

**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**
(ENV-2018-CHC-49)

Appellant

AND **SOUTHLAND REGIONAL COUNCIL**

Respondent

MEMORANDUM OF COUNSEL FOR RAYONIER NEW ZEALAND LIMITED

Date: 12 October 2021

Judicial Officer: Judge Borthwick

MAY IT PLEASE THE COURT

Introduction

- 1 This Memorandum of Counsel is filed on behalf of Rayonier New Zealand Limited (**Rayonier**) in response to the directions at [15](c)(i)-(iv) of the Court's Minute of 4 October 2021.
- 2 Counsel addresses each part of the directions at [15](c) below under the relevant heading.

Direction [15](c)(i) – Regional Council's proposed evidence exchange timetable

- 3 The Regional Council's proposed timetable is demanding of Rayonier's witnesses however they have each advised Counsel that they can comply with it.
- 4 Rayonier's interest in these proceedings relates to the application of Rule 25 proposed Southland Water and Land Plan (**pSWLP**) regarding cultivation and its application to production forest aerial spraying and windrowing/stick-raking activities. Both activities relate to land preparation prior to the start of the replanting phase of the plantation forestry cycle.
- 5 Rayonier has filed an appeal regarding the aerial spraying and is an interested party in the appeal by Southwood Export Limited and Others (**SWEL**) regarding windrowing/stick-raking.
- 6 Consequently, the proposed evidence timetable would require Rayonier's witnesses to file separate Will Say Statements and separate evidence-in-chief for each activity that Rayonier wishes to address. This would inevitably result in duplication of evidence because the factual context is the same for both activities.
- 7 Counsel submits that it would be simpler for Rayonier's experts, other parties and the Court, if Rayonier's witnesses addressed both activities within one Will Say Statement and one statement of evidence-in-chief rather than artificially splitting such evidence into two statements of evidence.
- 8 Counsel can confirm that Rayonier's witnesses are in a position to file their Will Say Statements and evidence-in-chief in accordance with the proposed evidence timetable for appellant evidence, should this approach meet with the approval of the Court.
- 9 Accordingly, Counsel request an amendment to the proposed evidence timetable to allow Rayonier to:
 - (a) file both its appellant and s 274 Will Say Statements according to the timetable for appellant Will Say Statements, which is currently 29 October

2021. Noting that Rayonier would reserve the right to file additional s 274 Will Say evidence within the timeframe for s 274 Will Say Statements, if it was necessary to do so to respond to new information in other parties' appellant Will Say Statements; and

- (b) file both its appellant and s 274 evidence-in-chief according to the timetable for appellant evidence-in-chief, which is currently 21 January 2022. Noting that Rayonier would reserve the right to file additional s 274 evidence-in-chief within the timeframe for s 274 evidence-in-chief, if it was necessary to do so to respond to new information in other parties' appellant evidence-in-chief.

Direction [15](c)(ii) – Regional Council's statement of the issues of fact and opinion to be resolved and legal issues to be decided

- 10 Rayonier agrees with the list of essential issues of fact and opinion, and legal issues to be resolved at Appendix B of the Regional Council's Memorandum of Counsel dated 24 September 2021, subject to the following proposed amendment.
- 11 Rayonier considers that the list of legal issues to be decided should include the following additional issue relating to the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (the **NES-PF**) and section 32(4) RMA as follows:

Is greater restriction on plantation forest windrowing / stick raking activity than is already provided by the NES-PF justified in the particular circumstances of the Southland Region?

Direction [15](c)(iii) - number of witnesses to be called and area of witness expertise

- 12 Rayonier intends to call four witnesses, as follows:
 - (a) Hamish Fitzgerald – professional forester;
 - (b) Dr Paul Adams - professional forester;
 - (c) Dr Chris Phillips – soil erosion scientist; and
 - (d) Jerome Wyeth – statutory planner.

Direction [15](c)(iv) – expert availability for expert conferencing

- 13 Each of Rayonier's experts are generally available for expert conferencing between 22 November and 10 December apart from these specific dates:
 - (a) Dr Chris Phillips is unavailable between 22-25 November.

14 Finally, Counsel notes that Rayonier continues to discuss unresolved issues relating to the definition of "cultivation" and Rule 25 regarding cultivation activities with the Regional Council and so these issue may be resolved prior to hearing.

DATED at Christchurch this 12th day of October 2021



Chris Fowler
Counsel for Rayonier New Zealand Limited