

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

IN THE MATTER of the Resource Management Act 1991

AND appeals under clause 14 of the First
Schedule of the Act

BETWEEN ARATIATIA LIVESTOCK
LIMITED

(ENV-2018-CHC-29)

(and all other appellants listed in
the Schedule attached)

Appellants

AND SOUTHLAND REGIONAL
COUNCIL

Respondent

MINUTE OF THE ENVIRONMENT COURT
Fifth Interim Decision – resumption of hearing, sacrifice paddocks and
sense check
(9 March 2023)

Introduction

[1] The purpose of this Minute is to address setting a date for the resumed hearing and Appendix N: FEMP, its drafting and referral for sense checking.

Resumed hearing

[2] This proceeding will resume in the week commencing **15 May 2023**. I



pSWLP – RE FIFTH INTERIM DECISION – RESUMED HEARING, SACRIFICE
PADDOCKS AND SENSE CHECK – MINUTE 9 MARCH 2023

estimate up to three days is required, but the court has blocked out the week in its roster. In setting this hearing date, I have not consulted with parties and witnesses as to their availability. It is my expectation parties will prioritise this event. A hearing notice will issue shortly.

Sacrifice paddocks

[3] The treatment of sacrifice paddocks in Appendix N: FEMP has thrown up drafting challenges for the parties.

[4] Having considered the Federated Farmers' and Regional Council's memoranda,¹ we suggest amending:

- (a) Rule 35B to expressly apply to deer or cattle;
- (b) the proposed definition of 'sacrifice paddocks' by deleting the reference to deer or cattle; and
- (c) to include a new clause for sacrifice paddocks in Appendix N: FEMP that is to apply to all stock types.

[5] The amended wording is attached and labelled Annexures A and B.

[6] Unless there is a drafting error that would frustrate Rule 35B or the Appendix N provisions for sacrifice paddocks, the sense check will consider the version of the Appendix N attached to this Minute.

Appendix N: FEMP – amendments approved

[7] Subject to the sense check, the following amendments will be confirmed in the next interim decision:²

¹ SRC, memoranda dated 9 February and 7 March 2023; Federated Farmers memorandum dated 16 February 2023.

² Clause references are to the Fifth Interim Decision Annexure 6.

- (a) clause 12(b) will be amended by deleting ‘of cattle’. The words are redundant given the definition of ‘pasture-based wintering’. SRC memorandum³ referred to clause 12(c) but we think this was in error;
- (b) clause 13(d) will be amended to exclude sacrifice paddocks;
- (c) clause 13(f) – the chapeau will be amended to delete ‘of cattle’;
- (d) clause 13(g) concerns pasture-based wintering of stock other than cattle. The parties do not propose that stock be set back from water bodies and cl 13(d)(ii) – a placeholder – will be deleted. The merits of stock proximity to water bodies has not been considered; and
- (e) clause (h) – delete ‘(including cattle)’.

Clauses 12(c) and 13(g)

[8] We do not approve the deletion of clauses 12(c) and 13(g) as proposed by Federated Farmers. The reason given for their deletion is that the clauses may cause confusion. Having reviewed the clause it is not apparent to us why this would be so and they are confirmed.

Clause 13(e)

[9] Rather than amend clause 13(e) as suggested by the Regional Council to include ‘sacrifice paddocks’, we have proposed a new clause for this activity.

[10] The court’s drafting may look repetitive and no doubt a single clause identifying all activities that result in resowing of paddocks after use can be crafted. However, we think it preferable that the architecture of clause 13 move from the general to the specific activity, with the tasks for each activity being separately identified.

[11] Finally, we agree with the Regional Council that cl 13(g) could be applied to sacrifice paddocks. However, we conceived of this clause as applying to

³ SRC, memorandum dated 7 March 2023 at [29].

pasture-based wintering of stock other than cattle. The two-fold difficulty of extending the clause to apply to both pasture-based wintering and sacrifice paddocks are:

- (a) stock on a sacrifice paddock may not be fed out supplemental feed;
- (b) this may give rise to sacrifice paddocks being used as an adjunct of pasture-based wintering.⁴ Parties will recall the warning against this by Dr D Dalley when giving evidence on the duration of use of a sacrifice paddock.⁵

[12] It is our view that appropriate sacrifice paddock provisions for all stock types is better achieved by:

- (a) amending Rules 35B(a) and (b) by limiting their application to ‘cattle or deer’;
- (b) the definition of ‘sacrifice paddock’ including all stock types;⁶ and
- (c) inserting a new FEMP clause 13(f) for sacrifice paddocks to be resown.

The effect of these changes is that Rule 35B will apply to the use of sacrifice paddocks by cattle or deer while sacrifice paddocks used by other stock types, including sheep, is managed through the FEMP required by Rule 20(a)(4) and Appendix N.

Clause 7(h)

[13] Federated Farmers suggest FEMP clause 7(h) might be amended by requiring that ‘actively farmed areas’ be mapped with details on the location of

⁴ The same concern arises in relation to the SRC proposed amendment to cl 13(e).

⁵ Fifth Interim Decision at [349]-[350].

⁶ As opposed ‘cattle or deer’ as proposed by the Council 9 February 2023 memo at [35].

rotated activities provided in the annual Winter Grazing Plan.⁷

[14] The purpose of the amendment and its application to sacrifice paddocks is unclear.⁸ That said, the mapping of farmed areas listed is a key risk management tool. We expect the FEMP's will be electronic documents to be reviewed annually (Appendix N, Part C). Difficulties are not anticipated in substituting an amended plan (dated) depicting the intended location of each of the four activities.

Sense check

[15] We have considered the draft brief attached to the Regional Council's memorandum dated 7 March 2023. The use of the term 'readily' in the brief is not to be used as it is entirely subjective and likely to provoke disagreement.

[16] While the Practice Note 2023 guidelines for expert conferencing do not apply, it is important that the participating witnesses:

- (a) approach the sense check as an evidential process. The sense check is neither a negotiation nor mediation;
- (b) understand that the court is best assisted -
 - (i) when participants give reasons for clauses in Appendix N: FEMP that they support and secondly, give reasons, also for clauses that they do not support.
 - (ii) when recommending amendments, track change Appendix N: FEMP and record the same.

Directions

[17] By **Monday 13 March 2023**, having conferred with the other interested parties, the Regional Council is to report to the court on any concern in principle

⁷ Federated Farmers memo 16 February 2023 p 5 and SRC, memorandum dated 7 March 2023 at [28].

⁸ Noting, the amendment may go beyond the mapping sacrifice paddocks.

with the court's proposed amendments in Annexures A and B. Parties are to work proactively with the Regional Council to resolve any drafting problem and annotate the attachment proposing changes.

[18] If no issue arises, the Appendix N: FEMP attached is to be referred to the sense check.

Jane S.



J E Borthwick
Environment Judge

Issued: 9 March 2023

Schedule – List of appellants

ENV-2018-CHC-26	Transpower New Zealand Limited
ENV-2018-CHC-27	Fonterra Co-operative Group Limited
ENV-2018-CHC-29	Aratiatia Livestock Limited
ENV-2018-CHC-30	Wilkins Farming Co Limited
ENV-2018-CHC-31	Gore District Council & others
ENV-2018-CHC-32	DairyNZ Limited
ENV-2018-CHC-33	H W Richardson Group Limited
ENV-2018-CHC-34	Beef + Lamb New Zealand
ENV-2018-CHC-36	Director-General of Conservation
ENV-2018-CHC-37	Southland Fish and Game Council
ENV-2018-CHC-38	Meridian Energy Limited
ENV-2018-CHC-40	Federated Farmers of New Zealand (Southland Province) Inc
ENV-2018-CHC-41	Heritage New Zealand Pouhere Taonga
ENV-2018-CHC-44	Wilkins Farming Co Limited (previously Campbell's Block Limited)
ENV-2018-CHC-45	Wilkins Farming Co Limited (previously Robert Grant)
ENV-2018-CHC-46	Southwood Export Limited & Others
ENV-2018-CHC-47	Te Rūnanga o Ngāi Tahu, Hokonui Rūnaka, Waihopai Rūnaka, Te Rūnanga o Awarua & Te Rūnanga o Oraka Aparima
ENV-2018-CHC-49	Rayonier New Zealand Limited
ENV-2018-CHC-50	Royal Forest and Bird Protection Society of New Zealand Incorporated



Annexure A

Appendix N – Farm Environmental Management Plan Requirements

- [1] A Farm Environment Management Plan must be:
- (1) a Freshwater Farm Plan prepared, implemented and audited in accordance with regulations prepared under Part 9A of the RMA and which apply within the Southland region, plus any additional information or components required by Part B below; or
 - (2) if Freshwater Farm Plans, under Part 9A of the RMA, are not yet required in the Southland region, a Farm Environmental Management Plan will be prepared and implemented in accordance with Parts A to C below.

Part A – Farm Environmental Management Plans

- [2] All FEMPs (prepared in accordance with this Appendix) must include and give effect to the FEMP Purpose Statement.

FEMP Purpose Statement

This FEMP contributes to the management of Southland's water and land resources under the Southland Water and Land Plan (the SWLP) which embodies ki uta ki tai and upholds Te Mana o Te Wai. These concepts are to be at the forefront of water and land management in the FEMP.

- [3]



The SWLP, and therefore this FEMP, must give effect to the objectives of the SWLP, including Objectives 1 and 2 which are fundamental to the SWLP. These objectives are:

Objective 1 (of the SWLP) – Land and water and associated ecosystems are sustainably managed as integrated natural resources, recognising the connectivity between surface water and groundwater, and between freshwater, land and the coast.

Objective 2 (of the SWLP) – The mauri of water provides for te hauora a te taiao (health and mauri of the environment), te hauora o te wai (health and mauri of the water body) and te hauora o te tangata (health and mauri of the people).

- [4] A FEMP can be based on either:
- (1) the default content set out in Part B below; or
 - (2) industry-prepared FEMP templates and guidance material, with Southland-specific supplementary material added where relevant, so that it includes the default content set out in Part B below; or
 - (3) a management plan and nutrient budget prepared in accordance with a condition of resource consent to discharge industrial wastewater onto land that is also used for farming activity, with the default content set out in Part B below included where relevant to the farm receiving the industrial wastewater.

[5] All FEMPs shall be certified and compliance with the FEMP audited in accordance with Part C.

Part B – Farm Environmental Management Plan Default Content

[6] The FEMP shall contain the following landholding details:

- (a) physical address;
- (b) description of the landholding ownership and the owner's contact details;
- (c) legal description(s) of the landholding;
- (d) a list of all resource consents held for the landholding and their expiry dates; and
- (e) the type of farming activities being undertaken on the property, such as 'dairy' or 'sheep and beef with dairy support'.

[7] The FEMP shall contain a map(s) or aerial photograph(s) of the landholding at a scale that clearly shows the locations of:

- (a) property and paddock boundaries; and
- (b) the physiographic zones found on the Regional Council's website (and variants where applicable) and soil types (or Topoclimate South soil maps); and
- (c) all lakes, rivers, streams (including intermittent rivers), springs, ponds, artificial watercourses, modified watercourses and natural wetlands; and
- (d) all critical source areas; and
- (e) all existing and proposed riparian vegetation and fences (or other stock exclusion methods) adjacent to water bodies; and
- (f) places where stock access or cross water bodies (including bridges, culverts and fords); and
- (g) the location of all known subsurface drainage system(s) and the locations and depths of the drain outlets; and
- (h) land to be:
 - (i) cultivated; or
 - (ii) intensively winter grazed; or
 - (iii) used for pasture-based wintering; and

- (iv) used for a sacrifice paddock;¹ and
- (i) any areas of the land within a catchment of a water body identified in Schedule X; and
- (j) any heritage site recorded in the relevant district plan, on the New Zealand Heritage List/Rārangī Kōrero or on the New Zealand Archaeological Association website; and
- (k) the presence of taonga species listed in Appendix M of the Southland Land and Water Plan within water bodies on the farm (if known); and
- (l) other significant values and uses (if known) of nearby land and waters including mahinga kai and nohoanga.

Nutrient Budget/Nutrient Loss Risk Assessment

[8] For all landholdings over 20 ha, the FEMP contains either:

- (a) a nutrient budget (which includes nutrient losses to the environment calculated using a model approved by the Chief Executive of Southland Regional Council); or
- (b) a nutrient loss risk assessment undertaken using a nutrient loss risk assessment tool approved by the Chief Executive of Southland Regional Council;
- (c) the nutrient budget or nutrient loss risk assessment will be ~~is~~ repeated:
 - (i) where a material change* in land use associated with the farming activity has occurred or is intended that may affect the implementation of cl [9] Objectives (including a change in crop area/yield, crop rotation length, type of crops grown, stocking rate or stock type); and
 - (ii) each time the nutrient budget or nutrient loss risk assessment is repeated, all the input data used to prepare it shall be reviewed by or on behalf of the landholding owner, for the purposes of

¹ See 'Rule 35B' decision.

ensuring the nutrient budget or nutrient loss risk assessment accurately reflects the farming system. A record of the input data review shall be kept by the landholding owner; and

- (iii) the nutrient budget or nutrient loss risk assessment must be prepared by a suitably qualified person who has been approved as such by the Chief Executive of Southland Regional Council.

Objectives of Farm Environmental Management Plans

[9] The following objectives will be met:

- (a) **Nutrient and soil management:**
 - (i) losses of nitrogen, phosphorus, sediment and microbial contaminants from farming activities to water bodies do not increase (when compared to existing discharges) and are minimised with any change in farming activity; and
 - (ii) the overland flow of water is minimised to control sediment loss from cultivated paddocks and from paddocks used for intensive winter grazing, pasture-based wintering and for sacrifice paddocks; vegetated setbacks are maintained to slow the overland flow of water, filter and support the infiltration of sediment/nutrients; and sediment trap(s) established where critical source areas are cultivated;
 - (iii) if the farm is within a catchment identified in Schedule X, adverse effects on water quality are reduced (when compared to existing activities).
- (b) **Habitat management:** activities in waterways, natural wetlands and their margins are managed so that in-stream and riparian habitat values are not diminished, and where practicable are improved;

[10] If relevant to farming operations, the following objectives will also be met:

- (a) **Intensive Winter Grazing and Pasture-Based Wintering:** ensure

- the particular risks of these activities are managed effectively, grazing of critical source areas and setbacks are avoided; and the extent and duration of exposed soils is minimised;
- (b) **Collected agricultural effluent management:** manage the discharge of collected agricultural effluent in accordance with industry best practice to ensure the adverse effects of contaminants on water quality do not increase and are minimised;
 - (c) **Irrigation system designs and installation:** ensure that all new irrigation systems and significant upgrades meet industry best practice;
 - (d) **Irrigation management:** ensure efficient on-farm water use that meets crop demands, including through upgrading existing systems to meet industry best practice standards, and ensuring that water and contaminant losses to water bodies do not increase and are minimised.

The FEMP must also identify additional objectives if these are relevant to the farming activities and/or to address environmental risks associated with the farm and the environment within which it is located.

[11] For each (relevant) objective above:

- (a) identify how the farm fits within the wider catchment, known as a 'catchment context', including a description of where contaminants lost from the farm end up; and
- (b) identify the risks associated with the farming activities on the property, including the risk pathways of the relevant physiographic zones (and variants), and the risks caused by extreme weather events; and
- (c) demonstrate how the losses of nitrogen, phosphorus, sediment and microbial contaminants are being minimised; and
- (d) where the farm is located in a Schedule X catchment, assess how the

effects on water quality will be reduced by taking into account the risk pathways of the relevant physiographic zone and the catchment context(s), the risks associated with farming activities and the actions to minimise losses of contaminants; and

- (e) define the actions to be taken that clearly set a pathway and timeframe for achievement of the objectives; and
- (f) identify any specific mitigations required by a resource consent held for the property; and
- (g) specify the records to be kept for demonstrating mitigations have been actioned and are achieving the objective.

Winter Grazing Plan

[12] A Winter Grazing Plan is to be prepared each year for the following activities:

- (a) intensive winter grazing; or
- (b) pasture-based wintering of cattle; or
- (c) for stock other than cattle, where pasture is to provide less than 50% of the animal's diet and supplementary feed will be offered on the paddock; or
- (d) sacrifice paddocks.

[13] Implementing the FEMP, the Winter Grazing Plan is to:

- (a) record:
 - (i) the location, paddock slope, land area used, crop type, expected pasture or crop yield and supplementary feed amount and type; and
 - (ii) stock type, numbers and estimated duration of grazing on each paddock.
- (b) identify:
 - (i) any critical source areas, explain how stock will be excluded

- from them between 1 May–30 September; and
- (ii) any water bodies and features from which stock must be setback and excluded, explaining how this will be done.
- (c) explain the procedures to be followed in an adverse weather event (including higher than or below average rainfall);
- (d) excluding sacrifice paddocks, confirm how the following practices are to be implemented:
- (i) downslope grazing or a 20 m ‘last-bite’ vegetated strip at the base of the slope; and
 - (ii) back fencing to prevent stock entering previously grazed areas.
- (e) for intensive winter grazing:
- (i) identify paddocks to be resown after grazing and the date by which this is to occur, weather permitting.
- (f) for a sacrifice paddock:
- (i) identify paddocks to be resown after use as a sacrifice paddock and the date by which this is to occur, weather permitting.
- (g) for pasture-based wintering of cattle:²
- (i) explain the intended paddock set-up including:
 - (1) the predicted post grazing residual on each paddock; and
 - (2) identification of paddocks to be resown after grazing and the date this is to occur, weather permitting; and
 - (ii) if a post-grazing residual is intended, explain how the amount of exposed soil will be minimised and the armouring provided by the pasture on the paddock will be retained.
- (h) for stock other than cattle, where pasture is less than 50% of the animal’s diet and supplementary feed will be offered on the paddock:
- (i) identify paddocks to be resown after grazing and the date this is to occur, weather permitting; and

² See the ‘Rule 20B’ decision.

- (i) with reference to the planned total feed to be offered stock³ and the relevant physiographic zones (and variants), explain how the intensity, operation and location of intensive winter grazing and pasture-based wintering ~~including stock~~ will:
- (1) not lead to an increase in contaminant losses when compared with what has occurred in the past;
 - (2) minimise contaminant losses; and
 - (3) for Schedule X catchments, lead to a reduction in adverse effects on water quality.

Part C – Farm Environmental Management Plan Certification, Auditing, Review and Amendment

[14] Farm Environmental Management Plan Certification:

- (a) the FEMP must be certified, prior to implementation on the farm, by a Suitably Qualified Person (SQP) who has been approved as such by the Chief Executive of Southland Regional Council;
- (b) the purpose of FEMP certification is to confirm that the farming activities on the farm will be carried out in a way that will achieve the Objectives in this Appendix and will comply with any resource consent for the landholding;
- (c) the FEMP must be re-certified, prior to implementation, following any amendments to the FEMP carried out in accordance with Part C (17) of this Appendix;
- (d) within one month of a FEMP being certified, a copy of the certified FEMP must be provided to the Southland Regional Council.

[15] Auditing of the certified Farm Environmental Management Plan:

- (a) within 12 months of the landholding's first FEMP being certified, the

³ An alternative way to express 'planned total feed' may be to refer to crop yield (kg of dry matter per m²) and the proportion of crop in the total diet (kg of dry matter offered per cow per day).

- landholding owner must arrange for an audit of the farming activities to ascertain and ensure compliance with the FEMP. Thereafter, the frequency of auditing will be in accordance with any conditions of consents held for the landholding, or alternatively, where there are no consent or consent conditions requiring auditing, every two years after receipt of the previous audit report, unless the Chief Executive of the Southland Regional Council, having regard to the Objectives of the Southland Water and Land Plan, specifies in writing, a shorter or longer period between auditing;
- (b) the auditor must be a SQP who has been approved as such by the Chief Executive of Southland Regional Council and must not be the same person or from the same organisation that prepared the FEMP;
 - (c) the auditor must prepare an audit report that:
 - (i) sets out the auditor's findings;
 - (ii) states whether compliance has been achieved; and
 - (iii) sets out any recommendations from the auditor.
 - (d) within one month of the final audit report being prepared, the audit report must be provided to the Southland Regional Council by the auditor.

[16] The FEMP must be reviewed by the landholding owner, or their agent, as follows:

- (a) when there is a material change* in farming activities on the landholding that increases the risk of not achieving the plan's objectives, and where that change is not provided for within the landholding's certified FEMP; and
- (b) at least once every 12 months; and
- (c) to respond to the outcome of an audit.

[17] The outcome of the review is to be documented and amendments to the FEMP must be made where Part C(16)(a) applies, and in circumstances where the

annual review identifies that amendments are required.

Notes:

- (a) actions and mitigations in a FEMP may be more stringent than permitted activity standards of the pSWLP rules where this is appropriate to achieve the FEMP objectives;
- (b) the no increase in contaminant loss explanation required by clause 13(h)(1) is to be made in the context of the whole of the relevant land holding consistent with Policy 16(c1) for farming activities that affect water quality. The same approach is to be taken for the explanation of reduced adverse effects on water quality for landholdings located in a Schedule X catchment required by clause 13(h)(3);
- (c) when addressing ‘intensity’ in Clause 13(h) the factors in Clauses 13(a)(i) and (ii) shall be applied, as relevant, in the required explanation;
- (d) minimise means to reduce to the smallest amount reasonably practicable;
- (e) intensive winter grazing means grazing of stock between May and September (inclusive) on forage crops (including brassica, beet and root vegetable crops), excluding pasture and cereal crops.
- (f) pasture-base wintering means break feeding cattle, other than lactating dairy cows, on pasture between 1 May and 30 September inclusive where supplementary feed offered is more than 10,000 kgDM/ha.
- (g) sacrifice paddock⁴ means an area on which—
 - (i) cattle or deer stock are temporarily contained (typically during extended periods of wet weather); and
 - (ii) the resulting damage caused to the soil by pugging is so severe as to require resowing with pasture species

⁴ SRC, memorandum ‘regarding the fifth Interim Decision’ dated 9 February 2023 at [35].



Rule 35B – Sacrifice Paddocks

- (a) The use of land for a sacrifice paddock by **cattle or deer** is a permitted activity provided the following conditions are met:
- (i) the use is not to exceed a total of 60 days in any twelve-month period.
 - (ii) ~~the slope of land that is used for a sacrifice paddock must be 10 degrees or less;~~
 - (iii) the sacrifice paddock must not be in forage crop;
 - (iv) in any year the sacrifice paddocks do not exceed:
 - (1) for a landholding 500 ha or less, 5 hectares of the landholding; or
 - (2) for a landholding greater than 500 ha, 1% or 30 hectares of the landholding (whichever is the lesser).
 - (v) stock must be separated by a vegetated setback at least:
 - (1) 20 metres from the bed of any Regionally Significant Wetland or Sensitive Waterbodies listed in Appendix A, nohoanga listed in Appendix B, mātaihai reserve, taiāpure, estuary or the coastal marine area; and
 - (2) 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 water course or natural wetland, where the slope of the land used as a sacrifice paddock is 10 degrees or more; and
 - (3) 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 water course or natural wetland, where the slope of the land used as a sacrifice paddock is 10 degrees or less.
 - (v) critical source areas within the area being used as a sacrifice paddock must:
 - (1) be identified in the Farm Environmental Management Plan; and
 - (2) have stock excluded from them; and
 - (vi) if the land that is used as a sacrifice paddock requires replanting, this must occur as soon as practicable after stock have been removed from the paddock; and
 - (vii) A Farm Environment Management Plan for the landholding is:
 - (1) prepared, certified and audited in accordance with Appendix N; and
 - (2) implemented by the landholder completing the practices, actions and mitigations specified in the FEMP in accordance with the timeframes set out in the FEMP; and
 - (viii) no part of the sacrifice paddock is located on land with an altitude greater than 800 metres above mean sea level
- (b) The use of land for a sacrifice paddock by **cattle or deer** that does not meet one or more of the conditions of Rule 35B(a) is a discretionary activity.



