

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

**MEMORANDUM OF COUNSEL FOR FEDERATED FARMERS
IN RESPONSE TO RESPONDENT'S COMMENTS**

16 February 2023

B S CARRUTHERS KC

Telephone: (021) 685 809
Email: bcarruthers@shortlandchambers.co.nz
Postal: PO Box 4338
Shortland Street
AUCKLAND 1140

MAY IT PLEASE THE COURT

1. The Southland Regional Council filed a reporting memorandum with the Court on 9 February 2023. In its memorandum the Council advised the parties of its view on the questions and/or directions of the Court at paragraphs 231, 279, 313, 314, 375, 397-399 and 455 of the Fifth Interim Decision.
2. The Court directed any party who does not agree with the Council's view to respond by 17 February 2023.
3. A table setting out Federated Farmers response to each of paragraphs 231, 279, 313, 314, 375, 397-399 and 455 of the Fifth Interim Decision is attached. The table identifies the rule, the paragraph, the Court's request or query, the Council's response and then provides Federated Farmer's response in the right-hand column.

DATED 16 February 2023



B S Carruthers KC
Counsel for Federated Farmers

Rule	Para	Court Comment / Query	SRC Response	Federated Farmers
20B/ AppN	231	Parties to advise whether there is scope to include: <ul style="list-style-type: none"> The same or similar land or percentage area controls in Rule 20B as Rule 20A(a)(i) and (ia); 	Scope for same or similar land area or percentage control.	Scope for same or similar land area or percentage control but merits of doing so not addressed in evidence or tested. Request no land area or percentage control be imposed in Rule 25B. If the Court is minded to impose such a constraint, Federated Farmers requests an opportunity to call evidence and be heard on the perverse outcomes that would arise.
		<ul style="list-style-type: none"> A setback standard in Appendix N for stock types other than cattle. 	No scope for setback standard in Appendix N for stock types other than cattle.	Agree. Also note not appropriate, as the rules identify the setback / exclusion standards not the Appendix. Clause 13(b)(ii) requires the FEMP's Winter Grazing Plan to identify any waterbodies and features from which stock must be setback and excluded, explaining how this will be done.
24	279	Propose timetable directions	Await outcome of High Court.	Agree.

25	313	Parties to advise whether an Appendix N FEMP should be required as condition on Rule 25(a) and (b).	Yes, if scope to do so.	<p>Agree in part.</p> <p>The Appendix N FEMP addresses cultivation.</p> <p>Rules 25(ba), (bb) and (bc) specifically require the preparation of an Appendix N FEMP.</p> <p>Rule 25(a) should also specifically require the preparation of an Appendix N FEMP.</p> <p>Rule 25(b) does not need to specify the preparation of an Appendix N FEMP as 25(b)(iv) requires that aspect of Rule 25(a) (presuming it is inserted as suggested) to be met.</p>
25(b)(iii)	314	Parties to advise if it is clearer to amend the rule to say ‘... or on land used for pasture-based wintering, even as part of a pasture renewal cycle’?	Following cross-examination, Mr McCallum-Clark acknowledged that as farmers would undertake pasture wintering on established or old pasture, and not cultivate, establish new pasture and then undertake pasture-based wintering activities on that land, Rule 25 did not need to reference ‘... or on land used for pasture-based wintering’.	<p>Agree.</p> <p>Consistent with evidence and clearer to amend Court version as shown:</p> <p><i>cultivation is for the purpose of renewing or establishing pasture and is not undertaken to establish a crop used for intensive winter grazing or on land used for pasture-based wintering, even as part of a pasture renewal cycle;</i></p>

				Note also that the setback cultivated under 25(b) will not be used for pasture-based wintering given the greater setback required under Rule 20B.
35B	375	Parties to propose definition of sacrifice paddock	sacrifice paddock means an area on which— (a) cattle or deer are temporarily contained (typically during extended periods of wet weather); and (b) the resulting damage caused to the soil by pugging is so severe as to require resowing with pasture species	Agree.
		Parties to confirm whether Rule 35B applies to cattle only.	Cattle and deer	Agree.
		Parties to confirm whether Appendix N FEMP is to address use of sacrifice paddocks by all stock, with wording proposed in Appendix 6 to the decision.	The Council considers that overall, the Winter Grazing Plan provisions appear helpful to manage the effects of sacrifice paddocks. Clause 13(d) is applicable to Intensive Winter Grazing, and possibly pasture-based wintering, but is not appropriate to apply to sacrifice paddocks, especially in respect of deer. Merging clause 13(d) with clause 13(e), may resolve this. Sacrifice paddocks could potentially be included in clause 13(h), to be treated the same as Intensive Winter	Disagree with Council's proposed solution. It is appropriate that the land to be used for a sacrifice paddock be identified in advance, together with the land to be cultivated, intensively winter grazed or used for pasture-based wintering. However, unlike the other items listed in clause 7, these areas may change annually. It may be more appropriate for clause 7(h) to simply require the actively farmed areas to be mapped, with the detail then to be provided (as at the

		<p>Grazing, and possibly pasture-based wintering activities</p>	<p>moment) in the annual Winter Grazing Plan.</p> <p>Clauses 12 and 13 are potentially confused by the addition of 12(c), 13(g) as they appear aimed at capturing stock other than cattle in the activity of pasture-based wintering rather than on sacrifice paddocks and the reference to “of cattle” in 13(f) and “(including cattle)” in 13(h).</p> <p>If the question has been understood correctly, Federated Farmers suggests:</p> <ul style="list-style-type: none"> • amend 7(h) to read “land to be actively farmed” or similar • delete 12(c), 13(g), and the references to “of cattle” in 13(f) and “(including cattle)” in 13(h) and • insert an alternative 13(g): <p><i>For sacrifice paddocks:</i></p> <p><i>(i) Identify the intended location and paddock set-up and the date by which the paddock is to be resown, weather permitting.</i></p>
--	--	---	---

	377	Respond to the Court's suggested amendments to Rule 35B and Appendix N.	As above.	As above.
51	397	Parties to consider whether Rule 51(b) and (d) conflict with the new Rule 51(e)	No conflict.	Agree.
	398	Parties consider whether Rule 51(e) should be amended to read, "Notwithstanding Rule 51(b) and Rule 51(d), the diversion of water from a natural wetland for the purpose of land drainage is a non-complying activity."	Agree with suggested amendment.	Agree.
	399	If there is scope to do so, deleting the words "Despite any other rule in this Plan" in Rule 51(b) may put any interpretation/implementation issues with the rules beyond doubt.	No scope to do so.	Agree.
General	455	Parties to advise which term, buffer or setback, ought to be used in Appendix N.	Setback.	Agree.