

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH  
I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI**

IN THE MATTER of the Resource Management Act 1991

AND appeals under clause 14 of the First  
Schedule of the Act

BETWEEN ARATIATIA LIVESTOCK  
LIMITED

(ENV-2018-CHC-29)

(and all other appellants listed in  
the Schedule attached)

Appellants

AND SOUTHLAND REGIONAL  
COUNCIL

Respondent

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**MINUTE OF THE ENVIRONMENT COURT  
Management of Consent Documentation  
(28 January 2022)**

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**Introduction**

[1] This Minute responds to a memorandum of counsel filed by Southland Regional Council dated 26 January 2022.

[2] By Minute dated 4 October 2021, I directed that documentation seeking consent orders from the court be filed by Friday 19 November 2021 in respect of the issues reported to have been resolved at mediation or through direct



negotiation for Topics B1 through B4, B6, and B7.

[3] It is the court's understanding that many of the provisions that remain in dispute (and set down for hearing) are related to or proceed from the proposed settlement. The 14 March 2022 hearing date was set to allow adequate time for the consideration of proposed consent orders prior to reading evidence for the hearing.

[4] The application(s) for consent orders was not filed as directed.

[5] On 25 January 2022,<sup>1</sup> I directed the Regional Council to report to the court by 26 January 2022 identifying the provisions proposed to be amended by consent order and whether those amendments would be supported by affidavits. I further directed that the Regional Council seek new directions on the filing of the application for consent orders.

[6] Counsel for Southland Regional Council responded by (appropriately) taking responsibility for this omission, and reported that this was delayed due to time pressures of expert witness conferencing.<sup>2</sup> Counsel attached a copy of a memorandum<sup>3</sup> which records in Appendix A resolved issues that are to be considered by consent orders. Counsel requests a direction to extend the filing date for consent documentation to **Thursday 3 February 2022**.

### **Issues subject to expert conferencing**

[7] Facilitated expert witness conferencing took place between 17 November and 10 December 2021. The Regional Council notes that the planners' final joint witness statement<sup>4</sup> sets out an agreed version for further plan provisions currently

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<sup>1</sup> Email of the Registry to parties dated 25 January 2022.

<sup>2</sup> Dated 26 January 2022.

<sup>3</sup> Dated 19 November 2021.

<sup>4</sup> Dated 10 December 2021.

scheduled for the hearing.<sup>5</sup> Several parties are said to have expressed a wish for these provisions to also be settled by way of consent orders, which would minimise the hearing time required.

[8] Counsel seeks a direction to convene a judicial telephone conference to ascertain the court's position on whether the provisions agreed between the planners can be determined in this manner or should continue to hearing. Further, despite agreement having been reached between the experts, counsel quite properly notes that the Regional Council cannot prepare draft consent orders for affected provisions until the position of all parties on the changes is known. This may become clear for s 274 parties when they file their evidence, but I am mindful that the appellants' positions also require confirmation.<sup>6</sup>

### **Consideration**

[9] COVID notwithstanding, there are potential complexities around what the Regional Council proposes.

[10] The consequence of the non-compliance with directions is that the bench has lost two months (plus) during which it intended to review and respond to provisions proposed to be settled by consent order. We are not confident of undertaking this prior to the hearing as the consent application(s) will preoccupy court time presently allocated to preparing for the hearing.

### ***Agreed JWS provisions***

[11] It is our preliminary view that a hearing will be required in relation to those provisions now agreed as a consequence of expert conferencing. However, the hearing may proceed on an 'all of parties' basis with parties able to adopt the evidence of the Regional Council's witnesses together with other expert witnesses,

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<sup>5</sup> Scheduled on 14 March 2022.

<sup>6</sup> Noting rebuttal evidence is not to be filed until 22 February 2022.

who are required to adequately inform and support the proposed provisions.

[12] At the judicial conference we will canvass with the parties as to whether evidence may be given via AVL.

[13] Note: Mr Maw has experience with this hearing format from Otago Regional Council's PC8 proceeding.

### ***Mediated agreement***

[14] Given the delay in filing the application for consent orders, it would be advantageous for the court to hear evidence in support of the provisions settled at mediation, again on an 'all of parties' basis.

[15] That said, I will make a direction that the application for consent orders in support of the mediated and directly negotiated agreements is to be filed on the date proposed by counsel i.e. Thursday 3 February 2022. However, this should **not** be taken as an indication that the hearing on disputed provisions will proceed.

### ***Disputed provisions***

[16] Having heard the 'all of parties case', I propose the hearing on remaining disputed provisions will continue in the usual way with the parties' individual evidence called in support of their appeal/s274 notices. Careful consideration will need to be given as to whether the witnesses appear or give evidence via AVL.

### ***Interim decision***

[17] If the hearing process proceeds in the way proposed above, an interim decision will be released if the court has concerns with any plan amendment(s) as agreed between the parties.

## Judicial conference

[18] A judicial conference will be convened on **Thursday 10 February 2022**. Attendance may be in person or by AVL. All those attending the conference in person must adhere to the COVID-19 protocols in place at the time.<sup>7</sup>

[19] The Regional Council having conferred with the parties, will file a memorandum one working day in advance of the judicial conference responding to the court's proposal for an 'all of parties case'.

[20] When reporting, the Regional Council will:

- (a) confirm whether all of the time allocated for the hearing is still required and if not, indicate preferred hearing dates; and
- (b) propose further directions as may be required for the smooth and efficient running of the hearing.

## Directions

[21] I direct:

- (a) the Regional Council is to file proposed consent documentation for all matters resolved between the parties by mediation and direct negotiation by **5pm Thursday 3 February 2022**;
- (b) the Regional Council is to advise by **5pm Tuesday 8 February 2022** what further matters agreed by planners' in their 10 December 2021 JWS the parties propose be settled by consent.
- (c) a judicial conference will be convened at **1pm Thursday 10 February 2022** in Courtroom 13 in Christchurch.

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<sup>7</sup> <https://www.courtsofnz.govt.nz/publications/announcements/covid-19/court-protocols/environment-court/>.

(d) parties are to advise the registry whether they will attend the conference in person or via AVL by **5pm Wednesday 2 February 2022**.

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

*Jane S.*



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

Issued: 28 January 2022

## Schedule – List of Appellants

ENV-2018-CHC-26	Transpower New Zealand Limited
ENV-2018-CHC-27	Fonterra Co-operative Group Limited
ENV-2018-CHC-29	Aratiatia Livestock Limited
ENV-2018-CHC-30	Wilkins Farming Co Limited
ENV-2018-CHC-31	Gore District Council & others
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-36	Director-General of Conservation
ENV-2018-CHC-37	Southland Fish and Game Council
ENV-2018-CHC-38	Meridian Energy Limited
ENV-2018-CHC-40	Federated Farmers of New Zealand
ENV-2018-CHC-41	Heritage New Zealand Pouhere Taonga
ENV-2018-CHC-44	Wilkins Farming Co Limited (previously Campbell's Block Limited)
ENV-2018-CHC-45	Wilkins Farming Co Limited (previously Robert Grant)
ENV-2018-CHC-46	Southwood Export Limited & Others
ENV-2018-CHC-47	Te Rūnanga o Ngāi Tahu, Hokonui Runāka, Waihopai Runāka, Te Rūnanga o Awarua & Te Rūnanga o Oraka Aparima
ENV-2018-CHC-49	Rayonier New Zealand Limited
ENV-2018-CHC-50	Royal Forest and Bird Protection Society of New Zealand Incorporated