

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

SUBMISSIONS ON TOPIC B1 – WATER ALLOCATION

11 FEBRUARY 2022

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MAY IT PLEASE THE COURT

INTRODUCTION

1. This document is in three Parts:
 - (a) Executive Summary
 - (b) Part 1: Policy 42 (Topic B1, Issue 6)
 - (c) Part 2: Appendix L.5 (Topic B1, Issue 17)
2. Four documents are **attached**:
 - (a) Wilkins Farming Company Limited (**Wilkins**) Submission
 - (b) Wilkins' Notice of Appeal
 - (c) Memorandum of counsel dated 27 October 2021
 - (d) An email from Southland Regional Council's GM Integrated Catchment Management on 23 December 2021

EXECUTIVE SUMMARY

Topic B1, Issue 6

3. The Southland Regional Council (**Council**) is claiming it has over-allocated the groundwater resource hydraulically connected to the Mataura River when the flow in the river is below 17m³/s.
4. Issues of negligence will obviously arise if that is indeed the case.
5. An extensive work programme has recently got underway on a collaborative basis to:
 - (a) Ascertain whether in fact the Council has over-allocated the resource and if so by what extent; and
 - (b) Develop a solution to address the problem (if confirmed).

6. The Council has communicated to all affected consent holders (and via its website¹) that the solution needs to be fair and equitable and that every consent holder should retain a rate that is efficient for their use.
7. In this context, it is not appropriate for the Council to either defend the decision version of Policy 42 of the proposed Southland Water and Land Plan (**pSWLP**) or seek to amend² it to read:

Except for non-consumptive uses or community water supply, consents replacing an expiring resource consent for an abstraction from an over-allocated waterbody shall only be granted at a reduced rate, the reduction being proportional to the amount of over-allocation and previous use, using the method set out in appendix 0;
8. The appeal by Wilkins provides the ability to change the policy.
9. The fundamental question though is: what should the Policy be?
10. In my submission, the most appropriate way forward is to:
 - (a) First, confirm whether Council has in fact over-allocated the resource and, if so, collaboratively develop the fair and equitable solution;
 - (b) Then, amend the Policy to implement the solution.
11. Unfortunately, the Council is currently opposed to such an approach which has resulted in this matter coming before the Court.
12. Wilkins is opposed to the decisions version of Policy 42 and to the Council's revised version of Policy 42. It is not set on the wording circulated in April 2021 (and set out in paragraph 4 of my memorandum of 27 October 2021, **attached**). It simply seeks a fair and equitable outcome for the water users affected by the Council's negligence (if it transpires the resource is indeed over-allocated).
13. However if it is forced to pursue the matter to hearing before the fair and equitable solution is developed, it will seek either:
 - (a) The notified version of Policy 42; or
 - (b) The version set out in paragraph 4 of my 27 October 2021 memorandum.

¹ <https://www.es.govt.nz/environment/water/mataura-river-water-takes> see in particular the "Presentation – Riversdale meeting 27 September 2021", Slide 10.

² Maciaszek Will Say Statement of 19 November 2021, Appendix 1.

14. This can be achieved by the Court amending Policy 42:
 - (a) within the confines of the Wilkins' appeal as lodged;
 - (b) within the confines of the Wilkins' submission by allowing an Amended Notice of Appeal; or
 - (c) by utilising s293 of the Act.
15. Part 1 of these submissions are filed on behalf of Wilkins to provide the context to this issue and address the options for advancing matters.

Topic B1: Issue 17

16. Issue 17 asks: should the groundwater zone allocations be based on a different methodology?
17. The allocation volume in each groundwater management zone is simply 35% of the land surface recharge estimated for that zone.³ Wilkins has two issues with this:
 - (a) the mountainous recharge occurring in some zones should also be factored in; and
 - (b) the confined Garvie Aquifer should be reinstated to Appendix L.
18. On 15 October 2021 Wilkins advised the Council it sought to amend Appendix L.5 as follows:
 - (a) Amend the primary groundwater allocation limits in Table 4 of Appendix L.5.1:
 - (i) Upper Mataura from 10.40 to 33.7;
 - (ii) Wendonside from 9.56 to 16.7;
 - (b) Add a note below Table 4 in Appendix L.5.1 to read:

The primary allocation for groundwater takes is equal to 35 percent of the rainfall recharge occurring over the relevant land area where the water is to be taken, except in Upper Mataura and Wendonside where it is equal to 35 percent of the rainfall recharge occurring over the relevant land area and its watershed.

³ Chanut, P., 2014: Seasonality of land surface recharge in Southland, Environment Southland Report, April 2014.

- (c) Reinsert the confined part of the Garvie Aquifer to Appendix L.5.2.
19. The 19 November 2021 Will Say statement of Ms Maciaszek questions whether there is scope to:
- (a) Amend the primary groundwater allocation limit in the Upper Mataura groundwater zone;
 - (b) Amend the primary groundwater allocation limit in the Wendonside groundwater zone;
 - (c) Reintroduce the Garvie Aquifer.
20. Part 2 of these submissions address those questions.

PART 1: POLICY 42

1. To understand the dispute, it is necessary to first understand the context.
2. I set out the allocation regime, the Council's implementation of it, and the workstreams underway to identify the extent of the problem and develop the solution. I then explain the iterations of Policy 42 and how the version currently supported by Council is in direct conflict with its actions. I then outline the options available for progressing matters, addressing jurisdiction as I do.

ALLOCATION REGIME

Water Conservation Order

3. The Mataura River is subject to a Water Conservation Order (**WCO**). The WCO defines its "protected waters" in clause 2 as:
 - (a) The MATAURA River from its source to its confluence with the sea;
 - (b) The Waikaia River and its tributaries, the Otamita Stream, and all other tributaries of the Mataura River upstream of its confluence with the Otamita Stream; and
 - (c) The MIMIHAU Stream and the Mokoreta River and each of their tributaries.
4. At any point above the Mataura Island Road Bridge, the WCO requires a minimum rate of flow of:

...95% of

(a) *the flow so estimated by the Southland Regional Council [at that point]; plus*

(b) *water taken in accordance with the [RMA] from the protected waters upstream of that point and not returned to the protected waters –*

less authorised inflows upstream of that point that did not have their source in the protected waters.

5. The Environment Court has previously ruled that the WCO does not cover subsurface flows⁴ and that groundwater is not intended to be “protected waters” under the WCO.⁵
6. Importantly, there is no suggestion of any breach of (or over-allocation under) the WCO.

Regional Plans

7. The regional plans manage the groundwater resource as if it is part of the protected waters.
8. For a groundwater take to be a discretionary activity under the pSWLP it must be:
 - (a) Within the PRIMARY allocation limits for the *groundwater* in Appendix L5; and
 - (b) Within the minimum flows and allocation limits for the *surface water* in Appendix L2 if the degree of hydraulic connection is riparian, direct, high or moderate.

*[Note the presence of **moderate** in the above list]*

9. Appendix L2 specifies that:
 - (a) groundwater takes with a riparian, direct or high degree of hydraulic connection will be subject to the WCO minimum flow regime;
 - (b) groundwater takes with a moderate degree of hydraulic connection:
 - (i) will have the estimated stream depletion effect (**SDE**) included in the allocation calculation; but
 - (ii) will not be subjected to minimum flow restrictions.

*[Note **moderate** flows need to be **within** the cumulative allocation calculation but at the same time **not** subject to the flow restrictions]*

⁴ *Morfield Farms Ltd & Anor v Southland Regional Council*, C154/2000, para [22].

⁵ *Morfield Farms Ltd & Anor v Southland Regional Council*, C154/2000, para [34].

10. Rather than allowing 5% of the *naturalised* flow⁶ to be allocated, the Council devised a method to allocate 5% of the *measured* flow in the river. It then created "bands" represented by river flow cut-offs. This system allows:

- (a) A total of 450L/s SDE to be allocated for when the river is flowing at 9m³/s or less. These early consents have no minimum flow cut-off. Water can be taken under these consents regardless of how low the river flow drops.
- (b) A further 100L/s SDE to be allocated for every 2m³/s increase in river flow:
 - (iii) A total of 550L/s SDE when the river is flowing at 11m³ or less;
 - (iv) A total of 650L/s SDE when the river is flowing at 13m³ or less;
 - (v) A total of 750L/s SDE when the river is flowing at 15m³ or less;
 - (vi) A total of 850L/s SDE when the river is flowing at 17m³ or less;
 - (vii) A total of 950L/s SDE when the river is flowing at 19m³ or less;
 - (viii) And so on.

11. For each consent application it is then necessary to establish:

- (a) The degree of hydraulic connection; and
- (b) The SDE.

12. The system was designed so that:

⁶ Which would be the measured flow plus the extracted water above that point and minus any water added by discharges that did not start out as a water take (such as the condensate waste product from drying milk into powder).

- (a) For takes with a riparian, direct, high or moderate degree of hydraulic connection, the SDE were to be noted and added to the cumulative SDE allocation total.
- (b) As the cumulative SDE allocation total passed 450L/s, a cut-off of 9m³/s was to be imposed on the riparian, direct and high takes (but not moderate takes). As it passed 550L/s, a cut-off of 11m³/s was to be imposed on the riparian, direct and high takes (but not moderate takes). As it passed 650L/s, a cut-off of 13m³/s was to be imposed on the riparian, direct and high takes (but not moderate takes). And so on.

13. There is a glaring and fundamental flaw in this system. By including the SDE of moderate takes in the cumulative SDE allocation total without subjecting them to minimum flow restrictions those moderate takes now have *priority* to the resource over all other permits granted earlier in time that are subject to a minimum flow restriction. Water can be taken under these permits regardless of the river flow. There are 31 of them.⁷ While this did not create any problems as the resource was first allocated, it has created a significant issue for consent holders at renewal. Consent holders are being “bumped up” to a higher cut-off band (with less reliable water) because the moderate takes with no cut-off are “first in line” to the water.

COUNCIL IMPLEMENTATION OF REGIME

14. Compounding the problem with the regime is the fact that Council then failed to keep an up-to-date record of the cumulative SDE allocation total. As a consequence:

- (a) The Council was unaware that the total had passed the trigger(s) for moving to the next band(s) and increasing the minimum flow cut-off; and
- (b) The Council allocated more than 100L/s in one or more bands.

15. It then looked to recalculate the SDE of each consent. This has created a high level of uncertainty as to the current allocation within each of the bands.

COLLABORATIVE APPROACH TO CATCHMENT WIDE SOLUTION

⁷ <https://www.es.govt.nz/environment/water/mataura-river-water-takes> see in particular the “Presentation – Riversdale meeting 27 September 2021”, Slide 7.

- 16.** The discovery of these issues led to the February 2020 request to place part of the Wilkins consent appeal⁸ on hold. The dispute was put on hold for a period of 2 years “while the Regional Council undertakes workstreams to resolve the possible over-allocation of the Maitara River.”⁹
- 17.** The 24 May 2020 evidence of Ms Maciaszek in that matter confirmed the Council was looking to resolve the breach “in an equitable way”,¹⁰ set out the work undertaken to date,¹¹ and outlined the options being considered¹² but could not give a firm commencement date nor an expected date for completion.¹³
- 18.** Wilkins understands its consent appeal is on hold until September 2022.¹⁴ It has made consistent and sustained efforts to engage with the Council and its various workstreams since February 2020. It has expressed concern that Council was not progressing the matter. It finally decided to stop waiting for Council to commence the project and in July 2021 invited all consent holders to a briefing meeting. A second meeting was held in December 2021, which led to the Council’s General Manager Integrated Catchment Management sending consent holders the **attached** email. This email records:
- (A) Wilkins initiated the process;
 - (B) The steering group is a “great step towards working together to find a fair and equitable solution”;
 - (C) Council is thankful for the “support and willingness to work together.”
- 19.** As recorded on the Council’s dedicated website for the issue:¹⁵

We intend to work with all affected consent holders in the catchment to determine the most equitable way to reduce the volume of water allocated to consents to the level set out in the WCO.

We want to look at a number of options and also consider alternatives which may come about as a result of our discussions with consent

⁸ ENV-2018-AKL-380
⁹ Minute, 21 February 2020, at [6].

¹⁰ Para 94.

¹¹ Para 95.

¹² Para 96.

¹³ Para 99.

¹⁴ [2020] NZEnvC 155, para [133].

¹⁵ <https://www.es.govt.nz/environment/water/maitara-river-water-takes>

holders. There are several different ways this situation can be resolved, each with its own benefits and challenges.

There's not a one size fits all rule to deal with the overallocation. Together, we can find the best fit for our own community, while meeting the legislative requirements of the WCO.

- 20.** A collaborative approach to investigating the problem and, if necessary, developing a catchment wide solution is underway.

POLICY 42

- 21.** The pSWLP was notified in June 2016. It included policy 42(2):

Policy 42 – consideration of water permit applications

When considering resource consent applications for water permits:

1. ...;
2. *Consents replacing an expiring resource consent for an abstraction from an over-allocated waterbody may be granted with a lesser volume and rate or take proportional to the amount of over-allocation and previous use;*

...

- 22.** The Council released its decision on submissions in April 2018. It amended policy 42(2) to read:

2. *Except for non-consumptive uses*, consents replacing an expiring resource consent for an abstraction from an over-allocated waterbody ~~may~~ *will generally only* be granted ~~with a lesser volume and at a reduced rate or take,~~ *the reduction being proportional to the amount of over-allocation and previous use, using the method set out in Appendix 0;*

- 23.** The Council proposes to further amend policy 42(2) as follows:

Except for non-consumptive uses or community water supply, consents replacing an expiring resource consent for an abstraction from an over-allocated waterbody ~~will generally~~ shall only be granted at a reduced rate, the reduction being proportional to the amount of over-allocation and previous use, using the method set out in Appendix 0;

- 24.** Policy 42(2) initially indicated that consents “may be” granted with a lesser volume, rate or take. The decision replaced “may be” with “will generally only be” and limited the option to a reduced rate. The Council (and others) now propose that such consents “shall only be” granted at the reduced rate, with an exclusion provided for community water supply.
- 25.** If approved, this wording would require each and every consent to be granted at a “reduced rate, the reduction being proportional to the amount of over-allocation and previous use.”
- 26.** Without going into the detail, such an outcome is nonsensical:
- (a) The Council has allocated almost 300L/s SDE in a cut-off band that should have no more than 100L/s. A proportional reduction would result in every consent holder in that band having their water reduced to 1/3.
 - (b) That makes no sense when the water could still be taken at that rate provided the flow in the river was above a certain level.
 - (c) The “rate” should not be the focus in an over-allocated waterbody.
 - (d) The Policy is unduly confined to one (ridiculous) option with no discretion to reflect efficiency of use and investment in infrastructure (among other matters).
- 27.** Such an outcome would also be contrary to the collaborative approach now underway.
- 28.** It is clear from Appendix O that water is to be both allocated and used efficiently. Wastage and inefficient water use is to be avoided. Applicants for replacement consents can utilise records of historical water use to demonstrate efficiency. Some consent holders may utilise all water within their seasonal allocation (or have confirmed plans to do so), while others may not. A blanket reduction:
- (a) With uncertain regard to previous use is unreasonable.
 - (b) With no regard of efficiency is unreasonable.
 - (c) With no regard to the investment in infrastructure is unreasonable.

- (d) That is “proportional to the amount of over-allocation” is both uncertain and unreasonable.

JURISDICTIONAL ISSUE

29. With that introduction I turn to the issue currently before the Court.

30. In August 2016 Mr Sean Wilkins prepared and filed a submission on behalf of Wilkins. As requested in the Minute of 23 December 2021 a copy is **attached**. In relation to policy 42 the submission stated:

Oppose in part

Reason

We are not satisfied with the scientific reasoning to establish that a particular application is fully allocated. We also point out that water demands, land uses etc change during the timeframe of a consent so that allocation of an aquifer can change from time to time.

Relief

Scientific proof to establish aquifer allocation must be independently achieved using internationally approved techniques. Allocation status of an aquifer needs to allow provision for review as water uses change from time to time.

31. In May 2018 Mr Wilkins prepared and filed the appeal. As requested in the Minute of 23 December 2021 a copy is **attached**. The appeal opposes the changes made in the decision, particularly the indication that at renewal, a consent could be compromised to a reduced rate to make room for other consent holders. He explained why. He proposed a solution that he thought would maintain the existing consent holders’ priority to the resource.

32. At this point in time it was simply a theoretical issue. There was no suggestion or awareness that the Council may have over-allocated the resource or that any consents may be at risk (and that did not come to light until later in 2018).

- 33.** Wilkins submitted on Policy 42 and its appeal relates to the wording added to and removed from the policy by the decision. In my submission:
- (a) It is clearly within scope of Wilkins' appeal as currently drafted to pursue changes aimed at:
 - (i) Providing priority to existing consent holders; and
 - (ii) Reversing the changes to (1) and (2) made in the decision so as to retain discretion and provide alternatives to a reduced rate (such as volume, or cut-offs).
 - (b) Consistent with the First Interim Decision,¹⁶ it may be within scope of the appeal as currently drafted to pursue changes aimed at:
 - (i) Determining whether a resource is fully allocated or over-allocated;
 - (ii) Providing a process to review allocation status; and/or
 - (iii) Deferring any phase out of over-allocation until after the Freshwater Management Unit process has been completed to implement¹⁷ revised Objectives 7 and 9.¹⁸
 - (c) If it is not, an Amended Notice of Appeal could be filed to pursue the changes in (b).
 - (d) If there is any doubt in relation to that route, the Court can utilise s293 to improve and update the wording of Policy 42.

CONCLUSION

- 34.** *If Council has over-allocated the resource when flows in the Mataura River fall below 17m³/s the solution is not to apply a reduced rate "proportional to the amount of over-allocation" to each consent as it comes up for renewal. Rather, the catchment wide solution will be arrived at collaboratively through the process that Wilkins eventually initiated after more than a year of inaction on Council's part.*
- 35.** I appreciate the Court may be reluctant to adjourn any pSWLP appeal and/or to embark on a s293 process. However, it is simply not viable for

¹⁶ Para [78].

¹⁷ Section 67(2) of the RMA; First Interim Decision, para [298]; Minute dated 1 October 2020, reiterated in Fourth Interim Decision, para [3].

¹⁸ First Interim Decision, paras [131], [141] and [144].

the Court to confirm either the decision version or the revised relief version of Policy 42 in these circumstances of Council's making.

- 36.** If the wording is to be confirmed at this juncture, then it must either be:
- (a) The notified version of Policy 42(2), which is clearly within scope of the Wilkins' appeal; or
 - (b) Some version of the relief circulated to the parties for consideration on 23 April 2021 (set out in the memorandum of counsel dated 27 October 2021)¹⁹ using one of the processes available to the Court.
- 37.** The preferred alternative is to adjourn the matter to await the outcome of the collaborative process initiated by Wilkins in July 2021 that now enjoys the involvement and full support of Council.²⁰

¹⁹ As requested in the Minute of 23 December 2021 a copy is **attached**.

²⁰ This can be confirmed by Chairman Nicol Horrell, Councillor Jeremy McPhail, Don Rule and Bianca Sullivan – all of whom attended the second consent holders' meeting held in Riversdale on 7 December 2021.

PART 2: APPENDIX L

1. The pSWLP as notified:
 - (a) Provided a primary allocation for waterbodies;
 - (b) Enabled a secondary allocation of groundwater subject to appropriate minimum groundwater level cut-offs and/or seasonal recovery triggers to ensure that long-term aquifer storage volumes are maintained and the reliability of supply for existing users is not adversely affected;²¹
 - (c) Explained the classification of unconfined and confined aquifers in Appendix L.3;
 - (d) Identified confined aquifers in Appendix L.5, Y.5.2 with primary and secondary allocation limits;²²
 - (e) Included within the confined aquifers in L.5, Y.5.2 the Garvie Aquifer with an annual allocation of 8.38 and a primary allocation of 147m asl and a secondary allocation of 146m asl.
 - (f) Grouped the unconfined aquifers into "Groundwater zones" with a primary allocation but no secondary allocation.
 - (g) In the three Groundwater Zones of interest to Wilkins, provided primary allocation limits of:
 - (i) Upper Mataura: 27.84
 - (ii) Waipounamu: 1.16
 - (iii) Wendonside: 7.07
2. Wilkins submitted on Appendix L, Y.5.2.²³ Wilkins holds a consent that enables it to take water until the Garvie Aquifer drops below 136m asl. The "limit" of the secondary allocation at 146m asl was therefore of concern. Wilkins opposed the change to the cut-off limit on the basis it could potentially restrict Wilkins' access to water during critical times of the growing season. Wilkins requested the removal of any irrigation cut-offs in the Garvie Aquifer until sound due diligence has been obtained.

²¹ Policy 21(c) in Notified Version of pSWLP

²² Rule 54(d).

²³ Page 22.

3. The Section 42a report recommended, in response to a submission received from Environment Southland staff:²⁴
 - (a) the deletion of the Garvie Aquifer from Appendix L5, Y.5.2;
 - (b) adjustments to the primary allocation for the Wendonside Groundwater Zone, from 7.07 to 9.56 and for the Upper Mataura Groundwater Zone from 27.84 down to 10.40.
4. The reasoning given in the main body of the Section 42a report for deleting the Garvie Aquifer was that:

When the original draft of the pSWLP was prepared, the "Garvie Aquifer" was classified as a separate groundwater resource from the overlying unconfined aquifer. However, improved hydrogeological data from recent drilling and aquifer testing in the area now shows that the water-bearing layer previously referred to as the Garvie Aquifer is relatively 'leaky' so it is more appropriate to manage all groundwater in the Wendonside groundwater zone (regardless of depth) as a single resource for allocation purposes. This is included as part of the analysis by Mr Hughes in Appendix C4 attached to this report. As sought by a number of submitters, including Environment Southland staff, the cut offs for the Garvie Aquifer are recommended to be removed.

5. Appendix C4 to the Section 42a report contains the rationale provided by Mr Hughes:

When the original draft of the pSWLP was prepared, the "Garvie Aquifer" was managed as a separate groundwater resource in the Wendonside terrace area which was distinct from the overlying unconfined aquifer. This approach reflected a conservative approach to managing allocation consistent with the 'staged management approach' outlined in the RWP and reflected the limited information available to characterise the resource.

However, improved hydrogeological data from recent drilling and aquifer testing in the area now shows that the water-bearing layer previously referred to as the Garvie Aquifer is relatively 'leaky' so it is more appropriate to manage all groundwater in the Wendonside groundwater zone (regardless of depth) as a single resource for allocation purposes.

Reflecting this, the Environment Southland staff submission proposes that reference to the Garvie Aquifer (and associated minimum level cut-

²⁴ Submission 247.29.

offs) is removed from the plan. As a result, bores located in what was previously referred to as the Garvie Aquifer are now managed as part of the Wendonside groundwater zone defined in the pSWLP.

6. Appendix C5 to the Section 42a report explains that the adjustments to the primary allocations in the Groundwater Zones was simply to align with the updated allocation volumes listed in the Environment Southland staff submission. No adjustment was made to the Wendonside groundwater zone's primary allocation to reflect the addition of the Garvie Aquifer to that zone. Instead, the allocation volume is simply 35% of the land surface recharge estimated for that zone using figures calculated by Chanut.²⁵
7. The Decision adopted these recommendations and reasons and does not itself discuss the Garvie Aquifer, confined aquifers more generally or secondary allocation in the Groundwater Zones.
8. As a consequence of the decision:
 - (a) The Garvie Aquifer is no longer identified as a confined aquifer, with a primary and secondary allocation;
 - (b) The allocation available in all groundwater zones is simply 35% of the *land surface recharge* estimated for each zone using figures calculated by Chanut.
 - (c) Using that simple methodology the primary allocation in the three Groundwater Zones of interest to Wilkins became:
 - (i) Upper Mataura: 10.40 (down from 27.84)
 - (ii) Waipounamu: 1.16 (the same)
 - (iii) Wendonside: 9.56 (up from 7.07)
9. The Wilkins' appeal challenges the unnecessarily restrictive allocations in Appendix L.5 and the arbitrary nature of the figures and requests the use of an alternative methodology.
10. Wilkins is entitled to do so:²⁶

²⁵ Chanut, P., 2014: Seasonality of land surface recharge in Southland, Environment Southland Report, April 2014.

²⁶ *Re Vivid Holdings*, [1999] NZRMA 467.

- (D) In relation to the allocation available in the Garvie Aquifer and the Wendonside Groundwater Zone it is fairly and reasonably within the general scope of the submission.
 - (e) In relation to the primary allocation available in the Upper Maitura Groundwater Zone it is fairly and reasonably within the general scope of the pSWLP as notified.
11. Wilkins has obtained independent expert advice²⁷ that:
- (F) Part of the Garvie Aquifer is confined;
 - (G) The confined part of the Garvie Aquifer can be identified and mapped; and
 - (H) For some Groundwater Zones, the watershed provides mountainous recharge that should be reflected in the allocations.
 - (I) The watershed provides mountainous recharge in two of the three Groundwater Zones of interest to Wilkins (Upper Maitura and Wendonside).
12. This led to its request on 15 October 2021 to amend Appendix L.5 as follows:
- (a) Amend the primary groundwater allocation limits in Table 4 of Appendix L.5.1:
 - (i) Upper Maitura from 10.40 to 33.7;
 - (ii) Wendonside from 9.56 to 16.7;
 - (b) Add a note below Table 4 in Appendix L.5.1 to read:

The primary allocation for groundwater takes is equal to 35 percent of the rainfall recharge occurring over the relevant land area where the water is to be taken, except in Upper Maitura and Wendonside where it is equal to 35 percent of the rainfall recharge occurring over the relevant land area and its watershed.
 - (c) Reinsert the confined part of the Garvie Aquifer to Appendix L.5.2.
13. In my submission the requested relief is within scope.

²⁷ Will Say, Dr Sklash, 12 November 2021.

DATED 11 February 2022

A handwritten signature in blue ink, appearing to be 'B S Carruthers', written in a cursive style.

B S Carruthers
Counsel for Wilkins Farming Company Limited