

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I MUA I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

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)

... (and all other appellants)

Appellants

AND SOUTHLAND REGIONAL COUNCIL

Respondent

**MINUTE OF THE ENVIRONMENT COURT
(11 September 2020)**

Introduction

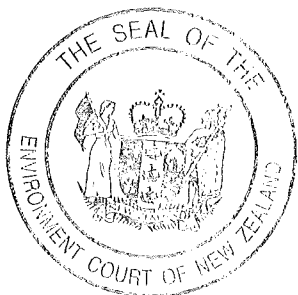
[1] This Minute is issued for the purpose of case management.

[2] Subject to any issues arising in relation to a s 32AA report (which I will direct) the court will approve:

- (a) Objective 18 (option 2);¹
- (b) the complete Topic A provisions (attached and labelled 'Annexure A').

[3] With one exception, any deviation from text the court has earlier approved, will be an accidental slip; it is not my intention in this Minute to amend the text of any provision the court has previously said that it will approve. The exception concerns the Advice Note to policy 45 and the omission of "region-wide" qualification to policies mentioned therein. While we have amended the Advice Note to refer to "region-wide" policies,

¹ Memorandum of counsel dated 9 September 2020.



parties are to say if this is incorrect. We have also standardised the use of capitalisation in pp 45-47. Otherwise, parties are to advise the court if there are errors in Annexure A.

Section 32AA Report

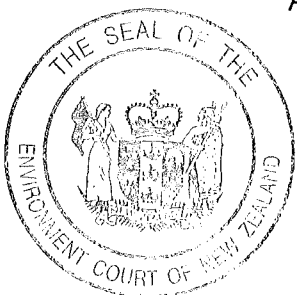
[4] As previously indicated, I will direct the Regional Council to file a report pursuant to s 32AA. Section 67(3) of the Act requires the Regional Plan give effect to national policy statements, national planning standards and the regional policy statement. By giving effect to these instruments, the pSWLP will be achieving the purpose of the Act. As the High Court decision of *Auckland Council v Cabra Developments Ltd* [2019] NZHC 1892 at [48]-[55] makes clear, it is necessary for the court to be satisfied as to s 67(3). It is not enough for the planners to have satisfied themselves and, on that basis, not address in evidence the relevant provisions of these instruments.

[5] Likewise, pursuant to s 67(4) the court must satisfy itself that the pSWLP is not inconsistent with a water conservation order or any other regional plan for the region.

[6] Being mindful of s 32AA, the court has endeavoured to do the above. However, it is entirely possible that we have overlooked a relevant provision. That being the case, I will direct the Regional Council furnish the court with a report prepared pursuant to s 32AA on the Topic A provisions (**attached**) and, with reference to s 67(3) and (4) of the Act, advise whether the attached provisions satisfy the s 67 requirements. As part of this report, I will also direct that the report writer address s 8 of the Act and to explain how (and to what extent) the principles of the Treaty are taken into account.

[7] Going forward, the parties will provide the court a s 32AA report when seeking agreed amendments to the provisions of the plan and secondly, the planners are to address in evidence the higher order planning instruments or, at the very least, provide the court an agreed list of relevant provisions.

[8] Once this report is to hand, we will issue (hopefully) our final decision on the Topic A provisions.



Reporting memorandum

[9] To keep matters moving, I will direct the Regional Council to confer with the other parties and propose directions as to the Topic B provisions. This may include mediation, joint witness conferencing or hearing discrete sub-topics.

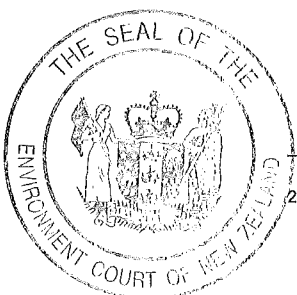
[10] Parties are reminded that taking a top-down approach, ordinarily the court case-manages large plan appeals by:

- (a) identifying broad **topics** (usually by subject matter); and
- (b) describing **issues** that arise in relation to those topics.

[11] Related topics/issues are then grouped and parties who are interested in the same will be referred to mediation and/or a hearing (the “topic groups”). Approached this way, groups of related parties can be referred to mediation² and, if successful, enter into a comprehensive settlement of all related topics and issues. If settlement is not reached, the appeals on the topic group can be set down for a hearing and/or expert conferencing.

[12] The parties are reminded that the court’s Commissioner resources are finite and unevenly distributed around the country. When seeking referral to a facilitated mediation, counsel will need to demonstrate that a robust approach has been taken in relation to the identification of topics and issues with any directions sought to allow:

- (a) prior identification of focused agenda items that articulate the primary interests of participants;
- (b) for the Regional Council to have purposively identified and agreed contested facts and/or opinions; and
- (c) for directions to allow time for the mediator to assist the parties prior to mediation with their identification of potentially beneficial avenues for exploration and discussion at mediation.



² This includes one or more separate mediation events.

Directions

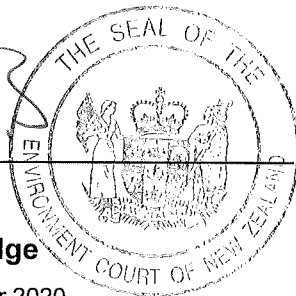
[13] By **Friday 25 September 2020**, the Regional Council, having conferred with the other parties, will:

- (a) confirm the provision text in Annexure A;
- (b) propose a timetable for filing a s 32AA report;
- (c) set out the Topic B topic groups together with a description of the issues and:
 - (i) report whether mediation, expert conferencing or, as the case may be, a hearing, is required in relation to individual topic groups;
 - (ii) if seeking (2020) mediation, propose directions as per paragraph [12] above.

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

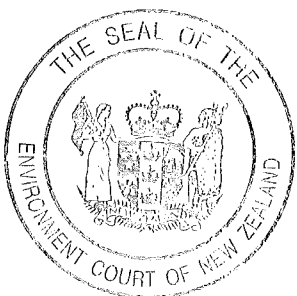
Jae
J/E Borthwick
Environment Judge

Issued: 11 September 2020



List of appellants

ENV-2018-CHC-000026	Transpower New Zealand Limited
ENV-2018-CHC-000027	Fonterra Co-operative Group Limited
ENV-2018-CHC-000028	Horticulture New Zealand
ENV-2018-CHC-000029	Aratiatia Livestock Limited
ENV-2018-CHC-000030	Wilkins Farming Co Limited
ENV-2018-CHC-000031	Gore District Council & others
ENV-2018-CHC-000032	DairyNZ Limited
ENV-2018-CHC-000033	H W Richardson Group Limited
ENV-2018-CHC-000034	Beef + Lamb New Zealand
ENV-2018-CHC-000035	Beef + Lamb New Zealand
ENV-2018-CHC-000036	Director-General of Conservation
ENV-2018-CHC-000037	Southland Fish and Game Council
ENV-2018-CHC-000038	Meridian Energy Limited
ENV-2018-CHC-000039	Alliance Group Limited
ENV-2018-CHC-000040	Federated Farmers of New Zealand
ENV-2018-CHC-000041	Heritage New Zealand Pouhere Taonga
ENV-2018-CHC-000042	Stoney Creek Station Limited
ENV-2018-CHC-000043	The Terraces Limited
ENV-2018-CHC-000044	Campbell's Block Limited
ENV-2018-CHC-000045	Robert Grant
ENV-2018-CHC-000046	Southwood Export Limited & Others
ENV-2018-CHC-000047	Te Rūnanga o Ngāi Tahu, Hokonui Runāka, Waihopai Runāka, Te Rūnanga o Awarua & Te Rūnanga o Oraka Aparima
ENV-2018-CHC-000048	Peter Chartres
ENV-2018-CHC-000049	Rayonier New Zealand Limited
ENV-2018-CHC-000050	Royal Forest and Bird Protection Society of New Zealand Incorporated



Annexure A

Interpretation Statement¹

All persons exercising functions and powers under this Plan and all persons who use, develop or protect resources to which this Plan applies shall recognise that:

- (i) Objectives 1 and 2 are fundamental to this plan, providing an overarching statement on the management of water and land, and all objectives are to be read together and considered in that context; and
- (ii) The plan embodies ki uta ki tai and upholds Te Mana o Te Wai and they are at the forefront of all discussions and decisions about water and land.

Objective 2²

The mauri of water provides for te hauora o te taiao (health and mauri of the environment), te hauora o te wai (health and mauri of the waterbody) and te hauora o te tangata (health and mauri of the people).

Objective 3³

Water and land are recognised as enablers of the economic, social and cultural wellbeing of the region.

Objective 6⁴

Water quality in each freshwater body, coastal lagoon and estuary will be:

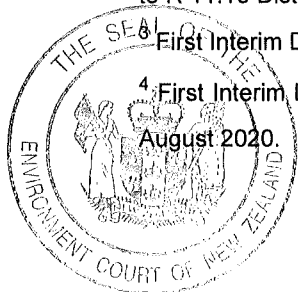
- (a) maintained where the water quality is not degraded; and
- (b) improved where the water quality is degraded by human activities.

¹Second Interim Decision [2020] NZEnvC 93 and Third Interim Decision [2020] NZEnvC 110.

² Second Interim Decision [2020] NZEnvC 93, Third Interim Decision [2020] NZEnvC 110 and Minute dated 5 August 2020. Note: as signalled, the court will issue corrigendum and correct the third Interim Decision pursuant to R 11.10 District Court Rules.

³ First Interim Decision [2020] NZEnvC 93.

⁴ First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.



Objective 7⁵

Following the establishment of freshwater objectives, limits, and targets (water quality and quantity) in accordance with the Freshwater Management Unit processes:

- (a) where water quality objectives and limits are met, water quality shall be maintained or improved;
- (b) any further over-allocation of freshwater is avoided; and
- (c) any existing over-allocation is phased out in accordance with freshwater objectives, targets, limits and timeframes.

Objective 9/9A⁶

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

- (a) the life-supporting capacity and aquatic ecosystem health, the values of outstanding natural features and landscapes, the natural character and the historic heritage values of waterbodies and their margins are safeguarded;
- (b) there is integration with the freshwater quality objectives (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.

Objective 9B⁷

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

Amend Issues: p 17⁸

Some of these activities can have positive effects on the natural environment, for example, bridges and culverts allow access across a river without disturbing the bed. Other activities, such as infrastructure, are important to enable people and

⁵ First Interim Decision [2020] NZEnvC 93 and memorandum of counsel dated 4 August 2020.

⁶ First Interim Decision [2020] NZEnvC 93, Minute dated 31 August 2020 and memorandum of counsel dated 9 September 2020.

⁷ First Interim Decision [2020] NZEnvC 93 and memorandum of counsel dated 4 August 2020.

⁸ Memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.



communities to provide for their economic, cultural, and social wellbeing. These activities can also have adverse effects on the environment, including generating sediment, disturbing habitat and preventing fish passage.

Objective 10⁹

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.

Objective 13¹⁰

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 may be used and developed to enable the economic, social and cultural wellbeing of the region.

Objective 14¹¹

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

⁹ First Interim Decision [2020] NZEnvC 93 and memorandum of counsel dated 4 August 2020

¹⁰ First Interim Decision [2020] NZEnvC 93, Minute dated 31 August 2020 and memorandum of counsel dated 9 September 2020

¹¹ First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.



Objective 17¹²

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 and protect them from inappropriate use and development.

Objective 18¹³

All persons implement environmental practices that optimise efficient resource use, safeguard the life supporting capacity of the region's land and soils, and maintain or improve the quality and quantity of the region's water resources.

Policy 3¹⁴

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

Policy 4¹⁵

In the Alpine physiographic zone:

1. avoid, as a first priority, risk to water quality from erosion and contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:
 - i. identifying contaminant pathways to ground and surface water bodies;
 - ii. requiring implementation of good management practices to manage erosion and adverse effects on water quality from contaminants transported via overland flow;
 - iii. having particular regard to adverse effects of contaminants transported via overland flow when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and

¹² First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.

¹³ Minute dated 11 September 2020.

¹⁴ First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.

¹⁵ First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.



2. prohibiting dairy farming and intensive winter grazing and avoiding cultivation where contaminant losses will increase as a result of the proposed activity.

Policy 5¹⁶

In the Central Plains physiographic zone:

1. avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:
 - i. identifying contaminant pathways to ground and surface water bodies;
 - ii. requiring implementation of good management practices to manage erosion and adverse effects on water quality from contaminants transported via overland flow;
 - iii. having particular regard to adverse effects of contaminants transported via overland flow when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and
2. avoid dairy farming and intensive winter grazing where contaminant losses will increase as a result of the proposed activity.

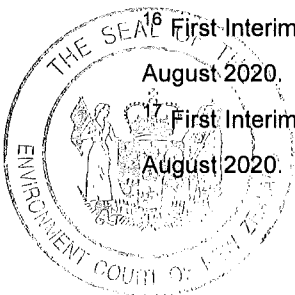
Policy 6¹⁷

In the Gleyed physiographic zone avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:

1. identifying contaminant pathways to ground and surface water bodies;
2. requiring implementation of good management practices to manage erosion and adverse effects on water quality from contaminants transported via overland flow; and

¹⁶ First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.

¹⁷ First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.



3. having particular regard to adverse effects of contaminants transported via overland flow when assessing resource consent applications and preparing or considering Farm Environmental Management Plans.

Policy 7¹⁸

In the Bedrock/Hill Country physiographic zone avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:

1. identifying contaminant pathways to ground and surface water bodies;
2. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant; and
3. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans.

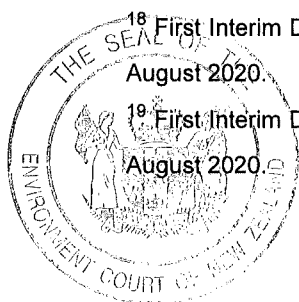
Policy 8¹⁹

In the Lignite-Marine Terraces physiographic zone avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:

1. identifying contaminant pathways to ground and surface water bodies;
2. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant; and
3. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans.

¹⁸ First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.

¹⁹ First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.



Policy 9²⁰

In the old Mataura physiographic zone:

1. avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:
 - i. identifying contaminant pathways to ground and surface water bodies;
 - ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage;
 - iii. having particular regard to adverse effects on water quality from contaminants transported via deep drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and

2. avoid dairy farming and intensive winter grazing where contaminant losses will increase as a result of a proposed activity.

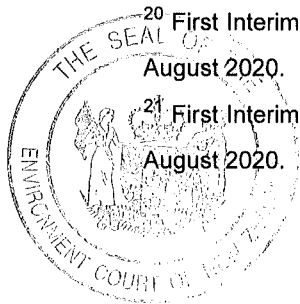
Policy 10²¹

In the Oxidising physiographic zone:

1. avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised, by:
 - i. identifying contaminant pathways to ground and surface water bodies;
 - ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage, and overland flow and artificial drainage where relevant;
 - iii. having particular regard to adverse effects on water quality from contaminants transported via deep drainage, and overland flow and

²⁰ First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.

²¹ First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.



artificial drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and

2. avoid dairy farming and intensive winter grazing where contaminant losses will increase as a result of a proposed activity.

Policy 11²²

In the Peat Wetlands physiographic zone:

1. avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:
 - i. identifying contaminant pathways to ground and surface water bodies;
 - ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, deep drainage, and lateral drainage;
 - iii. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, deep drainage, and lateral drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and
2. avoid dairy farming and intensive winter grazing where contaminant losses will increase as a result of a proposed activity.

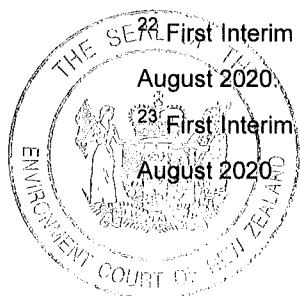
Policy 12²³

In the Riverine physiographic zone:

1. avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:
 - i. identifying contaminant pathways to ground and surface water bodies;

²² First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.

²³ First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.



- ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage, and overland flow where relevant;
 - iii. having particular regard to adverse effects on water quality from contaminants transported via deep drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and
2. avoid dairy farming and intensive winter grazing where contaminant losses will increase as a result of a proposed activity.

Policy 45²⁴

In response to Ngāi Tahu and community aspirations and local water quality and quantity issues, FMU sections of this Plan may include additional catchment-specific values, objectives, policies, attributes, rules and limits which will be read and considered together with the Region-wide objectives and Region-wide policies.

Any provision on the same subject matter in the relevant FMU section of a plan (including Freshwater Objectives) must give effect to the Region-wide Objectives.

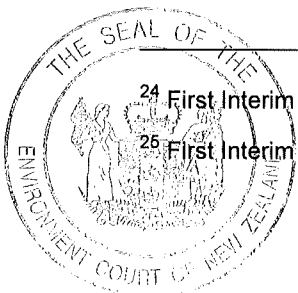
FMU provisions developed for a specific geographical area will not initiate a plan change to the Region-wide objectives or Region-wide policies.

Advice Note: It would be unfair if changes are made to Region-wide objectives and Region-wide policies based on decisions for individual FMUs in specific parts of Southland, without the involvement of the wider Regional communities.

Policy 46²⁵ is amended

The FMU sections of this Plan are based on the following identified Freshwater Management Units for Southland, as shown on Map Series 6: Freshwater Management Units:

- Fiordland and the islands;



²⁴ First Interim Decision [2020] NZEnvC 93 and memorandum of counsel dated 4 August 2020.

²⁵ First Interim Decision [2020] NZEnvC 93 and memorandum of counsel dated 4 August 2020.

- Aparima;
- Mataura;
- Ōreti;
- Waiau; and
- Waituna.

Policy 47²⁶ is amended

The FMU sections of this Plan will give effect to the Region-wide objectives – and:

1. identify values and establish freshwater objectives for each Freshwater Management Unit, including where appropriate at a catchment or sub-catchment level, having particular regard to the national significance of Te Mana o te Wai, and any other values developed in accordance with Policies CA1-CA4 and Policy D1 of the National Policy Statement for Freshwater Management 2014 (as amended in 2017); and
2. set water quality and water quantity limits and targets to achieve the freshwater objectives; and
3. set methods to phase out any over-allocation, within a specified timeframe; and
4. assess water quality and quantity taking into account Ngāi Tahu indicators of health.

