

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 LTD**
Appellant / s274 Party

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

**MEMORANDUM OF COUNSEL FOR WILKINS FARMING COMPANY LTD
CONFIRMING RELIEF BEING PURSUED**

27 July 2022

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MAY IT PLEASE THE COURT

1. All parties have been directed to file a memorandum by 27 July 2022 setting out the relief being pursued.
2. Wilkins Farming Co Ltd's interest in the B5 provisions is limited to what is now Rule 20A.
3. As the Court will be aware from the hearing:
 - (a) Wilkins' request to delete what was Rule 20(a)(iii)(3)(D) and (E) has been addressed in what is now Rule 20A.
 - (b) Wilkins Farming Co Ltd has been pursuing its requests to amend the decision version of what is now Rule 20A(a)(i) to read:

...does not occur on more than 15% of the area of the landholding ~~or 100 hectares, whichever is the lesser area~~
 - (c) The Regional Council has been advocating to amend the decision version of what is now Rule 20A(a)(i) to read:

...does not occur on more than 50ha or 10% ~~15%~~ of the area of the landholding ~~or 100 hectares, whichever is the lesser greater area~~
 - (d) The Regional Council is also seeking to include a new Rule 20A(a)(ii):

The slope of land that is used for intensive winter grazing must be 10 degrees or less.
 - (e) The Regional Council is yet to establish scope for its changes.
 - (f) To protect against the situation where the Court finds (contrary to Wilkins' position) there is scope for the Regional Council's change from 15% to 10% and from 20⁰ to 10⁰, Wilkins has pursued an alternative request to introduce a new Rule 20A(aa). The wording of the alternative request has been subject to changes during the course of the hearing.
4. This memorandum confirms the final relief to be pursued by Wilkins in closing submissions.

Rule 20(a)(i)

5. Wilkins seeks to amend the decision version of what is now Rule 20A(a)(i) as follows:

...does not occur on more than:

- *15% of the area of the landholding ~~or 100 hectares,~~ whichever is the lesser area; and*
- *the maximum area of the landholding used for intensive winter grazing in the five years 2014 – 2019.*

6. However, Wilkins is not opposed to the Council's request to allow up to 50ha to be used for intensive winter grazing on smaller landholdings. Once scope is established for this aspect of Council's request, the version of Rule 20A(a)(i) set out above could be further amended as follows:

...does not occur on more than:

- *50ha or 15% of the area of the landholding, whichever is the greater area; and*
- *the maximum area of the landholding used for intensive winter grazing in the five years 2014 – 2019.*

Rule 20A(a)(ii)

7. Council is yet to identify the appeal point it relies on to introduce new Rule 20A(a)(ii).

8. Wilkins would not oppose the introduction of a slope control to Rule 20A(a) that is consistent with the slope control restriction already contained in Rule 25. Such a rule would read:

The slope of land that is used for intensive winter grazing must be 20 degrees or less.

9. In the (unlikely) event the Council establishes there is scope to restrict intensive winter grazing on slopes over 10 degrees, rather than require the activity to cease or obtain consent, the more appropriate response would be to require an increased setback from waterbodies on these steeper slopes. This could be achieved by amending Rule 20A(a)(iii)(2) and introducing Rule 20A(a)(iii)(3) as follows:

(2) where the slope of land that is used for intensive winter grazing is 10 degrees or less, 10 metres from the bed of any other river, lake, artificial watercourse (regardless of whether there is any water in it at the time), modified watercourse or natural wetland; and

(3) where the slope of land that is used for intensive winter grazing is more than 10 degrees, 20 metres from the bed of any other river, lake, artificial watercourse (regardless of whether there is any water in it at the time), modified watercourse or natural wetland; and

Rule 20A(aa)

10. In light of the evidence, Wilkins is no longer pursuing the introduction of an alternative pathway via Rule 20A(aa).

DATED 27 July 2022



B S Carruthers
Counsel for Wilkins Farming Co Ltd