

**IN THE ENVIRONMENT COURT OF NEW
ZEALAND**

I MUA I TE KOOTI TAIAO O AOTEAROA

ENV-2018-CHC-000040

IN THE MATTER

of the Resource Management Act 1991

AND IN THE MATTER

of appeals under clause 14 of Schedule of
the RMA relating to the proposed
Southland Water and Land Plan

BETWEEN

**FEDERATED FARMERS OF NEW
ZEALAND INC**

Appellant and s274 Party

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

**MEMORANDUM ON BEHALF OF FEDERATED FARMERS
CONFIRMING AMENDMENTS SOUGHT**

22 February 2022



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MAY IT PLEASE THE COURT

1. All parties have been directed to file a memorandum by 22 February 2022 setting out the changes to provisions being pursued.
2. I confirm Federated Farmers agrees with the tracked changes in the attachment to the 10 December 2021 Joint Witness Statement from Expert Conferencing as they relate to:
 - (a) Policies 13, 15A, 15B, 15C and 16;
 - (b) Rules 5 and 13;
 - (c) Appendix N; and
 - (d) The definitions of "critical source area", "ephemeral rivers" and "stick raking".
3. At the time of exchange of evidence in chief, Federated Farmers was pursuing changes to
 - (a) Policy 18;
 - (b) Rules 20, 25, 35A, 51, 70 and 74;
 - (c) Proposed new rules 20A and 20B; and
 - (d) The definitions of "cultivation", "feedpad / lot", "minimum till cultivation", "no till cultivation", "hoof and tooth" and "spray and pray".
4. I confirm that Federated Farmers is no longer pursuing changes to:
 - (a) Policy 18
 - (b) Rules 51 and 74
 - (c) The definitions of "cultivation", "feedpad / lot", "minimum till cultivation", "no till cultivation", "hoof and tooth" and "spray and pray".
5. I confirm that Federated Farmers no longer supports the proposed new Rule 20B and the associated definition.
6. Instead, Federated Farmers is now confining its focus on its request for amendments to:

- (a) Rules 20 / 20A / 20B¹, 25, 35A / 35B and 70
- (b) Definition of natural wetlands
- (c) Appendix N

7. **Attachment A** shows in track the changes being pursued:

- (a) The majority of changes are shown using the attachment to the 10 December 2021 Joint Witness Statement from Expert Conferencing as the base document.
- (b) For proposed new Rule 35B the version in the evidence of Mr McCallum-Clark for Southland Regional Council has been used as the base document.
- (c) For Appendix N the version attached to the s274 evidence of Mr Willis has been used as the base document.

DATED 22 February 2022



B S Carruthers
Counsel for Federated Farmers

¹ Which as noted above it no longer supports.

CHANGES TO ATTACHMENT TO THE 10 DECEMBER 2021 JOINT WITNESS STATEMENT FROM EXPERT CONFERENCING

IWG Rule 20(a)(iii)(1) or Proposed New Rule 20A

If Rule 20(a)(iii) is retained, amend:

- (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 area;~~*

If proposed new Rule 20A is preferred to retaining Rule 20(a):

- (a) *Intensive winter grazing is a permitted activity provided the following conditions are met:*
- (i) *intensive winter grazing does not occur on more than 50ha or ~~10%~~ 15% of the area of the land holding, whichever is the greater; and*

...

- (aa) Intensive winter grazing is a permitted activity if it occurs on more than 15% of the landholding and a certifier certifies, in accordance with Appendix N Part C, that the adverse effects (if any) allowed by the winter grazing plan in a Farm Environment Management Plan are no greater than those allowed by 20A(i)-(v).

Rule 25: Cultivation

- (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, artificial watercourse, modified watercourse or natural wetland;*
- (ii) *cultivation does not take place within a distance of:*
- (1A) 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.

- (1) 5 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 10 degrees; and
 - (2) 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 on land with a slope greater than 20 degrees; and
 - (iv) cultivation does not occur at an altitude greater than 800 metres above mean sea level;
 - (v) critical source areas are not cultivated when forage crops used for intensive winter grazing 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, or modified watercourse or the edge of a natural wetland;
 - (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) 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, oversowing, or spraying 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;
 - (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
- (bb) Cultivation within the setback distances specified in (a), (b) or (ba) above for the purposes of renewing or establishing pasture within a buffer by direct-drilling, oversowing, and spraying is a permitted activity provided it does not take place more than once in any 5 year period;
- (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 Rule 25(b)~~ is a restricted discretionary activity.*

Rule 35A(a)(ii)

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

...

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

Rule 70

- (cb) The use of land within a natural wetland or the disturbance of the bed of a water body within a natural wetland for access or grazing by stock is a permitted activity, provided the following conditions are met:

- (i) That the stock are at low intensities (defined as 6 stock units per hectare or less using the definition in Rule 70 Table 1) and;

(ii) a Farm Environmental Management Plan for the landholding is prepared, certified, and implemented and audited in accordance with Appendix N, and shows how stock damage to the values of the wetland will be avoided.

(cc) Except for the above conditions, the use of land within a natural wetland or the disturbance of the bed of a waterbody within a natural wetland for access or grazing by stock is a non-complying activity.

Definition – Natural Wetland

Includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions, but excludes:

(a) wet pasture, damp gully heads, or where water temporarily ponds after rain or pasture containing patches of rushes;

(b) effluent ponds;

(c) artificial storage facilities and detention dams;

(d) artificial watercourses such as conveyance and drainage canals;

(e) reservoirs for firefighting, domestic or community water supply; and

(f) engineered soil conservation structures.

(g) a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former natural wetland);

**CHANGES TO THE VERSION IN THE EVIDENCE OF MR MCCALLUM-CLARK
FOR SOUTHLAND REGIONAL COUNCIL**

New Rule 35B

- (a) *The use of land for a sacrifice paddock is a permitted activity provided the following conditions are met:*
- (i) *animals do not remain on the ~~feedpad~~ sacrifice paddock for longer than 60 days in any six month period;*
 - (ii) *if the slope of land that is used for a sacrifice paddock ~~must be 10 degrees or less~~ is greater than 10 degrees, 20 metre buffers must be provided on waterways and features identified in (v);*
 - (iii) *the sacrifice paddock must not be in a forage crop at the relevant time; and*
 - (iv) *livestock must be kept at least ~~50 metres~~ 10 metres, or 20 metres in the case of land with a slope greater than 10 degrees, from:*
 - (1) *any nohoanga listed in Appendix B, mātaihai reserve, taiāpure, estuary or the coastal marine area; and*
 - (2) *the bed of any river, lake, artificial watercourse (regardless of whether there is any water in it at the time), modified water course or natural wetland; and*
 - (v) *critical source areas within the area being used as a sacrifice paddock must:*
 - (1) *be identified in the Farm Environmental Management Plan; and*
 - (2) *have stock excluded from them; and*
 - (vi) *if the land that is used as a sacrifice paddock ~~must be replanted~~ requires replanting, this must occur as soon as practicable after livestock have been removed from the paddock; and*
 - (vii) *a Farm Environmental Management Plan for the landholding is prepared and implemented in accordance with Appendix N; and*
 - (viii) *no part of the sacrifice paddock is located on land with an altitude greater than 800 metres above mean sea level.*

**CHANGES TO THE VERSION OF APPENDIX N ATTACHED TO THE S274
EVIDENCE OF MR WILLIS**

Part B – Farm Environmental Management Plan Default Content

...

3. The FEMP contains a map(s) or aerial photograph(s) of the landholding at a scale that clearly shows the locations of:

...

(i) land to be:

(i) cultivated; or

(ii) intensively winter grazed;

(iii) used to graze livestock on pasture in the period 1 May to 30 September where ~~the pasture will provide less than 50% of the animals' diet~~ supplementary feeding is more than 8 tonnes per hectare dry matter-or equivalent

and the slope of the land and intended setbacks from any lake, river, artificial watercourses, modified watercourse or natural wetland and any other critical source areas;

...

5. Objectives of Farm Environmental Management Plans

A description of how each of the following objectives will, where relevant, be met:

...

- (g) Pasture-based wintering: To ensure that the grazing of animals on pasture over winter where significant supplementary feeding occurs avoids damage to critical source areas and minimises both the period in which significant devegetation occurs and the risk of contaminant loss.

...

7. If any Intensive Winter Grazing, or grazing of livestock on pasture in the period 1 May to 30 September where ~~the pasture will provide less than 50%~~ of the animals' diet supplementary feeding is more than 8 tonnes per hectare dry matter or equivalent, is occurring on the landholding, the Farm Environmental Management Plan must also include a winter grazing plan that takes into account and responds to the risk pathways for the relevant physiographic zones (and variants). The winter grazing plan must include good management practices that respond to the risks and effects identified in accordance with section 6 (a) above. In determining the mitigations to apply to grazing covered by the winter grazing plan that is not intensive winter grazing, particular regard must be had to the potential benefit of:

- (a) Excluding critical source areas from grazing;
- (b) Providing a minimum 5m setback from rivers, lakes artificial watercourse and wetlands;
- (c) Resowing the pasture as soon as practicable after grazing (if required);
- (d) The practices set out in Rule 20A (a) (vi).