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 1 of the RMA relating to the proposed Southland Water and Land Plan (**pSWLP**)
BETWEEN	**FEDERATED FARMERS OF NEW ZEALAND INC** **Appellant and s274 Party**
AND	**SOUTHLAND REGIONAL COUNCIL** **Respondent**

STATEMENT OF REBUTTAL
OF PETER GORDON WILSON
ON BEHALF OF FEDERATED FARMERS

22 February 2022

FEDERATED FARMERS OF NEW ZEALAND

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1. INTRODUCTION

Name and Qualifications

1.1. My full name is Peter Gordon Wilson

1.2. I outlined my qualifications and experience in my Evidence in Chief (EiC) of 20 December 2021.

Code of conduct

1.3. I have read the Environment Court's Code of Conduct for Expert Witnesses, and I agree to comply with it. I confirm that the issues addressedin this brief of evidence are within my area of expertise, except where I state I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

Scope of rebuttal

1.4. My rebuttal focuses on the following matters:

a) The Rule 25A cultivation provisions, and specifically, the lack of permitted activity conditions for the maintenance and replacement of pasture on land above 20 degrees

b) The proposed additional provisions for wintering on pasture

c) Rule 51 and Rule 70 provisions for natural hazard removal and maintenance, and stock grazing, in natural wetlands

d) The feed lot/pad Rule 35A and proposed Rule 35B for sacrifice paddocks

e) Acknowledging support of the suggestions in evidence of others.

2. INTENSIVE WINTER GRAZING (RULE 20A)

2.1. The Council is proposing to amend the area constraint on IWG from the lesser of 15% or 100ha (Rule 20 in the Decision Version of the pSWLP) to the greater of 10% or 50ha (new Rule 20A in the "Preferred Relief" version).

2.2. My evidence of 20 December 2021 sought changes to new Rule 20A to better integrate it with the NES-F. In particular, I said that *if* the rule was to change from 15% to 10% then an equivalent to clauses 3/4 of the NES-F provisions needed to be added. Clause 3 of the NES-F enables IWG on a greater footprint than the default 10% or 50 hectares of a property when a certified freshwater farm plan demonstrates that the adverse effects are no greater than the default.

2.3. Mr McCullum-Clark has raised concerns about the practical nature of this, citing the need for an additional level of detail before the certification process as set out in the NES-F can be undertaken. I do not think this is justified criticism, given that Appendix N of the pSWLP sets out a certified farm environmental plan process with substantial detail – which I refer to as the 'Southland module' in the nationwide context. This includes a certification and audit regime, and an updating clause that ensures that when the appropriate regulations enact the nationwide freshwater farm plan certification regime, that the Southland regime updates itself accordingly. There is no 'risky oversimplification' as the level of assessment and evaluation detail in Appendix N is likely to be more stringent than any nationwide process, simply because it has been more thoroughly tested by regional experts through this plan and court process.

2.4. I maintain the view that *if* the rule is to change from 15% to 10% then it is important to retain the flexibility provided in the NES-F. The NES-F included flexibility on IWG for a reason – as maximum area limits can have a perverse environmental effect. These have been outlined in Ms Hunt's evidence at para 53-62 and in Mr Wilkins evidence for Wilkins Farming Co Ltd. I consider that flexibility must be enabled and managed through a process, hence my request for it to be included within Rule 20A as an additional clause (aa).

2.5. Mr Farrell's s274 evidence says, at para 25 (d), that I lack an evidential basis for making the statement that 'farm certifiers [can] decline to certify all or part of a farm plan'. I do not understand the point he is trying to make. Mr Farrell and I, along with all the other planners who participated in the expert caucus, amended Appendix N to include the farm plan certification regime. I agree with all of the context of Appendix N in the planning JWS and Federated Farmers seeks no changes to Appendix N. Part C of the Appendix N outlines the auditing requirements. Going forward, no farm can operate *any* intensive winter grazing operation, permitted or otherwise, without a certified farm environmental management plan.

2.6. I also note that at no point have I indicated that it will be a simple exercise to obtain a certified farm environmental plan. Mr McCullum-Clark states that I and others implied this (para 113), but does not explain where or when the implication was. For some properties it may be a simple exercise, but for others it may require substantial investment in systems and practice change. In my opinion it is likely that a small percentage of farming locations may not be able to obtain a certified farm environment plan for intensive winter grazing and the land may need to be put to other uses and/or alternative wintering solutions sought.

2.7. Mr McCullum-Clark (para 119) appears to believe that the greater the area in IWG, the higher the risk. I find this odd. The plan takes a physiographic approach to understanding environmental risk, acknowledging that risk is not linearly distributed throughout the underlying environment. If appropriately managed, an increased area of IWG on a farm can reduce the environmental risk through reducing the overall intensity. Ms Hunt has outlined some examples from her experience which I have referenced in 7 above. Mr Wilkins has given others. Resource consent processes are thought of differently by farmers than by planners – to a farmer a resource consent process is cost and time better spent on farm making improvements, and the relatively arbitrary area restrictions (without a fair flexible pathway) could result in perverse environmental effects.

2.8. Mr Burrell (para 35) stated that the reason for the 10% limitation is to manage diffuse pollution, presumably N and P. I consider this a surprising assumption, given how the physiographic approach attempts to model risk across Southland. As with the above reply, it is not a linear matter. Also, he does not consider the perverse effects of 10%, or any limitation, in how it may alter crop type and farmer behaviour to produce a worse environmental outcome than the flexibility of a greater area, as Ms Hunt and Mr Wilkins have discussed.

3. **OTHER WINTER GRAZING**

3.1. The planners agreed that the pSWLP does not cover pasture-based wintering. Concern was expressed that, if poorly managed, pasture-based wintering could have similar effects to crop-based wintering.

3.2. I agree with the s274 evidence of Ms Jordan and Ms Taylor that it must first be established whether pasture-based wintering justifies regulatory intervention.

3.3. Whilst I believe there is a need for the pSWLP to manage the risks of pasture-based wintering, the discussion in the evidence of the parties shows the difficulties in establishing an effective definition and rule regime. Mr Willis has outlined that not all winter grazing on pasture has the potential to contribute equally to adverse water quality outcomes, and as such, Mr Farrell's proposed definition would put all farming in Southland during winter into Rule 20A as well as Rule 20, when these rules (or part of them) were designed for forage crop wintering which has a higher risk profile. Pasture based wintering also requires more area than forage crop wintering, and therefore, area-based restrictions and limits do not suit this activity, and the risks differ based on physiographic zone and farm system type as well.

3.4. In recommending a definition in my evidence in chief, I wanted there to be consistency with the NES-F and pSWLP, which use activity-based approaches, linking it to functional farm activities, namely the grazing of types of stock on crops. Ms Jordan proposed a similar definition.

3.5. Two witnesses have responded with different definitions. I address these below.

3.6. Mr Farrell and Mr McCullum-Clark prefer pugging based definitions:

a) Mr Farrell: "exposure of soil and / or pugging of the soil" (para 28, EiC)
b) Mr McCullum-Clark: "Stock being break-fed pasture and supplementary feed, such as baleage, during the months of June, July and August, with the result being that the pasture is de-vegetated or damaged to the extent that more than 50% of the paddock area requires the resowing of the pasture"

3.7. This is not consistent with the other definitions on this type of activity (in the NES-F and pSWLP), going against the scheme of these definitions, as no other definitions of this type have a pugging or devegetation test. It also introduces uncertainty into the definition. Moreover, whether or not a paddock gets devegetated or damaged is largely a function of the weather, and the future weather cannot be predicted at the time a paddock is being prepared or planned for winter grazing activity (planning and setting out that occurs many months ahead). With this definition, a paddock could be a normal grazing paddock (with none of the intensive winter grazing setback and

buffer requirements) right up until the point it became wet, and by then, in the absence of buffers (because the definition is based on a future event), the environmental damage is done.

3.8. The question has arisen about the use of a farm environment plan certifier in the definition. I originally thought of this as I cannot predict future farm activities, and did not want to inadvertently capture activities that are of no or low risk in the broad activity based definition, nor did I want to rely on subjective pugging or de-vegetation tests. Similarly, I did not want to see farm activities that may be higher risk excluded from management on semantics. I believe that the farm environment plan process is an appropriate way of testing this.

3.9. I note that pasture-based wintering, including supplementary feeding of sileage or baleage, is different to forage crops, and that an area restriction does not make sense in this context. For farmers, feeding stock through the winter is non-negotiable, and if crops fail or are low yielding, area restrictions on pasture-based wintering will have a perverse effect as stock will need to be spread out over more land. To me the critical distinguishing feature between stock grazing on pasture during winter, and 'wintering', is when the level of supplementary feeding from whatever source is significantly more than what the pasture is providing

3.10. Mr Willis has attempted a definition whereby if animals are being fed more than 50% supplements on a pasture paddock, then this activity will count as winter grazing on pasture. This approach is consistent with the activity-based approach I prefer for these types of rules, but it does introduce some uncertainty. After discussing the matter with farmers familiar with wintering on pasture, the 50% could also be expressed in tonnes of dry matter or equivalent supplementary feed. A threshold of 8 tonnes per hectare of dry matter or equivalent was suggested. This would have the same general effect but be more practical for farm environment planners, certifiers, and farmers themselves.

3.11. Mr Willis also recognises the difficulties in establishing a rule regime for this activity, given the technicalities of it, and prefers for it to be a requirement for farm environment plans, noting that all farms over 20 hectares in Southland will require one.

3.12. My previous attempts at establishing a definition for the activity have involved reference to the farm environment plan regime, so I support the approach of providing it as an additional matter in Appendix N. I have recommended changes to amend Mr Willis' 50% test to where "supplementary feeding is more than 8 tonnes per hectare dry matter or equivalent".

3.13. I cannot recommend a separate standalone definition for 'high risk winter grazing', 'wintering on pasture', or support the proposed Rule 35B within the planning JWS at this point in time.

4. RULE 25A CULTIVATION

4.1. My evidence in chief challenged the lack of any ability to maintain or renew pasture on land with a slope of greater than 20 degrees as a permitted activity. Federated Farmers seeks some ability to undertake pasture maintenance and renewal by low-risk methods on this land.

4.2. There is substantial rebuttal of my request for changes to Rule 25 to enable no till and minimum till cultivation on land above 20 degrees. I respond below.

4.3. Mr McCullum-Clark outlines the hearing panel conclusion on the matter, and in doing so, identifies the heart of the issue. I consider that the hearing panel statement [216] contains an error – the s42A report recommended that 'other' (i.e. non mechanical) forms of cultivation be allowed on land up to 25 degrees. The s42A report did not recommend a 20-degree limitation (section 7.705 s42A report).

4.4. Mr Farrell also makes a similar point, drawing on both the hearing panel and s32A reports, which I have addressed above. He also comments that there is no technical evidence presented to support my conclusions. Mr Young has outlined their experience with minimum and no-till cultivation on steeper land, and has clarified where the risk with land use lies. The risk is not with no-till or minimum till cultivation, the risk is what happens to land after, such as if it is put into forage crop or intensively grazed in some way. Both of these activities are now regulated by resource consent on this type of terrain, which to me, removes the risk.

4.5. At Para 25 I believe Mr Farrell acknowledges this above point, when he states he – 'recall[s] the primary intent of the cultivation rule being about managing farming activities which increase the loss of sediment to reduce risks on water quality'. This is broader than the specific effects of cultivation activities collectively, and does not begin to indicate that any assessment of the nuances of different types of cultivation practice were assessed.

4.6. Mr Burrell outlines his concerns with my proposal for Rule 25, but I believe, in doing so, arrives at something of a solution to the problem. As currently drafted, and throughout its development process, Rule 25 (and the agricultural rules as well) never contained a buffer size greater than 10 metres. Ms McArthur has recommended a 20 metre setback on slopes above 10 degrees, based on an extensive review of the background literature. Mr Burrell indicates (para 23) that greater buffers in Rule 25 would result in better protection of water quality and ecosystem health. However, he also indicated that increased buffers would result in a loss of productive farmland. This is true if he were commenting on the agriculture Rules 20 or 20A where the buffers are more permanent, but he is commenting on the temporary and specific activities of cultivation, where the buffers are not a permanent feature. Buffers for cultivation activities exist for the purposes of managing or mitigating the specific effects of cultivation, which also again, should be limited to the specific effects of that type of cultivation. Once cultivation is complete and the pasture established and growing, the more general buffer restrictions from the agricultural rules, and other rules and regulations, apply.

4.7. Mr Farrell states (para 32) that he knows of no regional plans that allow minimum or no-till cultivation on slopes between 20 to 30 degrees (or above 20 degrees in general) as a permitted activity. I undertook a quick analysis of the suite of regional plans across New Zealand to check the validity of his statement, and I believe he is wrong. Most, if not all regional plans in New Zealand allow cultivation on land above 20 degrees as a permitted activity, with some buffering or other requirements . I have outlined the rule framework from across regional plans in New Zealand in the table below:

Region	Plan provision	Description of provision	Activity status with respect to Mr Farrell's statement
Northland	C.8.2. Land preparation (does not include direct drilling)	Permitted , regardless of slope, with a 5 metre buffer on all but erosion-prone land and in catchments of outstanding lakes, dune lakes, or high ecological value Controlled activity for erosion prone land.	Direct drilling is permitted on all slopes.
Auckland	Ancillary farming earthworks	Cultivation is permitted except in significant ecological areas and water supply management areas, where it is either a restricted discretionary or discretionary status.	Permitted in most areas
Waikato	5.1.4.12 Soil cultivation adjacent to water bodies	Permitted, unless it is within 2 metres of the bed of a river or lake Discretionary otherwise	Permitted, no slope restrictions
Bay of Plenty	LM R15 (Rule 5)	Permitted up to 25 degrees Restrictions on cultivation within 0-10 metre buffers of waterways and lakes	Permitted up to 25 degrees, discretionary otherwise
Gisborne	6.2.9(3)	Permitted, except within 5 metres of waterways, 1m of open drains	Permitted
Hawkes Bay	No rules		Permitted
Taranaki	No rules		Permitted

Manawatu-Wanganui	13-4 to	The rules are based on area of cultivation, rather than slope. Small areas of cultivation with 5-10m buffers related to the type and values of the stream are permitted Cultivation within 10m of rivers, lakes, and wetlands within a Hill Country Erosion Management Area is a restricted discretionary activity.	Permitted, in the context of Mr Farrell's question.
Wellington		Permitted activity on all slopes provided buffers of 5m are provided (10m around natural wetlands	Permitted
Marlborough	No rules		Permitted
Tasman		A 20 degree limitation, but their definition of cultivation does not include direct-drilling, spray and pray, oversowing	Probably permitted
West Coast	No rules		Permitted
Canterbury		Cultivation or spraying of slopes on land less than 25 degrees is a permitted activity. However there is no definition of 'cultivation', and part of the plan may exclude direct drilling, spray and pray.	Probably permitted
Otago	No rules		No land plan

4.8. On this basis, contrary to Mr Farrell's assertion, almost all regions have a permitted activity regime for cultivation on all slopes. Some regions have buffer requirements, some have no rules at all. Where there is a buffer requirement it is generally smaller than those proposed for Southland. This applies even for erosion prone regions like the Manawatu-Wanganui and Gisborne. The Bay of Plenty is the only place with a 25 degree limitation, but I note that their definition of cultivation is not clear on if it includes or excludes minimum or no-till activities.

4.9. At para 138 Mr McCullum-Clark states that the 20-degree threshold is relatively arbitrary, which I agree with, noting the original proposal for it to be a 25 degree threshold (for direct drilling). However, he also states that that there is no technical evidence that suggests sediment loss risk will be managed without such a threshold. As far as I am aware, no one, including myself, has ever proposed designing the rule without thresholds. What I oppose is the arbitrary threshold that pushes an activity with minimal effects into an unnecessary consenting regime, especially when no technical evidence has been presented that indicates the specific effects and risks of different types of cultivation.

4.10. The other difficulty I have with an effects-based analysis of the rule is that it exempts cultivation for forestry purposes. Instead, this is managed under the NES-PF, which, for the most part in Southland is a permitted activity (green zone). The preparation of land for forestry can be equally or more intensive as the most intensive forms of mechanical cultivation. The pSWLP thus permits activities with greater effect than those it restricts.

4.11. The perverse effect of this may be to drive hill country land use from pasture to forestry, likely carbon forestry, regardless of any assessment of whether that land, or that catchment is appropriate for forestry, including an assessment of the sedimentation effects of that forestry.

4.12. I have identified two final issues with the rule:

a) it currently prevents any renewal or maintenance of pasture within the specified buffers. If these are not allowed to be renewed from time to time, they will grow weed and pest species, and may fail in their purpose as functioning buffers. The rule must provide some ability for them to be renewed

using minimum or no till techniques on a longer cycle. I have proposed additions to achieve this.

b) it currently requires a buffer for arable land use (within the meaning of s217B RMA) on flat land (less than 5 degrees slope) with no evaluation. In this case, the additional 2 metre setback requirement, on top of the initial 3 metres, will result in a loss of food and seed production without any demonstrable environmental improvement. In the case of flat arable land use, there is no stocking, and no risk of overland flow. I consider this to be a relatively minor matter which is easily resolved with a simple addition to the rule.

4.13. Having reflected on this matter, I consider that it could be resolved as follows:

a) Keeping the current definition of cultivation.

b) Providing an additional section that covers pasture maintenance by direct-drilling, oversowing, and spraying on land with a slope greater than 20 degrees on a five year or greater cycle only.

c) Providing for pasture maintenance and renewals within buffers once every 5 years by minimum and no till techniques.

d) Maintaining the 3m buffer for arable farms on flat land.

4.14. The proposed wording is set out in the memorandum to be be filed by Ms Carruthers on 22 February 2022.

5. NATURAL WETLANDS

Definition

5.1. Ms Maciaszek acknowledges (para 36(d)) that the definition of vegetation clearance in the NES-F would include pest-species, and by her interpretation, of vegetation clearance automatically leading to a non-complying activity status (interpretation I disagree with), stocking of a natural wetland to remove pest plants, even if the wetland was artificially created, would be non-complying as well. The growth of weeds in natural wetlands across Southland on public and private land will create a future issue. I note that the Department of Conservation may have an exemption from this requirement under s4(3) RMA.

5.2. In rebutting this, I consider it helpful to consider the two definitions of natural wetland, because they do not easily align, and the regional plan definition does not replace the NES-F definition in the matters it does not cover, as on some matters, I consider the pSWLP definition to be more lenient than the NES-F. Section 43B RMA does not allow this to be the case.

a) NES-F definition (from NPS-FM):

natural wetland means a wetland (as defined in the Act) that is not:
(a) a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former natural wetland); or
(b) a geothermal wetland; or
(c) any area of improved pasture that, at the commencement date, is dominated by (that is more than 50% of) exotic pasture species and is subject to temporary rain derived water pooling

b) pSWLP definition:

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.

5.3. I consider that the pSWLP is more stringent than the NES-F on its lack of exclusion of all artificially constructed wetlands. It is not clear how wetlands constructed for conservation purposes, whether for offsetting or not, are treated. It is also not clear, or potentially more lenient than the NES-F on how it treats artificial watercourses and drainage canals draining into or from natural wetlands, noting the other rules in the NES-F that restrict activity in this area. It is potentially more lenient than the NES-F on its inclusion of wet pasture, damp gully heads, and pasture containing patches of rushes, but this is a matter of interpretation and mapping of the wetlands on the ground, as all of these Southland matters could fit within the 50% improved pasture

exclusion in the NES-F definition. I thus consider the Southland definition to be a more practical, and workable definition of what the NES-F may have been attempting to define.

5.4. My practical concern has been not wishing to see the more stringent components of the NES-F definition that relate to wet, damp pasture or pasture with rushes being inadvertently captured in the definition of 'natural wetland', and thus requiring stock to be excluded from them. If the pSWLP definition presides, along with farm environment plan mapping that will practically show the boundaries of natural wetlands, then this problem is substantially removed, however, I note that the main Ministry for Environment protocols and guidelines for wetland mapping do not use the Southland definition. If these are used in the absence of a requirement to look at regional definitions, in this case from the pSWLP, there is a risk of capture of pasture as natural wetland. I have submitted to MfE on this issue in their current consultation on the issues with the definition.

5.5. There is a residual risk of what happens to natural wetlands created on private land for conservation purposes. The NES-F definition excludes these, but the pSWLP definition does not fully exclude all examples of them (it excludes some). Stock would be required to be excluded from these types of natural wetlands, under the current pSWLP definition. The risk is that where stock are required from time to time in these areas, such as to manage weeds, that they will not be allowed, due to the non-complying rule. This creates a substantial disincentive to setting aside additional land for wetland creation (over and above any land that is used in offsetting, which would still be covered by the non-complying rule), something that is substantially needed across Southland. A definition change that includes the NES-F wording may fix this issue. I propose to add a new (g) to the end of the list:

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

5.6. The definition change I suggest would go some way to resolving the concern for created wetlands, but does not fully address it.

5.7. The remainder of the concern is as addressed in my EiC, where I outlined that if a farm environment management plan (or similar) in Rule 70 (ca) provided for an assessment of the effects of sheep grazing unfenced from waterways in certain areas, then I could see no reason for a similar assessment of the viability of grazing to occur within natural wetlands. Dr Burrell acknowledges this in his reference of Reeves and Champion (2004), outlining the variability and need for a site-by-site assessment based on conservation outcomes. That need for a site-based approach is the logic behind my proposed Rule 70 (cb), which follows the same approach as in Rule 70(ca) I see no ecological reason to allow light stocking by sheep on the banks of rivers and lakes, provided an assessment determines that the stocking is consistent with their values, and then not extend the same regime to natural wetlands.

Maintenance of natural hazards

5.8. I agree with Ms Maciaszek (para 45) where she wishes to restrict the scope of the non-complying activity to land drainage only. I strongly disagree with Ms Kirk and Mr Farrell, as their relief in the absence of definition changes would create the problems I am trying to avoid. I should note that I have no issues with preventing the loss of natural wetlands through land drainage through non-complying activity status. What concerns me is with the lack of a definition of 'land drainage'. If land drainage is interpreted to mean the complete drying of, or reduction in extent of a natural wetland below its natural range through a human activity, then I have no issues. However, if the Rule is interpreted as applying to any activity involving a drain, or drainage system that affects a wetland, then the issue arises. The question is purpose.

5.9. I believe Ms Maciaszek has identified some of this problem, but wishes to work around making a definition change. She notes the general conditions on natural wetland activities in regulation 55 of the NES-F, which apply as a permitted activity status. Assuming 'land drainage' cannot mean maintenance of a wetland in its natural range through management of a drain (noting that the pSWLP definition excludes artificial watercourses and drainage canals from inclusion in wetlands), the relatively practical permitted activity requirements of regulation 55 of the NES-F, and the slightly more stringent (but still permitted) Rule 41, I now consider that most of the likely natural hazard maintenance activities are provided for.

5.10. I have been considering my concerns about the maintenance of natural hazards in light of Ms Maciaszek's comments. The practical scenario I am trying to avoid is where a natural wetland and the catchment around it cannot be touched except under the non-complying rule. A natural wetland in an otherwise modified environment has a water level range on it, which is moderated and influenced by the drain leading to, and from, the wetland. The wetland expands in size during wet periods, and reduces in size during dry periods, but never entirely disappears, nor does it entirely take over and expand across the paddock.

5.11. However, if no work is allowed to be done to maintain the drainage into and out of the wetland, the wetland could either dry up fully (if the drainage into it is blocked), or expand out across the paddock if the drain leading out of it fills in, either over time due to a lack of maintenance or due to flood events.

5.12. It cannot have been the intention of the plan to allow the expansion of wetlands across productive pastoral land, at least, not without an agreement with the landowner and/or willing buyer-willing seller purchase of the land. The difficulty comes because the term 'land drainage' is not defined and potentially subject to interpretation.

5.13. As this complex suite of regulations and rules will be applied on the ground by landholders, I think that a practical guidance document will be required, particularly in respect of the NES-F regulation 55 and pSWLP Rule 41 requirements. I think it will be helpful to get anyone with a natural wetland on their property into the routine of understanding, monitoring, and recording its natural range, extent, and levels, to achieve compliance under this plan.

5.14. I disagree with Ms Kirk (para 38-40). Ms Maciaszek has attempted to achieve consistency between the NES-F and the pSWLP, with particular reference to the concerns I raised around how minor activities such as the maintenance of natural hazards would be treated. If her recommendations were to be accepted, the 'for the purposes of land drainage' purpose of the rule would go, and thus Rule 51 would make natural hazard maintenance a non-complying activity. This would conflict with the NES-F requirements which give this a permitted activity status, and may require the direct insertion of these (and other activities that have a permitted status in the NES-F and may also require minor diversions in natural wetlands). This would counter

Ms Maciazsek's recommendations to avoid plan complexity and inconsistencies with the cross-references.

5.15. Ms Kirk and Mr Farrell's changes would also override the requests of Ms Davidson, who has stated (para 19, EiC) that the non-complying activity status for land drainage would still allow other activities, such as restoration of wetlands, scientific research, construction and maintenance of wetland utility structures, and maintenance and operation of specified infrastructure and other infrastructure (some of these have NES-F clauses).

5.16. I also think Ms Kirk has erred with her planning analysis as the NES-F overrides the NPS-FM on this point. The NPS-FM does not set rules for natural wetlands, but the NES-F does. Clause 52 of the NES-F requires the drainage of natural wetlands to be a non-complying activity (which Ms Maciaszek's recommendations achieve). Clause 55 requires certain earthworks, vegetation clearance, and the taking, use, damming, diversion, and discharge of water within a 100m setback from a natural wetland also to be non-complying activities, *but only where they do not have another status under [the] subpart.* I can thus see no reason for the pSWLP to be more stringent than the NES-F in this regard.

6. **SACRIFICE PADDOCKS**

6.1. Mr McCullum-Clark acknowledges that there is an issue with the inconsistent treatment of feedlots between the NES-F definition (which excludes sacrifice paddocks), and the pSWLP definition, which includes them. He has proposed a new Rule 35B, modelled off the existing Rule 35A, to address this. I largely agree with this Rule, and this approach. I had never made a suggestion (as stated in para 144c) to remove sacrifice paddocks from direct control of the pSWLP, instead, as sacrifice paddocks are usually indistinguishable from intensive winter grazing, I thought they would have been captured under Rule 20A, along with however other wintering on pasture is managed. There is a high environmental risk from sacrifice paddocks, similar to that from forage crop grazing, which needs to be managed, however, the area of land in question should be small. The need for a separate rule arises because sacrifice paddocks can occur at all times of the year, not just winter.

6.2. In the agricultural context, sacrifice paddocks are a safeguard and last-resort option, required when all other plans fail. This could be due to extreme weather, such as dramatic flooding or snow, a failure on some other part of the farm system, or an outside event such as a disease outbreak requiring stock to be segregated or movement-controlled. The critical feature separating them is that they are not part of regular practice, or even the plan-b options that most farmers consider. If they are a part of regular practice, they would be a feedlot / pad, and the conditions of Rule 35A apply.

6.3. Thus I agree with Mr McCullum on the need for a separate Rule. The challenge is achieving an acceptable definition of what a sacrifice paddock is to avoid intensive winter grazing practices being inadvertently captured as a sacrifice paddock during the winter months, or, conversely, intensive winter grazing practices using the sacrifice paddock rule as a loophole. The NES-F definition is problematic in this regard because it is so similar to the definition of intensive winter grazing in practice, but rather than introduce a Southland specific definition of 'sacrifice paddock', I have considered Mr McCullum's proposed Rule 35B and propose further changes to address the above issues.

6.4. I consider that the limitation on use as a forage crop constrains the usage of the sacrifice paddock usage to unforeseen scenarios, separate to normal farming activity. I have also recommended making the buffers and setbacks consistent with the most stringent of the farming rules in 20 and 20A, by providing for a 10 metre buffer and setback on flat country (below 10 degrees), and for steeper country, going with Dr Burrell's recommendations for 20 metre setbacks.

6.5. These amendments are set out in the memorandum to be filed by Ms Carruthers on 22 February 2022.

7. MAPS OF CATCHMENTS IN NEED OF IMPROVEMENT

7.1. The planning JWS uses the term 'catchments of waterbodies in need of improvement'. This wording was chosen to be more of an incentive for action than the term 'degraded waterbodies'. All planners including Mr Farrell supported this term.

7.2. Mr Farrell has now changed his stance (para 90) and wishes to call them ‘degraded waterbodies’. Aside from the change in position, I do not consider that the term ‘degraded waterbodies’ should be used except as the end result of a full plan change that implements the NPS-FM: 2020, as ‘degraded’ has a specific meaning. In Southland, this plan change has not yet occurred. I cannot support Mr Farrell’s requests due to this.

7.3. I support the recommendations of Dr Depree and Mr Willis with respect to the intent and detail of the mapping.

7.4. I indicated at the planning expert caucus that I thought that the mapping exercise would result in almost all of Southland outside of Fiordland National Park being identified as in need of improvement, and the various approaches to mapping have born this out.

8. EPHEMERAL FLOW PATHS

8.1. The planning JWS agreed on how to handle ‘ephemeral flow paths’. Mr Farrell (para 55) and Ms Kirk (para 10) have changed their position on this. This is not a trivial matter, as the planning JWS carefully considered its provisions in light of the definitions, and a definition change now could unravel substantial aspects of this. Mr Farrell and Ms Kirk have not provided evaluation and analysis of the potential perverse outcomes of their position change.

8.2. I support the s274 evidence of Mr Willis (part B) on this matter.

9. MINOR CHANGES

9.1. Mr Willis (page 36, s274 evidence) has recommended minor changes to the planning JWS version to give effect to his recommendations. I support these changes.

10. FINAL TRACKED CHANGE PROVISIONS

10.1. The final tracked-change provisions are set out in the memorandum to be filed by Ms Carruthers on 22 February 2022.

Peter Gordon Wilson

22 February 2022