

**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

Appellants in ENV-2018-CHC-49, and section 274 party to appeals: ENV-2018-CHC-40 Federated Farmers of New Zealand, ENV-2018-CHC-46 Southwood Export Limited & Others, ENV-2018-CHC-50 Royal Forest and Bird Protection Society of New Zealand Incorporated

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

MEMORANDUM OF COUNCIL FOR RAYONIER NEW ZEALAND LIMITED

Date: 20 December 2021

Judicial Officer: Judge Borthwick

MAY IT PLEASE THE COURT

- 1 The purpose of this memorandum is to update the Court regarding the outcome of the expert planning conference regarding Topic B5 – Farming, as it relates to forestry and cultivation, and the Evidence in Chief filed with this Memorandum by Rayonier New Zealand Ltd (**Rayonier**).
- 2 Rayonier’s appeal seeks that herbicide spraying be removed from the definition of “cultivation” or alternatively that the term “crop” in the definition of “cultivation” be defined as specific to agricultural practices excluding forestry. Rayonier’s s274 party notice on the appeal filed by Southwood Export Limited and Others supports amendment to the definition of “cultivation” to exclude stick raking (also known as windrowing)
- 3 The Joint Witness Statement of the planning experts regarding the regarding Topic B5 – Farming, as it relates to forestry (the **Forestry JWS**) records agreement to amend the definition of cultivation in the Proposed Southland Water and Land Plan (the **pSWLP**). The purpose of these changes is to specifically exclude the low-risk activities of stick raking or slash raking and herbicide spraying associated with replanting a plantation forest from the cultivation definition in the pSWLP and Rule 25.
- 4 The amendments recorded in the Forestry JWS are supported by Rayonier’s expert witnesses, as detailed in their respective statements of Evidence in Chief. This evidence deals with both Rayonier’s appeal and Rayonier’s s274 notice on the appeal by Southwood Enterprises Ltd and Others.
- 5 Counsel notes that this approach is not entirely consistent with the directions of the Court in its Record of Pre-Hearing Conference dated 22 October 2021 wherein the Court declined Rayonier’s request that Rayonier’s witnesses file a single brief of evidence.
- 6 The Court’s reason for declining Rayonier’s request was that:

Exchanging briefs on this basis may prejudice other parties. If Rayonier’s s 274 evidence is to respond to the evidence of an appellant, it would presumably file the combined brief on 4

February 2022. However, this would deprive s 274 parties to Rayonier's appeal the opportunity to see Rayonier's appellant evidence before filing, as directed, on the same day.

- 7 Counsel submits that the prejudice of concern to the Court is remedied by Rayonier filing its combined evidence with appellant evidence, rather than in February with s274 evidence as contemplated by the Court. Accordingly it is submitted that s274 parties will not be deprived the opportunity to see Rayonier's evidence before filing.
- 8 Further, matters have moved on since the pre-hearing conference. There is now agreement between planning witnesses interested in the forestry subtopic on amendments to the cultivation definition. It is submitted that it is a sensible and pragmatic approach for Rayonier's experts to respond to that agreement in a combined brief because the Forestry JWS deals with both herbicide spraying and stick raking.
- 9 Finally, the issues of herbicide spraying and stick raking are intertwined. The evidence regarding these issues overlaps and it is considered more efficient for the Court and other parties to consider Rayonier's evidence on these issues at the same time in one brief.
- 10 In light of the above, Counsel apologises for the lateness of this Memorandum and respectfully seeks leave to file combined expert witness briefs regarding the above matters with appellant evidence for the reasons outlined above.

DATED at Christchurch this 20th day of December 2021



Chris Fowler
Counsel for Rayonier New Zealand Limited