

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
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 listed in the
Schedule attached)

AND SOUTHLAND REGIONAL
COUNCIL

Respondent

**MINUTE OF THE ENVIRONMENT COURT
Directions on supplementary evidence
(2 May 2022)**

Introduction

[1] This Minute is issued for the purpose of case management in response to the memorandum for the Southland Regional Council dated 29 April 2022 proposing directions for supplementary evidence and amended filing dates.

Canterbury Land and Water Plan

[2] The court would be best assisted if supplementary evidence and legal submissions address whether the farm plan regime to be created by the pSWLP,

pSWLP – MINUTE 2 MAY 2022



rules and Appendix N is intended to be enforceable. If it is not intended to give rise to enforcement action the Regional Council is to advise the court.

[3] To the extent that the regime¹ in Southland is like that created under Canterbury Land and Water Plan, the evidence on the latter may assist the court to better understand what is proposed.

[4] This is a question of mixed law and fact and I have made directions that the Regional Council and its witness(es) address specific questions on this matter.

Supplementary evidence in response to Mr McCallum-Clark and Dr Death and identification of overlap between provisions under appeal and NES-F

[5] I have made the directions proposed. Note: the court would be assisted if the witnesses were to clarify whether Policy 17 concerns liquid and/or solid effluent.

[6] It occurs to the court that the identification of overlapping pSWLP and NES-F provisions may be set out in a table, cross referencing the relevant provision together with a brief note on the point of tension between the provisions (e.g. activity types do not align etc).

Map Series 8

[7] Referred to in the context of Rule 78, the parties are to produce a copy of Map Series 8 (if not in evidence) or direct the court as to where this may be found.

NES-F – commencement of certain provisions

[8] The court notes that the Resource Management (National Environmental

¹ This includes the activity status, auditing and certification processes. The court recalls evidence to the effect that farm plan are enforceable under the relevant Canterbury Regional Plan as they are a condition of a resource consent.

Standards for Freshwater) Amendment Regulations 2022 came into force on 1 May 2022. Those Regulations amend the date on which temporary regs 26 and 27 of the NES – F come into force, now 1 November 2022. That being the case, the court must decide the Wilkins/Federated Farmers appeal on proposed Rule 20A(a)(i) and decide also whether there is scope for the court to approve the version of the rule preferred by the Regional Council and others.

Amendments to consolidated plan

[9] The Regional Council was to amend the consolidated plan dated 4 April 2022 recording:

- (a) any corrections (including grammar and internal cross referencing);
and
- (b) including the policies, rules and methods (which the court has indicated it provisionally approves).²

[10] The Regional Council is to advise the court when this will be ready.

Policy 28

[11] The position reached by the relevant parties in relation to Policy 28(b) is to be outlined either in supplementary submissions or evidence. A direction has been made accordingly.

Hearing Schedule

[12] The hearing resumes on Monday 30 May 2022. The Regional Council will advise the court of any changes to the hearing schedule by Monday 23 May 2022.

² Minute 'Amendments which the court would approve (2)' dated 25 March 2022.

Directions

[13] I direct the Regional Council by **Friday 13 May 2022**:

- (a) to file supplementary evidence and legal submissions (as appropriate):³
 - (i) explaining the Regional Council’s FEMP certification and auditing process;
 - (ii) addressing what, in its view, would constitute a breach of the farming activity rules (Rules 20, 20A, 20B, 70 and 76);⁴
 - (iii) related to (ii) above, advising whether a failure to implement a ‘mitigation’ within a timeframe specified in the FEMP constitutes non-compliance with the rules.⁵ Secondly, is a non-compliance with the timeframe specified in a FEMP a matter able to be cured on a review and amendment of an FEMP pursuant to pSWLP, Appendix N, clause 7(3)?
 - (iv) comparing farm plan regimes⁶ in the Canterbury Land and Water Regional Plan with Southland Water and Land Plan proposed FEMP framework;
 - (v) if not already in evidence, produce Map Series 8;
 - (vi) propose directions for filing of s32AA evidence and submissions addressing scope for amendments the Regional Council supports.
- (b) to file supplementary evidence identifying overlapping pSWLP and NES-F provisions;
- (c) to address in legal submissions the position reached by the parties in

³ Paragraph [11](a)(i) and (iv) are evidential matters, the balance of paragraph [11] may give rise to matters of law and evidence.

⁴ All rules that on their face require compliance with a FEMP. The inclusion of Rule 20B is contested, however the court nevertheless seeks the views of counsel and relevant witnesses.

⁵ See Appendix N, clause 6(c) ‘defined mitigations that clearly set a pathway for achievement of the objectives’ and Rules 20, 20A, 20B, 70 and 76.

⁶ Including relevant rules.

relation to Policy 28, including whether a decision on scope is required; and

- (d) to confirm in legal submissions that NES-F regs 26 and 27 have not commenced.

[14] All other parties are directed by **Friday 20 May 2022** to:

- (a) file any evidence in reply to the Regional Council and Southland Fish and Game Council concerning Policies 15A, 15B, 16A and 17, Rules 13 and 15, and Appendix E. Supplementary evidence is limited to 5 pages;
- (b) file any evidence in reply to the directions given in this Minute. Supplementary evidence is limited to 5 pages. Any counsel disagreeing with the legal submissions by the Regional Council on the topic of enforceability of the farm plan regime is to address the court in their closing submissions.

Hearing Schedule

[15] Any amendment to the Hearing Schedule is to be filed by **Monday 23 May 2022**.

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

Jane S.



J E Borthwick
Environment Judge

Issued: 2 May 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 (Southland Province) Inc
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 Rūnaka, Waihopai Rūnaka, 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