

**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              ARATIATIA LIVESTOCK LIMITED  
                                 (ENV-2018-CHC-29)  
                                 ... (continued on last page)  
                                 Appellants  
AND                      SOUTHLAND REGIONAL COUNCIL  
                                 Respondent

---

**MINUTE OF THE ENVIRONMENT COURT  
(29 June 2020)**

---

**Introduction**

[1]      Following the release of the first and second Interim Decisions, the court is able to refer the planning witnesses to expert conferencing to agree (hopefully) the wording of the higher order provisions.

[2]      Before this occurs, I will direct the parties to confer and respond on some limited topics. Secondly, I will set out provisions in respect of which the court seeks further evidence and then will refer the planning witnesses to expert conferencing about the same.

**General directions on higher order provisions**

[3]      In this section, I will address each of the higher order provisions of the proposed Southland Water and Land Plan in turn.



**Objective 6 (proposed to be amended)**

Water quality in each freshwater body will be:

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

[4] Further to paragraphs [125]-[128] of the first Interim Decision, the planning witnesses will be directed to confer and confirm the waterbodies (including freshwater and estuarine) to be referenced in Objective 6.

**Objectives 9 and 9A (proposed to be amended)**

The quantity of water in surface waterbodies is managed so that:

- (a) ~~the~~ aquatic ecosystem health, life-supporting capacity,<sup>1</sup> the values of outstanding natural features and landscapes, the natural character and historic heritage values of waterbodies and their margins are safeguarded;
- (b) there is integration with the freshwater quality objectives and values<sup>2</sup> (including the safeguarding of human health for recreation); and
- (c) provided that (a) and (b) are met, surface water is sustainably managed ~~—~~in accordance with Appendix K to support the reasonable needs of people and communities to provide for their economic, social and cultural wellbeing.<sup>3</sup>

[5] Further to paragraphs [139]-[140] of the first Interim Decision, what does 'life-supporting capacity' mean and secondly, how does the inclusion of this phrase assist the Regional Council to carry out its functions if the pSWLP does not enlarge on the same?

[6] Do the parties support the inclusion of sub-clause (b) above, including its retention/deletion of "values"?<sup>4</sup>



<sup>1</sup> Seeking further submissions on meaning of life-supporting capacity.

<sup>2</sup> Submissions are sought on sub-clause (b) introduced by the primary producers. "Values" does not appear to imply "freshwater quality objectives".

<sup>3</sup> Reordered in line with Objective 2.

<sup>4</sup> See footnote 175 of the first Interim Decision.

**Objective 9B (proposed to be amended)**

The importance of Southland's regionally and nationally significant infrastructure is recognised and its sustainable and effective development, operation, maintenance and upgrading enabled.

[7] At paragraphs [175]-[180] of the first Interim Decision, we said that by not addressing infrastructure's integration with land use activities and the environment, the objective did not give full effect to RPS Objective INF.1. At paragraph [180] of the first Interim Decision, we also said the meaning of 'sustainable and effective' concerned both the infrastructure *per se* and secondly, the manner of its development relative to the environment.

[8] With reference to the Interpretation Statement,<sup>5</sup> do the planning witnesses agree Objective 9B (as proposed to be amended by the court) gives effect to the RPS? Secondly, do the planning witnesses also agree 'sustainable and effective' is concerned with both the infrastructure and secondly, the manner of its development relative to the environment? If they do, is the court's proposed wording clear or do they recommend further change?

[9] Further to paragraphs [162] and [183(i)], we will direct the planners to confer and identify the issues that the plan seeks to address in relation to infrastructure and secondly, to say whether – in their opinion – these issues should be identified in the plan pursuant to s 67(2)(a) RMA.

[10] Further to paragraph [183(iii)], do the planning witnesses agree the plan may be amended by including the definition of "regionally significant infrastructure" and deleting the definition of "critical infrastructure"?

**Objective 10 (decided in part and amended)**

The national importance of the existing Manapōuri hydro-electric generation scheme in the Waiau catchment is provided for and recognised in any resulting flow and level regime.



Second Interim Decision.

[11] Beyond the above amendments made by the court in the first Interim Decision, Meridian no longer pursues its relief in relation to Objective 10.<sup>6</sup> That being so, Meridian is to firstly, confirm whether its appeal in relation to Objective 10 is otherwise dismissed and secondly, to identify, as directed at paragraph [225] of the first Interim Decision, the activities to which Objective 9B applies.

[12] At the recent hearing concerning the interpretation and implementation of the pSWLP, Mr A Feierabend gave evidence that Objective 9B provides a suitable basis for any future enhancement of the Manapōuri Power Scheme.<sup>7</sup> Neither the court nor the parties considered Objective 9B with this purpose in mind. Even so, does any issue arise?

**Objective 13 (proposed to be amended)**

Provided that

- (a) the quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land; and
- (b) the health of people and communities is safeguarded from the adverse effects of discharges of contaminants to land and water; and
- (c) ecosystems (including indigenous biological diversity and integrity of habitats), are safeguarded:

then land and soils are used and developed to enable the economic, social and cultural wellbeing of the region.

[13] Respecting the court's findings, the planners will be directed to conference on the structure and wording of the objective as proposed to be amended by the court.

**Objective 14 (DV)**

The range and diversity of indigenous ecosystem types and habitats within rivers, estuaries, wetlands and lakes, including their margins, and their life-supporting capacity are maintained or enhanced.



<sup>6</sup> Meridian, submissions: Topic A Plan Interpretation and Scope at [23].

<sup>7</sup> A Feierabend, supplementary evidence dated 8 May 2020 at [55]-[59].

[14] Further to paragraph [259] of the first Interim Decision, the planners will be directed to conference on the retention of 'life-supporting capacity' in this objective.

**Objective 17 (proposed to be amended)**

Preserve the natural character values of wetlands, rivers and lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats that are of significance to the region, and protect them from inappropriate use and development.

[15] Further to paragraphs [260]-[280] of the first Interim Decision, the planners will be directed to conference and respond to the issues raised in the Interim Decision. When doing so, planners are to consider the direction given in the RPS as to the subject-matter of this objective and whether the amendments proposed by the court respond appropriately to the same. If they agree with the court, that it is the natural character values that are of significance to the region, are the values of significance identified in the pSWLP and secondly, is there scope under any appeal for their inclusion?<sup>8</sup>

**Objective 18 (proposed to be amended)**

All persons will demonstrate improved land use and water management practice.

[16] While the DV wording of this objective is problematic for the reasons we have identified, we nevertheless regard this objective as being of critical importance to the outcomes for water quality under this plan.<sup>9</sup>

[17] Respecting the court's finding that the "good management practice" and "best practical option" narratives are best left for policy,<sup>10</sup> the planning witnesses will be directed to conference on the form and content of this objective.

[18] Conferencing will – in particular – address the goal or outcome to be secured by this objective. Planners are to bear in mind the court's observations in the first Interim Decision that paraphrasing (inaccurately) other objectives or listing outcomes is unhelpful and may prove quite cumbersome for plan users.



<sup>8</sup> We ask about scope, bearing in mind that it was Mr Dunning who raised the issue in his evidence as to the direction of the RPS.

<sup>9</sup> First Interim Decision at [281].

<sup>10</sup> At [285].

### Policy 3

To manage activities that adversely affect taonga species, identified in Appendix M, and their related habitats.

[19] Further to paragraph [326] of the first Interim Decision, the planners are to comment on the wording of Policy 3. Secondly, it occurs to us that the outcomes for taonga species would be more certain if they were included in the plan. If not listed in the plan, the parties are to comment whether there is scope (and any appetite) for this to occur under any appeal?

### Policies 4-12A

[20] The final determination of Policies 4-12A is subject to Objective 18. As we recorded in the first Interim Decision, our analysis proceeds on the basis that Objective 18 is directed (at least) towards improving existing land use and water management practice. Indeed, the weight of evidence strongly supports that there must be improvement in water quality if Southland is to even 'hold the line'.<sup>11</sup>

[21] The policies are complex and we will not summarise the findings of the court, save to record that a number of issues will need to be addressed as summarised in paragraphs [319]-[323] of the first Interim Decision.

[22] Instead, we will direct the parties to confer and the Regional Council to file a report on whether there is agreement in principle to either a risk-based or effects-based policy approach. Secondly, whether Policy 16, as Federated Farmers has recently suggested, is linked to this policy suite in a way that necessitates they be considered together. If that is the case, the Regional Council will also identify the linkages between Policy 16 and Policies 4-12A and the issues raised on appeal. Further directions will then issue.




---

<sup>11</sup> First Interim Decision at [108]-[111].

### Policies 45-47

[23] In relation to Policies 45-47 the parties will be directed to confer and advise whether any further change is supported in view of the likely amendments to the National Policy Statement for Freshwater Management.

### Directions

[24] I direct:

- (a) the Regional Council, having conferred with the other parties, is to file a reporting memorandum by **Monday 6 July 2020** in response to the matters raised by the court on:
  - Objectives 9 and 9A, sub-clause (b), (see paragraph [6] above);
  - Objective 10 (see paragraphs [11]-[12] above);
  - Policy 3 (see paragraph [19] scope to include taonga species in the plan);
  - Policies 4-12A and Policy 16 (see paragraph [22] above);
  - Policies 45-47 (see paragraph [23] above);
- (b) when responding, the Regional Council will indicate whether the parties seek specific directions in relation to the above provisions; and
- (c) the Registry will then liaise separately with counsel as to the conferencing of planning witnesses on the matters identified in this Minute. If the parties consider the directions incomplete or wish to clarify any matter, they are to seek further directions in the Regional Council's reporting memorandum.

  
**J E Borthwick**  
**Environment Judge**



THE SEAL OF THE  
ENVIRONMENT COURT OF NEW ZEALAND

Issued: 29 June 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

