

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

IN THE MATTER of the Resource Management Act 1991
AND of appeals pursuant to clause 14 of the First
 Schedule of the Act
BETWEEN ARATIATIA LIVESTOCK LIMITED
 (ENV-2018-CHC-029)
 ... (continued on last page)
 Appellants
AND SOUTHLAND REGIONAL COUNCIL
 Respondent

**MINUTE OF THE ENVIRONMENT COURT
(18 May 2020)**

Introduction

[1] This Minute is released for the purpose of case management, setting down for hearing the matters addressed in the Record of Pre-Hearing Conference held 10 February 2020. The resolution of these proceedings is time critical and have been prioritised by the Environment Court.

Resumed hearing

[2] In the Interim Decision¹ we 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. Then later, at the Pre-Hearing Conference, we reflected that if our interpretation is not available and/or the scheme of the plan does not implement the National Policy Statement-Freshwater Management (NPS-FM) in the manner we suggest, this has implications for the drafting of the higher order provisions, which are in many respects weakly drawn.²

¹ *Aratiatia Livestock Limited & Ors v Southland Regional Council* [2019] NZEnvC 208.
² Record of Pre-Hearing Conference held 10 February 2020.



[3] Ballance Agri-Nutrients Ltd and others raise a concern with the evidence filed on behalf of Ngā Rūnanga.³ They are concerned that Ms Davidson, giving planning evidence for Ngā Rūnanga, goes further than directed when re-evaluating all the provisions considered in the Topic A hearing. They say the evidence should have been confined to Objectives 1 and 3. That said, other parties do respond to Ms Davidson and address provisions other than Objectives 1 and 3.

[4] Subject to her counsel's clarification whether Ngā Rūnanga are inviting the court to make the changes she recommends or – as we interpret – are illustrative of a submission that the proposed plan does not yet give effect to the NPS-FM, Ms Davidson's evidence will be provisionally admitted. The later approach would be consistent with the direction given at paragraph [347] of the Interim Decision that:

Specifically, the parties are to address the interpretation and implementation of Te Mana o te Wai and ki uta ki tai in this plan and any other matter they consider relevant to the scheme of the plan in general. [our emphasis]

And is consistent also with the preamble in Annexure 1, Interim Decision, where we said:

In this attachment the court sets out its findings on the individual provisions. If a provision has been “confirmed” or “amended”, subject to submissions on the scheme architecture, the decision is final.

And with the directions given at the Pre-Hearing conference at paragraph [3]:

- (a) Southland Regional Council and Ngāi Rūnanga are to file and serve evidence by **Friday 17 April 2020**. Should it be necessary to support their interpretation of the plan, the parties are to propose amending the wording of the plan;
- (b) all other parties are to file and serve evidence in response by **Friday 8 May 2020**. Again, if any party proposes amendments to the wording of the plan, such wording should be set out;

[5] I will direct counsel for Ngā Rūnanga to confirm the purpose of leading evidence on provisions in addition to Objectives 1 and 3.



³ Joint memorandum of counsel dated 8 May 2020.

[6] I record that while all parties were afforded an opportunity to file evidence in response; some elected to file a memorandum instead. If what counsel for Ngā Rūnanga says gives them pause for thought, they may seek directions to file further evidence but in doing so they are to liaise with the other parties and preferably agree on amendments to the timetable directions. Any application is to be filed by Friday 22 May 2020.

Southland Fish and Game Council and Royal Forest and Bird Protection Society of New Zealand Inc

[7] Counsel for the above parties are unavailable to appear (being engaged in the High Court fixture). They seek leave to be excused on the basis that counsel for the Director-General of Conservation is to lead evidence of Mr Farrell. They propose submissions be filed in advance on Sunday 14 June 2020. I will grant leave to be excused and direct submissions be filed no later than 9.00 am Sunday 14 June 2020.

Christchurch venue

[8] Having earlier conducted a site visit, it is our strong preference during Level 2 of the COVID-19 lockdown to minimise travel within New Zealand.

[9] The court is exploring whether livestreaming of the proceedings to the public can be made available. All witnesses and counsel who are not present in court will be required to attend via AVL.

Hearing

[10] The hearing into the Topic A proceedings will resume at 10.00 am Monday 15 June 2020. The hearing will be held in Court 1, Christchurch Justice Precinct, 20 Lichfield Street, Christchurch. The court will comprise myself, Environment Commissioners Glenice Paine and Dr Ruth Bartlett.

[11] Parties may attend in person or via audio visual link (AVL). Parties are to advise my Hearing Manager, Cathy Harlow, by 9.00 am Friday 5 June 2020 whether they will attend in person or via AVL.

[12] While the court estimates two days hearing is sufficient time, we have allowed three days. Thus, the hearing dates are 15-17 June (inclusive). The Regional Council



has been directed to report to the court on 29 May on several matters, including the requirement of witnesses for cross-examination. I will extend the direction and ask that the Regional Council also report on the estimated hearing time.

[13] To ensure that the proposed AVL link works satisfactorily, a test will be required in advance, under the supervision of my Hearing Manager, Ms Harlow. Ms Harlow will liaise with you over a convenient time for link testing.

[14] The COVID-19 situation in New Zealand remains dynamic and I will, therefore, reserve leave for parties to seek amended (or other) directions.

Directions

[15] I direct:

- (a) by **Wednesday 20 May 2020** counsel for Ngā Rūnanga is to state the purpose of leading planning evidence on provisions other than Objectives 1 and 3;
- (b) by **Friday 22 May 2020** parties seeking leave to file further evidence in response to Ms Davidson are to propose directions. It is imperative they confer with all parties before seeking directions from the court;
- (c) by **Friday 29 May 2020** the Regional Council, having conferred with the other parties is to estimate the hearing length;
- (d) by **9.00 am Friday 5 June 2020**, all parties are to advise my Hearing Manager, Cathy Harlow, whether they will be attending in person or via AVL;
- (e) submissions for Southland Fish and Game Council and Royal Forest and Bird Protection Society of New Zealand Inc will be filed in advance by **9.00 am Sunday 14 June 2020**. Leave to be excused from the hearing is granted to counsel for Southland Fish and Game Council and Royal Forest and Bird Protection Society of New Zealand Inc; and
- (f) the hearing will be set down for three days commencing **Monday 15 June 2020**. A hearing notice will issue in due course.



[16] Leave is reserved for the parties to seek amended (or other) directions.




J E Borthwick
Environment Judge

Issued: 18 May 2020

List of appellants

ENV-2018-CHC-26	Transpower New Zealand Limited
ENV-2018-CHC-30	Wilkins Farming Co
ENV-2018-CHC-36	Director-General of Conservation
ENV-2018-CHC-37	Southland Fish and 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-47	Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima and Te Rūnanga o Ngāi Tahu
ENV-2018-CHC-50	Royal Forest and Bird Protection Society of New Zealand Incorporated

