

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

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 LIMITED
(ENV-2018-CHC-26)
... continued on the last page
Appellants
AND SOUTHLAND REGIONAL COUNCIL
Respondent

**MINUTE TO THE PARTIES
(9 July 2019)**

[1] This Minute is released for the purpose of case management.

Site visit

[2] The bench will undertake a site visit arriving at Invercargill on **Saturday 27 July 2019**.

[3] The court is planning on commencing the site visit at 2:00 pm at Riverton, travelling along the Waiau River (State Highway 99) and staying overnight at Te Anau. On Sunday 28 July the court will travel from Te Anau to the Waituna Lagoon and Oreti (New River) Estuary along State Highway 94.

[4] The parties are to confer and advise the court on any view or site they may wish the court to take in.



Documentation for the resumed hearing

[5] Unless requested, the court does not intend taking to the resumed hearing all of the documents filed. I will direct the parties identify the documents and/or bundles that they wish the court to have on hand for closing submissions.

Conduct of hearing

[6] The parties are to confer and agree on an order for closing submissions. I will direct the Regional Council file a memorandum prior to the hearing setting out the order. Counsel may be excused after giving closing submissions on behalf of their client.

Degradation of waterbodies

[7] For many parties the opinions expressed by the experts in their joint witness statements on the topic of degradation of Southland's waterbodies, appeared revelatory.

[8] Some expert witnesses recommended that the work commenced at the expert conferences continue apace and not wait on the decision of the Environment Court. Unless any party has an objection in principle to the inclusion of interim thresholds in the proposed Regional Plan, we propose to put into place directions enabling the work to continue.

[9] Further to this, in the expert conferences the witnesses expressed the view that from a water quality and ecological perspective the NPS-FM definition of 'over-allocation' was unable to be applied until the Freshwater Unit Management process has been completed.¹ In their view – which was shared by many parties in this hearing – water quality and ecology must be considered adopting an holistic, whole of catchment approach.² Indeed, is this not directed by objective 1?

[10] Given this, it is the court's tentative view that the wording for objective 6 proposed by Mr McCallum-Clark in his supplementary statement has merit.³ He recommended:

¹ Rivers and Wetlands JWS at [21].

² Rivers and Wetlands JWS at [25].

³ Dated 20 June 2019.



Prior to the establishment of freshwater objectives, limits and targets under Freshwater Management Unit processes, water quality in rivers, lakes, estuaries and coastal lagoons is:

- (a) maintained where the water quality is not degraded; and
- (b) improved where the water quality is degraded by human activities.

[11] With this in mind, we found helpful the description of the current state of water quality by reference to its numeric and attribute states. In the JWS the witnesses referred to these descriptors as 'interim thresholds'. We are not sure whether the label 'interim threshold' is appropriate – as for some parties it may be redolent of a FMU process whereas this is not what is intended. In this Minute we have referred to 'interim thresholds' as 'indicators of health', these may be both cultural and ecological indicators of health.

[12] That said, I will direct the parties confer and respond on the completion of the work started on the topic of the cultural and ecological indicators of waterbody health. Attached and labelled "A" is a draft outline of the work which may support that. The parties will confer with experts involved in the two conferences to date and respond.

Directions

[13] I direct by Friday **19 July 2019** the Regional Council, having conferred with the other parties, will file a memorandum:

- (a) proposing an itinerary for the court's site visit;
- (b) identifying documents that the parties wish the court to have to hand during the hearing;
- (c) proposing the order of closing submissions; and
- (d) responding to the draft outline of work in support of the cultural and ecological indicators of health and on the reconvening of a facilitated expert conference.


J E Borthwick
Environment Judge

Issued: 9 July 2019



Attachment "A"
Cultural and Ecological Indicators of Health

Pre-conference Agenda

- To identify the data, facts and information ("information") that could be used to develop indicators of the ecological health of the waterbodies. This will include any new data obtained by the Regional Council and may include work being undertaken by Professor Death;⁴
- The distribution of this information;
- The process to audit the sufficiency of information held relative to its proposed use, including any obvious knowledge gaps and the means by which any knowledge gaps are to be filled.

Conference Agenda

Responding to objective 6, the purpose of the facilitated conference is to agree on a proposed plan of work to develop cultural and ecological indicators of health for rivers, wetlands, estuaries and lakes.

Based on the evidence before the court the draft agenda may include:

- Identification of ecological indicators of health⁵ and any method(s) to verify the suitability of those indicators for determining whether water quality is maintained or improved (where degraded);
- Identification of any waterbodies (or the reaches within any waterbody) considered presently degraded;
- Where information is insufficient to establish whether the waterbody is degraded, then to identify any reliable repeatable method to determine the state of the waterbody;
- Related to the above, preliminary advice on the spatial relationship between the ecological indicators of health and the management of land and water

⁴ Rivers and Wetlands JWS at [49].

⁵ Ecological indicators of health were labelled 'interim thresholds' in the Rivers and Wetlands JWS at [41]-[49].



and associated ecosystems. See objective 1 and paragraph [25] of the Rivers and Wetlands Joint Witness Statement;

- Advice whether (and how) the quality of groundwater may be addressed in any indicators of health either for the ground waterbody or a connected surface waterbody;
- For the Regional Council and its expert witnesses to identify the cause of continuing reduction in the areal extent of wetlands;
- Identification of cultural indicators of health and their relationship with ecological indicators of health;
- A programme of work and time-frame to develop the cultural and ecological indicators of health including the agent(s) best placed to produce information including any fieldwork in support.

Step 3: Subject to feedback from the parties, for the experts to undertake the agreed programme of work, with direct communication between experts as appropriate. After six weeks, the facilitator will convene a telephone conference for the purpose of identifying any issues of concern that may need to be communicated to the Court for direction.

Step 4: Reconvene expert conference to complete recommendations for appropriate cultural and ecological indicators of health for consideration at a later hearing.



List of appellants

ENV-2018-CHC-27	Fonterra Co-Operative Group Ltd
ENV-2018-CHC-28	Horticulture New Zealand
ENV-2018-CHC-29	Aratiatia Livestock Limited
ENV-2018-CHC-30	Wilkins Farming Co
ENV-2018-CHC-31	Gore District Council, Southland District Council and Invercargill City Council
ENV-2018-CHC-32	DairyNZ Limited
ENV-2018-CHC-33	H W Richardson Group Limited
ENV-2018-CHC-34 & 35	Beef + Lamb New Zealand
ENV-2018-CHC-36	Director-General of Conservation
ENV-2018-CHC-37	Southland Fish & Game Council
ENV-2018-CHC-38	Meridian Energy Limited
ENV-2018-CHC-39	Alliance Group Limited
ENV-2018-CHC-40	Federated Farmers of New Zealand
ENV-2018-CHC-41	Heritage New Zealand Pouhere Taonga
ENV-2018-CHC-42	Stoney Creek Station Limited
ENV-2018-CHC-43	The Terraces Limited
ENV-2018-CHC-44	Campbell's Block Limited
ENV-2018-CHC-45	Robert Grant
ENV-2018-CHC-46	Southwood Export Limited, Southland Plantation Forest Company of NZ, Southwood Export Limited
ENV-2018-CHC-47	Te Rūnanga o Ngāi Tahu, Hokonui Rūnaka, Waihopai Rūnaka, Te Rūnanga o Awarua & Te Rūnanga o Oraka Aparima
ENV-2018-CHC-48	Peter Chartres
ENV-2018-CHC-49	Rayonier New Zealand Limited
ENV-2018-CHC-50	Royal Forest and Bird Protection Society of NZ Inc

