

**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 TRANSPOWER NEW ZEALAND LIMITED  
(ENV-2018-CHC-26)  
... (continued on Annexure A)  
Appellants  
AND SOUTHLAND REGIONAL COUNCIL  
Respondent

Before: Environment Judge J E Borthwick  
Environment Commissioner R M Bartlett

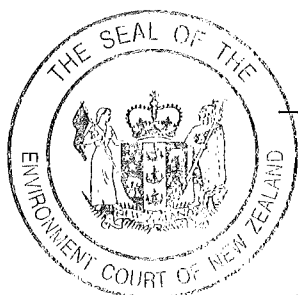
Held: at Christchurch on 5 June 2020 at 2.00 pm

Appearances: M Christensen for Ravensdown Limited, Horticulture New Zealand  
and Ballance Agri-Nutrients Limited  
D van Merlo for the Director-General of Conservation  
S Gepp for Southland Fish and Game Council and Royal Forest and  
Bird Protection Society of New Zealand Inc  
H Tapper for Meridian Energy Limited  
C Lenihan for Federated Farmers of New Zealand Inc  
C Owen for Heritage New Zealand Pouhere Taonga  
J G A Winchester and S Lennon for Waihopai Rūnaka, Hokonui  
Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima  
and Te Rūnanga o Ngāi Tahu  
M R Garbett for Southland District Council, Invercargill City Council  
and Gore District Council  
P A C Maw and A M Langford for the Southland Regional Council

---

**RECORD OF PRE-HEARING CONFERENCE  
PROPOSED SOUTHLAND WATER AND LAND PLAN  
(TOPIC A)**

---



## Introduction

[1] A pre-hearing conference was held to discuss case management in relation to the hearing set down for 15-17 June 2020. The purpose of the pre-hearing conference was to decide:

- (a) whether the notice of motion filed by the applicants is to be set down and heard at that hearing;
- (b) if set down, then the timing and sequencing of submissions and evidence.

[2] As all parties agree that the notice of motion should be heard together with the matters set down at the pre-hearing conference held 10 February 2020 and secondly, that all evidence is provisionally admitted, I will make those directions.

## Order of proceedings

[3] In the Minute dated 27 May 2020, the court sought the assistance of the parties on two matters. We asked:

- (a) pursuant to s 67(3) of the Resource Management Act 1991, to what extent does the proposed Southland Water and Land Plan give effect to the National Policy Statement for Freshwater Management; and
- (b) relative to the extent identified, if the court determines that the proposed Southland Water and Land Plan does not give effect to the National Policy Statement, what are the powers of the court pursuant to s 290?

[4] As I noted in the conference, the parties are to address whether the fact that the pSWLP is a plan review is relevant to the interpretational issues posed by the court.

[5] We understand the applicants to say, if the pSWLP does not give effect to the NPS-FM there is no scope under s 290 for the court to amend the plan. The court may have powers under s 293 of the Act to direct the Regional Council to change the plan to address matters identified by the court, but that the court should not exercise the same.

[6] Having traversed the issues at some length, the court resolved to hear from the witnesses and then from counsel. Until the court has heard the evidence, including the



witnesses' response to cross-examination and any questions from the court, the court does not know whether any issue as to scope arises.

[7] Until then we will wait to see what the parties say as to whether the plan, when properly interpreted, can be said to give rise to any scope issue *per se*. In this regard are amendments to clarify and make clear an intention to give effect to the pSWLP necessarily 'substantive'?

### **Other matters**

[8] Several parties experienced difficulties in participating via AVL. I am told by the Registry, that the difficulties were not with a link being established and sustained. Rather, the problems are at counsels' end. If the country has moved into COVID Level 1 of the pandemic response, it would be strongly desirable for all counsel to be present in the courtroom.

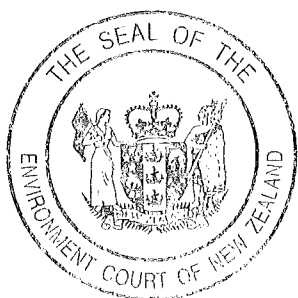
[9] For those unable to attend, the link and all supporting technology (devices, headphones, wifi) must be satisfactorily trialled before the hearing commences. To that end, my Hearing Manager, Cathy Harlow, will shortly be in contact with each counsel who has indicated their preference is AVL.

[10] Finally, attached to this Minute and labelled "Annexure B" are parties whose leave to attend the pre-hearing conference had been excused, and attached labelled "Annexure C" are parties who did not enter an appearance.

### **Directions**

[11] Accordingly, I direct:

- (a) the notice of motion will heard together with the matters set down at the pre-hearing conference held 10 February 2020;
- (b) all supplementary evidence filed with the court will be provisionally admitted;
- (c) parties are to provide a succinct opening statement setting out their position with regard to interpretation. Southland Regional Council will make the first statement;



- (d) the witnesses will then be called, with Mr McCallum-Clark giving evidence last. Counsel will advise the court of the order witnesses at the commencement of the hearing;
- (e) after the evidence is concluded, the court will hear submissions on the issues set out in the Record of Pre-Hearing Conference held 10 February 2020. If necessary, parties can then make separate submissions on scope. The court will hear Southland Regional Council last.

[12] Further, I direct that the direction given at paragraph [15](b) of the courts' Minute dated 18 May 2020 is amended as follows:

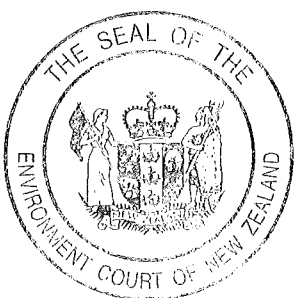
- (a) full submissions for Southland Fish and Game Council and Royal Forest and Bird Protection Society of New Zealand Inc will be filed once examination of all witnesses has concluded. Otherwise, these parties will file a brief synopsis of their submission on the interpretation/implementation of the NPS-FM and Treaty principles on **Sunday 14 May 2020**. The submission on scope (if any) may be filed after evidence concludes;
- (b) all parties participating by AVL are to test the link prior to the hearing commencing.

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

*ae3*  
  
**J E Borthwick**  
**Environment Judge**  
Issued: June 2020

**Annexure A : List of appellants**

ENV-2018-CHC-26	Transpower New Zealand Limited
ENV-2018-CHC-27	Fonterra Co-operative Group Limited
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
ENV-2018-CHC-32	DairyNZ Limited
ENV-2018-CHC-33	H W Richardson Group Limited
ENV-2018-CHC-34	Beef + Lamb New Zealand
ENV-2018-CHC-35	Beef + Lam New Zealand
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-42	Stoney Creek Station Limited
ENV-2018-CHC-43	The Terraces Limited
ENV-2018-CHC-44	Campbell's Block Limited
ENV-2018-CHC-45	Grant
ENV-2018-CHC-46	Southwood Export Limited and Others
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-48	Chartres
ENV-2018-CHC-49	Rayonier New Zealand Limited
ENV-2018-CHC-50	Royal Forest and Bird Protection Society of New Zealand Incorporated



### **Annexure B : Other appearances**

The following parties declared that they had no interest in the matters to be discussed and would abide by the directions of the court and, therefore, did not attend the pre-hearing conference:

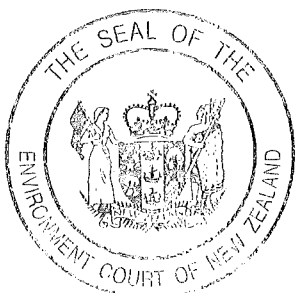
- Rayonier New Zealand Limited;
- Transpower New Zealand Limited;
- Invercargill City Council (Water Manager);
- Invercargill Airport Limited;
- DairyNZ Limited;
- Fonterra Co-operative Group Limited.

The following parties' counsel advised they had prior commitments and would, therefore, be unable to attend the pre-hearing conference but would abide by the directions of the court:

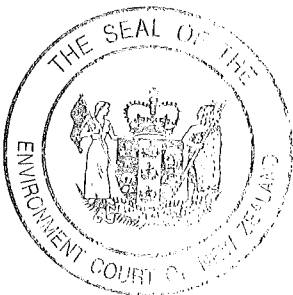
- Aratiatia Livestock Limited;
- Waiau Rivercare Group.

The following parties have previously indicated to the court that they have no interest in the interpretation and implementation of the plan and will abide by the directions and decisions of the court and did not attend the pre-hearing conference:

- BP Oil New Zealand Limited;
- Mobil Oil New Zealand Limited;
- Z Energy Limited;
- Dairy Holdings Limited;
- Wilkins Farming Co Limited;
- Southwood Export Limited;
- Kodansha Treefarm NZ Limited;
- Southland Plantation Forest Co of NZ Limited;
- Peter Chartres;



Finally, while an appearance for Heritage New Zealand Pouhere Taonga was entered at the pre-hearing conference, counsel confirmed her client does not wish to be heard.



**Annexure C : Parties not entering an appearance at the pre-hearing conference**

- Owen Buckingham;
- Campbell's Block Limited;
- Grant and Rachel Cockburn;
- D R & J A E Pullar Limited;
- Hamish English;
- Fairlight Station Limited;
- Grant Robert;
- Gunton Farms Limited;
- H W Richardson Group Limited;
- Robert Kempthorne;
- Mount Linton Station;
- Stoney Creek Station Limited;
- The Terraces Limited;
- Waiau River Liaison Committee; and
- Murray and Tania Willans.

