

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 FEDERATED FARMERS OF NEW ZEALAND
(SOUTHLAND PROVINCE)
(ENV-2018-CHC-40)

STONE CREEK STATION LIMITED
(ENV-2018-CHC-42)

THE TERRACES LIMITED
(ENV-2018-CHC-43)

CAMPBELL'S BLOCK LIMITED
(ENV-2018-CHC-44)

(Continued on next page)

MEMORANDUM OF COUNSEL RE: REPRESENTATION, GROUNDS OF APPEAL
7 SEPTEMBER 2018

Judicial Officers: Judge Hassan and Judge Borthwick

Instructing Counsel for Appellants:
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GRANT

(ENV-2018-CHC-45)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

1. Counsel has received instructions to act for Federated Farmers New Zealand (Southland Province). Counsel also represents the following Appellants - the Terraces Limited, Stoney Creek Station Limited, Robert Grant and Campbell's Block (the **Farmer Appellants**).
2. This Memorandum is in relation to:
 - a. Service for Federated Farmers
 - b. Grounds of appeal
 - c. Ambiguity over relief sought.

Service

3. The address for service of Federated Farmers is 102 Jed Street Invercargill 9810. Service can also be by way of e-mail to:
 - a. clare.lenihan@environmentallawyer.co.nz and rgardner@fedfarm.org.nz¹; and
 - b. DSycamore@fedfarm.org.nz (Darryl Sycamore)

Grounds of appeal

Federated Farmers

4. I note the Environment Court Practice Note 2014 sets out that "A Notice of Appeal... must give full and clear particulars of the grounds of appeal...and clearly state the relief sought that is being sought."²
5. Due to an oversight, the appeal of Federated Farmers on the Proposed Southland Water and Land Plan (the **Proposed Plan**) does not include the grounds on which the appeal is based. For the avoidance of doubt and to avoid prejudice to any party, the general grounds on which Federated Farmers appeal is based are, the Proposed Plan provisions:
 - a. Will not achieve the purpose of the RMA;
 - b. Are contrary to part 2;
 - c. Will not promote the efficient use and development of natural and physical resources, s7;
 - d. Are not the most appropriate way to achieve the objectives of the Proposed Plan, having regard to the efficiency and effectiveness of other available means, s32; and
 - e. Do not give effect to the Southland RPS 2017.

¹ Richard Gardner is instructing counsel for Federated Farmers.

² Environment Court Practice Note 2014, section 2.1, page 5.

Farmer Appellants

6. In the appeals for the Farmer Appellants, one ground was omitted at the time of filing (given the last-minute nature of the instructions) i.e. the Proposed Plan provisions:
- a. Are not the most appropriate way to achieve the objectives of the Proposed Plan, having regard to the efficiency and effectiveness of other available means, s32.

Relief – Federated Farmers

7. The relief Federated Farmers seeks in relation to Rule 52A in its Notice of Appeal is ambiguous³. The relief sought currently reads (bolding mine):
- (a) That any replacement permits associated with the Manapōuri Hydro-electric Generation Scheme be considered as a **restricted** discretionary activity.
 - (b) Federated Farmers seeks that the relevant parts of Rule 52A read as follows:

Rule 52A – Manapōuri Hydro-electric Generation Scheme

(a) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme, for which consent is held and which is the subject of an application for a new consent for the same activity and is:

- (i) the taking or use of water; or
- (ii) the discharge of water into water or onto or into land; or
- (iii) the discharge of contaminants into water or onto or into land; or
- (iv) the damming or diversion of water;

Is a **discretionary activity**.

8. Federated Farmers is seeking Rule 52A be a discretionary activity, contrary to the inclusion of the word “restricted” in (a) above.
9. Federated Farmers seeks to amend paragraph (a) by removing the word “restricted”.
10. Counsel is happy to comply with any further directions the Court may have in relation to these matters.



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Clare Lenihan
Counsel for the Appellants
7 September 2018

³ Federated Farmers Notice of Appeal 17 May 2018, paragraph 23, pages 16 and 17.