

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

IN THE MATTER of the Resource Management Act 1991
AND of appeals pursuant to clause 14 of the First
 Schedule of the Act
BETWEEN TRANSPOWER NEW ZEALAND LIMITED
 (ENV-2018-CHC-26)
 ... (continued on last page)
 Appellant
AND SOUTHLAND REGIONAL COUNCIL
 Respondent

**MINUTE OF THE ENVIRONMENT COURT
(30 January 2019)**

Introduction

[1] This Minute is released for the purpose of case management, by way of response to two memoranda of counsel for the Southland Regional Council dated 21 December 2018 and 25 January 2019.

Rule 52A

[2] The Council's December memorandum addresses its position in relation to Rule 52A. Rule 52A provides for the consenting of the Manapōuri hydro-electric generation scheme as a controlled activity, provided certain conditions are met. A number of parties have appealed the activity status of this rule.

[3] The Council's planning witness Mr McCallum-Clark largely supports the Objective and Policy framework in the decisions version of the pSWLP. However, he considers that restricted discretionary activity status was (and is) the most appropriate activity status for Rule 52A (as set out in the Section 42A Reply Report). Disagreeing with him, the Hearing Panel determined the activity status to be controlled. As the Council has engaged Mr McCallum-Clark to provide expert planning evidence on behalf of the Council



for the pSWLP hearing, it is placed in a somewhat difficult position in respect of the appropriate activity status for Rule 52A.

[4] Given the circumstances, the Council advises the court and parties that in relation to the activity status of Rule 52A, it will abide by the court's decision, and does not intend to present any evidence on that issue. The Council considers no party will be prejudiced by the Council's position and still intends to be actively involved in mediation and the wider appeals in relation to Rule 52A (excluding the appropriate activity status).

[5] While the Council is not seeking any direction from the court in response to this matter, it occurs to us that some parties may seek to question Mr McCallum-Clark on his opinion regarding the status of the activity. This line of questioning may be difficult to resist, particularly if the questions contrast different approaches in policy advocated on behalf of the other parties.

Waiver and directions sought

[6] The Council has also applied for the following waivers and directions:

- (a) a direction that, unless hard copies are subsequently required to be filed and/or served by the court, all evidence (evidence-in-chief and rebuttal) relating to the appeal filed by any party may be:
 - (i) filed electronically with the Environment Court by email to christine.mckee@justice.govt.nz; and
 - (ii) served electronically on the Council by email to waterlandappeals@es.govt.nz and counsel for the Council (philip.maw@wynnwilliams.co.nz kirstie.wyss@wynnwilliams.co.nz).
- (b) a waiver of the usual requirement to serve a copy of the evidence (evidence-in-chief and rebuttal) on all relevant parties; and
- (c) a direction that service of evidence on all other parties can be deemed to be effected by the Council uploading a copy of the evidence onto the Council's website (www.es.govt.nz/waterandland) as soon as is practicable, but within three working days after the evidence is received by the Council.

[7] The Council considers that the proposed directions will reduce the burden of the Council in receiving hard copies of documents, reduce the burden on appellants and



s 274 parties who would otherwise be obliged to serve a large number of parties and reduce also the risk of service of evidence being overlooked due to the complexity of determining who has an interest in what parts of different appeals.

[8] I consider the waiver and directions sought by the Council to be sensible. Given the large number of parties to these proceedings, hosting all court and party documentation on the website in one place will ensure the process is as efficient as possible while ensuring fairness to all parties in accessing them.

[9] That said, I am mindful that not all parties may have access to computers in order to download evidence. If that is the case, parties are to notify the court by **Friday 8 February 2019** that hard copies are required and a direction will be made to that effect.

[10] Note, the Council is still required to file six hard copies of all evidence with the court as previously directed (as per the Minute dated 19 October 2018 at [11](j)). This is in addition to parties electronically filing their evidence with the court.

[11] Finally, parties are advised that these proceedings will now be case managed by Emma Sprott (instead of Christine McKee). Emma's details are as follows:

Emma Sprott
Hearing Manager
emma.sprott@justice.govt.nz
027 629 2355 / 03 962 4158

Directions

[12] Accordingly, under s 281 of the Act I direct:

- (a) the Council is to upload the application for waiver and this Minute onto its website;
- (b) unless hard copies are subsequently required to be filed and/or served by the court, all evidence (evidence-in-chief and rebuttal) relating to the appeals is to be:
 - (i) filed electronically with the Environment Court by email to emma.sprott@justice.govt.nz; and



- (ii) served electronically on the Council by email to waterlandappeals@es.govt.nz and counsel for the Council (philip.maw@wynnwilliams.co.nz kirstie.wyss@wynnwilliams.co.nz).
- (c) a waiver of the usual requirement that the parties serve a copy of the evidence (evidence-in-chief and rebuttal) on all relevant parties is granted and I direct service of evidence on all parties is effected by the Council uploading a copy of the evidence onto the Council's website (www.es.govt.nz/waterandland) as soon as is practicable (within **three working days**) after the evidence is received by the Council; and
- (d) any party without adequate computer access seeking hard-copies of evidence is to notify the court and the other parties by **Friday 8 February 2019**. A direction is made (without further notice) that those parties be served by post.


J E Borthwick
Environment Judge



Issued:

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

