

**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-29)

(and all other appellants listed in
the Schedule attached)

Appellants

AND SOUTHLAND REGIONAL
COUNCIL

Respondent

**MINUTE OF THE ENVIRONMENT COURT
Recall of Sixth Interim Decision
(18 April 2023)**

Introduction

[1] The purpose of this Minute is to provide the parties an opportunity to recall the Sixth Interim Decision.¹

¹ *Aratiatia Livestock Limited v Southland Regional Council* [2023] NZEnvC 51.



Policy 30 & Rule 78

[2] An issue was raised at the April 2023 pre-hearing conference whether the court approved a different activity status for Rule 78 or only for those sub-clauses of Rule 78 that were the subject matter of evidence.

[3] Having now had an opportunity to re-read the same, our decision on this matter is unclear. The court recognises that the entirety of the rule had not been appealed at [269] and discusses its shortcomings generally. At paragraph [271] the court notes that the amendments proposed by the parties do not redress the shortcomings of the rule. At [281] we find that the conditions of the permitted activity rule proposed by the parties are unclear and uncertain and then go on to say that a permitted activity rule is not the most appropriate method to implement the objectives. At [292] we conclude that absent effective permitted activity provisions, a consent regime is required. Then at [294] we direct that when responding parties are not simply to repeat the conditions of Rule 78 (as proposed to be amended) in a new rule. Scope is briefly touched on at [284].

[4] During the pre-hearing conference we offered to clarify the decision. Forest & Bird/Fish & Game opposed that course.

[5] After the pre-hearing conference Federated Farmers appealed the decision on the grounds concerning scope.

Where to from here and directions

[6] Given the tension between parts of the court's decision and being mindful of not wanting to cut across the High Court appeal, parties may consider requesting the Environment Court to partially recall the sixth interim decision. Any applications for recall are to be filed by **Friday 28 April 2023**.

[7] If this has any attraction, the following issues appear to be alive:

- (a) is there scope for a different activity status in relation to Rule 78;
- (b) is there scope for a new rule to be included in the plan limited to the sub-clauses under appeal? The status of a new rule is something other than a permitted activity;
- (c) if there is no scope in relation to activity status *per se*, then whether the court allows or declines the appeals seeking new or amended sub-clauses to Rule 78.

[8] Expert conferencing is underway in relation to Rule 78. I suggest the experts confer looking at all options in relation to Rule 78.

[9] Leave is granted for the parties to seek new of amended directions.

Jane S.



J E Borthwick
Environment Judge

Issued: 18 April 2023

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-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 (Southland Province) Inc
ENV-2018-CHC-41	Heritage New Zealand Pouhere Taonga
ENV-2018-CHC-44	Wilkins Farming Co Limited (previously Campbell's Block Limited)
ENV-2018-CHC-45	Wilkins Farming Co Limited (previously Robert Grant)
ENV-2018-CHC-46	Southwood Export Limited & Others
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-49	Rayonier New Zealand Limited
ENV-2018-CHC-50	Royal Forest and Bird Protection Society of New Zealand Incorporated

