

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

UNDER the Resource Management Act 1991

IN THE MATTER of appeals under Clause 14 of the First Schedule of the Act

BETWEEN **WILKINS FARMING COMPANY LIMITED**
(ENV-2018-CHC-030)

(ENV-2018-AKL-380)

Appellant

AND **SOUTHLAND REGIONAL COUNCIL**

Respondent

JOINT MEMORANDUM OF COUNSEL
31 October 2023

Respondent's Solicitor
PO Box 4341 CHRISTCHURCH 8140
DX WX11179
Tel +64 3 379 7622
Fax +64 3 379 2467

WYNN WILLIAMS

Solicitor: P A C Maw
(philip.maw@wynnwilliams.co.nz)

MAY IT PLEASE THE COURT

- 1 This Joint Memorandum of Counsel responds to the Court's direction dated 31 August 2023 in relation to:
 - (a) The balance of the appeal by Wilkins Farming Company Limited (**Wilkins**) against the decision by Southland Regional Council (**Council**) to grant resource consent to take and use groundwater subject to conditions (ENV-2018-AKL-0380) (**Consent Appeal**); and
 - (b) That part of the Wilkins' appeal against the decisions of the Council on the proposed Southland Water and Land Plan (**pSWLP**) (ENV-2018-CHC-0030) identified as Topic B1, Tranche 2 (**Tranche 2 Appeal**).
- 2 This Memorandum provides a brief background to the matters raised in the Consent Appeal and Tranche 2 Appeal and reports on the progress of the Council's consent review process, which impacts on the disposition of both the Consent Appeal and the Tranche 2 Appeal.

Consent Appeal

- 3 By way of background, with respect to the Consent Appeal, there remains a dispute on the conditions of consent that restrict the taking of groundwater when the flow of surface water in the Mataura River is at or below a certain level. This remaining dispute is currently on hold while the "Council undertakes workstreams to resolve the possible over-allocation of the Mataura River."¹
- 4 In its second interim decision dated 14 October 2020 the Environment Court directed that:²
 - (a) The appeal was allowed in part and the water permit is confirmed subject to conditions and the associated plan.
 - (b) The balance of the appeal is on hold until 21 September 2022, being a period of two years from the date of the first interim decision.

¹ Minute 21 February 2020, paragraphs [6], [20] and [21].

² *Wilkins Farming Co Ltd v Southland Regional Council* [2020] NZEnvC 175.

- (c) On 21 September 2022 the Council is to report on the water quantity aspects raised in relation to the Mataura River and propose next steps.

Tranche 2 Appeal

- 5 Groundwater quantity and allocation issues associated with the Mataura River are also raised by Wilkins' appeal against the Council's decision on the pSWLP.
- 6 Wilkins advised the Court and parties of its revised relief in relation to Policy 42 of the pSWLP in October 2021. The Council challenged whether the scope of Wilkins' appeal enabled the revised relief to be pursued.
- 7 The Council's challenge was scheduled to be heard on 24 August 2022. By Minute dated 24 August 2022, the Environment Court granted an adjournment by consent to the hearing of the preliminary challenge until 24 February 2023.
- 8 The purpose of the adjournment was to allow time for the workstreams now underway aimed at resolving the possible over-allocation of the Mataura River.

Progress since Consent Appeal and Tranche 2 Appeal adjourned

- 9 Reporting Memoranda have been filed (on 6 April 2023 and 29 August 2023), seeking further reporting dates to enable the affected consent holders and Council pursue solutions to the over-allocation issue, including through the potential use of a consent review process.
- 10 Since the last reporting date, the affected consent holders and Council have continued to progress the workstreams, including the consent review process.
- 11 However, this process has continued to take longer than anticipated. Counsel are also mindful of the upcoming Christmas and New Year period, which will reduce the time available to progress this work.
- 12 Accordingly, counsel respectfully request the appeals remain on hold with a further reporting date of Friday, 16 February 2024.

Directions sought

- 13 That the parties file a Joint Memorandum reporting on progress by **Friday, 16 February 2024.**

Dated this 31st day of October 2023



.....
P A C Maw / I F Edwards
Counsel for the Southland Regional Council



.....
B S Carruthers KC
Counsel for Wilkins Farming Company Limited