

UNDER the Resource Management Act 1991 ("RMA")

IN THE MATTER of appeals under Clause 14 of the First Schedule to the RMA in relation to the decision on the proposed Southland Water and Land Plan

BETWEEN **WILKINS FARMING COMPANY LIMITED**
Appellant

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

MEMORANDUM OF COUNSEL OPPOSING WITHDRAWAL

OF PART OF APPEALS

27 OCTOBER 2021

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**TO: The Registrar
Environment Court**

AND TO: the Parties

MAY IT PLEASE THE COURT

1. This memorandum is filed on behalf of Wilkins Farming Company Limited (**Wilkins**), the appellant in proceedings ENV-2020-CHC-000030 and section 274 party in other proceedings relating to the proposed Southland Water and Land Plan (**pSWLP**).
2. In particular, Wilkins lodged s274 notices in support of the requests in the four Notices of Appeal by Robert Grant, Peter Chartres, Campbell's Block and Stoney Creek Station to amend the cap on intensive winter grazing (**IWG**) in Rule 20(a)(iii)(1) to a simple maximum of 15% of the landholding.
3. In relation to these appeals:
 - (a) The appeals by Peter Chartres and Stoney Creek Station were confirmed by the Court as withdrawn on 24 June 2021. Wilkins did not oppose this withdrawal as two appeals remained pursuing the same relief.
 - (b) On 14 October 2021 the Court and parties were advised that both Robert Grant and Campbell's Block intended to withdraw the remaining two appeals, in their entirety.
 - (c) On 15 October 2021 counsel advised the court and parties that Wilkins opposes the withdrawal of the parts of the appeals relating to Rule 20(a)(iii)(1) – being the request to amend the cap on IWG to a simple maximum of 15% of the land holding.¹ The relief sought in the appeals is shown below:

(1) from 1 May 2019, intensive winter grazing does not occur on more than 15% of the area of the landholding ~~or 100 hectares, whichever is the lesser area;~~

¹ B5-C: Issue 36 and 49

4. An appellant's right to withdraw its appeal is subject to two things – first that the withdrawal is not in some way an abuse of process, and secondly, to the rights of any section 274 party.²
5. The right of a section 274 party to oppose the withdrawal of this part of the appeals is provided by s274(5) of the RMA.
6. Wilkins submitted on the pSWLP as did Robert Grant and Campbell's Block. This enabled Wilkins to be a party to the appeals by Robert Grant and Campbell's Block under s274(1)(e).
7. In accordance with s274(4B) Wilkins can call evidence that is within the scope of these appeals provided it is also "on matters arising out of [its] submission" on the pSWLP. Its submission on the pSWLP clearly raises concerns with the IWG controls in the pSWLP and requested a number of amendments to the notified rules. Its submission requested the removal of any restriction on the maximum hectares of IWG per farm, suggested a percentage control, if used, of 30-40% of total landholding and requested any regulation instead be linked to water quality outcomes. There is no doubt as to Wilkins right to call evidence in support of the request to amend Rule 20(a)(iii)(1) as sought in the appeals.
8. In accordance with s274(5) Wilkins can (and does) also oppose the withdrawal of the appeals by Robert Grant and Campbell's Block as they relate to this rule. These are proceedings that were brought by persons who also made submissions on the pSWLP.
9. The Court has a discretion to allow the withdrawal despite such opposition.³ However, as noted by the Court in *Preston Road*:⁴

"... if a section 274 notice simply supports a notice of appeal then we consider the court might often feel able to let the section 274 party step straight into the appellant's shoes."
10. Here, Wilkins s274 notice clearly and simply supports the relief sought in the appeals.⁵ It is not seeking to amend its s274 notice (as was the case in *Preston Road*) nor has there been any change in its position (as was the case in *Preston Road*). There is no prejudice to any party from allowing Wilkins to step into the shoes of the appellants at this stage of the proceedings.

² *Prestons Road Ltd v Canterbury RC* [2011] NZEnvC 167, at [13]; *Gertrude's Saddlery v QLDC* [2020] NZHC 3387, Dunningham J at [84].

³ *Prestons Road*, para [17].

⁴ *Prestons Road*, para [19]

⁵ Paragraph 5 of each of the two s274 notices.

There is, in my submission, no reason why the Court should exercise its discretion to allow the withdrawal.

11. By refusing the withdrawal of the part of the appeals relating to Rule 20(a)(iii)(1), Wilkins can step into the shoes of the appellants and continue to seek the removal of "or 100 hectares, whichever is the lesser area" from the rule.
12. I therefore request 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.
13. I confirm that to the best of my knowledge leave is not required to substitute a s274 party for the appellant. However, in the event that is not so, I confirm Wilkins is prepared to take whatever further procedural steps the Court considers to be required following hearing from the Respondent.

DATED 27 October 2021



B S Carruthers
Counsel for Wilkins Farming Company Limited