

**BEFORE THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I MUA I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUUTAHI**

UNDER the Resource Management Act 1991

AND

IN THE MATTER OF an appeal under clause 14 of
Schedule 1 of the RMA in relation to
Decisions on the Proposed
Southland Water and Land Plan

BETWEEN ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF
NEW ZEALAND INC (ENV-2018-
CHC-0050)

Appellant

AND SOUTHLAND FISH AND GAME
COUNCIL (ENV-2018-CHC-0037)

Appellant

**MEMORANDUM OF COUNSEL FOR FOREST AND BIRD AND FISH &
GAME REGARDING HEARING AVAILABILITY**

Dated 4 February 2022

AND SOUTHLAND REGIONAL
COUNCIL

Respondent

Counsel: Sally Gepp
Level 1, 189 Hardy Street, Nelson 7010
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MAY IT PLEASE THE COURT:

1. Forest & Bird and the Southland Fish and Game Council are appellants and interested parties in respect of appeals on Topic B provisions of the Proposed Southland Water and Land Plan (**pSWLP**). This memorandum addresses an issue of availability that I seek to raise now, in case it is relevant to matters to be addressed at the pre-hearing conference on 10 February 2022.
2. The Court has set this matter down for a four week hearing commencing on 14 March 2022. Since the hearing was set down, I have had a fixture in the Court of Appeal set down on 15 and 16 March 2022. A copy of the Court of Appeal Minute addressing the reasons for setting down the fixture on those dates is enclosed.
3. I request that the Court accommodates this issue of availability in one of the following ways:
 - a. If it transpires that the matters requiring hearing have been narrowed such that 4 weeks is no longer required, I request that the hearing starts one week later on 21 March 2022.
 - b. If four weeks are still required, I request leave to be excused for 14 – 16 March 2022, and that presentation of the case for Forest & Bird and Fish & Game is scheduled for a later date in the hearing.
4. If required, in-house counsel for Forest & Bird and a representative of Fish & Game may be able to attend the hearing on the days that I am unavailable.

Dated 4 February 2022



Sally Gepp
Counsel for the Royal Forest and Bird Protection Society of New Zealand Inc and
Southland Fish & Game Council

**IN THE COURT OF APPEAL OF NEW ZEALAND
I TE KŌTI PĪRA O AOTEAROA**

CA426/2021

BETWEEN

FISHERIES INSHORE NEW ZEALAND
LIMITED
Appellant

AND

ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED
First Respondent

MINISTER OF OCEANS AND FISHERIES
Second Respondent

TE OHU KAI MOANA TRUSTEE
LIMITED
Third Respondent

Counsel: B A Scott for Appellant
 S R Gepp for First Respondent
 N C Anderson and K F Gaskell for Second Respondent
 J P Ferguson for Third Respondent

Date of Minute: 2 December 2021

MINUTE OF GODDARD J

[1] At the time a fixture was applied for in this appeal, in early September 2021, the Court was advised that a time-bounded stay had been granted in the High Court, and that it was highly desirable that a decision be issued on the appeal by this Court by early June 2022. I directed that a fixture should be allocated in late 2021 or early 2022 if at all possible.

[2] Unfortunately, at that time, the earliest two day fixture that could be allocated before the Permanent Court at a time that all parties could reasonably accommodate was 31 May and 1 June 2022.

[3] Subsequently, a two day fixture has become available on 15–16 March 2022.

[4] The Deputy Registrar made inquiries about counsels' availability for that earlier fixture. All counsel were able to accommodate it, apart from Ms Gepp for the First Respondent. I convened a telephone conference to consider whether the earlier fixture should be allocated.

[5] Mr Anderson outlined the timetable for consultation and decision-making by the Minister in advance of the statutory deadline of 1 October 2022, for any decision in relation to the relevant fisheries in the year beginning on that date. That involves a consultation process in June/July 2022, to enable the Minister to make a decision in August or September 2022. Ms Gepp confirmed that she broadly accepted this outline of the timetable.

[6] It is plainly desirable that the consultation process be informed by this Court's decision on the appeal. There would be significant disadvantages for the Minister as decision-maker, and for all affected parties, if consultation took place at a time when this Court's decision had not been delivered, with the risk that following that decision, aspects of the consultation process would need to be revisited.

[7] Ms Gepp explained the difficulties that she would face if the March fixture is allocated. She is acting for the Southland Fish and Game Council and for the Royal Forest and Bird Protection Society in their appeals on the proposed Southland Water and Land Plan. Those appeals have been set down for four weeks beginning on 14 March 2022. There are approximately 20 active parties involved in the proceeding. Plainly it would not be realistic for that hearing to be moved in order to accommodate Ms Gepp, in the event this appeal proceeds on 15–16 March 2022.

[8] Ms Gepp explained the particular difficulties she would face in the first week of the hearing, during which parties will present opening legal submissions and Southland Regional Council will present its evidence.

[9] Ms Gepp also explained the prejudice to her clients if she were not able to act as counsel in those appeals, and if she were unable to appear as counsel in the appeal before this Court.

[10] I am sympathetic to the difficulties that Ms Gepp faces, and the inconvenience this may cause to her clients. However there is a real urgency in this Court determining the appeal before it as early as possible in 2022. Now that that is possible, it should be done.

[11] It may be that Ms Gepp is able to continue to appear as counsel in the appeals before the Environment Court, and in the appeal before this Court, stepping out of the Environment Court hearing for two days. Such accommodations are often necessary to enable short appeals to be heard in this Court or the Supreme Court, while counsel are engaged in longer fixtures elsewhere.

[12] Weighing all these factors, I direct that the appeal be set down for 15–16 March 2022.

[13] I have asked the Deputy Registrar to use his best endeavours to identify any other two day fixture that may be available in the weeks surrounding the week of 14 March 2022. If another fixture becomes available, the Deputy Registrar will consult counsel, and then refer the file to me for a decision on the fixture date. As I explained to all other counsel, they may need to adjust their schedules in order to accommodate a different date, and in particular an earlier date, should one become available.

Goddard J