

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I MUA I TE KOOTI TAIAO O AOTEAROA
KI OTAUTAHI**

ENV-2018-CHC-34

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF appeals under clause 14 of the First Schedule to the Act

BETWEEN **BEEF+LAMB NEW ZEALAND LIMITED**

Appellant

AND **SOUTHLAND REGIONAL COUNCIL**

Respondent

**WILL SAY STATEMENT OF CHRISTINE ANNE FOSTER FOR
BEEF+LAMB NEW ZEALAND LIMITED
29 OCTOBER 2021**

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I, **CHRISTINE ANNE FOSTER**, Resource Management Planner, will say:

BACKGROUND

1. My full name is Christine Anne Foster.
2. I am a Planning Consultant and sole director of CF Consulting Services Limited, based in Wellington. I hold a Bachelor of Regional Planning and have worked as a resource management planner in New Zealand for over 35 years.
3. My planning experience has included drafting and implementing resource management plan provisions, the compilation of resource consent applications, assessment of the environmental effects of a variety of projects, and community consultation. That experience has been gained in a number of roles including as a staff planner for local authorities, policy analyst with the Ministry for the Environment and, since 1992, as a consultant planner working on contract for a variety of clients including regional councils, unitary authorities and territorial authorities. I have assisted local authorities with the preparation of district and regional plans under the Resource Management Act 1991 (the RMA) and with plan changes and variations.
4. I was asked by Beef + Lamb New Zealand (**'Beef + Lamb NZ'**) in October 2021 to review the provisions of the proposed Southland Water and Land Plan (**'the Plan'**) relevant to Beef + Lamb NZ's appeal on stock exclusion as relates to the exclusion of sheep from waterbodies. I have not previously been involved in submissions, hearings or the mediation of appeals on the Plan. I am authorised to give this statement on behalf of Beef + Lamb NZ.
5. I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise except where I state that I am relying on the evidence of another person.

Scope of Will Say Statement

6. This will say statement addresses the following parts of Beef + Lamb NZ's appeal:
- (a) Paragraphs 6a. and 9: in relation to Policy 18 (2a) (stock exclusion from water bodies) as relates to the exclusion of sheep from water bodies;
 - (b) Paragraphs 6b. and 10a.: in relation to the definition of the expression 'stock units' used in Table 1 of Rule 70 (e); and
 - (c) Paragraphs 6b. and 10b.: in relation to the exclusion from Rule 70 of a specific exemption for sheep.
7. I am aware of the direction that this will say statement address how the relief will implement the objectives and policies. Given the nature of the relief sought by Beef + Lamb NZ and the fact it focuses on Plan methods and their practical implementation, I have also addressed the justification for some of the specific changes to the methods.

Opinion on Policy 18(2a)

8. Policy 18 (2a.) states:

'Policy 18 – Stock exclusion from water bodies

Reduce sedimentation and microbial contamination of water bodies and improve river (excluding ephemeral rivers) and riparian ecosystems and habitats by:

.....

2a. requiring the management of sheep in critical source areas and in those catchments where E.coli levels could preclude contact recreation; ...

9. It is clear in the reference to 'critical source areas' exactly where the policy will apply (because there is a definition of 'critical source area' proposed in the Plan's Glossary). It is not, however, clear from Policy 18 (2a.) which of

the region's catchments are 'catchments where E. coli levels could preclude contact recreation'.

10. It is my opinion that the efficiency and effectiveness of Plan implementation, including the efficiency and effectiveness of Plan objectives, would be assisted by clarifying explicitly which catchments Policy 18 (2a.) applies to, by listing or mapping those. Conversely, it is my opinion that the efficiency and effectiveness of Plan implementation would be impaired if the catchments referred to in Policy 18 (2a.) are not explicitly identified.
11. The supplementary statement of evidence of Matthew McCallum-Clark (for Southland Regional Council) dated 28 October 2021 clarifies that there are six freshwater swimming sites monitored by the Council that are categorised as 'poor' in relation to the NPS-FM 2020 national bottom line for E. coli (as set out in Table 22 of Appendix 2B of the NPS-FM 2020). It is not clear, though, what catchments those monitored swimming sites are within. It is not clear what is meant by 'preclude contact recreation', or what measured level of E. coli is considered by the Plan to 'preclude contact recreation'. It is not clear, either, whether those six monitored swimming sites represent all catchments where E. coli levels could 'preclude contact recreation'.
12. It appears from Mr McCallum-Clark's supplementary statement that there may be a basis for more clearly defining the catchments referred to by the words 'preclude contact recreation' in Policy 18 (2a.). If that is the case, my opinion is that the Council should propose a list explicitly identifying the relevant catchments.

Opinion on the Absence of a Definition of 'Stock Unit'

13. Table 1, in Rule 70 (e) includes a timetable for the exclusion of beef cattle and deer from water bodies (the last row of Table 1). That timetable applies to all water bodies over 1 metre wide from 1 July 2030 *unless* the average stocking rate on the land directly adjacent to the water body is less than '6 stock units per hectare'.
14. My opinion is that this part of Table 1 is incapable of clear and unambiguous interpretation without a clear definition of what is meant by 'stock unit' and that a definition should be included in the Plan.

15. The will say statement of Tom Orchiston (for Beef + Lamb NZ) clarifies that the definition proposed by Beef + Lamb NZ is the most widely accepted and applied definition currently used by the agriculture industry. Based on Mr Orchiston's opinion, and subject to considering any relevant expert evidence presented by the parties that suggests an alternative, my opinion is that the definition proposed in Beef + Lamb NZ's notice of appeal is appropriate.

Opinion on Rule 70(e) Stock Exclusion and Sheep

16. Rule 70 details the circumstances in which certain types of stock are to be excluded from water bodies and by what dates this must be achieved.
17. Policy 18 (1) is clear that the requirement for stock exclusion applies to all stock except sheep. It states (with my highlighting):

'Policy 18 – Stock exclusion from water bodies

Reduce sedimentation and microbial contamination of water bodies and improve river (excluding ephemeral rivers) and riparian ecosystems and habitats by:

1. *Requiring progressive exclusion of all stock, **except sheep**, from lakes, rivers (excluding ephemeral rivers), natural wetlands, artificial watercourses, and modified watercourses on land with a slope of less than 15 degrees by 2030; ...'*

18. The method by which Policy 18 (1.) is to be implemented is Rule 70. However, there is no explicit exception for sheep in Rule 70. That appears to be an oversight.
19. My opinion is that the intended exception for sheep (in Policy 18) needs to be made explicit in Rule 70 for the following reasons:
- (a) The will say statements of Dr David Stevens and Dr René Corner-Thomas (for Beef + Lamb NZ) clarify that sheep will not generally seek to access natural water. Dr Corner-Thomas explains that sheep do not generally need to access natural water bodies for drinking water (because they obtain most of the water they need

from pasture and other feed) and, when they do, contact is generally only with the sheep's muzzle;

- (b) Accordingly, sheep do not present a risk to water quality in the same way that other stock named in Rule 70 do (that is, dairy cattle, beef cattle, pigs and deer);
- (c) The low risk represented by sheep is recognised in the Resource Management (Stock Exclusion) Regulations 2020 which do not include sheep in the definition of 'stock' (this means that the Regulations do not require the exclusion of sheep from any water body); and
- (d) Failure to explicitly exclude sheep from the ambit of Rule 70 means that a discretionary activity consent may be required wherever stock have the potential to access a water body (under 'default' Rule 4 of the Plan) and this is clearly not the outcome intended by Policy 18.

Proposed Amendments to Plan Provisions

- 20. I include in Attachment 1 to this will say statement proposed amendments to Rule 70 and the Glossary (both in Part A of the Plan) to address the matters discussed in the foregoing paragraphs 7 to 18. Given the nature of my opinion on Policy 18, I have not suggested any specific changes to it.
- 21. I have not had an opportunity, in the time available, to discuss my proposed amendments with the Council or with any planning experts for other parties. I will review, and may alter, my proposed amendments in light of any relevant evidence presented by parties to the appeal and/or discussion at expert conferencing.

Christine Foster

29 October 2021

ATTACHMENT 1

**AMENDMENTS TO PROPOSED SOUTHLAND WATER AND
LAND PLAN PROVISIONS**

PROPOSED BY CHRISTINE FOSTER

Proposed Amendment No. 1: Insert a new clause (f) in Rule 70 as follows:

Bed disturbance activities in river and lake beds

Rule 70 – Stock exclusion from water bodies

- (a) From 1 July 2020, the disturbance of roosting and nesting areas of the black fronted tern, black billed gull, banded dotterel or black fronted dotterel located in the bed of a lake, river (including an ephemeral river), modified watercourse, or natural wetland by stock including cattle, deer, pigs or sheep is a prohibited activity.
- (b) From 1 July 2020, the disturbance of the bed of a Regionally Significant Wetland or Sensitive Water Body listed in Appendix A by stock including cattle, deer, pigs or sheep is a prohibited activity.
- (c) The disturbance of the bed of a river (excluding ephemeral rivers where stock access is permitted under Rule 20(aa)) or modified watercourse for the purposes of moving stock including cattle, deer, pigs or sheep (but excluding dairy cattle on a dairy platform or on land used for dairy support) is a permitted activity provided the stock are being supervised and are actively driven across the water body in one continuous movement.
- (d) Bed disturbance activities that do not comply with Rule 70(c) are a non-complying activity.
- (e) Other than as provided for by Rules 70(c) and 70(d), the disturbance of the bed of a lake, river (excluding ephemeral rivers where stock access is permitted under Rule 20(aa)), modified watercourse or natural wetland by cattle, deer or pigs is a permitted activity prior to the dates set out in Table 1 for the land having listed land slopes after which time it is respectively a discretionary activity on that land.
- (f) The disturbance of the bed of a lake, river (excluding ephemeral rivers where stock access is permitted under Rule 20(aa)), modified watercourse or natural wetland by sheep is a permitted activity.

Table 1: Timetable for stock exclusion from water bodies ...

Proposed Amendment No. 2: Insert into the Glossary a new definition of 'Stock Unit' as follows:

Stock unit means one 55 kilogram breeding ewe, bearing a single lamb, consuming 550 kilograms DM average quality feed over a year.