

**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

**MINUTE OF THE ENVIRONMENT COURT
(29 October 2021)**

[1] The purpose of this Minute is to put in place arrangements for expert conferencing and to respond to the parties' request to clarify the timetable.

Timetable

[2] The court has received correspondence¹ from parties expressing that the Record of Pre-hearing Conference issued 22 October 2021 has some discrepancies

¹ Emails to the registry from counsel for Ngā Rūnanga dated 26 October 2021 and counsel for Wilkins Farming Co dated 27 October 2021.



and have asked the court to clarify the timetable.

[3] Counsel for Ngā Rūnanga submits that paragraph [8] of the Record correctly records the parties' understanding, that the exchange of will-say statements will occur simultaneously on 11 November 2021, while the timetable as set out in Attachment A does not reflect this, having a staggered approach.

[4] The court notes there is an inconsistency between paragraph [8]'s reference and Attachment A, and confirms the simultaneous exchange of will-says is not correct. Will-say statements are to be filed in a staggered approach. Further, while all other timetable dates remain the same, SRC will file their will-say and tracked change relief on **12 November 2021**, rather than 11 November 2021. All other dates remain the same. An amended timetable is set out in Attachment A.

Expert conferencing

[5] As previously signalled,² further directions are made in order to set down expert conferencing. As discussed, expert conferencing on planning and technical matters will take place between 17 and 26 November 2021 **or** 22 November and 10 December 2021. Resolution of these dates is required as soon as possible to assist management of the court roster.

Remote participation

[6] I have been appointed as the lead commissioner for these proceedings, having facilitated the Topic B mediations. Due to COVID-19 restrictions myself, and likely other counsel and experts, will not be able to travel. Therefore, it is likely that conferencing will need to be held virtually either via Zoom or MS Teams. While this is not the court's preferred format, it is accepted that it will be necessary to progress matters efficiently.

² Record of Pre-Hearing Conference issued 22 October 2021, Attachment A.

[7] Accordingly, the court has drafted protocols for remote participation.³ In addition to the Court Practice Note, the minimum requirements for parties to attend mediation remotely are:

- (a) a quiet room in which only the person in attendance is located (note confidentiality requirement);
- (b) a computer with a relatively up-to-date operating system;
- (c) a built-in microphone and camera in the computer or those items configured to the computer; and
- (d) a strong WIFI/internet signal/connection.

[8] Remote attendance can form part of a conference which also accommodates some participants on a face-to-face basis. This “hybrid” arrangement requires certain facilities to be in place at the venue where the face-to-face participants are located, as well as the technology residing with parties attending remotely. If a hybrid arrangement is contemplated, the registry will need to be advised as soon as possible to confirm appropriate arrangements can be made.

[9] Having considered these options, if any party objects to conferencing taking place virtually, they are to inform the court, outlining reasons why. If opposed, the court will look into arranging an alternative facilitator.

Agenda

[10] Counsel and witnesses are to confer and prepare an agenda prior to each conference identifying the key issue(s) relative to the witnesses expertise as per paragraphs [9] – [10] of the Record.

[11] Each agenda must be filed **five working days** prior to conferencing

³ A copy can be obtained from the registry.

commencing.

Responsibilities of counsel

[12] 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.

[13] 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.

[14] When considering the appropriate sequencing of conferencing, counsel should consider which topics feed into others i.e. terrestrial ecology impacts on landscape. Counsel should also consider whether some experts should be briefed by others, or attend alternative conferences that they may be able to contribute positively to.

Scribe

[15] 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 to 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 computer.

Joint witness statement

[16] The Joint Witness Statement agreed from the conference will identify the issues, both agreed and not agreed, accompanied by the experts' reasoning set out as succinctly as the circumstances allow. A joint witness statement will be filed within **three working days** of the conference concluding or as directed by the facilitating commissioner, but no later than **Friday 10 December 2021**.

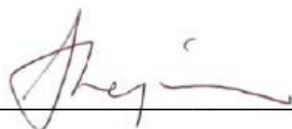
Directions

[17] The timetable is confirmed as set out in Attachment A.

[18] The respondent, having conferred with the other parties, is to file a memorandum by **Friday 5 November 2021** giving the following (preferably agreed) details:

- (i) parties are to confirm per paragraph [9] if they object to remote conferencing;
- (ii) the specific date and sequencing of conferences;
- (iii) the number of persons anticipated to attend each conference;
- (iv) the estimated time required for conferencing;
- (v) if appropriate, facilities required; and
- (vi) the most suitable location for conferencing if face to face. Parties are to consider whether alternative locations such as Christchurch or Wellington are suitable.

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



A C E Leijnen
Environment Commissioner

Issued: 29 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 (amended)

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>	12 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>	<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</p>

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