

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14 of the First Schedule of the Act

BETWEEN WILKINS FARMING CO LIMITED
(ENV-2018-CHC-30)
Appellant

AND SOUTHLAND REGIONAL COUNCIL
Respondent

MINUTE OF THE ENVIRONMENT COURT
Preliminary legal issue
(23 August 2022)

[1] This Minute concerns the Tranche 2 appeal set down for hearing tomorrow on a preliminary legal issue.

[2] The Regional Council takes issue with Ms Carruthers' submissions saying that she is giving evidence from the bar on matters that are irrelevant. Ms Carruthers will need to explain why Ms Dines (planner) was not briefed in relation to the same. For now, the court has an open mind about the relevance of the subject matter.

[3] Assuming that she is in a position to do so, do the parties object to Ms Dines proving in evidence the statements made in paragraph [17] (first sentence)



of the Executive Summary, Part 1: Policy 42 paragraphs [3]-[20]; Part 2: paragraphs [2]-[9] of Ms Carruthers' submissions dated 11 February 2022? Ms Carruthers shall confirm at the commencement of the hearing whether Ms Dines may give this evidence. I suggest the evidence be admitted on a provisional basis with counsel to establish relevance to any matter in issue tomorrow.

[4] The court has read the submissions and has sighted the document referred to in footnote 7 to Ms Carruthers' opening. The court directs counsel for the Regional Council take his client's instructions and confirm at the commencement of the hearing:

- (a) does the proposed plan's methodologies require the relevant Water Conservation Order be considered together with the allocations made for surface and groundwater resources?
- (b) has the Water Conservation Order been breached in any part of the catchment and if so what implications, if any, does this have for the management of surface and groundwater under the relevant pSWLP provisions?
- (c) does it accept that the Council applies a policy (sitting outside the pSWLP) described in Ms Carruthers' opening submissions at [10]-[12], including a 'SDE allocation'?

[5] Does the Regional Council say that the following groundwater zones are over-allocated:

- (i) Upper Maitaia; and
- (ii) Wendonside.

Case management directions

[6] From the material before the court (assuming it is relevant), it occurs to us that the Regional Council may have made a mistake of fact when calculating the primary allocation for the groundwater zones that are the subject matter of the

appeal and that mistake may have informed the policy that is to apply when the groundwater resource is over-allocated. Alternatively, the method in the proposed plan to attribute stream depletion effects between surface and groundwater bodies was flawed and that flaw may have informed the policy in the plan.

[7] At the commencement of Wednesday's hearing, counsel, having considered the above matters, and having taken their client's instructions, will give their client's position in relation to the following proposed case management options:

- (a) deal with the issue of scope in the substantive hearing after evidence is heard regarding any factual / method dispute; or
- (b) adjourn the Wilkins' proceeding pending the outcome of the Regional Council's collaboration with consent holders in the process documented in footnote 7 (above). If that is the preferred option, the Regional Council is to advise on the anticipated result of the collaboration including:
 - (i) the review of existing consents,
 - (ii) the scoping of work and engagement of experts and the relevant timelines for completion identified; or
- (c) adjourn the hearing on scope pending the notification of Plan Change Tuatahi (assuming the plan change will contain a resolution).

Will say statements

[8] Finally, this morning Ms Carruthers listed several documents she considers relevant to the issue for determination.

[9] The documents include 'will say' statements which, while referred to in Ms Carruthers' submissions, the court has not sighted. Will say statements are usually prepared for the purpose of expert conferencing on a without prejudice basis. Unless both parties agree, it is not appropriate for the court to consider the same.

[10] The Regional Council is to advise by **today at 3.00 pm** whether it agrees that the will say documents may be included in a common bundle.

Jane S.



J E Borthwick
Environment Judge

Issued: 23 August 2022