

**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 EVIDENCE OF
PETER GORDON WILSON
ON BEHALF OF FEDERATED FARMERS
ON
SECTION 274 INTERESTS**

4 February 2022



Counsel:
B S Carruthers
Shortland Chambers
021685809
bcarruthers@shortlandchambers.co.nz

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 addressed in 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 evidence

- 1.4. This evidence relates to Rule 35A and the related definition of feed lot / pad.

2. RULE 35A AND DEFINITION OF FEED LOT / PAD

- 2.1. Rule 35A governs feed pads / lots within the Southland region. It sets a permitted activity threshold for some feed pads / lots, along with a discretionary status for activities that do not meet the permitted conditions.
- 2.2. The planning JWS recommends changes to this, to remove the limitations on stock numbers, and to remove the exclusion on ephemeral flow paths (thus including ephemeral flow paths by inference in the wider definition of sub-surface drains, lakes, rivers, artificial watercourses, modified watercourses, or the coastal marine area). The planning JWS recommended no other changes to the rule.
- 2.3. However, I have recently become aware of issues in the interpretation of the rule during processing of consent applications under the operative and proposed plan (the pSWLP). At issue is how to process a consent application for a farming operation which includes intensive winter grazing, when at the end of the winter season, paddocks require resowing. I would have expected this to be processed under Rule 20 and Rule 20A— Farming, although some applications may also trigger Rule 25 - Cultivation. However, Environment Southland seem to be also processing these applications under Rule 35A as well.

- 2.4. At the time of the expert conferencing I had understood Rule 35A was used for feedpads/lots only, which is an entirely different agricultural activity – not related to pastoral agriculture. This interpretation is inconsistent with the nature of Rule 35A, which was intended for non-pastoral agriculture, for instance, its permitted activity condition requiring a sealed and impermeable base (Rule 35A(a)(iv)). Sealing paddocks is not a feature of pastoral agriculture.
- 2.5. If the Council maintains its recent approach the basic farming function of resowing grass will be pushed into the situation of requiring discretionary consent. This is in contrast to Rule 20 and Rule 25, which set up a specific regime for pastoral farming, including intensive winter grazing, and resowing as a permitted activity.
- 2.6. To investigate this conflict I looked to both the NES-F and the pSWLP. Rule 35A, and the pSWLP definition of feed pad / lot, are inconsistent with the NES-F definitions on the same matter. The central issue is the treatment of ‘sacrifice paddock’:
- a) The pSWLP definition of feed pad / lot *includes* sacrifice paddocks in the definition of feed lot / pad but does not provide a definition of sacrifice paddock.
 - b) The NES-F definition of feedpads *excludes* sacrifice paddocks.
 - c) The NES-F *includes* a definition of sacrifice paddocks
- 2.7. This sets up opposing regimes.
- 2.8. I outline the respective definitions below (the underlining is mine for emphasis):
- a) NES-F definition of feedlot:
feedlot means a stockholding area where cattle—
 - (a) *are kept for at least 80 days in any 6-month period; and*
 - (b) *are fed exclusively by hand or machine*
 - b) NES-F definition of stockholding area:
stockholding area—
 - (a) *means an area for holding cattle at a density that means pasture or other vegetative ground cover cannot be maintained (for example, feed pads, winter pads, standoff pads, and loafing pads); but*
 - (b) *does not include an area used for pastoral purposes that is in the nature of a stockyard, milking shed, wintering barn, or sacrifice paddock*

- c) NES-F definition of sacrifice paddock:

sacrifice paddock means an area on which—

- (a) *cattle are repeatedly, but 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*

- d) pSWLP definition:

Feed pad/lot - A fenced in or enclosed area located on production land used for feeding or loafing of cattle or deer to avoid damage to pasture when soils are saturated, and which can be located either indoors or outdoors. It includes 'sacrifice paddocks', wintering pads, stand-off pads, calving pads, loafing pads, and self-feed silage storage facilities

2.9. For completeness I note that:

- a) the pSWLP definition above does not include a time-period but that is instead found in Rule 35A(ii) ('the permitted activity status')- stating "three continuous months". This is similar to the 80 day in any 6-month period test in the NES-F definition.
- b) similar to Rule 35A, the NES-F activity standards (clauses 12-14) set up a permitted-discretionary framework in much the same way.

2.10. The pSWLP definitions were written before the NES-F added clarity and national consistency on these matters. I prefer the approach taken in the NES-F.

2.11. It does not make sense to me to put activities that are normally associated with pastoral agriculture into a rule designed for non-pastoral agriculture. Sacrifice paddocks, or any area of pasture that requires resowing at the end of the winter season, are regulated under Rule 20 and Rule 25, and in some cases, will require resource consent, as well as a certified farm environmental management plan.

2.12. By contrast, wintering, or stand-off pads, are something that farmers should be encouraged to install, or have installed already, where the farm system, animal health, or environmental risk, justifies it. The test of permeability and proximity to critical source areas means that some new wintering and stand off pads may require resource consent. In other areas of less risk, they fall under the permitted activity standard. Rule 35A provides an appropriate level of control over these pads.

2.13. However, Rule 35Aa(ii) currently places a three month time limit on the permitted activity use of feedpads/lots. This is problematic. The use of a feedpad cannot be predicted in advance, as this is weather and farm system dependent, and so, the time restriction makes no sense in this context. The scenario could arise whereby a feedpad used in dry years would be permitted (animals on the pad for under three months) but in wet years would require a discretionary resource consent (animals on the pad for over three months), with no difference in environmental outcome given the other conditions that need to be met. The weather cannot be predicted in advance. The perverse effect of the rule is that it would likely be better (environmentally and potentially for animal welfare) to hold animals on the feed pad for longer in a very wet spring, but the rule currently requires them to be turned out to maintain permitted activity status.

2.14. I consider that:

- a) the issue of inconsistency between the NES-F and the pSWLP can be resolved by deleting the reference to sacrifice paddocks in the pSWLP definition of feedpad / lot.
- b) the three-month time limit should be removed from Rule 35A (a)(ii) as future weather conditions cannot be predicted.

2.15. Further improvements to the drafting of the definition can be made by:

- a) adding the 'exclusively feeding by hand or machine' phrase from the NES-F, which in my view is the critical feature separating pastoral agriculture from non-pastoral agriculture.
- b) as a consequence, removing the "self-feed silage storage facility" as this is better covered in the NES-F definition of "exclusive feeding by hand or machine".
- c) broadening out the reasons why such areas are used – rather than solely linking to saturated soils. For instance, non-pastoral agricultural activities may not have had any linkage to pasture to begin with and the feed pad / lot can never have been used to 'avoid damage to saturated soils'.

2.16. The amended version of the definition I recommend is below:

Feed pad/lot - A fenced in or enclosed area located on production land used for exclusive feeding by hand or machine ~~or loafing~~ of cattle or deer for instance to avoid damage to pasture when soils are saturated or for non-pastoral farming, and which can be located either indoors or outdoors. It includes ~~'sacrifice paddocks'~~, wintering pads, stand-off pads, calving pads, and loafing pads, ~~and self feed silage storage facilities~~ but does not include sacrifice paddocks.

Peter Gordon Wilson

A handwritten signature in black ink, appearing to read 'Peter Gordon Wilson', written in a cursive style.

4 February 2022

TRACKED CHANGES SOUGHT IN THIS STATEMENT OF EVIDENCE

Amend the definition of Feed pad / lot as follows:

Feed pad/lot - A fenced in or enclosed area located on production land used for exclusive feeding by hand or machine ~~or loafing~~ of cattle or deer for instance to avoid damage to pasture when soils are saturated or for non-pastoral farming, and which can be located either indoors or outdoors. It includes ~~'sacrifice paddocks'~~, wintering pads, stand-off pads, calving pads, and loafing pads, ~~and self feed silage storage facilities~~ but does not include sacrifice paddocks or winter crop paddocks.

Amend Rule 35A to remove clause a(ii):

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