

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

UNDER the Resource Management Act 1991

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)

(Continued next page)

**WILL SAY STATEMENT OF LAUREN MACIASZEK ON BEHALF OF
SOUTHLAND REGIONAL COUNCIL IN RELATION TO TOPIC B1**

PLANNING

19 November 2021

Judicial Officer: Judge Borthwick

Respondent's Solicitor
PO Box 4341 CHRISTCHURCH 8140
DX WX11179
Tel +64 3 379 7622
Fax +64 379 2467

WYNNWILLIAMS

Solicitor: P A C Maw
(philip.maw@wynnwilliams.co.nz)

ARATIATIA LIVESTOCK LIMITED
(ENV-2018-CHC-29)

WILKINS FARMING CO
(ENV-2018-CHC-30)

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

Introduction, qualifications and experience

- 1 My name is Lauren Rachel Maciaszek. My qualifications will be set out in full in my evidence in chief, however, in brief: I am employed by the Southland Regional Council (Council) as a Principal Policy Planner. I hold the qualifications of Bachelor of Environment Management from Lincoln University and Master of Natural Resources Management and Ecological Engineering, jointly awarded by Lincoln University and BOKU University in Austria.

Code of conduct

- 2 I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and agree to comply with it. The contents of this statement are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this statement.
- 3 I acknowledge that I am an employee of the Respondent, Southland Regional Council. Notwithstanding that, I confirm that I prepared and will present my evidence as an independent expert and in compliance with the Code of Conduct.

Scope of will say statement

- 4 I have prepared this Will Say statement in anticipation of facilitated expert conferencing on Topic B1, although I note that a timetable for such conferencing has not yet been confirmed. I also note that there appears to be a need for a determination as to the scope of the appeal of Wilkins Farming Company Ltd (**Wilkins**) prior to any expert conferencing.
- 5 This statement addresses the Council's preferred "tracked changes relief" shown in Appendix 1, prepared in response to the tracked changes relief provided by Wilkins dated 27 October 2021. Specifically, this statement addresses Topic B1 – Water Takes:
 - (a) Policy 42(2)
 - (b) Appendix L.5
- 6 For completeness, I note that I prepared a separate Will Say statement dated 11 November 2021 which addressed planning matters in relation to Topic B3 - Wetlands.

Policy 42(2)

7 In my evidence, I intend to say:

- (a) The changes shown in blue in Appendix 1 were agreed at mediation between all interested parties, in relation to the appeal on Policy 42 by Fish & Game. Wilkins is not a section 274 party to this appeal.
- (b) I understand that there are issues of scope which will need to be resolved. This is because Wilkins' submission focussed on scientific reasoning, with the following relief sought: "*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*". Wilkins' notice of appeal seeks that Policy 42 be amended to state: "*if a groundwater management zone is within the last 10% of its primary groundwater allocation limit, then existing consent holders should be offered consent renewal options before further allocating groundwater to new applicants*". It appears that the matters raised in the notice of appeal may not be sufficiently related to the submission that the notice of appeal is within scope. Further, it appears that Ms Dines's discussion in her paragraph 19 extends beyond the relief sought in the Wilkins notice of appeal in that it addresses the agreed changes to Policy 42 as a result of Fish and Game's appeal, to which Wilkins is not a party. I consider these matters of scope to be primarily a legal issue, and consider that they should be resolved prior to expert conferencing or evidence exchange to ensure that any remaining matters are able to be efficiently addressed.
- (c) Further to the scope issues outlined above, I consider that the changes proposed by Wilkins on 27 October 2021 and supported by Ms Dines in her Will Say Statement of 12 November 2021 also appear to be outside the scope of the Wilkins submission and appeal. If Wilkins intend to pursue this relief, I consider that a determination should be made before any expert conferencing or evidence exchange as to:

- (i) Whether the notice of appeal was within the scope of the submission, and whether the appeal is considered to be valid; and then
 - (ii) If the notice of appeal is considered to be valid, whether the relief now sought by Wilkins and supported by Ms Dines is within the scope of the notice of appeal.
- (d) If the changes now sought by Wilkins are determined to be within scope, I will say the following:
- (i) I do not consider that the scope of Policy 42(2) should be limited to the period prior to the plan change implementing the Freshwater Management Unit process as sought.
 - (ii) Policy 42(2)(a)(i) and (c) as sought by Wilkins are already addressed in Policy 20(3).
 - (iii) The basis for the proposed addition of Policy 42(2)(a)(ii) is not clear.
 - (iv) Policy 42(2)(b) as sought by Wilkins is already addressed through Policy 20(3) and Appendix O.
- (e) I do not consider that the changes proposed by Wilkins to Policy 42 are appropriate, for the reasons above. As there is already an allocation framework for water quantity in the plan, I consider that direction in Policy 42 to reduce the level of abstraction in an over-allocated waterbody regardless of whether the allocation framework was implemented through the Freshwater Management Unit process appropriately gives effect to the objectives of the plan as a whole (including in particular Objectives 1, 2, 9/9A, 11, and 12). It is also consistent with the hierarchy of Te Mana o te Wai set out in the National Policy Statement for Freshwater Management 2020 (NPSFM) and the direction in Policy WQUAN.2 of the Southland Regional Policy Statement 2017 (RPS) to avoid over-allocation of surface water and groundwater and resolve any historical instances of over-allocation.

Appendix L.5

8 My evidence will say:

- (a) I do not support the changes to the allocation limits sought by Wilkins and supported by Ms Dines, based on the reasoning set out in the will say statement of Peter Callander dated 19 November 2021.
- (b) I also understand that there may be issues as to scope with the appeal on this provision. The submission on the notified version of the plan specifically sought to “*remove irrigation cut-offs in Garvie aquifer until sound environmental, economic, and social due diligence has been obtained*”. The reasoning provided refers to the minimum level cut-off of 146 metres above sea level that was specified for the Garvie aquifer in Table Y.6 of the notified version of Appendix L.5. The notice of appeal provides reasoning related to “*the relevance of primary allocation of groundwater figures*”. The relief sought in the notice of appeal was: “*That the groundwater restrictions should be based on a transparent and consistent formula applied fairly across all ground water zones. This is to demonstrate that the water abstraction does not have significant detrimental effects on the aquifer level using the existing pump test and ongoing well, piezo, and flowmeter monitoring techniques. The use of random or arbitrary figures is not appropriate. What would be more appropriate is to use information obtained from such a formula suggested applied in a local context factoring in KNOWN environmental risks and resource availability*”.
- (c) The relief sought in the notice of appeal is broader than the submission, by way of no longer restricting the relief sought to the Garvie aquifer. The reason for the appeal also appears to be focussed on the primary allocation of groundwater, while the relief sought is not clear as to whether it is referring to the primary allocation as with the reasoning provided, or whether it is specifically the cut-offs. As the cut-offs referred to in the submission were removed from the plan when the Garvie aquifer was amalgamated into the Wendonside groundwater zone due to being a semi-confined aquifer, there are no minimum groundwater level cut-offs specified in the decisions version of the plan which

are relevant to the Garvie aquifer (or the Wendonside groundwater zone).

- (d) Based on the information set out above, I consider that a legal determination is required before expert conferencing or evidence exchange is undertaken, to ensure that the scope is clear for water quantity experts and planners by determining:
- (i) Whether there is scope for the relief now sought by Wilkins in relation to the Upper Mataura groundwater zone; and
 - (ii) Whether there is scope for the relief now sought by Wilkins in relation to the Wendonside groundwater zone, given that Dr Sklash's evidence also states that the Garvie aquifer should be managed separately as a confined aquifer; and
 - (iii) Whether there is scope for the relief now sought in separating 'the confined part of the Garvie aquifer' back out from the Wendonside groundwater zone, given that it had not been sought in the notice of appeal.
- (e) If it is determined that there is scope to separate out the confined part of the Garvie aquifer as sought, I consider there needs to be further clarification as to the specific changes sought to Appendix L.5. The tracked changes relief provided by Wilkins does not show tracked changes to L.5 in relation to the Garvie Aquifer, rather it simply states "*Reinsert the confined part of the Garvie Aquifer to Appendix L.5.2*", and the same statement has been repeated by Ms Dines in her will say statement. As Dr Sklash's will say statement indicates that he considers the whole of Garvie aquifer to be confined, it is not clear to me what exact changes are sought by referring to "*the confined part of the Garvie Aquifer*".
- (f) While the uncertainty in the relief sought and the scope of the appeal means that it is difficult to identify specifically what I will need to give evidence on, broadly I will say:
- (i) There is conflicting scientific opinion as to the status of the Garvie aquifer, in whether it is semi-confined or confined (in whole or in part). On the basis of the will say statement of Peter Callander, who considers that the Garvie aquifer is best defined as semi-confined, I consider that the Garvie

aquifer should remain combined with the Wendonside groundwater zone and not considered separately.

- (ii) Given the conflicting scientific opinion, I consider it is appropriate that the plan takes a precautionary approach. I consider that the reasoning and conclusions laid out by Mr Callander in his Will Say Statement indicate that the decisions version of Appendix L.5 most appropriately gives effect to the objectives of the plan. In particular, taking a precautionary approach is consistent with ki uta ki tai and Te Mana o te Wai (Objectives 1 and 2 of the plan). Further, it is consistent with the hierarchy of obligations in Te Mana o te Wai as set out in the NPSFM which prioritises the health and well-being of water bodies and freshwater ecosystems above the needs of people.



.....
Lauren Maciaszek
19 November 2021

Appendix 1

B1 – Water Takes

Council Relief

Tracked changes key:

Blue = previously agreed by parties

Red = changes that show Council's preferred relief

Policy 42

As agreed at mediation in respect of the Fish & Game appeal, with the following changes to be made to Policy 42(2):

Except for non-consumptive uses or [community water supply](#), consents replacing an expiring resource consent for an abstraction from an over-allocated water body ~~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 O; and