

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH  
I TE KOOTI TAIAO O AOTEAROA  
KI OTAUTAHI**

**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**

Appellant:

ENV-2018-CHC-000030

Section 274 Party:

ENV-2018-CHC-000044

ENV-2018-CHC-000045

**AND** **SOUTHLAND REGIONAL COUNCIL**

Respondent

---

**AFFIDAVIT OF SHARON GAIL DINES**

**11 FEBRUARY 2022**

---

---

**Counsel instructed:**  
B S Carruthers  
Shortland Chambers  
P +64 21 685 809  
PO Box 4338  
Auckland 1140

I, **SHARON GAIL DINES**, Director and Principal Planner from Auckland, swear:

## INTRODUCTION

1. Paragraph 8(c) of the Minute of the Environment Court dated 23 December 2021 directed a planner “for either Council or Wilkins” to provide an affidavit “that sets out the relevant aspects of the statutory planning framework.”
2. I am an independent expert planner engaged by Wilkins Farming Co Limited (**Wilkins**) in relation to the Proposed Southland Water and Land Plan (**pSWLP**). I am authorised to give this affidavit on behalf of Wilkins.
3. The “scope” issue relates to the following requests from Wilkins:
  - (a) Wilkins seeks amendments to the method for phasing out over-allocation in Policy 42(2).
  - (b) Wilkins seeks amendments to the primary groundwater allocation limits for the Upper Mataura and Wendonside Groundwater Zones in Appendix L.5.1; and
  - (c) Wilkins seeks the reinstatement of the confined part of the Garvie aquifer in Appendix L.5.2.

## THE PLANNING FRAMEWORK

4. Section 66 and 67 of the Resource Management Act 1991 (**RMA**) set out the requirements for Southland Regional Council in preparing a regional plan. I do not intend to reproduce the contents of those sections of the RMA. In respect of water quantity and allocation in the Southland region, it is relevant to note:
  - (a) I am not aware of any directions given under section 25A(1) of the RMA.
  - (b) There are currently five operative national policy statements. Of those the National Policy Statement for Freshwater Management (**NPSFM**), the National Policy Statement for Renewable Electricity Generation (**NPSREG**) and the New Zealand Coastal Policy Statement (**NZCPS**) are the most relevant. The NPSFM was updated in 2020 following the Topic A Interim Decisions on pSWLP.

- (c) The Water Conservation Orders that apply within the Southland Region are the Water Conservation (Mataura River) Order 1997 and Water Conservation (Oreti River) Order 2008.
- (d) There are currently nine operative national environmental standards. Of those the National Environmental Standard for Freshwater 2020 (**NESF**) and the National Environmental Standard for Sources of Drinking Water 2007 are the most relevant. The NESF were released following the Topic A Interim Decisions on pSWLP.
- (e) The Southland Regional Policy Statement 2017 (**SRPS**) is operative and there is no proposed Regional Policy Statement. Mr McCallum Clark outlines Environment Southland's Plan Change Tuatahi to implement the NPSFM in his Topic B overview evidence.<sup>1</sup> This includes a proposed to notify changes to the Freshwater chapter of the SRPS in mid-2022.
- (f) Ms Davison the planner for Ngai Tahu has identified<sup>2</sup> that there are two iwi management plans which must be taken into account - Te Rūnanga o Ngāi Tahu Freshwater Policy 1992 and Te Tangi a Tauira (Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan) 2008.
- (g) There are several Statutory Acknowledgement Areas within Southland which are mapped and listed in Appendix B of the pSWLP.
5. Southland Regional Council proposes to notify a plan change to the pSWLP to implement the latest version of the NPSFM in December 2023. This plan change will identify Freshwater Management Units (**FMU**), identify values, include freshwater objectives and limits for the FMUs<sup>1</sup>.
6. While the Court needs to be cognisant of all the documents, outlined above, in respect of the provisions at issue as outlined by Ms Carruthers, I consider the key statutory documents or matters the Court needs to consider are:
- (a) NPSFM;
- (b) Water Conservation (Mataura River) Order;
- (c) Water quantity objectives and policies of the SRPS, noting that water quantity and water quality are linked;

<sup>1</sup> Paragraphs 56-62, Statement of Evidence of Matthew McCallum Clark, 22 October 2021.

<sup>2</sup> Paragraph 34, Statement of Evidence of Treena Lee Davison, 18 April 2019.

- (d) Relevant objectives of the pSWLP as determined in the Topic A Decisions;
- (e) Relevant policies of the of the pSWLP; and
- (f) Plan Change Tuatahi will result in notification of changes to the SRPS in mid-2022 and changes to pSWLP in December 2023 designed to give effect to the 2020 version of NPSFM.

7. I address each of these matters below.

### **NPSFM**

- 8. In paragraphs 36-40 of his Topic B Overview Evidence, Mr McCallum Clark provides a high-level summary of the NPSFM as it relates to Southland. I agree with this summary.
- 9. In relation to Water Quantity, Policy 11 of the NPSFM states:
 

Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided.
- 10. Section 3.7 of the NPSFM sets out a summary of the National Objectives Framework process that regional councils must follow. The NOF process is prescriptive. Section 3.16 and 3.17 of the NPSFM provide further detail of the process regional councils must follow to set environmental flows and levels and identify water take limits.
- 11. In my opinion, sections 3.7(2) and 3.17 (4) of the NPSFM make it clear that before environmental flows, levels and limits can be set for water allocation, Southland Regional Council must identify its long-term visions, FMUs, values and environmental outcomes that are to be achieved.

### **Water Conservation (Mataura River) Order**

- 12. Ms Carruthers has set out the key provisions of the Water Conservation Order for the Mataura River. I do not repeat them.

### **Water Quantity Objectives and Policies of the SRPS**

- 13. The SRPS was made operative in full in 2017, three years before the current version of the NPSFM was promulgated. It will require changes to give full effect to the NPSFM and correct misalignments that have arisen from the differences between the NPSFM 2020 and the NPSFM 2014.

14. Water Quantity provisions are contained in Chapter 4 Part B. There are two objectives and nine policies. For ease of reference I have reproduced these below. I consider all these objectives and policies are relevant to water quantity and allocation in the context of the provisions at issue.
15. In the context of Policy 42 and Appendix L.5:
- (a) Objective WQUAN.1 requires that groundwater levels and allocation regimes must be developed in accordance with the NPSFM 2014 to achieve the matters set out in (a)-(d).

**Objective WQUAN.1 – Sustainably managing the region’s water resources**

Flows, levels and allocation regimes of surface water and groundwater in the region are developed in accordance with the National Policy for Freshwater Management 2014 to:

- (a) safeguard the life-supporting capacity of water, catchments and related ecosystems;
- (b) support the maintenance or improvement of water quality in accordance with Policy WQUAL.1;
- (c) meet the needs of a range of uses, including the reasonably foreseeable social, economic and cultural needs of future generations;
- (d) comply with limits or targets set to achieve freshwater objectives.
- (b) Objective WQUAN.2 requires the allocation and use of Southland water resources to be efficient.

**Objective WQUAN.2 – The efficient allocation and use of water**

The allocation and use of Southland’s water resources:

- (a) is efficient;
- (b) recognises and makes provision for the Monowai and nationally significant Manapōuri hydro-electric generation schemes in the Waiau catchment and the resultant modified flows and levels.
- (c) Policy WQUAN.1 requires the management of groundwater, where it is connected to surface water, to support the maintenance of instream values of surface water that derive from water levels and flows.

**Policy WQUAN.1 – Instream values**

Maintain instream values of surface water that derive from flows and levels of water, while recognising the special circumstances of the Waiau catchment.

- (d) Policy WQUAN.2 requires over allocation of groundwater to be avoided and historical instances of over-allocation to be resolved. The policy does not specify a timeframe in which historical over-allocation must be resolved.

**Policy WQUAN.2 – Overallocation**

Avoid over-allocation of surface water and groundwater, and resolve any historical instances of over-allocation, while recognising the special provisions made for the Waiau catchment.

- (e) Policy WQUAN.3 requires Southland Regional Council to recognise the finite nature of groundwater and identify a management regime that addresses the matters in (a)-(i) that relate to groundwater.

**Policy WQUAN.3 – Regional plans**

Recognise the finite nature of water resources and catchments and identify management regimes in accordance with the National Policy Statement for Freshwater Management 2014 that:

- (a) provide for the freshwater objectives for surface water and groundwater that derive from flows and levels of water;
- (b) in managing the effects of activities on flows and levels of water in surface and groundwater:
  - (i) avoid, as far as practicable, significant adverse effects (including cumulative effects);
  - (ii) remedy or mitigate significant adverse effects only where avoidance is not practicable;
  - (iii) avoid, remedy or mitigate other adverse effects;
- (c) within allocation limits, provide for the current and reasonably foreseeable future needs, and the social, economic and cultural wellbeing, of people and communities;
- (d) recognise the potential effects of climate change on flows and levels of water and on water availability;
- (e) consider the effects of new uses of water on established activities;
- (f) are capable of adapting to manage the effects of changing demand on flows and levels of surface water and groundwater;
- (g) recognise the outstanding characteristics identified in water conservation orders applying to rivers within the region;
- (h) recognise the need for availability of water to enable the Monowai and nationally significant Manapouri hydro-electricity power generation activities in the

Waiau catchment to continue, and be enhanced where over-allocation will not occur;

- (i) recognise the inter-related nature of all water bodies in a catchment and the need to maintain flows to sensitive habitats within the catchment.

- (f) Policy WQUAN.4 requires Southland Regional Council to address the matters in (a)-(e).

**Policy WQUAN.4 – Demand management**

Manage demand for water in order to protect instream values of surface water, and ensure freshwater objectives are met, including by:

- (a) establishing specific allocation limits;
- (b) allocating water to particular uses;
- (c) determining the security of supply that should be afforded to water users;
- (d) providing for the transfer or exchange of water between users;
- (e) encouraging the development of water storage.

- (g) Policy WQUAN.5 requires Southland Regional Council is required to manage the cumulative effects of permitted water takes, Section 14(3)(b) water takes and consented taking, use, damming or diversion of water in the Mataura catchment. The policy does not specify a timeframe in which management must occur.

**Policy WQUAN.5 – Abstraction management**

In catchments and/or aquifers where:

- (a) there is a high potential for increased use or demand for water;
- (b) current allocation is approaching limits set in regional plans;
- (c) adverse effects of taking, use, damming or diversion are likely due to the nature or size of the catchment or aquifer;

the Southland Regional Council will manage the cumulative effects of permitted, Section 14(3)(b) of the Act and consented taking, use, damming or diversion of water, while recognising the specific circumstances of the Waiau catchment resulting from hydroelectric generation.

- (h) Policy WQUAN.6 requires groundwater to be used efficiently and Southland Regional Council to consider establishing management provisions to maximise efficiency of use of available water in the Mataura catchment.

**Policy WQUAN.6 – Efficient use of water**

- (a) Ensure that any water taken from surface water or groundwater is used efficiently.

(b) Where fresh water bodies are approaching full allocation, consider establishing management provisions to maximise the efficiency of using any available water.

- (i) Policy WQUAN.7 requires recognition of the social economic and cultural benefits that are derived from the use, development and protection of groundwater in the Mataura catchment.

**Policy WQUAN.7 – Social, economic and cultural benefits**

Recognise the social, economic and cultural benefits that may be derived from the use, development or protection of water resources.

- (j) Policy WQUAN.8 requires integrated management of land use, water quality, water quantity and use and development of resources in the Mataura catchment wherever possible.

**Policy WQUAN.8 – Integrated management**

Integrate the management of land use, water quality, water quantity and use and development of resources wherever possible.

- (k) Policy WQUAN.9 requires the gathering of information on water resources and effects of land use change on flows and levels of surface water and groundwater in the Mataura catchment to assist with the sustainable management and water and the development and implementation of a water management regime.

**Policy WQUAN.9 – Information gathering**

Continue to gather information on Southland's water resources (including definition of catchment areas) and effects of land use change on flows and levels of surface water and groundwater, to assist with the sustainable management of water and the ongoing development and implementation of water management regimes.

**Relevant Objectives of the pSWLP**

16. As already established in the Topic A decisions, Objective 1 and Objective 2 of the pSWLP are the primary objectives of the plan. While all provisions of the plan should be read together, in my opinion, subject to Objective 1 and Objective 2, the following objectives are the most relevant to water quantity and allocation in the context of the provisions at issue.
17. Objective 3 gives effect to Objective WQUAN.1(c), Policy WQUAN.3(c) and Policy WQUAN.7 of the SRPS. The objective requires recognition that access



to water resources enables farming activities in the Maitara catchment that contribute to economic, social and cultural wellbeing.

**Objective 3**

Water and land are recognised as enablers of the economic, social and cultural wellbeing of the region.

18. Objective 7 gives effect to Objective WQUAN.1(d), Policy WQUAN.2 and Policy WQUAN.5 of the SRPS. The objective requires that any existing over-allocation in the Maitara catchment is phased out in accordance with freshwater quantity objectives, targets, limits and timeframes *after* these are established in accordance with the FMU processes.

**Objective 7**

Following the establishment of freshwater objectives, limits, and targets (water quality and quantity) in accordance with the Freshwater Management Unit processes:

- (a) where water quality objectives and limits are met, water quality shall be maintained or improved;
- (b) any further over-allocation of freshwater is avoided; and
- (c) any existing over-allocation is phased out in accordance with freshwater objectives, targets, limits and timeframes.

19. Objective 9/9A gives effect to Objective WQUAN.1 to some extent and Policy WQUAN.8. The objective requires that groundwater that is connected to surface water is to be managed to support the achievement of (a)-(c).

**Objective 9/9A**

The quantity of water in surface water bodies is managed so that:

- (a) the life-supporting capacity and aquatic ecosystem health, the values of outstanding natural features and landscapes, the natural character and the historic heritage values of waterbodies and their margins are safeguarded.
- (b) there is integration with the freshwater quality objectives (including the safeguarding of human health for recreation); and
- (c) provided that (a) and (b) are met, surface water is sustainably managed in accordance with Appendix K to support the reasonable needs of people and communities to provide for their economic, social and cultural wellbeing.

20. Objective 11 gives effect to Objective WQUAN.2(a) and Policy WQUAN.6(a). It requires that for groundwater takes in the Maitara catchment, water users show that the water abstracted is reasonable for its intended use and that groundwater is allocated and used efficiently.

**Objective 11**

The amount of water abstracted is shown to be reasonable for its intended use and water is allocated and used efficiently.

21. Objective 12 gives effect to Objective WQUAN.1 and requires that for groundwater that is connected to surface water, groundwater quantities in the Mataura catchment are sustainably managed.

**Objective 12**

Groundwater quantity is sustainably managed, including safeguarding the life-supporting capacity, ecosystem processes and indigenous species of surface water bodies where their flow is, at least in part, derived from groundwater.

22. Objective 18 gives effect to a number of objectives and policies in the SRPS. It requires water users in the Mataura catchment to optimise efficient water use and improve the quantity of the catchment's groundwater resources.

**Objective 18**

All persons implement environmental practices that optimise efficient resource use, safeguard the life supporting capacity of the region's land and soils, and maintain or improve the quality and quantity of the region's water resources.

**Relevant Policies of the pSWLP**

23. While the Objectives of the pSWLP are determined as a result of the Topic A decisions, some of the policies of the pSWLP are subject to appeal and those appeal points are not yet resolved.
24. While all provisions of the pSWLP should be read together, in my opinion policies B7, 20-25, 42 and 44-47<sup>3</sup> are relevant to water quantity and allocation in the context of the provisions at issue.
25. Policy B7 has been inserted in the pSWLP as required by the NPSFM 2014.
26. Policy 20 seeks to give effect to a number of objectives and policies of the SRPS including Objective WQUAN.1(c) and Policies WQUAN.3-6. It also gives effect in part to SRPS Objective 3, Objective 9/9A and Objective 11 of the pSWLP.
27. In the context of the provisions at issue, Policy 20 requires that significant adverse effects from the use and development of groundwater resources in the Mataura catchment on the following must be avoided, remedied or mitigated:

---

<sup>3</sup> Policies B7 and 20-25 are located on page 40-42, Policy 42 is on page 47 and Policies 44-47 are on pages 48-49 of Proposed Southland Water and Land Plan (Decisions Version, 1 March 2021).

- (a) long term aquifer storage volumes;
  - (b) supply reliability for lawful existing groundwater users, included those with existing, but not yet implemented resource consents;
  - (c) surface water flows and levels, particularly in spring-fed streams, natural wetlands, lakes, aquatic ecosystems and habitats (including life supporting capacity and ecosystem health and processes of water bodies) and their natural character; and
  - (d) water quality.
28. In addition, groundwater in the Mataura catchment must be used efficiently and reasonably by requiring the rate and volume of abstraction specified on water takes are not more than reasonable for the intended end use following the criteria in Appendices O and L.4.
29. Policies 21-25 address allocation of water (Policy 21), management of effects of groundwater and surface water use (Policy 22), stream deletion effects (Policy 23), water abstraction for community supply (Policy 24) and priority of water takes during water shortage conditions (Policy 25). These policies provide the mechanics of the water allocation and management regime and seek to implement a number of the objectives and policies of the SRPS and Objective 9/9A and Objective 11 of the pSWLP.
30. Policy 42 sets out the matters decision makers must consider when determining resource consent applications for water permits to take and use water. This policy is subject to appeals by Wilkins, Southland Fish and Game Council and Alliance Group Limited. Southland Regional Council's "preferred relief" circulated on 11 November 2021 indicates the changes to the policy proposed by Southland Regional Council. The policy (in all versions) includes a method (in subclause 2) for phasing out over-allocation.
31. Policy 44-47 set out the framework and process for the development of the FMU sections of the pSWLP.
32. Policy 44 provides further detail of how Te Mana o te Wai is recognised and the associated values to which particular regard will be had in the FMU limit setting process.
33. Policy 45 sets out what may be included in the FMU sections and indicates that provisions in the FMU section will prevail over provisions on the same

matter in the region-wide objectives and policies unless the pSWLP explicitly states otherwise.

34. Policy 46 identifies the FMUs, including the Mataura – Toestoes Harbour FMU.
35. Policy 47 identifies what will be included in the FMU sections of the pSWLP. The policy indicates these sections will identify values, establish freshwater objectives for each FMU at catchment or sub-catchment level, have particular regard to the national significance of Te Mana o te Wai, set limits and targets to achieve the freshwater objectives, set methods to phase out over-allocation within a specified timeframe and assess water quality and quantity taking into account Ngāi Tahu indicators of health.

### **Plan Change Tuatahi**

36. As discussed previously in my evidence, I understand from Mr McCallum Clarke's Topic B Overview evidence<sup>4</sup> that Southland Regional Council has a programme of work in place to give full effect to the latest version of the NPSFM. This will result in the notification of proposed changes to the SRPS in mid-2022 and Plan Change Tuatahi to be notified in December 2023. At this point in time it is difficult to determine exactly what the provisions of Plan Change Tuatahi will include. However, changes to Policies 20-25, 42 and 44-47 may be necessary to achieve the visions, environmental outcomes and limits for each FMU that I would expect to be set through Southland Regional Council's programme of work to give effect to the latest version of the NPSFM.

**Sworn at**

this        day of February 2022

before me:

---

**Sharon Gail Dines**

On behalf of Wilkins Farming Co Limited

---

<sup>4</sup> Paragraphs 56-62, Statement of Evidence of Matthew McCallum Clark, 22 October 2021.