

**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-029)

(appellants listed on the attached Schedule)

Appellants

AND SOUTHLAND REGIONAL COUNCIL

Respondent

Before: Environment Judge J E Borthwick
Deputy Environment Commissioner R M Dunlop

Held: at Christchurch on Tuesday 19 October 2021 at 10.00 am

Appearances: P A C Maw, I Edwards, A M Langford for the Southland Regional Council
D Allan for Aratiatia Livestock Ltd
S Christensen for Meridian Energy Ltd
M Wright for Southland Fish and Game Council and the Royal Forest and Bird Protection Society of NZ Incorporated
C Fowler for Rayonier New Zealand
B S Carruthers for Wilkins Farming Company Limited
M R Christensen for Ravensdown Ltd
P Wilson for Federated Farmers of NZ
J G A Winchester for Ngā Rūnanga
V Hamm for Ballance Agri-Nutrients Ltd
K Rusher for Southport Export Ltd, Kodansha Tree Farm NZ Ltd, Southland Plantation Forest Company of NZ Ltd and Hamish English
P Williams for the Director-General of Conservation



M Garbett for the Territorial Authorities
C Thomsen for Beef+Lamb Ltd
K Forward and J Ottawa for DairyNZ and Fonterra Co-
Operative Group Ltd
J Forrest for Waiau Rivercare Group

**RECORD OF PRE-HEARING CONFERENCE
TIMETABLE DIRECTIONS (TOPIC B)**

Introduction

[1] The Topic B appeals were set down for a pre-hearing conference for the purpose of making timetable directions to bring the appeals on to a hearing.

[2] The sequence of hearing will be in three tranches as follows:

- (a) Tranche 1: Topics B2 (water quality and discharges); B3 (wetland and indigenous biodiversity); B4 (bed disturbances) and B5 (farming);
- (b) Tranche 2: B1 – water takes; and
- (c) Tranche 3: B6 – infrastructure and Waiau/Manapōuri Power Scheme.

Venue

[3] Given the continuing impact of the COVID-19 pandemic, the hearing will be in Christchurch where the court has the greatest ability to accommodate social distancing in a large hearing and provide audio-visual link (AVL) services (e.g. Zoom, MS Teams).

[4] Unless directed otherwise, expert witnesses are required to attend court and give evidence in person.¹ Farmers and lay witnesses located in Southland region² may – if they wish – give evidence remotely by AVL. More information will be

¹ Travelling may not be possible during a regional lockdown.

² A lay witness is a person who is not giving evidence as an expert.

provided about AVL closer to the hearing.

Hearing weeks

[5] Courtroom availability is now confirmed and Tranche 1 appeals will be set down for hearing in the following weeks:

- (a) weeks commencing 14 and 21 March 2022; and
- (b) weeks commencing 4 April and 11 April 2022 (excluding Good Friday).

State of the environment

[6] When filing its Topic B Overview Evidence on 22 October 2021, the Regional Council will identify the evidence that it relies on to inform its view on the current state of the environment. I understand this will largely be contained in the joint witness statements (JWS) filed in 2020 and if this is to be supplemented, the Regional Council will give a broad overview of new evidence to be called.

Tranche 1 hearing

Expert conferencing

[7] The court can facilitate expert conferencing from 17 November 2021.

[8] All parties have agreed to document and exchange their proposed relief, track changing the appeal's version of the proposed plan as appropriate. Following this Will Say statements will be exchanged simultaneously.

[9] Directions will be made that counsel and the witnesses confer and agree on agendas for expert conferencing. These will include:

- (a) one or more conferences of technical witnesses; and
- (b) one or more conferences of planning witnesses.

[10] To assist with the preparation of the conference agendas, the planning witnesses will identify the issues on which they require technical advice to inform their opinion on the wording of the plan's provisions. Secondly, the planners are to observe any technical conference relevant to the matters in relation to which they are giving evidence. They may observe via AVL or in person.

[11] Planners are to note that Will Say statements need only include how the recommended relief implements the relevant objectives and policies.

[12] As suggested by Rayonier New Zealand Limited, Will Say briefs may be provided to inform the planning conference as to the technical evidence relied upon by a party to the proceeding. This may be done even when no relevant technical conference has been scheduled.

Tranche 2 and 3 hearings

[13] There may be jurisdictional challenges to the relief being pursued by parties in respect of which I do not have time to decide this year. I understand that if they arise, they will likely concern Wilkins Farming Company Ltd and Meridian Energy Ltd appeals.

[14] Parties to the Topic B1 and B6 appeals are to exchange a complete set of tracked changed provisions updated to record the relief they wish the court to make and secondly, file Will Say statements in advance of expert conferencing.

[15] Within ten working days after the exchange of Will Say statements, the parties are to seek directions in relation to any jurisdiction challenge and propose a timetable for evidence exchange on the basis that any hearing is to commence on or after 1 June 2022.

[16] Expert conferencing on Topics B2 and B6 will take place in the New Year. I note Meridian opposes Ms Jordan's participation in the planning conference as she is not giving evidence in the capacity of an expert.

Filing of combined appellant and s 274 briefs

[17] Rayonier requested that when a witness is giving evidence in two capacities, i.e. for an appellant and secondly for a s 274 party, that they file a single brief of evidence. While I agreed to this in court, I have had time to think it over and will not confirm the direction.

[18] Exchanging briefs on this basis may prejudice other parties. If Rayonier's s 274 evidence is to respond to the evidence of an appellant, it would presumably file the combined brief on 4 February 2022. However, this would deprive s 274 parties to Rayonier's appeal the opportunity to see Rayonier's appellant evidence before filing, as directed, on the same day.

Wilkins Farming Co Ltd

[19] Notice of withdrawal of an appeal filed by Campbell's Block Ltd and Robert Grant was received on 14 October 2021. Wilkins emailed the registry stating that it opposes the withdrawal of the appeal.³

[20] Is the correct procedure for Wilkins Farming Co Ltd to seek leave to substitute itself for the appellants? If so, directions have been made. If this is not the correct procedure, Wilkins Farming and the Regional Council are to confer and file a joint memorandum by **Wednesday 27 October 2021** advising whether any further procedural steps (if any) are required.

Directions

Timetable

[21] The timetable is set out in Attachment A.

³ Email from B Carruthers to registry dated 15 October 2021.

Wilkins Farming Company Ltd

[22] If an application is required, Wilkins Farming are to file an application to substitute itself as appellant in the appeals by Campbell's Block Ltd and Robert Grant by **Wednesday 27 October 2021**.

[23] The Regional Council is to file a memorandum in reply on whether opposition can be received on such an application by **Friday 29 October 2021**.

Tranche 2 and 3 hearings

[24] The Regional Council, in consultation with the relevant parties, is to file a reporting memorandum **within ten working days** after the exchange of Will Say statements, setting out:

- (a) any jurisdiction challenge and related directions required;
- (b) a proposed timetable for evidence exchange;
- (c) proposed dates and directions for expert conferencing; and
- (d) any other matters parties wish to raise.

Planning evidence of other parties

[25] Planning witnesses will, as a minimum:

- (a) identify and address the significant resource management issues that the proposed plan seeks to address;
- (b) if proposing to amend a plan change provision, evaluate the proposed change in line with s 32 giving reasons for their support; and
- (c) attach to their evidence a complete set of tracked changed provisions.

Form of evidence

[26] Evidence to be presented at a hearing shall be a written statement which is

to:

- (a) include a one-page summary of the key points;
- (b) number all pages and paragraphs;
- (c) be in Arial typeface, 11 font, and line spacing not less than 1.5;
- (d) ensure evidence exceeding 20 pages includes a table of contents;
- (e) ensure plans, maps and photographs including the north point, a scale and key;
- (f) propose changes to any provision by specifying the change sought with amendments or deletions underlined or struck through, as appropriate; and
- (g) attach a complete set of tracked changes to the provisions at the end of the evidence.

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



J E Borthwick
Environment Judge

Issued: 22 October 2021

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-35	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	Campbell's Block Limited
ENV-2018-CHC-45	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

Attachment A

Expert conferences	
<p>Topic B Overview Evidence from the Regional Council outlining key findings from Topic A Interim Decisions, updates to superior planning documents (e.g., NPSFM 2020), outline of other new regulations (e.g., NES Freshwater, Stock-exclusion), outline of ES' freshwater planning process, outline of fundamental issues raised in Topic B appeals</p> <p>Identify and update State of the Environment evidence.</p>	22 October 2021
<p>Parties to file tracked change relief and Will Say statements</p> <p>Planners will say limited to how proposed relief implements relevant objectives and policies.</p>	29 October 2021
<p>SRC to file tracked change provisions proposed in response and Will Say statements</p> <p>Planner's Will Say is limited to how proposed relief implements relevant objectives and policies.</p>	11 November 2021
<p>Expert witness conferencing of technical witnesses, and planners to take place</p>	17 – 26 November or 22 November – 10 December 2021
<p>Joint Witness Statements of technical witnesses and planners to be filed</p>	Within three working days of expert conference concluding or as directed by facilitating commissioner, but in any event no later than 10 December 2021

Evidence timetable	
Evidence-in-chief for the appellants to be filed and served	20 December 2021
Evidence-in-chief for s 274 parties to be filed and served	4 February 2022
Evidence-in-chief for the Regional Council to be filed and served	11 February 2022
Rebuttal evidence for s 274 parties and appellants to be filed and served	22 February 2022
All parties to file a memorandum setting out changes to provisions being pursued	22 February 2022

Hearings to commence in Christchurch	
Week 1	14 March 2022
Week 2	21 March 2022
Week 3	4 April 2022
Week 4 (not sitting Good Friday 15 April)	11 April 2022