

**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

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**MINUTE OF THE ENVIRONMENT COURT  
(13 July 2020)**

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**Introduction**

[1]      The purpose of this Minute is to put in place suitable arrangements for the conferencing of planning witnesses on the matters identified below.

[2]      The Regional Council has filed a reporting memorandum responding to the court's Minute dated 29 June 2020. I will make modified directions to those sought and abridge time because:

- (a)      the first Interim Decision was released in December 2019 and the parties have had adequate time to consider their position; and
- (b)      the court's resources are limited. Mr Ross Dunlop has been appointed as the court's Special Advisor to assist mediation/expert conferencing on both the Southland Water and Land Plan and the Dunedin proposed District Plan (amongst other appointments). The court has scheduled ADR for both plans in July and August 2020.



### **Event dates**

[3] Expert conferencing on the pSWLP has been tentatively scheduled for **Thursday 6 August 2020 to Friday 7 August 2020**. If these dates are unsuitable it is unlikely expert conferencing will be able to be scheduled before September/October 2020.

[4] Expert conferencing will be cancelled if agreement in full has been reached on the wording of the objectives and policies. If agreement is reached, the Regional Council may file a memorandum no later than Friday 31 July 2020 seeking such a direction.

### **Other matters**

#### ***Second Interim Decision***

[5] I record no party opposed the amendments to Objective 2 suggested by the court at paragraph [19] of the second Interim Decision.

#### ***Interpretation Statement and Objective 9/9A(b)***

[6] Some parties support whilst others oppose or are neutral to the inclusion of words introducing the Interpretation Statement<sup>1</sup> and the wording of Objective 9/9A sub-clause (b).<sup>2</sup>

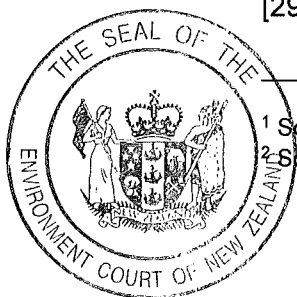
[7] Do the parties oppose the court making a decision on these two matters on the papers filed? If no opposition is received to the court deciding the matter on the papers, we will release a determination.

#### ***Objectives 9B and 10 (as those objectives may pertain to the MPS)***

[8] Without binding the other parties on appeal, Meridian has stated its position in relation to the above objectives.

#### ***Objective 18***

[9] The court finds this objective problematic for the reasons outlined at paragraph [290] of the first Interim Decision.



<sup>1</sup> Southland Regional Council memorandum dated 10 July 2020 at [10]-[15].

<sup>2</sup> Southland Regional Council memorandum dated 10 July 2020 at [16]-[26].

[10] As we had indicated in the first Interim Decision that we would call for submissions/evidence, Meridian now seeks a direction from the court as to how/when the court proposes to hear from the parties in relation to this objective.

[11] Insofar as the court is looking for guidance on the outcome that is supported by the objective, the parties will be directed to confer and endeavour to agree on the outcome to be secured. In the first Interim Decision we said the objective appeared concerned with bringing about behavioural change and, on that basis, suggested rewording the objective.

[12] When responding, the parties will respect the findings of the court in the first Interim Decision. Whether or not they can agree on the outcome, the objective will be referred to expert conferencing for the planners to consider the appropriate wording.

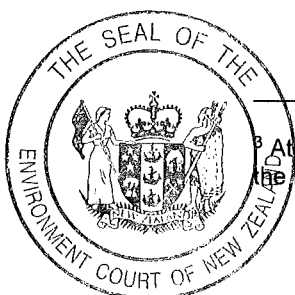
[13] Note: the s 32AA report records all policies and rules implement Objective 10. However, we recall that there was disagreement between the planners whether this was the case and made a specific direction at paragraph [320] of the first Interim Decision for the parties to clarify its scope.<sup>3</sup> It is important the parties are clear on the policies and rules that implement this objective.

### **Policy 3**

[14] The court had in mind whether there is scope to include a list of taonga species (at least) in the plan by way of a method.

[15] While the court was not contemplating any change to Objective 15 or Policy 3, Forest & Bird/Fish & Game say there may be scope under their appeals to expressly draw the link in Policy 3 between habitat of taonga species and hauora.

[16] Unless there is objection in principle by any party on the grounds of scope, the above matters will be referred to expert conferencing.



<sup>3</sup> At paragraph [320] we said "Subject to confirmation that the policies apply only to farming activities, amend the heading to Policies 4-12 to read 'Physiographic Zone Policies for Farming Activities'".

### ***Physiographic Zone Policies***

[17] The first issue is whether any party opposes the court deciding on the papers whether a risk-based or effects-based policy applies?

[18] If no opposition is received to the court deciding the matter on the papers, we will release a determination. If parties are unable to agree on the wording, the policies will be referred to expert conferencing, together with Policy 16.

### ***Policies 45-47***

[19] The court agrees with the parties that Policies 45-47 will need to be reviewed in light of the 2020 amendments to the National Policy Statement – Freshwater Management.

### ***Expert Conferencing***

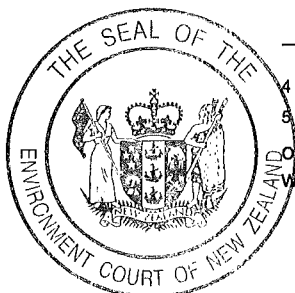
[20] The parties' planning experts are directed to attend court-facilitated conferencing for two days on the matters set out in this Minute, together with the Minute dated 29 June and the first and second Interim Decisions.<sup>4</sup>

[21] Special Advisor Ross Dunlop is available to facilitate conferencing on Thursday 6 August 2020 to Friday 7 August 2020. The Regional Council, having conferred with the parties, is to advise the Registry whether Christchurch or Invercargill is the preferred location.

### ***Expert conferencing general directions***

#### *Documents to be prepared for the purpose of the expert conferencing*

[22] If the matters are not resolved by agreement between the parties, Mr McCallum-Clark is to file a brief, within **two weeks** of the conferencing commencing, responding to the matters raised by court.<sup>5</sup> With respect to the court's findings, this is to include matters



<sup>4</sup> Second Interim Decision at paragraph [20].

<sup>5</sup> Note : while I say 'brief' a brief of evidence is not expected – this is a document prepared for the purpose of expert conferencing. While the direction overlaps with the parties' discussions, I anticipate it may assist with their dialogue.

in relation to which the court sought further evidence and proposing (if relevant) amendments to the objectives and policies.<sup>6</sup>

[23] The other planners must file a brief on the same matters, including on any matters in Mr McCallum-Clark's brief to which they wish to respond.

*Responsibilities of counsel*

[24] Counsel are to provide their respective experts with a copy of the Environment Court's Expert Witnesses Code of Conduct (Part 7, Environment Court Practice Note 2014) and Protocol for Expert Witness Conferences (Appendix 3, Environment Court Practice Note 2014) and to brief them on their responsibilities under these. Particular attention is to be drawn to those parts which require experts to express their views independent of counsel and the parties who have engaged them.

[25] Participants are to be advised by counsel that expert witness conferencing is privileged except for the signed joint witness statement prepared by the experts following the conference, which will be part of the public record.

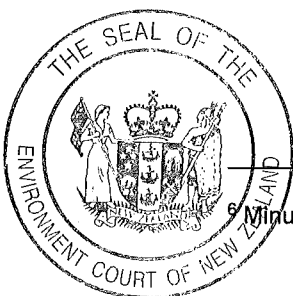
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[26] Counsel are to liaise on the provision of a suitable recorder to attend the conference and prepare the Joint Witness Statement under the direction of the experts. For small conferences (two to three experts) this may be one of the experts, but it is preferable that a suitably experienced and skilled non-participant is made available for all conferences. Recorders are to be supplied with the necessary technical equipment, including a laptop computer, projector and screen, plus a whiteboard.

**Directions**

[27] I direct:

- (a) expert conferencing for planners is to be set down for two days on **Thursday 6 August 2020 – Friday 7 August 2020**;



<sup>6</sup> Minute of the court dated 29 June 2020 at paragraphs [3]-[10] and paragraphs [12]-[19].

- (b) by **Thursday 16 July 2020** the Regional Council, having conferred with the parties, is to:
- (i) confirm with the Registry whether Christchurch or Invercargill is a suitable location for conferencing or whether another location is preferred;
  - (ii) advise whether they are seeking that the court release a further interim decision on the provisions noted at paragraphs [7] and [17] above;
- (c) by **Monday 20 July 2020** the parties are to confirm the availability of their witnesses on the proposed dates and their contact details with the Registry. A Notice of Expert Conferencing will then be issued;
- (d) Mr McCallum-Clark is to file and serve his brief by **Monday 20 July 2020**;
- (e) if agreement in full is reached between the parties, the Regional Council will file a memorandum seeking the cancellation of expert conferencing by **Friday 31 July 2020**;
- (f) if not cancelled by the court, the other planning experts are to file and serve their briefs in response by **Monday 3 August 2020**; and
- (g) if expert conferencing proceeds, a joint witness statement will be filed and served within **three working days** of the conference concluding.

[28] If the parties consider the directions incomplete or wish to clarify any matter, leave is reserved for parties to apply for further (or amended) directions.

*ae*

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

Issued: 13 July 2020

The seal of the Environment Court of New Zealand is circular. It features a central coat of arms with a crown on top, flanked by two figures. The text "THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND" is written around the perimeter of the seal.

**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

