

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KŌTI TAIAO O AOTEAROA**

**AT CHRISTCHURCH
KI ŌTAUTAHI**

IN THE MATTER of the Resource Management Act 1991

AND of appeals under clause 14 of the First Schedule of
the Act

BETWEEN **TRANSPower NEW ZEALAND LTD**
(ENV-2016-CHC-26)
Appellant

FONterra CO-OPERATIVE GROUP LTD
(ENV-2018-CHC-27)
[Continued on next page]

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

**Memorandum for the Director-General of Conservation Tumuaki Ahurei
Responding to Regional Council's response to Court's Questions as Directed**

Dated 16 February 2023

Department of Conservation
Planning, Permissions and Land
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Solicitor Rōia: Pene Williams

BETWEEN

ARATIATIA LIVESTOCK LTD

(ENV-2018-CHC-29)

WILKINS FARMING CO

(ENV-2018-CHC-30)

GORE AND SOUTHLAND DISTRICT COUNCILS,

INVERCARGILL CITY COUNCIL

(ENV-2018-CHC-31)

DAIRYNZ LTD

(ENV-2018-CHC-32)

H W RICHARDSON GROUP LTD

(ENV-2018-CHC-33)

BEEF + LAMB NEW ZEALAND

(ENV-2018-CHC-34 AND 35)

DIRECTOR-GENERAL OF CONSERVATION

(ENV-2018-CHC-36)

SOUTHLAND FISH & GAME COUNCIL

(ENV-2018-CHC-37)

MERIDIAN ENERGY LTD

(ENV-2018-CHC-38)

FEDERATED FARMERS OF NEW ZEALAND

(ENV-2018-CHC-40)

SOUTHWOOD EXPORT LTD, SOUTHLAND PLANTATION

FOREST COMPANY OF NZ

(ENV-2018-CHC-46)

TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA,

WAIHOPAI RUNAKA, TE RUNANGA O AWARUA AND TE

RUNANGA O ORAKA APARIMA

(ENV-2018-CHC-47)

RAYONIER NEW ZEALAND LTD

(ENV-2018-CHC-49)

ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NZ

INC

(ENV-2018-CHC-50)

Appellants

May it please the Court,

The following matters are respectfully put forward for the Director-General of Conservation Tumuaki Ahurei (the Director-General):

1. I refer to the Court's Record of Pre-Hearing Conference dated 15 February 2023 at [9] which refers to the Court's direction in its previous Minute¹ that parties are to file a memorandum if they disagree with the Regional Council's responses to the Court's questions/ directions at paragraphs 231, 279, 313, 314, 375, 397-399 and 455 of the Court's fifth Interim Decision.
2. I advise where the Director-General has an interest in these matters, she agrees with all the Council's responses apart from one matter. I further attach a table in Appendix A setting out the Director-General's position.



P D Williams
Counsel Rōia for the Director-General

¹ Court's Minute dated 10 February 2023 at [15]

Appendix A

Para	Provision	Court's comment	SRC Response	Director-General's response
231(a)	Rule 20B	Is there scope to include the same or similar land or percentage controls as in Rule 20A	Yes	Not a party to Rule 20B
231(b)	Appendix N standards	Is there scope to include a setback standard in Appendix N for stock types other than cattle	No	Agree
279	Rule 24	Propose timetable directions	Await outcome of High Court Appeals	Agree
313	Rule 25(a) and (b)	Should an Appendix N FEMP condition also apply here	Yes if scope to do so	To extent D-G has an interest in appeals on Rule 25, agree
314(b)	Rule 25(b)(iii)	Should a reference to pasture-based wintering be included in sub-cl(iii)	Following cross-examination, Mr McCallum-Clark acknowledged that as farmers would undertake pasture wintering on established or old pasture, and not cultivate, establish new pasture and then undertake pasture-based wintering activities on that land, Rule 25 did not need to reference '... or on land used for pasture-based wintering'.	Agree there is no need to include reference in sub-clause (iii)

Para	Provision	Court's comment	SRC Response	Director-General's response
375(a) and (b)	Definition of 'sacrifice paddock', Rule 35B, and FEMP reference to sacrifice paddocks	NA	NA	Director-General has no interest in appeals relating to sacrifice paddocks or proposed Rule 35B
397	Rule 51	Whether Rule 51(b) and (d) conflict with the new Rule 51(e)	No conflict	Agree – noting Rule 51(b)(iii) provides as a condition of the permitted activity that (my emphasis): <i>(iii) the diversion of water is not from a Regionally Significant Wetland or Sensitive Water Body identified in Appendix A or <u>any natural wetland</u></i>
398	Rule 51(e)	Should Rule 51(e) be amended to read: <u>Notwithstanding Rule 51(b) and Rule 51(d),</u> the diversion of water ...	Agree with suggested amendment	Disagree it is necessary to exclude Rule 51(b) as subclause (iii) already excludes any natural wetland, see above. Agree with the Court and Council there is potential confusion between Rule 51(d) and new Rule 51(e) and

Para	Provision	Court's comment	SRC Response	Director-General's response
				propose Rule 51(e) be amended to read: <u>Notwithstanding Rule 51(d),</u> the diversion of water ...
399	Rule 51(b)	Consequential amendment to delete "Despite any other rule in this Plan"	No scope to amend this part of the rule	Agree
455	General	Parties to advise whether they prefer 'buffer' or 'setback' to be used in the Plan	Prefer 'setback'	Agree