

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH  
I MUA I TE KOOTI TAIAO O AOTEAROA  
KI OTAUTAHI**

**IN THE MATTER** of the Resource Management Act  
1991

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

**BETWEEN** **ARATIATIA LIVESTOCK LIMITED**  
(ENV-2018-CHC-29)

**(and others)**

Appellants

**SOUTHLAND  
COUNCIL**

**REGIONAL**

Respondent

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**PLANNING WILL SAY STATEMENT OF CLAIRE JORDAN FOR  
ARATIATIA LIVESTOCK LTD**

**29 October 2021**

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1. My full name is Claire Louise Marshall Jordan.
2. At the Pre-Hearing Conference (**PHC**) of 19 October 2021, and in a memorandum responding to the Court's minute of 4 October 2021, counsel for Aratiatia Livestock Ltd (**Aratiatia**) requested that the Court permit me to be involved in planning expert witness conferencing for the proposed Southland Water and Land Plan (**pSWLP**) given that, although I am not providing independent expert planning evidence to the Court, I do have sufficient planning expertise to be involved in conferencing.
3. In response, the Court acknowledged my expertise and asked whether any parties had an issue with my involvement in expert witness conferencing.
4. Meridian Energy Ltd opposed my involvement in conferencing on the Waiau River provisions, which are part of Topics B2 and B6. No parties opposed my involvement in conferencing on Topics B1 and B3-B5. As such, I have prepared the following Will Say statement ahead of my attendance at planning expert conferencing on Topics B1, and B3-B5.
5. Paragraph 10 of the PHC record requires planning Will Say statements to identify the issues on which technical advice has informed planning opinions on the wording of the plan's provisions. My planning opinion on the wording of the plan's provisions in relation to ephemeral rivers, critical source areas, and contaminant transport is informed by the advice provided by Environment Southland science staff, in particular the evidence provided to the Court by Ewen Rodway and Roger Hodson, and the technical paper provided to parties on 28 May 2021 authored by Ewen Rodway and Roger Hodson.
6. My planning opinions on the wording of the plan provisions in relation to operational farming matters are informed by the advice of Paul Marshall, who, though not providing independent expert evidence, has significant operational farming expertise, having farmed the land owned by Aratiatia Livestock Ltd for over 35 years.
7. The remainder of this Will Say statement is focused on proposed relief for these provisions, and how the recommended relief implements the relevant objectives and policies, as required by paragraph 11 of the PHC record.
8. Aratiatia's interests in Topics B1, B3 and B4 have essentially been addressed through mediation. Where issues within those Topics remain live, they are interwoven with Topic B5, and so are addressed through addressing Topic B5.

9. Aratiatia is a primary appellant on Rules 20(a)(iii)(3)(D) and (E). Aratiatia is a s274 party in relation to the rest of the matters outlined below. I set out below my initial comments on these matters for consideration by other planning witnesses ahead of expert conferencing, acknowledging that the appellants have yet to outline the relief they will seek in relation to these matters.

### ***Aratiatia appeal matters***

#### **Rules 20(a)(iii)(3)(D) and (E)**

10. Aratiatia has requested the following relief in relation to Rule 20(a)(iii)(3)(D) to read:

*“If supplementary feed (including baleage, straw or hay) is used in the area being grazed it is placed in portable feeders fed to the stock in such a way as to prevent the supplementary feed being trampled into the ground, such as placing the supplementary feed in portable feeders or behind an electrified wire.”*

11. Aratiatia has requested that Rule 20(a)(iii)(3)(E) and any cross references throughout the pSWLP, be deleted.
12. In my opinion, the relief sought in relation to Rules 20(a)(iii)(3)(D) and (E) will better implement the Objectives and Policies of the plan because they reduce the practical operational constraints on farming activities without compromising the fulfilment of the Objectives and Policies. I consider that both these provisions could be deleted without compromising the implementation of the Objectives and Policies of the pSWLP.

### ***Aratiatia S274 matters***

#### **Grass-based intensive winter grazing**

13. Some appeals to which Aratiatia is a s274 party suggest that the definition of intensive winter grazing should not be limited to forage crops.
14. It appears that the intent of this appeal point is, in essence, to ensure that break-feeding on pasture between May and September also has regulatory controls around it for the protection of freshwater.
15. In principle, I consider that a provision of this nature would improve how the pSWLP rule framework implements Objectives 1 – 4, 6, 8, 13 and 18 and Policies 1, 3 - 12, 13, 15A, 15B, 16, and 18, However, achieving this through the definition alone would see grass-based wintering constrained by land area or herd size. I consider this

problematic, as a limit on land area or herd size for grass-based winter grazing would likely drive perverse outcomes, such as increasing the stocking rate, de-vegetation and compaction, increasing both the magnitude and duration of contaminant losses, particularly via overland flow.

16. Further, the proposed change to the definition of intensive winter grazing would create inconsistency and confusion with the definition of intensive winter grazing in the National Environment Standard for Freshwater Management 2020.
17. I consider the intent could be achieved by creating a new definition for winter grazing on pasture, with a set of permitted activity rules which require critical source area management/exclusion and setbacks from waterbodies, but do not set maximum herd sizes of areas within a landholding.

### **Critical source areas**

18. Some appeals to which Aratiatia is a s274 party, suggest that critical source areas should be excluded from intensive winter grazing and cultivation into forage crops for intensive winter grazing.
19. I consider that requiring critical source areas to be excluded from intensive winter grazing and cultivation into forage crops for intensive winter grazing, together with a tightening of the definition of critical source areas would improve the extent to which the rules around critical source areas implement Objectives 1 – 4, 6, 8, 13 and 18 and Policies 1, 3 - 12, 13, 15A, 15B, 16, and 18, as it would result in greater protection of critical source areas, and subsequently other waterbodies, at critical times of the year.
20. If critical source areas are excluded from intensive winter grazing and cultivation into forage crops for intensive winter grazing the existing critical source area definition becomes potentially problematic. Users would not be able to cultivate or winter graze a critical source area, but as soon as they did cultivate or winter graze any area, that area would become a critical source area under (b). I consider that the operational uncertainty this would create would impede the implementation of the Objectives and Policies of the pSWLP.
21. I consider the following amendment would address this issue:

### ***Critical source area***

*(a) a landscape feature like a gully, swale or a depression that accumulates runoff (sediment and nutrients) from adjacent flats and slopes, and delivers it to surface water bodies (including lakes, rivers, artificial watercourses and modified watercourses) or subsurface drainage systems; and*

~~*(b) areas which arise through land use activities and management approaches (including cultivation and winter grazing) which result in contaminants being discharged from the activity and being delivered to surface water bodies.*~~

22. For clarity, I consider that retaining the ability to cultivate critical source areas except into forage crops for intensive winter grazing is important operationally for farmers, and specifically implements Objectives 3 and 13 and Policy 13, without compromising the implementation of the remaining Objectives and Policies. I do not consider any additional changes to Rule 25 are essential to achieve this.

### **Ephemeral rivers**

23. A number of appeals to which Aratiatia is a s274 party raise concern that the definition of ephemeral rivers is unclear in practice.

24. In my view this lack of clarity is problematic for the successful implementation of the Objectives and Policies of the pSWLP.

25. I note that it has been suggested by Environment Southland experts that there something of a continuum between critical source area, ephemeral river and intermittent river.

26. On that basis, and in an attempt to improve the clarity of the provisions addressing ephemeral rivers, I provide the following suggestions for consideration.

27. The Resource Management Act 1991 defines 'river' as:

*river means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal)*

28. And, in relation to a river, defines 'bed' as:

**bed means,—**

*(a) in relation to any river—*

*(i) for the purposes of esplanade reserves, esplanade strips, and subdivision, the space of land which the waters of the river cover at its annual fullest flow without overtopping its banks:*

*(ii) in all other cases, the space of land which the waters of the river cover at its fullest flow without overtopping its banks...*

29. Given the above definitions, it follows that every river has a bed. Given beds are defined on the basis of water overtopping banks, it also follows that every river also has banks. With that in mind a working definition of the continuum between critical source area, ephemeral river and intermittent river might be:

- An intermittent river periodically carries water, has a bed and banks, and the bed is less than half covered in pasture
- An ephemeral river periodically carries water, has a bed and banks, and the bed is at least half covered in pasture
- A critical source area periodically carries water, but does not have a defined bed and banks.

30. I understand that the various waterways and swales on Aratiatia's property could be classified on this basis with relative ease.

31. I consider that under the above classification, excluding ephemeral rivers from cultivation and grazing would provide a greater level of mandatory protection of ephemeral rivers, improving the extent to which the rules implement the relevant Objectives and Policies, in particular Objectives 1 – 4, 6, 8, 13 and 18 and Policies 1, 3 - 12, 13, 15A, 15B, 16, and 18.

32. I consider it would be appropriate to require all stock, including dairy cattle, to be actively driven across ephemeral rivers, whereas currently they do not have to be. I consider this amendment would be consistent with Regulation 9 of the Resource Management (Stock Exclusion) Regulations 2020.

1. I consider this could be achieved by deleting the definition and any reference to ephemeral rivers in the pSLWP, including Rule 20(aa), broadening the definition of intermittent rivers to include ephemeral rivers, and tweaking Rule 70(c) as follows:

***“Rule 20 – Farming***

~~*(aa) Unless stated otherwise by Rules 20, 25, 70 or any other rule in this Plan: (i) intensive winter grazing; or (ii) cultivation; or (iii) the disturbance by livestock including cattle, deer, pigs or sheep; in, on or over the bed of an ephemeral river is a permitted activity...*~~

~~*“Ephemeral rivers Rivers which only contain flowing or standing water following rainfall events or extended periods of above average rainfall.”*~~

~~*“Intermittent river A river which does not contain permanently flowing or standing water and has a defined bed and banks and where the bed is predominantly devoid of terrestrial vegetation and comprises sand, gravel, boulders, or similar material or aquatic vegetation.”*~~

***“Rule 70 – Stock exclusion from waterbodies***

~~*...(c) The disturbance of the bed of a river (excluding ephemeral rivers where stock access is permitted under Rule 20(aa)) or modified watercourse for the purposes of moving stock including cattle, deer, pigs or sheep (but excluding dairy cattle on a dairy platform or on land used for dairy support) is a permitted activity provided the stock are being supervised and are actively driven across the water body in one continuous movement.”*~~

Claire Jordan

29 October 2021