

**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  
Provisions agreed following expert conferencing  
(3 March 2022)**

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**Introduction**

[1] This Minute primarily concerns provisions agreed following expert conferencing.

[2] Before I address these provisions, I can say that the court's feedback on the provisions set out in the consent documentation will be released early next week. This will involve matters of interpretation (for counsel) and clarification (for the



planners).

### **All of parties hearing**

[3] The ‘all of parties’ hearing set down to commence 14 March 2022 is to hear evidence in support of provisions which:

- (a) are agreed and consent documentation has been filed;<sup>1</sup> or
- (b) have been agreed following expert conferencing held in 2021 but consent documentation has not been filed.<sup>2</sup>

### **Issues**

[4] Subject to what we say next, the court seeks **urgent** advice identifying the provisions for the March 2022 hearing that are agreed following expert conferencing.

[5] In support of provisions agreed following witness conferencing, evidence is to be called from two Regional Council planning witnesses, Mr McCallum-Clark and Ms Maciaszek together with several technical witnesses.

### **Agreed provisions that are addressed by the Regional Council’s planners**

[6] From Mr McCallum-Clarks’ evidence<sup>3</sup> the following provisions appear suitable for formal proof and may be referred to the all of parties hearing:

#### *Topic B2 – water quality and discharges*

- (a) Physiographic Zone Policies 4-12 – wording set out in Minute dated 1 October 2020 is agreed and so nothing more is required;

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<sup>1</sup> On 3 February 2022 the parties filed applications for consent orders.

<sup>2</sup> On 22 February 2022, the parties filed memoranda identifying provisions the wording of which they were now agreed.

<sup>3</sup> Amended EIC dated 22 February 2022.

- (b) Policy 15 C – agreed to be deleted;
- (c) Rule 13 – wording agreed but will require technical evidence to support.

*Topic B5 – farming*

- (a) Policy 18 – note: the court wishes to better understand the evidence to be given in relation to Stock Exclusion Regulations.

[7] Likewise, the following provisions addressed in Ms Maciaszek’s evidence:

*Topic B3 – wetlands*

- (a) Rule 51 excluding sub-clause (e);
- (b) Rule 70 (cb).

**Provisions agreed following expert conferencing, but not addressed by the Regional Council’s planners**

[8] Having perused the Regional Council’s Final Relief filed 25 February 2022, while the Regional Council may support amendments recommended by the conference of planners, Mr McCallum-Clark and Ms Maciaszek either do not provide evidence or refer only in passing to many of the agreed provisions or alternatively, refer to evidence of other planning witnesses.<sup>4</sup> This is likely the result of the timing and sequencing of evidence and on the court’s reckoning involves at least the following:

- (a) Objective 16;<sup>5</sup>
- (b) Policy 16;<sup>6</sup>

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<sup>4</sup> These other witnesses are not scheduled to give evidence at the all of parties hearing.

<sup>5</sup> Unclear which appeal proposes the amendment, it may be regarded by SRC as a consequential amendment.

<sup>6</sup> Forest & Bird do not agree with the wording proposed. Mr McCallum-Clark relies on evidence to be given by Messrs Farrell and Willis and by Ms Kirk and Ms Rushton.

- (c) the sub-topic concerning ephemeral rivers/waterbodies/flow paths including deletion of definition of ‘ephemeral river’ and the use of the new term ‘ephemeral flow path’;<sup>7</sup>
- (d) Rule 20;<sup>8</sup>
- (e) Rule 20(aa) – a rule to be deleted;
- (f) Rule 20A;
- (g) Rule 25;
- (h) Rule 35;
- (i) Rule 70 (excluding cb) and Table 1;
- (j) definitions of:
  - (i) Critical Source Area;<sup>9</sup>
  - (ii) Cultivation;
  - (iii) High risk winter grazing;
  - (iv) Minimise;
  - (v) Stock Unit.
- (k) Appendix N;
- (l) Schedule X.

[9] The planning joint witness statements do not record the reasons for proposing amendments to the provisions listed above.

[10] As the planning evidence to be called in March 2022 does not comprehensively address the provisions listed in paragraph [8], I direct these be heard together with the provisions that are in dispute, when the court resumes sitting in April 2022.

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<sup>7</sup> Multiple provisions are impacted by the deletion of ephemeral rivers.

<sup>8</sup> Mr McCallum-Clark’s assessment depends on the evidence of Ms Taylor who is not being called.

<sup>9</sup> Critical source area is addressed in Mr McCallum-Clark’s brief but the court is uncertain of the reasons for the proposed amendment. The reasons may pertain to provisions in Appendix N and for intensive winter grazing which the court will be considering when we resume in April 2022.

## *Forestry*

[11] By **Monday 7 March 2022** the parties to the appeals filed by Rayonier and Southwood Exports are to confirm their interest in these proceedings is limited to the definition of ‘cultivation’ and secondly, confirm a proposed new definition of ‘stick racking or slash racking’. Is the court correct that these amendments exclude forestry from Rule 25?; and if so:

- (a) identify other provisions that apply (if any) to forestry;
- (b) confirm that resolution of the above definitions concludes the forestry topic.

## **General directions**

[12] If the parties consider provisions have been omitted from paragraph [6] and [7], then by **Monday 7 March 2022** the Regional Council will update the list identifying provisions they would have the court consider in March 2022, together with the relevant passages from the evidence of Mr McCallum-Clark and Ms Maciaszek and the technical evidence. Further directions may issue.

[13] The court would be assisted by the updating of the Decisions Version of the pSWLP with provisions agreed following expert conferencing (using a different colour than blue to track changes). Is this able to be filed by **9 March 2022 (or earlier)?**

## **Scope**

### *For provisions agreed following expert conferencing*

[14] No analysis of scope is offered. For the provisions listed at [6],[7] and [8]<sup>10</sup>

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<sup>10</sup> There is no analysis of scope for any of the amendments being pursued.

above we will endeavour to check scope prior to the hearing commencing.

[15] In the meantime, we direct counsel for the Regional Council to address scope in his opening submissions. At the same time he will address the court on when it may receive a s 32AA report for provisions to be addressed in March 2022.<sup>11</sup>

***For consent order provisions***

[16] Having read the consent documentation, counsel for the Regional Council in his opening submission is to address the scope for making changes to the following provisions:

- (a) Policy 28(b):
  - (i) in addition, the court will have questions in relation to interpretation and application.
- (b) Policy 39, Advice Note:
  - (i) in addition, the relevant planning witness is to identify the issue that the proposed advice note addresses and counsel the legal effect of the note.<sup>12</sup>

[17] Leave is granted for any party to seek further (or amended) directions.

Jane S.



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

Issued: 3 March 2022

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<sup>11</sup> Record of Prehearing Conference 'Timetable Directions' held 19 October 2022 at [25].

<sup>12</sup> Policy 39 concerns the permitted baseline. The Regional Council appears to be fettering a statutory discretion it holds to consider the permitted baseline. What is the purpose of the advice note?

### 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