

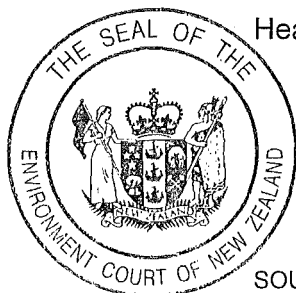
BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2020] NZEnvC 94

IN THE MATTER of the Resource Management Act 1991
AND of appeals under clause 14 of the First
Schedule of the Act
BETWEEN HORTICULTURE NEW ZEALAND LTD
(ENV-2018-CHC-028)
DIRECTOR-GENERAL OF CONSERVATION
(ENV-2018-CHC-36)
SOUTHLAND FISH AND GAME COUNCIL
(ENV-2018-CHC-37)
MERIDIAN ENERGY LIMITED
(ENV-2018-CHC-38)
FEDERATED FARMERS OF NEW ZEALAND
(ENV-2018-CHC-40)
WAIHOPAI RŪNAKA, HOKONUI RŪNAKA,
TE RŪNANGA o AWARUA, TE RŪNANGA o
ORAKA APARIMA and TE RŪNANGA o NGĀI
TAHU
(ENV-2018-CHC-47)
ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND
INCORPORATED
(ENV-2018-CHC-50)
Appellants
AND SOUTHLAND REGIONAL COUNCIL
Respondent

Court: Environment Judge J E Borthwick
Environment Commissioner R M Bartlett
Environment Commissioner S G Paine

Hearing: at Christchurch on 15, 16 and 17 June 2020



Appearances: P A C Maw and A M Langford for Southland Regional Council
 M R G Christensen for Horticulture New Zealand, Ballance Agri-Nutrients Limited, Federated Farmers of New Zealand and Ravensdown Limited
 P D Williams and D van Mierlo for Director-General of Conservation
 S W Christensen and H J Tapper for Meridian Energy Limited
 C Lenihan for Federated Farmers of New Zealand
 J G A Winchester and S K Lennon for Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima and Te Rūnanga o Ngāi Tahu (collectively Ngā Rūnanga)

Date of Decision: 29 June 2020
 Date of Issue: 29 June 2020

**DECISION OF THE ENVIRONMENT COURT
 ON NOTICE OF MOTION**

- A: I decline to rule on the notice of motion. The notice of motion is dismissed.
- B: While not encouraged, costs are reserved. Any application for costs is to be filed by **Friday 10 July 2020** with replies by **Friday 17 July 2020**. In the event no application for costs is made, the court's order will be (without further decision of the court issuing) that there is no order as to costs.

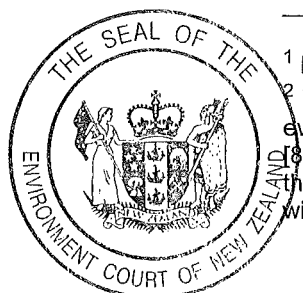
REASONS

Introduction

[1] Ballance Agri-Nutrients Limited, Federated Farmers of New Zealand (Southland), Horticulture New Zealand, and Ravensdown Limited filed a notice of motion¹ seeking a ruling that the evidence of Ngā Rūnanga's planning witness, Ms T Davidson, is beyond the scope of the Ngā Rūnanga appeal and is therefore to be excluded from the court's consideration.²

¹ Notice of motion dated 22 May 2020.

² We note that some parties were unclear whether the notice of motion concerned only Ms Davidson's evidence on Objectives 1 and 3 or all the pre-circulated evidence filed on these objectives (see paragraphs 8(a)] and [10] of joint memorandum of counsel seeking a ruling on scope, 22 May 2020). We presume it is the former, as the ruling would be to exclude the applicants' own evidence. Further, the other planning witnesses were responding to evidence filled by Ngā Rūnanga and the Regional Council.



[2] The application is made pursuant to s 291 of the Resource Management Act 1991 on the grounds that evidence on Objectives 1 and 3 (and consequential amendments proposed to other objectives) goes beyond the scope of any appeal.

[3] Six parties gave notice of their intention to be heard.³

Background

[4] The application arises in the context of the court's second hearing on appeals filed in relation to the proposed Southland Water and Land Plan. In its 2019 Interim Decision⁴ the court sought the parties' assistance as to the interpretation and implementation of Te Mana o te Wai and ki uta ki tai in the proposed Southland Water and Land Plan.

[5] At the subsequent pre-hearing conference convened following the release of the Interim Decision the court said:⁵

Before the court can make its final decision on those provisions, it must reach a settled view on the interpretation and implementation of the plan's provisions. We have set out our interpretation of the National Policy Statement for Freshwater Management, and in particular Te Mana o te Wai and ki uta ki tai, in the pSWLP. If our interpretation is not available and/or the scheme of the plan does not implement the National Policy Statement-Freshwater Management in the manner we suggest, this has implications for the drafting of the higher order provisions which are in many respects weakly drawn.

[6] The court then directed parties with an interest in the matter to file evidence.

[7] Ballance Agri-Nutrients Limited, Federated Farmers of New Zealand (Southland), Horticulture New Zealand, and Ravensdown Limited objected to the contents of Ms Davidson's pre-circulated brief of evidence filed on behalf of Ngā Rūnanga.

[8] Prior to the hearing resuming on 15 June 2020, the court indicated Ms Davidson's evidence would be provisionally admitted pending the determination of scope.⁶ While it



³ Meridian Energy Ltd, Ngā Rūnanga, Southland Regional Council, Director-General of Conservation, Royal Forest & Bird Protection Society of New Zealand Inc and Southland Fish & Game Council.

⁴ *Aratiatia Livestock Limited & Ors v Southland Regional Council* [2019] NZEnvC 208 (Interim Decision).

⁵ Record of Pre-Hearing Conference held 10 February 2020 at [4].

⁶ Record of Pre-Hearing Conference held 5 June 2020.

was anticipated Ms Davidson would give this evidence, by the time the witness was called the case had moved on considerably with the parties' planning witnesses agreeing to the inclusion of an interpretation statement in the proposed Southland Water and Land Plan in response to the issue raised by the court. Thus, as it transpired, when sworn in Ms Davidson was not asked to confirm her pre-circulated brief of evidence.

[9] We understand the applicants ask the court rule in favour of the notice of motion on the basis that the agreed interpretative statement is included in the proposed plan, which they say is within scope of the court's jurisdiction to approve.⁷ I will not make a ruling as Ms Davidson did not give the evidence that is the subject matter of the application and nor did any other planning witness who indicated their support (in whole or in part) for the evidence Ms Davidson was anticipated to give. It follows there is no live issue to be determined.

Outcome

[10] I decline to make a ruling on the notice of motion on the basis there is no live issue. Accordingly, the notice of motion is dismissed.

For the court:

J E B

J E Borthwick
Environment Judge

The seal of the Environment Court of New Zealand is circular. It features the text "THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND" around the perimeter. In the center is the coat of arms of New Zealand, which includes a crown, two figures holding a shield, and a banner below with the motto "EUREKA".

⁷ Transcript (M Christensen) at 242.