

**BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA**

IN THE MATTER            of the Resource Management Act 1991  
AND                            of appeals under clause 14 of the First  
                                      Schedule of the Act  
BETWEEN                    TRANSPOWER NEW ZEALAND LIMITED  
                                      (ENV-2018-CHC-026)  
                                      ...continued on page 5  
                                      Appellants  
AND                            SOUTHLAND REGIONAL COUNCIL  
                                      Respondent

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**MINUTE RE WATER QUALITY AND ECOLOGY  
EXPERT CONFERENCING  
(15 April 2019)**

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**Introduction**

[1] This Minute is released for the purposes of water quality and ecology expert conferencing, with a view to ensuring an efficient and effective process to assist the court, as required by the Environment Court Practice Note 2014 (the Practice Note). The Minute suggests a possible approach to agenda setting for consideration by the parties; based on my experience on other recent cases, as both a facilitator and as a member of a court presented with the outcomes of expert conferences. However, I note that I cannot prejudge what information will ultimately be of assistance to the court in this case, as only the court can determine that. I also emphasise most strongly that the Minute is not directive and the actual agenda is to be prepared as directed in paragraph [7](v) of Judge Borthwick's Minute dated 2 April 2019.

[2] Experience has shown that an agenda based on open questions that the relevant experts consider "cover the field" and set out in logical order can assist the court to navigate through what can be complex technical subject areas reasonably efficiently and effectively. It is not the only way to assist the court, and it is for counsel and the experts



to decide how they wish to proceed.

[3] Experience has also shown that attention to detail in preparing each conference agenda; the availability of all relevant information for use at the conference; setting aside sufficient time for conferencing (to enable issues to be addressed to the extent) appropriate and thorough preparation by all participating experts are fundamental requirements for successful conferencing outcomes. Considerable time can be saved at a conference if general sections, such as key information sources relied on, can be drafted by an appropriate expert prior to the conference and modified by other experts as considered necessary at the conference.

[4] Before considering a possible approach as set out in the attached draft agenda framework, I considered my preliminary understanding of the evidence of the eight experts originally participating in the conference, the matters raised by Judge Borthwick in her Minute<sup>1</sup> and the response dated 5 April 2019 from counsel for the Regional Council. As additional experts are now attending, further questions may arise from their evidence and should be added.

[5] As counsel and experts will appreciate, my understanding of the case is relatively limited at this stage and I would expect that if the overall approach is acceptable to them, changes to the content and order could well be necessary. I have attempted to provide opportunities for experts to debate specific issues where I observed differing opinions being expressed in the evidence, as it is reasonable to anticipate that the issues will be raised before the court. Counsel and experts will need to decide if this approach is appropriate.

[6] As set out in the Practice Note, experts will be required to set out matters on which they agree and matters on which they disagree, with reasons. Where possible, experts should refer to particular sections of evidence, where that is appropriate, to avoid repetition.

### **The possible approach suggested**

[7] I attach a draft framework for the river water quality and ecology JWS for



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<sup>1</sup> Minute re Expert Conferencing dated 2 April 2019.

consideration by experts and counsel. The introductory sections are based on a number of recent cases before the court, although other approaches are sometimes used. The questions are set out in one possible sequence and arise primarily from the evidence. It is for counsel and the experts to decide if they wish to adopt it, modify it or use a different approach, with the key objective being to assist the court.

[8] An agenda using a similar approach should be considered for the lake water quality and ecology conference.

### **Date of conferencing**

[9] Judge Borthwick has forwarded to me a copy of Ngā Rūnanga's memorandum dated 10 April 2019 and asked me to respond. Having now read Dr Kitson's evidence, along with all the other evidence, I agree that the date of the conferencing should be changed to allow her to participate. I note from paragraph [4] of the memorandum<sup>2</sup> that "At this stage, she is expected to return for the week of 6 May when circumstances permit." To allow a small factor of safety and to ensure conferencing can be completed in the same week, river water quality and ecology conferencing will start on **Tuesday 7 May 2019** and continue until completed. The start of the conference cannot be delayed beyond this date as it could prevent completion of the two conferences in the time available. The lake's water quality and ecology will follow as soon as possible after completion of the river water quality and ecology conference.

### **Directions**

[10] It is directed:

- (a) a copy of this Minute and possible draft agenda is to be provided to all water quality, ecology and planning experts prior to preparation of the proposed agenda;
- (b) the final agenda is to be set by counsel and the experts as directed by Judge Borthwick in her Minute dated 2 April 2019 and filed with the Commissioner through the registry for review **five full working days** before the start of the conference;



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<sup>2</sup> Memorandum of Counsel for Ngā Rūnanga dated 10 April 2019.

- (c) river water quality and ecology conferencing will start on **Tuesday 7 May 2019** at 9 a.m. and continue over the next few days, starting at the same time each day, until completed. The lakes water quality and ecology conference will follow as soon as possible after that.



**Jim Hodges**  
**Environment Commissioner**



Issued: 15 April 2019

### List of appellants

ENV-2018-CHC-27	Fonterra Co-Operative Group Ltd
ENV-2018-CHC-28	Horticulture New Zealand
ENV-2018-CHC-29	Aratiatia Livestock Limited
ENV-2018-CHC-30	Wilkins Farming Co
ENV-2018-CHC-31	Gore District Council, Southland District Council and Invercargill City Council
ENV-2018-CHC-32	DairyNZ Limited
ENV-2018-CHC-33	H W Richardson Group Limited
ENV-2018-CHC-34 & 35	Beef + Lamb New Zealand
ENV-2018-CHC-36	Director-General of Conservation
ENV-2018-CHC-37	Southland Fish & Game Council
ENV-2018-CHC-38	Meridian Energy Limited
ENV-2018-CHC-39	Alliance Group Limited
ENV-2018-CHC-40	Federated Farmers of New Zealand
ENV-2018-CHC-41	Heritage New Zealand Pouhere Taonga
ENV-2018-CHC-42	Stoney Creek Station Limited
ENV-2018-CHC-43	The Terraces Limited
ENV-2018-CHC-44	Campbell's Block Limited
ENV-2018-CHC-45	Robert Grant
ENV-2018-CHC-46	Southwood Export Limited, Southland Plantation Forest Company of NZ, Southwood Export Limited
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-48	Peter Chartres
ENV-2018-CHC-49	Rayonier New Zealand Limited
ENV-2018-CHC-50	Royal Forest and Bird Protection Society of NZ Inc



**Possible framework for Joint Witness Statement for river water quality and ecology  
expert conference**

**Expert conference – River water quality and ecology**

ENV-2018 - CHC – 026, 29, 37, 38, 39, 40, 41, 47, 50

Various s274 parties

**Topic:**

**Southland Regional Council Proposed Southland Water and Land Plan**

**Date: 7 to ? May 2019**

**Venue: Invercargill**

**Witnesses who participated and agreed to content of this Joint Witness Statement (JWS) To be corrected/completed by the experts**

<b>Name</b>	<b>Employed or engaged by</b>	<b>Signature</b>
<b>Roger Hodson</b>	<b>Southland Regional Council</b>	
<b>Kevin Lloyd</b>	<b>Southland Regional Council</b>	
<b>Russell Death</b>	<b>Fish and Game</b>	
<b>Kate McArthur</b>	<b>Forest and Bird</b>	
<b>Jane Kitson</b>	<b>Ngā Rūnanga</b>	
<b>Mark James</b>	<b>Meridian</b>	
<b>Justin Kitto</b>	<b>Fonterra</b>	
<b>Susan Bennett</b>	<b>Territorial Authorities</b>	
<b>Emily Funnell</b>	<b>Director-General of Conservation</b>	



<b>Brian Rance</b>	<b>Director-General of Conservation</b>	

**Facilitator: Jim Hodges, Environment Commissioner**

**Recorder: To be confirmed**



## **Environment Court Practice Note**

All participants confirm that they have read the Environment Court Consolidated Practice Note 2014 and in particular Section 7 (Code of Conduct, Duty to the Court and Evidence of an expert witness) and Appendix 3 – Protocol for Expert Witness Conferences and agree to abide by it.

Mr Kitto acknowledges in his evidence that he is an employee of DairyNZ, which is a party to this proceeding, and that he may not be considered to be independent simply because of that employee status. Notwithstanding that, he confirms that he prepared and will present his evidence in all other respects as an independent expert and in compliance with the Code of Conduct. (Important to be upfront on this in the JWS and may need amendment to reflect the conference process)

Ms Funnell also acknowledges in her evidence that she is employed by the Department of Conservation, and the Department has an advocacy function under the Conservation Act 1987, her role in preparing and giving this evidence is as an independent expert. She goes on to state that she is authorized to provide any evidence that is within her expertise which goes outside the Department's advocacy function.

### **Purpose of expert conference**

The purpose of the conference is to assist the court by responding to a series of questions agreed by counsel and experts relating to river water quality and ecology and associated issues that the court may wish to consider when determining the appeals. For each question, the experts state matters on which they agree and on which they do not agree, with reasons.

### **Experts' qualifications and experience**

These are set out in each experts' statement of evidence.

### **Key information sources relied on**

The experts relied on the following key sources of information:

- (a) To be completed by the experts





## Definitions

The experts used the following definitions in this JWS (to be completed by the experts referring to the proposed plan definitions where possible):

- (a) Ecosystem health
- (b) Enhancement or improvement of water quality
- (c) Excessive periphyton growth
- (d) Macroinvertebrates
- (e) Maintenance (of water quality)
- (f) MCI
- (g) Over-allocation
- (h) Periphyton
- (i) QMCI
- (j) SQMCI

## Attachments to the JWS

The following attachments for part of this JWS:

- (a) Map of Freshwater Management Units, reproduced from Map series 7 of the Proposed Southland Water and Land Plan (pSWLP)
- (b) Details of Ngai Tahu cultural monitoring methodology
- (c) To be completed by the experts



## **Description of the Southland region aquatic environment**

An overview is provided in paragraphs 14 to 23 of the evidence of Mr Hodson. The other experts are in general agreement/disagreement with the overview.

### **Conference outcomes**

- 1 Is there agreement that the evidence of Mr Hodson provides an appropriate description of the condition of the existing river environment for use by the court or, if not, what changes or additions are required?**

(a)

(b)

- 2 What are the key contaminants that need to be considered?**

The experts agree that the following contaminants need to be considered:

(a) Experts to list

(b)

Experts to explain why the contaminants are important and state any disagreements

- 3 What are the key observations about the condition of the existing river and estuarine environments that are agreed and not agreed by the experts?**

(a)

(b)

- 4 What are the key trends in river water quality and ecology that need to be taken into account in the planning process?**



(a) What is the appropriate period for monitoring trends?

(b)

**5 To what extent, if any, do the experts consider over allocation of the river systems has occurred?**

(a)

(b)

**6 What water quality and ecology guidelines need to be taken into account in the planning process?**

(a)

(b)

**7 What are the key threats to human health that need to be taken into account in the planning process?**

(a)

(b)

**8 What are the key threats to mahinga kai that need to be taken into account in the planning process?**

(a)

(b)

**9 Are there any issues associated with threatened species that need to be taken into account in the planning process?**

(a)



(b)

**10 Are there any issues associated with toxicity in rivers and estuaries that need to be taken into account in the planning process?**

(a)

(b)

**11 Are there any matters arising from groundwater quality and its effects on river water quality and ecology that need to be taken into account in the planning process?**

(a) Would it be worth commenting on groundwater lag times, as it is relevant to load to come? (Kitto EIC at 4.16). If it is decided to include it, it would help to have an indication of when dairy conversions occurred to provide a more complete picture.

(b)

**12 Are there any matters arising from river water quantity and its effects on river water quality and ecology that need to be taken into account in the planning process?**

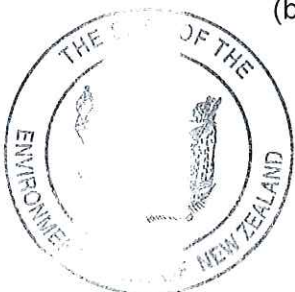
(a)

(b)

**13 Are there any issues associated with climate change that need to be taken into account in the planning process?**

(a)

(b)



**14 From a river water quality and ecology perspective, are there any other key issues that need to be taken into account in the planning process?**

(a)

(b)

**15 From a scientific point of view, how should the “maintenance” of existing water quality be measured, under what circumstance is “maintenance” appropriate and under what circumstance is “enhancement” or “improvement” appropriate?**

(a) Are these terms from the NPSFM or where?

(b)

**16 To what extent do the experts consider the use of an “overall” water quality parameter would be helpful as part of the proposed Southland Water and Land Plan?**

(a) The inclusion of an overall water quality parameter is proposed by Fish and Game.

(b) Their reason for doing so is...

(c)

**17 What do the experts consider should be the overall approach to managing river water quality and ecology prior to the finalisation of the proposed later limit setting process – “hold the line” or something else?**

(a)

(b)



**18 Do the experts consider that the proposed plan provisions are appropriate to address wastewater and stormwater discharges?**

(a)

(b)

**19 What key parameters or indicators do the experts consider need to be used as the basis of monitoring river water quality and ecology?**

(a)

(b)

**20 Are the same parameters or indicators the appropriate ones to be used as the basis of monitoring estuarine water quality and ecology or, if not, what changes or additions are required?**

(a)

(b)

**21 What are the experts' preliminary views on the setting of appropriate targets or limits for each parameter or indicator based on current knowledge, recognising that the limits are to be set in a subsequent process?**

(a)

(b)

**22 What linkages or common ground exist, if any, between the above parameters or indicators and the Ngai Tahu indicators used to assess Te Mana o te Wai?**

(a)

(b)



**23 Do the experts have a view on how to combine use of the two monitoring methods to provide the most efficient use of resources and result in the most effective environmental outcomes?**

(a)

(b)

**24 Are there any aspects of current river and estuarine water quality and ecology management proposals, not addressed above, that the experts consider need to be taken into account in the planning process?**

(a) For example methods, FMUs, risk, didymo

(b)

**25 Other matters (To be identified by the experts)**

(a) estuaries

(b)

**26 What opinions do the experts have on the proposed plan provisions set out below in terms of managing effects on river water quality and ecology effectively and efficiently? (Planning experts to set out relevant provisions)**

**Provision X**

(a)

(b)

**Provision Y**

(a)

(b)



**Provision Z**

(a)

(b)

