

**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 WILKINS FARMING CO LIMITED  
(ENV-2018-CHC-30)  
  
(appellants listed on the attached Schedule)

Appellants

AND SOUTHLAND REGIONAL COUNCIL  
  
Respondent

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**MINUTE OF THE ENVIRONMENT COURT  
(2 November 2021)**

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**Introduction**

[1] Timetabling directions<sup>1</sup> were put in place at the pre-hearing conference held on 19 October 2021, including in relation to the opposition by Wilkins Farming Co Limited (‘Wilkins’) to the withdrawals of the Robert Grant and Campbell’s Block appeals. In follow-up, the court has now received:

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<sup>1</sup> At paras [19] – [20] and [22] – [23] of the Record of PHC issued on 22 October 2021.



- (a) memorandum of counsel for Wilkins dated 27 October 2021, opposing the withdrawals of the Robert Grant and Campbell's Block appeals;
- (b) memorandum of counsel for the Southland Regional Council ('SRC') dated 29 October 2021 in response;
- (c) memorandum of counsel for Wilkins dated 1 November 2021 seeking an extension to file their will-say statements; and
- (d) memorandum of counsel for SRC dated 1 November 2021 in response.

### **Withdrawal of the Robert Grant and Campbell's Block appeals**

#### *Wilkins Farming Co*

[2] Counsel for Wilkins submits that as a s274 party, it can oppose a withdrawal under s274(5), RMA and effectively assume the appeal without leave to substitute itself as appellant. Accordingly, Wilkins seeks that the court refuse the withdrawal of the parts of the appeals relating to r 20(a)(iii)(1) which Wilkins seeks to pursue.

[3] Counsel submits that no party will be prejudiced by the court allowing Wilkins to pursue this relief, as it is consistent with their relief sought as a s274 party and the previous appellants' positions.

#### *Southland Regional Council*

[4] Counsel for the SRC agrees that Wilkins may oppose the withdrawal of the appeals and that the court has discretion to allow or refuse the withdrawal. Counsel points out that the RMA does not specifically provide a procedure for a s274 party to substitute itself for an appellant under s274(5), but suggests the default procedure set out in s291 should be followed. Therefore, the proper course would be for Wilkins to file a notice of motion and supporting affidavit (as per Form 36). Counsel says due process is important. While SRC is unlikely to oppose any notice of motion filed, parties ought to be given opportunity to do so, should

they wish.

*Discussion*

[5] I agree with SRC on these matters of procedure. If Wilkins wishes to pursue their objection to withdrawal of the appeals, it is to do so in accordance with s291, RMA and cl 23 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003. As Form 36 indicates, a notice of motion and an affidavit in support of the application is required. Once this has been filed, I will give parties the opportunity to respond.

[6] The timetabling directions provide for this and for parties to have the opportunity to respond to any application. This anticipates that the matter will be determined on the papers.

**Will-say statements**

[7] As directed in the court's Record of PHC issued on 22 October 2021, parties will-say statements were due to be filed on 29 October 2021. The court has since received a memorandum of counsel for Wilkins dated 1 November 2021 which seeks an extension. The extension is sought to enable their status as a party to be determined prior to their will-say statements being lodged, so to avoid unnecessary costs if they were unsuccessful.

[8] SRC seeks an extension to their requirement to file a will-say statement in response.<sup>2</sup>

[9] I sympathise with counsels' position in wanting to satisfy itself of an outcome on its substantive application prior to filing will-say briefs, so will grant an extension. However, it is important not to put pressure on the balance of the timetable, prior to conferencing commencing. Considering these matters, I make

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<sup>2</sup> Memorandum of counsel dated 1 November 2021.

some adjustments to the timetable in the directions below.

### Directions

[10] I direct:

- (a) Wilkins is to file a notice of motion and accompanying affidavit by **5pm Friday 5 November 2021**;
- (b) any party who opposes the notice of motion should file a memorandum, with reasons, by **5pm Tuesday 9 November 2021**;
- (c) any final reply by Wilkins should be filed by **5pm Thursday 11 November 2021**;
- (d) the court will consider the notice of motion (and any memoranda in reply) on the papers and issue a decision promptly;
- (e) Wilkins are to file any will-say statements by **Friday 12 November 2021**; and
- (f) SRC are to file their response and will-say statements by **Friday 19 November 2021**.

[11] As directed in the 29 October Minute, SRC are due to propose a schedule for the upcoming conferencing so should ensure there is enough time for parties and the facilitator to consider the positions ahead the relevant conferencing commencing.

[12] Leave is reserved for any party to apply for further (or other) directions.



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**J J M Hassan**  
**Environment Judge**

Issued: 2 November 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