

**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
Sense check
(28 April 2023)**

Introduction

[1] The purpose of this Minute is to address the sense check of Appendix N: FEMP and resultant JWS.

[2] First, we wish to note our appreciation for the careful way that the participants in the sense check have gone about this task. We have tracked the recommendations from the sense check into Appendix N (**attached**).



[3] The court has no difficulty in principle with the recommended changes to cl 6(b), cl 7(b), (g), (h) and (i), cl 9(a)(ii) and cl 10(d).

[4] In respect of other clauses, evidence may be required to support the changes.

Court's suggested amendments

[5] The court has slightly amended the recommended changes to clauses cl 6(b)¹ and the preamble to cl 11.

[6] In relation to cl 7(b) we wonder whether 'predominant' rather than 'dominant' may be a better fit. We would appreciate technical evidence on the granularity of information needed to inform the FEMP and whether this is captured in the suggested edits; e.g. are there circumstances in which soil types other than the predominant type could be relevant and should be recorded?

Material Change*

[7] The court did not approve the Regional Council's definition for 'material change*' in the fifth interim decision. For the reasons we set out at paragraphs [472]-[473] of that decision, we continue to anticipate difficulties with its application.

[8] We understand the variables in cl 8(c)(i) – crop area/yield, crop rotation length, type of crops grown, stocking rate or stock type – are inputs into a nutrient budget or nutrient loss risk assessment tool. Parties are to say if this is not the case.

[9] What is a 'material change*' and what is to happen in response is set out in cl 16. Clause 16 is focused on risk. Would it be clearer if cl 16(a) was amended

¹ We omitted reference to 'entities'. The RMA's definition of 'person' appears to capture what was sought.



to read:

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. A material change* is one 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

Clause 7(k) and (l)

[10] If not resolved between the parties directly, we seek evidence responding to the JWS concern around lack of clarity in the phrase 'other significant values and uses (if known) of nearby land and waters' (cl 7(l)). While not mentioned, the same issue may arise in cl 7(k) which uses the phrase 'if known'.

[11] There appears to be no issue with an amendment made by the court to this clause to include 'mahinga kai and nohoanga'.

Clause 8(c)

[12] Is the recommended change to include 'irrigation and effluent areas' made clearer if the reference is to 'effluent disposal areas'?

[13] The participants in the sense check are to elaborate on the statement at [32] of their JWS that crop yield is less foreseeable e.g. are they referencing the situation where yield/harvest is less than planned due, for example, to an adverse weather event or something else.

[14] It may be that the concerns around yield are addressed in the discussion about 'material change*'.

Clause 9(a)(i)

[15] This clause is important because it implements Policy 16(a) and (c). Our



working assumptions are:

- (a) existing discharges can be determined using one or other of the tools at Annexure N [cl (8)(a) or (b)]; and
- (b) existing discharges are those that occurred in the prior 12-month period.

[16] If not resolved between the parties directly, we seek evidence responding to the perceived lack of clarity around the phrase ‘when compared to existing discharges’.

Clause 9(a)(iii)

[17] The court agrees with the recommended change ‘degraded’.

[18] An issue has been raised in the JWS whether this clause acts as a *sinking lid* on contaminants. This is a good question.

[19] Our understanding of Appendix N: FEMP is that gradual improvement in farm management and reduction in contaminant losses over successive Farm Environmental Management Plans is an outcome. If incorrect, parties are to comment.

Clause 9(b)

[20] The term ‘margin’ appears in many places in the proposed plan. Parties are to explain how the term is to be understood and applied in a FEMP.

Clause 10(c)

[21] Would the uncertainty noted in the JWS be addressed if the word ‘significant’ was omitted? On our reading the meaning of the clause is unaltered if it reads ‘upgrades’ rather than ‘significant upgrades’.



Clause 10(d)

[22] Parties are to confirm whether ‘pasture’ is to be captured in this clause and if so, should ‘crop’ be amended to read ‘plants’.

Clause 11(c)

[23] An issue is raised whether cl 11(c) sets a higher threshold than cl 9(a)(i). The former requires contaminants be minimised while the latter requires that they not increase and are minimised with any change in farming activity.

[24] We note, all farming activities are to comply with Policy 16(a) and therefore all farming activities are to:

- (a) not lead to an increase in contaminant losses when compared with what has occurred in the past; and
- (b) minimise contaminant losses.

[25] For degraded Schedule X catchments, there is an additional requirement under Policy 16 to reduce the adverse effects on water quality.

[26] Responding to the sense check, arguably cl 11(c) is a *lower* threshold as there is no associated method in this clause to implement the ‘not increase’ policy outcome.

[27] More thought on cl 11 is required and the court wonders whether cl 11(c) might be deleted and instead cl 13(i) be relocated into cl 11 and amended to apply to all farming activities (i.e. not limited to winter grazing practices).

[28] Regardless of the solution, cl 11(c) does not appear to implement Policy 16 and parties are to respond, calling evidence (if required).



Clause 13(g)

[29] The term ‘armouring’ was used in evidence by planning and technical witnesses. We are advised farmers and farm systems advisors may be unfamiliar with this term.

[30] That being the case a new term or phrase is required to convey the idea of the residual root system and vegetative cover provided by pasture retained on the paddock.

Clause 13(i) and Notes (a), (b) and (c)

[31] A cross-referencing error in the Notes arose when Appendix N was amended to address the topic of sacrifice paddocks in the Minute dated 8 March 2023. The error has been corrected in the copy of Appendix N **attached** to this Minute.

[32] The court is particularly interested in the experts’ views on the likely effectiveness of cl 13(i) and the above Notes as a method to implement the outcomes of Policy 16 i.e. there is no increase in contaminants and contaminants are minimised. As explained in the fifth interim decision our intention was that the FEMP is responsive to the relationship between contaminant losses and total feed, area and stocking density.²

[33] To that end the farm systems advisors (who have not participated in the sense check) having conferred with the planning witnesses are to propose a range of scenarios for the sense checkers to test the relationship where land area, total planned feed and stocking density is changing.

[34] For example, if the area for intensive winter grazing is reduced from 15% to 10% of the landholding, can total planned feed over the next 12 months support

² At [140]-[141] of the decision.



an increase in stock density under 13(i) and FEMP generally? Our understanding is that total planned feed may support an increase in stock density grazing on the reduced area of land. If this were to occur this may result in an increase in contaminants (N and *E.coli* at least).

Other matters

[35] We well understand the JWS concern over the complexity added by the various meanings and requirements of ‘intensive winter grazing’ (pSWLP and NES definitions).³

[36] We note the observation that critical source areas may be difficult to identify for the reasons stated in the JWS.⁴

[37] Finally, we note the observations made regarding the approved nutrient budget model or nutrient loss risk assessment tool.⁵ We are interested to learn whether these methods have been progressed either by the Regional Council or central government.

[38] We leave the above matters for the Regional Council to comment or call evidence on.

Directions

[39] We anticipate that on several matters the parties will be able to reach agreement and that this can be supported by supplementary planning evidence together with technical evidence (if required).



³ JWS dated 3 April 2023 at [44].

⁴ JWS dated 3 April 2023 at [23].

⁵ JWS dated 3 April 2023 at [28].

[40] Having regard to the foregoing, the Regional Council having conferred with the parties about the best way to respond, is to propose directions by **Friday 5 May 2023**.

A handwritten signature in blue ink, appearing to read "Jane S.", with a dotted outline around it.

J E Borthwick
Environment Judge

Issued: 28 April 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

