

**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-26)
... (continued on last page)
Appellants
AND SOUTHLAND REGIONAL COUNCIL
Respondent

**MINUTE OF THE ENVIRONMENT COURT
(13 September 2019)**

Introduction

[1] This Minute is released for the purpose of case management regarding the proposed programme of work for ecological and cultural indicators of health.

Background

[2] All parties with an interest in water quality were directed to attend a facilitated meeting on 3 September 2019 to develop a proposed programme of work to identify ecological and cultural indicators of health for waterbodies in Southland, with scientific experts to attend a facilitated conference on 4 September 2019. Following the conferences, counsel for Ngā Rūnanga and the Southland Regional Council both filed memoranda¹ as directed² seeking further directions from the court.



¹ Dated 6 September 2019.

² Minute of the Environment dated 5 August 2019 at [15](d).

[3] Counsel for Ngā Rūnanga outlined a preliminary programme of work to be undertaken by cultural experts³ noting the scope and scale of the work and matters of importance to be considered in developing cultural indicators of health. No directions are sought.

Directions sought by the Regional Council

[4] Counsel for the Southland Regional Council detail the proposed programme of work produced by the parties and seek directions confirming a number of matters as set out below. Any party opposing the directions or matters which the Council set out for confirmation were to advise the court by Thursday 12 September 2019. No opposition was received.

Proposed programme of work

[5] The parties' proposed programme of work is made up of three parts: the key tasks for the experts; the proposed general timeline for work and the specific outputs expected of the experts and proposed timeline for achieving these outputs. The Regional Council seeks that the programme as set out in the memorandum is approved by the court and that the work outlined is directed to be undertaken by the relevant parties.

Scope of the work programme

[6] Counsel advised that the following matters were agreed by the parties to be beyond the scope of the proposed work:⁴

- (a) A separate process is being undertaken by the Regional Council and its expert witnesses to identify the cause of continuing reduction in the areal extent of wetlands;
- (b) The contents of Appendix E of the pSWLP;
- (c) The land use management response to the indicators of health; and
- (d) The planning response to the indicators of health.

[7] The parties seek confirmation from the court that these matters are beyond the scope of the joint work programme. I confirm those matters are beyond the scope of the joint work programme.

³ Memorandum of counsel for Ngā Rūnanga dated 6 September 2019, Appendix A.

⁴ Memorandum of counsel for SRC dated 6 September 2019 at [24],



Groundwater quality

[8] The experts seek clarification as to whether it is necessary for groundwater to be considered as part of water quality in accordance with Objective 6. The wording of Objective 6 in the appeals version of pSWLP reads “maintaining the quality of water in waterbodies, estuaries and coastal lagoons, where the water quality is not degraded”. However, Mr McCallum-Clark’s proposed wording of Objective 6 (which counsel notes the court’s tentative endorsement of in the Minute dated 9 July 2019), only relates to “water quality in rivers, lakes, estuaries and coastal lagoons”. No decision has been made on which version of Objective 6 is preferred.

[9] Counsel suggests that the experts should not be required to set thresholds for defining degradation of water quality in groundwater bodies as that is outside the scope of the appeals. Objective 8, which is not under appeal, addresses groundwater quality but only insofar as it concerns the Drinking Water Standards and secondly, post FMU processes. Does not the appeals version of Objective 6 reference to “freshwater” include groundwater?

[10] Ground and surface water bodies are often (if not usually in Southland) interconnected. We would not want to prematurely close the experts’ consideration of freshwater management by excluding groundwater degradation. Being mindful the implementation of this work is to be considered in Topic B, we prefer to be led by the experts on scope regarding regarding the indicators for ecological and cultural health. At the very least, it is prudent that groundwater experts are included in the conferences and work programme to produce outcomes that meaningfully respond to the integrated and holistic well-being of freshwater bodies.

Expert conferencing

[11] As part of the proposed programme of work the parties seek further facilitated conferences between experts. The Commissioners are available to facilitate conferencing on the following dates:



- **Monday 14 October– Wednesday 16 October 2019** and;
- the weeks of **11 November 2019** and **18 November 2019**.

[12] Ms Cain and Mr Rodway are directed to attend these conferences.

[13] The respondent, having conferred with the other parties, is to file a memorandum giving the following (preferably agreed) details:

- (a) the **number of persons** anticipated to attend each conference;
- (b) the **availability** of experts for conferencing on the dates indicated;
- (c) the **estimated time** required for conferencing;
- (d) **facilities** required; and
- (e) if Christchurch would be the best venue and if not, then the most suitable **location** for conferencing.

Responsibilities of counsel

[14] Counsel are to provide their respective experts with a copy of the Environment Court's Expert Witnesses Code of Conduct (Part 7, Environment Court Practice Note 2014) and Protocol for Expert Witness Conferences (Appendix 3, Environment Court Practice Note 2014) and to brief them on their responsibilities under these. Particular attention is to be drawn to those parts which require experts to express their views independent of counsel and the parties who have engaged them.

[15] Participants are to be advised by counsel that expert witness conferencing is privileged except for the signed joint witness statement prepared by the experts following the conference, which will be part of the public record.

Scribe

[16] Counsel are to liaise on the provision of a suitable recorder to attend the conference and prepare the Joint Witness Statement under the direction of the experts. For small conferences (2 - 3 experts) this may be one of the experts, but it is preferable that a non-participant is made available for all conferences. Recorders are to be supplied with the necessary technical equipment, including a laptop computer.



Directions

[17] Accordingly, I direct:

- (a) by **Friday 20 September 2019** the respondent (having conferred with the other parties) is to file and serve a memorandum addressing the details outlined at [13];
- (b) the final agenda must be filed within **five working days** of each conference commencing.
- (c) cultural and scientific experts are to attend a combined facilitated conference on **Monday 14 October – Wednesday 16 October 2019**. Experts are to provide an update to the parties and the court as to progress against the work programme;
- (d) a further combined facilitated expert conference of two – three days is to take place between in either the week of **11 November 2019** or **18 November 2019** (parties are advised that the week of 18 November is the courts preference). The parties are to confirm if this will be required by **Tuesday 29 October 2019**; and
- (e) a final joint witness statement is to be filed and served on all parties and the court by **Friday 29 November 2019**.

[18] Leave is reserved for parties to apply for further directions.


J E Borthwick
Environment Judge
Issued: 13 September 2019



THE SEAL OF THE
ENVIRONMENT COURT OF NEW ZEALAND

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

