

**BEFORE 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

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 COURT'S MINUTE**

13 February 2023

Judicial Officer: Judge Borthwick

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WILKINS FARMING CO
(ENV-2018-CHC-30)

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL CITY 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 of Counsel is filed on behalf of the Southland Regional Council (**Council**) in response to the Court's Minute dated 10 February 2023, regarding the appeals on the proposed Southland Water and Land Plan (**pSWLP**).

2 The purpose of this Memorandum is to respond to the direction at paragraph 12 of the Court's Minute:

I will direct all parties holding the view that the court cannot *advance* one or more of the provisions prior to the High Court's decision, to file a memorandum succinctly giving reasons for those views. For present purposes I am assuming 'advance' means the court directing the Regional Council to amend the proposed plan.

3 In its Memorandum of 9 February 2023, counsel identified that Rules 20, 20A, 20B, 24, 25, and 35B of the pSWLP should not be advanced further through the Environment Court until such time as the High Court appeals have been resolved.

4 The Court's interpretation of the term 'advanced' is partially correct. The use of 'advanced' was also intended to refer to any further expert conferencing or hearing time on those provisions, given the various questions posed to the parties by the Court in its Fifth Interim Decision.¹ As it now transpires, no parties have indicated that further expert conferencing or hearing time is required.

5 Putting Rule 24 to one side, the reason for the Council's position with respect to Rules 20, 20A, 20B, 25 and 35B of the pSWLP is due to the interconnected nature of the provisions. It is desirable to achieve consistency between the farming land use rules and the rule regulating incidental discharges from those farming land use activities to the extent possible. While acknowledging that there may be little scope to make substantive changes to the farming land use rules, it is conceivable that if the Environment Court made a decision with respect to Rule 24 that categorised incidental discharges as a controlled or even (perhaps) as a discretionary activity, certain consequential changes to those rules may be required.

¹ *Aratiatia Livestock Limited v Southland Regional Council* [2022] NZEnvC 265.

6 That said, the Council does not hold a strong view in this respect, and it has now become apparent that all parties (including the Council) are supportive of the Court's version of the provisions. On that basis, the Court may well be satisfied that it can proceed to direct the Council to amend the pSWLP with respect to those rules, once the Appendix N sense check has occurred.

DATED this 13th day of February 2023



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P A C Maw / I F Edwards
Counsel for the Southland Regional Council