

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 **FEDERATED FARMERS OF NEW ZEALAND INCORPORATED**
Appellant / s274 Party

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

**MEMORANDUM OF COUNSEL FOR FEDERATED FARMERS PROVIDING
UPDATE ON AMENDMENTS SOUGHT**

26 May 2022

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MAY IT PLEASE THE COURT

1. My opening legal submissions of 11 April 2022 explained the disputed provisions were somewhat of a moving target¹ for Federated Farmers and that it was continuing to engage to further develop the drafting.² I indicated that an update would be provided to the Court and parties in advance of the reconvened hearing.
2. As outlined in my 11 April 2022 submissions, Federated Farmers takes issue with the proposed methods in the pSWLP that control:
 - (a) The area of a landholding able to be used for intensive winter grazing (**IWG**);³
 - (b) Pasture-based grazing in the winter months;⁴
 - (c) Cultivation;⁵
 - (d) Feed pads / lots;⁶
 - (e) Sacrifice paddocks;⁷ and
 - (f) Stock access to wetlands.⁸
3. The drafting has been further developed and an updated version of amendments was provided to the Council and parties on 23 May. The expectation is that the updated Consolidated Version will correctly reflect the amendments now proposed.

Intensive Winter Grazing

4. There is no change to the relief sought to Rule 20(a)(iii)(1) and/or Rule 20A(a)(i).

¹ Paragraph 1
² Paragraph 25
³ Rule 20 and Proposed Rule 20A
⁴ Proposed Rule 20B and Appendix N
⁵ Rule 25A
⁶ Rule 35A
⁷ 35A and Proposed Rule 35B
⁸ Rule 70 / Definition of Wetland

5. A new rule 20A(aa) is now sought:

The use of land for intensive winter grazing that does not meet (a)(i) or (ii) of Rule 20A is a permitted activity provided a certifier has certified in a Farm Environmental Management Plan that the adverse effects (if any) allowed by the winter grazing plan are no greater than those allowed for by 20A(a)(i)-(v).

6. This replaces the relief set out in paragraph 13 of my opening legal submissions.

Pasture based grazing in the winter months

7. There is no change to Federated Farmers position that it supports *defining* the activity as grazing livestock on pasture in the winter months (May – September) where supplementary feed is more than 8 tonne dry matter per ha.
8. It now supports the option for *controlling* the activity using a new rule (as sought by Aratiatia) with the same setback / buffer constraints as IWG (but no area or slope limitation).
9. Otherwise, it continues to support the option of controlling the activity through the FEMP / Appendix N.

Cultivation

10. A new rule framework has been prepared through engagement with other parties. The changes sought to the decisions version of the pSWLP are shown in the **attachment** to this memorandum.

Feed Pads and Sacrifice Paddocks

11. There is no change to the relief sought in relation to Rule 35A and the associated definition of “feed pad / lot”. It is understood this matter is agreed.
12. A further condition has been added to the new Sacrifice Paddocks rule:

no more than 1% or 5 hectares of the landholding (whichever is the greater) is used as a sacrifice paddock in any year;

Stock Access To Wetlands

13. There is no change to the relief sought in relation to the definition of natural wetland.
14. An alternative approach is proposed to Rule 70(cb)(ii):

A Farm Environmental Management Plan for the landholding is prepared, certified, and implemented and compliance with it audited in accordance with Appendix N, and shows how any damage to the values of the wetland will be avoided that contains an ecological assessment showing how loss of natural wetland values will be avoided.

DATED 26 May 2022



B S Carruthers
Counsel for Federated Farmers

Rule 25: Cultivation

(Amendments shown to Decision Version for ease of understanding)

- (a) The use of land for cultivation is a permitted activity provided the following conditions are met:
- (i) cultivation does not take place within the bed of a lake, river ~~(excluding ephemeral rivers where cultivation is permitted under Rule 20(aa))~~, artificial watercourse, modified watercourse or natural wetland;
 - (ii) cultivation does not take place within a distance of:
 - (1) 3 metres from the outer edge of the bed of a lake, river, or modified watercourse or the edge of a natural wetland on land with a slope of less than 5 degrees where the cultivation is for arable land use.
 - (2) 5 metres from the outer edge of the bed of a lake, river ~~(excluding ephemeral rivers where cultivation is permitted under Rule 20(aa))~~, artificial watercourse, or modified watercourse or the edge of a natural wetland on land with a slope of less than 10 degrees; and
 - (3) 10 metres from the outer edge of the bed of a lake, river, or modified watercourse or the edge of a natural wetland on land with a slope between 10 and 20 degrees;
 - (iii) cultivation does not occur at an altitude greater than 800 metres above mean sea level; ~~and~~
 - (iv) cultivation does not occur on land with a slope greater than 20 degrees; and
 - (v) critical source areas are not cultivated when forage crops used for intensive wintergrazing are established and sediment detention is established when cultivating critical source areas for any other purpose; and
- (b) The use of land for cultivation that does not meet the setback distance of Rule 25(a)(ii)(2) is a permitted activity provided the following conditions are met:

- (i) cultivation does not take place within a distance of 5 metres from the outer edge of the bed of a lake, river (excluding ephemeral rivers where cultivation is permitted under Rule 20(aa)) artificial watercourse, or modified watercourse or the edge of a natural wetland and a distance of 3 metres from the outer edge of the bed;
- (ii) cultivation does not take place more than once in any 5-year period;
- (iii) cultivation is for the purpose of renewing or establishing pasture and is not undertaken to establish a crop used for intensive winter grazing, even as part of a pasture renewal cycle; and
- (iv) cultivation does not occur at an altitude greater than 800 metres above mean sea level all other conditions of Rule 25(a) are complied with.

(ba) The use of land with a slope greater than 20 degrees for the purpose of renewing or establishing pasture by direct drilling is a permitted activity provided the following conditions are met:

- (i) cultivation does not take place within a distance of 10 metres from the outer edge of the bed of a lake, river, or modified watercourse or the edge of a natural wetland; and
- (ii) cultivation does not take place more than once in any 5-year period; and
- (iii) cultivation is for the purpose of renewing or establishing pasture and is not undertaken to establish a crop used for intensive winter grazing, even as part of a pasture renewal cycle; and
- (iv) cultivation does not occur at an altitude greater than 800 metres above mean sea level; and
- (v) sediment detention is established when cultivating critical source areas; and
- (vi) Farm environment plans prepared in accordance with Appendix N must outline paddock specific sediment control measures;

(bb) The use of land with a slope greater than 20 degrees for the purpose of renewing or establishing pasture by oversowing, and/or spraying with

the assistance of animals in the pasture establishment period is a permitted activity provided the following conditions are met:

- (i) cultivation does not take place within a distance of 10 metres from the outer edge of the bed of a lake, river, or modified watercourse or the edge of a natural wetland; and
- (ii) cultivation does not take place more than once in any 5-year period; and
- (iii) cultivation is for the purpose of renewing or establishing pasture and is not undertaken to establish a crop used for intensive winter grazing, even as part of a pasture renewal cycle; and
- (iv) sediment detention is established when cultivating critical source areas; and
- (v) cultivation does not occur at an altitude greater than 800 metres above mean sea level; and
- (vi) during the establishment of the pasture up to 10 weeks, or when ground remains bare the land must not be grazed except as follows:
 - a. An initial 48-hour grazing period to assist in the establishment of seed; and
 - b. No grazing for six weeks; and
 - c. One further 48-hour grazing period between 6 to 10 weeks;
- (vii) If the ground remains bare following 10 weeks, the land must not be grazed until pasture is re-established in accordance with this rule; and
- (viii) Farm environment plans prepared in accordance with Appendix N must outline paddock specific sediment control measures and the grazing plan consistent with (vii);

(bc) The use of land with a slope greater than 20 degrees for the purpose of renewing or establishing pasture by oversowing, and/or spraying without the assistance of animals in the pasture establishment period is a permitted activity provided the following conditions are met:

- (i) cultivation does not take place within a distance of 10 metres from the outer edge of the bed of a lake, river, or modified watercourse or the edge of a natural wetland; and
- (ii) cultivation does not take place more than once in any 5-year period; and

- (iii) cultivation is for the purpose of renewing or establishing pasture and is not undertaken to establish a crop used for intensive winter grazing, even as part of a pasture renewal cycle; and
- (iv) There is to be no grazing until the pasture is established; and
- (v) cultivation does not occur at an altitude greater than 800 metres above mean sea level; and
- (vi) sediment detention is established when cultivating critical source areas; and
- (vii) Farm environment plans prepared in accordance with Appendix N must outline paddock specific sediment control measures; and
- (viii) If the ground remains bare following 10 weeks, the land must not be grazed until pasture is reestablished in accordance with this rule;

(bd) Cultivation within the setback distances specified in (a), (b), (ba), (bb), or (bc) above for the purposes of renewing or establishing pasture within a buffer by direct-drilling, oversowing, and spraying is a permitted activity provided it:

- (i) does not take place more than once in any 5 year period; and
- (ii) it occurs after other cultivation activity; and
- (iii) established pasture exists on the remainder of the paddock.

(c) The use of land for cultivation, which does not meet one or more of the conditions of Rule 25(a), (b), (ba) or (bb), or (bc) is a restricted discretionary activity.

(d) Despite any other rule in this Plan, the use of land for cultivation at an altitude greater than 800 metres above sea level is a non-complying activity.