

**UNDER** the Resource Management Act 1991 ("RMA")

**IN THE MATTER** of appeals under Clause 14 of the First Schedule to the RMA in relation to the decision on the proposed Southland Water and Land Plan

**BETWEEN** **FEDERATED FARMERS OF NEW ZEALAND INCORPORATED**  
**Appellant / s274 Party**

**AND** **SOUTHLAND REGIONAL COUNCIL**  
**Respondent**

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**MEMORANDUM OF COUNSEL FOR FEDERATED FARMERS SETTING OUT  
RELIEF SOUGHT**

**27 July 2022**

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## MAY IT PLEASE THE COURT

1. As outlined in my 11 April 2022 submissions, Federated Farmers takes issue with the proposed methods in the pSWLP that control:
  - (a) The area of a landholding able to be used for intensive winter grazing (**IWG**);<sup>1</sup>
  - (b) Pasture-based grazing in the winter months;<sup>2</sup>
  - (c) Cultivation;<sup>3</sup>
  - (d) Feed pads / lots;<sup>4</sup>
  - (e) Sacrifice paddocks;<sup>5</sup> and
  - (f) Stock access to wetlands.<sup>6</sup>
2. Updates as to the relief sought have been provided by way of memorandum on 25 May 2022 and 7 June 2022.
3. The final request in relation to each method is addressed below.

### Rule 20A: Intensive Winter Grazing

4. As the Court will be aware from the hearing:
  - (a) Federated Farmers has been pursuing its requests to amend the decision version of what is now Rule 20A(a)(i) to read:

*...does not occur on more than 15% of the area of the landholding or 100 hectares, whichever is the lesser area*
  - (b) The Regional Council has been advocating to amend the decision version of what is now Rule 20A(a)(i) to read:

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<sup>1</sup> Rule 20 and Proposed Rule 20A  
<sup>2</sup> Proposed Rule 20B and Appendix N  
<sup>3</sup> Rule 25A  
<sup>4</sup> Rule 35A  
<sup>5</sup> 35A and Proposed Rule 35B  
<sup>6</sup> Rule 70 / Definition of Wetland

*...does not occur on more than 50ha or 10% ~~15%~~ of the area of the landholding ~~or 100 hectares~~, whichever is the ~~lesser~~ greater area*

- (c) The Regional Council is also seeking to include a new Rule 20A(a)(ii):

*The slope of land that is used for intensive winter grazing must be 10 degrees or less.*

- (d) The Regional Council is yet to establish scope for its changes.

- (e) To protect against the situation where the Court finds (contrary to Federated Farmers' position) there is scope for the Regional Council's changes, Federated Farmers has pursued an alternative request to introduce a new Rule 20A(aa). The wording of the alternative request has been subject to changes during the course of the hearing.

5. In light of evidence given during the course of the hearing, a revised position is now taken as outlined below.

*Rule 20(a)(i)*

6. Federated Farmers seeks to amend the decision version of what is now Rule 20A(a)(i) as follows:

*...does not occur on more than:*

- *50ha or 15% of the area of the landholding ~~or 100 hectares~~, whichever is the ~~lesser~~ greater area; and*
- *the maximum area of the landholding used for intensive winter grazing in the five years 2014 – 2019.*

*Rule 20A(a)(ii)*

7. Council is yet to identify the appeal point it relies on to introduce new Rule 20A(a)(ii).

8. Federated Farmers would not oppose the introduction of a slope control to Rule 20A(a) that is consistent with the slope control restriction already contained in Rule 25. Such a rule would read:

*The slope of land that is used for intensive winter grazing must be 20 degrees or less.*

9. In the (unlikely) event the Council establishes there is scope to restrict intensive winter grazing on slopes over 10 degrees, rather than require the activity to cease or obtain consent, the more appropriate response would be to require an increased setback from waterbodies on these steeper slopes. This could be achieved by amending Rule 20A(a)(iii)(2) and introducing Rule 20A(a)(iii)(3) as follows:

(2) where the slope of land that is used for intensive winter grazing is 10 degrees or less, 10 metres from the bed of any other river, lake, artificial watercourse (regardless of whether there is any water in it at the time), modified watercourse or natural wetland;  
and

(3) where the slope of land that is used for intensive winter grazing is more than 10 degrees, 20 metres from the bed of any other river, lake, artificial watercourse (regardless of whether there is any water in it at the time), modified watercourse or natural wetland;  
and

*Rule 20A(aa)*

10. Federated Farmers is no longer pursuing the introduction of an alternative pathway via Rule 20A(aa).

*Appendix N*

11. Federated Farmers supports the new objective (b1) for IWG in the FEMP set out on page 16 of the Joint Witness Statement Planning dated 25 July 2022 (**JWS-P 25.7.22**) and the New Winter Grazing Plan Requirements set out on page 17 of the JWS-P 25.7.22.

**Rule 20B: Pasture based grazing in the winter months**

12. Federated Farmers supports:
- (a) *defining* the activity of high risk pasture winter grazing (**HRPWG**) as grazing livestock on pasture in the winter months (May – September) where supplementary feed is more than 8 tonne dry matter per ha;
  - (b) the use of a new rule to *control* HRPWG;
  - (c) the version of new Rule 20B in Attachment B to the JWS-P 25.7.22, provided the upper slope control in (ia) is 20 degrees;

- (d) either option for the new objective for HRPWG in the FEMP set out on pages 16 and 17 of the JWS-P 25.7.22; and
- (e) The New Winter Grazing Plan Requirements set out on page 17 of the JWS-P 25.7.22.

**Rule 25: Cultivation**

- 13. The new cultivation rule framework put forward by Federated Farmers is shown in the June Consolidated Plan.
- 14. That rule framework proposed to:
  - (a) Manage critical source areas as follows:
    - (i) By not cultivating critical source areas when forage crops used for intensive wintergrazing are established;<sup>7</sup> and
    - (ii) Establishing sediment detention when cultivating critical source areas for any other purpose.<sup>8</sup>
  - (b) Require the FEMP to outline paddock specific sediment control measures when cultivating slopes over 20 degrees.<sup>9</sup>
- 15. In light of evidence given during the hearing, Federated Farmers:
  - (a) Seeks to also require the FEMP identify all critical source areas in advance of cultivation activities and for other critical source area management measures to be outlined in the FEMP (beyond sediment detention); and
  - (b) Seeks to include both erosion and sediment control measures, including the most appropriate time of year for the activity to avoid or minimise risk, in the FEMP.
- 16. The changes requested to the rule framework put forward by Federated Farmers in the June Consolidated Plan are shown in strikethrough and underlining in **Attachment A**.

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<sup>7</sup> Rule 25(a)(v)  
<sup>8</sup> Rule 25(a)(v), Rule 25(ba)(v), Rule 25(bb)(iv), Rule 25(bc)(vi)  
<sup>9</sup> Rule 25(ba)(vi), Rule 25(bb)(viii), Rule 25(bc)(viii)

### **Rule 35A: Feed Pads**

17. The relief sought by Federated Farmers is correctly shown in the Consolidated Plan.

### **Rule 35B: Sacrifice Paddocks**

18. The version of Rule 35B now sought by Federated Farmers reads as follows:

(a) *The use of land for a sacrifice paddock is a permitted activity provided the following conditions are met:*

(i) *stock do not remain on the sacrifice paddock for longer than 60 days in any six month period;*

(ii) *the slope of land that is used for a sacrifice paddock must be 20 degrees or less*

(iii) *the sacrifice paddock must not be in a forage crop at the relevant time;*

(iv) *no more than 1% or 5 hectares of the landholding (whichever is the greater) is used as a sacrifice paddock in any year;*

(v) *stock must be kept at least 50 metres from:*

(1) *the bed of any Regionally Significant Wetland or Sensitive Waterbodies listed in Appendix A, nohoanga listed in Appendix B, mātaítai 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 requires replanting, this must occur as soon as practicable after livestock have been removed from the paddock; and
- (vii) A Farm Environment Plan for the landholding is:
- prepared, certified and audited in accordance with Appendix N; and
  - implemented by the landholder completing the practices, actions and mitigations specified in the FEMP in accordance with the timeframes set out in the FEMP; and
- (viii) no part of the sacrifice paddock is located on land with an altitude greater than 800 metres above mean sea level.
- (b) The use of land for a sacrifice paddock that does not meet one or more of the conditions of Rule 35B(a) is a discretionary activity.

#### **Rule 70: Stock Exclusion from Water Bodies**

19. Federated Farmers seeks to amend the new (ca) as follows:

*The disturbance of the bed of a lake, river or modified watercourse or natural wetland by sheep, other than as regulated by Rule 70(a) and 70(b), is a permitted activity, provided the following conditions are met:*

- (i) *the waterbody is not already fenced to prevent sheep access;*
- (ii) *the sheep are not being break fed or intensively winter grazed in the adjacent paddock;*
- (iii) *there is no significant de-vegetation leading to exposure of soil of the bed and banks, pugging or alteration to the*

*profile of the bed and banks, other than at fords or stock crossings; ~~and~~*

(iv) *for natural wetlands, the stocking rate in the adjacent paddock does not exceed 6 su/ha; and*

(v) *A Farm Environmental Management Plan is:*

*(A) prepared, and certified, and compliance with it is audited, in accordance with Appendix N; and*

*(B) implemented by the landholder completing the practices, actions, and mitigations specified in the Farm Environmental Management Plan in accordance with the timeframes set out in that Plan.*

20. Federated Farmers considers there is no scope for the proposed (cb). Federated Farmers understands it would be within scope to include the following as a new (cb) and would not oppose such occurring:

*The disturbance of the bed of a natural wetland by cattle, deer or pigs is a non-complying activity.*

21. Federated Farmers seeks to make a consequential amendment to (d) as follows:

*Bed disturbance activities that do not comply with Rule 70(c) or 70(ca) are a non-complying activity.*

**DATED 27 July 2022**



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B S Carruthers  
Counsel for Federated Farmers



**Attachment A:**

**Further refinements proposed to version of Rule 25 relief set out in June Consolidated Version**

- (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:*
    - (1) *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.*
    - (2) *5 metres from the outer edge of the bed of a lake, river, modified watercourse or the edge of a natural wetland on land with a slope of less than 10 degrees; and*
    - (3) *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 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; and*
  - (v) *Critical source areas are:*
    - a. *Identified in a farm environment plan ahead of cultivation activities;*  
*and*
    - b. *Not cultivated ~~when~~ with forage crops ~~used~~ for intensive winter grazing ~~are established;~~ and*
    - c. *When cultivating for any other purpose, sediment detention is established when cultivating critical source areas for any other purpose; and*
    - d. *Other critical source area management measures are outlined in a farm environment plan.*
- (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 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; and
  - (ii) cultivation does not take place more than once in any 5-year period; and
  - (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) cultivation does not occur at an altitude greater than 800 metres above mean sea level; and
  - (v) Critical source areas are:
    - a. Identified in a farm environment plan ahead of cultivation activities;  
and
    - b. sediment detention is established when cultivating critical source areas; and
    - c. Other critical source area management measures are outlined in a farm environment plan; and
  - (vi) Farm environment plans prepared in accordance with Appendix N must outline paddock specific erosion and sediment control measures, including the most appropriate time of year for the activity to avoid or minimise risk;
- (bb) The use of land with a slope greater than 20 degrees for the purpose of renewing or establishing pasture by oversowing, and/or spraying with

*the assistance of animals in the pasture establishment period 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; and*
- (ii) cultivation does not take place more than once in any 5-year period; and*
- (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) Critical source areas are:*
  - a. Identified in a farm environment plan ahead of cultivation activities; and*
  - b. sediment detention is established when cultivating critical source areas; and*
  - c. Other critical source area management measures are outlined in a farm environment plan; and*
- (v) cultivation does not occur at an altitude greater than 800 metres above mean sea level; and*
- (vi) during the establishment of the pasture up to 10 weeks, or when ground remains bare the land must not be grazed except as follows:*
  - d. An initial 48-hour grazing period to assist in the establishment of seed; and*
  - e. No grazing for six weeks; and*
  - f. One further 48-hour grazing period between 6 to 10 weeks;*
- (vii) If the ground remains bare following 10 weeks, the land must not be grazed until pasture is re-established in accordance with this rule; and*
- (viii) Farm environment plans prepared in accordance with Appendix N must outline paddock specific erosion and sediment control measures, including the most appropriate time of year for the activity to avoid or minimise risk;*

*(bc) The use of land with a slope greater than 20 degrees for the purpose of renewing or establishing pasture by oversowing, and/or spraying*

*without the assistance of animals in the pasture establishment period is a permitted activity provided the following conditions are met:*

- (ii) 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; and*
- (iii) cultivation does not take place more than once in any 5-year period; and*
- (iv) 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*
- (v) There is to be no grazing until the pasture is established; and*
- (vi) cultivation does not occur at an altitude greater than 800 metres above mean sea level; and*
- (vii) Critical source areas are:*
  - a. Identified in a farm environment plan ahead of cultivation activities;*  
*and*
  - b. sediment detention is established when cultivating critical source areas; and*
  - c. Other critical source area management measures are outlined in a farm environment plan; and*
- (viii) Farm environment plans prepared in accordance with Appendix N must outline paddock specific erosion and sediment control measures, including the most appropriate time of year for the activity to avoid or minimise risk; and*
- (ix) If the ground remains bare following 10 weeks, the land must not be grazed until pasture is reestablished in accordance with this rule;*

*(bd) Cultivation within the setback distances specified in (a), (b), (ba), (bb), or (bc) above for the purposes of renewing or establishing pasture within a buffer by direct-drilling, oversowing, and spraying without animal assistance is a permitted activity provided it:*

- (i) does not take place more than once in any 5 year period; and*
- (ii) it occurs after other cultivation activity; and*
- (iii) established pasture exists on the remainder of the paddock.*

- (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), is a restricted discretionary activity.*
  
- (d) *Despite any other rule in this Plan, the use of land for cultivation at an altitude greater than 800 metres above sea level is a non-complying activity.*