

**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
(22 October 2020)**

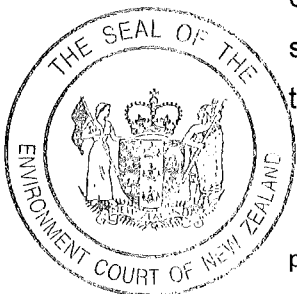
Introduction

[1] This Minute is issued for the purpose of case management and responds to the matters raised in the memorandum filed by Southland Regional Council dated 16 October 2020.

Topic B6

[2] As this division of the court has no realistic prospect of hearing Topic B6 before the third quarter of 2021, Meridian's request to set the topic down after the other topics are resolved can be accommodated.

[3] That said, if there are linkages between this and the other topics it is unlikely consent orders will be issued on Topics B1-B5 even if the parties' interests on appeal are settled through mediation. Any party applying for consent orders from the court is to bear this in mind.



[4] Neither Meridian nor Trustpower support the Regional Council's proposal to set the entirety of Topic B6 (Infrastructure) down for a hearing. They consider aspects of Topic B6 may be mediated. The Regional Council disagrees, saying the issues in Topic B6 are too inter-related for some issues to be mediated separately from the issues to be heard by the court.

[5] If the parties to Topic B6 are agreeable, I will ask Mr Ross Dunlop to mediate the impasse, including facilitating an AVL mediation. If the matter cannot be settled, I will set the topic down for a pre-hearing conference in Invercargill where I will hear from counsel directly on the matter.

Topic B7

[6] I note the three day estimate for mediation of this topic. Mr Dunlop is available to facilitate mediation on **Tuesday 15 December 2020 – Thursday 17 December 2020**.

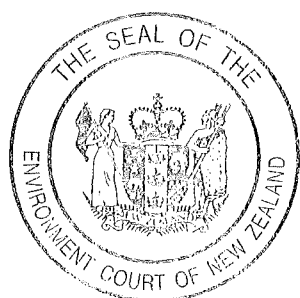
Meridian's comments

[7] While I do not agree with Meridian that the process for mediation is solely for the mediator, Mr Dunlop was consulted in relation to process outlined in the court's last Minute as he has in relation to this Minute.¹ What is proposed by the court reflects practices he has adopted in relation to the appeals on the Dunedin proposed District Plan and in *Royal Forest and Bird Protection Society of New Zealand Inc and Ors v Wangan Hills Limited and Ors* [2020] NZEnvC 54.

Comments of the Director-General of Conservation, Forest & Bird and Fish & Game

[8] I have considered the comments of the Director-General of Conservation, Forest & Bird and Fish & Game.

[9] On this occasion, the court encourages, but does not direct, the conferencing of expert witnesses prior to mediation. The court has not foreclosed on the prospect of facilitated expert conferencing if mediation does not result in agreement.



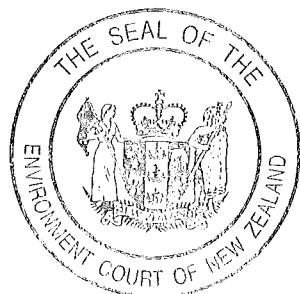
¹ Minute dated 1 October 2020.

[10] Forest & Bird and Fish & Game do not intend to comment on the draft technical papers circulated by the Regional Council.² This is a disappointing position to take and one that does not take cognisance of the preparation by the mediator. The court's process is intended to reduce costs and to put parties in the best position for a successful outcome at mediation. While Mr Dunlop will have access to the full record of the court, he did not hear the evidence. If Forest & Bird and Fish & Game decline to respond to the draft technical papers this will likely incur the Crown unnecessary costs. However, it is for those parties to conduct their case as they see fit.

[11] I have amended the directions previously given in relation to the Essential Freshwater Package as they omitted the important matter at paragraph [52(c)] of the Regional Council's memorandum dated 25 September 2020 about which I will require the parties' response. See direction at [19(a)(iii)] and [19(b)(ii)] below.

[12] The Regional Council proposes that the parties evaluate the relief sought under s 32 of the Act.³ I decline to give this direction. The 'Essential Freshwater Package' adds complexity to this proceeding and without knowing more on the potential impact of that, it remains my view that the Regional Council is best placed to undertake this evaluation. The direction made is that the assessment is 'in line' with s 32.⁴ I am told by Mr Dunlop that in the Dunedin proposed plan proceedings, the City Council does this by evaluating the strengths and weaknesses of the competing provisions in its Options paper. An evaluation in terms of s 32 is subsequently provided in an affidavit by a planner filed with proposed consent order documentation. That said, I have modified the relevant direction at [19(d)(ii)] and (iii)] to make the requirements clearer.

[13] If settlement is not reached, all planning witnesses, if proposing to amend any provisions, will be directed to evaluate the amendment in accordance with s 32 and/or s 32AA in evidence, giving reasons for their support.



² Memorandum of counsel dated 16 October 2020 at [21(d)(3)].

³ Memorandum of counsel dated 16 October 2020 at [19].

⁴ Section 32 and not 32AA as recorded in the earlier Minute.

Directions

[14] I direct:

Topic B6

[15] The parties are to respond to the ADR suggestion made at paragraph [5] above.

Topics B1-B5

[16] Topics B1-B5 are referred to mediation.

All topics

[17] Unless varied by the court, mediation will follow in the order proposed in the memorandum of Southland Regional Council dated 25 September 2020, commencing with Topic B7.

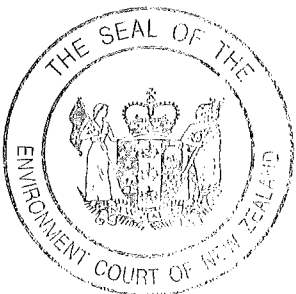
[18] Mediation and any facilitated expert conferencing, if subsequently directed, is to be completed by **Tuesday 1 June 2021**.

General directions on all mediations

Essential Freshwater package

[19] For convenience, I record the direction given in the Minute dated 1 October 2020, adding a new direction at [19(a)(iii)]. Four weeks appears to be insufficient time for the balance of the directions. If parties agree, they should seek leave to amend the direction and/or consider setting mediation down in 2021:

- (a) **four weeks prior to mediation** on any given Topic, the Regional Council is to provide the parties with a statement in relation to the issues covered by that Topic, addressing:
 - (i) which parts of the NPSFM 2020 the Regional Council intends to implement in the pSWLP;

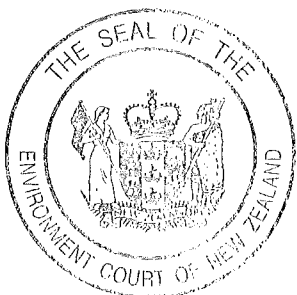


- (ii) which appeal points the Regional Council considers provide scope to implement those parts of the NPSFM 2020 identified pursuant to (i) above;
- (iii) prescriptive procedural requirements in the NPSFM 2020 that will require the Regional Council to revisit the relevant Topic's appeal points;
- (iv) whether any provisions in the Topic are considered to duplicate or conflict with the NES or Stock Exclusion Regulations, or cover similar matters such that some appeal points may become moot;
- (v) whether any appeal points in the Topic seek relief that is considered to duplicate or conflict with the NES; and
- (vi) whether any appeal points in the Topic seek relief that is moot as a result of the Stock Exclusion Regulations.

Pre-mediation consultation

- (b) **fifteen working days** prior to mediation:
 - (i) the Regional Council will have conferred with each of the parties on their interest(s) in the relevant Topic and reasons for seeking change. If the planning witnesses or other expert witnesses for two or more parties have conferenced independently in accordance with the court's Practice Note and reached an agreed position on relief, their joint witness statement will be provided to the Regional Council; and
 - (ii) parties are to indicate whether there is any change in relief⁵ in light of the technical papers and the requirements of the National Policy Statement for Freshwater Management 2020, National Environmental Standards for Freshwater and the Stock Exclusion Regulation; and
- (c) **ten working days** prior to mediation, the Regional Council will circulate technical paper(s) setting out relevant facts and the significant resource management issues that arise from the same, inviting comment from the parties' expert advisors for inclusion in the paper(s). It is anticipated these reports will be from persons other than the planning witnesses.

⁵ Including the withdrawal of any part of an appeal.



- (d) **five working days** prior to the mediation the Regional Council will circulate:
- (i) the final copy of the technical paper(s);
 - (ii) an options paper which identifies the relief proposed by the parties together with any of the amendments proposed in any Joint Witness Statement (if different from the instructing party(ies)); and
 - (iii) an indication, without prejudice, as to whether the Regional Council will:
 - consider adopting with or without amendment the relief sought by another party or propose an alternative relief, and evaluate each⁶ in line with s 32;
 - or
 - support the Decision Version of the pSWLP (without amendment).

[20] Leave is reserved for the parties to seek further or amended directions.

J. E. Borthwick
J E Borthwick
Environment Judge
 Issued: 22 October 2020



The seal is circular with the text 'THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND' around the perimeter. In the center is the coat of arms of New Zealand, featuring a crown atop a shield supported by two figures, with a ship below.

⁶ That is, all relief proposed by the parties as opposed evaluating the Regional Council's preferred relief.

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

