

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I MUA I TE KOOTI TAIAO
I ŌTAUTAHI ROHE**

IN THE MATTER of the Resource Management Act 1991
(the Act)

A N D

IN THE MATTER of appeals pursuant to clause 14 of the First
Schedule to the Act

BETWEEN **SOUTHLAND FISH AND GAME COUNCIL**
(ENV-2018-CHC-37)

**ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND**
(ENV-2018-CHC-50)

**WAIHOPAI RŪNAKA, HOKONUI RŪNAKA,
TE RŪNANGA O AWARUA, TE RŪNANGA O
ORAKA APARIMA, and TE RŪNANGA O
NGĀI TAHU (collectively NGĀ RŪNANGA)**
(ENV-2018-CHC-47)

Appellants

A N D **SOUTHLAND REGIONAL COUNCIL**

Respondent

**JOINT MEMORANDUM REGARDING HEARING PROCESS AND COURT'S
QUESTIONS**

5 JUNE 2020

MAY IT PLEASE THE COURT:**INTRODUCTION AND BACKGROUND**

1. This Joint Memorandum is filed on behalf of Ballance Agri-Nutrients Limited, Federated Farmers of New Zealand (Southland), Horticulture New Zealand, and Ravensdown Limited (“the Parties”).
2. The Joint Memorandum responds to the Court’s minutes of 27 May 2020 and 2 June 2020 and sets out a suggested sequencing to address the issues raised by the Parties at the hearing on 15 – 17 June 2020.

RESPONSE TO COURT’S MINUTES

3. In response to the question raised in paragraph 5(a) of its Minute dated 27 May, the Parties submit that in relation to the matters already determined by the Court in its Interim Decision, the Court is functus officio on the question of whether the proposed Southland Water and Land Plan (**pSWLP**) gives effect to the National Policy Statement for Freshwater Management (**NPSFM**), except to the extent that it has kept the issues open in the Interim Decision, such as the role of Objectives 1 and 3.
4. In relation to the question raised in paragraph 5(b) of its Minute dated 27 May, the Parties submit that the Court should:
 - (a) make a decision on whether Objectives 1 and 3 give effect to the NPSFM after hearing evidence that is within the scope of the appeals; and
 - (b) if it determines that Objectives 1 and 3 do not give effect to the NPSFM, consider the use of section 293 to direct the Southland Regional Council to prepare changes to address this matter.

Giving effect to the NPSFM 2014

5. The Parties note that the Interim Decision of the Court sought that parties specifically address:¹
 - (a) The interpretation and implementation of Te Mana o Te Wai and ki uta ki tai in this plan and any other matter they consider relevant to the scheme of the plan in general; and
 - (b) How the plan is to take into account the principles of the Treaty.

6. The Parties submit that the question of whether the pSWLP gives effect to the NPSFM 2014 was covered in the evidence and submissions presented in the hearing in June and July 2019, and ruled on by the Court in its interim decision, except to the limited extent identified in the interim decision. Respectfully, the Parties submit that the Court is functus officio on the wider enquiry that the filed evidence invites the Court to embark on.

7. We further note that if s293 is in contemplation, then the question for the Court is whether Objectives 1 and 3 'give effect to' the NPSM 2014. The question to be asked is binary: Do Objectives 1 and 3 give effect to the NPSFM, or not? If the Court rules in favour of the Parties' position on the question of scope, the RMA does not invite an enquiry of "to what extent" the pSWLP gives effect to the NPSFM".²

Suggested sequence for the hearing

8. The Parties suggest the following process would be an effective and efficient way of addressing the issues:

¹ Interim Decision, at [347].

² Ngā Runanga Notice of wish to be heard on Notice of Motion, dated 2 June 2020, paragraph 4(b)(i).

- (a) The Court first hears the legal arguments regarding the scope of evidence, as raised by the Notice of Motion by the Parties dated 22 May 2020. In order to streamline that as much as practicable, the Parties propose that they file and serve written submissions on the scope issue by 9 June 2020, with all other parties who wish to be heard on this issue filing and serving written submissions by 11 June 2020.
- (b) The Court then hears submissions on scope, followed by evidence and cross examination of the witnesses regarding the question of whether Objectives 1 and 3 give effect to the NPSFM 2014, as set out in items (c), (d), and (i) to (k) of paragraph 4 of the Southland Regional Council (**Council**) memorandum dated 29 May. Specifically, the Parties seek that the Court directs that all parties address the following questions:
- (i) Do Objectives 1 and 3 of the pSWLP, without any amendment, give effect to the NPSFM?
 - (ii) Do Objectives 1 and 3, with Mr McCallum-Clark's proposed changes, give effect to the NPSFM?
 - (iii) Do Objectives 1 and 3, with Ms Davidson's proposed changes (and any other changes proposed by others) give effect to the NPSFM?
- (c) All parties then make closing submissions on the above, in reverse order.
- (d) The Court then reserves its decision on both the question of scope and whether s 293 is in issue.
- (e) If the Court decides that the evidence on Objectives 1 and 3 is outside scope, then it moves on to answer question 8(b)(i).

- (f) If the answer to question 8(b)(i) is no, then the Court has to consider whether to use the s293 process.
 - (g) If the answer to question 8(b)(i) is yes, then that is the end of the matter.
 - (h) If the Court decides that some, or all, evidence on Objectives 1 and 3 is within scope, then it can consider question 8(b)(ii) and 8(b)(iii) and which provisions (those suggested by Mr McCallum-Clark or Ms Davidson or others) best give effect to the NPSFM.
9. The parties submit that the Court is also *functus officio* in regard to items (e) to (h) of paragraph 4 of the Council’s memorandum dated 29 May which relate to the New Zealand Coastal Policy Statement, the Regional Policy Statement and Part 2 of the Act. These issues were addressed at the hearing in June and July last year and a decision on them has been made by the Court.

SECTION 293 PROCESS

10. If the Court decides that Objectives 1 and 3 do not give effect to the NPSFM then the Parties submit that, before the Court considers exercising its powers under s293, it first issue a decision on its findings and then seek submissions on whether or not, or the extent to which, its s293 powers should be exercised.³

DATE: 5 June 2020

³ For completeness, the Parties note that s 293 contemplates that a “departure” (which includes that a proposed plan does not give effect to a national policy statement) may remain if it is of minor significance and does not affect the general intent and purpose of the proposed plan.



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