

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

**I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI**

**Decision No. [2023] NZEnvC 87**

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

Court: Environment Judge J E Borthwick  
Deputy Environment Commissioner R M Dunlop

Hearing: In Chambers at Christchurch

Last case event: 10 May 2023

Date of Decision: 11 May 2023

Date of Issue: 11 May 2023

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**SEVENTH INTERIM DECISION  
OF THE ENVIRONMENT COURT**

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## REASONS

### Introduction

[1] This Seventh Interim Decision finalises and confirms the drafting of the provisions in respect of which the court suggested alterations in its fifth and sixth interim decisions. The provisions are of particular interest to the farming community.<sup>1</sup>

[2] Other provisions not addressed by this decision are:

- (a) Rule 24: incidental discharges from farming;
- (b) Policy 30 and Rule 78: weed and sediment removal from modified watercourses; and
- (c) Appendix N: FEMP.

[3] The decision on Rule 24 has been appealed to the High Court. Policy 30 and Rule 78 and finally Appendix N: FEMP have been set down for a hearing in the week commencing 29 May 2023.

### Documents considered

[4] In arriving at this decision, the court considered the following documents filed by counsel:

- (a) Southland Regional Council (SRC) memoranda dated 9 February 2023, 13 February 2023, 17 February 2023, 7 March 2023, 13 March 2023, and 1 May 2023;
- (b) memoranda from Federated Farmers, Beef & Lamb, Forest & Bird / Fish & Game, Fonterra/DairyNZ, Ballance Agri-Nutrients and Ravensdown – all dated 13 February 2023; memorandum from

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<sup>1</sup> The Tranche 1 – Farming topic.

Federated Farmers and Director-General of Conservation both dated 16 February 2023 and memoranda from Ngā Rūnanga and Dairy Interests both dated 17 February 2023.

### **Fifth Interim Decision**

[5] The court released its Fifth Interim Decision on 23 December 2022. In it, the court suggested alternative wording for several provisions and included a decision that was provisional upon other matters being satisfied.

[6] No opposition was raised regarding the alternative wording for the following provisions and that being the case, the wording is now finalised:

- (a) Rule 20;
- (b) Rule 20A;
- (c) Schedule X – title page; and<sup>2</sup>
- (d) preferred terminology – ‘setback’ for ‘buffer’.

[7] In the provisions addressed below, if a specific alteration has not been noted it is because no party opposed the same and the wording is now finalised.

### ***Schedule X maps***

[8] SRC has reported on the maps to be appended to Schedule X, however it has not explained why maps and layer plans for DIN and DRP are included. In context, the mapping of these values is inconsistent with paragraphs [62]-[65] and footnote 94 of the Fifth Interim Decision.<sup>3</sup> If estuarine trophic status is correlated with TN and TP loads, should not TN and TP have been mapped? SRC is directed to respond, producing new maps and layer plans (if appropriate).

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<sup>2</sup> Ngā Rūnanga advises that it is not pursuing the cultural indicators of health and hauora for inclusion in Schedule X. See Ngā Rūnanga memorandum dated 17 February 2023.

<sup>3</sup> SRC memorandum dated 9 February 2023 at [24]-[25] and memorandum dated 17 February 2023.

***Rule 20B***

[9] No party supported the inclusion of an area control on pasture-based wintering.<sup>4</sup> As there is no appetite for an area control on this activity, none will be confirmed. Given the potential risk to the environment arising from this largely unregulated activity, this decision is not to be interpreted by the parties as one based on its merits.<sup>5</sup>

***Rule 25***

[10] Save in relation to Rule 25(b)(iii), the alternative wording of this rule proposed by the court is not opposed.

[11] Parties do not support the inclusion of ‘pasture-based wintering’ in Rule 25(b)(iii). While this wording was proposed by Forest & Bird/Fish & Game,<sup>6</sup> Forest & Bird/Fish & Game – without giving reasons – no longer seek its inclusion.<sup>7</sup>

[12] The Regional Council relies on evidence having been given by Mr M McCallum-Clark (planner) as a basis not to include ‘pasture-based wintering’. However, having checked the transcript the witness was not addressing this particular sub-clause, but was instead addressing sub-clauses (ba), (bb), and (bc).<sup>8</sup>

[13] Unless there is a principled reason not to do so, we will confirm the inclusion of ‘pasture-based wintering’ in Rule 25(b)(iii). As with intensive winter grazing, pasture-based wintering should not be occurring within the Rule 25(a)(ii)

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<sup>4</sup> Record of pre-hearing conference held 1 March 2023 at [15].

<sup>5</sup> Fifth Interim Decision [2022] NZEnvC 265 at [181]-[201].

<sup>6</sup> August Consolidated Plan.

<sup>7</sup> Forest & Bird/Fish & Game memorandum dated 13 February 2023 at [7(e)].

<sup>8</sup> See email dated 8 May 2023 referring the court to transcript pages.

water body setbacks, and paddocks are not to be cultivated for this purpose within the identified setbacks without obtaining resource consent.

[14] Any party continuing to oppose the alteration is to propose directions for evidence exchange.

***Rule 35B – sacrifice paddocks***

[15] In the Fifth Interim Decision the court was concerned with a condition of the permitted activity rule that allows the use of land as a sacrifice paddock up to 60 days per annum, noting the days' usage criterion may be too high. No party responded to the court's concern. While we will confirm Rule 35B(a)(i), this is not to be interpreted as a decision on the merits.

[16] The parties have responded to the court's decision on Rule 35B, including its interface with Appendix N: FEMP. The issues that arise in relation to the use of land as a sacrifice paddock are addressed in the court's Minute dated 9 March 2023.<sup>9</sup> No party has raised any concern in principle with the amendments to Rule 35B suggested by the court in that Minute.

[17] If no party opposes the amendment to Rule 35B suggested by the court in the Minute dated 9 March 2023, Rule 35B(a) and (b) will be amended to read:

The use of land for a sacrifice paddock by cattle or deer...

[18] We note that alterations to Appendix N: FEMP addressed in the Minute were carried through into the court's version of the consolidated plan and attached as Annexure 4 to the Sixth Interim Decision.

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<sup>9</sup> Minute 'Fifth Interim Decision – resumption of hearing, sacrifice paddocks and sense check' dated 9 March 2023.

**Rule 51**

[19] The court suggested Rule 51(e) be amended to make it clear that the sub-clause applies, notwithstanding two sub-clauses to the contrary.

[20] The court is now satisfied that only one of the two sub-clauses mentioned is contrary and that being the case, the final wording of Rule 51(e) follows:<sup>10</sup>

Notwithstanding ~~Rule 51(b)~~ and Rule 51(d) the diversion of water from a natural wetland for the purpose of land drainage is a non-complying activity.

**Sixth Interim Decision**

[21] The court released its Sixth Interim Decision on 23 March 2023. As with the preceding decision, we suggested amendments to certain provisions. Having been provided an opportunity to respond, no party opposes the amendments or seeks to advance alternative drafting. No issue as to scope has been raised in relation to the court approving the same.<sup>11</sup>

[22] The provisions are:

- (a) Policy 3;
- (b) Policy 15A and Policy 15B;
- (c) Policy 16A;<sup>12</sup>
- (d) Rule 15(ab);
- (e) Rule 32B; and
- (f) Appendix E.

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<sup>10</sup> Accepting the court lacks the scope to do so, the court will not amend Rule 51(b) to delete 'Despite any other rule in this Plan'.

<sup>11</sup> SRC memorandum dated 1 May 2023.

<sup>12</sup> While SRC would amend Policy 16A pursuant to cl 16(2) of Schedule 1 of the RMA to make the changes suggested by the court, we confirm the alterations in this decision and leave it for the Regional Council to decide whether something more is required regarding an express reference to the RMA's definition of 'industrial or trade process'. See SRC memorandum dated 1 May 2023.

[23] As the amendment to Policy 3 has yet to be carried forward into the court's version of the consolidated plan, for completeness I note the policy will be amended to read:

To manage activities that adversely affect taonga species, identified in Appendix M, and their related habitats.<sup>13</sup>

### Directions

[24] Any party opposing the alteration to Rule 25(b)(iii) is to file evidence by **Friday 19 May 2023** with any evidence in reply to be filed by **Wednesday 24 May 2023**. If no response is received, the drafting of Rule 25(b)(iii) in the Fifth Interim Decision will be confirmed (without any further decision issuing).

[25] By **Wednesday 24 May 2023** SRC will respond to the issue raised by the court concerning the inclusion of DIN and DRP maps and layer plans and if TP and TN were intended, then producing the same. Further directions may issue.

For the court:

Jane S.

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**J E Borthwick**  
**Environment Judge**



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<sup>13</sup> See *Aratiatia Livestock Ltd v Southland Regional Council* [2019] NZEnvC 208 (First Interim Decision) at [324]-[326] and SRC memorandum dated 1 May 2023 at [19].

### 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-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