

**IN THE ENVIRONMENT COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY**

**I MUA I TE KOOTI TAIAO O AOTEAROA  
ŌTAUTAHI ROHE**

**UNDER THE** Resource Management Act 1991 ("**Act**")  
**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)

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**MEMORANDUM OF COUNSEL ON BEHALF OF FEDERATED FARMERS**

**18 DECEMBER 2024**

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**Counsel:**  
Federated Farmers of NZ  
H D Jopp  
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PO Box 715  
Wellington 6140

**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. Counsel refers to the notice of application to stay the proceedings filed by Southland Regional Council dated 2 December 2024 (**Stay Application**) and to the directions of the Court dated 9 December 2024.
2. The purpose of this memorandum is to advise the Court and parties that Federated Farmers Southland Incorporated (**Federated Farmers**):
  - a. Supports the Stay Application on the grounds set out in the application and on the further grounds set out in the affidavit of Bernadette Ellen Hunt dated 17 December 2024.
  - b. Attaches for filing with this memorandum, an affidavit of Bernadette Ellen Hunt in support of Federated Farmers' position.
  - c. Federated Farmers wishes to be heard in relation to the Stay Application.

**DATED** 18 December 2024



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**H D Jopp**

Counsel for Federated Farmers Southland Incorporated

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AFFIDAVIT OF BERNADETTE ELLEN HUNT IN SUPPORT OF STAY OF  
PROCEEDING

17 DECEMBER 2024

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**Respondent**

**I, Bernadette Ellen Hunt, of Gore, farmer, swear that:**

1. My full name is Bernadette Ellen Hunt. My husband and I own and run a sheep, beef and arable farming operation, covering approximately 400ha. Of this, we own 150ha and the remaining land is leased (all of the land is in the Gore District, with the exception of 38ha of the leased land). We also own and run a rural contracting business, Hunt Agriculture, offering full agricultural services to a range of farming clients in Eastern Southland.
2. I am an elected representative of Federated Farmers Southland Incorporated.

**Purpose of my affidavit**

3. The purpose of my affidavit is to provide evidence, in my capacity as a local farmer and an elected representative of Federated Farmers Southland Incorporated, in support of Environment Southland's application for a partial stay of these proceedings (pending the Government's proposed changes to section 70 of the RMA).

**About Federated Farmers**

4. Federated Farmers is a not for profit, member funded organisation. It has a long and proud history of representing the interests of New Zealand farmers involved in a range of rural businesses (dairy, sheep and beef, deer, arable cropping and horticulture).
5. Federated Farmers is a federation of 24 provincial bodies (called provinces), each structured as its own incorporated society, and six industry groups (dairy, meat and wool, arable, goats, high country and rural butchers). Federated Farmers' national body is governed by a National Council (which comprises a representative from each province and industry group), with day to day governance delegated to a National Board.
6. Federated Farmers Southland Incorporated (which we colloquially refer to as the "Southland province") is the entity which appealed the proposed Southland Water and Land Plan (pSWLP) and joined other appeals as a s 274 party.
7. The Southland province is governed by an elected executive group, which is headed by a provincial president. I was elected to the Southland Provincial Executive in 2015. During my time in this role, the pSWLP has been one of the most important (and resource intensive) pieces of work for the province.
8. As an elected representative for the province, I attended (online or in person) many of the hearing days at the pSWLP Council level hearings and then the hearings for the Environment Court appeals. I gave evidence during both hearings, and I also participated in expert conferencing.



## Legislative amendment to section 70

9. The affidavit of Elizabeth Ann Devery in support of Environment Southland's stay application refers to the Government's proposal to amend section 70. After this affidavit was sworn, the Resource Management (Consenting and Other System Changes) Amendment Bill (**RM Amendment Bill 2**) was introduced to Parliament (on 10 December 2024).
10. The effect of clause 15 of the RM Amendment Bill 2 (if passed into law) would be to amend section 70 of the RMA as shown in red underline:

### 70 Rules about discharges

(1) Before Except as provided for in subsection (3), before a regional council includes in a regional plan a rule that allows as a permitted activity—

(a) a discharge of a contaminant or water into water; or

(b) a discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water,—

the regional council shall be satisfied that none of the following effects are likely to arise in the receiving waters, after reasonable mixing, as a result of the discharge of the contaminant (either by itself or in combination with the same, similar, or other contaminants):

(c) the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials:

(d) any conspicuous change in the colour or visual clarity:

(e) any emission of objectionable odour:


(f) the rendering of fresh water unsuitable for consumption by farm animals:

(g) any significant adverse effects on aquatic life.

(2) Before a regional council includes in a regional plan a rule requiring the adoption of the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of any discharge of a contaminant, the regional council shall be satisfied that, having regard to—

(a) the nature of the discharge and the receiving environment; and

(b) other alternatives, including a rule requiring the observance of minimum standards of quality of the environment,—

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the inclusion of that rule in the plan is the most efficient and effective means of preventing or minimising those adverse effects on the environment.

(3) A regional council may include in a regional plan a rule that allows as a permitted activity a discharge described in subsection (1)(a) or (b) that may allow the effects described in subsection (1)(g) if—

(a) the council is satisfied that there are already effects described in subsection (1)(g) in the receiving waters; and

(b) the rule includes standards for the permitted activity; and

(c) the council is satisfied that those standards will contribute to a reduction of the effects described in subsection (1)(g) over a period of time specified in the rule.

#### **Grounds to support stay application**

11. Federated Farmers supports Environment Southland's stay application in circumstances where section 70 is in the process of being amended, waiting until section 70 is amended would likely avoid (or significantly reduce) Court hearing time and the costs to parties, and, in the meantime, the land use rules in the pSWLP are operative and will require improvements in farming activities. And this is in addition to non-regulatory methods and actions being implemented, such as education regarding good management practices for high risk activities, building detainment bunds / sediment traps, constructing wetlands, riparian planting and other community initiatives.


#### **Cost of further evidence, expert conferencing and hearing time**

12. The prospect of further evidence exchange, expert conferencing and hearing time is pretty daunting. The pSWLP has been an extremely long journey and I think that everyone is feeling pretty burned out with it all.

13. The pSWLP was first notified in 2016. Since the Environment Court process began in 2018, there have been nine interim decisions, two High Court appeals and an appeal to the Court of Appeal. The Environment Court process has involved 52 expert witnesses, 200 statements of evidence and 25 joint witness statements.

14. To provide further context, I have tallied the time spent on tranche 1, topic B of the pSWLP appeals (to which Rule 24 relates) as follows:

- a. 6 days of mediation;
- b. 12 days of expert conferencing;

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- c. 4 weeks' hearing time;
  - d. Countless hours of preparation leading into all of that, in my case, all voluntary, and in addition to my "day job" of farming and being a mum.
15. My concern is that, if the stay is not granted, we could well be embarking on a process which will span several months, could collectively cost the parties several hundred thousands of dollars and could end up being unnecessary (or the next steps could be significantly shorter/more focused) if section 70 is amended.
16. As a farmer, I am also concerned that money is a limited resource, particularly at the moment for farmers in Southland. Beef and Lamb estimate that the average farm profit (before interest, drawings and tax) will be \$45,200 per farm for the 2024 – 2025 season. This means that most sheep and beef farms will be making a (not minor) loss and the forecast is similar to the most challenging seasons in the 1980s and 1990s.<sup>1</sup> Southland farmers have also experienced the most challenging spring in memory, with flooding and prolonged wet weather – resulting in a medium scale adverse event classification. The impacts of the floods include a massive feed shortage, significant reduction in pasture and stock growth, and the "spring" workload began approximately two months later than a "normal" season in terms of agricultural work – which has an ongoing knock-on effect for the season i.e. everyone will be a lot busier than usual.
17. With limited funds and time available to farmers, my concern is that both would be better spent on developing farm plans and implementing actions to improve water quality. And, as a ratepayer, the Council's money would be better spent implementing the pSWLP and supporting sub-catchment initiatives to improve water quality.

#### **Effect of operative parts of pSWLP**

18. Rule 20 of the pSWLP is one of the main rules which applies to farming and, since 27 May 2024, that rule has been operative. A requirement of Rule 20 is that for farming to be a permitted activity, a farm environment plan (FEP) must be prepared in accordance with Appendix N. The deadline for obtaining a certified FEP is 27 May 2026.
19. I participated in the expert conferencing for Appendix N. Appendix N FEPs are required to be certified by a certifier (under the Resource Management (Freshwater Farm Plans) Regulations 2023) or a Suitably Qualified Person who has been approved by Environment Southland.

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<sup>1</sup> [farm-profit-2024-25.pdf](#)

Handwritten signature and initials in blue ink, located in the bottom right corner of the page.

20. Appendix N sets out the objectives of FEPs, which include:

- a. Nutrient and soil management to ensure no increase, and preferably a decrease in the losses of nitrogen, phosphorous, sediment and microbial contaminants;
- b. There is continual improvement in benchmarked on-farm nutrient and soil management practices and actions;
- c. If the farm is within a degraded catchment, adverse effects on water quality are reduced.

21. There are also specific requirements relating to higher risk activities Rules 20A, 20B, 25, 35A and 70 (all of which are operative), as well as the requirements of Appendix N which provide:

- a. Every farm must include either a nutrient budget or a nutrient loss risk assessment. A farm will need to complete a repeat nutrient budget or nutrient loss risk assessment if there is a material change in land use<sup>2</sup>;
- b. Intensive winter grazing and pasture based wintering must appropriately manage risks relating to critical source areas and setbacks, and resowing.
- c. Effluent management must reflect best practice.
- d. Irrigation must reflect best practice.
- e. Stock exclusion must comply with Policy 18.<sup>3</sup>
- f. Cultivation must comply with rule 25.<sup>4</sup>

22. In addition to these regulatory requirements, all dairy farmers and the many dry stock farmers already have an FEP (as part of their supply agreement with their milk company or an industry assurance programme, like the New Zealand Farm Assurance Programme).

23. I also want to point out that the date for having farm plans certified under the pSWLP (27 May 2026) is the date for *certification* not the date for preparation of farm plans or implementation of actions. Based on the many farmers I talk to, and farms I visit, farmers are not waiting until this deadline to get a farm plan or improve practices. The journey towards good management practice started when the pSWLP was notified almost 10 years ago. Over this time, I have seen a massive change with farming practices, in particular around intensive winter

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<sup>2</sup> Appendix N, Clause 8

<sup>3</sup> Policy 18(5), pSWLP

<sup>4</sup> Rule 25(a)(vi), pSWLP

grazing and cultivation practices. Farmers are also involved in non-regulatory restoration work through catchment groups.

Sworn/affirmed at Gore this 17<sup>th</sup> day of ) *B. Hunt*  
December 2024, before me: ) .....  
) Bernadette Ellen Hunt

*[Signature]*  
.....  
A Solicitor/Deputy Registrar of the High Court of New Zealand

**LISA DESIREE GRACE  
SOLICITOR  
GORE**