 The relief sought by the Dairy Interests, consistent with the agreement reached during mediation, and as set out under the heading 'B5 – Farming' to the JWS is not complete. The words "*and habitats*" appear to have inadvertently been deleted as per below:

Policy 18

~~Reduce~~ *Avoid where practicable, or otherwise remedy or mitigate, any adverse effects from the discharge of sedimentation and or microbial contamination of contaminants to water bodies and improve river (excluding ephemeral rivers) and riparian ecosystems and habitats* by:

¹ Email from the Court dated 1 June 2022

² Statement of Supplementary Evidence of Gerard Matthew Willis for Fonterra Cooperative Group Limited and Dairy NZ Limited (Planning – Policies 15A, 15B, 16A and 17). 20 May 2022

Rule 20 – pages 74, and 76

- 6 The Dairy Interests should be recorded alongside Ballance, Federated Farmers and Southland Regional Council in relation to the following relief (it occurs three times in Rule 20) relating to the implementation of the Farm Environment Management Plan – (a)(ii)(4), (a)(iii) and (c)(i):

A Farm Environmental Management Plan is:

(A) ~~prepared; and certified, and implemented compliance with it is audited, in accordance with Appendix N; and~~

(B) implementation by the landowner completing the practices, actions, and mitigations specified in the Farm Environment Management Plan in accordance with the timeframes set out in that Plan.

Rule 20A – page 77

- 7 The Dairy Interests should be recorded as agreeing with Aratiatia, Director-General of Conservation, Nga Runanga, Ravensdown, and Southland Regional Council.

Rule 25 – page 88

- 8 The relief sought by the Dairy Interests, consistent with the agreement reached in the JWS is not complete. The clarification of 'slope' beneath Rule 25(d) appears to have inadvertently been deleted. The Dairy Interests seek that this is reinserted as per below:

(d) Despite any other rule in this Plan, the use of land for cultivation at an altitude greater than 800 metres above mean sea level is a non-complying activity.

Slope in Rule 25(a)(ii) and (iii) ~~(iv)~~ is the average slope over any 20 metre distance.

Definition of 'Critical source area' – page 154

- 9 The Dairy Interests should be recorded as agreeing with Director-General of Conservation, Aratiatia, Federated Farmers, Fish and Game, Forest and Bird, Nga Runanga, and Southland Regional Council for (b). The Dairy Interests separate relief is correctly recorded for (a).

Definition of 'Ephemeral rivers' – page 156

- 10 The Dairy Interests should be recorded as agreeing with Aratiatia, Ballance, Director-General of Conservation, Fish and Game, Forest and Bird, Federated Farmers, Meridian Energy, and Southland Regional Council regarding the deletion of the ephemeral rivers definition.

Appendix N, Part B – page 246

11 The Dairy Interests should be recorded as agreeing with Ballance, Nga Runanga, Ravensdown, and Southland Regional Council for 2(a-h) and (j–m). The Dairy Interests separate relief is correctly recorded for 2(i).

Appendix N, Part B – page 247

12 The relief sought by the Dairy Interests as set out in the Evidence of Mr Willis dated 4 February 2022³, and Counsel’s memorandum of 22 February 2022⁴ has not been correctly recorded. The Dairy Interests seek the following relief:

(i) ~~for~~ land to be

(1) Cultivated; or

(2) intensively winter grazed, ~~or break fed on pasture between 1 June and 31 July.~~

(...)

13 The relief sought by the Dairy Interests, consistent with the agreement reached in the JWS is not complete. The ‘slope’ footnote appears to have inadvertently been deleted. The Dairy Interests seek the following relief:

(3) used to graze livestock on pasture in the period 1 May to 30 September where the pasture will provide less than 50% of the animals’ diet, and the **slope¹** of the land used for any of the activities described in (1) to (3) above and intended setbacks from any lake, river, artificial watercourses, modified watercourse or natural wetland and any other critical source areas; and:

^{1.} Slope is the average slope over any 20 metre distance

Appendix N, Part B (5) – page 248

14 The Dairy Interests should be recorded as agreeing with Ballance, Nga Runanga, Ravensdown, and Southland Regional Council for 5(a-f). The Dairy Interests separate relief is correctly recorded for 5(g).

³ Statement of Evidence of Gerard Matthew Willis for Fonterra Cooperative Group Ltd and DairyNZ Ltd (Planning – Topic B), 4 February 2022

⁴ Memorandum of Counsel for the Dairy Interest parties setting out changes to provisions being pursued in Topic B Trance 1

Appendix N, Part B (5) – page 251

15 There is an error in the relief sought by the Dairy Interests for 7(b) as set out in Counsel's memorandum of 22 February 2022⁵. The word "that" needs to be deleted as per below:

The winter grazing plan must ~~that~~ takes into account and responds to the risk pathways for the relevant physiographic zones (and variants) and include good management practices that respond to the risks and effects identified in accordance with section 6(a) above.

(...)

DATE: 7 June 2022



Katherine Forward

Counsel for DairyNZ Limited and Fonterra Co-operative Group Limited

⁵ Memorandum of Counsel for the Dairy Interest parties setting out changes to provisions being pursued in Topic B Trance 1