

**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

**Supplementary evidence
(16 June 2022)**

Introduction

[1] The court has questions for the planners and farms systems experts. As these are questions from the court, as a matter of fairness parties may wish their experts have an opportunity to comment and if that is the case, we will direct witnesses to expert conferencing.



[2] The questions concern the following topics:

- (a) the interpretation of Policy 16 and Rule 20A;
- (b) proposed new permitted activity rule, Rule 20A(aa); and
- (c) high risk winter grazing.

[3] By way of background we set out our understanding of parts of the evidence relevant to the above.

Stocking density

[4] Stocking density is a function of the yield of the crop and the amount of crop allocated per animal per day.¹ The number of cows in a mob is therefore determined by the amount of available feed.

[5] Stocking density is relatively constant over crops of the same type/yield.² The risk of contaminant loss is related to stocking density rather than the number of cows (all things being equal).³

[6] Feeding stock in situ on a standing crop over winter can support high stocking density. At high stocking densities, the activity of stock foraging on winter crops may result in:

- bare ground,
- damaged soil structure, and
- high deposition rates of urinary N.

[7] Were the above to occur, this increases the risk of contaminant loss with the actual level of risk being a function of stocking density and on farm specific

¹ Willis, EiC at [6.6]; Dalley, EiC at [21].

² Willis, EiC at [6.6].

³ Willis, EiC at [6.5].

conditions,⁴ including temperature and rainfall.

[8] The risk of contaminant loss may be minimised by controls on land use and by stock management.⁵

[9] However, on the evidence before the court,⁶ while we could conclude the risk of contaminant loss may be minimised, the evidence does not establish that the risk can be eliminated.

Area increase

[10] SRC proposes a permitted activity pathway for intensive winter grazing. That pathway is subject to a condition that the activity does not occur on more than 50 ha or 10 per cent of the area of the land holding, whichever is the greater.⁷

[11] The SRC's permitted activity pathway is based on the area control in reg 26(4)(a) of the NES-F.⁸

[12] SRC's proposed Rule 20A(a)(i) may not implement Policy 16(1)(ba) if the area limits encourage the intensification of intensive winter grazing activities.⁹

[13] Based on reg 26(3), Federated Farmers and Wilkins propose a second permitted activity pathway for activities that exceed the area control where ... a certifier has certified ... that the adverse effects (if any) allowed by the winter grazing plan are no greater than those allowed for by sub-cl (4).¹⁰ This pathway is not supported by SRC because of, amongst other things, the difficulty of linking

⁴ Including soil type, stock class, crop type, slope and the daily area allocation.

⁵ Land management includes those controls on land use proposed in Rules 20, 20A, 20B, 35 etc.

⁶ We bear in mind that the proceeding is only part-heard.

⁷ Rule 20A(a)(i).

⁸ We note Federated Farmers challenge the scope to amend the equivalent provision in the Decision Version of the rule and propose different controls on area.

⁹ Referred to in Dines, EiC at [50].

¹⁰ These parties propose that the pathway also apply to activities that exceed the proposed control on slope in Rule 20A(a)(ii). However, this Minute does not address the proposed slope exclusion.

diffuse contamination to individual farm actions and land use change.¹¹

[14] We think it uncontroversial to observe that an increase in the area used for intensive winter grazing, will – in the absence of land use controls – increase the likelihood and quantum of contaminant loss.

Policy 16(1)(ba)

Questions for the planners

[15] Having heard from some planners, we sense that the witnesses' understanding of the content and interpretation of Policy 16(1)(ba) may differ and, if true, this may impact the implementation of Rule 20A and FEMPs. We set out questions for their comment.

[16] Setting aside dairy farming of cows, sub-cl (ba) applies to intensive winter grazing activities. The planners are to confirm whether the rule applies to both existing and new activities.

[17] For existing activities is it intended that:

- the activity is intensified when the area of the activity increases?
and/or
- the activity is intensified when stocking densities on the same area of land are increased?¹² or
- something else?

[18] Correct us if wrong, but if the activity is intensified, the policy requires that there be:

¹¹ Burrell, EiC at [35].

¹² An increase in stocking density may be achieved by feeding high yielding crops such as beet.

- no increase in contaminants;¹³ and
- contaminants are either minimised or reduced depending on whether the land holding is in a Schedule X catchment.¹⁴

[19] And secondly, the policy is implemented by Rule 20A (among other rules) is a rule that applies at the scale of a landholding?

Rule 20A

Further questions for the planners:

[20] If Rule 20A(aa) is to be approved in some form, should the provision be amended to refocus away from effects and onto implementing Policy 16(1)(ba) by – we suggest:

[a certifier has certified that]¹⁵ the landholding's:

- contaminant load and concentration is no greater than that allowed by Rule 20A(a)(i);¹⁶ and
- losses of contaminants will be reduced where the farming activity occurs within the catchment of a waterbody in Schedule X.

If the planners support this, propose suitable wording.

[21] Subject to the Farm Systems advice, should reducing stocking density on the landholding be a condition of the proposed permitted activity rule?

¹³ Policy 16(1)(ba)(i).

¹⁴ Policy 16(1)(ba)(ii) and (iii).

¹⁵ Noting not all planners supported this wording.

¹⁶ Noting a decision is required whether SRC's proposed slope control is within scope and secondly, the merits of extending Rule 20A sub-cl (aa) to the slope control (sub-cl (a)(ii)) needs to be made.

[22] We anticipate most farmers will not read the provisions of the proposed plan when preparing their FEMP. Should the FEMP include an objective for intensive winter grazing that articulates the outcomes for this activity? If so, propose wording.

[23] Should a condition of the permitted activity rule (Rule 20A(a)) include a provision that requires grazed land to be re-sown in the following spring or is best left for the FEMP?¹⁷

Questions for the Farm Systems Experts

Increase in land area

[24] Is reducing stocking density on all areas of the landholding used for intensive winter grazing, necessary to achieve:

- no increase in contaminants;¹⁸ and
- contaminants are either minimised or reduced (depending on whether the land holding is in a Schedule X catchment).¹⁹

[25] If stocking density is not reduced, what level of confidence do the Farm Systems experts have that there will be no increase in contaminants and secondly, that contaminants will be minimised or reduced (as the case may be)?²⁰ When responding, consider both the SRC and Federated Farmers/Wilkins proposed area controls.

[26] If a reduction in stocking density is required, how might that be determined?

¹⁷ Monaghan, EiC at [21].

¹⁸ Policy 16(1)(ba)(i).

¹⁹ Policy 16(1)(ba)(ii) and (iii).

²⁰ Policy 16(1)(ba)(ii) and (iii).

[27] Does the Farm Systems experts' level of confidence change depending on whether the permitted activity rule (Rule 20A(aa)) has an effects' focus or alternatively, a focus on contaminant load and concentration as proposed in [20] above?

[28] We may have overlooked the same, but in the context of intensive winter grazing we have not found evidence on the topic of microbial contaminant discharges.²¹ How might microbial contaminant discharges be managed in order that they do not increase if the land area increases? Do changes in microbial contaminants support a control on stocking density if the land area increases?

[29] For present purposes the court accepts that the removal of land from production will reduce contaminants.²² When supporting an increase in area, is it enough to point to the removal of land from production from the landholding (or elsewhere in the region/catchment) as achieving [24] above?

Other matters for the Farm Systems experts

[30] Is there any change to either proposed version of Rule 35B: sacrifice paddocks that the experts would recommend to the court to better manage the potential adverse effects of contaminant discharges, and to implement Policy 16(1)?

[31] Are the Rule 25(ba), (bb) and (bc x 2) permitted activity standards proposed by Federated Farmers likely to prove effective in managing the potential adverse effects (sediment and P) of cultivation on slopes greater than 20 degrees noting that the standards, as proposed, do not enable winter forage crops? Secondly, what amendments, if any, to the standards may be required to better implement Policy 16(1) as proposed by the parties, including for the purposes of sediment

²¹ The parties agree to use *Escherichia coli* (*E. coli*) as a proxy for human health in this proceeding.

²² We have in mind setbacks, critical source areas and slope controls.

detention?²³

High risk winter grazing

[32] We understand parties have been consulting on a definition of winter pasturing and the inclusion of a provision in the plan (a rule or method). The outcome of this is to be given in evidence either by the parties' witnesses (if no agreement reached) or the witnesses of the Regional Council (if agreement reached).

Directions

[33] By **Monday 20 June 2022** having conferred the Regional Council will report to the court whether expert conferencing is proposed.

[34] If it is not, a timetable is to be proposed including (if necessary) evidence exchange.

Jane S.



J E Borthwick
Environment Judge

Issued: 16 June 2022

²³ Refer Monaghan, EiC at [37(c)].

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