

IN THE ENVIRONMENT COURT

ENV-2018-CHC-

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of an appeal pursuant to clause 14(1) of the
First Schedule of the Act

BETWEEN

**FEDERATED FARMERS OF NEW
ZEALAND (SOUTHLAND)**

Appellant

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT
AGAINST DECISIONS ON THE PROPOSED SOUTHLAND WATER AND LAND PLAN
(as amended 21 September 2018)**

Clause 14(1) of First Schedule, Resource Management Act 1991

Federated Farmers of New Zealand (Southland Province)

To: The Registrar
Environment Court
P O Box 2069
Christchurch 8013

This Notice is made upon the following grounds:

Federated Farmers of New Zealand (Southland) (**Federated Farmers**) appeals against a decision of the Southland Regional Council on the following plan:

Proposed Southland Water and Land Plan.

Federated Farmers made a submission on that plan.

Federated Farmers is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

Federated Farmers received notice of the decision on 4 April 2018.

The decision was made by the Southland Regional Council.

The decision (or part of the decision) that Federated Farmers is appealing is:

(see schedule below)

The reasons for the appeal are as follows:

(see schedule below)

Federated Farmers seeks the following relief:

(see schedule below)

SCHEDULE
DECISIONS ON PROVISIONS IN THE PROPOSED SOUTHLAND WATER AND LAND
PLAN TO WHICH THE APPEAL RELATES

The part of the decision Federated Farmers is appealing is the part relating to:

1. **Objective 9B – The effective development, operation, maintenance and upgrading of Southland’s regionally significant, nationally significant and critical infrastructure is enabled.**

Reason for appeal

This is a new objective. Federated Farmers considers it is not necessary or appropriate to “enable” Southland’s regionally and nationally significant or critical infrastructure. The objective is also not consistent with the intent of the Southland Regional Policy Statement 2017 (Southland RPS), including INF.1.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That Objective 9(B) read as:

The effective development, operation, maintenance and upgrading of Southland’s regionally significant, nationally significant and critical infrastructure is ~~enabled~~ recognised.

2. **Objective 10 - The national importance of existing hydro-electric generation schemes, including the Manapōuri hydro-electric generation scheme in the Waiau catchment, is provided for, recognised in any resulting flow and level regime, and their structures are considered as part of the existing environment.**

Reason for appeal

Federated Farmers considers:

- (a) the Manapouri Power Scheme is already recognised in the Southland RPS. The Plan is a regional document and therefore should focus on regional issues.
- (b) Other water users also need to be recognised in the Waiau catchment. It is inappropriate to prioritise some uses (power schemes, natural and fishery values) to the detriment of all other users.

Relief Sought

Federated Farmers seeks the following relief:

- (a) *That Objective 10 read as:*

The national importance of the existing Manapouri Power Scheme in the Waiau catchment is provided for, and
1. is recognised in any resulting flow and level regime, and

2. the Manapouri Power Scheme including its associated water takes, use, damming, diverting and discharge of contaminants and water to water or onto and into land where this enters water is considered as part of the existing environment; and
3. allows for enhancement of the scheme where the effects of these can be appropriately managed.

3. **Policy 1 – Ngāi Tahu Policies Policy 1 – Enable papatipu rūnanga to participate** Enable papatipu rūnanga to effectively undertake their kaitiaki (guardian/steward) responsibilities in freshwater and land management through the Southland Regional Council:
1. providing copies of all applications that may affect a Statutory Acknowledgement area, tōpuni (landscape features of special importance or value), nohoanga, mātaimai or taiāpure to Te Rūnanga o Ngāi Tahu and the relevant papatipu rūnanga;
 2. identifying Ngāi Tahu interests in freshwater and associated ecosystems in Murihiku (includes the Southland Region); and
 3. reflecting Ngāi Tahu values and interests in the management of and decision-making on freshwater and freshwater ecosystems in Murihiku (includes the Southland Region), consistent with the Charter of Understanding.

Reason for appeal

Federated Farmers opposes policy 11.3 as:

- (a) Ngāi Tahu “interests” may include commercial interests which could cause a conflict of interest in the management and decision-making on freshwater and freshwater ecosystems.
- (b) Ngāi Tahu interests could include forestry or farming activity.
- (c) This is particularly a concern if ‘interests’ are taken to include ‘commercial interests’ with the subsequent implication that Ngāi Tahu commercial interests are afforded greater weighting in resource management decisions against other potential competing interests.

Relief Sought

Federated Farmers seeks the following relief:

(a) That policy 1.3 reads as follows:

Reflect Ngāi Tahu values ~~and interests~~ in the management of and decision-making on freshwater and freshwater ecosystems in Southland/Murihiku, consistent with the Charter of Understanding.

4. **Policy 4 – Physiographic zone policy – Alpine zone**

Policy 4.3 – prohibiting dairy farming and intensive winter grazing, and decision makers generally not granting resource consents for cultivation.

Reason for appeal

Federated Farmers opposes policy 4.3 as:

- (a) it is inappropriate to fetter the discretion of the consent authority.
- (b) The policy is directive and pre-empts the outcome of a broad policy analysis stepping through the full suite of planning instruments.

- (c) The suggested changes direct and control activities rather than manage effects which is inappropriate and inefficient.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That policy 4.3 is deleted.

5. Policy 5 – Physiographic zone policy – Central Plains zone

Policy 5.3 - decision makers generally not granting resource consents for additional dairy farming of cows or additional intensive winter grazing where contaminant losses will increase as a result of the proposed activity.

Reason for appeal

Federated Farmers opposes policy 5.3 as:

- (a) it is inappropriate to fetter the discretion of the consent authority.
- (b) The policy is highly directive and pre-empts the outcome of a broad policy analysis stepping through the full suite of planning instruments.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That policy 5.3 is deleted.

6. Policy 9 – Physiographic zone policy – Old Maitaura zone

Policy 9.3 - decision makers generally not granting resource consents for additional dairy farming of cows or additional intensive winter grazing where contaminant losses will increase as a result of the proposed activity.

Reason for appeal

Federated Farmers opposes policy 9.3 as:

- (a) it is inappropriate to fetter the discretion of the consent authority.
- (b) The policy is highly directive and pre-empts the outcome of a broad policy analysis stepping through the full suite of planning instruments.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That policy 9.3 is deleted.

7. Policy 10 – Physiographic zone policy – Oxidising zone

Policy 10.3 - decision makers generally not granting resource consents for additional dairy farming of cows or additional intensive winter grazing where contaminant losses will increase as a result of the proposed activity.

Reason for appeal

Federated Farmers opposes policy 10.3 as:

- (a) It is inappropriate to fetter the discretion of the consent authority.
- (b) The policy is highly directive and pre-empts the outcome of a broad policy analysis stepping through the full suite of planning instruments.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That policy 10.3 is deleted.

8. Policy 11 – Physiographic zone policy – Peat Wetland zone

Policy 11.3 - decision makers generally not granting resource consents for additional dairy farming of cows or additional intensive winter grazing where contaminant losses will increase as a result of the proposed activity.

Reason for appeal

Federated Farmers opposes policy 11.3 as:

- (a) it is inappropriate to fetter the discretion of the consent authority.
- (b) The policy is highly directive and pre-empts the outcome of a broad policy analysis stepping through the full suite of planning instruments.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That policy 11.3 is deleted.

9. Policy 12 – Physiographic zone policy – Riverine zone

Policy 12.3 - decision makers generally not granting resource consents for additional dairy farming of cows or additional intensive winter grazing where contaminant losses will increase as a result of the proposed activity.

Reason for appeal

Federated Farmers opposes policy 12.3 as:

- (a) it is inappropriate to fetter the discretion of the consent authority.
- (b) The policy is highly directive and pre-empts the outcome of a broad policy analysis stepping through the full suite of planning instruments.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That policy 12.3 is deleted.

**10. Policy 16A – Industrial and trade processes that may affect water quality
Minimise the adverse environmental effects (including on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries, salt marshes and groundwater) by requiring the adoption of the best**

practicable option to manage the treatment and discharge of contaminants derived from industrial and trade processes.

Reason for appeal

Federated Farmers considers

- (a) That neither the RMA nor environment does not discern the source of contaminants.
- (b) All activities and their effect on the environment should be treated equitably.
- (c) The use of the term 'minimise adverse environmental effects' for Policy 16A should be aligned with the phrasing for policy 17 which applies the term 'avoid significant adverse effects on water quality'

Relief Sought

Federated Farmers seeks the following relief:

- (d) That Policy 16A read as:

Policy

1. 16A – Industrial and trade processes that may affect water quality

~~Minimise~~ Avoid the adverse environmental effects (including on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries, salt marshes and groundwater) by requiring the adoption of the best practicable option to manage the treatment and discharge of contaminants derived from industrial and trade processes.

11. **Policy 17A – Community sewerage schemes and on-site wastewater systems**
- 1. Minimise adverse effects on water quality, and avoid, remedy, or mitigate other adverse effects of the operation of, and discharges from, community sewerage schemes by:**
- (a) designing, operating and maintaining community sewerage schemes in accordance with recognised industry standards; and**
 - (b) implementing measures to progressively reduce the frequency and volume of wet weather overflows from community sewerage schemes; and**
 - (c) ensuring community sewerage schemes are operated and maintained to minimise the likelihood of dry weather overflows occurring.**

Reason for appeal

Federated Farmers considers

- (a) The RMA or environment discerns the source of contaminants.
- (b) All activities and their effect on the environment should be treated equitably.
- (c) The use of the term 'minimise adverse effects on water quality' for Policy 17A should be aligned with the phrasing for policy 17 which applies the term 'avoid significant adverse effects on water quality'

Relief Sought

Federated Farmers seeks the following relief:

- That Policy 17A read as:

Policy 17A – Community sewerage schemes and on-site wastewater systems

1. ~~Minimise~~ Avoid significant adverse effects on water quality, and avoid, remedy, or mitigate other adverse effects of the operation of, and discharges from, community sewerage schemes by:

- (a) designing, operating and maintaining community sewerage schemes in accordance with recognised industry standards; and
- (b) implementing measures to progressively reduce the frequency and volume of wet weather overflows from community sewerage schemes; and
- (c) ensuring community sewerage schemes are operated and maintained to minimise the likelihood of dry weather overflows occurring.

12. Policy 18 – Stock exclusion from waterbodies

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

Reason for appeal

Federated Farmers opposes Policy 18(2a) as:

- (a) The decision incorrectly assumes that all stock access affects bank erosion and water quality.
- (b) It disregards the cost and practicality of excluding livestock from hill and high country streams.
- (c) It disregards the role that livestock grazing plays in pest and flood management in riparian areas.
- (d) The receiving environment does not discern the source of contaminants. If it is appropriate for sheep to be excluded from waterbodies that show positive signatures for sheep *E.coli*. then gamebirds should also be excluded from waterbodies that are subsequently found to failing the secondary contact bottom line in NOF and showing positive signatures for avian *E.coli*.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That policy 18(2a) is deleted.

13. Policy 26 – Renewable energy

Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri hydro-electric generation scheme in the Waiau catchment), the national, regional and local benefits of renewable electricity generation activities, the need to locate the generation activity where the renewable energy resource is available, and the

practical constraints associated with its development, operation, maintenance and upgrading, when:

- 1. allocating surface water for abstraction, damming, diversion and use; and**
- 2. considering all resource consent applications for surface water abstractions, damming, diversion and use.**

Reason for appeal

Federated Farmers opposes Policy 26 for the following reasons

- (a) The NPS for the Generation of Renewable Energy expresses a preference for the use of renewable energy over non-renewable sources. The objective and policies seek to direct councils to consider these benefits when developing provisions to manage the effects on the environment of the infrastructure associated with renewable energy generation. Neither it nor the NPS-FM expresses a preference for the allocation of water resources for energy generation over other uses.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That policy 26 is reworded to say:

Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri hydro-electric generation scheme in the Waiau catchment), the national, regional and local benefits of renewable electricity generation activities, the need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading, when:

- 1. allocating surface water for abstraction, damming, diversion and use; and*
- 2. considering all resource consent applications for surface water abstractions, damming, diversion and use*

While having particular regard to:

- (a) The potential to avoid, remedy or mitigate any adverse effects on the Waiau River and downstream users by increasing minimum flow provisions.*

14. Policy 39 – Application of the Permitted Baseline

When considering any application for resource consent for the use of land for a farming activity, the Southland Regional Council should consider all adverse effects of the proposed activity on water quality, whether or not this Plan permits an activity with that effect.

Reason for appeal

Federated Farmers considers

- (a) This policy is inequitable and prejudicial against farming as it only applies to farming activities, not all land use activities.
- (b) It conflicts with the purpose of RMA planning documents by enabling Council reconsider whether activities should be permitted for each individual resource consent application. It therefore severely and unfairly disadvantages resource consent applicants, as opposed to those acting under the permitted activity framework set out in the Plan.
- (c) This policy promotes the idea of Council officers picking winners to suit their philosophical view on land use, where the baseline can be applied to support favoured applications and therefore offsetting the assessment of some adverse effects.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That Policy 39 be deleted.

- 15. Policy 40(2) – Determining the term of resource consents**
When determining the term of a resource consent consideration will be given, but not limited, to:
2. relevant tangata whenua values and Ngāi Tahu indicators of health;...

Reason for appeal

Federated Farmers considers

- (a) Ngāi Tahu indicators of health should not inform the length of resource consents because they are not widely known and are too subjective to justify being used for consent processing.
- (b) Ngāi Tahu indicators of health have not been publically consulted on and lacks transparency.
- (c) Resource consents should be assessed by their effects on the environment using scientifically robust methods to determine those effects. The Ngai Tahu indicators of health are the not aligned with science.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That indicators of health are removed such that Policy 40(2) reads as:
~~2. relevant tangata whenua values and Ngāi Tahu indicators of health;...~~

- 16. Rule 13 – Discharge from subsurface drainage systems**
(a) The discharge of land drainage water to water from an on-farm subsurface drainage system is a permitted activity, provided the following conditions are met:
(i) the discharge does not cause:
(1) a conspicuous change to the colour or clarity of the receiving waters beyond 20 metres from the point of discharge; or
(2) conspicuous oil or grease films, scrums or foams, or floatable or suspended materials beyond 20 metres from the point of discharge;
and
(ii) the discharge does not render freshwater unsuitable for consumption by farm animals; and
(iii) the discharge does not cause the flooding of any other landholding; and (iv) the discharge does not cause any scouring or erosion of any land or bed of a water body beyond the point of discharge; and
(vi) the discharge does not cause any significant adverse effects on aquatic life; and
(vii) the subsurface drainage system does not drain a natural wetland; and
(viii) for any known existing drains and for any new drains, the locations of the drain outlets are mapped and provided to the Southland Regional Council on request.

(b) The discharge of land drainage water to water from an on-farm subsurface drainage system that does not comply with Rule 13(a) is a discretionary activity.

Reason for appeal

Federated Farmers considers

- (a) That tile drains are an essential part of farming in Southland. They have many benefits including the promotion of free-draining soils, increasing productivity and allowing for better utilisation of nutrients in the ground. Tiles also reduce ponding, overland flow, runoff, and dry out the soil so that livestock do not churn up the ground in wet conditions.
- (b) Permitting discharges from farm drains is critical to maintaining the productive capacity of the land. When cleaning tile drains some organic matter will be flushed out and may muddy the water for more than 20 metres, this is an irregular occurrence and should be permitted.
- (c) There is no need to require the mapping information of drainage systems to be provided to Council. The RMA is effects-based and this provision has little relationship with effects.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That discharges arising from periodic cleaning of the subsurface draining system is included within the permitted activity provisions. We seek Rule 13(a)(i)(1) to read as :

Except for when periodically cleaning the subsurface drainage network, the discharge will not cause:.....

- (b) That all requirements to map and provide information of sub-surface drains is removed from this Plan. We seek the deletion of Rule 13(a)(viii).

17. Rule 20(a)(iii) – Farming

(iii) where the farming activity includes intensive winter grazing on the landholding, the following conditions are met:

(1) from 1 May 2019, intensive winter grazing does not occur on more than 15% of the area of the landholding or 100 hectares, whichever is the lesser; and

(2) from 1 May 2019, a Farm Environmental Management Plan for the landholding is prepared and implemented in accordance with Appendix N; and

(3) from 1 May 2019, all of the following practices are implemented:

(A) if the area to be grazed is located on sloping ground, stock are progressively grazed (break-fed or block-fed) from the top of the slope to the bottom, or a 20 metre ‘last-bite’ strip is left at the base of the slope; and

(B) when the area is being break-fed or block-fed, the stock (excluding sheep and deer) are back fenced to prevent stock entering previously grazed areas; and

(C) transportable water trough(s) are provided in or near the area being grazed to prevent stock accessing a lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse or natural wetland for drinking water; and

(D) if supplementary feed (including baleage, straw or hay) is used in the area being grazed it is placed in portable feeders; and Proposed Southland Water and Land Plan (Recommendations Report, 29 January 2018) Page 53

(E) if cattle or deer are being grazed the mob size being grazed is no more than 120 cattle or 250 deer; and

(F) critical source areas (including swales) within the area being grazed that accumulate runoff from adjacent flats and slopes are grazed last; and...

Reason for appeal

Federated Farmers considers

- (a) For Rule 20(a)(iii)(1) as it is phrased discourages best management practice and therefore nutrient management.
 - (i) To limit intensive winter grazing as set out in Rule 20(a)(iii)(1) will be significantly punitive to those larger farms and stations and will likely result in the need to obtain resource consent irrespective of potential effects.
 - (ii) Intensive winter grazing is not the issue; but the potential effects of sediment, P, N or *E.coli* losses that may occur depending on where and how wintering is undertaken. Such controls are not justified where wintering does not have significant effects on water quality and where it does, these effects must be very carefully considered against the purpose of the Act.
 - (iii) The rules need to be balanced and recognised for the vital role which winter grazing plays in ensuring optimal animal health. Blanket controls over the area of a farm that can be in winter grazing have the potential to create significant animal health issues and affect production, especially the growing out of young stock and the mortality rate for calving and lambing.
- (b) With respect to 20(a)(iii)(1)(B) relating to the need to establish back-fencing behind a break-feed area to avoid stock moving to previously feed areas, this has raised a number of impracticalities. While well intentioned, the proposed rule is unnecessarily blunt.
 - (i) To apply the rule would create unnecessary double-handling in terms of positioning troughs. Under this rule, troughs would require moving potentially every time the break-feed line is shifted. If the back fencing is not prescribed by rule, a farmer can retain a trough in a set location for longer periods.
 - (ii) To apply a back-fence as stock are progressively fed may negate the ability for stock to take shelter during inclement weather. If back-fencing was not mandatory, a farmer can retain the feed area to allow access to a windbreak or better shelter.
- (c) Rule 20(a)(iii)(3)(D) sets out supplementary feed being applied via portable feeders. This rule precludes the ability to manually feed out silage to ground. It is Federated Farmers view silage fed-out to the ground should be a permitted activity given the effects on the soil structure, sediment loss is lessened and little feed is lost to the receiving environment.
- (d) Rule 20(a)(iii)(3)(E) sets out the maximum mob size during intensive winter grazing. Based on our experience, the proposed maximum quanta are unnecessarily restrictive. The provision is blunt and discounts the broad range of ways Southlander's farm their land.
 - (i) Often larger mobs are grazed over larger blocks with a lessened impact on the soils. This rule will negate this ability for no environmental gain.
 - (ii) The rule suggests the effects of 120 calves is equitable to 120 heifers. No provision has been applied to consider the effects in bulk in determining the mob size. This

can be addressed in the Farm Management Environmental Plan which recognises every farm has its own unique circumstances.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That for Rule 20(a)(iii)(1) is reworded to state: "From 1 May 2019, intensive winter grazing does not occur on either more than 15% of the area of the landholding or 100 hectares, whichever is the lesser; and..."
- (b) That Rules 20(a)(iii)(3)(B)-(E) be deleted.

18. Rule 25(a) – Cultivation on sloping ground

(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; and**
- (ii) 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, modified watercourse or wetland and**
- (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.**

Reason for appeal

Federated Farmers considers

- (a) For Rule 25(a)(ii) Federated Farmers supports set-backs from waterways for cultivation to reduce sedimentation and loss of top-soil, but disagree with the extent of those proposed in the Plan. There is a significant amount of land that would not be able to be worked for crops, even those crops that are fast growing, and would not be used for intensive winter grazing.
- (b) Federated Farmers considers a 5m setback is overly excessive and not supported by modelling.
- (c) With respect to Rule 25(a)(iv) Federated Farmers supports set-backs from waterways for cultivation to reduce sedimentation and loss of top-soil, but disagree with the extent of those proposed in the Plan.
- (d) Under the rules as drafted, there is a significant amount of land that would not be able to be worked for crops, even those crops that are fast growing, and would not be used for intensive winter grazing. Federated Farmers considers land sloping between 20 and 30 degrees can be cultivated under some circumstances.
- (e) Minimum tillage cultivation (such as direct drilling or spray & pray) provides the benefit of improved pasture without the risk of soil or nutrient loss that may occur with other methods of cultivation.
- (f) Minimum tillage methods can also be readily carried out on moderately sloping land.

Relief Sought

Federated Farmers seeks that:

(a) Rule 25(a)(ii) reads as “(ii) cultivation does not take place within a distance of 5 3 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, modified watercourse or wetland and”...

(b) A new definition for minimum tillage is incorporated into the Plan, such as:

“Minimum Tillage is a tillage method that does not turn the soil over. It is contrary to intensive tillage, which changes the soil structure”.

(c) Rule 25(a)(iv) reads as:

(iv) cultivation does not occur on land with a slope greater than 230 degrees.

19. Rule 32B– Construction, maintenance and use of new agricultural effluent storage facilities

(a) The use of land for the construction, maintenance and use of a new agricultural effluent storage facility, and any incidental discharge of agricultural effluent directly onto or into land from that facility which is within the normal operating parameters of a leak detection system or the pond drop test criteria set out in Appendix P, is a permitted activity provided the following conditions are met:

(i) the total capacity of all agricultural effluent storage on a landholding, excluding storage authorised by a resource consent, does not exceed 35 cubic metres; and

(ii) the agricultural effluent storage facility is constructed using an impermeable concrete or synthetic liner; and

(iii) the agricultural effluent storage facility is not within 50 metres of any lakes, rivers, artificial watercourses, modified watercourses, natural wetlands or the coastal marine area; and

(iv) the agricultural effluent storage facility is not within 200 metres of any dwelling not on the same landholding, or within 50 metres of the boundary of any other landholding or road; and

(v) the agricultural effluent storage facility is not within 100 metres of any authorised drinking water abstraction point; and

(vi) the agricultural effluent storage facility is not located above any known sub-surface drainage systems.

(b) The use of land for the construction, maintenance and use of a new agricultural effluent storage facility, and any incidental discharge of agricultural effluent directly onto or into land from that facility which is within the normal operating parameters of a leak detection system, or the pond drop test criteria set out in Appendix P, which does not meet condition Proposed Southland Water and Land Plan (Recommendations Report, 29 January 2018) Page 61 (i) or condition (ii) of Rule 32B(a) is a controlled activity provided the following conditions are met:

(i) the design is certified by a Chartered Professional Engineer as being in accordance with IPENZ Practice Note

2: Farm Dairy Effluent Pond Design and Construction (2013) or IPENZ Practice Note 27: Dairy Farm Infrastructure (2013); and

(ii) the application includes an operational management plan that addresses operational procedures, emergency response, monitoring and reporting requirements, the undertaking of pond drop tests, and installation of monitoring devices; and (iii) conditions (iii) to (vi) of Rule 32B(a).

Reason for appeal

Federated Farmers considers

- (a) Rule 32B(a)(v) creates significant issue for the maintenance of existing agricultural effluent storage facilities as they are captured in this rule.
- (b) Should an existing agricultural effluent storage facility be sited within 100m of a bore, and operate effectively, we do not consider a resource consent should be required when they are upgraded, such as relining them in accordance with a new practice.
- (c) With respect to 32B(b)(1) there is no need for a Chartered Professional Engineer to be required for this work. It is too challenging to source the services of an Engineer and the costs are unnecessarily prohibitive.
- (d) There are few Chartered Professional Engineers in Southland. Restricting certification to CPEs will result in significant delays and increased costs for farmers, especially as CPEs may have full workloads away from dairy effluent systems. There are other suitably qualified people that could perform this role competently. A list of suitably qualified people could be populated by Environment Southland staff.
- (e) Rule 32D(a)(ii)(2) which relates to existing effluent storage facilities allows for a suitably qualified person to verify work is in accordance with Appendix P. Rule 32B can apply the same process and standard without engaging a CPE.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That Rule 32B(a)(v), the rule is re-written to state:
 - (v) Any new ~~the~~ agricultural effluent storage facility is not within 100 metres of any authorised drinking water abstraction point; and
- (b) That Rule 32B(b)(1) reads as:
“The design is approved by a suitably qualified person”

20. Rule 35 – Discharge of agricultural effluent to land

(a) Other than as provided for by Rules 32A, 32B and 32D, the discharge of agricultural effluent or water containing agricultural effluent onto or into land in circumstances where contaminants may enter water is a permitted activity provided the following conditions are met...

(xii) the location of any known sub-surface drains within the discharge area, and their outlet position and relative depth, is mapped and provided to the Southland Regional Council upon request.

Reason for appeal

Federated Farmers considers

- (a) That tile drains are an essential part of farming in Southland. They have many benefits including the promotion of free-draining soils, increasing productivity and allowing for better utilisation of nutrients in the ground. Tiles also reduce ponding, overland flow, runoff, and dry out the soil so that livestock do not churn up the ground in wet conditions.
- (b) Sub-surface drains are critical to maintaining the productive capacity of the land.
- (c) There is no need to require the mapping information of drainage systems to be provided to Council. The RMA is effects-based and this provision has little relationship with effects.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That all requirements to map and provide information of sub-surface drains is removed from this Plan. We seek the deletion of Rule 35(a)(xii).

21. Rule 35A – Feed pads/lots

(a) The use of land for a feed pad/lot is a permitted activity provided the following conditions are met:

(i) if accommodating cattle or deer, each feed pad/lot services no more than 120 adult cattle, or 250 adult deer, or equivalent numbers of young stock at any one time; and

(ii) animals do not remain on the feed pad/lot for longer than three continuous months; and

(iii) the feed pad/lot is not located

(1) within 50 metres from the nearest sub-surface drain, lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse, natural wetland, or another feed pad/lot on the same landholding; or

(2) within a microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J; or

(3) within 200 metres of a place of general assembly or dwelling not located on the same landholding, or

(4) within 20 metres of the boundary of any other landholding; or

(5) within a critical source area; and (iv) the feed pad/lot is constructed with:

(1) a sealed and impermeable base and any liquid animal effluent or stormwater containing animal effluent discharging from the feed pad/lot is collected in a sealed animal effluent storage system authorised under Rule 32B or Rule 32D; or

(2) a minimum depth of 500 millimetres of wood-based material (bark, sawdust or chip) across the base of the feed pad/lot; and

(v) any material scraped from the feed pad/lot, including solid animal effluent, is collected and if applied to land is applied in accordance with Rule 38; and

(vi) the overland flow of stormwater or surface runoff from surrounding land is prevented from entering the feed pad/lot.

(b) The use of land for a feed pad/lot that does not meet one or more of the conditions of Rule 35A(a) is a discretionary activity.

Reason for appeal

Federated Farmers considers

- (a) Federated Farmers considers the limit in stock numbers is a blunt approach that will not address environmental effects. Feedlots can be designed to accommodate greater numbers of stock with minimal environmental effect and improved efficiency for the farmer.
- (b) Our members all have unique farms and each farming system differs. This rule is unnecessarily prescriptive without catering for the full scope of good management options.
- (c) Federated Farmers raises concern with rule 35A(a)(ii) limiting to stock on the pad for a continuous period of three months. This rule serves no benefit and can also be manipulated by taking stock off the pad, only to return hours after.
- (d) Rule 35A(a)(iii)(1) is unnecessarily blunt. There is no rationale for limiting the proximity of a feedlot/feedpad in relation to another. Having adjacent feedlots offers a level of efficiency.
- (e) No definition for sacrifice paddocks has been included in the schedule.
- (f) While Rule 35A(a)(iv)(2) sets out the materials that may be used in the feedlot base, a number of equally applicable alternatives have not been included. Given the list of materials is explicit, it can be inferred the list is exhaustive and therefore other alternatives are not suitable. We do not agree as straw or other biodegradable alternatives should be available to use.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That Rule 35A(a)(i) limiting the maximum mob size be deleted.
- (b) That Rule 35A(a)(ii) be amended to allow for up to six months of continuous use of the feedlot/ feedpad.
- (c) That Rule 35A(a)(iii)(1) reads as:
 - (1) within 50 metres from the nearest sub-surface drain, lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse, natural wetland, ~~or another feed pad/lot on the same landholding~~; or

22. Taking and Using Water

Rule 49 – Abstraction, diversion and use of surface water

(a) The take and use of surface water is a permitted activity provided the following conditions are met:...

(vi) the following details are supplied to the Southland Regional Council upon request (if applicable):

- (1) farming type; and**
- (2) stocking rate; and**
- (3) point of abstraction; and**
- (4) what the water was used for; and**
- (5) maximum rate of take;**

and

(vii) where the volume of the take exceeds 20,000 litres per day, a water meter capable of recording the rate of take and the daily volume of take is used. Water

take data must be recorded daily and provided to the Southland Regional Council on request. The accuracy of the water meter must be verified every 12 months. ..

Reason for appeal

Federated Farmers considers

- (a) These provisions require the constant collection of this information by farmers, in case ES ever asks for it, and will provide no benefit to water quality.
- (b) Stocking rates vary throughout the year on many (especially non-dairy) farms.
- (c) This provision is for small water takes not for large users - so having to collect this information is just extra paperwork for no benefit.
- (d) There is no need to verify the accuracy of a water meter for takes that exceed 20,000 l/d every year.
- (e) Annual inspection creates unnecessary costs, workload and compliance burden on our members with little benefit. Other Councils have less frequent inspection provisions and we see no reason why Environment Southland can follow suit.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That Rules 49(a)(vi)(1)-(5) are deleted.
- (b) That any water meter verification is no more frequent than 5-yearly.

23. Rule 52A – Manapōuri Hydro-electric Generation Scheme

(a) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme, for which consent is held and which is the subject of an application for a new consent for the same activity and is:

- (i) the taking or use of water; or**
- (ii) the discharge of water into water or onto or into land; or**
- (iii) the discharge of contaminants into water or onto or into land; or**
- (iv) the damming or diversion of water;**

is a controlled activity provided the following conditions are met:

- (1) the application is for the replacement of an expiring resource consent pursuant to section 124 of the Act; and**
- (2) where the replacement consent is for the taking or use of water, the rate of take and volume is not increasing, and the use of water is not changing; and**
- (3) where the replacement consent is for the taking or use of water, the rate of take and volume complies with any relevant flow and level regimes set out in this Plan.**

The Southland Regional Council will reserve the exercise of its control to the following matters:

- 1. the volume and rate of water taken, used, diverted or discharged and the timing of any take, diversion or discharge, including how this relates to generation output;**
- 2. any effects on river flows, wetland and lake water levels, aquatic ecosystems and water quality;**
- 3. mitigation or remediation measures to address adverse effects on the environment;**
- 4. the benefits of renewable electricity generation.**

An application for resource consent under Rule 52A

(a) will be publicly notified.

(b) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme for which consent is held and which is the subject of an application for a new consent for the same activity and is:

(i) the taking or use of water; or

(ii) the discharge of water into water or onto or into land; or

(iii) the discharge of contaminants into water or onto or into land; or

(iv) the damming or diversion of water; that does not meet one or more of the conditions of Rule 52A(a) is a non-complying activity.

Reason for appeal

Federated Farmers considers

- (a) As a controlled activity, the Council must grant the consent.
- (b) As a controlled activity Environment Southland will be significantly hindered in its ability to reduce the volume of take in future renewal consents irrespective of limit setting or allocation findings.
- (c) Should the Waiau be considered over-allocated and Meridian Energy have their volumes of take secured for the life of the Plan, the burden will fall on other water users in the catchment such as farmers or community wastewater schemes.
- (d) The Hearing Panel chose not to adopt the recommendation of the Council officers who recognised the implications of the controlled activity assessment criteria, specifically paragraphs 4.297 to 4.308. 61 which recognised as a controlled activity, any replacement permit by Meridian Energy Limited would preclude a re-assessment of the appropriateness of the volume of water abstracted by the MPS or the rate of take and subsequent discharge.

Relief Sought

(a) That any replacement permits associated with the Manapōuri Hydro-electric Generation Scheme be considered as a **restricted** discretionary activity.

(b) Federated Farmers seeks that the relevant parts of Rule 52A read as follows:

Rule 52A – Manapōuri Hydro-electric Generation Scheme

(a) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme, for which consent is held and which is the subject of an application for a new consent for the same activity and is:

(i) the taking or use of water; or

(ii) the discharge of water into water or onto or into land; or

(iii) the discharge of contaminants into water or onto or into land; or

(iv) the damming or diversion of water;

is a discretionary activity

24. Rule 73 – Gravel Extraction

(a) The excavation or disturbance of the bed of any lake, river or modified watercourse for the purpose of extracting gravel or aggregate (except where the extraction of gravel or aggregate is associated with the maintenance of structures which is otherwise authorised under Rule 66) is a restricted discretionary activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A other than conditions (i), (j) and (k) of that Rule; and

(i) the quantity of gravel removed is less than 120 cubic metres per year; and

(ii) there is no extraction from flowing water; and

(iii) the area is left level and tidy on completion of the activity. The Southland Regional Council will restrict its discretion to the following matters:

1. the quantity and location of the extraction;

2. any effects on infrastructure, river morphology and dynamics (including erosion or deposition), aquatic and riverine ecosystems and habitat, taonga species, natural character and amenity values, navigation hazard, public access, recreation values and the spiritual and cultural values and beliefs of the tangata whenua...

Reason for appeal

Federated Farmers considers

(a) Gravel extraction is a necessary aspect of farming for the creation and maintenance of farm tracks and flood management.

(b) Extraction of gravel where gravel build-up is causing erosion and for uses ancillary to farming the land should be a permitted activity subject to a number of performance standards.

(c) It is not unusual for Regional Councils to have a permitted activity rule for gravel extraction.

Relief Sought

Federated Farmers seeks the following relief:

(a) That a permitted volume of gravel extraction be incorporated into the Rule.

(b) That the relevant part of Rule 73 read as follows:

(a) The excavation or disturbance of the bed of any lake, river or modified watercourse for the purpose of extracting gravel or aggregate is a permitted activity provided the following performance standards are met:

(i) The maximum volume of gravel shall not exceed 120 cubic metres per year, and

(ii) There is no extraction in flowing water, and

(iii) The area is left contoured and tidy upon completion of the works, and

(iv) All gravel extracted must be used on the same landholding.

(v) No extraction should occur on gravel beaches or areas during nest bird breeding season.

(vi) the general conditions set out in Rule 55A other than conditions (i), (j) and (k) of that Rule are satisfied.

(b) The excavation or disturbance of the bed of any lake, river or modified watercourse for the purpose of extracting gravel or aggregate (except where the extraction of gravel or aggregate is associated with the maintenance of structures which is otherwise

authorised under Rule 66) is a restricted discretionary activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A other than conditions (i), (j) and (k) of that Rule; and

(i) the quantity of gravel removed is ~~less~~ more than 120 cubic metres per year; and

(ii) there is no extraction from flowing water; and

(iii) the area is left level and tidy on completion of the activity. The Southland Regional Council will restrict its discretion to the following matters: 1. the quantity and location of the extraction;

2. any effects on infrastructure, river morphology and dynamics (including erosion or deposition), aquatic and riverine ecosystems and habitat, taonga species, natural character and amenity values, navigation hazard, public access, recreation values and the spiritual and cultural values and beliefs of the tangata whenua...

Note: In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.

25. Rule 79 – High country burning

(b) The use of land for the burning of vegetation in Zone B of the Fire Hazard Zones (Map Series 5) between 1 May and 30 September in any one year is a permitted activity.

(c) The use of land for the burning of vegetation in Zone A, or in Zone B between 1 October and 30 April in any one year, of the Fire Hazard Zones (Map Series 5) is a restricted discretionary activity provided the following conditions are met:

(i) one of the following has been obtained, which covers the proposed burning of vegetation on land:

(2) a permit for burning in the hill and high country from the Fire and Emergency New Zealand; or

(3) a consent from the Commissioner of Crown Lands for burning on Crown pastoral leasehold land; or

(4) a resource consent or permit for burning from the relevant territorial local authority as determined by their district plans and/or bylaws.

(ii) the burning does not occur above 800 metres above mean sea level. The Southland Regional Council will restrict the exercise of its discretion to the following matters:

(1) Soil conservation and sediment control practices to be undertaken;

(2) Adverse effects on areas of significant indigenous vegetation and habitat that is in proximity to wetlands, and lakes and rivers and their margins.

(d) The use of land for the burning of vegetation within Zones A or B of the Fire Hazard Zones that does not comply with Rule 79(c) is a discretionary activity.

Reason for appeal

Federated Farmers considers

- (a) This is a new rule which has not been discussed with high country farmers, and there is no rationale or explanation for its inclusion.
- (b) Burning is already controlled through the Fire Service. The rule is duplication which will be costly and inefficient.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That Rule 79 is deleted.

26. Appendix A – Regionally Significant Wetlands and Sensitive Water Bodies in Southland Locations of the wetlands and water bodies listed in this Appendix can be found in Map Series 7: Regionally Significant Wetlands and Sensitive Water Bodies.

Reason for appeal

Federated Farmers considers

- (a) It is inappropriate to revise Appendix A without thorough research, investigation, ground-truthing, and extensive public and landowner consultation.
- (b) We consider that many of the wetlands listed are not 'regionally significant'.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That the Appendix A list remains as notified, and
- (b) further work is carried out to determine the validity of the other sites promoted by other stakeholders.

27. Definitions – Feedpad/ feedlot

Feed pad/lot:

A fenced in or enclosed area located on production land used for feeding or loafing of cattle or deer to avoid damage to pasture when soils are saturated, and which can be located either indoors or outdoors. It includes 'sacrifice paddocks', wintering pads, stand-off pads, calving pads, loafing pads, and self-feed silage storage facilities.

Reason for appeal

Federated Farmers considers

- (c) Federated Farmers provided a further submission on the definition of feedpad / lot.
- (d) We consider the definition is too broad, and includes a sacrifice paddock.
- (e) Sacrifice paddock needs to be removed from the definition -as they are often an "emergency" option for farmers when no other options exist.
- (f) It is also unclear what ES's definition of sacrifice paddock might be.

Relief Sought

Federated Farmers seeks the following relief:

- (a) That the definition of feed pad/ lot be amended to remove the term sacrifice paddock, and
- (b) A new definition be confirmed for sacrifice paddock to provide clarity to plan users.

28. In addition to the matters set out in paragraphs 1 to 27 above, Federated Farmers seeks the following relief:

- (a) Similar and/or consequential amendments to the Proposed Southland Water and Land Plan (such as to methods, explanatory text and to ensure a consistent approach where appropriate) that would satisfactorily address the matters raised in this appeal; and
- (b) Federated Farmers' submission and further submission relief in the event that its primary relief in this appeal is not granted; and
- (c) Such other relief as the Court considers appropriate.

I attach the following documents to this notice:

- (a) a copy of Federated Farmers submission *or* further submission (with a copy of the submission opposed or supported by Federated Farmers further submission):
- (b) a copy of the relevant decision (*or* part of the decision):
- (c) any other documents necessary for an adequate understanding of the appeal:
- (d) a list of names and addresses of persons to be served with a copy of this notice.



P R Gardner
Solicitor
for Federated Farmers of New Zealand (Southland Province)

17 May 2018

Date

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant;
and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

The copy of this notice served on you does not attach a copy of any other documents necessary for the adequate understanding of the appeal (of which there were none), or a list of names and addresses of persons to be served with a copy of this notice. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.