

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

**I MUA I TE KOOTI TAIAO O AOTEAROA  
ŌTAUTAHI ROHE**

**UNDER THE** Resource Management Act 1991 ("**Act**")  
**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)

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**APPLICATION TO STAY PART OF PROCEEDING PENDING DETERMINATION  
OF APPEAL IN THE HIGH COURT AND APPLICATION TO RECALL**

**2 MAY 2023**

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**Counsel:**  
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**WILKINS FARMING CO**  
(ENV-2018-CHC-30)

**GORE DISTRICT COUNCIL, SOUTHLAND  
DISTRICT COUNCIL & INVERCARGILL CITY  
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**

**TO:** The Registrar of the Environment Court at Christchurch

**AND TO:** Appellants

**AND TO:** The section 274 parties

**APPLICATION TO STAY PROCEEDINGS:**

1. Federated Farmers Southland Incorporated (**Federated Farmers**) applies for a partial stay of these proceedings pending determination of:
  - (a) Federated Farmers' appeal to the High Court<sup>1</sup> against the Sixth Interim Decision of the Environment Court;<sup>2</sup> and
  - (b) the application by Southland Regional Council to recall parts of the Sixth Interim Decision of the Environment Court filed on 28 April 2023.
2. This application is made pursuant to sections 269 and 272 of the Resource Management Act 1991 (**RMA**) and rule 18.10 of the District Court Rules 2014.
3. In particular, this application relates only to appeals on Rule 78 of the proposed Southland Water and Land Plan (**pSWLP**), noting that the Environment Court is currently hearing other aspects of appeals against the Southland Regional Council's decision on the pSWLP.

*The Court's powers*

4. The Court's powers to stay a proceeding derive from sections 269 and 272 of the RMA, and rule 18.10 of the District Court Rules 2014. The Court summarised its powers in the case of *Selwyn Quarries Limited v Canterbury Regional Council*, as follows:<sup>3</sup>

Section 272 of the Act provides that the Environment Court shall hear and determine all proceedings as soon as practical after the date on which the proceedings are lodged unless, in the particular circumstances of the case, it is not appropriate to do so. That provides the court with the flexibility it needs to manage its case (pursuant to s 269) and recognises that it may be appropriate to stay or adjourn a proceeding for a variety of reasons.

Through s 278 of the Act, the Environment Court has the powers of a District Court which enables it to utilise the District Court Rules. Rule

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<sup>1</sup> CIV-2023-409-000144.

<sup>2</sup> *Aratiatia Livestock Limited v Southland Regional Council* [2023] NZEnvC 51.

<sup>3</sup> *Selwyn Quarries Limited v Canterbury Regional Council* [2018] NZEnvC 194 at [9]-[10].

18.10 District Court Rules 2014 allows the court, pending the determination of an appeal, to stay a proceeding subject to any conditions it thinks just.

5. The over-arching principle applying to any application for the adjournment (or stay) of a proceeding must be the interests of justice overall.<sup>4</sup>
6. In determining whether to grant a stay, the Court must weigh a range of factors to determine the balance between the successful litigant's rights to the fruits of a judgment and the need to preserve the position in case the appeal succeeds.<sup>5</sup>
7. The relevant principles for consideration in an application for stay pending appeal were set out by the High Court in *Bergman v Bergman* and have since been applied by the Environment Court:<sup>6</sup>

[9] The principles relevant to applications for stay pending appeal are well known. The factors generally to be considered in balancing the competing rights are:

- (a) Whether the appeal may be rendered nugatory by the lack of a stay;
- (b) The bona fides of the applicant as to the prosecution of the appeal;
- (c) Whether the successful party will be injuriously affected by the stay;
- (d) The effect on third parties;
- (e) The novelty and importance of questions involved;
- (f) The public interest in the proceeding; and
- (g) The overall balance of convenience.

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<sup>4</sup> *Director-General of Conservation v Waikato Regional Council* A232/02 at [16]. See also *Selwyn Quarries Limited v Canterbury Regional Council* [2018] NZEnvC 194 at [11], and *Gibbston Vines Limited v Queenstown Lakes District Council* [2021] NZEnvC 196 at [11], citing the original stay decision in *Gibbston Vines Limited v Queenstown Lakes District Council* [2021] NZEnvC 110.

<sup>5</sup> *Duncan v Osborne Building Limited* (1992) 6 PRNZ 85 (CA) at 5. See also *Te Rununga o Ngati Awa v Bay of Plenty Regional Council* [2020] NZEnvC 52 at [24] and *Norman v Tūpuna Maunga o Tāmaki Makaurau Authority* [2021] NZHC 201 at [18].

<sup>6</sup> *Bergman v Bergman* [2014] NZHC 1567; see also *Gibbston Vines Limited v Queenstown Lakes District Council* [2021] NZEnvC 196 at [11], citing the original stay decision in *Gibbston Vines Limited v Queenstown Lakes District Council* [2021] NZEnvC 110.

[10] The apparent strength of the appeal now appears also to be generally recognised as an additional factor.

8. The matters listed in [9](d) and (g) are of most relevance to the present application.
9. The Environment Court in *St John's College Trust Board Progressive Enterprises Limited v Auckland Council* noted that the wise use of parties' and the Court's resources should also be considered in relation to an application to stay proceedings:<sup>7</sup>

[28] Progressive submitted that there is a presumption in the Act against delay. I do not agree. The critical question is whether there is unreasonable delay. In some cases awaiting the outcome of another court's decision will amount to delay that is unreasonable, but in others it will not. Financial factors are one aspect to be considered, but overall the wise use of the parties and the Court resources must be taken into account in deciding whether or not a delay is such that it becomes unreasonable. I accept that speedy resolution is a goal, but I agree that it should be afforded no additional priority over saving expense or indeed the appropriate allocation of the court's resources. It is all a question of balancing these factors in the context of the particular case before the Court.

#### *Grounds for Stay Application*

10. Federated Farmers' application for stay is made on the following grounds:
  - (a) The appeal and application for recall concern determining the scope of appeals on Rule 78. Scope defines the issues to be determined by the Court. It is therefore in the interests of justice to grant this application to ensure an accurate and robust determination of the scope of appeals on Rule 78 and subsequently the issues the Court is to determine prior to any further expert conferencing or evidence addressing potential amendments to Rule 78.
  - (b) If the High Court finds, or the Environment Court determines post recall, that the scope of appeals for Rule 78 are limited to imposing alternative and/or additional standards on the permitted activity rule, there is a possibility neither the parties nor the Environment Court will need to

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<sup>7</sup> *St John's College Trust Board Progressive Enterprises Limited v Auckland Council* [2011] NZEnvC 70; see *Selwyn Quarries Limited v Canterbury Regional Council* [2018] NZEnvC 194 at [11].

engage with the merits of a consent regime for maintenance of modified watercourses.

- (c) If the Environment Court does not need to engage with the merits of a consenting regime for maintenance of modified watercourses, it is unlikely the Court will need the further evidence currently envisaged by the existing directions. This puts the balance of convenience in favour of ensuring an accurate determination of the scope of appeals on Rule 78, either through the High Court appeal or preferably the application for recall and subsequent determination by the Environment Court as to scope.
- (d) If further consideration of Rule 78 is stayed until the scope of appeals on the rule is determined, parties will not incur additional cost with respect to expert conferencing and calling further evidence and the Court's resources can be utilised more efficiently to address remaining issues in dispute between the parties to the appeals on the pSWLP. Although the speedy resolution of the appeals on the pSWLP is an important goal, as acknowledged in *St John's College Trust Board Progressive Enterprises Limited v Auckland Council*, it is equally important to save the parties from incurring additional, and potentially unnecessary expense, as a result of calling further evidence that may be irrelevant.
- (e) No parties will be prejudiced if an order for stay is granted and the overall balance of the proceeding is in favour of a partial stay with respect to the appeals on Rule 78.

*Hearing*

11. Federated Farmers wishes to be heard on this application if it is opposed.

**DATED 2 May 2023**



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**B S Carruthers / M T N Campbell**

Counsel for Federated Farmers Southland Incorporated