

**IN 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 DAIRYNZ LIMITED, AND  
FONterra CO-OPERATIVE GROUP LIMITED**

**13 October 2021**

---

---

**Counsel:**

Katherine Forward  
Duncan Cotterill  
PO Box 5, Christchurch  
Phone +64 3 379 2430  
Fax +64 3 379 7097

katherine.forward@duncancotterill.com

**WILKINS FARMING CO**

(ENV-2018-CHC-30)

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT COUNCIL  
& INVERCARGILL DISTRICT 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)

**STONY CREEK STATION LIMITED**

(ENV-2018-CHC-42)

**THE TERRACES LIMITED**

(ENV-2018-CHC-43)

**CAMBELL'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 NGĀI TAHU, HOKONUI RUNAKA, WAIHOPAI  
RUNAKA, TE RUNANGA O AWARUA & TE RUNANGA O  
ORAKA APARIMA**

(ENV-2018-CHC-47)

**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 joint Memorandum is filed on behalf of DairyNZ Limited and Fonterra Co-operative Group Limited (**the Dairy Interest parties**) in response to the directions at [15](c)(i) -(v) of the Court's Minute dated 4 October 2021.
- 2 Counsel responds to each direction from [15](c)(i) -(v) separately below.

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

- 3 The Dairy Interest Parties make the following comments in relation to the evidence exchange timetable proposed by Southland Regional Council in its Memorandum dated 24 September 2021 (**Memorandum**).
- 4 The Dairy Interest Parties agree with the timetabling requests proposed in the Memorandum of Counsel for Rayonier New Zealand Limited dated 12 October 2021 (the **Rayonier Memorandum**) (see **attached at Appendix 1**). Similarly to Rayonier, the Dairy Interest Parties interests in these proceedings arise from both appellant and section 274 interests; many of which are interrelated. Under the proposed evidence exchange timetable, the Dairy Interest parties' experts and witnesses would be required to file separate Will Say Statements and evidence-in-chief for each issue that the Dairy Interest parties are party to. Counsel considers that this is inefficient and would result in unnecessary duplication of evidence across the board.
- 5 Accordingly, the Dairy Interest parties consider that the requests made by Rayonier at [9](a) &(b) of the Rayonier Memorandum of Counsel are logical and it would be sensible to adopt this approach for all parties in the same situation.
- 6 Alternatively, the Dairy Interest parties see merit in the proposal regarding contemporaneous filing of Will Say Statements proposed by Meridian at [2] & [3] of the Memorandum of Counsel for Meridian Energy Limited dated 13 October 2021 (see **attached at Appendix 2**) and considers that either approach would be appropriate.

### **Issues of fact and opinion to be resolved and legal issues to be decided - Direction [15](c)(ii)**

- 7 The Dairy Interest parties consider that Issue 28 of the Topic B2 mediated issues may have been incorrectly recorded as having been resolved. Accordingly, the Dairy Interest Parties request that Issue 28 of Topic B2 is included as an unresolved issue to be decided.
- 8 The Dairy Interest parties are also not certain whether Issues 10,15 and 16 of Topic B2 have been resolved and reserve their position with respect to the same.

9 Subject to the above, the Dairy Interest parties agree with the balance of the listed issues of fact and opinion, and legal issues to be resolved at Appendix B of the Memorandum.

**Number of witnesses to be called and area of witness expertise - Direction [15](c)(iii) & [15](c)(iv)**

10 The Dairy Interest parties intend to call the following seven witnesses and experts:

10.1 1x Planning expert.

10.2 1x Water quality expert.

10.3 1x Farm operations expert.

10.4 1x Farm systems and sustainable dairying expert.

10.5 2x Farmer witnesses (to be confirmed).

**Expert availability for expert conferencing - Direction [15](c)(iv)**

11 For the proposed expert conferencing period of 22 November – 10 December, the Dairy Interest parties' experts are available on the following weekdays:

11.1 Planning expert - unavailable the week of the 6 - 10 December, otherwise available for all other proposed weekdays.

11.2 Water quality expert - available for expert conferencing on all proposed weekdays

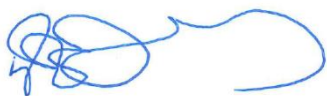
11.3 Farm operations expert – unavailable from 25-26 November and 8-9 December, otherwise available for all other proposed weekdays.

11.4 Farm systems and sustainable dairying expert – limited availability. Potentially available on 30 November and 7- 8 December, otherwise unavailable.

12 Katherine Forward (Counsel) will represent the Dairy Interest parties in person at the pre-hearing conference scheduled for 19 October 2021.

13 A copy of this memorandum has been circulated to all parties.

**Dated** 13 October 2021



---

**Katherine Forward**

Solicitor for DairyNZ Limited and on behalf of Counsel for Fonterra Co-operative Group Limited.

**APPENDIX 1**

**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 12<sup>th</sup> day of October 2021



---

Chris Fowler  
Counsel for Rayonier New Zealand Limited

**APPENDIX 2**

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

**UNDER** The Resource Management Act 1991  
(RMA)

**IN THE MATTER** Appeals under clause 14(1) of the First  
Schedule of the Act in relation to the  
Proposed Southland Water and Land Plan

**BETWEEN** **MERIDIAN ENERGY LIMITED**  
**Appellant**

**AND** **SOUTHLAND REGIONAL COUNCIL**  
**Respondent**

---

**MEMORANDUM OF COUNSEL FOR MERIDIAN ENERGY LTD REGARDING**

**CASE MANAGEMENT**

**13 OCTOBER 2021**

---

**Judicial Officer:** Judge Borthwick

**Solicitor acting:**

Humphrey Tapper  
In-house counsel  
287–293 Durham St North  
Christchurch Central  
Christchurch 8013  
humphrey.tapper@meridianenergy.co.nz

**Counsel acting:**

Stephen Christensen  
Project Barrister  
421 Highgate, Dunedin 9010  
P 027 448 2325  
stephen@projectbarrister.nz

**FONTERRA CO-OPERATIVE LTD**

(ENV-2018-CHC-27)

**HORTICULTURE NEW ZEALAND**

(ENV-2018-CHC-28)

**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)

**ALLIANCE GROUP LTD**

(ENV-2018-CHC-39)

**FEDERATED FARMERS OF NEW ZEALAND**

(ENV-2018-CHC-40)

**HERITAGE NEW ZEALAND POHERE TAONGA**

(ENV-2018-CHC-41)

**STONEY CREEK STATION LTD**

(ENV-2018-CHC-42)

**THE TERRACES LTD**

(ENV-2018-CHC-43)

**CAMPBELL'S BLOCK LTD**

(ENV-2018-CHC-44)

**ROBERT GRANT**

(ENV-2018-CHC-45)

**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)

**PETER CHARTRES**

(ENV-2018-CHC-48)

**RAYONIER NEW ZEALAND LTD**

(ENV-2018-CHC-49)

**ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NZ INC**

(ENV-2018-CHC-50)

**Appellants**

**AND SOUTHLAND REGIONAL COUNCIL**

**Respondent**

**MAY IT PLEASE THE COURT**

- 1 This memorandum is filed on behalf of Meridian Energy Limited (**Meridian**) in response to the Court's directions contained in a case management Minute dated 4 October 2021.

*Evidence Exchange Timetable*

- 2 Meridian proposes some amendments to the timetable prepared by counsel for the Council as follows:

<b>Step</b>	<b>Date (assuming 14 March hearing)</b>
Topic B Overview Evidence from Council outlining key findings from Topic A Interim Decisions, updates to superior planning documents (e.g., NPSFM 2020), outline of other new regulations (e.g., NES Freshwater, Stock-exclusion), outline of ES' freshwater planning process, outline of fundamental issues raised in Topic B appeals	22 October 2021
<del>Will say statements from Appellants' experts and planners. Planners to provide marked up changes to planning provisions sought, together with an explanation as to how those provisions align with Topic A decisions</del>	<del>29 October 2021</del>
<del>Will say statements from 274 Parties' experts and planners. Planners to provide marked up changes to planning provisions sought, together with an explanation as to how those provisions align with Topic A decisions</del>	<del>5 November 2021</del>
<del>Will say statements from Council's experts and planners. Planners to provide marked up changes to planning provisions sought, together with an explanation as to how those provisions align with Topic A decisions</del>	<del>11 November 2021 (Canterbury Show Day on 12 November 2021)</del>
Will say statements from all experts (where conferencing required) including marked-up changes to provisions where appropriate	12 November 2021 <sup>1</sup>
Expert witness conferencing of technical witnesses, and Planners to take place	22 November to 10 December 2021
Joint Witness Statements of technical witnesses and Planners to be filed	10 December 2021

<sup>1</sup> Rather than a sequential exchange of 'will say' statements, it is proposed that all statements be filed contemporaneously. Allowing more time for preparation of these statements gives witnesses a greater opportunity to consider the contents of the statements and will hopefully thereby improve the quality of conferencing

Evidence-in-chief for the Appellants to be filed and served	21 January 2022 19 January 2022 <sup>2</sup>
Evidence-in-chief for s274 Parties to be filed and served	28 January 2022 2 February 2022 <sup>3</sup>
Evidence-in-chief for Council to be filed and served	11 February 2022 16 February 2022
Rebuttal evidence for s274 Parties and Appellants to be filed and served	25 February 2022 2 March 2022
All parties to file a memorandum setting out changes to provisions being pursued	25 February 2022 2 March 2022
Council to file tabbed, indexed and paginated hard copies of all evidence (including exhibits) with the Court	4 March 2022 7 March 2022

*Issues to be resolved/decided*

- 3 Meridian agrees with the table at Appendix B of the Council's memorandum of 24 September 2021.
- 4 Appendix A of the Council's memorandum sets out a large number of issues that have been resolved by mediation or otherwise withdrawn. As a consequence there are a number of agreed changes to be made to the Plan. In accordance with the Court's Minute of 4 October 2021 documentation seeking appropriate orders by consent in relation to these changes is to be filed by 19 November 2021. The timetable suggested above (and I assume the timetable proposed by the Council) assumes that the changes agreed in mediation will be accepted by the Court. Witnesses

<sup>2</sup> The proposed date for appellants to file evidence means witnesses can write evidence in accordance with their personal circumstances – either in December 2021, after the completion of conferencing, or in January 2022.

<sup>3</sup> The suggested dates for this and subsequent steps are consequential amendments to provide reasonable spacing between steps while still keeping to a 14 March 2022 date for commencement of the hearing

need to be instructed on the basis that the agreed changes are settled for the purposes of preparing will say statements and attending mediation. If that is not the case (i.e., if the parties cannot proceed on the basis that the agreed changes are settled) an alternative process will need to be developed.

*Witnesses to be called by Meridian*

- 5 Meridian intends to call the following witnesses:
- a. Company witnesses (non-expert) x 2
  - b. Planning expert x 1
  - c. Water quality/ecology expert x 1
  - d. Hydrologist x 1
  - e. Electricity sector consultant (the role and importance of the Manapōuri Power Scheme) x 1
  - f. Climate change expert x 1

*Expert witness availability*

- 6 In the period 22 November – 10 December Meridian's experts are available for conferencing on all week days as follows:
- a. Planning expert – all days
  - b. Water quality/ecology expert – all days except 22 November
  - c. Hydrologist - all days up to and including 3 December
  - d. Electricity sector consultant – all days
  - e. Climate change expert – all days



Stephen Christensen  
**Counsel for Meridian Energy Limited**  
13 October 2021



