

**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

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

Held: at Christchurch via AVL on 10 February 2022

Appearances: P A C Maw and I Edwards for Southland Regional Council
A M Langford for Southland Regional Council (AVL)
B S Carruthers for Wilkins Farming Co Limited and Federated
Farmers of New Zealand Inc (AVL)
S Gepp for Southland Fish and Game Council and Royal Forest
and Bird Protection Society of New Zealand Inc (AVL)
K Rusher for Hamish English and Southwood Export Limited
(AVL)
V Hamm and M Exton for Ballance Agri-Nutrients Limited
(AVL)
P D Williams for Director-General of Conservation
Tumuaki Aburei (AVL)
J G A Winchester and S Lennon for Ngā Rūnanga (AVL)
K Forward and J Ottawa for Fonterra Co-operative Group
Limited and DairyNZ Limited



M R Garbett for Territorial Authorities (AVL)
M R Christensen for Ravensdown Limited
C Thomsen for Beef + Lamb New Zealand (AVL)
C Fowler for Rayonier New Zealand Limited
H Tapper for Meridian Energy Limited

RECORD OF PRE-HEARING CONFERENCE

Introduction

[1] The proceedings were set down for a pre-hearing conference for the purpose of case management.

Protocols

[2] Important changes have been made to the Environment Court's COVID-19 Protocols. From 14 February 2022, hearings will be conducted to the extent possible by remote participation.¹

[3] The link to the Environment Court COVID-19: Protection Framework may be found here:

<https://environmentcourt.govt.nz/assets/Documents/Publications/Environment-Court-COVID-19-Protocol-Red-traffic-light-February-2022.pdf>

Timing and sequencing

[4] Three workstreams are underway to ready the proceedings for hearing. These are:

- (a) provisions proposed to settle following mediation and in respect of which consent documentation has been filed;

¹ Environment Court Practice Note: COVID-19: Protection Framework at [6].

- (b) provisions proposed to settle following expert conferencing about which evidence is to be called; and
- (c) disputed provisions.

A further issue for the parties to resolve

[5] In October 2021, the provisions in dispute were set down for a four-week hearing commencing **14 March 2022**.

[6] Those weeks are no longer available, with two weeks hearing time being taken up by provisions proposed to be amended by agreement of the parties (as set out below).

[7] This change impacts the proceeding two ways:

- (a) if – as the Regional Council estimates – the ‘all of parties’ hearing requires 1.5 weeks, the court will not have sufficient time to pre-read for the ‘disputed provisions’ hearing; and
- (b) more hearing time (overall) may be required.

All of parties’ hearing

[8] Having heard from the parties, I will direct that the provisions proposed to settle following mediation and expert conferencing be set down for hearing in the weeks commencing **14 March** and **21 March 2022**. I will refer to this as the ‘all of parties’ hearing’. It is to proceed remotely (i.e. via AVL).

[9] I anticipate witnesses will include the deponents of affidavits filed in support of the application seeking orders by consent and secondly, the Regional Council’s planner whose evidence supports the agreements reached at expert

conferencing.²

[10] If the planners rely on (technical) expert advice to inform amendments to the plan provisions, expert evidence will be required. I suggest that technical evidence be by affidavit with the court to decide whether the deponent is required to attend the hearing to answer questions. The technical evidence is to be focussed; the court is not to be directed to read entire briefs³ or joint witness statements filed in the 2019/2020 hearings.

[11] The parties are to confer and report to the court on witnesses to give evidence in support of the amended provisions. If the planning witnesses rely on technical advice to support those amendments, this is to be filed no later than 25 February 2022.

[12] By 14 March 2022, the court will have read the evidence to be called in support of the all of parties' hearing (only). Prior to the hearing commencing, I will endeavour to release a Minute highlighting topics and issues in respect of which the court has questions.

Disputed provisions hearing

[13] The timetable for evidence exchange is currently underway for those provisions about which there is a dispute. I will refer to this as the 'disputed provisions hearing'.

[14] A decision whether the disputed provisions hearing can be heard remotely will be made once the hearing schedule is to hand. The Regional Council will seek and report on the parties' views on this matter when filing the hearing schedule.

[15] It is possible that the matters in dispute may narrow once evidence

² It is the court's understanding that planning evidence will be given by Mr M McCallum-Clark evidence-in-chief due 11 February 2022.

³ The briefs or transcript of evidence given in the 2018/2019 hearing.

exchange is concluded. If it does, some witnesses will need to amend their evidence by making track changes. A direction is made that if evidence is amended, it is the amended version that is included in the electronic casebook.

[16] Evidence will be amended if the witness has **not** qualified themselves in evidence-in-chief as an expert witness.⁴

[17] The court will not commence reading the evidence for the disputed provisions hearing until after 25 March 2022 or after it completes the all of parties' hearing, whichever date is the earliest. Parties are to **ensure** the court has two weeks for pre-reading the evidence before the disputed provisions hearing commences.

[18] The court has set aside time in the roster to continue the proceedings in the weeks commencing **30 May** and **7 June 2022**. Parties will be directed to file a memorandum with the court if counsel and witnesses are unavailable during these weeks.

AVL hearings – general directions

[19] For the all of parties' hearing, I am satisfied that a remote hearing can serve the interests of justice and direct the hearing be conducted via AVL.

[20] That said, any party may seek leave to appear in person but must do so **ten working days** prior to the commencement of the hearing and I will decide whether parties are able to be safely accommodated.⁵

[21] The place of hearing is Christchurch, with the judge and hearing manager

⁴ It is not sufficient for qualifications to be given in will say statements, as these statements may not be in evidence.

⁵ Environment Court Practice Note: COVID-19: Protection Framework at [8] says at least five working days' notice is required. I have extended this to require ten working days, given the number of parties to the proceedings.

in a courtroom.⁶ Commissioner Dunlop will be sitting remotely in Auckland.

[22] For those parties appearing by AVL, they will be requested to participate via Virtual Meeting Room ('VMR') or MS Teams technology.

[23] The Protocol for Participation in Remote Hearings applies. The link to the protocol may be found here:

<https://www.courtsofnz.govt.nz/going-to-court/practice-directions/practice-notes/all-benches/protocol-for-participation-in-virtual-hearings/>

[24] In addition to the matters addressed in the protocol, all participants are advised:

- (a) to link to the court hearing using a laptop or desktop device (preferably);
- (b) to mute their microphones when not speaking and keep them muted during breaks;
- (c) to be no more than 2 metres from the camera; and
- (d) to assist the court's transcription service, to give your name before addressing the court or commencing cross-examination.

[25] It is counsels' responsibility:

- (a) to provide to their witness copies of the protocols mentioned;
- (b) to ensure that their witness can access the electronic casebook while maintaining the audio-visual link with the court;⁷ and
- (c) if the witness wishes to be sworn, ensure a bible is to hand.

⁶ The hearing may continue with the Judge sitting outside of a courtroom either in Chambers or self-isolating at home.

⁷ To do this, the witness will either give evidence using dual computer screens or have a hard copy of the electronic casebook.

[26] The Registry will:

- (a) test the AVL link⁸ at least **one week prior** to the commencement of the hearing and may repeat the test. Any adjustments or changes required by the Registrar must be undertaken, and
- (b) confirm with the bench, compliance with the protocols and with the guidance given in this Record.

Remote viewing (streaming)

[27] I have made a direction that remote viewing is permitted.

[28] If parties wish to apply to view a hearing remotely, they must do so by contacting the Registry requesting access **one working day** before the hearing.

[29] The Protocol for Remote Viewing of Hearings applies. The link to the protocol may be found here:

<https://www.courtsofnz.govt.nz/going-to-court/practice-directions/practice-notes/all-benches/protocol-for-remote-viewing-of-hearings/>

Will say statements

[30] No party opposes the inclusion in evidence of will say statements that were prepared for expert conferencing.⁹ Only those will say statements that have been cross-referenced in evidence will be read by the court.

[31] If the witness has not done so, counsel will be directed to file a memorandum directing the court to the relevant page and/or paragraphs.

⁸ For counsel and their witnesses.

⁹ The relevant expert conferencing took place in 2021.

Final relief sought

[32] All parties are directed to file and serve memoranda setting out the final version of relief sought.

Hearing schedule

[33] The Regional Council, having conferred with the parties, will produce a hearing schedule that allows for parties' submissions and (where relevant) estimated time for cross-examination and re-examination following the court's questions. Allow 45 minutes for the court's questions of each witness.

[34] The evidence will be sequenced in order of topics.¹⁰

[35] Counsel are excused from attending any topics in respect of which their client has no interest.

[36] It is counsels' responsibility to keep abreast of changes to the hearing schedule.

Pre-reading

[37] As the evidence will be pre-read, the court will usually be prepared to take topics and/or witnesses out of order.

[38] However, two working days' notice is required if a whole topic is to be rescheduled.

¹⁰ I.e. Topic B2: Water quality and discharges, Topic B3: Wetland and indigenous biodiversity, Topic B4: Bed disturbances and Topic B5: Farming.

Electronic casebook

[39] The Regional Council is responsible for filing an electronic casebook.

[40] It is counsels' responsibility to ensure that the electronic casebook is transmitted to their witnesses. Cross-examination of witnesses will be on documents contained in the electronic casebook and counsel will refer to the casebook's paginated numbering.

[41] Documents may not be handed up during the hearing. Documents not included in the electronic casebook are to be filed and served no later than two working days prior to their intended production. Filing is by email transmission.

Directions

[42] I direct:

AVL

- (a) any party may seek to appear in person (instead of by AVL) by application made at least **ten working days** prior to the commencement of the hearing;
- (b) by **Friday 25 February 2022** the Regional Council will report to the court on the parties' views as to use of AVL for the disputed provisions hearing.

All of parties' hearing

- (c) the parties are to identify any witnesses to give technical evidence in support of the agreed amended provisions by **Friday 18 February 2022**; and
- (d) the technical evidence in support of amended provisions is to be filed by **Friday 25 February 2022**.

Disputed provisions hearing

- (e) by **Tuesday 22 February 2022** if agreement is reached on one or more disputed provisions, the evidence-in-chief is to be amended (tracking changes) with any amended brief included in the electronic casebook.

General directions relevant to both hearings

- (f) by **Tuesday 22 February 2022**:
- (i) any expert witness who has **not** qualified themselves in evidence-in-chief as an expert, will amend providing details (tracking changes);¹¹
 - (ii) all parties are to file and serve memoranda setting out the final version of relief sought;
 - (iii) if referred to in evidence, counsel are to file a memorandum directing the court to relevant pages and/or paragraphs of will say statements.¹²
- (g) by **Friday 25 February 2022**:
- (i) the Regional Council is to file a hearing schedule;
 - (ii) the Regional Council is to file an electronic casebook;
 - (iii) parties will file memoranda if counsel and witnesses are unavailable in the hearing weeks commencing **30 May** and **7 June 2022**.

¹¹ Any amended briefs will replace evidence-in-chief filed in the electronic casebook.

¹² Note: if page and paragraph references are given no further action is required.

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

Jane S.



J E Borthwick
Environment Judge

Issued: 15 February 2022

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 Inc
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