

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

UNDER the Resource Management 1991
IN THE MATTER of appeals under Clause 14 of the First Schedule of the Act

BETWEEN **TRANSPower NEW ZEALAND LIMITED**
(ENV-2018-CHC-26)

FONterra CO-OPERATIVE GROUP
(ENV-2018-CHC-27)

HORTICULTURE NEW ZEALAND
(ENV-2018-CHC-28)

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

WILKINS FARMING CO
(ENV-2018-CHC-30)

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**STATEMENT OF EVIDENCE OF CLAIRE JORDAN ON
BEHALF OF ARATIATIA LIVESTOCK LIMITED (SECTION 274)**

4 February 2022

Judicial Officer: Judge Borthwick

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL DISTRICT COUNCIL**
(ENV-2018-CHC-31)

DAIRYNZ LIMITED
(ENV-2018-CHC-32)

H W RICHARDSON GROUP
(ENV-2018-CHC-33)

BEEF + LAMB NEW ZEALAND
(ENV-2018-CHC-34 & 35)

DIRECTOR-GENERAL OF CONSERVATION
(ENV-2018-CHC-36)

SOUTHLAND FISH AND GAME COUNCIL
(ENV-2018-CHC-37)

MERIDIAN ENERGY LIMITED Act 1991
(ENV-2018-CHC-38)

ALLIANCE GROUP LIMITED
(ENV-2018-CHC-39)

FEDERATED FARMERS OF NEW ZEALAND
(ENV-2018-CHC-40)

HERITAGE NEW ZEALAND POUHERE TAONGA
(ENV-2018-CHC-41)

STONEY CREEK STATION LIMITED
(ENV-2018-CHC-42)

THE TERRACES LIMITED
(ENV-2018-CHC-43)

CAMPBELL'S BLOCK LIMITED
(ENV-2018-CHC-44)

ROBERT GRANT
(ENV-2018-CHC-45)

**SOUTHWOOD EXPORT LIMITED, SOUTHLAND
PLANTATION FOREST COMPANY OF NZ,
SOUTHWOOD EXPORT LIMITED**
(ENV-2018-CHC-46)

**TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA,
WAIHOPAI RUNAKA, TE RUNANGA O AWARUA & TE
RUNANGA O ORAKA APARIMA**
(ENV-2018-CHC-47)

PETER CHARTRES
(ENV-2018-CHC-48)

RAYONIER NEW ZEALAND LIMITED
(ENV-2018-CHC-49)

**ROYAL FOREST AND BIRD PROTECTION SOCIETY OF
NEW ZEALAND**
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

One-page summary

- 1 My full name is Claire Louise Marshall Jordan.
- 2 My evidence is not presented as independent expert evidence, as I acknowledge that my connection to Aratiatia renders me too close to the matter to be considered independent in this instance. However, I do have some expertise in planning and the development of the pSWLP, which has informed the preparation of my evidence.
- 3 All of Aratiatia's outstanding S274 issues which fall within Topic B5 were addressed in the Planning Expert Conferencing in late 2021. I support the conclusions reached in the Planning JWS in relation to these issues.
- 4 In relation to ephemeral rivers and critical source areas, I have nothing further to add to the position outlined in the Planning JWS. As such, I have included the recommended relief from the Planning JWS in **Appendix 1** of this evidence as my proposed relief.
- 5 While I support the views expressed in the Planning JWS in relation to intensive winter grazing on grass (called "*high risk winter grazing on pasture*" in the Planning JWS and throughout the rest of this evidence), the Planning JWS does not express a firm view about the content of any provisions governing high risk winter grazing on pasture, essentially because of uncertainty regarding potential consequences of such provisions. In that regard:
 - a This statement identifies matters that I consider need to be clarified with the farm systems experts before I can form a definitive view on the most appropriate provisions to address high risk wintering on pasture.
 - b Notwithstanding the desirability of further work on this issue, I have included proposed new Rule 20B from the JWS in **Appendix 1** as my "*relief sought*", alongside a proposed definition of high risk winter grazing on pasture based on Mr Wilson's suggestion from his evidence in chief for Federated Farmers.

Introduction

- 6 My full name is Claire Louise Marshall Jordan.
- 7 I live at 1066 Lillburn-Monowai Road, located on the property owned by Aratiatia Livestock Limited (**Aratiatia**). The majority shareholder of Aratiatia is the Marshall Family Trust. The property is immediately adjacent to both the Waiau River and the Dean Burn, a tributary of the Waiau River. I am a discretionary beneficiary of the Marshall Family Trust and a shareholder of Totara Agricultural Limited, which contracts to Aratiatia. Paul and Juanita Marshall, the directors of Aratiatia, are my parents.
- 8 I am also a committee member of the Waiau Rivercare Group Inc. I have assisted the Waiau Rivercare Group Inc in their part in these proceedings.
- 9 I hold a Bachelor of Science with Honours (first class) from the University of Canterbury in 2010, majoring in chemistry (undergraduate major) and environmental science (honours major). I am currently undertaking a Master of Resource and Environmental Planning Degree through Massey University.
- 10 Prior to starting my Masters, I was a Senior Policy Planner at Environment Southland. I have worked as a Policy Analyst/Planner and an Environmental Scientist for eight years, within Central and Regional Government and as a consultant.
- 11 While employed by Environment Southland I was involved in preparing the proposed Southland Water and Land Plan (**pSWLP**). I was one of the authors of both the Section 32 Report and the Section 42A Report. I was not involved in the Section 42A Reply Report or the hearing process as I was on maternity leave during this time.
- 12 Shortly after my return to Environment Southland in February 2018, I left Environment Southland's employment.
- 13 I have prepared evidence for these proceedings on behalf of Aratiatia and am authorised to give evidence on Aratiatia's behalf.

- 14 My evidence is not presented as independent expert evidence, as I acknowledge that my connection to Aratiatia renders me too close to the matter to be considered independent in this instance. However, I do have some expertise in planning and the development of the pSWLP, which has informed the preparation of my evidence.
- 15 At the Pre-Hearing Conference of 19 October 2021, and in a memorandum responding to the Court's minute of 4 October 2021, counsel for Aratiatia requested that the Court permit me to be involved in planning expert witness conferencing for the 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.
- 16 In response, the Court asked whether any parties had an issue with my involvement in expert witness conferencing. In that regard:
- a Meridian Energy Ltd opposed my involvement in conferencing on the 'Waiau River provisions', which I understand are covered in Topic B6 following the suggestion at paragraph 22(b) of the Planning JWS that the Waiau River exemption in Appendix E be considered in Topic B6 instead of Topic B2.
 - b No parties opposed my involvement in conferencing on the remaining Topics. As such, I was involved in Planning Expert Conferencing and signed the Joint Witness Statement on Topics B1-B5.

Scope

- 17 This evidence addresses the provisions to which Aratiatia is a s274 party outside Topic B6, all of which fall within Topic B5.
- 18 Many of Aratiatia's S274 notices were broad, and as the matter has proceeded, the outstanding issues within Topic B5 have been narrowed to ephemeral rivers, critical source areas and high risk winter grazing on pasture.
- 19 This evidence does not address provisions Aratiatia has appealed that I understand fall outside the matters to be dealt with in Topic B6, namely Policy 26, Rule 52A and the exemption of the Waiau River from water quality standards in Appendix E.

- 20 In preparing this evidence, I have read and considered the following documents:
- a The pSWLP Decisions Version 1 March 2021 (Decisions Version);
 - b Section 42A Hearing Report and Reply Report;
 - c The Council's Decision Report;
 - d Aratiatia's Appeal;
 - e The Topic A Interim Decisions;
 - f Topic B Overview Evidence from the Regional Council, 22 October 2021
 - g The Joint Witness Statements of the Farms Systems Experts, 22 November and 6 December 2021;
 - h The Joint Witness Statement of the Water Quality Experts, 24-26 November 2021;
 - i The Joint Witness Statement of the Planning Experts, 10 December 2021;
 - j Appellants' Evidence in Chief, 20 December 2021;
 - k The National Policy Statement for Freshwater Management 2020 (**NPSFM**)
 - l The National Environmental Standard for Freshwater Management 2020 (**NESFM**)
 - m The Southland Regional Policy Statement 2017 (**RPS**).

Background

- 21 Aratiatia was a submitter on the notified version of the proposed Southland Water and Land Plan (**Notified Version**). Aratiatia lodged further submissions on the submissions of Meridian Energy Limited and the Southland Fish and Game Council.

- 22 Aratiatia lodged an appeal to the Environment Court on the decisions version of the proposed Water and Land Plan (**Decisions Version**).
- 23 Aratiatia lodged S274 notices on a number of appeals, including Fish and Game, Forest and Bird, Federated Farmers, Nga Runanga, and the Director General of Conservation.
- 24 Many of these S274 notices were broad, and as the matter has proceeded, the outstanding issues within Topic B5 have been narrowed to ephemeral rivers, critical source areas and high risk winter grazing on pasture.

Planning JWS

- 25 All of Aratiatia's outstanding S274 issues which fall within Topic B5 were addressed in the Planning Expert Conferencing in late 2021. I support the conclusions reached in the Planning JWS in relation to these issues.
- 26 In relation to ephemeral rivers and critical source areas, I have nothing further to add to the position outlined in the Planning JWS. As such, I have included the recommended relief from the Planning JWS in **Appendix 1** of this evidence as my proposed relief.
- 27 While I support the views expressed in the Planning JWS in relation to high risk winter grazing on pasture, the Planning JWS does not express a firm view about the appropriate content of any provisions governing high risk winter grazing on pasture. As such, this evidence discusses the matter further.

High risk winter grazing on pasture

- 28 Fish and Game's and Forest and Bird's appeals (Aratiatia is a S274 party to both) seek that the definition of intensive winter grazing should not be limited to forage crops, as follows:

"Grazing of stock at any time between 1 May and 30 September of the same year (inclusive) on forage fodder crops (including brassica, beet and root vegetable crops), excluding pasture and cereal crops, or pasture to the extent that the grazing results in the exposure of soil and / or pugging of the soil."

- 29 I support the position expressed in the Planning JWS, which is included as **Appendix 2** to this evidence. In summary, the Planning JWS outlines that:
- a High risk winter grazing on pasture is not currently regulated.
 - b If high risk winter grazing on pasture is to be regulated as a consequence of its generation of adverse environmental effects, then the existing controls on intensive winter grazing (currently limited to forage crops) may provide a useful starting point. The Planning JWS therefore suggested proposed new Rule 20B (see **Appendix 1**).
 - c The planners did not propose a definition for “*high risk winter grazing on pasture*” but noted that one would be necessary if Rule 20B was adopted. That definition will determine whether a given activity qualifies as high risk winter grazing and hence is subject to the rule or is enabled by the generally applicable provisions of Rule 20.
 - d Farm systems expertise is required to better inform the planners on the scale of high risk winter grazing on pasture, and its effects. Further, farm systems expertise is required to understand the likely impact of any provisions drafted by the planners (including the definition). The planners prepared a list of questions for farm systems experts to consider.
- 30 I am aware from informal discussions with members of and advisors to the farming community that, anecdotally, high risk winter grazing on pasture, often supplemented by baleage, has become more prevalent following the increased regulation of intensive winter grazing on forage crops.
- 31 Unfortunately, the farm systems experts were not asked during expert conferencing to confirm whether they have observed this trend and, if so, whether it is at a scale that might justify regulatory intervention. In my opinion, this is the first thing that needs to be confirmed before this issue is considered further.

- 32 The rest of this section proceeds on the assumption that the farm systems experts do confirm that high risk winter grazing on pasture does require regulatory intervention. [Nb: if the farm systems experts do not consider this to be an issue that requires regulation, consideration of the remainder of my evidence is unnecessary.]
- 33 It seems to me that the intent of this appeal point is to ensure that high risk winter grazing on pasture has regulatory controls around it for the protection of freshwater where the grazing results in the same or similar effects as intensive winter grazing on forage crops.
- 34 I have identified three potential options that have been put forward, Fish and Game/Forest and Bird's proposal, the wording in the Planning JWS, and the option outlined in Mr Wilson's evidence in chief on behalf of Federated Farmers dated 20 December 2021. I have addressed each of these in turn below.

Proposal 1 - Fish and Game/Forest and Bird

- 35 Forest and Bird/Fish and Game have suggested that high risk winter grazing on grass should be incorporated into the definition of "*intensive winter grazing*" as follows:

"Grazing of stock *at any time* between 1 May and 30 September of the same year (inclusive) on forage fodder crops (including ~~brassica, beet and root vegetable crops~~), ~~excluding pasture and cereal crops~~, or pasture to the extent that the grazing results in the exposure of soil and / or pugging of the soil."

- 36 This would result in the provisions of Rule 20(a)(iii), or Rule 20A in the Planning JWS, applying to high risk winter grazing on grass. The key difference between this approach and the new Rule 20B proposed in the Planning JWS, is that under the Fish and Game / Forest and Bird proposal, wintering on pasture would be included within the 50 ha / 10% limit per landholding that applies to "*intensive winter grazing*".
- 37 My concern in this regard (based on my own experience of farming) is that while intensive winter grazing on forage crops completely devegetates the paddock (makes the ground bare), this is not always the case for grass-based winter grazing. Pasture will often be grazed to a certain height, or

'post-grazing residual', before the stock are moved on, leaving the grass to continue growing, much like mowing a lawn.

- 38 In my view, is important that grazing of pasture which leaves a post-grazing residual is not captured by the definition, as it does not have the same risk profile as intensive winter grazing on forage crops, and capturing this activity captured would limit the effective total grazing area on each landholding to 50 ha / 10% for five months of the year. Such an outcomes is clearly unintended and impractical, and would drive significant perverse and unintended outcomes; environmentally, economically, and for animal welfare.
- 39 I consider that farm systems expertise is required to understand the potential effects (both positive and adverse) of restricting the land area where high risk wintering on pasture can occur if intensive winter grazing is defined as suggested by Fish and Game / Forest and Bird.
- 40 My other concern with Proposal 1 is one of implementation. While I agree that focusing on the effects of the activity in the definition is the simplest approach in principle, in practice, determining whether grazing has given rise to "*exposure of the soil and / or pugging of the soil*" on the ground will involve subjective judgments and will be innately problematic for farmers and other parties.
- 41 Even attempts to define these terms using measurements, such as half a paddock and depth of pugging of 20 cm in the context of the NESFM, have been difficult to implement.
- 42 That said, without including a condition such as, "*exposure of the soil and / or pugging of the soil*" or similar, the definition would capture all grazing on pasture from May to September, which as mentioned above, is clearly not intended and would be impractical.
- 43 I consider that farm systems expertise is required to help planners understand if high risk winter grazing on pasture that has the similar adverse effects to intensive winter grazing can be defined in a way that is narrow enough to capture only the activity of concern (without capturing winter grazing on pasture with lesser effect), while also being implementable.

- 44 Lastly, I consider it would be undesirable and potentially confusing for the farming community to have a definition of intensive winter grazing in the pSWLP that differs from that in the National Environment Standard for Freshwater Management 2020.

Proposal 2 – Planning JWS

- 45 The provisions suggested in the Planning JWS are included in **Appendix 1** as Rule 20B.

- 46 I consider that Proposal 2 addresses the concerns outlined above in relation to Proposal 1 by:

- a Envisaging high risk winter grazing on pasture being defined as a separate activity to intensive winter grazing; and
- b Removing the land area restriction.

- 47 However, what is currently missing from Proposal 2 is a definition of “*high risk winter grazing on pasture*”. Without such a definition, I am not able to form a definitive view on the implications, effectiveness and appropriateness of the proposal.

- 48 However, I consider that in the absence of a land area constraint (i.e.: the 50 ha / 10% constraint proposed in Proposal 1), the definition of high risk winter grazing on pasture could afford to be broader (i.e. could include some winter grazing on pasture that has a lesser effect than intensive winter grazing on forage crops).

- 49 This might be a workable and appropriate option if the farm systems experts and planners are unable to come up with a definition (as suggested at Paragraph 43) that is:

- a Sufficiently narrow to only capture high risk winter grazing on pasture that has the same effect as intensive winter grazing (i.e.: complete devegetation); and
- b Implementable.

Proposal 3 – Mr Wilson’s evidence in chief

50 Mr Wilson suggested the following definition for high risk winter grazing on pasture in his evidence in chief:

“High risk winter grazing” is the break-feeding of stock on fodder crops or pasture (where the farm environment plan certifier has determined the farm activity to be of the same risk as intensive winter forage crop grazing) between 1 May and 30 September of the same year. It excludes dairy cows in a springer mob prior to calving, and dairy cows in the milking herd after calving.”

51 Mr Wilson goes on to suggest that Rule 20B as outlined in the Planning JWS would then apply.

52 It appears that Mr Wilson has attempted to address the practicality issues associated with the phrase “*exposure of soil and / or pugging of the soil*” by incorporating the need to have a certifier make a call about the risk.

53 While I do not have a problem with that in principle, the difficulty is the current uncertainty about the certifier programme, which I understand is yet to be finalised. This:

- a Creates the risk of continued degradation before the certifier programme is confirmed; and
- b Gives substantial discretion to the certifier.

54 Without the programme being finalised, I am not in a position to confirm whether I consider this level of discretion appropriate. However, I consider it likely that to become a certifier a person will be required to have a level of education and/or experience which means they are well placed to make such an assessment. As such, I am reasonably comfortable with it.

55 The risk of continued degradation in the interim could be addressed by turning the definition around as follows:

*“**High risk winter grazing** is the break-feeding of stock on fodder crops or pasture (unless where the farm environment plan certifier has determined the farm activity to be of ~~the same~~ lesser risk than as intensive winter forage crop grazing) between 1 May and 30 September of the same year. It excludes dairy cows in a*

springer mob prior to calving, and dairy cows in the milking herd after calving.”

- 56 This formulation would mean that the default position is that Rule 20B applies to all break-feeding of stock on pasture (with the exception of springer mobs and cows in milk) until a certifier programme is established and a certifier is able to make an assessment on their property. There is currently no clear timeframe for this.
- 57 As such, I consider that this definition should only be used in conjunction with the new Rule 20B. To use it with Rule 20A would constrain all grazing on pasture (with the exception of springer mobs and cows in milk) to 50 ha or 10% of each landholding for five months of the year until landowners are able to access a certifier. This would be an unintended and impractical outcome with significant adverse consequences for the environment, the economy and animal welfare.
- 58 Further, I support the exclusion suggested by Mr Wilson in the last sentence of his proposed definition for the following reasons:
- a My understanding, and certainly Aratiatia’s practice, is that cows in milk being break fed on pasture are moved out of the break when there is still significant pasture cover remaining (or post-grazing residual), so does not devegetate the paddock like intensive winter grazing.
 - b In terms of a springer mob, my understanding is that there is more variation in practices across Southland, but that it is a separate mob where cows due to calve are moved off the crop paddock in the few days before calving, in part to avoid calving onto bare earth. While pasture might be grazed lower than in a milking herd situation, my understanding is that it is unlikely to be at the same stocking rate, for the same duration, or result in the same extent of devegetation as intensive winter grazing.
- 59 I am not a farm systems expert, and consider that the appropriateness of the exclusion proposed by Mr Wilson should be confirmed with the farm systems experts. Based on my understanding of the practices on Aratiatia’s property, however, I consider that the exclusion proposed by Mr Wilson is appropriate from an environmental effects perspective.

Preliminary Assessment under s32AA

- 60 The following is a preliminary assessment of Proposals 1-3 above and the Decisions Version in relation to the definition of and rules for high risk winter grazing on pasture under s32 and 32AA of the Resource Management Act 1991 (RMA).
- 61 This assessment has been undertaken at a level of detail that I consider corresponds to the scale and significance of the changes, as required by s32AA(1)(c) of the RMA, given that there exists some uncertainty about the content of the various proposals.
- 62 The proposed provisions in full are contained in **Appendix 1**. Please note that these are identical to those suggested in the Planning JWS, with the exception of the definition of '*high risk winter grazing on pasture*', which I have adapted from Mr Wilson's evidence.
- 63 Looking first at s32(2)(c), in my view there is sufficient uncertainty about the practice of high risk winter grazing on pasture to create significant risk of perverse outcomes associated with acting, and an unquantifiable (but anecdotally significant) risk associated with not acting, as it is not clear to me whether the issue warrants regulatory intervention.
- 64 That said, I consider that these proceedings provide an opportunity to improve the level of certainty about the practice of high risk winter grazing on pasture through the farm systems experts. Once that occurs, the risk profile of acting or not acting will also change.
- 65 If the farm systems experts confirm that high risk winter grazing on pasture is being undertaken at scale and requires regulation, then I consider that provisions regulating high risk winter grazing on pasture could 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, compared to the Decisions Version.
- 66 With input from the farm systems experts to draft appropriate provisions and highlight any unintended consequences, provisions regulating high risk winter grazing on pasture may be a more appropriate, effective and efficient way of achieving the relevant Objectives and Policies. I am not

currently able to comment on what impact they would have on economic growth or employment. However, my initial feeling is that Proposal 1 would have the most impact, due to its restriction on land area.

- 67 However, as any of the proposals would result in increased regulation compared to the Decisions Version and the NES Freshwater, cost increases are likely to be felt by those undertaking high risk winter grazing on pasture, however it is ultimately defined. While it is not possible to understand the magnitude of these costs currently, costs are likely to vary significantly from farm to farm because of varied geomorphology and operational practices.
- 68 It is also unclear at this point how any cost increases might compare to the cost of any ongoing environmental degradation associated with high risk winter grazing on pasture under the existing regulatory framework.
- 69 I also note that any regulation of high risk winter grazing on pasture may trigger assessment under s32(4) of the RMA.

Conclusion

- 70 I support the proposed approach to regulating ephemeral rivers and critical source areas outlined in the Planning JWS.
- 71 I agree with the suggestions outlined in the Planning JWS in relation to high risk winter grazing on pasture. However, a complete set of provisions was not provided, and I consider further work is required.
- 72 I consider that to further develop provisions in relation to high risk winter grazing on pasture, we need to understand whether farm systems experts have observed a significant increase in the amount of grass-based intensive winter grazing (resulting in complete devegetation akin to intensive winter grazing on forage crops), and whether it is at a scale that might justify regulatory intervention.
- 73 If the answer to the above question is 'yes', then farm systems expertise is required to understand:
- a If high risk winter grazing on pasture that has the same effects as intensive winter grazing (on forage crops) can be defined in a way that

is narrow enough to only capture the activity of concern (without capturing winter grazing on pasture with lesser effect), while also being implementable.

- b The potential effects (both positive and adverse) of restricting the land area where high risk wintering on pasture can occur if intensive winter grazing is defined as suggested by Fish and Game / Forest and Bird.
- c Whether the risk to water quality of break feeding pasture to springer mobs and dairy cows after calving as part of the milking herd, is less than intensive winter grazing on forage crops.

DATED this 4TH day of February 2022
Claire Jordan

Appendix 1 Tracked changes of relief sought

The following relief is as suggested in the Planning JWS, which I agree with.

Ephemeral rivers

Ephemeral rivers

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

Consequentially, delete Rule 20(aa) and all other references to ephemeral rivers throughout the pSWLP.

Critical source areas

Critical source area

~~*(a) a landscape feature like a gully, swale or a depression (including ephemeral flow paths) 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) a non-landscape feature that has high levels of contaminant losses, such as, silage pits, fertiliser storage areas, stock camps and laneways.*~~

~~*(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.*~~

Note that while most of the intensive winter grazing rule has been simply moved from Rule 20 – Farming to a new Rule 20A – Intensive winter grazing, the requirements for critical source areas has changed from being intensively winter grazed last to not being intensively winter grazed at all, see below.

Rule 20 – Farming

...

(a) The use of land for a farming activity, other than for intensive winter grazing, is a permitted activity provided the following conditions are met:

...

~~(iii) where the farming activity includes intensive winter grazing on the landholding, the following conditions are met:~~

...

~~(F) critical source areas (including swales) within the area being grazed that accumulate runoff from adjacent flats and slopes are grazed last;~~

Rule 20A – Intensive winter grazing

(a) Intensive winter grazing is a permitted activity provided the following conditions are met:

...

(iv) critical source areas within the area being intensively winter grazed must:

(1) be identified in the Farm Environmental Management Plan; and

(2) have stock excluded from them; and

(3) not be cultivated into forage crops for intensive winter grazing

Rule 25 – Cultivation

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

...

(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.

High risk winter grazing on pasture

New Rule 20B for high risk winter grazing on pasture is taken from the Planning JWS. This would require a definition of high risk winter grazing on pasture. Such a definition was not provided in the Planning JWS. The definition of high risk winter grazing on pasture provided below is a modification of the one provided by Mr Wilson in his evidence in chief on behalf of Federated Farmers on 20 December 2021, with modifications shown as tracked changes.

Rule 20B –High risk winter grazing on pasture

(a) High risk winter grazing on pasture is a permitted activity provided the following conditions are met:

(i) livestock must be kept at least:

(1) 20 metres from the bed of any Regionally Significant Wetland or Sensitive Water Bodies listed in Appendix A, estuary or the coastal marine area; and

(2) 10/5 metres from the bed of any other river, lake, artificial watercourse (regardless of whether there is any water in it at the time), modified water course or natural wetland; and

(ii) critical source areas within the area being winter grazed on pasture must:

(1) be identified in the Farm Environmental Management Plan; and

(2) have stock excluded from them; and

(iii) On areas where significant de-vegetation occurs, vegetation is re-established as soon as practicable; and

(iv) a Farm Environmental Management Plan for the landholding is prepared and implemented in accordance with Appendix N, that also includes a grazing plan that includes:

(1) downslope grazing or a 20 metre 'last-bite' strip at the base of the slope; and

(2) back fencing to prevent stock entering previously grazed areas; and

(v) no high risk winter grazing on pasture occurs at an altitude greater than 800 metres above mean sea level; and

(b) The use of land for high risk winter grazing on pasture that does not meet conditions (a)(i)-(vi) of Rule 20B is a restricted discretionary activity provided the following conditions are met:

(i) a Farm Environmental Management Plan is prepared and implemented in accordance with Appendix N

The Southland Regional Council will restrict its discretion to the following matters:

1. the quality of and compliance with Appendix N and the Farm Environmental Management Plan for the landholding;

2. mitigation actions and good management practices to be undertaken, including those to minimise the discharge of nitrogen, phosphorus, sediment and microbiological contaminants to water from the use of land, taking into account contaminant loss pathways;

3. the potential benefits of the activity to the applicant, the community and the environment;

4. the potential effects of the farming activity on surface and groundwater quality and sources of drinking water;

5. monitoring and reporting undertaken to assess the effectiveness of any mitigation implemented.

(c) The use of land for high risk winter grazing on pasture that does not meet conditions of Rule 20B(b) is a non-complying activity.

(d) The use of land for high risk winter grazing on pasture that does not meet condition (vii) of Rule 20A(a) is a prohibited activity.

“High risk winter grazing is the break-feeding of stock on fodder crops or pasture (unless where the farm environment plan certifier has determined the farm activity to be of ~~the same~~ lesser risk than as intensive winter forage crop grazing) between 1 May and 30 September of the same year. It excludes dairy cows in a springer mob prior to calving, and dairy cows in the milking herd after calving.”

Appendix 2:
Planning JWS statement relating to high risk winter grazing on pasture

The following is a direct excerpt from the Planning JWS:

The planners agree that the Plan does not control high risk winter grazing of all stock on grass beyond the controls of Rule 20 and associated FEMP (which applies all year round).

They are conscious that they have very limited farm systems technical evidence on the scale of the problem, or the nature of the activity (and it's effects) that may require specific control.

Accordingly, planners have identified the following questions for technical experts/evidence:

- *How would you define what is high risk winter grazing on grass based on characteristics of the activity?*
- *Are the other risk factors (such as biophysical factors) that would need to be taken into account to appropriately target the high risk activity?*
- *How prevalent is this activity?*
- *What are the adverse effects of the activity?*
- *How different are these from adverse effects of intensive winter grazing as defined in the Plan?*
- *What controls would be necessary to manage these adverse effects?*
- *Are there any potential perverse outcomes (including from imposing a size area limit)?*

We note that the scope for addressing this matter derives from the Fish and Game appeals seeking that the definition of intensive winter grazing is expanded as follows:

“Grazing of stock at any time between 1 May and 30 September of the same year inclusive on fodder crops or pasture to the extent that the grazing results in the exposure of soil and / or pugging of the soil.”

There are a range of alternative approaches to address this matter. This may require defining high risk winter grazing on grass. The alternative approaches include a further condition in Rule 20, or add an additional Rule 20B, to target the specific activity of concern.

We note that many of the conditions of Rule 20A are likely to be potentially appropriate to apply to any new condition or rule that targets higher risk winter grazing on pasture although some planners have identified such limits on area, slope and the need for transportable troughs, may not be appropriate when regulating this activity.

One way to achieve this would be through a provision similar to that below.

Rule 20B – High risk winter grazing on pasture

(a) High risk winter grazing on pasture is a permitted activity provided the following conditions are met:

(i) livestock must be kept at least:

(1) 20 metres from the bed of any Regionally Significant Wetland or Sensitive Water Bodies listed in Appendix A, estuary or the coastal marine area; and

(2) 10/5 metres from the bed of any other river, lake, artificial watercourse (regardless of whether there is any water in it at the time), modified water course or natural wetland; and

(ii) critical source areas within the area being winter grazed on pasture must:

(1) be identified in the Farm Environmental Management Plan; and

(2) have stock excluded from them; and

(iii) On areas where significant de-vegetation occurs, vegetation is re-established as soon as practicable; and

(iv) a Farm Environmental Management Plan for the landholding is prepared and implemented in accordance with Appendix N, that also includes a grazing plan that includes:

(1) downslope grazing or a 20 metre 'last-bite' strip at the base of the slope; and

(2) back fencing to prevent stock entering previously grazed areas; and

(v) no high risk winter grazing on pasture occurs at an altitude greater than 800 metres above mean sea level; and

(b) The use of land for high risk winter grazing on pasture that does not meet conditions (a)(i)-(vi) of Rule 20B is a restricted discretionary activity provided the following conditions are met:

(i) a Farm Environmental Management Plan is prepared and implemented in accordance with Appendix N

The Southland Regional Council will restrict its discretion to the following matters:

1. the quality of and compliance with Appendix N and the Farm Environmental Management Plan for the landholding;

2. mitigation actions and good management practices to be undertaken, including those to minimise the discharge of nitrogen, phosphorus, sediment and microbiological contaminants to water from the use of land, taking into account contaminant loss pathways;

3. the potential benefits of the activity to the applicant, the community and the environment;

4. the potential effects of the farming activity on surface and groundwater quality and sources of drinking water;

5. monitoring and reporting undertaken to assess the effectiveness of any mitigation implemented.

(c) The use of land for high risk winter grazing on pasture that does not meet conditions of Rule 20B(b) is a non-complying activity.

(d) The use of land for high risk winter grazing on pasture that does not meet condition (vii) of Rule 20A(a) is a prohibited activity.