

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

UNDER the Resource Management Act 1991

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

BETWEEN

TRANSPOWER NEW ZEALAND LIMITED
(ENV-2018-CHC-26)

FONTERRA CO-OPERATIVE GROUP
(ENV-2018-CHC-27)

HORTICULTURE NEW ZEALAND
(ENV-2018-CHC-28)

ARATIATIA LIVESTOCK LIMITED
(ENV-2018-CHC-29)

(Continued next page)

**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL
REGARDING WILKINS FARMING CO OPPOSITION OF WITHDRAWALS
29 October 2021**

Judicial Officer: Judge Borthwick

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WILKINS FARMING CO
(ENV-2018-CHC-30)

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL DISTRICT COUNCIL**
(ENV-2018-CHC-31)

DAIRYNZ LIMITED
(ENV-2018-CHC-32)

H W RICHARDSON GROUP
(ENV-2018-CHC-33)

BEEF + LAMB NEW ZEALAND
(ENV-2018-CHC-34 & 35)

DIRECTOR-GENERAL OF CONSERVATION
(ENV-2018-CHC-36)

SOUTHLAND FISH AND GAME COUNCIL
(ENV-2018-CHC-37)

MERIDIAN ENERGY LIMITED
(ENV-2018-CHC-38)

ALLIANCE GROUP LIMITED
(ENV-2018-CHC-39)

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

HERITAGE NEW ZEALAND POUHERE TAONGA
(ENV-2018-CHC-41)

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

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

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

ROBERT GRANT
(ENV-2018-CHC-45)

**SOUTHWOOD EXPORT LIMITED, KODANSHA
TREEFARM NEW ZEALAND LIMITED, SOUTHLAND
PLANTATION FOREST COMPANY OF NEW ZEALAND**
(ENV-2018-CHC-46)

**TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA,
WAIHOPAI RUNAKA, TE RUNANGA O AWARUA & TE
RUNANGA O ORAKA APARIMA**
(ENV-2018-CHC-47)

PETER CHARTRES
(ENV-2018-CHC-48)

RAYONIER NEW ZEALAND LIMITED
(ENV-2018-CHC-49)

**ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND**
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

MAY IT PLEASE THE COURT

- 1 This Memorandum of Counsel is filed on behalf of the Southland Regional Council (**Council**) in respect of the appeals against the Council's decision on the proposed Southland Water and Land Plan, in particular the appeals of Robert Grant, Campbell's Block Limited, and the s 274 notice of Wilkins Farming Co (**Wilkins**) in relation to those appeals.
- 2 The Council was directed to file this Memorandum in reply to Wilkins Farming Co's *application* to take over the appeals of Robert Grant and Campbell's Block Limited.¹

Background

- 3 The parties were advised on 14 October 2021 that Robert Grant and Campbell's Block Limited sought leave to withdraw their appeals and s274 notices in their entirety (**the Appeals**).
- 4 Wilkins advised the court and parties at the pre-hearing conference on 19 October 2021 that it opposed the withdrawal of the parts of the Appeals relating to Rule 20(a)(iii)(1).
- 5 Wilkins filed a *memorandum* on 27 October 2021 requesting that the Court refuse the withdrawal of the part of the Appeals relating to Rule 20(a)(iii)(1) on the basis it is opposed by Wilkins.

Response to Wilkins' Memorandum of Counsel

- 6 Counsel agrees with counsel for Wilkins that Wilkins may oppose the withdrawal of all or part of the Appeals and that the Court has a discretion to allow or refuse the withdrawal.

Whether parties can oppose Wilkins' opposition to the withdrawals

- 7 At paragraph [23] of the Record of Pre-Hearing Conference dated 22 October 2021, the Council was directed to file this Memorandum setting out whether opposition can be received on an application by a section 274 party to substitute itself as appellant on an appeal.
- 8 The Act does not provide a procedure for a section 274 party to substitute itself for an appellant under section 274(5). It does, however,

¹ At paragraph [23] of the Record of Pre-Hearing Conference dated 22 October 2021.

provide a default procedure for any application which is not specifically dealt with in the Act. That procedure is set out in section 291 of the Act and clause 23 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 (**Regulations**).

9 Clause 23 of the Regulations provides:

23 How to make applications for which no other procedure provided

(1) An application to the Environment Court under the Act or any other Act is an originating application and must be made by notice of motion—

(a) under section 291 of the Act; and

(b) on form 36.

(2) However, subclause (1) does not apply to an application for which another procedure is provided by the Act, these regulations, or any other enactment.

10 Accordingly, it is submitted that a section 274 party wishing to exercise its right to oppose a withdrawal pursuant to section 274(5) should do so in accordance with clause 23 of the Regulations, that is, by filing a notice of motion and accompanying affidavit (as required by Form 36).

11 Form 36 provides that:

If you wish to be heard on this application, you must lodge a notice (in form 37) with the Environment Court and serve a copy of the notice on the applicant within 15 working days after you were served with this notice.

12 Section 291(4) provides for parties to be heard in relation to an application. Form 37 prompts persons giving notice of their wish to be heard to “[c]learly indicate whether you support or oppose the motion.”

13 The Court has a discretion as to whether it allows or refuses the withdrawal. Natural justice must require that parties affected by the exercise of that discretion are given the opportunity to put their position

and reasons before the Court, and for the Court to consider the same, before it exercises its discretion and makes a determination.²

- 14 For these reasons, it is submitted that parties can oppose any application by Wilkins to substitute itself for the appellants, following the filing of a notice of motion and accompanying affidavit, as required by Form 36.
- 15 For completeness, the Council is unlikely to oppose any notice of motion filed by Wilkins with respect to this matter, however the correct procedure should still be followed as other parties may wish to oppose.

Directions sought

- 16 In all these circumstances, Counsel respectfully seeks the following directions:
- a. Should Wilkins wish to pursue its *application* to substitute itself for the Appellant in respect of the appeals lodged by Robert Grant and Campbell's Block Limited, it must file a notice of motion and accompanying affidavit by **Friday 5 November 2021**.

DATED this 29th day of October 2021



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P A C Maw / A M Langford
Counsel for the Southland Regional Council

² While counsel has been unable to find direct judicial comment on the correct procedure, it is noted that there are many cases where a s 274 party's application to substitute itself for an appellant has been opposed. See, for example, *Save the Otago Peninsula Inc Society v Dunedin City Council* [2018] NZEnvC 69.