

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2021] NZEnvC 177

IN THE MATTER

of the Resource Management Act 1991

AND

appeals under clause 14 of the First
Schedule of the Act

BETWEEN

CAMPBELL'S BLOCK LIMITED

(ENV-2018-CHC-44)

ROBERT GRANT

(ENV-2018-CHC-45)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

Court: Environment Judge J J M Hassan

Hearing: In chambers at Christchurch

Date of Decision: 16 November 2021

Date of Issue: 16 November 2021

DECISION OF THE ENVIRONMENT COURT

A: The notices of withdrawal by Campbell's Block Limited and Robert Grant are refused so that the notices of appeal in respect of rule 20(a)(iii)(1) remain live *pro forma* with effect that Wilkins can continue to seek the removal of the words "or 100 hectares, whichever is the lesser area" from the rule.



REASONS

Introduction

[1] By notices dated 14 October 2021, Campbell's Block Limited ('Campbell's Block') and Robert Grant sought leave to withdraw their appeals on the proposed Southland Water and Land Plan ('pSWLP').

[2] On 15 October 2021, counsel advised the court and parties that Wilkins Farming Co Limited ('Wilkins'), a s274 party, opposes the withdrawal of the parts of the appeal relating to rule 20(a)(iii)(1). Counsel provided further submissions by memorandum dated 27 October 2021.

[3] By Minute dated 2 November 2021, Wilkins was directed to file a notice of motion and accompanying affidavit. Any party who opposes the notice of motion was to file a memorandum in response.

Wilkins grounds of opposition

[4] On 5 November 2021, Wilkins filed a notice of motion and affidavit in support from Sean Wilkins.

[5] Wilkins opposes the withdrawal of the parts of the appeals relating to rule 20(a)(iii)(1). The grounds of opposition are:

- (a) Robert Grant, Campbell's Block and Wilkins all filed primary submissions on the proposed rules relating to Intensive Winter Grazing ('IWG') in the proposed Southland Water and Land Plan ('pSWLP').
- (b) The Wilkins' submission raised 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.
- (c) Robert Grant and Campbell's Block appealed part of the IWG rule, Rule

- 20(a)(iii)(1), to the Environment Court.
- (d) Wilkins filed s274 parties in support of the relief sought in those appeals as it relates to the IWG rule, Rule 20(a)(iii)(1).
 - (e) In accordance with s274(4B) of the Act, Wilkins can call evidence that is within scope of these appeals provided it is also “on matters arising out of [its] submission” on the pSWLP. Given the breadth of the Wilkins’ submission, 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.
 - (f) Robert Grant and Campbell’s Block seek to withdraw their appeals in their entirety.
 - (g) In accordance with s274(5) of the Act, Wilkins can oppose the withdrawal of the appeals by Robert Grant and Campbell’s Block as they relate to Rule 20(a)(iii)(1).
 - (h) Wilkins opposes the withdrawal in accordance with its right to do so under s274(5). It wishes to step into the shoes of the appellants and continue to seek the removal of “or 100 hectares, whichever is the lesser area” from Rule 20(a)(iii)(1).
 - (i) There is no reason for this court to exercise its discretion to allow the withdrawal despite this opposition.

Party responses to notice of motion

[6] No party has opposed the notice of motion.

Consideration

[7] An appellant does not require leave from the court to withdraw or abandon their appeal.¹ The court cannot compel a party to continue with an appeal they no longer wish to pursue, but this is subject to the capacity of a s274 party to oppose withdrawal as provided under s274(5).² There are limits to that exceptional capacity to oppose withdrawal. As explained in *Prestons Road Ltd v Canterbury Regional Council* and as adopted by the High Court in *Gertrude’s Saddlery Limited v*

¹ *Parkbrook Holdings Ltd v Auckland City Council and Mullen* HC 112/98, [1999] NZRMA 10, Salmon J; upheld in *Mullen v Parkbrook Holdings Limited* [1999] 2 NZLR 312, [1999] NZRMA 23 (CA).

² Section 274(5) RMA.

Queenstown Lakes District Council:³

- (1) the section 274 party may “oppose the withdrawal” provided the original appellant was also a submitter on the same proposed plan (or resource consent);
- (2) the court has a discretion to allow the withdrawal or part withdrawal, and if it refuses the withdrawal, then:
- (3) the section 274 party may call evidence on the (now) *pro forma* notice of appeal provided that the evidence is:
 - (a) within the scope of the (purportedly withdrawn) appeal; and
 - (b) on matters arising out of the s274 party’s submission to the local authority, or on any matter on which the s274 party could have appealed. [Footnotes omitted]

[8] In this case, Campbell’s Block, Robert Grant and Wilkins all filed primary submissions on the proposed rules relating to Intensive Winter Grazing (‘IWG’) in the pSWLP. Hence, they clearly satisfy the relevant prerequisites. As for the discretion, I am guided by *Prestons Road Ltd*, where the court stated: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.

[9] The parts of the decision the appellants appealed include IWG – size of area allowed to be grazed – rule 20(a)(iii)(1); the Council’s decision to accept only in part the appellants submissions with the result that the area of permissible intensive winter grazing is 15% of a landholding or 100 hectares, whichever is the lesser. The relief sought seeks the deletion of the words “or 100 hectares, whichever is the lesser” from the rule. Wilkins’ s274 notice states it is interested in rule 20(a)(iii)(1) Intensive Winter Grazing Area. Wilkins supports the relief sought to delete the words “or 100 hectares, whichever is the lesser”.

³ *Prestons Road Ltd v Canterbury Regional Council* [2011] NZEnvC 167 at [18]; *Gertrude’s Saddlery Limited v Queenstown Lakes District Council* [2020] NZHC 3387 at [84].

⁴ *Prestons Road Ltd v Canterbury Regional Council* [2011] NZEnvC 167 at [20].

[10] I accept that Wilkins' s274 notice clearly and simply supports the relief sought in the appeals. I am satisfied there is no prejudice to any party from allowing Wilkins to pursue this relief. It is consistent with the relief sought as a s274 party and the previous appellants' positions. I have noted that no party has opposed the notice of motion.

[11] Therefore, I refuse the withdrawal by Campbell's Block and Robert Grant in relation to rule 20(a)(iii)(1), with effect that this aspect of the appeal remains live *pro forma* in order that Wilkins can continue to seek the removal of the words "or 100 hectares, whichever is the lesser area" from the rule.

[12] As for the third matter in the above quote concerning evidence, I observe that Campbell's Block, Robert Grant and Wilkins all filed primary submissions on the proposed rules relating to IWG in the pSWLP. Furthermore, the relief sought by Wilkins as a s274 party is consistent with the previous appellants' positions.

[13] I record that Campbell's Block and Robert Grant are no longer active parties to the appeals, and I excuse counsel from any further appearance in the matter.

Decision

[14] The notices of withdrawal by Campbell's Block and Robert Grant are refused so that the notices of appeal in respect of rule 20(a)(iii)(1) remain live *pro forma* with effect that Wilkins can continue to seek the removal of the words "or 100 hectares, whichever is the lesser area" from the rule.



J J M Hassan
Environment Judge