

23/RC/75



Before Commissioner Jayne MacDonald

5 October 2023
10.00 am

Staff Report for Hearing

The recommendation in the staff report represents the opinion of the writer and it is not binding on the Hearing Commissioner. The report is evidence and has no greater weight than any other evidence that the Commissioner will hear and consider.

Hearing of Application – APP-20222765

Pahia Dairies Limited

Compiled by Jade McRae, Senior Consents Officer

Applicant: Pahia Dairies Limited

Application number: APP-20222765

Location: 171 Ruahine Road West, Riverton

Activities for consent: See Table 1 (below). A consent term of 9 years is sought for all consents.

Notification: The application was publicly notified on 23 February 2023.

Table 1: Consents sought

Consent type	Purpose
1. Land Use Consent	To use land for farming in the form of a dairy farm expansion
2. Land Use Consent	To use land for intensive winter grazing
3. Discharge permit	To discharge contaminants to land associated with the use of land for a dairy farm expansion and intensive winter grazing

1. Introduction

1.1 Status and purpose of this report

- 1.1.1 This report has been prepared under Section 42A of the Resource Management Act 1991 (RMA or Act) to assist the Hearing Commissioner in the hearing of the application for resource consent made by Pahia Dairies Limited. Section 42A allows local authorities to require the preparation of such a report on an application for resource consent and allows the report to be considered at any hearing conducted by the local authority.
- 1.1.2 In accordance with s42A (1A) and (1B), material contained within the application documentation is largely referenced rather than repeated where it is efficient to do so.
- 1.1.3 The purpose of the report is to assist the Hearing Commissioner in making a decision on the application.

1.2 About the author

- 1.2.1 My name is Jade Linda McRae. I am a Senior Consents Officer employed by the Southland Regional Council. I have been employed by the Council firstly as a Consents Officer, and now Senior Consents Officer, since January 2019.
- 1.2.2 I hold the qualifications of Bachelor of Science majoring in Zoology and Psychology and a Certificate in Sustainable Nutrient Management in New Zealand Agriculture (intermediate Overseer). I am an accredited decision-maker through the Ministry for the Environment Making Good Decisions course and an Associate member of the New Zealand Planning Institute.
- 1.2.3 I have been involved with the application since the application was lodged and received by Council on 7 December 2021. I have also visited the site on 25 May 2022.
- 1.2.4 For completeness, I have read the Environment Court of New Zealand Practice Note 2014 Code of Conduct for expert witnesses and agree to abide by it.

1.3 Information relied on in preparation of this report

- 1.3.1 In preparation of this report I have had regard to the following documents:
- resource consent application;
 - report commissioned under Section 92(2) of the RMA;
 - the submission on the application;
 - relevant statutory instruments including:
 - Resource Management Act 1991 (RMA or Act);
 - National Environmental Standards for Freshwater Regulations 2020 (NES-F);
 - National Environmental Standards for Sources of Human Drinking Water Regulations 2007 (NES-SHDW);
 - National Policy Statement on Freshwater Management 2020 (NPS-FM);
 - Southland Regional Policy Statement 2017 (RPS);
 - Regional Water Plan for Southland, 2010 (RWPS);
 - Proposed Southland Water and Land Plan, 3 April 2018 (Decisions Version – with Appeals) (PSWLP);

- Environment Court Decisions on the Proposed Southland Water and Land Plan;
- Te Tangi a Tauria (Iwi Management Plan) 2008.

1.4 Attachments

1.4.1 The following attachments form part of this report:

- Attachment 1: Irricon Resource Solutions OVERSEER Nutrient Budget Review Report on behalf of Council
- Attachment 2: NZALA submission opposing application
- Attachment 3: Applicant response to NZALA submission opposing application
- Attachment 4: Section 99 Pre-hearing report
- Attachment 5: Submitter response to applicant's response to the NZALA submission opposing application
- Attachment 6: Section 41D Application to strike out NZALA submission
- Attachment 7: NZALA submission in relation to applicant's strike out application
- Attachment 8: Applicant's submission in response to NZALA's submission to the strike out application
- Attachment 9: NZALA further memorandum in response to the applicant's submission relating to the strike out application
- Attachment 10: Decision on section 41D strike out application by Pahia Dairies Limited
- Attachment 11: Draft consent conditions

2. The application and procedural matters

2.1 The proposed activities

2.1.1 Consents have been sought as follows:

- Applicant: Pahia Dairies Limited
- Application Number: APP-20222765
- Activities for consent is sought:
 - Land use Application:**
To use land for farming in the form of a dairy farm expansion.
 - Land use Application:**
To use land for intensive winter grazing
 - Discharge Application:**
To discharge contaminants to land associated with the use of land for an expanded dairy farm and intensive winter grazing

2.2 Summary of the Proposal

2.2.1 The proposed activities are outlined in the submitted applications. However, by way of brief summary, the applicant is proposing to expand the dairy farm incorporating a 100 ha block, known as the Browns block, into the dairy platform. It also requires land use consent to intensively winter graze cattle on 55 hectares of crop on slopes over 10 degrees. Both land use activities also require a discharge permit for the discharge of contaminants into or onto land associated with the land of land use to dairy farm land and the use of land for intensive winter grazing.



Figure 1: Map showing the locations of the Dairy Platform (red) and the Browns Block (blue) which is proposed to be incorporated into the dairy platform.

2.3 Regional Planning Framework

- 2.3.1 Resource consents for the above activities are required under the National Environmental Standards for Freshwater and the proposed Southland Water and Land Plan (pSWLP).
- 2.3.2 An application for resource consents was lodged with Environment Southland in accordance with these requirements.
- 2.3.3 I generally concur with these assessments and summarise these as follows in Table 2 below. I note that the rules in the Proposed Plan (PP in the table below), which are subject to appeal, are highlighted in grey.

Table 2: Activity Status of Consents Sought

Activity	Relevant rule	Activity status
To use land for farming in the form of a dairy farm expansion.	NES: Regulation 19(1): Conversion of land on farm to dairy farm land	Discretionary activity
	PP: Rule 20: The use of land for a farming activity	Discretionary activity
To use land for intensive winter grazing	NES: Regulation 27(1): Intensive winter grazing	Discretionary activity
To discharge contaminants to land associated with the use of land for dairy farming and intensive winter grazing	NES: Regulation 19(2): Conversion of land on farm to dairy farm land NES: Regulation 27(2): Intensive winter grazing	Discretionary activity

- 2.3.4 As the applications are bundled, the overall activity status is a **discretionary activity**.
- 2.3.5 Under Section 104B the Council may grant or refuse consent for a **discretionary activity**, and if it grants the application, may impose conditions under Section 108 of the RMA.

2.4 Further information request

- 2.4.1 Pursuant to Section 92(2) of the RMA, a request to commission an audit of, and report on, the Overseer nutrient budgets was sent to the applicant on 24 January 2023.
- 2.4.2 The applicant agreed to the commissioning of the report on 24 January 2023.
- 2.4.3 The report was received 2 February 2023 for the purpose of s92(2) is the OVERSEER Nutrient Budget Review report authored by Nicky Watt from Irricon Resource Solutions and is attached.

2.5 Notification and submissions

- 2.5.1 The application was publicly notified on 23 February 2023.
- 2.5.2 One submission was received. This is included in the appendices, and summarised as follows:

Table 3: Summary of Submissions

Submitter	Oppose/Support	Issues/comments	Decision Sought	Wish to be heard at hearing?
New Zealand Animal Law Association	Oppose	Inconsistent with the Animal Welfare Act. Potential adverse effects on proper and sufficient food. Potential adverse effects on the opportunity to display normal patterns of animal behaviour and accessing adequate shelter. Potential adverse effects on the cattle’s protection from significant injury or disease.	Decline the application	Yes

2.5.3 The applicant’s consultant/lawyer issued a letter to NZALA in response to the submission opposing the application on 24 April 2023 (attached).

2.6 Section 99 pre-hearing meeting

2.6.1 A pre-hearing meeting was held on 28 April 2023 in the Council Chambers at the offices of Environment Southland.

2.6.2 The meeting was chaired by Environment Southland Councillor Neville Cook, who holds Making Good Decisions accreditation. His report, as per Section 99(5), is attached.

2.6.3 The submitter did not attend the pre-hearing meeting.

2.6.4 At the pre-hearing meeting it was established that the following were points of agreement between the applicant and the Council:

1. Draft consent conditions were appropriate to avoid, remedy or mitigate adverse effects on the environment; and
2. The applicant was able to comply with the consent conditions as they were drafted.

2.6.5 There were no points of disagreement between Council and the applicant.

2.6.6 The pre-hearing meeting report issued on 8 May 2023 concluded the following points were still unresolved between the applicant and the submitter:

- a. As the Submitter was not represented at the pre-hearing meeting, there was no discussion of the matters contained in the submission in opposition to the Applicant’s consent applications.

2.6.7 The submitter issued a letter in response to the applicant’s response to the submission on 10 May 2023 (attached).

2.7 Section 41D strike out application

2.7.1 The applicant lodged an application with Council to strike out the NZALA submission on 17 May 2023 (attached) on the grounds that the submission discloses no reasonable or relevant case (s41D (1)(b)) and allowing it to be taken further would be an abuse of the hearing process (s41D (1)(c)).

- 2.7.2 The section 41D decision making was delegated to Independent Decision Maker Clare Lenihan.
- 2.7.3 NZALA filed a submission in relation to the strike out application on 9 June 2023 (attached). It noted the RMA definitions of “environment” and “effect” are broad, the RMA encourages public participation and that there is no authoritative case law confirming that animal welfare is irrelevant in RMA decisions.
- 2.7.4 The applicant filed a submission in response to NZALA’s submission 22 June 2023 (attached). It argues only one of the five tests in section 41D(1) needs to be met in order to strike out, just because Case Law emphasises the powers of strike out should be used sparingly does not preclude them from being used, and animal welfare concerns are not within scope of the RMA and are more appropriately addressed by the Animal Welfare Act.
- 2.7.5 NZALA filed a further memorandum in response to the applicant’s submission on 30 June 2023 (attached). It referenced an Environment Court case where adjoining property owners to a relocated Gun Club appealed the consents allowing the relocation on the basis the noise from the Club, particularly gunfire, would disturb and be harmful to the wellbeing of their stock. The Court concluded the granting of consents was appropriate subject to amendments to conditions addressing the animal welfare concerns raised. NZALA considers this case is evidence that animal welfare effects and concerns are a relevant matter for assessment under the RMA.
- 2.7.6 The application made by the applicant to strike out the NZALA submission was declined on 10 July 2023 due to the high threshold for striking out a submission not being met. The strike-out decision from Commissioner Lenihan is attached.

3. Assessment

3.1 Statutory Considerations

3.1.1 Section 104 of the Act sets out the matters to be considered when assessing an application for a resource consent. Section 104(1) of the Resource Management Act, 1991, states:

- (1) *When considering an application for a resource consent and any submission received, the consent authority must, subject to Part 2, have regard to:*
- (a) *any actual and potential effects on the environment of allowing the activity;*
and
 - (b) *any relevant provisions of:*
 - (i) *a national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*
 - (v) *a regional or proposed regional policy statement;*
 - (vi) *a plan or proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

3.1.2 Those matters which are relevant for this application are discussed in the following sections as follows:

- description of the receiving environment;
- assessment of the actual and potential effect of the activity on the environment;

- relevant provisions of the Regional Water Plan and the Proposed Southland Water and Land Plan;
- relevant provisions of the Southland Regional Policy Statement;
- relevant provisions of the National Policy Statements and National Environmental Standards;
- Part 2 of the RMA.

3.1.3 Section 108 provides for consent to be granted subject to conditions and sets out the kind of conditions that may be imposed.

3.2 Description of the affected environment

3.2.1 The existing site is an operational dairy farm located approximately 45 km west of Invercargill. Currently, the applicant holds discharge permit AUTH-20222602. This permit expires on 31 May 2032. The discharge permit authorises the discharge of dairy shed effluent from 1,000 cows onto 235 ha via low rate Larall system, umbilical system and slurry tanker.

3.2.2 The landholding is made up of the dairy platform and the Browns block. The applicant purchased the 100 ha Browns block from the neighbouring farm in 2017. This parcel of land had not been historically used as dairy farm land. Since the purchase in 2017 the applicant has been unlawfully using this block of land for grazing dairy cows as part of their dairy platform. Council’s Resource Management Officer issued an abatement notice on 15 September 2022 for unlawful farm expansion and dairy grazing without consent. The abatement notice remains in effect until the activity is legalised.

3.2.3 Soils and Physiographic Zones within the property are detailed in Table 4 below.

Table 4: Soil and Physiographic Zones with the Property

Soils	Soil Type	Vulnerability Factors		
		Structural Compaction	Nutrient Leaching	Waterlogging
	Te Waewae	Slight	Moderate	Slight
	Otanomomo	Minimal	Slight	Severe
	Colac	Minimal	Slight	Severe
Physiographic Zones	Lignite/Marine Terraces (39%) Bedrock/Hill Country (30%) Peat Wetlands (27%) Oxidising (4%)			

3.2.4 In the Lignite marine terraces physiographic zone the main risk is to the surface waterbody due to contaminant movement via overland and artificial drainage during heavy rainfall events. Nitrate leaching to groundwater is less of an issue for his zone due to high rates of denitrification.

3.2.5 In the Bedrock/Hill Country physiographic zone, the main risk is to surface waterbodies within the property because water (and contaminants) quickly flow down-slope through wet soils and as overland flow to nearby streams following high or prolonged rainfall. Groundwater within this zone is minimal and so groundwater contaminants are typically not a concern

3.2.6 In the Peat Wetlands physiographic zone, the soils are prone to waterlog and will often have a seasonal water table that sits close to the ground surface which results in ponding and overland

flow of water carrying contaminants to nearby streams. Soils and aquifers in this zone are mainly made up of organic material, making them very good at removing nitrogen via a process called denitrification. As a result, nitrogen build-up is not an issue for aquifers in this zone.

3.2.7 In the Oxidising physiographic zone, the main risk is contaminant movement to groundwater due to the deep draining soils and to surface water via artificial drainage where relevant. The soils in this zone may accumulate nitrogen during the drier months and then leach into the groundwater (and surface water where relevant) during the wetter months.

3.2.8 *Groundwater quality* – There is one groundwater monitoring bore on the property, which showed 0.01mg/L when it was tested once in June 2003. There are no other monitoring bores down gradient of the property due to its close proximity to the coast.

3.2.9 *Surface water quality* - there are no surface water monitoring sites within the vicinity or downstream of the property due to its close proximity to the coast.

3.3 Actual and potential effects

3.3.1 *Effects that must be disregarded (Section 104(2))*

3.3.1.1 Policy 39 of the proposed Southland Water and Land Plan states:

“When considering any application for resource consent for the use of land for a farming activity, the Southland Regional Council should consider all adverse effects of the proposed activity on water quality, whether or not this Plan permits an activity with that effect”.

As such, **all effects** related to the use of land for farming and the associated activities undertaken as part of the entire farming operation have been considered, and **no effects have been disregarded**.

3.3.2 *Effects to be considered (Section 104(1)(a))*

3.3.2.1 *Water Quality*

Land Use – Expanded dairy farm

The applicant has provided nutrient budgets of the current scenarios and proposed amalgamated scenario as required by Part B Section 4 of Appendix N in the proposed Southland Water and Land plan. These budgets have been created by Nicole Mesman, who is a Certified Nutrient Management Advisor, using the Overseer Software. Council commissioned Nicky Watt, who is a Certified Nutrient Management Advisor, to review the nutrient budgets for a “sensitivity check”. She has confirmed that the figures that have been used in the budgets are appropriate and that the Overseer Best Practice Data Input Standards have been followed.

Table 5 below shows the nutrient losses from the current dairy platform and current Browns block combined 2019-2020 season vs the proposed scenario of the Browns block amalgamated in to the dairy platform in OverseerFM version 6.4.3.

Table 5: Nutrient losses from the dairy platform and the Support blocks

	Dairy + Browns YE2020 (511 ha)	Proposed scenario (511 ha)	Difference (%)
N Loss to water (kg/ha/yr)	47	43	-8.5%
N Loss to water (kg/yr)	24,052	22,220	-7.6%
P Loss to water (kg/ha/yr)	1.8	1.5	-16.7%
P Loss to water (kg/yr)	945	764	-19.2%

Table 6 below outlines a number of standard good management practices (GMPs) and additional mitigation measures, which either currently occur or are proposed to be undertaken on-farm. Each GMP/mitigation has a varying degree of effectiveness in terms of nitrogen, phosphorus, microbes (e.g. *E. coli*) and sediment loss. The mitigation measures and GMPs for the landholding have been selected based on specific characteristics of the physiographic zones and key contaminant pathways present on farm. As a result, the application has identified the loss of P and N via overland flow and artificial drains is of higher concern than leaching of N to groundwater.

Table 6: Good Management Practices (GMPs) and mitigation measures which have either occurred or are proposed to be undertaken on-farm

Mitigation/GMP	Implementation timeframe	Mitigation measure or GMP?
Fence off all waterways.	Done	Good management practice
Plant all riparian margins.	Riparian Planting Plan currently in place	Mitigation Measure
Provide sufficient effluent storage to enable deferred application.	Pond is adequately sized.	Good management practice
Defer effluent application when soil conditions are unsuitable.	Currently happens.	Good management practice
Minimising run-off from tracks, gateways, and crossings by ensuring they are designed and maintained adequately.	More work planned on some culvert stock crossings.	Good management practice
Apply effluent at low rates and depths.	Low rate Larall used.	Good management practice
Decrease in crop area from permitted baseline of 64 ha to 55 ha.	14% reduction in crop area from first exercise of consent.	Mitigation Measure
Intensive winter grazing excluded from certain areas	Exclusion zone map as per appendix 2 of the LUC	Mitigation measure
A buffer of 5m between the waterways and crops	Applicant uses a 10m buffer for slopes over 10 degrees	Mitigation measure
Back fence stock off land that has already been grazed.	From first exercise of new consent.	Good management practice
Use portable water troughs and portable feeders when supplementary feed is fed on crop paddocks.	From first exercise of new consent.	Good management practice

Mitigation/GMP	Implementation timeframe	Mitigation measure or GMP?
Re-sow bare soils as soon as possible.	From first exercise of new consent.	Good management practice
CSAs remain uncultivated and un-grazed.	From first exercise of new consent.	Good management practice
Synthetic fertiliser use 190kg N/ha/yr maximum	Currently happens	Good management practice
Avoid applying fertiliser to excessively dry, saturated or when soil temp is less than 7 degrees.	Currently happens	Good management practice
Fertiliser applicators are spreadmark certified	Currently happens	Good management practice
Maintain Olsen P levels at agronomic optimum (30-35)	From first exercise of new consent.	Good management practice

Table 6 above shows which measures are identified as mitigations and which are GMPs. Overseer assumes some of the GMPs above are being used, which means some of the GMPs are already accounted for in Overseer. Others are not accounted for in Overseer and are therefore not taken into account by the budget, so they can be considered a mitigation as they represent something additional that the applicant is putting in place to mitigate the effects.

In light of the Government’s Science Advisory Panel’s review of the effectiveness of Overseer in assessing and predicting farm-scale nitrogen losses, and the conclusion that the current Overseer model is not fully fit for purpose in the way it is being currently used in the consenting process, mitigation measures are of the utmost importance when assessing this application. This is because they represent additional steps that can be taken to offset or compensate for the effects of the change or intensification of land use. Those crucial mitigations are:

- decreasing the intensive winter grazing (IWG) crop area by 14%;
- riparian planting five waterways, the southern boundary of the farm and a wetland area on Browns Block;
- Increasing the buffer of 10m minimum between surface waterways and IWG on slopes over 10°; and
- Implementing an IWG exclusion zone map to avoid paddocks which are unsuitable during winter.

Nitrogen

The budgets show that the N losses on the landholding are expected to decrease by 1,832 kg/year or -7.6% when the 100 ha Browns block is amalgamated into the platform in comparison with the current scenario.

Due to the nature of the landholding’s soils the risk of nitrogen leaching through the soil to groundwater is low. However, there is a risk of nitrogen being transported to surface water via overland flow and artificial drainage as it can build up during summer in the soil and become mobilised in late autumn and winter when soil moisture levels rise.

Phosphorus

The budgets show that the P losses on the landholding are expected to decrease by 181 kg/year or -19.2% when the 100 ha Browns block is amalgamated into the platform in comparison with the current scenario.

Decreasing its winter crop area is a key measure the applicant has offered to mitigate N and P losses to water. The applicant has confirmed the maximum crop area that was used for intensive winter grazing¹ within the reference period² on both the dairy platform and Browns block combined was 64 ha. This figure was comprised of 30 ha on the Browns block and 34 ha on the dairy platform. Therefore, the applicant can continue to intensively winter graze up to 64 ha of crop as a permitted activity under Regulation 29 of the National Environmental Standards for Freshwater 2020. However, the applicant has proposed to drop its area of crop for the entire landholding down to 55 ha, which is a 14% decrease. Wintering cows in paddocks can cause compaction of soil, which reduces soil porosity and hydraulic conductivity and increases bulk density, particularly on fine textured soils which have become water-saturated (Luo & Ledgard, 2021)³. Fallow soil can run off into surface waterbodies carrying with it phosphorus and microbial contaminants. As a result, a proposed consent condition has been included in the Land Use Consent for Farming which, if granted, would cap the intensive winter grazing crop area at a maximum of 55 hectares.

Microbes (e.g. E. coli) and sediment loss

Sediment and microbiological contaminants are not modelled within Overseer. However, Phosphorus loss modelling can be used to indicate the probability of sediment and microbiological contaminant losses. This is because phosphorus in the soil readily bonds to fine soil particles and is therefore lost to the environment via the same contaminant pathways e.g. overland flow and erosion. Microbiological contaminants are also lost to the environment by the mechanics of water flow via these same pathways. In spite of this, P loss processes are not exactly the same as microbial and sediment losses, and therefore the assessment only provides a very broad assumption of the likely losses and risks to the environment from sediment and faecal indicator bacteria. That assumption being if P losses are predicted to reduce then there is likely to be a roughly similar level of reduction in sediment and microbe losses to freshwater.

3.3.2.2 Soil Health

Regulation 26A of the National Environmental Standards for Freshwater Management is a pugging standard which was inserted on 1 May 2022 and states “A person using land on a farm for intensive winter grazing in accordance with regulation 26 must take all reasonably practicable steps to minimise adverse effects on freshwater of any pugging that occurs on that land. A person using land under this regulation must provide any information reasonably required by a regional council enforcement officer for the purpose of monitoring compliance with this regulation.” While I acknowledge NZALA’s submission raises concerns regarding the Browns block’s susceptibility to pugging, the IWG exclusion map proffered by the applicant excludes 8 of the 17 paddocks on the Browns block. The application also notes “Intensive winter grazing management includes a winter grazing plan prepared for each paddock and wet weather management strategies including dry lying areas and back fencing with portable troughs and

¹ Defined in the NES-F as grazing of livestock on an annual forage crop between 1 May and 30 September of the same year.

² Defined in the NES-F 2020 as the period that started on 1 July 2014 and ended with the close of 30 June 2019.

³ Luo, J. and Ledgard, S. (2021) New Zealand Dairy Farm Systems and Key Environmental Effects. *Frontiers of Agricultural Science and Engineering*, Vol 8, issue 1, pages 148–158

feeders to ensure soil pugging damage is minimized.” Furthermore, if consent was granted a recommended condition of consent has been outlined requiring the applicant take all reasonably practicable steps to avoid pugging of soils as a result of undertaking the intensive winter grazing activity.

3.3.2.3 Animal welfare

Despite the Resource Management Act having broad definitions of “effect”⁴ and “environment”⁵, I consider effects on stock and animal welfare concerns are more specifically covered by other legislation (e.g., the Animal Welfare Act 1999). I consider that animal welfare concerns are better managed by the Ministry of Primary Industries (MPI) to regulate, investigate and prosecute animal welfare breaches.

Ultimately, the commissioner will need to decide what weighting to give to the submission. The applicant’s intensive winter grazing activity requires resource consent under regulation 27 of the National Environmental Standards for Freshwater as a restricted discretionary activity. The matters of discretion do not include effects on animals or stock and there is nothing unusual or out of the ordinary with the proposed intensive winter grazing activity that would suggest it would be more harmful to cattle than any other intensive winter grazing activity being undertaken nationally.

3.3.3 Effects Conclusion

3.3.3.1 In my opinion, riparian planting five waterways, the southern boundary of the farm and a wetland area on Browns Block, increasing the buffer of 10m minimum between surface waterways and IWG on slopes over 10°, implementing an IWG exclusion zone map to avoid paddocks which are unsuitable during winter, and decreasing the crop area below the property’s permitted baseline will avoid, remedy or mitigate any potential or actual adverse effects that arise from the proposed inclusion of the additional 100 ha into the dairy platform and the intensive winter grazing activity. A consent condition relating to pugging of soil and the Animal Welfare Act address the concerns raised in the submission.

3.3.4 Monitoring (future)

3.3.4.1 Groundwater monitoring has occurred on the property in the past from bore E46/0315 (once in June 2003). However, considering the property is located outside of any mapped groundwater zones, and the physiographic zones of this property indicate the preferential contaminant pathway is to surface water as well as the close proximity of the property to the Coast, I do not consider it necessary to include a consent condition that stipulates continued groundwater quality monitoring.

⁴ Defined in the RMA as any positive or adverse effect, any temporary or permanent effect, any past, present, or future effect, any cumulative effect which arises over time or in combination with other effects regardless of the scale, intensity, duration, or frequency of the effect, and also includes any potential effect of high probability and any potential effect of low probability which has a high potential impact.

⁵ Defined in the RMA as ecosystems and their constituent parts, including people and communities, all natural and physical resources, amenity values and the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters.

3.3.4.2 Should consent be granted, it is recommended that two compliance inspections be carried out on the property per year. These inspections would be added as an advice note to the farming land use consent for the landholding. The number of inspections required is in my opinion appropriate because:

- most dairy farms in Southland have two or three routine compliance inspections each year; and
- the applicant is proposing to winter dairy cows on 55 ha of crop.

3.3.5 Consideration of Alternatives

3.3.5.1 The application included an assessment of alternatives which included not converting the Browns Block into dairy farm land.

3.3.5.2 The applicant disregarded this alternative due to it resulting in a very short cropping rotation (Kale-Pasture-Kale repeating) due to the size of the Browns block. This would result in the farm only being able to grow Kale, as fodder beet and swedes are more prone to disease with continually tight rotations. By increasing the area of the dairy platform the farm will be able to grow fodder beet and rotate it around the larger platform. The consideration of alternatives is addressed further in this report in the section on Section 105 of the RMA.

3.3.5.3 The applicant did not consider alternatives to the incidental discharges from the cows resulting from the conversion of land to dairy farm land and from intensive winter grazing. This is a fundamental part of the application and I accept that considering alternative methods of this discharge would not be feasible.

3.4 Relevant provisions of the relevant regional plan objectives, policies and rules (Section 104(1)(b)(v))

3.4.1 At present, both the Regional Water Plan for Southland and the proposed Southland Water and Land Plan are in effect. The Regional Water Plan is operative. The proposed Southland Water and Land Plan has been through the notification, submission and hearing stages, and is currently before the Court with regard to decisions on appeals with a range of interim decisions having been issued to date by the Court.

3.4.2 For completeness, if there is a conflict between the planning framework of the Regional Water Plan for Southland and the proposed Southland Water and Land Plan, I consider greater weight should be placed on the proposed Southland Water and Land Plan framework. This is because the proposed Southland Water and Land Plan is a more recent planning document, which has been developed under the National Policy Statement for Freshwater Management and has been through a submissions and hearing process where the majority of the objectives and policies have been resolved.

3.4.3 Both plans pre-date the NPSFM 2020 so may not fully give effect to it. Therefore, regard should be given to the higher order document.

3.4.4 Regional Water Plan (2010)

The application in my opinion is not inconsistent with the relevant objectives and policies of the Regional Water Plan. The following objectives and policies in the Regional Water Plan for Southland are of particular relevance to this application:

Water Quality

Objective 3 *To maintain and enhance the quality of surface water bodies so that the following values are protected where water quality is already suitable for them, and where water quality is currently not suitable, measurable progress is achieved towards making it suitable for them.*

In surface water bodies classified as mountain, hill, lake-fed, spring-fed, lowland (hard bed), lowland (soft bed) and Maitai 1, Maitai 2 and Maitai 3:

- (a) bathing, in those sites where bathing is popular;*
- (b) trout where present, otherwise native fish;*
- (c) stock drinking water;*
- (d) Ngāi Tahu cultural values, including mahinga kai;*
- (e) natural character including aesthetics.*

Objective 4 *To manage the discharge of contaminants and encourage best environmental practice to improve the water quality in surface water bodies classified as hill, lowland (hard bed), lowland (soft bed) and spring fed, and in particular to achieve a minimum of 10 percent improvement in levels of the following water quality parameters over 10 years from the date this Plan became operative (January 2010):*

- (a) microbiological contaminants*
- (b) nitrate*
- (c) phosphorus*
- (d) clarity*

Policy 13 *Avoid the point source discharge of raw sewage, foul water and untreated agricultural effluent to water.*

Policy 35 *(a) Encourage the exclusion of all stock from surface water bodies and artificial watercourses where practicable.*

(b) Ensure that when stock access to surface water bodies and artificial watercourses occurs, this is managed in a manner that avoids significant adverse effects on:

- (i) water quality;*
- (ii) bed and bank integrity and stability;*
- (iii) aquatic, riverine and riparian ecosystems and habitats.*

Comment

With regard to Objective 3, in my opinion the proposed land use activity should not result in a reduction in surface water quality as long as mitigations proffered in the application, such as riparian planting five waterways, the southern boundary of the farm and a wetland area on Browns Block, increasing the buffer of 10m minimum between surface waterways and IWG on slopes over 10°, implementing an IWG exclusion zone map to avoid paddocks which are

unsuitable during winter, and decreasing the crop area below the property's permitted baseline, are implemented correctly and in a timely manner.

The discharge to land associated with this application is the incidental discharge from cows which are excluded from all surface waterways. Conditions of consent relating to buffer distances, riparian planting of native species, and installing any new permanent fencing of surface waterways with a 3-metre buffer, are included in the recommended conditions of consent which is consistent with objective 4 and policies 13 and 35.

3.4.5 Proposed Southland Water and Land Plan (2018)

The application in my opinion is not inconsistent with the relevant objectives of the Proposed Southland Water and Land Plan. The following provisions are relevant to the application and are considered in turn below.

Interpretation Statement

All persons exercising functions and powers under this Plan and all persons who use, develop or protect resources to which this Plan applies shall recognise that:

- (i) Objectives 1 and 2 are fundamental to this plan, providing an overarching statement on the management of water and land, and all objectives are to be read together and considered in that context; and
- (ii) the plan embodies ki uta ki tai and upholds Te Mana o Te Wai and they are at the forefront of all discussions and decisions about water and land.

Objective 1 *Land and water and associated ecosystems are sustainably managed as integrated natural resources, recognising the connectivity between surface water and groundwater, and between freshwater, land and the coast.*

Objective 3 *Water and land are recognised as enablers of the economic, social and cultural wellbeing of the region.*

Ngāi Tahu

Objective 2 *The mauri of water provides for te hauora o te taiao (health and mauri of the environment), te hauora o te wai (health and mauri of the waterbody) and te hauora o te tangata (health and mauri of the people).*

Objective 4 *Tangata whenua values and interests are identified and reflected in the management of freshwater and associated ecosystems.*

Policy 1 *Enable papatipu rūnanga to effectively undertake their kaitiaki responsibilities in freshwater and land management through the methods listed in the Policy.*

Policy 2 *Take into account iwi management plans.*

Comment

Te Tangi a Taurira, and the views of Te Rūnanga o Ngāi Tahu and Te Ao Marama Inc. have been taken into account in assessing the application. I will note that the applicant engaged with te Ao Marama Inc. prior to lodging the application with Council and no submission was received

from Te Ao Marama Inc. or Ōraka Aparima Rūnaka. Te Ao Marama Inc. was also involved in the consultation phase and development of the pSWLP objectives and policies.

Physiographic Zone

Policy 6

In the Bedrock/Hill Country and Lignite-Marine Terraces physiographic zones avoid, remedy or mitigate adverse effects on water quality from contaminants, by:

- 1. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage and overland flow where relevant; and*
- 2. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage and overland flow where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans.*

Policy 10

In the Oxidising physiographic zone avoid, remedy or mitigate adverse effects on water quality from contaminants, by:

- 1. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage, and overland flow and artificial drainage where relevant; and*
- 2. having particular regard to adverse effects on water quality from contaminants transported via deep drainage, and overland flow and artificial drainage where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and*
- 3. decision makers generally not granting resource consents for additional dairy farming of cows or additional intensive winter grazing where contaminants losses will increase as a result of the proposed activity.*

Policy 11

In the Peat Wetlands physiographic zone avoid, remedy or mitigate adverse effects on water quality from contaminants, by:

- 1. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, deep drainage, and lateral drainage; and*
- 2. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, deep drainage, and lateral drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans.*
- 3. decision makers generally not granting resource consents for additional dairy farming of cows or additional intensive winter grazing where contaminants losses will increase as a result of the proposed activity.*

Comment

The physiographic zones relate to the classification of land and risks to water quality based on factors including soil types, landscape classification, climate, topography and water chemistry. These have been developed to better understand Southland's water and why the quality is better in some areas than others. These policies are particularly relevant to land use activities such as dairy farming and intensive winter grazing.

The mitigations proposed by the applicant target the overland flow contaminant pathways, such as riparian planting five waterways, the southern boundary of the farm and a wetland area on Browns Block, increasing the buffer of 10m minimum between surface waterways and IWG on slopes over 10°, implementing an IWG exclusion zone map to avoid paddocks which are unsuitable during winter, and decreasing the crop area below the property’s permitted baseline. Furthermore, consent conditions will require the applicant to reduce Olsen P to agronomic optimum, ensure synthetic nitrogen fertiliser use is below the NES-F cap of 190 kg/ha/year and exclude 8/17 paddocks on the Browns block, which all target the contaminant pathways mentioned in Policies 6, 10 and 11 above.

Water Quality

- Objective 6* *Water quality in each freshwater body, coastal lagoon and estuary will be:*
- (a) maintained where the water quality is not degraded; and*
 - (b) improved where the water quality is degraded by human activities.*
- Policy 13* 1. *Recognise that the use and development of Southland’s land and water resources, including for primary production, enables people and communities to provide for their social, economic and cultural wellbeing.*
2. *Manage land use activities and discharges (point source and non-point source) to enable the achievement of Policies 15A, 15B and 15C.*
- Policy 15B* *Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, improve water quality including by:*
- 1. *avoiding where practicable and otherwise remedying or mitigating any adverse effects of new discharges on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines beyond the zone of reasonable mixing.*
- Policy 16* 1. *Minimising the adverse environmental effects (including on the quality of water in rivers, coastal lakes, lagoons, tidal estuaries, salt marshes and coastal wetlands, and groundwater) from farming activities by:*
- (a) strongly discouraging the establishment of new dairy farming or new intensive winter grazing activities in close proximity to Regionally Significant Wetlands and Sensitive Waterbodies identified in Appendix A;*
 - (b) ensuring that, in the interim period prior to the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities will generally not be granted where:*
 - i) the adverse effects, including cumulatively, on the quality of groundwater, or water in lakes, rivers, artificial or modified water courses, tidal estuaries, salt marshes and wetlands cannot be avoided or fully mitigated; or*
 - ii) existing water quality is already degraded to the point of being over-allocated; or*

- iii) *water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet Appendix C ANZECC sediment guidelines; and*
 - (c) *ensuring that, after the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities:*
 - i) *will generally not be granted where freshwater objectives are not being met; and*
 - ii) *where freshwater objectives are being met, will generally not be granted unless the proposed activity will maintain the overall quality of groundwater and water in lakes, rivers, artificial and modified watercourses, wetlands, tidal estuaries and salt marches.*
2. *Requiring all farming activities, including existing activities, to:*
- (a) *implement a Farm Environmental Management Plan, as set out in Appendix N;*
 - (b) *actively manage sediment run-off risk from farming and hill country development by identifying critical source areas and implementing practices including setbacks from waterbodies, wetlands, riparian planting, limits on areas or duration of exposed soils and the prevention of stock entering the beds of surface waterbodies;*
 - (c) *manage collected and diffuse run-off and leaching of nutrients, microbial contaminants and sediment through the identification and management of critical source areas within individual properties.*
3. *When considering a resource consent application for farming activities, consideration should be given to the following matters:*
- (a) *whether multiple farming activities (such as cultivation, riparian setbacks, and winter grazing) can be addressed in a single resource consent; and*
 - (b) *granting a consent duration of at least 5 years.*

Comment

The landholding is not located within close proximity of any Regionally Significant Wetlands or Sensitive Waterbodies. The applicant’s nutrient budgets show an overall reduction in contaminants when the proposed scenario is compared to the current scenario. In the interim before FMU limits are set, the applicant has proposed mitigations in order to avoid and/or mitigate any adverse effects on water quality such as riparian planting five waterways, the southern boundary of the farm and a wetland area on Browns Block, increasing the buffer of 10m minimum between surface waterways and IWG on slopes over 10°, implementing an IWG exclusion zone map to avoid paddocks which are unsuitable during winter, and decreasing the crop area below the property’s permitted baseline. The landholding has an up-to-date Farm Environmental Management Plan, which was prepared in accordance with Appendix N of the Southland Water and Land Plan (Decisions Version). As a result of the above, I consider the proposal is consistent with Objective 6 and Policies 13, 15B and 16.

Freshwater Management Unit Policies

Policy 44 *Te Mana o te Wai is recognised at a regional level by tangata whenua and the local community identifying values held for, and associations with, a particular water body and freshwater management unit.*

Particular regard will be given to the following values, alongside any additional regional and local values determined in the Freshwater Management Unit limit setting process:

- *Te Hauora o te Wai (the health and mauri of water);*
- *Te Hauora o te Tangata (the health and mauri of the people);*
- *Te Hauora o te Taiao (the health and mauri of the environment);*
- *Mahinga kai;*
- *Mahi māra (cultivation);*
- *Wai Tapu (Sacred Waters);*
- *Wai Māori (municipal and domestic water supply);*
- *Āu Putea (economic or commercial value);*
- *He ara haere (navigation).*

Policy 45 *In response to Ngāi Tahu and community aspirations and local water quality and quantity issues, FMU sections may include additional catchment-specific values, objectives, policies, attributes, rules and limits which will be read and considered together with the Region-wide Objectives and Region-wide Policies. Any provision on the same subject matter in the relevant FMU section of this Plan prevails over the relevant provision within the Region-wide Objectives and Region-wide Policy sections, unless it is explicitly stated to the contrary.*

As the FMU sections of this Plan are developed in a specific geographical area, FMU sections will not make any changes to the Region-wide Objectives or Region-wide Policies.

Policy 46 *The FMU Sections of this Plan are based on the following identified Freshwater Management Units for Southland, as shown on Map Series 6: Freshwater Management Units:*

- *Fiordland and Islands;*
- *Aparima and Pourakino – Jacobs River Estuary;*
- *Mataura – Toetoes Harbour;*
- *Ōreti and Waihopai – New River Estuary; and*
- *Waiau – Waiau Lagoon.*

Comment

The above provisions relate to the identification of Freshwater Management Units and the subsequent development of policies and rules. As part of this process, water quality limits will be set for each unit. This is part of the process of addressing water quality and the direction provided by the NPS for Freshwater Management 2020.

Term and Consideration of Consent

Policy 39 *When considering any application for resource consent for the use of land for a farming activity, the Southland Regional Council should consider all adverse effects of the proposed activity on water quality, whether or not this Plan permits an activity with that effect.*

- Policy 39A* *When considering the cumulative effects of land use and discharge activities within whole catchments, consider:*
- 1. the integrated management of freshwater and the use and development of land including the interactions between freshwater, land and associated ecosystems (including estuaries); and*
 - 2. through the Freshwater Management Unit process, facilitating the collective management of nutrient losses, including through initiatives such as nutrient user groups and catchment management groups.*
- Policy 40* *When determining the term of a resource consent consideration will be given to a range of factors, fully listed in the policy.*
- Policy 41* *Consider the risk of adverse environmental effects occurring and their likely magnitude when determining requirements for auditing and supply of monitoring information on resource consents.*

Comment

Term of consent, and in particular the full range of factors in Policy 40, is considered in Section 4.2 below.

Conclusion to Policy Assessment – Regional Plans

The activities have been considered against all relevant provisions of the RWP and the pSWLP. The key policies from the RWP relate to water quality and stock exclusion from waterways. I consider that the proposed activities are generally consistent with these provisions. The key policies in the pSWLP relate to the physiographic zones which the site is located in and directions around maintaining and/or improving water quality. I consider that the proposed activities are generally consistent with these provisions.

3.5 Relevant provisions of the Southland Regional Policy Statement (Section 104(1)(b)(v))

3.5.1 The Southland Regional Policy Statement 2017 became operative on 9 October 2017. It pre-dates the NPSFM 2020, so may not fully give effect to it. Therefore, regard should be given to the higher order document.

3.5.2 The following objectives and policies in the Regional Policy Statement are of particular relevance to this application:

Tangata Whenua

Objective TW.1 *The principles of the Treaty of Waitangi/Te Tiriti o Waitangi are taken into account in a systematic way through effective partnerships between tangata whenua and local authorities, which provide the capacity for tangata whenua to be fully involved in council decision-making processes.*

Objective TW.2 *All local authority resource management processes and decisions take into account iwi management plans.*

Policy TW.1 *Consult with, and enhance tangata whenua involvement in local authority resource management decision-making processes, in a manner that is consistent with the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.*

- Policy TW.3 Take iwi management plans into account within local authority resource management decision making processes.*
- Policy TW.4 When making resource management decisions, ensure that local authority functions and powers are exercised in a manner that:*
- (a) recognises and provides for:*
 - (i) traditional Māori uses and practices relating to natural resources (e.g. mātaítai, kaitiakitanga, manaakitanga, matauranga, rāhui, wāhi tapu, taonga raranga);*
 - (ii) the ahi kā (manawhenua) relationship of tangata whenua with and their role as kaitiaki of natural resources;*
 - (iii) mahinga kai and access to areas of natural resources used for customary purposes;*
 - (iv) mauri and wairua of natural resources;*
 - (v) places, sites and areas with significant spiritual or cultural historic heritage value to tangata whenua;*
 - (vi) Māori environmental health and cultural wellbeing.*
 - (b) recognises that only tangata whenua can identify their relationship and that of their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.*

Water Quality

Objective WQUAL.1 Water quality in the region:

- (a) safeguards the life-supporting capacity of water and related ecosystems;*
 - (b) safeguards the health of people and communities;*
 - (c) is maintained, or improved in accordance with freshwater objectives formulated under the National Policy Statement for Freshwater Management 2014;*
 - (d) is managed to meet the reasonably foreseeable social, economic and cultural needs of future generations.*
- Policy WQUAL.1 (a) Identify values of surface water, groundwater, and water in coastal lakes, lagoons, tidal estuaries, salt marshes and coastal wetlands, and formulate freshwater objectives in accordance with the National Policy Statement for Freshwater Management 2014; and*
- (b) Manage discharges and land use activities to maintain or improve water quality to ensure freshwater objectives in freshwater management units are met.*
- Policy WQUAL.2 Maintain or improve water quality, having particular regard to the following contaminants:*
- (a) nitrogen;*
 - (b) phosphorus;*
 - (c) sediment;*
 - (d) microbiological contaminants.*
- Policy WQUAL.3 Identify and protect the significant values of wetlands and outstanding freshwater bodies.*

- Policy WQUAL.5 Improve water quality by:*
- (a) identifying water bodies that are not meeting freshwater objectives, including identifying priority freshwater management units;*
 - (b) specifying targets to improve water quality within those water bodies within defined timeframes;*
 - (c) implementing management frameworks to meet the targets taking into account;*
 - (i) the values supported by the water body/ies;*
 - (ii) national or legislative standards and requirements;*
 - (iii) the benefits and costs associated with achieving improvement in water quality*
- Policy WQUAL.7 Recognise the social, economic and cultural benefits that may be derived from the use, development or protection of water resources.*
- Policy WQUAL.11 Avoid, as far as practicable, remedy or mitigate the risks that the adverse effects of land use activities and discharges of contaminants have on the sources of community water supplies.*
- Policy WQUAL.13 Continue to improve knowledge and understanding of water resources, and the relationship of land use activities with water quality values in water bodies, in Southland to promote the sustainable management of water.*

Rural Land and Soils

- Objective RURAL.1 Achieve sustainable use of Southland’s rural land resource, in respect of:*
- (a) agriculture and primary sector activities;*
 - (b) subdivision, use and development activities;*
 - (c) earthworks and vegetation clearance activities;*
 - (d) the use of soil resources;*
 - (e) mineral extraction activities; and*
 - (f) on-site wastewater systems.*
- Objective RURAL.2 Safeguard the life-supporting capacity, mauri and health of soils in rural areas, and prevent or minimise soil erosion and sedimentation from land use soil disturbance.*
- Policy RURAL.1 Recognise that use and development of Southland’s rural land resource enables people and communities to provide for their social, economic and cultural wellbeing.*
- Policy RURAL.2 Maintain land use change activities in rural areas of Southland, in a way that maintains or enhances rural amenity values and character.*
- Policy RURAL.4 Avoid the irreversible loss of high value soils from productive use, through inappropriate subdivision, use and development.*
- Policy RURAL.5 The effects of rural land development shall be sustainably managed and land management practices encouraged so that:*
- (a) soil properties are safeguarded;*
 - (b) soil erosion is minimised;*
 - (c) soil compaction and nutrient and sediment loss is minimised;*

- (d) *soil disturbance is reduced;*
- (e) *water quality is maintained or enhanced;*
- (f) *indigenous biodiversity is maintained or enhanced;*
- (g) *the mauri of water and soils is safeguarded.*

Comment

The proposed activities are consistent with the policies in the Regional Policy Statement. Even though tangata whenua did not submit on the application, I do note that the applicant engaged with Te Ao Marama Inc. prior to lodging the application with Council to ensure they were aware of the proposal. Te Tangi a Tauria is considered in Section 3.9 below.

The proposed land use activity should not result in a reduction in water quality as long as mitigations offered in the application, riparian planting five waterways, the southern boundary of the farm and a wetland area on Browns Block, increasing the buffer of 10m minimum between surface waterways and IWG on slopes over 10°, implementing an IWG exclusion zone map to avoid paddocks which are unsuitable during winter, and decreasing the crop area below the property’s permitted baseline, are implemented correctly and in a timely manner. The consent conditions will require the applicant reduce its Olsen P to agronomic optimum, ensure synthetic nitrogen fertiliser use is below the NES-F cap of 190 kg/ha/year and maintain and/or reduce their modelled nutrient losses to water which should, in theory, improve water quality.

3.6 Relevant provisions of National Policy Statements (Section 104(1)(b)(iii))

3.6.1 National Policy Statement for Freshwater Management (NPS-FM) 2020

3.6.1.1 The National Policy Statement for Freshwater Management 2020 came into effect on 3 September 2020, as part of the central government’s Essential Freshwater package. The Essential Freshwater package recognises the move towards a holistic, ki uta ki tai approach to the management of the natural environment and provides an opportunity for the Crown to demonstrate partnership relationship with Tangata Whenua and exercise responsibilities under Te Tiriti o Waitangi.

3.6.1.2 The NPS-FM 2020 post-dates all of the Council’s regional plans and regional policy statement, and therefore, as a later-in-time piece of national direction, it carries considerable weight in consent decision-making.

3.6.1.3 I consider the NPS-FM 2020 objective and policies (Part 2), which give effect to the fundamental concept of Te Mana o te Wai (Clause 1.3), and the associated hierarchy of obligations are relevant to the proposal.

3.6.1.4 The objective of the NPS-FM 2020 (‘the Objective’) is:

- [...] to ensure that natural and physical resources are managed in a way that prioritises:
 - (a) first, the health and wellbeing of water bodies and freshwater ecosystems;
 - (b) second, the health needs of people (such as drinking water);
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the_”

3.6.1.5 The Objective is reflective of the hierarchy of obligations in Te Mana o te Wai, which underpins the national direction of how freshwater is to be managed under the NPS-FM 2020. While the “local approach to Te Mana o te Wai” is yet to be developed, I understand that Te Mana o te

Wai is about the long-term sustainability of freshwater resources, where the health and wellbeing of a waterbody entails more than bio-physical health, it also considers other matters such as the mauri^[1] of the waterbody and the health and wellbeing of the wider environment, people and the community. The NPS-FM 2020 inextricably links the traditional western science bio-physical aspects of waterbody health with the fundamental concept of Te Mana o te Wai.

3.6.1.6 Overall, the principles of Te Mana o te Wai underpin what long-term sustainable management of freshwater and the fundamental wellbeing of the waterbody mean as a holistic whole. Therefore, I consider that Te Mana o Te Wai is fundamental to water quality, and all of its principles of are relevant to the proposal. These principles are:

- (a) *Mana whakahaere: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and wellbeing of, and their relationship with, freshwater;*
- (b) *Kaitiakitanga: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations;*
- (c) *Manaakitanga: the process by which tangata whenua show respect, generosity, and care for freshwater and for others;*
- (d) *Governance: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and wellbeing of freshwater now and into the future;*
- (e) *Stewardship: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations;*
- (f) *Care and respect: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.*

3.6.1.7 The hierarchy of obligations in Te Mana o te Wai are:

- (a) first, the health and wellbeing of water bodies and freshwater ecosystems;
- (b) second, the health needs of people (such as drinking water);
- (c) third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.

3.6.1.8 Policies 1 to 15 seek to give effect to the Objective. In line with the above principles of Te Mana o te Wai, I have considered the relevant policies below:

- Policy 1 Freshwater is managed in a way that gives effect to Te Mana o te Wai.*
- Policy 2 Tangata Whenua are actively involved in freshwater management and Māori freshwater values are identified and provided for.*
- Policy 3 Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.*
- Policy 4 Freshwater is managed as part of New Zealand’s integrated response to climate change.*

^[1] **mauri** may be defined as life principle, life force, vital essence, special nature, a material symbol of a life principle, source of emotions - the essential quality and vitality of a being or entity. Also used for a physical object, individual, ecosystem or social group in which this essence is located (Source: <https://maoridictionary.co.nz/>).

- Policy 8* *The significant values of outstanding water bodies are protected.*
- Policy 9* *The habitats of indigenous freshwater species are protected.*
- Policy 11* *Freshwater is allocated and used efficiently, all existing over-allocation is phased out and future over-allocation avoided.*
- Policy 12:* *The national target for water quality improvement is achieved.*
- Policy 13:* *The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.*
- Policy 15* *Communities are enabled to provide for their social, economic, and cultural wellbeing in a way that is consistent with the NPS-FM.*

Comment

I consider that the proposed activities are consistent with the policies in the National Policy Statement for Freshwater Management. I consider that the mitigations proposed, such as riparian planting five waterways, the southern boundary of the farm and a wetland area on Browns Block, increasing the buffer of 10m minimum between surface waterways and IWG on slopes over 10°, implementing an IWG exclusion zone map to avoid paddocks which are unsuitable during winter, and decreasing the crop area below the property's permitted baseline, would avoid and mitigate any potential adverse effects on water quality, which is consistent with Policies 1, 3, 8, 9 and 12.

With regard to Policy 4, greenhouse gases are predicted to decrease by 480 kg/ha and 245.3 tonnes/year when the current farm system is compared to the proposed dairy farm system in OverseerFM.

There is no water quality monitoring within the vicinity or downstream of the property due to its close proximity to the coast, therefore I cannot confirm whether freshwater in the receiving environment is considered over-allocated, however the applicant's nutrient budgets predict a decrease in both nitrogen and phosphorus when the proposal is compared to the current farming system, which is consistent with Policy 11.

Even though tangata whenua did not submit on the application, the applicant did engage with Te Ao Marama Inc. prior to lodging the application with Council to ensure they were aware of the proposal. Consideration of Te Tangi a Taura and the involvement of Te Ao Marama Inc., albeit limited, is not considered inconsistent with Policy 2.

In terms of monitoring freshwater quality, if consent was granted a condition of consent could be included to require periodic monitoring of surface water entering and exiting the farm. A threshold trigger relating to degrading trends could also be included in order to be consistent with Policy 13.

In terms of the ability of people and communities to provide for their social and economic wellbeing, now and in the future, I consider that the proposal is likely to give rise to economic benefits as it provide a source of employment and will inject money into rural suppliers.

3.8 Relevant provisions of National Environmental Standards and other regulations (Section 104(1)(b)(i) and (ii))

3.8.1 National Environmental Standard for Freshwater Management 2020

3.8.1.1 Section 104 requires consideration of any NES that is relevant. In this case, the National Environmental Standards for Freshwater Management need to be considered. These regulations also came into effect on 3 September 2020 as part of the Governments Essential Freshwater package, which seeks to stop further degradation of New Zealand’s freshwater resources, making immediate improvements and reversing past damages.

3.8.1.2 Regulation 18 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 is as follows:

“The conversion of land on a farm to dairy farm land is a permitted activity if it complies with the applicable condition.

...

Condition

If the farm included dairy farm land at the close of 2 September 2020, the condition is that, at all times, the area of the farm that is dairy farm land must be no greater than-

- (a) the area of dairy farm land at the close of 2 September 2020; plus*
- (b) 10 ha.”*

3.8.1.3 As the parcel of land being incorporated into the dairy farm is 100 ha, the proposal triggers Regulation 19, which in turn means the proposal is subject to Regulation 24. Regulation 24 sets out conditions on granting resource consents for a discretionary activity and states *“a resource consent for an activity that is a discretionary activity under this subpart must not be granted unless the consent authority is satisfied that granting the consent will not result in an increase in either of the following:*

- a. contaminant loads in the catchment, compared with the loads as at the close of 2 September 2020;*
- b. concentrations of contaminants in freshwater or other receiving environments (including the coastal marine area and geothermal water), compared with the concentrations as at the close of 2 September 2020.”*

3.8.1.4 I am satisfied that granting this current proposal will not result in an increase in contaminant loads or concentrations because:

- (a) the nutrient budgets modelled in OverseerFM predict that both nitrogen and phosphorus loads in the catchment will decrease; and
- (b) the applicant has provided adequate mitigations over and above those that existed on 2 September 2020 to minimise contaminants losses to freshwater.

3.8.1.5 Regulation 24 also stipulates the consent must expire before 1 January 2031.

3.8.1.6 Regulation 26 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 is as follows:

“The use of land on a farm for intensive winter grazing is a permitted activity if it complies with the applicable condition or conditions.

...

Conditions

...

- (4) *In any other case, the conditions are that –*
- (a) *At all times, the area of the farm that is used for intensive winter grazing must be no greater than 50 ha or 10% of the area of the farm, whichever is greater; and*
 - (b) *The slope of any land under an annual forage crop that is used for intensive winter grazing must be 10 degrees or less, determined by measuring the slope over any 20 m distance of the land; and*
 - (c) *[Revoked].*
 - (d) *Livestock must be kept at least 5 m away from the bed of any river, lake, wetland, or drain (regardless of whether there is any water in it at the time); and*
 - (e) *On and from 1 May to 30 September of any year, in relation to any critical source area that is within, or adjacent to, any area of land that is used for intensive winter grazing on a farm,-*
 - i. *The critical source area must not be grazed; and*
 - ii. *Vegetation must be maintained as ground cover over all of the critical source area; and*
 - iii. *Maintaining that vegetation must not include any cultivation or harvesting of annual forage crops.”*

3.8.1.7 As the applicant has slopes on the farm over 10 degrees which may be used for intensive winter grazing, and the area of crop proposed is more than 10% of the area of the farm and larger than 50 ha, the proposal moves to Regulation 27 which states:

“The use of land on a farm for intensive winter grazing is a restricted discretionary activity if the use does not comply with the applicable condition, or any of the applicable conditions, in regulation 26(3) or (4).

3.8.1.8 Cattle will be kept at least 5 metres away from surface waterbodies on the farm when intensive winter grazing and critical source areas will be remain uncultivated and un-grazed during the intensive winter grazing period. However, the farm has sloping land over 10 degrees which may be used for intensive winter grazing, and the proposed area of 55 ha of crop is more than 10% of the of the farm and larger than 50 ha, and so the proposal triggers Regulation 27 which deems the use of land for intensive winter grazing⁶ a restricted discretionary activity.

3.8.1.9 The discretion of a consent authority is restricted to the following matters:

⁶ Defined in the NES-F as the grazing of livestock on an annual forage crop at any time in the period that begins on 1 May and ends with the close of 30 September of the same year.

- (a) the adverse effects of the activity on ecosystems, freshwater, and water bodies:
- (b) the adverse effects of the activity on the water that affect the ability of people to come into contact with the water safely:
- (c) the adverse effects of the activity on Māori cultural values:
- (d) the susceptibility of the land to erosion, and the extent to which the activity may exacerbate or accelerate losses of sediment and other contaminants to water:
- (e) the timing and appropriateness of the methods (if any) proposed to avoid, remedy, or mitigate the loss of contaminants to water.

3.9 Any other matters considered relevant and reasonably necessary to determine the application (Section 104(1)(c))

3.9.1 Te Tangi a Tauira

3.9.1.1 Te Tangi a Tauira is the Iwi Management Plan for Murihiku. This plan is recognised in Policy 1.2 of the Regional Policy Statement, and is included as a matter considered relevant and necessary under Section 104(1)(c) of the Resource Management Act 1991. Policies from Te Tangi a Tauira, which are relevant to this application, are:

Water Quality (Section 3.5.13)

Policy 6 *Avoid impacts on water as a result of inappropriate discharge to land activities.*

Policy 8 *Promote the restoration of wetlands and riparian areas as part of maintaining and improving water quality, due to the natural pollution abatement functions of such ecosystems.*

Riparian Zones (Section 3.5.19)

Policy 3 *Promote riparian zone establishment and management as a tool to improve water quality in the waterways of Murihiku.*

Policy 4 *Require that riparian restoration or establishment, when used as a condition of consent or otherwise, uses plant species that are appropriate to the area in which they will be established.*

Policy 7 *Encourage fencing of streams to protect riparian vegetation and promote healthy riparian establishment.*

Comment

I am not a suitably qualified person with regard to cultural impact assessments, however I have sought to assess the proposal against the direction in Te Tangi a Tauira as far as possible. The discharge to land associated with this application is the incidental discharge from cows which are excluded from all surface waterways. Conditions of consent relating to buffer distances, riparian planting of native species, and installing any new permanent fencing of surface waterways with a 3-metre buffer, are included in the conditions of consent which is consistent with all the policies above. I note the Iwi Management Plan has very few policies relating to land use activities with regard to dairy farm expansions and land intensification. This is presumably because Te Tangi a Tauira became operative in 2008 during the dairy boom in Southland.

3.10 Section 104E applications relating to discharge of greenhouse gases

3.10.1 Section 104E was repealed on 30 November 2022, prior to this date the section restricted the Consent Authority's ability to have regard to the effects of a discharge activity on climate change.

3.10.2 The application was lodged after section 104E was repealed and does not specifically address the consequences of the section being repealed, however relating to greenhouse gases (GHG) the application does discuss the Climate Change Response Amendment Act 2019 and its GHG emissions reduction targets for New Zealand.

3.10.3 The application also notes "*The Government, primary sector and Iwi came together to develop an appropriate strategy and farm gate emission pricing mechanism by 2025. The primary sector's proposed 5-year programme of action is aimed at ensuring farmers and growers are equipped with the knowledge and tools they need to deliver emissions reductions while maintaining profitability. The first step in the project delivery is for farm businesses to be aware of and able to report their on-farm greenhouse gas emissions and have a plan in place.*"

3.10.4 The applicant's greenhouse gases are predicted to decrease by 480 kg/ha and 245.3 tonnes/year when the current farm system is compared to the proposed dairy farm system in OverseerFM version 6.5.2.

3.11 Section 105 matters relevant to discharge or coastal permits

3.11.1 Section 105 matters need to be considered as the application is for a discharge that would contravene Section 15. Under Section 105, the consent authority must have regard to:

- (a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects;
- (b) the applicant's reasons for the proposed choice; and
- (c) any possible alternative methods of discharge, including discharge into any other receiving environment.

3.11.2 The nature of the discharge permit required by regulations 19 (2) and 27 (2) is considered an incidental discharge from the cows resulting from the conversion of land to dairy farm land and the use of land for intensive winter grazing.

3.11.3 The applicant did not consider alternatives for the incidental discharges from the cows resulting from the conversion of land to dairy farm land and from intensive winter grazing. This is a fundamental part of the application and I accept that considering alternative methods of discharge would be nonsensical.

3.12 Section 107 restriction on grant of certain discharge permits

3.12.1 Section 107(1) states that a discharge permit should not be approved if, after reasonable mixing, the contaminant is likely to give rise to adverse effects.

3.12.2 I have considered the proposed discharge against the requirements of section 107 and I do not consider that the discharge will give rise to the listed effects in the receiving environment.

3.13 Part 2 of the Resource Management Act 1991

- 3.13.1 All considerations are subject to Part 2 of the RMA, which sets out the purpose and principles that guide this legislation. Section 5 states the purpose of the RMA and Sections 6, 7 and 8 are principles intended to provide additional guidance as to the way in which the purpose is to be achieved.
- 3.13.2 The application of Section 5 involves consideration of a range of matters in assessing whether a proposal will promote the sustainable management of natural and physical resources. The enabling and managing functions found in s5(2) should be considered of equal importance and taken as a whole. Sections 6, 7 and 8 provide further context and guidance to the constraints found in s5(2)(a), (b) and (c). The commencing words to these sections differ, thereby establishing the relative weight to be given to each section.
- 3.13.3 In relation to the matters outlined in Section 5, I consider that this application is consistent with the purpose and the principles of the Act, as set out in Section 5. This is the promotion of the sustainable management of natural and physical resources. The proposed activities will have no more than minor adverse effects on the ability of the receiving environment to meet the reasonably foreseeable needs of future generations, or on the life-supporting capacity of the land or any ecosystem associated with it. In my opinion the proposed consent conditions would ensure that any potential adverse effects of the activities will be avoided, remedied or mitigated.
- 3.13.4 All of the Part 6 matters have been covered within the various Council planning instruments, of which the application is generally consistent with. The following parts of Section 6 have been recognised and provided for, but do not have a direct relationship to the application because:
- the natural character of the coastal environment, wetland, rivers and lakes and their margins will not be developed, used or subdivided as part of this application;
 - there are no identified Outstanding Natural Features and/or Outstanding Natural Landscapes within the area;
 - there are no known areas of significant indigenous vegetation and significant habitats of indigenous fauna;
 - the application does not relate to public access to and along the coastal marine area, lakes would and/or rivers;
 - there are no known sites of historic heritage within the farm and as such they will not be affected by inappropriate use, subdivision or development;
 - the site is in the broader Waiau catchment but is not within a Statutory Acknowledgment Area and is not part of any customary rights.
- 3.13.5 In relation to the considerations under Section 7, I consider that the activity would not be detrimental to the matters listed in Section 7 (a)–(j). In particular, the efficient use of and development of resources and the maintenance and enhancement of the quality of the environment. It is considered that, as the application is generally consistent with the various Council planning documents, the application is also generally consistent with the aforementioned Section 7 matters.
- 3.13.6 With regard to Section 8 of the Act, the principles of the Treaty of Waitangi have been taken into account. This is through the consideration of Te Tangi a Tauria (Iwi Management Plan) and the relevant policies in other planning documents.

3.13.7 Overall, I consider that the application meets the relevant provisions of Part 2 of the RMA as the proposal achieves the purpose of the RMA, which is the sustainable management of natural and physical resources.

4. Recommendations

4.1 Whether to grant

4.1.1 The application is considered a **discretionary activity**. Under Section 104B the Council may grant or refuse consent for a discretionary activity, and if it grants the application, may impose conditions under Section 108 of the RMA.

4.1.2 I consider that it is appropriate to **grant** the application for the following reasons:

- the application is generally consistent with the objectives and policies of the relevant National Policy Statement, Regional Policy Statement, Iwi Management Plan and Regional Plans;
- any potential or actual adverse effects on the environment from the proposed activity will in my opinion be no more than minor if the mitigations are implemented correctly and in a timely manner and agreed conditions of consent are adhered to;
- the mitigations the applicant has offered will avoid, remedy or mitigate any actual adverse effects that do arise from the proposed activity; and
- the proposed dairy farm expansion activity satisfies the ‘contaminant threshold’ tests of the National Environmental Standards for Freshwater which restricts Council’s ability to grant consent.

4.1.3 Noting the concerns raised by the submitter in relation to effects on animals as a result of the proposal, I have closely considered this issue when formulating my report and recommendation. The proposed dairy farm expansion activity has appropriate mitigation measures proposed by the applicant, including riparian planting, increasing the buffer between surface waterways and IWG on slopes over 10°, implementing an IWG exclusion zone and decreasing the crop area below the property’s permitted baseline. Recommended conditions of consent include restrictions on pugging, implementing a soil testing regime, maintaining and/or reducing the modelled nutrient losses to water, maintaining a Farm Environmental Management Plan and ensuring proposed mitigation measures are implemented to improve water quality.

4.1.4 Overall, I recommend, that for the above reasons, the application be granted pursuant to Sections 104B and 108 of the Resource Management Act 1991, subject to the consent conditions.

4.2 Term of consent

4.2.1 When the application was lodged in December 2022 it requested a consent term of 9 years due to:

- the low environmental risk associated with the application;
- investment in effluent storage facilities;
- the near equivalent practices to those which are permitted activities; and
- compliance reports will be provided annually.

4.2.2 Policy 40 of the proposed Southland Water and Land Plan requires that determination of the term includes:

- granting a shorter duration than that sought by the applicant when there is uncertainty regarding the nature, scale, duration, and frequency of adverse effects from the activity or the capacity of the resource;
- relevant tāngata whenua values and Ngāi Tahu indicators of health;
- the duration sought by the applicant and reasons for the duration sought;
- the permanence and economic life of any capital investment;
- the desirability of applying a common expiry date for water permits that allocate water from the same resource or land use and discharges that may affect the quality of the same resource;
- the applicant’s compliance with the conditions of any previous resource consent, and the applicant’s adoption, particularly voluntarily, of good management practices; and
- the timing of development of FMU sections of this plan, and whether granting a shorter or longer duration will better enable implementation of any revised frameworks established in those sections.

4.2.3 Following consideration of the policies above, I consider that the 9-year period requested would have been appropriate. However, that is not legally possible for any consents required under the NES-F, as it requires the term of a discretionary activity to expire before 1 January 2031. Section 43B(3) of the RMA states that *“a rule or resource consent that is more lenient than a national environmental standard prevails over the standard if the standard expressly says that a rule or consent may be more lenient than it.”* and Section 6(1) of the NES-F states *“A district rule, regional rule, or resource consent may be more stringent than these regulations.”* Consequently, all the NES-F consents must have an expiry date of no later than 31 December 2030. Therefore, I recommend that the application is granted, with all permits given the expiry date of 31 December 2030.



Jade McRae
Senior Consents Officer

Attached: Land Use Consent AUTH-20222765-01 and Discharge permit AUTH-20222765-02

RECOMMENDATIONS IN COUNCIL REPORTS ARE NOT TO BE CONSTRUED
AS COUNCIL POLICY UNLESS ADOPTED BY COUNCIL



Consents Hearing 5 October 2023

Pahia Dairies Limited – APP-20222765

Appendices

Attachment 1

Irricon Resource Solutions OVERSEER Nutrient Budget Review Report on behalf of Council



Irricon
resource solutions

OVERSEER Nutrient Budget Review

For: Environment Southland – Pahia Dairies Ltd

Prepared by: Nicky Watt, CNMA

Date: 2nd February 2023

www.irricon.co.nz

Introduction

1. Regarding the consent application for Pahia Dairies Ltd, I have reviewed the following OVERSEER[®] Nutrient Budget (OVERSEER) files:
 - a) YE2020 for UC (v2) (Environment Southland)
 - b) Proposed expanded dairy platform for LUC (v2) (Environment Southland)
2. Along with the files I have reviewed the following accompany report: “Overseer Nutrient Budget Report”, prepared for part of a consent application to expand the dairy platform for a land use consent. The report was prepared by Nicole Mesman, Lumen Environmental Ltd. I have completed a robustness check on the file for sensibility based on data available and checked to ensure the modelling aligns with the OVERSEER Best Practice Data Input Standards for v6.4.3.
3. It must be assumed that the information provided in the OVERSEER files that the current farming system as modelled is a viable farming system, using actual stock and fertiliser inputs. Therefore, the actual and proposed scenario is also assumed to be appropriate for the location and climate.
4. A ‘sensibility test’ has been undertaken on the Pahia Dairies Ltd nutrient budgets with the following five output screens from OVERSEER forming the basis of the determination of the robustness of the nutrient budget:
 - a) Is the nutrient loss consistent with what you would expect for an operation of this type and soils in this location?
 - b) Does the summary of inputs and outputs make sense? Especially clover fixation and change in block pools?
 - c) Check the ‘Other values’ block reports for rainfall, drainage, and PAW.
 - d) Select the Scenario reports other values and check the production and stocking rate.
 - e) Select the pasture production in the scenario report and check pasture growth.
5. Answers to each of these five points will be provided further in this report and then a final determination of the robustness of the nutrient loss to water will be provided at the end of this report.

OVERSEER AUDIT

Appropriateness of the Overseer inputs

1. The Overseer FM files submitted and stated in paragraph 1 of this report have been reviewed for consistency between the files and appropriateness of the inputs regarding the farming systems and the Overseer Best Practice Data Input Standard (BPDIS).
2. I concur that there are some deviations from the BPDIS. The soils between models have not been modelled to best management practice. There is difference of 5% or more in some soils between the Current and Proposed models.
3. The Current Model has 511 ha total area with 445 ha effective (382 ha in pasture and 63 ha of Fodder Beet cropped). The Proposed Model has 511 ha total area with 445 ha effective (394 ha in pasture and 51 ha of fodder beet cropped). The Current model has a dairy revised stocking unit of

20.7 RSU/ha compared to the Proposed model which has a RSU 20.1 RSU/ha or a 2.9 % decrease in RSU/ha (see Table 1 below).

4. Reviewing the NZ Dairy statistics for the 2019/2020 season, shows the average milk solids production on this property for the Current model at 345.1 kgMS/cow and 1060 kgMS/ha is respectively lower than the Southland Regional average of 418 kg MS/cow and lower than the Southland Regional average of 1133 kgMS/ha. The Proposed model at 345.1 kgMS/cow and 958 kgMS/ha is respectively lower than the Southland Regional average of 418 kg MS/cow and lower than the Southland Regional average of 1133 kgMS/ha.
5. The stocking rate for Current Model at 3.1 cows/ha higher than the Southland average for the 2019/2020 season of 2.76 cows/ha (Invercargill). The stocking rate for Proposed Model at 2.8 cows/ha is similar to the Southland average for the 2019/2020 season of 2.76 cows/ha (Invercargill).

6. *Table 1: Summary of Production and stocking rate*

	Current ¹	Proposed ²
Total Ha	511	511
Effective Area (ha)	445	445
Effective Pasture Area (ha)	382	394
KgMS	338200	338200
MS kg/ha grazed	1060	958
MS kg MS/cow	345.1	345.1
Lactation Length	266	266
Dairy RSU	7913	7901
Dairy RSU/ha (effective pasture area)	20.7	20.1
Beef RSU	2512	2457
Replacement RSU	123	122
Total RSU	10548	10480
Total RSU/ha (effective area)	23.7	23.6
Cows/ha	3.1	2.8
Cows October	980	980
Cows June	778	778
Cows July	778	778
Replacements June/July	320	320
N lost kg/ha/yr	47	43

¹YE2020 for LUC – Current

²Proposed expanded dairy platform for LUC- Proposed

7. There was 63 ha of kale grazed in the Current model, grazed May to September by beef animals (cows/replacements) and Proposed model had 51 ha of fodder beet grazed May to September by beef animals. This is a 19% decrease in winter grazed crop (see Table 2 below).

Table 2: Crop Details

	Current	Proposed
Kale (ha)	63	-
Kale Yield (tDM/ha)	12	-
When grazed	May to Sept	-
Grazed by	Beef	-
Fodder Beet (ha)	-	51
Fodder Beet Yield (tDM/ha)	-	16
When grazed	-	May to Sept
Grazed by	-	Beef

8. The soil areas are not within the margin of error for all soils (see Table 3 below).

Table 3: Soil Details

	Current	Proposed	Changes (%)
Waiki_16a	159.2	164.9	+ 3.5
Kaip_9a	112.6	112.8	+ 0.2
Orep_2a	77.3	77.1	-0.3
Otwy_3a	58.6	52.4	-10.6
Orik_2b	23.3	25.5	+8.6
Piak_5b	14	12.3	-12.1

9. Supplements imported to meet cow demand (see Table 3 below). Pasture silage has been made where there was a surplus of pasture.

10. The Current model had 13.2 tDM/ha average pasture growth compared to 13.3 tDM/ha for the Proposed model (similar pasture growth). The N used on all pasture in the Current and Proposed models was 190 kgN/ha. There is expected to be 12.6 % less supplement imported and 81 % more silage harvested in the Proposed model compared to the Current model (see Table 4 below).

Table 4: Supplements imported and Harvested

	Current	Proposed
Supplements Imported (tDM)	880	770
Supplements Imported Effective Area (tDM/ha)	1.98	1.73
Silage Harvested (tDM)	24.5	150
Silage Harvested Pasture (tDM/ha)	0.08	0.42
Total Area (ha)	511	511
Effective Area (ha)	445	445
Effective Pasture Area (ha)	382	394
Dairy RSU	7913	7901
Dairy RSU/ha (effective pasture area)	20.7	20.1
Beef RSU	2512	2457
Replacement RSU	123	122
Total RSU	10548	10480
Total RSU/ha (effective area)	23.7	23.6
Cows/ha	3.1	2.8
N Fertiliser applied non -effluent area(kgN/ha)	190	190
N Fertiliser applied effluent Area (kgN/ha)	190	190
Pasture Growth (tDM/ha) - Average	13.2	13.3

Overseer Outputs

The N lost to water for the Current model was 47 kgN/ha/yr (24052 kgN/annum) compared to 43 kgN/ha/yr (22220 kgN/annum) for the Proposed model which is a 7.6 % reduction in total N loss. The P loss for the Current model was 1.8 kgP/ha/yr (945 kgP/annum) compared to 1.5 kgP/ha/yr (764 kgP/annum) for the Proposed model which is a 19.2% reduction in total P loss (see Table 5 below). It is assumed that the information provided in this farming system is modelled as a viable farming system, using actual stock and fertiliser inputs.

Table 5: OVERSEER outputs

Overseer v6.4.3	Current	Proposed
N lost to water kg/ha/yr	47	43
Total N lost kg/farm	24052	22220
P lost kg/ha/yr	1.8	1.5
Total P lost kg/farm	945	764

<i>Other sources – N</i>	763	757
<i>Other sources – P</i>	187	177

Change in block pools

- The organic pool for N indicates the amount of N that is being either immobilized as seen by a 'positive' Organic pool N value or being mineralized as seen by a 'negative' Organic pool N value. N being immobilized is being used for increased biological activity and temporarily locked up. Once the microorganisms die the organic N in their cells is converted by mineralization and nitrification to plant available nitrate. It appears N is potentially being immobilized in both models (see Table 6 below).
- The inorganic soil pool for P indicates the amount P that exceeds soil P maintenance as seen by a 'positive' inorganic soil P value or is less than the soil P maintenance requirements as seen by a 'negative' inorganic soil P value. Slightly greater than maintenance P was applied to Current and Proposed models (see Table 6a below).

Table 6: Change in block pool (N)

	Current	Proposed
Organic Pool	78	69
Inorganic Mineral	0	0
Inorganic Soil Pool	6	4

Table 6a: Change in block pool (P)

	Current	Proposed
Organic Pool	8	9
Inorganic Mineral	3	3
Inorganic Soil Pool	9	9

Rain/clover N Fixation

All plants, including forage crops, need relatively large amounts of nitrogen for growth and development. Biological nitrogen fixation is the term used for a process in which nitrogen gas (N₂) from the atmosphere is incorporated into the tissue of certain plants. Only a select group of plants can obtain N this way, with the help of soil microorganisms. Among forage plants, the group of plants known as legumes (predominantly Clover in NZ pastures) are well known for being able to obtain N from air N₂. The OVERSEER Technical Manual – Characteristics of Pasture, April 2015 indicates that biological N fixation is based on total pasture production and includes the fertiliser induced reduction in N fixation.

- The Biological fixation for the Current model is 61 compared to the Proposed model at 48 (see table 7 below).
- The average N added to the Current and Proposed models is 155 kgN/ha and 149 kgN/ha for the whole farm.
- The lower biological fixation for the Proposed model compared to the Current model can be explained by reduction in stocking rate and the decrease in supplement imported.

Table 7: Biological fixation

	Current	Proposed
Biological Fixation	61	48

Average N applied to whole farm kg/ha/yr	155 (190 to non-effluent and effluent pasture)	149 (190 to effluent and non-effluent pasture)
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Pasture Production

16. The average effluent N inputs for the Current model was 66 kgN/ha from liquid to pasture and 70 kgN/ha for the Proposed model from liquid to pasture (see table 8 below).
17. Fertiliser inputs of N for the Current model to effluent and non-effluent pasture was 190 kgN/ha. Fertiliser inputs of N to pasture onto effluent and non-effluent area was 190 kgN/ha pasture in the Proposed model.
18. Liquid effluent is applied onto pasture block for all the models was applied all year-round using a Low application method. Solid effluent from the pond was applied for both Current and Proposed models in November and February.

Table 8: Pasture production and N inputs (fertiliser and effluent)

	Current	Proposed
Effluent Liquid Area (ha)	150	123
Effluent Solids Area (ha)	210.5	230.4
Pasture Growth (tDM/ha/yr)	13.2	13.3
N Fertiliser inputs (kg/ha/yr)		
Effluent/Non effluent	190	190
N Effluent Inputs (kg/ha/yr)		
Effluent Liquid	66	70
Effluent Solids	9	8
Total N Inputs (kgN/ha/yr)		
Effluent Liquid	256	260
Effluent Solids	199	198

19. The pasture production for all models has been modelled as varying based on topography, climate, and development status.
20. Fertiliser inputs of N are low for the Current and Proposed models (see Table 8).
21. It is assumed the Current model represent the actual farm system with actual stock, crop area and fertiliser inputs, it is assumed that the pasture production is accurate and reasonable.
22. Long term pasture growth in Southland between 1979 and 2012 indicated that average pasture growth for newer pastures was 12.7T DM/ha/yr.
23. The dairy pasture production for the Current model was 13.2 tDM/ha compared to 13.3 tDM/ha for the Proposed model which is respectively 3.8% and 4.5% higher than the Southland average.
24. Current/Proposed model: Allowing for the Overseer model assuming an average metabolisable energy (ME) value of 10.5 MJME/kgDM for pasture and South Island pastures have a ME value closer to 11 MJME/kgDM the models output of pasture growth would drop by 4.5%. Also, the Current Model has used actual data and have been rotating crops which means new pasture which can account for 15-20% improvement in pasture growth. This more than accounts for the higher pasture growth.

25. The animal distribution is modelled as 'Relative pasture yield' and 'Based on animals present on block' with 'Default Grazing Months' for all models.

Mitigations Modelled

26. Reporting out lined the following: As described in the Overseer Nutrient Budget Report for Pahia Dairies Ltd prepared Nicole Mesman, Lumen Environmental Ltd, there are several mitigation measures indicated to mitigate N loss that have been included in the Proposed modelling. The below table details if the mitigation measures have been included in the proposed scenario and if they are accurately modelled.

Table 9: Mitigation option for Proposed scenario

Decreased Winter Crops	Yes, the area of winter crop is dropped from 63ha kale in the Current Model to 51 ha fodder beet (19% decrease) in the Proposed model
Decrease in imported supplement	Yes, Supplement imported has decreased by 12.6%

27. It is important that these mitigation measures are measured and monitored as if they are not adhered to the N loss reductions proposed may not occur.
28. Some good management practices assumed in Overseer are maintain accurate and auditable records of annual farm inputs, outputs and management practices (Overseer output is only as good as the data entered); Fertiliser is being applied according to the Fertmark and Spreadmark Codes of Practice; Feed is stored to minimise leachate and soil damage; Compliant effluent systems as defined by DairyNZ; Stock exclusion from water ways; Irrigation efficiency greater than 80%; farm race and bridge/culvert nutrient runoff is directed to paddocks; grazing managed to minimise losses from critical source areas.
29. Overseer will account for bad practices such as nitrogen (N) applied that exceeds the plants' ability to absorb the excess N, application of N in the winter, high stocking rates, land left fallow between crops and irrigating high water application rates causing N drainage to name a few.
30. The Overseer modelling completed for Pahia Dairies Ltd does not have any of the 'Bad Practices' as suggested in paragraph 29, and it would be assumed the FEMP would cover any good management practices (not limited to) outlined in paragraph 28.

CONCLUDING COMMENTS

Determination of the robustness of the nutrient loss to water

31. The questions below were described at Paragraph five of this report. Whilst these have been answered throughout this report, this section summarizes the answer to each question to make an overall conclusion about the robustness of the nutrient budgets.

Is the N loss consistent with what you would expect for an operation of this type and soils in this location?

32. Based on my experience, the N loss estimates are reasonably consistent with an operation of this scale and types of soil present.

Does the summary of inputs and outputs make sense? Especially clover fixation and change in block pools?

33. The Biological fixation for the Current model is 61 compared to the Proposed model at 48.
34. The average N added to the Current and Proposed models is 155 kgN/ha and 149 kgN/ha for the whole farm.
35. The lower biological fixation for the Proposed model compared to the Current model can be explained by reduction in stocking rate and the decrease in supplement imported.

Check the 'Other values' block reports for rainfall, drainage, and PAW.

36. The rainfall and soil information have been entered based on protocols for the location. The soils between models have not been modelled to best management practice. There is difference of 5% or more in some soils between the Current and Proposed models.

Production and stocking rate

37. The Current model has a dairy revised stocking unit of 20.7 RSU/ha compared to the Proposed model which has a RSU 20.1 RSU/ha or a 2.9 % decrease in RSU/ha (see Table 1 below).
38. Reviewing the NZ Dairy statistics for the 2019/2020 season, shows the average milk solids production on this property for the Current model at 345.1 kgMS/cow and 1060 kgMS/ha is respectively lower than the Southland Regional average of 418 kg MS/cow and lower than the Southland Regional average of 1133 kgMS/ha. The Proposed model at 345.1 kgMS/cow and 958 kgMS/ha is respectively lower than the Southland Regional average of 418 kg MS/cow and lower than the Southland Regional average of 1133 kgMS/ha.
39. The stocking rate for Current Model at 3.1 cows/ha higher than the Southland average for the 2019/2020 season of 2.76 cows/ha (Invercargill). The stocking rate for Proposed Model at 2.8 cows/ha is similar to the Southland average for the 2019/2020 season of 2.76 cows/ha (Invercargill).
40. It is assumed that the Current model is based on actual year end information.

Select the pasture production in the scenario report and check pasture growth.

41. Long term pasture growth in Southland between 1979 and 2012 indicated that average pasture growth for newer pastures was 12.7T DM/ha/yr.
42. The dairy pasture production for the Current model was 13.2 tDM/ha compared to 13.3 tDM/ha for the Proposed model which is respectively 3.8% and 4.5% higher than the Southland average.
43. Current/Proposed model: Allowing for the Overseer model assuming an average metabolisable energy (ME) value of 10.5 MJME/kgDM for pasture and South Island pastures have a ME value closer to 11 MJME/kgDM the models output of pasture growth would drop by 4.5%. Also, the Current Model has used actual data and have been rotating crops which means new pasture which can account for 15-20% improvement in pasture growth. This more than accounts for the higher pasture growth.

44. The animal distribution is modelled as 'Relative pasture yield' and 'Based on animals present on block' with 'Default Grazing Months' for all models.
45. I have assumed an adequate level of robustness around the Current model of actual Overseer Modelling as it is based on an actual farming system, and with that, I have assumed actual stock and fertiliser inputs used.

The data input protocols have been followed with some deviations. This leads to a **medium** level of robustness for the relevant input data for example, climate, soils, and pasture type. Based on the level of robustness of the inputs and outputs in the Proposed and Current Overseer model, I consider that the robustness of the nutrient loss estimates for the Current and Proposed model to be **medium**. This is due to the follow:

Please explain why some of the soils, between the Current and Proposed models, have a difference of greater than 5%.

References:

New Zealand Dairy Statistics 2019/2020. Produced by LIC and DairyNZ 2020.
<https://www.dairynz.co.nz/publications/dairy-industry/new-zealand-dairy-statistics-2019-20/>

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Overseer Technical Manual – Characteristics of Pasture, April 2015

Smith. L. C. 2012. Proceedings of the New Zealand Grassland Association 74: 147-152 (2012) *Long Term pasture growth patterns for Southland New Zealand: 1978-2012.*
www.grassland.org.nz/publications/nzgrassland_publication_2284.pdf

<https://www.dairynz.co.nz/media/5793235/average-pasture-growth-data-south-island-2020-v1.pdf>

Attachment 2

NZALA submission opposing application



22 March 2023

Environment Southland Regional Council
service@es.govt.nz
esconsents@es.govt.nz

CC: Lumen Environmental Limited
Attention: Nicole Mesman
nicole@lumen.co.nz

Tēnā koe Environment Southland,

NEW ZEALAND ANIMAL LAW ASSOCIATION'S SUBMISSION OPPOSING RESOURCE CONSENT APPLICATION APP-20222765

Background

1. Pahia Dairies Limited ("**the Applicant**") has applied to Environment Southland ("**the Authority**") for a consent for nine years to:
 - a. increase the area of the dairy farm by 100 hectares;
 - b. to use that land for intensive winter grazing; and
 - c. to discharge contaminants to land associated with intensive winter grazing.
2. The New Zealand Animal Law Association ("**NZALA**") opposes these applications.
3. The Applicant owns a 419-hectare dairy farm at 171 Ruahine Road West, Ruahine. In 2017, the Applicant extended their dairy farm by purchasing a 100-hectare block of land known as "Browns Block". Since 2017, the Applicant has been unlawfully using this land for grazing dairy cows and was issued an abatement notice by the Authority in September 2022.
4. The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 ("**NESF**") permits intensive winter grazing where certain conditions are met. Browns Block fails to meet two of these conditions because it is greater than

50 hectares or 10% of the area of the farm,¹ and parts of the farm can slope in excess of 10 degrees over a 20-metre distance of land.² Therefore, as the Applicant's proposal does not comply with these conditions, the joint application for winter grazing and dairy expansion constitutes a restricted discretionary activity under the NESF.³

The definition of “environment” includes cattle

5. The purpose of the RMA is to promote the sustainable management of natural and physical resources.⁴ “Sustainable management” can be defined as avoiding or mitigating any adverse effects of activities on the environment.⁵ The term “environment” is defined as including “all natural and physical resources”, which includes cattle, given the definition encompasses “*all* forms of plants and animals” (emphasis added).⁶ When the courts have determined animals do not fall under the definition of “environment”, it has been regarding activities that were already regulated under other regulatory regimes and not regulated or controlled under the RMA.⁷ By contrast, intensive winter grazing is regulated and controlled under the RMA and its secondary legislation.⁸ Therefore, NZALA submits that the Authority must consider the potential adverse effects of the proposed intensive winter grazing on the cattle before approving this application.

The potential adverse effects of the Applicant's proposal

6. The Authority's assessment of potential adverse effects on cattle includes potential effects of low probability, which have a high potential impact.⁹ Case law has confirmed that absolute certainty of an event or effect is not required under the RMA.¹⁰
7. NZALA argues that the intended operation is likely to be inconsistent with section 10 of the Animal Welfare Act 1999 (“**AWA**”), by failing to meet the cattle's physical, health and behavioural needs in accordance with good practice and scientific knowledge.

¹ Breaching reg 26(4)(a).

² Breaching reg 26(4)(b).

³ Resource Management (National Environmental Standards for Freshwater) Regulations 2020, reg 27.

⁴ Section 5(1).

⁵ Resource Management Act 1991, s 5(2)(c).

⁶ Resource Management Act, s 2(1).

⁷ For example, the management of kaimanawa horses was regulated under the Wildlife Act 1953 in *Kaimanawa Wild Horse Preservation Society Inc v Attorney-General* NZEnvC A27/97, 5 March 1997, and coal mining was regulated under the Coal Mines Act 1979 in *Powelliphanta Augustsus Inc v Solid Energy New Zealand Ltd* HC Christchurch CIV-2006-409-2993, 30 April 2007.

⁸ Resource Management Act 1991, pt 6 and Resource Management (National Environmental Standards for Freshwater) Regulations 2020, subpt 3.

⁹ Resource Management Act, s 3(f).

¹⁰ *Living in Hope Inc v Tasman DC* [2011] NZEnvC 157.

These needs include the provision of proper and sufficient food and water, adequate shelter, the opportunity to display normal patterns of behaviour and protection from significant injury or disease.¹¹ NZALA submits the proposed activity could leave the Applicant exposed and potentially liable to criminal liability under section 12 of the AWA.

(A) Potential adverse effects on proper and sufficient food

8. The Applicant refers to the loss of nutrients per hectare of land when they repeatedly refer to fodder beet being more beneficial to the environment than other options, such as kale. However, the Applicant failed to consider the implications on cattle welfare, as part of the environment.
9. NZALA submits there are significant concerns associated with the use of fodder beet, which must be considered by the Authority, including:
 - a. long-term implications on milk composition, reproduction, bone development in young stock and longevity;¹²
 - b. the need for careful observation of the impact of low protein intake and understanding the impact of a low phosphorus diet;¹³
 - c. the increasing evidence that mineral deficiencies caused by fodder beet can lead to serious consequences, including spontaneous humeral fractures in replacement heifers, occurring in up to 25% of herds.¹⁴

(B) Potential adverse effects on the opportunity to display normal patterns of behaviour and accessing adequate shelter

10. The Code of Welfare (Dairy Cattle) 2019 (“**COW19**”) stipulates that when dairy cattle have suitable soft lying surfaces and space available that is not exposed to adverse environmental conditions, they prefer to lie down for 10-12 hours each day.¹⁵ Minimum standard 6(b) of the COW19 provides that the ability “to lie and rest comfortably for sufficient periods to meet their behavioural needs” must be provided to dairy cattle. This was also identified by the Winter Grazing Taskforce, confirming that cattle “...should always be able to lie down comfortably (on a soft dry substrate) for as long

¹¹ Animal Welfare Act 1999, s 4.

¹² Dairy NZ “Transitioning and health risks” <<https://www.dairynz.co.nz/feed/crops/fodder-beet/transitioning-and-health-risks/>>

¹³ Dairy NZ, above n 12.

¹⁴ Michaela Jane Gibson “Broken shoulders in dairy heifers in New Zealand: Investigating the relationship between live weight and bone morphology in the bovine forelimb” (Doctor of Philosophy in Animal Science, Massey University Palmerston North, 2021).

¹⁵ At 12.

as they want [and] there should always be an ability to readily move animals to shelter/dry land in adverse weather before harm occurs.”¹⁶

11. The Applicant submits they will manage the impacts of intensive winter grazing with a plan for each paddock and wet weather management strategies, including dry lying areas and fencing with portable troughs and feeders.¹⁷ The Applicant has not specified how much space will be dedicated to dry lying or how these areas will be kept dry. Further, the number and location of troughs have not been specified and how this will minimise the effects of winter grazing where the cattle are kept at higher than normal density.
12. NZALA is further concerned with Browns Block’s susceptibility to pugging. Pugging happens when soil structure becomes damaged, uneven and muddy from animals grazing during wet conditions.¹⁸ The majority of Browns Block is comprised of Otway and Kaipaki soils, which the Applicant notes are susceptible to pugging due to their high waterlogging risk.¹⁹ Therefore, given the substrate's makeup, NZALA submits that pugging is inevitable if the Authority permits intensive winter grazing on Browns Block. While the Applicant has indicated back fencing will be implemented to minimise pugging,²⁰ this reduces the space for the cattle and thus the ability to display their normal behaviours.²¹
13. The Winter Grazing Taskforce also highlighted that adverse weather could prevent normal birthing,²² and the conditions created by intensive winter grazing could exacerbate this. Such conditions could impede normal maternal behaviour, breaching section 10 of the AWA.
14. Therefore, NZALA submits that Browns Block’s susceptibility to pugging and insufficient drainage will likely impede the cattle’s opportunity to display normal patterns of behaviour, and the Applicant has failed to address how they will sufficiently mitigate or eliminate these adverse effects.

¹⁶ Ministry for Primary Industries *Winter Grazing Taskforce Final report and recommendations: Improving Animal Welfare on Winter Grazing Systems* (November 2019) at 7.

¹⁷ Nicole Mesman *Application for Resource Consent* (Lumen Environmental Ltd, 21 October 2022), at 55.

¹⁸ Beef and Lamb New Zealand “Factsheet September 2021 Pugging and Soil Compaction - What Influences Pugging” <[¹⁹ Mesman, above n 17, at 7.](https://beeflambnz.com/knowledge-hub/PDF/FS265-pugging-and-soil-compaction#:~:text=Pugging%20is%20when%20soil%20structure,looks%20rough%2C%20uneven%20and%20muddy.></p></div><div data-bbox=)

²⁰ Mesman, above n 17, at 55.

²¹ Ministry for the Environment and Ministry for Primary Industries *Report and recommendations on intensive winter grazing amendments* (April 2022) at 6.

²² Ministry for Primary Industries, above n 16, at 43.

(C) Potential adverse effects on the cattle's protection from significant injury or disease

15. As stated, Browns Block is susceptible to water pooling and pugging, which can lead to significant injury and disease in cattle, including the following:
 - a. Weakened hoof material and softened skin of the interdigital space and coronet, leading to infection and lameness.²³
 - b. An increase in mastitis.²⁴
 - c. A significant reduction in lying time can lead to acute and chronic stress and possible immunosuppression.²⁵

Code of Welfare for Dairy Cattle under review

16. Pursuant to section 104(1)(c) of the RMA, the Authority must have regard to any other matter the Authority considers relevant and reasonably necessary to determine the application. As the Authority may be aware, the Code of Welfare for Dairy Cattle (and its associated regulations) is currently under review by the National Animal Welfare Advisory Committee to ensure that it is consistent with animal welfare legislation. A significant part of the review relates to intensive winter grazing and whether such practices are consistent with the AWA. It is NZALA's and the Winter Grazing Taskforce's position that the animal welfare standards need to increase in relation to intensive winter grazing due to its adverse effects on dairy cattle.²⁶
17. NZALA submits that in light of the current review, the Authority must strongly consider whether such practices are consistent with the AWA.

Conclusion

18. The Applicant suggests that the cumulative effects on the environment will be "less than minor" as a result of management practices.²⁷ NZALA submits that the effects of the proposed activity on cattle will be more than minor and the Applicant has failed to sufficiently eliminate or mitigate the risk of potential adverse effects on the cattle. Therefore, the application is inconsistent with the requirements of the RMA and should not be granted.

²³ Beef and Lamb New Zealand, above n 18.

²⁴ Beef and Lamb New Zealand, above n 18.

²⁵ Ministry for the Environment and Ministry for Primary Industries, above n 21, at 43.

²⁶ See Ministry for Primary Industries, above n 16, at 8.

²⁷ Mesman, above n 17, at 4.

NZALA wishes the Authority to:

19. Decline the applications in accordance with section 104B(a) of the Act.
20. If the Authority grants the applications, NZALA submits that the resource consent should be granted for a maximum of 3 years.
21. If it is considered helpful to the Authority, NZALA can appear and speak in support of this submission.

Ngā mihi,

The New Zealand Animal Law Association

Attachment 3

Applicant response to NZALA submission opposing application

RESPONSE TO NZALA SUBMISSION CONSENT APPLICATION APP-20222765

Farm: Pahia Dairies

Date: 24/4/2023

Consultant: Nicole Mesman

Topics: Response to points of opposition raised by NZALA regarding the application for resource consent to increase dairy farm area and use land for intensive winter grazing (and the discharge of contaminants associated with this grazing) by Pahia Dairies in consent application APP-20222765.

1. Summary

Response has been provided to each point raised by NZALA, the corresponding numbers are provided.

4. A correction that while Browns block contributes to the total area of IWG at Pahia being in excess of 50 ha/ 10% no part of the block itself has a slope of over 10 degrees.
9. NZALA is concerned about the effects on cattle, considered part of the physical environment, from the grazing of fodder beet during winter.
 - a. As per the information provided below nutrient levels in the fodder beet and through dietary supplements are sufficient to ensure no long-term impacts on stock or on the development of young stock.
 - b. The low protein content of FB is recognised, as a result fodder beet is only fed at 60% of the diet or 8 kg offered with the remaining 40% or 6 kg offered being high-quality grass baleage. The Dairy NZ feed checker calculator results presented below demonstrates that the diet meets the requirements of a dry cow. In addition, minerals are supplemented through the dosatron throughout the year, through the mineral dispenser during in shed feeding, administered straight to the cow as required with all mineral supplementation being guided by the recommendation of Pahia's vet.
 - c. Use of the DairyNZ FeedChecker calculator allows for comparison between minerals in the diet and those required in reference material¹. Mineral supplementation is as per the information above or under recommendation of Pahia's vet informed by herd

¹ FeedChecker calculator, Dairy NZ, [FeedChecker calculator - DairyNZ](#)

blood testing twice a year. The information provided below in Figures 1-3 shows the summary of the diet at Pahia over the winter, the energy, protein and mineral makeup of the diet and the Dairy NZ recommendations for dairy cows in terms of protein and minerals. Phosphorus requirements of dry cows at Pahia eating 12 kg DM/day is 0.24% of DM consumed². This is lower than what is recommended by Dairy NZ for lactating cows (Figure 3 below). Dry cow protein requirements are 12% of dry matter (DM) intake, the diet provided at Pahia has a protein concentration of 12.5% of DM. In addition, sulphur and calcium are supplemented in the diet. Sulphur is added as magnesium sulphate to the stock drinking water through the dosatron system. Calcium needs to be kept low in the diet until calving at which point Pahia adds calcium through the mineral dispenser in the dairy shed to ensure optimal uptake.

4. FEED AND MINERAL SUPPLY				OPTION 1	
FEED TYPE	FEED	FEEDING METHOD	Util.	OFFERED kg DM /cow	EATEN kg DM /cow
PASTURE			0%		
Fodder_beet_Default	Bulb 80% Leaf 20%	Utilisation 90%	90%	8.0	7.2
Hay_Silage	Baleage	in a bale feeder	80%	6.0	4.8

Figure 1: Summary of feed offered per cow per day over winter at Pahia

FEEDCHECKER			
RECOMMENDED		OPTION 1	
DM eaten	Opt 1	Opt 2	diff
DM			12.0
Average MJME/kg DM			
MJME			134
PROTEIN			12.5

² Why is Phosphorus so important? AHV, [Why is phosphorus so important for your dairy cattle? - AHV International - Animal Health Vision Concept & Solutions](#)

MINERALS

Na	min	0.48
K	min	2.06
Cl	min	0.30
S	min	0.09
Mg	min	0.24
Ca	min	0.36
	max	
P	min	0.26

Figure 2: Summary of Dry matter, energy, protein and minerals provided in the winter diet as % of DM at Pahia

As a general rule for all diets	Protein content of diet required % DM
Early lactation	18
Mid lactation	16
Late lactation	14
Dry cow	12

Macro minerals	Mineral content of diet required (%DM)
All diets for high production (2 kg MS/cow/day)	
Calcium	0.6-0.8
Phosphorus	0.3-0.35
Magnesium	0.22-0.28
Potassium	1.0+
Sulphur	0.23
Sodium	0.20
Chlorine	0.25

Figure 3: Dairy NZ reference levels for protein requirements of dry cows and minerals required in a lactating dairy cow diet.

10. In wet conditions cows are moved to a standoff grass paddock once they have finished their break of fodder beet for the day. In this paddock supplement and stock water are supplied and cows have access to the clean, soft, dry lying space equivalent to 8-10 m² per cow³.
11. Pahia Dairies move cows to standoff paddocks when winter grazing paddocks are wet and there is not adequate (8-10 m²) of dry lying space available per cow. Standoff paddocks are chosen for their soil type, ability to stay dry and flat topography⁴. Cows are moved to the standoff area after finishing their crop break. They are provided with supplement and stock water on the standoff paddock. If the standoff area also becomes wet then straw is spread out to provide a dry lying surface. When cows are grazing fodder beet portable troughs are used, typically one, in the middle of the break fence bordering the crop face and are therefore moved up daily when the break fence is moved. The use of both portable troughs and back fencing means that pacing of stock is reduced and therefore pugging is minimised⁵.
12. There is a reduction in potential effects on the environment because the proposal indicates moving from an area of high susceptibility to pugging to an area of lower susceptibility to pugging. A key way to minimise pugging is by ensuring cows are fully fed which then reduces their pacing and potential pugging⁶. This is achieved at Pahia by carrying out yield assessments on the fodder beet and subsequent feed budgeting. Back fencing does not occur directly behind the animals, sufficient space is left between grazing face and the back fence to allow for at least 8-10 m² per cow. The back fence is typically moved every 3-4 days rather than every day like the break fence. In wet conditions the back fence may be moved more frequently to ensure that any pugging as a result of the conditions is minimised to a smaller area, cows will always have at least 8-10 m² of space available within the winter grazing paddock even when they are being moved off to a standoff paddock. Pahia also strategically sets up the break fences to minimize cow pacing, considering wind direction and using square breaks if needed to provide cows with shelter from prevailing wind.
13. Cows are moved back to pasture paddocks prior to birthing. Cows are pregnancy tested and are split into mobs according to their calving dates. This allows cows to then be moved back to pasture paddocks a week to 10 days in advance of their expected calving date to ensure that they do not calve on a crop paddock. There are no benefits to calving on crop paddocks and therefore Pahia ensures that this does not happen.
14. All proposed wintering on Browns block would take place on Waikiwi and Kaipaki soils not Otway. Otway soils on Browns block are also associated with swampy parts of the block and therefore currently require a lot more management during winter. Therefore the transition from winter grazing on swampy areas of Otway soil to Waikiwi and Kaipaki soils on Browns block will be beneficial both for grazing conditions of cows and for soil structure. A maximum of 30 ha of Browns block would be used in any one season for wintering. This is the maximum area however the average annual area would be closer to 10 ha. This is a significant reduction on the 44 ha that is grazed currently and ensures a far more sustainable rotation. With 44 ha of winter grazing annually on Browns block, to ensure rotation, eventually crops would be

³ Smart Shelters NZ, Composting Barns, [Composting Barn for Dairy Cows | SmartShelters NZ](#)

⁴ Dairy NZ, Providing a comfortable lying surface, [Keeping cows comfortable - DairyNZ](#)

⁵ Dairy NZ, Back fences, [Using portable troughs and back fences - DairyNZ](#)

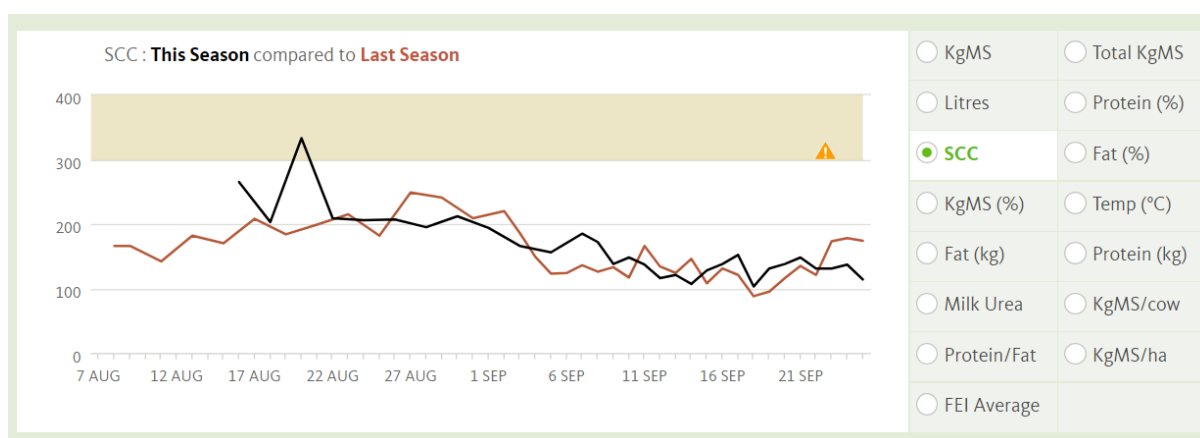
⁶ Northland Pastoral Extension, Soil structure, [82748 - Enterprise Northland - Pugging Popular.indd \(nddt.nz\)](#)

sown across most of the block including across the Otway soils. The proposed change in land use would ensure that the areas identified by the farm as less suited to wintering on Browns block (Figure 4 below) would be able to be avoided.

In addition, the applicant proposes grazing of Fodder beet instead of Kale. The lower protein content of Fodder beet is managed from a dietary perspective (as demonstrated in Figure 1 above through supplementation of baleage) and is beneficial with reductions in nitrate nitrogen loading on the receiving environment of 40-50% when compared to those from grazing of Kale⁷.

15. NZALA is concerned about the effects on cattle of water pooling and pugging and this leading to injury and disease in cattle.

- a. The beef and lamb reference cited by NZALA is in relation to stock which typically graze hill country during the season where conditions are firm and dry. Their hooves are not used to continual muddy, wet conditions and therefore have heightened sensitivity to hoof infections. The cows at Pahia however, are used to wet conditions and are grazed throughout the season on soft grass so their hooves are already adapted to these conditions. To ensure hooves are kept in good condition zinc powder is applied to mats in the cow shed at Pahia in spring from drafting of springer cows right through till mating⁸. In addition, cows at Pahia are crossbred, are lighter with a higher mix of Jersey genetics. They are bred specifically for the farm conditions and the Jersey breeding gives them black hooves which are harder and tougher⁹
- b. Cows at Pahia are herd tested at the end of the milking season when they are being dried off for somatic cells and depending on the cell counts and subsequent risk profile of the cow they receive teat seal or dry cow treatment or both. Treatment given to cows at Pahia and drying off practices is in consultation with their vet. As shown by the somatic cell count graph issued by Fonterra (below) from the first two months of milking for the last two seasons somatic cell counts are managed to be well below the risk level. This graph also allows for immediate identification of any issues during the season and immediate treatment.



⁷ Journal of NZ Grasslands, Nitrogen leaching losses from fodder beet, <http://www.nzgajournal.org.nz/index.php/JoNZG/article/view/444>

⁸ Agvance, Lameness in Dairy Cattle, [LAMENESS IN DAIRY CATTLE | Agvance Nutrition](#)

⁹ Jersey Canada, Hoof Health, [hoof-health-fact-sheet-eng-for-web.pdf \(jerseycanada.com\)](#)

- c. As already mentioned in Point 11 there will be no reduction in lying time due to provision of clean and dry lying surfaces and sufficient space provided to each cow while on crop and on grass stand-off paddocks.
- 16. The applicant believes that through addressing the points of opposition raised by NZALA the applicant has demonstrated that there are no adverse effects of the proposed activity on dairy cattle on the farm.
- 17. The applicant has responded to all points of opposition raised so far by NZALA and given consideration to them to ensure that the practices on farm are consistent with the proposed dairy welfare code and that these practices are clearly articulated to promote understanding. The proposed Code of Welfare for Dairy Cattle has therefore been considered.
- 18. From the management practices detailed above the applicant demonstrates that through implementation of adequate management practices the effect of winter grazing activities on cows grazing at Pahia will be less than minor. Furthermore, the change in proposed land use on Browns block means that it will be easier to manage the effects on the environment, including the effects on dairy cattle, to ensure they are less than minor in comparison to management under the current land use.

Pahia Dairies Ltd
4017154

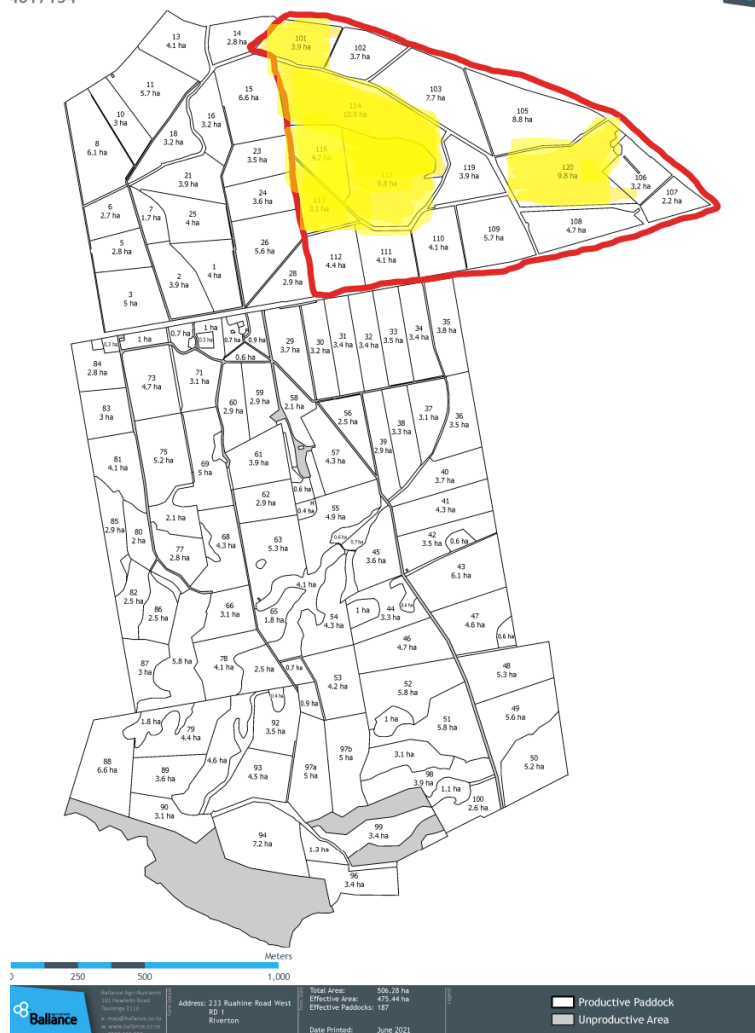


Figure 4: Browns block marked in red and paddocks in Browns block not suited for cropping and therefore proposed not to be cropped anymore, highlighted yellow.

This response has been prepared in conjunction with the farm owner, farm consultant and farm vet.
Any questions please contact myself.

Kind regards,

Nicole Mesman | Consultant



Integrated environmental management

P: 0800 458 636

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Attachment 4

Section 99 Pre-Hearing report

Report on pre-hearing meeting

Section 99 of the Resource Management Act 1991

From: Councillor Neville Cook

To: [Commissioner(s) or Committee to hear and determine the application]

Date: 8 May 2023

Pre-hearing meeting

1. On 28 April 2023 the Environment Southland (ES), conducting its function as consent authority under the Resource Management Act 1991 invited Pahia Dairies Limited, who has applied for resource consent, and New Zealand Animal Law Association, who is a submitter on the application, to meet.
2. At that stage the application had been notified 23 February 2023, submissions closed 23 March 2023, one submission received, and the submitter opposing the application indicated they wished to be heard at a hearing. The requested meeting was therefore a pre-hearing meeting held under section 99 of the RMA. Prior to that hearing, the Applicant had provided a detailed response to the Submitters evidence. This response had been provided directly to the Submitter by the Applicant.
3. The meeting was held by ES at the request of Pahia Dairies Limited for the purpose of clarifying a matter or issue; or facilitating resolution of a matter or issue. All discussions categorised as 'without prejudice'. The online teams meeting link was circulated by ES to all parties on 20 April 2023.
4. Additional matters for clarification arising before and during the meeting were:
 - a. Review discussion of the DRAFT conditions with the Applicant and ES staff.
5. The meeting was held on 28 April 2023 at 10 am as follows:
 - a. Location: Council Chamber at the offices of Environment Southland, Invercargill
 - b. Present:
 - Applicant in-person:**
 - i. Nicole Mesman – Lumen Environmental Limited
 - ii. Emily Chisholm – Lumen Environmental Limited
 - iii. Simon Anderson – Pahia Dairies Limited
 - iv. Trevor Gee – Macfarlane Rural Business
 - Applicant accessing remotely:**
 - v. Mark Everest – Lumen Environmental Limited
 - Environment Southland staff:**
 - vi. Councillor Neville Cook – Chair
 - vii. Jade McRae – Processing Officer
 - viii. Catherine Ongko – Panel Assistant
 - c. Apologies:
 - Submitter:**
 - i. Lois Stone – New Zealand Animal Law Association
 - ii. Jordan Rennie – New Zealand Animal Law Association

The meeting concluded at 10:42 am

Statutory and procedural matters

Requiring and requesting attendance

6. Section 99(2) allows consent authorities to request an applicant, a submitter or any other person it considers appropriate to attend a pre-hearing meeting. This can be either at the request of the applicant or submitters or on its own initiative.
7. In this case the applicant requested the meeting to be held and for submitters to attend. ES agreed this was appropriate and advised by email on 4 April 2023 that a meeting was to be held and requested attendance to the parties listed above.
8. If attendance is requested, as opposed to required, the attendance of the applicant and submitters is optional and their decision to attend can be made without prejudice. In this case, the applicant representatives were present and the submitter did not attend. There were a number of contacts with the Submitter and the Panel Assistant regarding attendance in person or electronic participation in a discussion. It is understood that the Submitter wished to obtain further advice around the response from the Applicant and asked for additional time to do so. It was decided that the appropriate notice of the meeting had been provided to the parties, and the Applicant had arranged for transport from Christchurch for its supporting witnesses. The email request for postponement of the Section 99 discussion from the Submitter was declined.

Attendance of those delegated to make decisions

9. Section 99(4) states that an officer of the authority who has the power to make the decision on the application may attend, subject to the agreement of all the parties attending and participating, and if the consent authority is satisfied their presence is appropriate.
10. No officers with delegation to determine the application were present at the meeting.

Chairperson to prepare this report

11. Section 99(5) and (6) require the chairperson of the meeting to prepare a report outlining particular matters, and to circulate that report to all of the parties and the consent authority (meaning, the commissioners or hearings panel that will hear and determine the application) no less than 5 working days before the hearing.
12. The report must, for the parties who attended the meeting:
 - a. set out the issues that were agreed; and
 - b. set out the issues that are outstanding
13. However, the report must not include anything communicated or made available at the meeting on a without prejudice basis.
14. In addition, the report may, for all the parties:
 - a. set out the nature of the evidence that the parties are to call at the hearing; and
 - b. set out the order in which the parties are to call the evidence at the hearing; and
 - c. set out a proposed timetable for the hearing.

15. Commentary on these matters can be found in paragraphs 20 - 24 of this report.
16. The meeting was not able to address matters pertaining to evidence or the hearing timetable.

Status of this report and next steps

17. Section 99(6) requires the chairperson to send this report to the consent authority and all the parties so that they have it at least 5 working days before the hearing. **The report was sent by email to the parties on 8 May 2023.**
18. At the time of writing, no parties have advised that they no longer wish to be heard, and the application has not yet been scheduled to be heard. The Applicant and parties would have 10 working days to consider this pre-hearing meeting report. Please kindly confirm in writing any comments on the pre-hearing report circulated by May 22, 2023.
19. Section 99(7) **requires** the consent authority (meaning, the commissioners delegated power of the consent authority by to determine the application) to **have regard to** this report in making the decision on the application.

Issues to be clarified or resolved

20. Issue 1 – Submission in opposition to the Applicants consent applications.
21. As the Submitter was not represented at the pre-hearing meeting, there was no discussion of the matters contained in the submission.
22. This issue remains unresolved. The submitter indicated more time was required for them to respond to the applicant's letter in response to the submission opposing the application.
23. Issue 2 – Council required certainty that mitigations proffered in the application would be accepted as conditions of consent to avoid, remedy or mitigate adverse effects on the environment.
24. Land use consent conditions were discussed, and the applicant confirmed there would be no issues complying with the conditions and that they are consistent with the activity outlined in the application.



Councillor Neville Cook
Chair
Date:

Attachment 5

Submitter response to applicant's response to the NZALA submission opposing application



10 May 2023

Environment Southland Regional Council
service@es.govt.nz
esconsents@es.govt.nz

CC: Lumen Environmental Limited
Attention: Nicole Mesman
nicole@lumen.co.nz

Tēnā koe,

**NEW ZEALAND ANIMAL LAW ASSOCIATION'S RESPONSE TO NICOLE MESMAN'S
LETTER DATED 24 APRIL 2023 - RE APP-20222765**

This letter outlines NZALA's response to Nicole Mesman's letter dated 24 April 2023, written on behalf of the Applicant, Pahia Dairies Limited. For the purpose of this letter, NZALA refers to Ms Mesman's letter when "the Applicant" is referenced.

Potential adverse effects on proper and sufficient food

1. The Applicant acknowledges that fodder beet has a lower protein content and proposes cattle would only be fed at 60% of the diet or 8kg to address this issue.¹ NZALA submits 60% is at the top end of the recommendation in the Proposed Code of Welfare for Dairy Cattle and Associated Regulations ("PCWDC"), and it is not in line with their recommended best practice, which does not include fodder beet.² The National Animal Welfare Advisory Committee has also expressed concern about fodder beet use.³
 - a. As outlined in NZALA's original submission, there are several serious risks to cattle consuming fodder beet that must be mitigated.⁴
 - b. In addition to those factors, fodder beet can lead to acidosis, which can have serious implications on cattle, including the risk of spontaneous humerus

¹ At [9.b].

² At 11.

³ See National Animal Welfare Advisory Committee *Code of Welfare Evaluation Report Dairy Cattle* at 16-17.

⁴ At [9].

fractures,⁵ depression, dehydration, bloating and milk fever-like symptoms.

Severe cases can result in coma or death within 8-10 hours.⁶

- c. Therefore, the Applicant is not following best practice and has failed to take meaningful steps to mitigate the risk fodder beet poses by feeding it to the cattle at the very top end of the recommendation.
2. The Applicant proposed that Dosatron would be used to administer the mineral supplementation on the veterinarian's recommendation.⁷ NZALA submits Dosatron is an inaccurate and inefficient method of mineral supplementation. It cannot guarantee that each cow will receive the necessary mineral supplementation, especially during winter when cattle are less likely to drink as much due to the hydration they receive from their feed and the cooler weather. It also relies on no water leaks and a water system that works effectively 100% of the time.
3. The Applicant relies on Dairy NZ's feed checker to calculate mineral supplementation. NZALA emphasises this generic Dairy NZ advice should not be used as a substitute for professional nutritional advice or diet formulations that would provide specific advice tailored to the cattle occupying Browns Block.

Potential adverse effects on the opportunity to display normal patterns of behaviour if space is limited

4. The Applicant suggests back fencing minimises pugging by reducing the pacing of stock⁸ and ultimately the size of the area being pugged.⁹ NZALA disagrees with these findings and submits that the absence of back fencing and increased space for cattle often reduces pugging. Further, while back fencing might reduce the size of the pugged area, this fails to acknowledge that it causes deeper damage to the substrate.
5. Portable troughs (typically one) are also suggested to reduce pugging.¹⁰ NZALA requires more information about the size of the trough and how many cows would be feeding from each trough.

⁵ National Animal Welfare Advisory Committee, above n 3, at 65.

⁶ Dairy NZ, "Acidosis" <<https://www.dairynz.co.nz/animal/cow-health/acidosis/>>

⁷ At [9.b].

⁸ At [11].

⁹ At [12].

¹⁰ At [11].

6. The Applicant states that fully fed cows reduce pacing and potential pugging.¹¹ NZALA questions how the Applicant determines when every cow is “fully fed”, particularly since 12kg DM does not equate to a fully fed cow.
7. These mitigating factors must be credible since the Applicant relies on these to justify limiting space for the cattle, which impacts their ability to display normal patterns of behaviour. Restricting cattle space can seriously affect their ability to move freely within the paddock in accordance with their position in the herd hierarchy. It may prevent their ability to display their natural behaviours as prey animals, leading to increased stress and pacing.
8. NZALA submits other factors that can contribute to pugging have been overlooked. Such factors include the space available per cow, the timing of moving the herd, the amount of rainfall, and waterlogged soils.

Potential adverse effects on the opportunity to display normal patterns of behaviour in relation to accessing adequate shelter and dry-lying space

9. Several times throughout the letter, the Applicant states adequate dry-lying space will be available to each cow.¹² NZALA requires information on how the Applicant can guarantee “dry” bedding in a stand-off paddock.
10. The Applicant also states that straw will be utilised if the stand-off paddock area becomes wet. NZALA requests further information on how the Applicant plans on using straw to provide dry bedding in persistently wet conditions.
11. Further, the Applicant claims square breaks shelter cattle from the wind.¹³ NZALA requires the Applicant to clarify how square breaks provide adequate shelter for a herd, ensuring the cattle’s physical, health and behavioural needs required by the Animal Welfare Act 1999.¹⁴
12. NZALA is not satisfied that the Applicant has sufficiently addressed the concerns intensive winter grazing poses in relation to adequate shelter and dry-lying space.

¹¹ At [12].

¹² At [10], [11] and [15.c].

¹³ At [12].

¹⁴ Animal Welfare Act 1999, s 4.

Potential adverse effects on the opportunity to display normal patterns of behaviour in relation to calving

13. In response to NZALA's concern about calving and intensive winter grazing, the Applicant explained that cows are split into mobs 7-10 days before their calving dates.¹⁵ NZALA submits this does not allow sufficient time for cattle that calve early and that mixing social groups increases agonistic behaviour.
14. NZALA further submits that the Applicant's proposed timing is inconsistent with the minimum standard set out in the PCWDC. The standard requires cows to be provided with a compressible well-drained surface and effective shelter at least 14 days prior to scan-dated calving to prevent calves from being born into unsuitable conditions, including surface water or mud.¹⁶
15. Therefore, NZALA's concerns around calving and the Applicant's resource consent application remain.

Potential adverse effects on the cattle's protection from significant injury or disease

16. In response to NZALA's concern about the health impacts of intensive winter grazing on cattle, the Applicant states that because the Pahia Dairy cattle are used to muddy conditions, their hooves have adapted to the conditions and are less likely to get infected.¹⁷ NZALA requires the Applicant to provide evidence that supports this claim.
17. Further, the Applicant states the Pahia Dairy cattle breed with black hooves makes them harder and tougher. NZALA asks the Applicant to provide monthly records on the number of lame cattle they have had at Pahia Dairy over the last three years.

Overall, the Applicant has failed to adequately address NZALA's concerns about the potential adverse effects the Applicant's intensive winter grazing application has on the cattle. As per NZALA's original submission, the cattle form part of the definition of 'environment' under the Resource Management Act 1991. As such, the Authority must consider these issues when determining the outcome of the application.

¹⁵ At [13].

¹⁶ National Animal Welfare Advisory Committee - Proposed Code of Welfare for Dairy Cattle and Associated Regulations, at 12.

¹⁷ At [15.a].

Ngā mihi,

The New Zealand Animal Law Association

Attachment 6

Section 41D Application to strike out NZALA submission

BEFORE THE SOUTHLAND REGIONAL COUNCIL

Under The Resource Management Act 1991 (**'The Act'**)

In the matter of an application for resource consent

**STRIKE OUT APPLICATION PURSUANT TO SECTION 41D OF
THE RESOURCE MANAGEMENT ACT 1991 ON BEHALF OF
PAHIA DAIRIES LIMITED**

Duncan Cotterill
Solicitor acting: Jamie Robinson
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MAY IT PLEASE THE COUNCIL:

INTRODUCTION

- 1 Pahia Dairies limited (**PDL** or **the Applicant**) requests that the Southland Regional Council (**Environment Southland**) strikes out the submission of the New Zealand Animal Law Association (**NZALA**) on PDL's application (Environment Southland reference APP-20222765) pursuant to s41D of the Resource Management Act (**RMA**).
- 2 This application for strike out addresses:
 - 2.1 the background to the application;
 - 2.2 the reasons for the strike out; and
 - 2.3 the relief sought.

BACKGROUND

- 3 PDL owns a 419 hectare dairy farm located between Colac Bay and Orepuki. In 2017, PDL purchased a 100ha block of land, referred to as "Browns Block" which was incorporated into the dairy platform.
- 4 In September 2022 Environment Southland issued an abatement notice, requiring that Browns Block cease being used for dairy purposes, as that use was not authorised by the regional rules.
- 5 As a result of that abatement notice, PDL applied to Environment Southland for resource consent to authorise the use of Browns Block for dairy purposes, particularly to:
 - 5.1 Use land to expand a dairy farm by 95ha (with no increase in peak milking herd); and
 - 5.2 Use land for intensive winter grazing of cattle on 55ha of crop on slopes over 10 degrees.
- 6 The resource consent was publicly notified, with submissions closing on 23 March 2023. Only one submission was received, from the NZALA (**NZALA submission**). A copy of that submission is enclosed with this application to strike out, as **Appendix 1**.
- 7 That submission raised purported issues of animal welfare from the winter grazing of cattle on fodder beet.

GROUNDS FOR STRIKE OUT

8 Section 41D of the RMA authorises an authority conducting a hearing to strike out a submission (in part or in whole), if certain conditions are met:

(1) *An authority conducting a hearing on a matter described in section 39(1) may direct that a submission or part of a submission be struck out if the authority is satisfied that at least 1 of the following applies to the submission or the part:*

(a) *it is frivolous or vexatious:*

(b) *it discloses no reasonable or relevant case:*

(c) *it would be an abuse of the hearing process to allow the submission or the part to be taken further:*

(d) *it is supported only by evidence that, though purporting to be independent expert evidence, has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert evidence on the matter:...*

(2) *An authority*

(a) *may make a direction under this section before, at, or after the hearing; and*

(b) *must record its reasons for any direction made.*

9 The grounds for strike out are that the NZALA submission:

9.1 discloses no reasonable or relevant case; and

9.2 would be an abuse of the hearing process to allow the submission to be taken further.

It discloses no reasonable or relevant case

10 To disclose a reasonable or relevant case, a submission must raise issues which are within the scope of an application under the RMA.

11 The sole issue raised in the NZALA submission is animal welfare. Animal welfare is **not** an issue which is within the scope of the RMA, rather it is addressed under the Animal Law Act 1999 (**AWA**) (which is referenced throughout the NZALA submission).

12 The issue of animal welfare and its relevance to the RMA was thoroughly traversed in the matter of several resource consent applications to Environment Canterbury (**ECan**) for intensive indoor dairy farming in the Mackenzie Basin. In particular, in that situation:

- 12.1 Over 75% of the submissions received on the publicly notified applications raised animal welfare concerns.
- 12.2 ECan received legal advice that effects on animal welfare could not be considered because issues in terms of animal welfare are more appropriately addressed via the AWA. This position was communicated to the Ministry for the Environment, as part of discussions about whether the Minister should call in the applications.
- 12.3 In advising the Minister, the government officials' advice¹ confirmed that animal welfare issues sit outside the RMA, and so in this instance could not be a matter for call in.
- 12.4 The Minister (Nick Smith) agreed with the advice of his officials, and animal welfare was **not** an issue for the resource consent application.

Abuse of the hearing process

- 13 Allowing the NZALA submission to progress to a hearing would amount to an abuse of process, and put PDL to unnecessary expense.
- 14 The NZALA submission is the only submission on the application. At the pre-hearing meeting (which NZALA did not attend) the Environment Southland planning officer proposed draft conditions, and advised that if those conditions were imposed the officer was minded to recommend a grant of consent. On that basis, the only reason for a hearing would be the NZALA submission, which does not raise valid RMA issues.
- 15 If the submission is not struck out, PDL will need to immediately commence the preparation of evidence to protect its position. This may need to include expert evidence on animal welfare, feed/supplement nutritional make up, and planning. There are no cost recovery mechanisms for PDL if the submission is subsequently found to be out of scope of RMA considerations at the hearing. At that point, evidence will already have been prepared and costs incurred, as well as the Council costs for a publicly notified hearing.

¹ [10-B-00003: Resource Consent applications for or Dairy Farming Under-Cover in the MacKenzie Basin V2 \(environment.govt.nz\)](#)

16 PDL are prejudiced by this process as the NZALA submission raises no valid RMA submission points, and so PDL should not be put to the cost of responding to these points via a hearing.

RELIEF SOUGHT

17 PDL seeks the following relief:

17.1 The submission of NZALA is struck out in its entirety; and

17.2 To prevent unnecessary costs PDL respectfully requests that a decision is made in advance of any evidence exchange timeline or hearing.

Dated 15 May 2023



J A Robinson

Solicitor for Pahia Dairies Limited

APPENDIX 1 – New Zealand Animal Law Association submission

Attachment 7

NZALA submission in relation to applicant's strike out application

BEFORE THE SOUTHLAND REGIONAL COUNCIL

UNDER the Resource Management Act 1991

IN THE MATTER an application by **PAHIA DAIRIES LIMITED**
for resource consent

**MEMORANDUM OF COUNSEL ON BEHALF OF THE NEW ZEALAND
ANIMAL LAW ASSOCIATION IN RESPONSE TO A STRIKE OUT
APPLICATION**

Dated: 9 June 2023

Govett Quilliam
THE LAWYERS

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MAY IT PLEASE THE COUNCIL:

Introduction

1. Pahia Dairies Limited (“**PDL**”) has requested that the Southland Regional Council (“**Environment Southland**”) strike out the submission of the New Zealand Animal Law Association (“**NZALA**”) on PDL’s application (APP-20222765) (“**Consent Application**”) pursuant to section 41D of the Resource Management Act 1991 (“**RMA**”).
2. These submissions respond to and oppose the application to strike out (“**Strike Out Application**”).

Section 41D

3. The ability to strike out a submission is governed by section 41D of the RMA.
4. The section 41D(1) powers are discretionary in that an authority “*may*” direct that a submission or part of a submission be struck out. The RMA does not make it mandatory to strike out a submission in the event that at least one of the specified grounds are made out. This can be contrasted with other powers and duties in relation to applications and hearings, which provide mandatory directions.¹
5. Section 41D(1) enables an authority, where it is satisfied that it may use its discretion to strike out a submission, to do so in whole or in part. PDL has sought that NZALA’s submission be struck out in whole and has not provided consideration as to whether it would be more appropriate to seek a partial strike out of NZALA’s submission.
6. Finally, Section 41D(1) expressly states that “at least one of” the specified grounds must be met before an authority may strike out a submission. This suggests that Parliament intended this provision to often be used in instances where more than one of the specified grounds are present, and emphasises that this is a tool that should be used sparingly (as discussed later in these submissions).

¹ See sections 39(1) and (2), section 41C(5) and (5B)

7. There is a significant lack of case law regarding section 41D. However it is submitted that section 41D mirrors the Environment Court's strike out powers under section 279(4). The case law in relation to section 279(4) provides useful guidance and instruction to authorities regarding the application of section 41D.

Strike out powers should be used sparingly

8. Case law in relation to section 279(4) has emphasised that the jurisdiction to strike out is exercised sparingly and only in cases where there is the "requisite material...to reach a certain and definite conclusion.² There is a "very high" threshold to be met before striking out.³
9. Further, the discretion is only to be used where the claim is beyond repair and so unobtainable that it could not possibly succeed.⁴

Public participation

10. Case law has acknowledged that the RMA encourages public participation in the resource management process, which should not be bound by undue formality.⁵
11. In *Everton Farm Ltd v Manawatu-Wanganui RC*⁶, the Court again highlighted that the jurisdiction to strike out (under s279) is to be exercised sparingly and persons should not be deprived of their "day in Court" for the sake of efficiency.
12. The importance of public participation is reinforced by the fact that the ability to submit on a consent application is not constrained (except for trade competition limitations). Section 96(1) of the RMA states:

If an application for a resource consent is publicly notified, a person described in subsection (2) **may make a submission about it** to the consent authority.

[emphasis added]

13. While section 96 goes on to prescribe the form a submission must be filed in, it does not constrain the content or subject of such submissions, except to

² *Hern v Aickin* [2000] NZRMA 465 at [6]

³ *Simons Hill Station Limited v Royal Forest and Bird Protection Society of New Zealand Incorporated* [2014] NZHC 1362 at [37]

⁴ *Coldway Installation Ltd v North Shore CC* W118/96

⁵ *Countdown Properties (Northland) Ltd v Dunedin CC* [1994] NZRMA 145

⁶ ENC Wellington W8/2002, 22 March 2002 at [44]

the extent that a submission *may* state whether it supports, opposes or is neutral in respect of the application.⁷

14. Importantly, in the case of a submission struck out under section 41D, while there is a right to object to the decision to strike out under section 357, if a decision to strike out is upheld, the submitter will not be entitled to appeal to the Environment Court against the consent decision. This is accordingly, a significant impingement on public participation, which is a hallmark of the resource management system. As emphasised in the relevant case law, such limitations on public participation should be exercised sparingly.
15. It is respectfully submitted that the Council ought to bear in mind the RMA's generally inclusive approach to public participation, and accordingly, that any exercise of power to limit this participation should be exercised with significant caution. The exercise of the strike out provisions are a heavy-handed tool and should accordingly be used sparingly. It is noted that the Consent Application was publicly notified, enabling the highest level of public participation in the consenting framework.

PDL's application to strike out

16. PDL have sought that the NZALA be struck out on the grounds that:
 - 16.1 It discloses no reasonable or relevant case; and
 - 16.2 Would be an abuse of the hearing process to allow the submission to be taken further.

Reasonable or relevant case

17. What is reasonable and relevant will depend on the particular circumstances of each case. It is sufficient for a submission to meet only one of the limbs of s41D(1)(b) (ie it is sufficient that the case is either reasonable or relevant).
18. PDL submit that to disclose a reasonable or relevant case, a submission must raise issues within the scope of an application under the RMA. PDL have submitted that the sole issue raised in the NZALA submission is animal welfare and that animal welfare is not an issue which is within the scope of the RMA.

⁷ Section 96(7)

19. It is submitted in the first instance that this is an overly simplified characterisation of the NZALA submission. By way of summary, NZALA's submission raises concerns regarding:
- 19.1 Whether the Consent Application and if granted, the consent and any relevant consent conditions comply with relevant legislation and regulations, including the National Environmental Standards for Freshwater and the Animal Welfare Act 1999 and associated regulations;
 - 19.2 Effects of the Consent Application on animal health and welfare;
 - 19.3 Whether the Consent Application provides for sufficient management of the effects of intensive winter grazing, including the ability to manage the effects of pugging.
20. It is noted that it is common for consent conditions to include a condition ensuring compliance with all applicable legislation and regulations. The Consent Application proposes specified consent conditions "In addition to standard conditions".⁸ NZALA as a submitter is entitled to raise concerns regarding compliance with other legislation, including the Animal Welfare Act 1999, particularly in instances where a full suite of proposed consent conditions are not provided by the applicant.

Animal welfare considerations

21. Notwithstanding the above, importantly, there is no need for an authority to agree with the *merits* of the case included in submissions or even to consider if they are strong at the time of considering a section 41D application. This is particularly the case for submissions that raise novel arguments.
22. It is submitted that the definitions of both "environment" and "effect" under the RMA are broadly constructed. While neither terms expressly capture animal welfare, a lack of direct legislative reference does not automatically exclude its consideration in the course of decision making.⁹
23. Further the purpose of the RMA, captured by section 5 is to promote the sustainable management of natural and physical resources. The definition of natural and physical resources includes all forms of plants and animals.

⁸ At 3.6 of Consent Application

⁹ See *Back Country Helicopters Limited v The Minister of Conservation* [2013] NZHC 982 for an example of where the High Court found that animal welfare concerns were not "irrelevant or improper" in the context of the Wild Animal Control Act 1977 and the Conservation Act 1987, where neither statute makes reference to animal welfare.

Further, an assessment of environmental effects must also address *any effect* on animals.¹⁰

24. While there is scarce case law regarding the consideration of impacts on animal welfare in consenting decisions, this issue has been considered in passing (and not deemed to be irrelevant) by the Environment Court.¹¹ Animal welfare issues are also commonly assessed in enforcement proceedings under the RMA.
25. Conditions of consent constructed to ensure that animal welfare requirements and standards are met, have also been accepted and confirmed by the Environment Court.¹²
26. It is noted that PDL's strike out application relies heavily on references to internal local authority and Ministry legal advice and statements made in correspondence from the Minister for Environment in 2010. It is submitted, that while any individual or entity is entitled to obtain legal advice and take a position based on this advice, this is not binding authority. Further, it is established case law that Ministry guidance or statements regarding the interpretation of legislation or secondary legislation, including formal published guidance, do not have authoritative weight in decision-making.¹³ It is submitted that PDL have not provided any binding authority for its position in the Strike Out Application.
27. Accordingly it is submitted that there is no authoritative case law or authority confirming that animal welfare is irrelevant to resource management considerations sufficient to meet the high bar required to strike out submissions.
28. It is also noted that section 331B of the RMA, which was incorporated into the RMA in April 2023 by way of the Severe Weather Emergency Legislation Act 2023, expressly allows for the consideration of the well-being of animals. While provisions 331 – 331F will be automatically repealed in April 2024 and are irrelevant to this application, this express inclusion suggests that animal

¹⁰ Schedule 4, Clause 7 RMA

¹¹ See for example *Stark v Waikato District Council* [2014] NZEnvC 150 where the Court considered possible effects of noise on animal welfare.

¹² See for example, *Gray Cuisine Limited v South Waikato District Council* [2011] NZEnvC 121

¹³ See for example, the High Court's observations in *Opoutere Ratepayers and Residents Association v Waikato Regional Council* [2015] NZEnvC 105 at [97], *Gray v Dunedin City Council* [2023] NZEnvC 45 at [205]

welfare considerations are not outside of the ambit of the RMA as suggested by PDL.

29. Finally, the Consent Application required consent as a discretionary activity under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (“**NESFW**”), including those provisions relating to intensive winter grazing (“**IWG**”).¹⁴
30. The IWG provisions of the NESFW were introduced to address, among other factors, negative effects on “animal welfare”¹⁵ and the environment, and accordingly are relevant concerns that may be raised by a submitter.
31. It is therefore respectfully submitted that NZALA’s submission raises a reasonable and a relevant case and cannot be struck out on this basis.

Abuse of process

32. An abuse of process involves using the Court (or equivalent decision-making forum) for an ulterior purpose, for example a purpose not within the scope of such process.¹⁶
33. The equivalent power under section 279(4)(c) requires a high threshold to be met and is no more than “statutory recognition of the Court’s wider jurisdiction to prevent its own procedures from being misused to achieve a result which would be manifestly unfair or which otherwise would bring the administration of justice into disrepute.”¹⁷
34. It is submitted that to allow NZALA’s submission to stand would not amount to a misuse of Council’s procedures or create a result that is “manifestly unfair”.
35. PDL have submitted that allowing the NZALA submission to progress to a hearing would amount to an abuse of process and would “put PDL to unnecessary expense”, noting that the NZALA submission is the only submission on the Consent Application. It is submitted that the “cost of responding to” the points in the NZALA submission does not meet the high

¹⁴ PDL Resource Consent application at 5.4.4.

¹⁵Ministry for the Environment, *Wai Māori Mātuaatua Essential Freshwater; Intensive Winter Grazing*; INFO1067; August 2022

¹⁶ *Fletcher Challenge Energy Power Generation Ltd v Waikato RC EnvC A109/98*

¹⁷ *Hurunui Water Project v Canterbury RC* [2015] NZHC 3098

threshold required to be an abuse of process. As set out above, it is submitted that NZALA's submission does raise a reasonable and relevant case.

36. As noted in these submissions, the Consent Application was publicly notified and any person (other than those precluded due to trade competition) may make a submission about the application to the consent authority. Section 96 and Form 13 of the Resource Management (Forms, Fees and Procedure) Regulations 2003¹⁸ enables (and in fact, requires) submitters to identify whether they do or do not wish to be heard in support of their submission. The NZALA submission states that "if it is considered helpful to the Authority, NZALA can appear and speak in support of this submission". In accordance with section 100 of the RMA, a hearing need not be held unless the consent authority considers that a hearing is necessary or the application or submitter requests to be heard.
37. The associated cost of any such hearing, regardless of the number of submitters or number of those seeking to be heard, is not an abuse of process, but rather is a consequence of the process intended by the relevant provisions of the RMA. It is respectfully submitted that striking out NZALA's submission on the basis that the cost to the Applicant of proceeding to a hearing would be an abuse of process, would deny NZALA of their public participation rights as a submitter under the RMA.
38. Finally, PDL's Strike Out Application also notes that NZALA did not attend the pre-hearing meeting. NZALA wishes to note that it was provided with PDL's extensive response to its submission on 24 April 2023, with the pre-hearing meeting scheduled for 28 April. NZALA instruct that while it was prepared to attend the pre-hearing meeting on the basis of the Consent Application and its submission, it required more time to obtain legal and technical advice and representation in relation to PDL's response of 24 April. NZALA is a voluntary organisation, and unfortunately the timeframe did not allow it to engage appropriate counsel and advice to enable meaningful participation in the pre-hearing meeting. NZALA's position was communicated with Environment Southland prior to the pre-hearing meeting, and NZALA was gratefully given the opportunity to provide further written feedback once it had engaged and received appropriate technical advice.¹⁹

¹⁸ Resource Management (Forms, Fees, and Procedure) Regulations 2003; Schedule 1

¹⁹ Which it provided by way of letter dated 10 May 2023

NZALA has now had the opportunity to engage appropriate technical expert advice and legal counsel in relation to the Consent Application.

Summary

39. It is submitted that the threshold for striking out NZALA's submission in accordance with section 41D has not been met. NZALA's submission raises a reasonable and relevant case and does not amount to an abuse of process.
40. It is respectfully submitted that the ability to strike out under section 41D must only be used sparingly, given the significant implications on public participation.

Yours faithfully
GOVETT QUILLIAM



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REE-742577-10-21-1

Attachment 8

Applicant's submission in response to NZALA's submission to the strike out application

**BEFORE A COMMISSIONER APPOINTED
BY THE SOUTHLAND REGIONAL COUNCIL**

Under The Resource Management Act 1991 (**'The Act'**)

In the matter of an application for resource consent

**SUBMISSION IN RESPONSE TO NZALA ON BEHALF OF
PAHIA DAIRIES LIMITED**

Duncan Cotterill
Solicitor acting: Jamie Robinson
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MAY IT PLEASE THE COUNCIL:

Introduction

- 1 These submissions are provided to address several issues raised in the Memorandum of Counsel for NZALA, dated 9 June¹ (**the Memorandum**). We do not intend to raise new issues, or readdress matters which the original application for strike out has already raised.

Section 41D

- 2 We agree with the submissions of NZALA that there is limited applicable case law in relation to s41D, and that s279(4) is similar enough to provide useful guidance to the Commissioner when determining this application². We do note that section 41D provides an additional **two** grounds beyond those of s279(4), that is:

- (d) it is supported only by evidence that, though purporting to be independent expert evidence, has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert evidence on the matter:
- (e) it contains offensive language.

- 3 We disagree with the statement at paragraph 6 of the Memorandum that implies a Parliamentary intention that more than one of the specified grounds are met. Were that the case, the grounds for strike out would be indicated by an “and” between (a) and (e). Rather, we submit that reference to “at least one of” indicates that there is potential for submissions which should be struck out to meet several grounds.

Strike out powers should be used sparingly

- 4 The Memorandum states that strike out powers should be used sparingly. Firstly (and somewhat obviously) we point out that direction to use **sparingly** is not to say they can not be used at all. The RMA has allowed for strike out when particular grounds are made out, and as long as the threshold is met, it is appropriate for the power of strike out to be used.

¹ Noting that these were not circulated to PDL until 16 June.

² Paragraph 7 of the NZALA memorandum

- 5 The Memorandum refers to the decision of *Coldway Installation Ltd v North Shore City Council* as support for using strike out powers sparingly. In *Federated Farmers v Wellington Regional Council*³, the Environment Court commented on the *Coldway* case, distinguishing the two saying

“what are essentially civil law tests in that case are of only limited relevance in the administrative law context of the RMA. In particular when there are jurisdictional boundaries facing a Council or this Court, if those boundaries are exceeded - bearing in mind the pragmatic nature of such a decision... then there is no discretion to be exercised “sparingly”. The case must simply be struck out as legally frivolous or vexatious or as disclosing no reasonable or relevant case.”

- 6 In my submission, the *Federated Farmers* case supports the argument by PDL in its application to strike out. There is no discretion towards strike out where there is no case to answer. The grounds for strike out are clearly stipulated in section 41D and if Council finds that one of the grounds are met, then it should use its authority to strike out.

Scope

- 7 NZALA seeks the Authority to decline PDL’s application for resource consent (or if granted, to limit the duration of the resource consent to a period of three years) based on animal welfare concerns. As outlined in the strike out application, it is submitted that animal welfare concerns are **not** an issue within the scope the RMA.
- 8 It is evidenced in *Elwell-Sutton v West Coast Regional Council* that scope is a relevant consideration of the Environment Court when considering an application to strike out under section 279(4). Furthermore, to grant relief sought that is not within the appropriate scope “would be an abuse of the court’s process in terms of section 279(4)(c) of the Act.”⁴
- 9 In *Federated Farmers*, the Environment Court determined that relief can only be granted within the scope of an original submission. In that case, two submitters filed notices under s271A of the RMA (now repealed), which went beyond the scope of the original submission filed by Federated Farmers.

³ *Federated Farmers v Wellington Regional Council* [1999] ENC Christchurch C192/99 at [17]

⁴ *Elwell-Sutton v West Coast Regional Council* [2013] NZEnvC 58 at [15]

Under section 279(4), the Environment Court partially struck out paragraphs of the notice as disclosing no reasonable or relevant case.

Animal welfare concerns

- 10 As noted by NZALA in its Memorandum, considerations of animal welfare by the Environment Court have only been made in passing, and in no case has the Environment Court considered animal welfare in conjunction with the RMA's core purpose of promoting sustainable management.
- 11 In *Gray Cuisine v South Waikato District Council*⁵ (referenced in the Memorandum), the Environment Court's confirmation of consent conditions related to animal welfare standards simply reinforced the existing statutory requirements of the AWA and no other matters of animal welfare were addressed by the Court. PDL will comply with the conditions of consent imposed by the Council, as well as all other legal obligations (which naturally captures the AWA alongside a range of other legislation).
- 12 The Memorandum criticizes the strike out application for reliance on the ECan and Ministry for the Environment position in relation to the relationship between the RMA and the AWA. Although it is established that secondary guidance and commentary are not legally binding on the Court, it is nevertheless still "helpful,"⁶ and in absence of case law and legislative authority, it is not unreasonable to turn to secondary commentary available to provide guidance on an issue, where otherwise there would be none. In *Opoitere Ratepayers and Residents' Association v Waikato Regional Council* (referenced in NZALA's Memorandum), the Environment Court dismissed the reliance held by the Council on the Department of Conservation's guidance notes because in this case, there was clear authority provided for in the New Zealand Coastal Policy Statement 2010 and the provisions of the RMA. There is no such clear authority (as agreed at paragraph 24 of the Memorandum) in relation to this issue. I submit it would be unusual to disregard the Ministry for the Environment's position on such an analogous issue, whilst noting it is in no way authoritative on your decision.
- 13 As previously submitted, the Ministry of Environment concluded that animal welfare would more appropriately be addressed via the AWA. In *Winter and Clark v Taranaki Regional Council and Fletcher Challenge Energy Taranaki*

⁵ *Gray Cuisine Ltd v South Waikato District Council*, [2011] NZEnvC 49

⁶ *Opoitere Ratepayers and Residents' Association v Waikato Regional Council* [2015] NZEnvC 105 at [97].

Ltd, an appeal was lodged against resource consents granted in respect of a proposed gas well in North Taranaki. The appellants argued that the proposal was contrary to the provisions of section 7 of the RMA and the Council had not had regard to the efficient use and development of oil and gas or its finite characteristics. The Environment Court held that efficient allocation of rights in respect of Crown-owned minerals was more appropriately governed by the Crown Minerals Act, not by the RMA and consequently the appeal was struck out.⁷ The purpose of the AWA is to ensure animal welfare standards are met. Where legislation exists that exists purely to address the issue of animal welfare, it would be more appropriate for animal welfare issues to be addressed via the AWA, as Parliament had intended, rather than the RMA, which makes very limited references to animal welfare throughout the Act. It should also be noted that animal welfare is not a matter listed in sections 5, 6 or 7 of the RMA, which sets out the purpose and principles of the act, as well as the matters of national importance and other matters which persons exercising functions and powers under the Act must have particular regard to..

- 14 As NZALA noted in its response, the provisions of s331 – 331F (inserted by way of the Severe Weather Emergency Legislation Act 2023 (SWELA)) is time limited and will be automatically repealed in April 2024. The SWELA was introduced specifically in response to the severe weather events that affected the North Island earlier this year. The intent of provisions s331 – 331F, as evidenced in the Hansard reports, is to enable rural landowners and occupiers to undertake permitted activities to repair or prevent damage on their land, without the need to obtain resource consents.⁸ The inclusion of animal welfare in these provisions is not, as submitted by NZALA, to expressly allow the consideration of the well-being of animals, but rather to allow farmers to more effectively and efficiently manage their property, which includes livestock and animals in the aftermath of a severe weather event. We submit its relevance to this decision is negligible.

Conclusion

- 15 We trust that these submissions are useful in determining the application for strike out.

⁷ *Winter and Clark v Taranaki Regional Council and Fletcher Challenge Energy Taranaki Ltd* [1998] 4 ELRNZ 506

⁸ (16 March 2023) 766 NZPD (Severe Weather Emergency Legislation Bill – Second Reading)

- 16 It remains our submission that:
- 16.1 The issues of animal welfare are out of scope of the RMA (and instead sit within the AWA); and
 - 16.2 Pursuant to the *Federated Farmers* finding, it is appropriate (and indeed correct) to strike out a submission where there is no case to answer, and that can be established by a lack of scope.
- 17 The PDL position remains that the NZALA submission only relates to animal welfare concerns (despite paragraph 19 of the Memorandum). All matters raised (such as pugging) are linked to issues of animal welfare⁹ rather than relevant RMA considerations.

Dated 22 June 2023



J A Robinson

Solicitor for Pahia Dairies Limited

⁹ as summarised in paragraph 14 of the NZALA submission

Attachment 9

NZALA further memorandum in response to the applicant's submission relating to the strike out application

BEFORE THE SOUTHLAND REGIONAL COUNCIL

UNDER the Resource Management Act 1991

IN THE MATTER an application by **PAHIA DAIRIES LIMITED** for resource consent

MEMORANDUM OF COUNSEL ON BEHALF OF THE NEW ZEALAND ANIMAL LAW ASSOCIATION

Dated: 30 June 2023

Govett Quilliam
THE LAWYERS

Rebecca Eaton
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NEW PLYMOUTH 4342
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MAY IT PLEASE THE COUNCIL:

1. Counsel is in receipt of the email from Environment Southland dated 28 June 2023.

***Stark v Waikato District Council* [2014] NZEnvC 19**

2. Counsel apologises for the citation error in its submissions in respect to the above case.
3. The *Stark* case relates to the decision of the Waikato District Council to grant resource consents for the relocation, construction and operation of the Gun Club. The Starks, adjoining property owners, appealed against the grant of the consents.
4. The Court in *Stark* observes at paragraph [8] that the planning witnesses provided evidence that the permitted noise standards do not apply to the issue raised by the Starks as the relevant District Plan Rule (25.17.1) does not apply to the effects of noise on farm animals. However the Court then states:

“That of course is not to say that the possible effects of noise on animal welfare is not relevant as a factual issue under s104”.

5. The Court then went on to record the animal welfare concerns of the Starks at paragraph [13] noting in particular the concerns that the noise from the Club, particularly gunfire, will disturb and be harmful to the wellbeing of their stock, including by unsettling ewes and does following birth resulting in failure to bond, poor development and death.
6. The Council relied on evidence of an acoustics engineer and an animal behaviour specialist to support its view that noise effects would be minor.¹
7. NZTA (the applicant in *Stark*) engaged an animal behaviour and welfare specialist, Dr Lindsay Matthews to advise on the issue of disturbance of lambing ewes. Dr Matthew’s assessment on the effects on animal behaviour and welfare are summarised by the Court at paragraphs [24] – [29].

¹ Paragraph [18]

8. The Starks also produced evidence in respect of effects on animal welfare from Dr Dalton and Mark Vette. The Court summarises the evidence of Dr Dalton and Mr Vette at paragraphs [30] – [35].
9. The Court found that the potential adverse effect of gunshot noise over the lambing period was credible² and turned to mitigation opportunities.
10. The Court reviewed the proposed conditions and made a number of comments, including comments to ensure that the animal welfare concerns raised by the Starks were addressed.³
11. The Court considered that the granting of consent with the conditions proposed (subject only to the amendments suggested) was appropriate.
12. It is submitted that *Stark* is clear authority that animal welfare effects and concerns are a relevant matter for assessment under the RMA.
13. It is reiterated that the standard to be met under section 41D (and as sought by PDL's strike out application) is whether:
 - 13.1 The submission discloses no reasonable or relevant case; and
 - 13.2 It would be an abuse of the hearing process to allow the submission to be taken further.
14. The merits or strength of a submission are not relevant for the assessment of a strike out application under section 41D. This assessment is for the consent authority in considering the application and any matters raised in submissions.
15. PDL's strike out application is predicated on the position that NZALA's submission is outside the scope of the RMA. It is submitted that the above case supports NZALA's position that the matters raised in its submission are within the scope of the RMA and accordingly the high threshold imposed by s41D is not met.

Environment Canterbury legal opinion

16. We note that Environment Southland has requested that PDL provide a copy of the legal opinion/advice referenced in its strike out application.

² At [49]

³ Paragraph [70]

17. As at the time of filing this memorandum, Counsel for NZALA has not received a copy of this opinion and is not aware whether PDL intends to provide this.
18. Due to prior commitments, counsel for NZALA is unavailable on Monday 3 July 2023, and accordingly will be unable to respond within Environment Southland's requested timeframe if PDL do provide this legal opinion following the filing of this memorandum.
19. In the event that PDL does provide this legal opinion, counsel for NZALA requests a further brief period to respond to this information.
20. However, counsel understands that the information referenced in PDL's strike out application (including the referenced legal advice) was prepared in 2010. This was prior to the consideration of the Environment Court in *Stark v Waikato District Council*. Accordingly, it is submitted that the Court in *Stark*, in addition to other authority referenced in NZALA's memorandum of 9 June 2023 should be afforded greater weight in this matter.
21. We reiterate our comments in paragraph 26 of our memorandum of 9 June 2023, regarding the weight to be afforded to legal advice and ministerial statements and guidance.

Summary

22. Again, we submit that the threshold for striking out NZALA's submission in accordance with section 41D has not been met. NZALA's submission raises a reasonable and relevant case and does not amount to an abuse of process. The case of *Stark v Waikato District Council* supports NZALA's position.

Yours faithfully
GOVETT QUILLIAM



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REE-742577-10-33-1

Attachment 10

Decision on section 41D strike out application by Pahia Dairies Limited

**Before Independent Decision Maker
Environment Southland**

In the Matter of the Resource Management Act 1991

and

In the Matter of the strike out application of a submission on a resource consent application by **Pahia Dairies Limited APP-20222765**

Decision of Independent Decision Maker 10 July 2023

Independent Decision Maker: Clare Lenihan
Decision date: 10 July 2023 (on the papers)
Application: Strike out submission, s41D Resource Management Act
Decision: **Decline application to strike out NZALA submission**

1 INTRODUCTION

1.1 I have been given delegated authority by the Southland Regional Council (**Environment Southland**) to determine an application by Pahia Dairies Limited (**the Applicant**) to strike out a submission made by the New Zealand Animal Law Association (**NZALA**), pursuant to s41D of the Resource Management Act (1991) (**the Act**).

2 BACKGROUND

2.1 The Applicant applied to Environment Southland for consents to authorise the use of a piece of land known as “Browns Block” for dairy purposes, in particular:

- 2.1.1 to expand a dairy farm by 95ha (with no increase in peak milking herd); and
- 2.1.2 for intensive winter grazing of cattle on 55ha of crop on slopes over 10 degrees
- 2.1.3 to discharge contaminant to land associated with intensive winter grazing.

2.2 The proposal triggers:

Land use consents:

- 2.2.1 Rule 20(e) of the proposed Southland Water and land plan due to the expanded dairy farm (discretionary);
- 2.2.2 Regulation 19(1) of the National Environmental Standards for Freshwater due to the expanded dairy farm (discretionary); and
- 2.2.3 Regulation 27(1) of the National Environmental Standards for Freshwater due to intensive winter grazing over 10 degrees slopes (restricted discretionary).

Discharge permits:

- 2.2.4 Regulation 19(2) of the National Environmental Standards for Freshwater due to the expanded dairy farm (discretionary)
- 2.2.5 Regulation 27(2) of the National Environmental Standards for Freshwater due to intensive winter grazing over 10 degrees slopes (restricted discretionary).

2.3 I understand the activities will be bundled together, so the overall status is discretionary.

2.4 The Application was publicly notified (closing 23 March 2023) and NZALA lodged the only submission (attached as Appendix 1).

NZALA submission

Resource Management Act

2.5 The NZALA submission covered the matters below.

2.6 The purpose of the Act is to promote the sustainable management of natural and physical resources.

- 2.7 “Sustainable management” can be defined as avoiding [remedying sic] or mitigating any adverse effects of activities on the environment.
- 2.8 “Environment” is defined to include all natural and physical resources, which includes cattle, s2(1) of the Act¹.
- 2.9 “Effect” includes potential effects of low probability which have a high potential impact².
- 2.10 As intensive winter grazing is controlled under the Act, the consent authority must consider the potential adverse effects of the proposed intensive winter grazing on cattle.

Animal Welfare Act

- 2.11 The intended operation is likely to be inconsistent with s10 Animal Welfare Act 1999 (**AWA**), by failing to meet the cattle’s physical, health and behaviours needs in accordance with good practice and scientific knowledge, including provision of proper and sufficient food and water, adequate shelter, the opportunity to display normal patterns of behaviour and protection from significant injury or disease.
- 2.12 It is not clear how much space there is for dry lying or how the species will be kept dry - a significant reduction in lying time can lead to acute and chronic stress and possible immunosuppression³.
- 2.13 The land is susceptible to pugging and insufficient drainage will likely impede the cattle’s opportunity to display normal patterns of behaviours and can lead to hoof injury, an increase in mastitis – the applicant has failed to address these adverse effects

Section 104(1)(c) - Code of Welfare for Dairy Cattle under review

- 2.14 NZALA assert it is relevant to consider the Code of Welfare for Dairy Cattle, the fact this is currently under review and a significant part of the review relates to intensive winter grazing (**IWG**) and whether such practises are consistent with the AWA. It is NZALA and the Winter Grazing Taskforce’s position that the standards need to increase in relation to IWG⁴.

¹ Paragraph 5 NZALA submission 22 March 2023

² Paragraph 6 NZALA submission 22 March 2023

³ Paragraph 15 NZALA submission 22 March 2023

⁴ Paragraph 16 NZALA submission 22 March 2023

NZALA Conclusion

- 2.15 NZALA concludes by submitting the effects of the proposed activity on cattle will be more than minor and the Applicant has failed to sufficiently eliminate or mitigate the risk of potential adverse effects on cattle. NZALA seeks the application be declined, or if granted, only for a period of a maximum of three years.

3 STRIKE OUT APPLICATION

Applicant

- 3.1 On 15 May 2023 the Applicant requested Environment Southland strike out the NZALA submission pursuant to s41D on the grounds the submission:
- 3.1.1 Discloses no reasonable or relevant case; and
- 3.1.2 Would be an abuse of the hearing process to allow the submission to be taken further⁵.
- 3.2 The Applicant seeks the submission be struck out in its entirety, and to prevent unnecessary costs to the applicant, a decision be made in advance of any evidence exchange timetable or hearing⁶.

Discloses no reasonable or relevant case

- 3.3 The Applicant submits that to disclose a reasonable or relevant case, a submission must raise issues, which are within the scope of an application under the Act. The sole issue raised by NZALA is animal welfare, which is not an issue with the scope of the Act - this is addressed under the Animal Law Act 1999 (**AWA**).
- 3.4 The Applicant further submits that the issue of animal welfare and the Act was thoroughly traversed in the matter of several resource consent applications to Environment Canterbury (ECan) for intensive indoor dairy farming in the Mackenzie Basin⁷. Legal advice provided to ECan⁸ was effects on animal welfare could not be considered under the Act because these are appropriately addressed under the AWA. The then Minister for the Environment (Nick Smith) and Government officials agreed that animal welfare issues sit outside the Act⁹.

Abuse of the hearing process

- 3.5 The Applicant submits that allowing the NZALA submission to progress to a hearing would amount to an abuse of process and put PDL to unnecessary expense¹⁰. At a

⁵ Applicant Strike out Application 15 May 2023 paragraph 9

⁶ Applicant Strike out Application 15 May 2023 paragraph 17

⁷ Applicant Strike out Application 15 May 2023 paragraph 11

⁸ Not provided by the Applicant and not available on the internet

⁹ Applicant Strike out Application 15 May 2023 paragraph 12.3 - 12.4

¹⁰ Applicant Strike out Application 15 May 2023 paragraph 13

pre-hearing meeting, ES advised the Applicant that if proposed draft conditions were imposed, the officer was minded to grant consent. There would be no need for a hearing, apart from the NZALA submission.

- 3.6 If the submission isn't struck out, the Applicant will need to immediately commence operation of evidence to protect its position, which could include expert animal welfare evidence, feed/supplement nutritional make-up and planning. There are no cost recovery provisions for the Applicant and if the submission is subsequently found to be out of scope, costs will already have been incurred for the hearing.
- 3.7 The Applicant is prejudiced by this process, as the NZALA submission does not raise any valid issues under the Act.

4 NZALA Memorandum in response to strike out

- 4.1 On 9 June 2023 NZALA lodged a Memorandum of Counsel in response to the Applicants strike out application, submitting:
 - 4.1.1 The threshold for striking out has not been met – NZALA submission raises a reasonable and relevant case and does not amount to an abuse of process;
 - 4.1.2 The ability to strike out under s41D must only be used sparingly, given the significant implications on public participation¹¹.
- 4.2 NZALA notes the power to strike out:
 - 4.2.1 is discretionary, contrasted with other powers in relation to application and hearings;¹²
 - 4.2.2 should only be used when a claim is beyond repair and so unobtainable that it could not possibly succeed;¹³ and
 - 4.2.3 can be in whole or part (noting the Applicant hasn't considered whether it may be more appropriate to strike out part of the submissions only).
- 4.3 NZALA notes a significant lack of case law regarding section 41D, and that the wording mirrors aspects of a similar power for Environment Court Judges under s279(4), and considers case law under this section can provide useful guidance¹⁴.
- 4.4 NZALA note the Act encourages public participation and people should not be deprived of "their day in court"¹⁵. This application was publicly notified, enabling the highest level of public participation¹⁶.

¹¹ NZALA Memorandum of Counsel in response to Strike Out Application 9 June 2023, paragraphs 39 and 40

¹² NZALA Memorandum of Counsel in response to Strike Out Application 9 June 2023, paragraph 4

¹³ Citing *Coldway Installation Ltd v North Shore CC* W118/96

¹⁴ NZALA Memorandum of Counsel in response to Strike Out Application 9 June 2023, paragraph 7

¹⁵ NZALA Memorandum of Counsel in response to Strike Out Application 9 June 2023, paragraphs 10 and 11

¹⁶ NZALA Memorandum of Counsel in response to Strike Out Application 9 June 2023, paragraph 15

- 4.5 The submitter also highlighted that when a submission is struck out under s41D, although there is a right of objection under s357, there is no right of appeal to the Environment Court.

Reasonable or relevant case

- 4.6 NZALA asserts its submission does not raise only animal welfare issues – it is also concerned with:
- 4.6.1 Whether the application, the consent (if granted) and any conditions comply with relevant legislation and regulations, including the NES Freshwater and the Animal Welfare Act and associated regulations;
- 4.6.2 Effects of the consent application on animal welfare; and
- 4.6.3 Whether the consent application provides for sufficient management of the effects of IWG, including the ability to manage the effects of pugging¹⁷.
- 4.7 NZALA also notes it is common for consent conditions to include a condition ensuring compliance with all applicable legislation and regulations¹⁸.
- 4.8 There is no need for an authority to agree with the merits of the case or whether they are strong or not, especially if novel arguments are raised¹⁹.

Animal welfare considerations

- 4.9 The definition of “environment” and “effect” are broadly constructed, as is the purpose of sustainable management, which can include animals. A lack of direct legislative reference to animal welfare does not automatically exclude its consideration,²⁰ although effects on “animals” are specifically mentioned as something an assessment of environment effects must address²¹.
- 4.10 Although there is scarce case law considering impacts on animal welfare in consenting decisions, the issue has been considered in passing²² and imposed as part of conditions of consent²³.
- 4.11 NZALA considers the Applicant’s strike out notice relies heavily on references to internal local authority and Ministry legal advice and statements made in correspondence from the Minister for the Environment in the Mackenzie example and

¹⁷ NZALA Memorandum of Counsel in response to Strike Out Application 9 June 2023, paragraph 19

¹⁸ NZALA Memorandum of Counsel in response to Strike Out Application 9 June 2023, paragraph 20

¹⁹ NZALA Memorandum of Counsel in response to Strike Out Application 9 June 2023, paragraph 21

²⁰ NZALA Memorandum of Counsel in response to Strike Out Application 9 June 2023, paragraph 22, citing *Backcountry Helicopters Ltd v Minister of Conservation*[2013] NZHC 982 where the Court found animal welfare concerns were not irrelevant or improper, even though not mentioned in either the Wild Animal Control Act 1977 or the Conservation Act 1987 (the relevant statutes)

²¹ Schedule 4 Clause 7 of the Act

²² FN 11: *Stark v Waikato District Council* [2014] NZEnvC 150 (NB this should be [2014] NZEnvC 49), paragraph 8

²³ FN 12: *Gray Cuisine Limited v South Waikato District Council* [2011] NZEnvC 121

submits Ministry guidance or statements regarding interpreting legislation do not have authoritative weight in decision-making²⁴.

- 4.12 Section 331B of the Act was incorporated in 2023 by the Severe Weather Emergency Legislation Act 2023 and expressly allows for consideration of the well-being of animals. Although relevant provisions will be automatically repealed in April 2024, this indicates animal welfare considerations are not outside the ambit of the Act.
- 4.13 The application requires consent as a discretionary activity under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NESFW**) including provisions relating to IWG. The IWG provisions were introduced to address, among other factors, negative effects on “animal welfare” and the environment and these are relevant concerns that may be raised by a submitter²⁵.

Abuse of process

- 4.14 NZALA submits an abuse of process involves using the Court for an ulterior purpose e.g. a purpose not within the scope of such process²⁶, and a high threshold has to be met.
- 4.15 In response to the Applicant asserting allowing the NZALA submission would put the Applicant to unnecessary expense, the costs of responding to NZALA points and any such hearing (regardless of the number of submitters) is not an abuse of process, but a consequence of the process set out under the Act²⁷.

5 Applicant response

- 5.1 On 22 June 2023, the Applicant lodged submissions in response to the NZALA Memorandum.
- 5.2 The Applicant agrees there is very little relevant case law for strike out applications and considers s279(4) can provide useful guidance, noting there are an additional two grounds in s41D.
- 5.3 In response to the assertion by NZALA that strike out powers should be used sparingly, the Applicant noted where one of the grounds is made out in s41D, such as in this case, there is no discretion – the submission must be struck out²⁸.

²⁴ FN 13: Citing *Opoutere Ratepayers and Residents Association v Waikato Regional Council* [2015] NZEnvC 105 at [97] and *Gray v Dunedin City Council* [2023] NZEnvC 45 at [205]

²⁵ NZALA Memorandum of Counsel in response to Strike Out Application 9 June 2023, paragraph 30

²⁶ FN 16: Citing *Fletcher Challenge Energy Power Generation Ltd v Waikato RC* EnvC A109/98

²⁷ NZALA Memorandum of Counsel in response to Strike Out Application 9 June 2023, paragraphs 35 and 37

²⁸ Relying on *Federated Farmer v Wellington Regional Council* {1999} EnvC C192/99 at [17]

- 5.4 The Applicant reiterates animal welfare concerns are not an issue within scope of the Act. Scope is a relevant matter to consider for strike out under s279(4) and to grant relief sought that is not within scope would be an abuse of process.²⁹
- 5.5 The Applicant notes any consideration of animal welfare made by the Environment Court are in passing and there is no case where the Environment Court has considered animal welfare in conjunction with the Act's core purpose of promoting sustainable management.
- 5.6 The only case where conditions were recorded regarding animal welfare³⁰ simply reinforced existing statutory requirements of the AWA and no other matters of animal welfare were addressed by the Court.
- 5.7 It is not unreasonable to turn to secondary commentary where there otherwise would be none. The case cited by NZALA was one where reliance on secondary sources was dismissed because there was clear authority provided for in the NZCPS and the Act³¹.
- 5.8 The Provisions of s331-331F (inserted by way of the Sever Weather Emergency Legislation Act 2023) are time limited and will be automatically repealed in 2024. The inclusion of animal welfare in these provisions is not to expressly allow consideration of the wellbeing of animals, but to allow farmers to more effectively and efficiently manage their property, which includes livestock and animals. Its relevance is negligible.

6 Stark case – further NZALA and Applicant response

- 6.1 On 28 June I advised the parties I had ascertained one of the case references from the NZALA legal submissions was in error (footnote 11 had the wrong citation *Stark v Waikato District Council* [2014] NZEnvC 150, should have been [2014]NZEnvC 19).). When I found the correct case, I realised it is relevant regarding animal welfare concerns and thought it important this be pointed out to the parties and they be offered an opportunity to respond.
- 6.2 The Applicant referred to this issue being considered in relation to several applications to ECan for intensive indoor dairy farming in the Mackenzie Basin. When I followed the link in the Applicant's reply to submissions (footnote 1), it only led to a Ministerial Briefing Note. I asked for a copy of the ECan legal opinion.

NZALA response

- 6.3 NZALA responded on Friday 30 June. NZALA noted the *Stark* case related to consent for the relocation, construction and operation of a Gun Club. The Starks, adjoining property owners, appealed.

²⁹ Citing *Elwell-Sutton v West Coast Regional Council* [2013] NZEnvC 58 at [15]

³⁰ *Gray Cuisine v South Waikato District Council* [2011] NZEnvC 49

³¹ Applicant submissions in response 22 June 2023 paragraph 12

- 6.4 The Court observed that although permitted noise standards did not apply to issues raised by the Starks (effects of noise on farm animals) “That of course is not to say that the possible effects of noise on animal welfare is not relevant as a factual issue under s104”.
- 6.5 The Court then went on to record the animal welfare concerns of the Starks at paragraph [13] noting in particular the concerns that the noise from the Club, particularly gunfire, will disturb and be harmful to the wellbeing of their stock, including by unsettling ewes and does following birth resulting in failure to bond, poor development and death.
- 6.6 Both the Appellant and the Applicant engaged animal behaviour specialists to support their views. The Appellant’s were concerned about; inter alia, disturbance of lambing ewes. The assessment of the effects on animal behaviour and welfare are summarised by the Court at paragraphs [24] - [35].
- 6.7 The Court found that the potential adverse effects of gunshot noise over the lambing period was credible and turned to mitigation opportunities. The Court reviewed the proposed conditions and made a number of comments, including comments to ensure that the animal welfare concerns raised by the Starks were addressed. The Court considered that the granting of consent with the conditions proposed (subject only to the amendments suggested) was appropriate.
- 6.8 NZALA submit that *Stark* is clear authority that animal welfare effects and concerns are a relevant matter for assessment under the RMA. The merits or strength of a submission is not relevant for the assessment of a strike out application under section 41D. This assessment is for the consent authority in considering the application and any matters raised in submissions³².

Applicant response

- 7 The Applicant considers three key issues arise out of the *Stark* case:
- 7.1 The applicability of animal welfare to a resource management application was not explicitly considered by the Court. There was no discussion of the Animal Welfare Act 1999, and how the AWA and the RMA co-exist. This does not conclude decisively either way whether the issue of animal welfare is legitimately within the ambit of RMA ‘effects’.
- 7.2 The effects considered were ones arising on **another parties animals**, rather than animals of the applicant. This is a situation where the effects of an activity (noise) on a neighbours ability to use its land (for productive farming) was the issue, rather than one of animal welfare explicitly.

³² NZALA Memorandum of Counsel 30 June 2023

- 7.3 The *Stark* application was for a land use activity, where the effects of that land use (noise, from a shooting range) were at issue. The PDL application is for a land use activity authorising discharges to land associated with farming. The issues raised in the NZALA submission do **not** relate to the discharge to land, which is the activity to be consented. The application does not amend the total number of animals authorised to be farmed by PDL, it only extends the area in which those animals can be farmed and winter grazed. The NZALA submission does not relate to the effects of the activity, in the way the *Stark* effects related to the application and effects at issue.
- 7.4 The ECan opinion was not available but a letter from the Chief Executive to the then Minister for the Environment included aspects of that advice, as follows:

“...the effects which are relevant and which need to be assessed the context of all applications relate to the effects of the activity for which consent is sought. In the case of effluent discharge permits, that is the effects (in the main) of the discharge of effluent to land and associated earthworks (in riverbeds). There, the advice we have received is that the effect of factory dairy farming on the welfare of the dairy cattle is not an “effect” of the activity when the subject application is for a discharge permit and further, issues in terms of animal welfare are more appropriately addressed via the Animal Welfare Act 1999...

there is a stronger argument to suggest that a detrimental effect on New Zealand’s image abroad could fall within the scope of the definition of “effect” under the RMA. Nevertheless, my advice is that any such effect would again, be associated with a land use activity rather than any discharge and earthworks (in riverbeds permits which have to be processed by a Regional council. In other words, it is unlikely that any Regional council as a consent authority can place significant weight on this issue.

8 Law – strike out

- 8.1 Section 41D (Striking out submissions) of the Resource Management Act provides
- (1) An authority conducting a hearing on a matter described in section 39(1) may direct that a submission or part of a submission be struck out if the authority is satisfied that at least 1 of the following applies to the submission or the part:
 - (a) it is frivolous or vexatious;
 - (b) it discloses no reasonable or relevant case;
 - (c) it would be an abuse of the hearing process to allow the submission or the part to be taken further;
 - (d) it is supported only by evidence that, though purporting to be independent expert evidence, has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert evidence on the matter;
 - (e) it contains offensive language.
 - (2) An authority—
 - (a) may make a direction under this section before, at, or after the hearing; and
 - (b) must record its reasons for any direction made.
 - (3) A person whose submission is struck out, in whole or in part, has a right of objection under section 357.

8.2 As both parties acknowledged, there is very little if any case law on s41D and I agree it is useful to look to s279(4) (Powers of Environment Court Judge Sitting Alone) of the Act for guidance, which provides:

An Environment Judge sitting alone may, at any stage of the proceedings and on such terms as the Judge thinks fit, order that the whole or any part of that person's case be struck out if the Judge considers -

- (a) that it is frivolous or vexatious; or
- (b) that it discloses no reasonable or relevant case in respect of the proceedings; or
- (c) that it would otherwise be an abuse of the process of the Environment Court to allow the case to be taken further.

8.3 Both parties have set out helpful cases.

8.4 I agree with the Applicant that scope is a relevant matter when considering whether to strike out under s279(4) and it could, in certain circumstances, be an abuse of process.³³

8.5 I also agree with NZALA that the equivalent power under s279(4)(c) requires a high threshold to be met and is no more than a "statutory recognition of the Court's wider jurisdiction to prevent its own procedures from being misused to achieve a result which would be manifestly unfair or which otherwise would bring the administration of justice into disrepute".³⁴

8.6 I also agree with the NZALA that the "cost of responding to "points in the NZALA submission does not meet the threshold required to be an abuse of process and in fact is a consequence of the process encapsulated in the Act³⁵.

8.7 To ascertain whether the NZALA submission is in scope it is necessary to look at the purpose and provisions of the Act.

Purpose and provisions of Act

8.8 The purpose of the Act is to promote the sustainable management of natural and physical resources. Sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while -

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

³³ Applicant Submissions in response dated 22 June 2023, paragraph 8

³⁴ Applicant Submissions in response dated 9 June 2023, paragraph 33

³⁵ Applicant Submissions in response dated 9 June 2023, paragraphs 35 and 37

- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

8.8.1 “Environment” includes all natural and physical resources, s2. “Natural and physical resources” includes animals (s2), which can include cattle.

References to “animal”

8.9 The Applicant submits that animal welfare is not a matter listed in sections 5,6 or 7 of the Act, which sets out the purpose and principles as well as matters of national importance However, I note the word “animal” is used numerous times in the Act:

8.9.1 “Use” is defined (a) in sections 9, 10, 10A, 10B, 81(2), 176(1)(b)(i), and 193(a), means—

- (iii) damage, destroy, or disturb the habitats of plants or **animals** in, on, or under land:

8.9.2 Section 12 No person may, in the coastal marine area,—...

- (c) destroy, damage, or disturb any foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal) in a manner that has or is likely to have an adverse effect on plants or **animals** or their habitat

8.9.3 Section 13 No person may do an activity described in subsection (2A) in a manner that contravenes a national environmental standard or a regional rule unless the activity—

- (a) is expressly allowed by a resource consent; or
- (b) is an activity allowed by section 20A.

(2A) The activities are -

- (d) to damage, destroy, disturb, or remove the habitats of **animals** in, on, or under the bed of a lake or river.

8.9.4 Sections 70 and 107 are for rules about discharges -

- (f) the rendering of fresh water unsuitable for consumption by farm **animals**:

RMA Severe weather provisions

8.9.5 Section 331B Provides an owner or occupier of rural land may take emergency preventive or remedial measures

(1) Subsection (2) applies if,-

- (a) because of or in connection with the impacts of a severe weather event, a sudden event or an adverse effect on the environment has caused, is causing, or is likely to cause loss of life or injury to humans, loss of life or serious detriment to the health or well-being of **animals**, or serious damage to land or property

8.9.6 The Applicant submits that s331B (and related provisions) were introduced solely in response to severe weather events and the intent is to enable landowners to undertake permitted activities to repair or prevent damage on their land without the need to obtain consent. The inclusion of animal welfare is only to allow farmers to more effectively and efficiently manage their property and livestock.

8.9.7 I do not agree with the above argument – whether provisions are permanent or introduced for a short term, they still need to be consistent with the Act’s purpose. “Wellbeing of animals” was specifically included in these provisions. Farmers can undertake remedial measures to prevent serious detriment to the health or well-being of animals. If the well-being of animals weren’t relevant under the Act, the reference to wellbeing would not have been included.

AEE

8.9.8 Information required as part of an application must include any effect on ecosystems, including effects on plants or **animals** and any physical disturbance of habitats in the vicinity, Clause 7 of Schedule 4.

“Effects”

8.10 Section 104(1)(a) requires a consent authority to have regard to any actual and potential effects on the environment of allowing the activity.

8.11 “Effect” is broadly defined in section 3 to include any positive or adverse effect; any temporary or permanent effect; any past, present, or future effect; any cumulative effect which arises over time or in combination with other effect, regardless of the scale, intensity, duration, or frequency of the effect, and also includes any potential effect of high probability; and any potential effect of low probability which has a high potential impact.

8.12 The definition of “effect” is very broad. It is relevant to consider not only direct effects of activities, but indirect or consequential effects for which no consent might be needed.

8.13 In *Aquamarine Limited v Southland Regional Council*³⁶ the Court considered whether the activities of passage of water tankers and discharge of ballast water (for which consent was not being sought) were relevant issues. The Court agreed with analogy that it is commonplace to consider associated potential (permitted) traffic effects on the surrounding area from a land use consent for development.

“Relevance is not dependent upon the need or otherwise for resource consents or whether such effects can be the subject of controls. Nor is it dependent on whether a common law rite of passage is being exercised. Rather it is dependent upon giving a sufficiently wide interpretation to s104 (1)(a) of the Act to ensure that in achieving its purpose, all reasonably foreseeable effects...can be considered by the consent

³⁶ (1996) 2 ELRNZ 361 at page 3

authority...to exclude such effects on the grounds that a resource consent is not required or that they cannot be controlled by conditions, could lead to the granting of resource consent that, because of those effects, may not achieve the purpose of the Act.”

- 8.14 Here, an example of a consequential effect of the land use and allowing cattle to graze on pugged soil might be injury and/or disease in the cattle as a result (which would need to be proved by evidence from NZALA). Conditions could be imposed regulating the land use to avoid, remedy or mitigate this effect.

Case Law

- 8.15 In the *Stark* case, there was no argument from either party that it was not relevant to consider the adverse effects (noise) on animals, in this case both sheep and gun dogs. The appeal was declined but I note the Court was satisfied there were conditions put in place that would avoid, remedy or mitigate the adverse noise effects on the welfare of the animals, so there was no need to grant the appeal.
- 8.16 I note the Applicant’s comments that the *Stark* case involved a land use affecting the welfare of a **neighbour’s** animals. That is a different case than the present, where it is the Applicant’s animals and the AWA is directly relevant. I surmise that is why the AWA was not specifically mentioned in that case (as the obligation is on owners and people in charge of animals).
- 8.17 The *Kaimanawa*³⁷ horse case involved a party seeking a declaration the s17 duty had been breached in relation to the culling and mustering of wild horses. The Judge concluded the Act is broad enough to include adverse effects on animals, but he could not make a declaration there was a duty under s17 in this case, as it was not a use of land controlled by section 9. There was no consideration of the AWA in that case.
- 8.18 In this, unlike the *Kaimanawa* case, there is a use of land, which requires a consent.
- 8.19 I also note the *Gray Cuisine* case where a condition was imposed relating to animal welfare. Although it may have been a standard condition (as asserted by the Applicant), any condition imposed must still be for a resource management purpose³⁸.

³⁷ *Kaimanawa Wild Horse Protection Society Inc v A-G* NZEnvC A27/97

³⁸ Often cited as the *Newbury test* - the benchmark for vires of conditions. It provides a condition must: (i) be for a resource management purpose, not for an ulterior one; (ii) Fairly and reasonably relate to the development authorised by the consent to which the condition is attached; and (iii) Not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties, could not have approved it. *Newbury DC v Secretary of State for the Environment*, *Newbury DC v International Synthetic Rubber Co Ltd* [1981] AC 578; [1980] 1 All ER 731 (HL).

9 ECan opinion - effects

- 9.1 The letter I was provided that referred to the ECan legal opinion has very little context or detail, which made it difficult to understand the conclusion - that the effect of factory dairy farming on the welfare of the dairy cattle is not an “effect” of the activity when the subject application is for a discharge permit and further, issues in terms of animal welfare are more appropriately addressed via the AWA.
- 9.2 I agree with the ECan opinion to the extent that **if** it were relevant to consider adverse effects of an activity on animals, it would be the effects of the land use rather than any discharge permits.
- 9.3 I disagree about limiting effects in the way ECan appears to have done. The definition of effect is broad, and includes consequential effects, as set out above.

10 Animal Welfare Act and Code of Welfare for Dairy Cattle

- 10.1 Where there is a potential conflict or inconsistency between two Acts, firstly Courts will look to see if the two can be read together. If not, the specific will usually prevail over the general, *Stewart v Grey County Council*³⁹.
- 10.2 The purpose of the relevant part of the AWA is to ensure that owners and people in charge of animals attend properly to the welfare of those animals, section 9. Section 9 also requires:
- 10.2.1 Owners and people in charge of animals to take all reasonable steps to ensure the physical, health and behavioural need of the animals are met in accordance with good practise and scientific knowledge; and
- 10.2.2 owners of ill or injured animals and people in charge of them, to ensure the animals receive treatment that alleviates any unreasonable or unnecessary pain or distress from which the animals are suffering, s9(2)(a)&(b).
- 10.3 The Act provides for Codes of Welfare (Part 5). The Codes can relate to one or more of the following:
- 10.3.1 a species of animal:
- 10.3.2 animals used for purposes specified in the code:
- 10.3.3 animal establishments of a kind specified in the code:
- 10.3.4 types of entertainment specified in the code (being types of entertainment in which animals are used):
- 10.3.5 the transport of animals:
- 10.3.6 the procedures and equipment used in the management, care, or killing of animals or in the carrying out of surgical procedures on animals, s69.

³⁹ *Stewart v Grey County Council* [1978] NZLR 577

- 10.4 Given the above, the Codes are limited in their ambit.
- 10.5 There is a Code for Dairy Cattle (2019). It is comprehensive and includes guidance for the animal's physical environment. I note it does not explicitly include impact such as pugging.
- 10.6 The focus of the AWA (and Codes) is on owners and people in charge of animals. It is more specific than the RMA, which has as its purpose sustainable management, and is focussed on the use of land air and water and the adverse effects of activities on the environment, including animals (and cattle). Although there may be some overlap, the RMA is broader and more proactive – it attempts to avoid, remedy and mitigate adverse effects of activities on the environment (including animals) prior to them occurring (the fence at the top of the cliff), by requiring resource consents in certain situations and providing for the imposition of relevant conditions to regulate activities.
- 10.7 The AWA is more specific and reactive – standards are only enforced when people breach them, ss10-12. Even then, the language of the AWA is such that only very clear cases would be prosecuted (the ambulance at the bottom of the cliff).
- 10.8 The two statutes can be read together. Where land use consent is required (that is discretionary or non-complying), it may be relevant to consider animal welfare (it would depend on the type of land use consent), and if so, conditions may be imposed to avoid remedy or mitigate adverse effects of land use activities on animals. It is not possible for this to be done under the AWA, so there is no overlap in this respect.
- 10.9 By way of example of such overlaps in other situations, the provisions of the Civil Aviation Act 1990 did not prevent the (then) Tribunal from investigating matters of air safety generally (normally the province of the CAA) and assessing public safety risks (a consequential effect on the environment) of an air accident⁴⁰.
- 10.10 Another safety case involved Maritime Rules and the Court held the question of safety could not be delegated by a decision maker under the RMA to a decision made under the Maritime rules⁴¹ (both considering safety concerns).

11 CONCLUSION

- 11.1 I agree with the Applicant that there is no case law specifically considering the issue of whether animal welfare is a relevant consideration on an application for a land use consent where the adverse effects are on the applicant's animals, rather than e.g. a neighbours (the *Stark* case).
- 11.2 I also agree with NZALA that while the term "animal welfare" is not specifically captured in the Act, a lack of direct legislative reference does not automatically exclude its

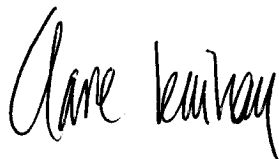
⁴⁰ *Glentanner Park (Mt Cook) Ltd v Mackenzie DC* W050/94 (PT) and *Director of Civil Aviation v Planning Tribunal* [1997] 3 NZLR 335; [1997] NZRMA 513 (HC)

⁴¹ *Southern Alps Air Ltd v Queenstown Lakes DC* [2007] NZRMA 119 (EnvC)

consideration in the course of decision-making.⁴² “Animals” are part of the natural and physical resources covered by the Act. The Act also mentions “animals” numerous times, and specifically requires applicants to provide information about any adverse effects of activities on animals. A recent amendment to the RMA now specifically includes wellbeing of animals.

- 11.3 Given all the references to “animals” in the Act and the broad definition of natural and physical resources and effects, if certain categories of animals are to be excluded from the Act, or certain types of effects on certain animals are to be excluded, Parliament would need to make that explicit. There are no such exclusions in the Act relating to animal welfare considerations, and no limits on either the sorts of animals that might be considered (when associated with a land use activity), or the types of effects that might be considered.
- 11.4 It is relevant the activities in this case are bundled as discretionary. If they were restricted discretionary, it would be highly unlikely animal welfare would be a listed matter of discretion, so would not be relevant to consider. The Applicant submits its application is for a land use activity authorising discharges to land associated with farming (so a discharge consent in disguise). I think this is too narrow – the application specifically triggers three land use consents (distinct from the discharge consents), so this brings land use into play (I have not dealt with whether consequential effects of discharges may also be relevant, given my conclusion that it is relevant to consider of effects of land use activities on the Applicant’s animals).
- 11.5 For the above reasons, I do not consider the high threshold for striking out a submission has been met for either ground advance by the Applicant. It is finely balanced, but I conclude that it **is** relevant to consider any consequential effects of the land use activity on the Applicant’s animals (which **could** include animal welfare). Even if I am wrong to conclude it is relevant to consider this, I think the NZALA submission is broad enough in scope to include e.g. effects of intensive winter grazing including pugging, which also affects water quality, and therefore it is within scope.

Dated at Invercargill this 10th day of July 2023.



Clare Lenihan
INDEPENDENT DECISION MAKER

⁴² NZALA Memorandum of Counsel 9 June 2023, paragraph 22 and FN 9

Attachment 11

Draft consent conditions

Land Use Consent

Under Section 104B of the Resource Management Act 1991, a resource consent is granted by the Southland Regional Council to **Pahia Dairies Limited** of **171 Ruahine Road West, RD 1, Riverton 9881** from **Date Consent Granted**.

Please read this Consent carefully, and ensure that any staff or contractors carrying out activities under this Consent on your behalf are aware of all the conditions of the Consent.

Details of Consent

Purpose for which permit is granted:	Use of land on a farm as dairy farm land and for intensive winter grazing
Location	- groundwater zone - physiographic zones - catchment - FMU
	Orepuki Lignite Marine Terraces, Bedrock/Hill Country, Peat Wetlands, Oxidising Rurikaka Creek Aparima
Expiry date:	31 December 2030

Schedule of Conditions

1. Except as modified by conditions of resource consent, the activities authorised by this resource consent shall be carried out in general accordance with the application for resource consent (APP-20222765)¹ and all subsequent information provided during the application and the Farm Environmental Management Plan required by this consent.
2. For the avoidance of doubt, in the event that any inconsistency between the conditions of resource consent and the information and plans, including the Farm Environmental Management Plan (FEMP), submitted as part of the application, the conditions of resource consent shall prevail.

¹ Environment Southland Document ID: A860599

3. This consent shall be exercised in conjunction with Discharge Permit AUTH-20222602 or any subsequent replacement permits.

Advice Note: Routine monitoring inspections of this consent may occur up to twice a year. This number does not include any other required inspections.

4. The use of land for farming shall occur on the landholding at 171 Ruahine Road West, Orepuki, as shown on the plan attached as Appendix 1, and consisting of:

(a) A block of land forming the dairy platform referred to as the "Pahia dairy platform", at or about map reference (NZTM 2000) 1196245E 4854030N and comprising Section 11 Block V Longwood SD, Section 12 Block V Longwood SD, Lot 1 DP 401670 and Lot 2 DP 10746; and

(b) A block of land referred to as the "Browns Block", at or about map reference (NZTM 2000) 1196630E 4854161N and comprising Part Section 14 Block V Longwood SD and Crwon land Block V Longwood SD.

5. The farming activities shall be limited as follows:

- (a) a maximum milking herd of no more than 1,000 cows;
- (b) grazing 250 R1 and 250 R2 dairy support cattle;
- (c) grazing up to 50 mating bulls; and
- (d) intensive winter grazing on a maximum of 55ha of crop.

6. When intensive winter grazing is occurring on any part of the landholding, the Consent Holder shall:

- (a) maintain a 5 metre buffer at all times between any surface waterbody (river, artificial watercourse, modified watercourse and natural wetland) and the area being grazed;
- (b) maintain a 10 metre buffer at all times between any surface waterbody (river, artificial watercourse, modified watercourse and natural wetland) and sloping land over 10 degrees;
- (c) progressively graze stock from the top to the bottom of any slope, where this is not possible a 20 metre "last bite" strip shall be left at the bottom of the slope to be grazed last;
- (d) back fence cattle at all times to prevent the stock re-entering previously grazed areas;
- (e) provide transportable water trough(s) in or near the areas being grazed;
- (f) place supplementary feed (including silage, baleage or hay) in portable feeders in the area being grazed;
- (g) critical source areas (including swales) within the area being grazed, shall be uncultivated and ungrazed; and
- (h) graze cattle in mobs of no more than 250.

Advice note: Intensive winter grazing is defined as the grazing of stock between May and September (inclusive) on forage crops (including brassica, beet and root vegetable crops), excluding pasture and cereal crops.

7. The Consent Holder shall notify the Consent Authority the identity of the Person in Charge of the dairy farming activity:

- (a) prior to the first exercise of this consent, and
- (b) no more than five working days following the appointment of any new Person in Charge.

Exclusions

8. No intensive winter grazing shall occur in the exclusion zones as shown on the plan attached as Appendix 2.
9. Cultivation and intensive winter grazing shall not occur on any slope over 20 degrees.

Nutrient Management

10. The Consent Holder shall implement a soil testing regime to determine the soil fertility status over the landholding and to develop fertiliser recommendations based on the soil testing results.
11. The Consent Holder shall maintain a record of their soil testing regime, soil testing results and fertiliser recommendations required by Condition 10 within the Farm Environmental Management Plan.
12. The Consent Holder shall:
 - (a) manage the application of fertiliser in accordance with:
 - (i) The Code of Practice for Fertiliser Nutrient Management, Fertiliser Association of New Zealand, 2023; or
 - (iii) any subsequent updates;
 - (b) not apply fertiliser:
 - (i) to land during the period 1 June - 31 July inclusive;
 - (ii) within 10 m of a surface water body;
 - (iii) within 10 m of any wetland boundary;
 - (iv) within 20 m of any bore;
 - (v) when soil temperature is at or below six degrees Celsius;
 - (vi) when soil moisture capacity is exceeded; and
 - (vii) directly to land within a riparian strip/margin.
 - (c) not apply synthetic nitrogen fertiliser to land in pastoral land use at a rate of more than 190kg N/ha/year on an individual hectare basis and as an average over the landholding.
13. The Consent Holder shall:
 - (a) take representative soil samples at least once every two years and have those samples analysed for Olsen P by a laboratory with IANZ accreditation;
 - (b) if Olsen P levels exceed a range of 28 - 34 the Consent Holder must reduce the amount of P fertiliser being applied to the landholding to ensure the risk of P loss is reduced; and
 - (c) record the Olsen P results required by Condition 13(a) and any fertiliser reduction required by Condition 13(b) in their Farm Environmental Management Plan.

Nutrient Modelling

14. The Consent Holder must ensure that nitrogen and phosphorus losses to water from farming activities undertaken on the land are maintained at, or below the baseline contaminant loss rates of:
 - (a) 44 kilograms per hectare per year nitrogen;

- (i) as estimated by the four-year rolling average loss rates using OVERSEER FM[®] version 6.5.0, undertaken in accordance with the generally accepted best practice modelling including the applicable Best Practice Data Input Standards/Overseer FM User Guide.
- (b) 1.5 kilogram per hectare per year phosphorus;
 - (i) as estimated by the four-year rolling average loss rates using OVERSEERFM[®] version 6.5.0, undertaken in accordance with the generally accepted best practice modelling including the applicable Best Practice Data Input Standards/Overseer FM User Guide; and
 - (ii) information from published New Zealand and Overseas research to estimate the additional phosphorus loss mitigation, beyond that modelled in Overseer, that is likely to occur as a result of the mitigation being implemented in accordance with the FEMP required under this resource consent.

For the purposes of this resource consent, the four-year rolling average is defined as the average of the most recent four consecutive years' results starting from 1 July 2023.

15. Each and every year for the duration of this consent, using the current version of OverseerFM and in accordance with the generally accepted best practice modelling and the current Best Practice Data Input Standards, the Consent Holder shall:
 - (a) model the nitrogen and phosphorus loss rates for the previous year from 1 July to 30 June inclusive;
 - (b) calculate the four-year rolling average of nitrogen and phosphorus loss rates; and
 - (c) re-model the baseline contaminant loss rates specified in condition 14 in the current version of Overseer.
16. The re-modelled baseline contaminant loss rates, modelled in accordance with Condition 15(c) shall supersede and replace the baseline contaminant loss rates specified in condition 14.
17. A report must be provided to the Consent Authority by 30 September each year summarising the results of Overseer nitrogen and phosphorus loss modelling required by condition 15. The report must include:
 - (a) a review of the Overseer input data to ensure that the annual nutrient budget reflects the farming system;
 - (b) an explanation of any differences between that nutrient budget and the annual nutrient budget of all previous years of farming undertaken under this consent;
 - (c) a comparison of the four-year rolling average nitrogen and phosphorus losses with the applicable baseline contaminant loss rates; and
 - (d) the names and summaries of the relevant qualifications and experience of the person(s) who prepared and (if relevant) reviewed the nutrient budget.
18. All nutrient loss modelling required by this consent must be undertaken by a person who is a Certified Nutrient Management Advisor (CNMA) under the Nutrient Management Advisor Certification Programme (NMACP).
19. The Consent Holder may use an alternative model that has been demonstrated to be equivalent to Overseer provided:

- (a) the evidence to demonstrate equivalence is provided to the Consent Authority at least six months prior to submitting the relevant annual report as required by condition 17; and
- (b) the use of the alternative model is approved by the Chief Executive of the Consent Authority.

Mitigation Measures

- 20. The Consent Holder shall undertake maintenance of the existing and any new dairy lanes to ensure they are contoured to ensure that any run-off occurs onto vegetated areas where it will not enter any surface water body.
- 21. The Consent Holder must manage the dairy lanes so that agricultural effluent and effluent sludges from the lanes does not:
 - (a) accumulate in gateways;
 - (b) accumulate in paddocks; or
 - (c) result in the ponding, pooling, overland or lateral flow of any effluent or sludge beyond the dairy lane.
- 22. Prior to the exercise of this consent, the Consent Holder shall inspect all bridges and culverts and, where necessary, undertake improvements to the structures to ensure that there is no runoff of agricultural effluent to surface water.
- 23. Except for crossings of surface waterways, the Consent Holder shall not construct any new dairy lanes within 10 metres of a surface waterbody.
- 24. The Consent Holder shall install any new permanent fencing of any temporarily fenced surface waterbodies with a minimum 3-metre buffer and written confirmation, along with date stamped photos, of the new fencing provided to the Consent Authority (EScompliance@es.govt.nz) by 1 June 2023.
- 25. The Consent holder shall have and maintain a Riparian Management Plan for the farm that includes the use of native plants. This plan shall begin being implemented within 6 months of the consent being granted and be incorporated into the Consent Holder's Farm Environmental Management Plan required by Condition 29.
- 26. The Riparian Planting Plan required by Condition 25 shall include, but not be limited to the areas below:
 - (a) the planting of one side of the waterway that runs between paddock 11 and paddock 13, as detailed in the application, beginning at or about NZTM 1195971E 4855087N and finishing at or about 1196182E 4854935N, as per Appendix 1;
 - (b) the planting of one side of the waterway that runs between paddock 8 and paddock 10, as detailed in the application, beginning at or about NZTM 1195776E 4854943N and finishing at or about 1195908E 4854654N, as per Appendix 1;
 - (c) the planting of one side of the waterway that runs between paddock 18 and paddocks 16/21 as detailed in the application, beginning at or about NZTM 1196228E 4854956N and finishing at or about 1195888E 4854578N, as per Appendix 1;
 - (d) the planting of one side of the waterway that runs from paddocks 15/114 to paddocks 28/112, as detailed in the application, beginning at or about NZTM 1196478E 4854980N and finishing at or about 1196528E 4854088N, as per Appendix 1;

- (e) the planting of one side of the waterway that runs from paddocks 105/106 and paddocks 109/120, as detailed in the application, beginning at or about NZTM 1197688E 4854620N and finishing at or about 1197312E 4854320N, as per Appendix 1;
 - (f) the planting of the southern farm boundary that runs from paddock 94 to paddock 88, beginning at or about NZTM 1196260E 4951978N and finishing at or about 1195407E 4852327N, as per Appendix 1; and
 - (g) the planting of the wetland area located on Browns Block, as detailed in the application, at or about NZTM 1196822E 4854536N, as per Appendix 1.
27. Following intensive winter grazing on all areas of the landholding, the Consent Holder shall re-sow at the earliest opportunity based on paddock suitable conditions and as soon as practicable to minimise the amount of time that bare ground is exposed.
28. The Consent Holder shall cultivate;
- (a) with the contour of the land being used for cultivation and shall not cultivate up and down the slope; and
 - (b) no less than 5 metres from the outer edge of any surface water body or natural wetland unless for the purpose of renewing or establishing pasture in accordance with Rule 25(b) of the Proposed Southland Water and Land Plan (Decisions Version), or any subsequent replacement versions.

Farm Environmental Management Plan

29. The Consent Holder shall have and maintain a Farm Environmental Management Plan (FEMP) for the landholding. The FEMP shall, in accordance with Appendix N of (Decisions Version) the Southland Water and Land Plan (or any replacement Appendix in an updated version of the plan), demonstrate how the following outcomes are to be achieved:
- (a) nutrients are used efficiently and nutrient loss to water is minimised;
 - (b) contaminant losses from critical source areas are reduced;
 - (c) cultivation is undertaken in a manner that minimises the movement of sediment and phosphorus to waterways;
 - (d) intensive winter grazing occurs in a way that minimises the loss of sediment, phosphorus and microbiological contaminants to waterways;
 - (e) agricultural effluent and other discharges are managed in a way that avoids or minimises the loss of contaminants to water. Irrigation water is applied to meet plant demands and minimises the risk of leaching and run-off;
30. The FEMP required by Condition 29 shall also include, but not be limited to:
- (a) a site map showing the location of critical source areas; physiographic zones; permanent or intermittent rivers, streams, lake, drains, ponds or wetlands; where known the location and depth of any subsurface drainage systems including outlets, riparian vegetation and fences adjacent to waterways and stock access points across waterways;
 - (b) details of the implementation and maintenance of mitigation measures required by the conditions of this consent;
 - (c) details of the implementation and maintenance of Good Management Practices, including adoption of changing industry good management practices. This includes where the implementation of these is to avoid, remedy or mitigate any farm specific environmental risks to water quality shown through any monitoring undertaken on the property voluntarily or as required by the conditions of this consent;
 - (d) a review of the data obtained from the monitoring undertaken in accordance with the Farm Environmental Management Plan and any changes made, or to be made, as a consequence of that monitoring.

Advice Note: *Should the use of a Freshwater Farm Plan be required or available, on the basis that it is certified under section 217G of the Resource Management Act 1991 (as amended from time to time in accordance with section 217E(2) or (3)) and available for use, the Consent Holder may elect to use such plan.*

31. The FEMP shall be reviewed at least once each milking season and can be modified at any time by the Consent Holder; and either
- (a) an updated version shall be provided to the Consent Authority by 31 May each year; **or**
 - (b) the Consent Holder must notify the Consent Authority in writing that no changes have been made by 30 September each year.

Advice Note

The results from the review of the FEMP will be assessed by the Consent Authority to ensure that the FEMP will still achieve the objectives specified in the FEMP and the FEMP has been prepared in accordance with Appendix N of the Southland Water and Land Plan (Decisions Version) (or any updated version of the plan).

32. The Consent Holder shall operate in accordance with the FEMP at all times. Where there is inconsistency between the FEMP and the conditions of the consent, the conditions of this consent shall prevail.

Auditing

33. The Consent Authority may require the Consent Holder to have the farming activity as authorised by this consent independently audited, in accordance with Appendix 3, by a person who is a Certified Nutrient Management Advisor or Farm Environmental Plan Auditor or a Suitably Qualified Person who has demonstrated an equivalent level of expertise.

Lapse and Review

34. The Consent Authority may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this consent during the period 1 February to 30 September each year, or within two months of any enforcement action being taken by the Consent Authority in relation to the exercise of this consent, or on receiving monitoring results, for the purposes of:
- (a) determining whether the conditions of this permit are adequate to deal with any adverse effect on the environment, including cultural effects on the tangata whenua and/or cumulative effects, which may arise from the exercise of the permit, and which it is appropriate to deal with at a later stage, or which become evident after the date of commencement of the permit; or
 - (b) ensuring the conditions of this consent are consistent with any National Environmental Standards Regulations, relevant plans and/or the Environment Southland Regional Policy Statement;
 - (c) Amending the auditing/monitoring/recording/reporting/modelling programme to be undertaken;
 - (d) Adding or adjusting compliance limits;
 - (e) Ensuring the Aparima Freshwater Management Unit meets the freshwater objectives and freshwater quality limits set in an operative regional plan or National Policy Statement for Freshwater Management; and

- (f) Requiring the Consent Holder to adopt the best practicable option to remove or reduce any adverse effect on the environment as a result of the exercise of this permit.

for the **Southland Regional Council**

Jayne MacDonald
Hearing Commissioner

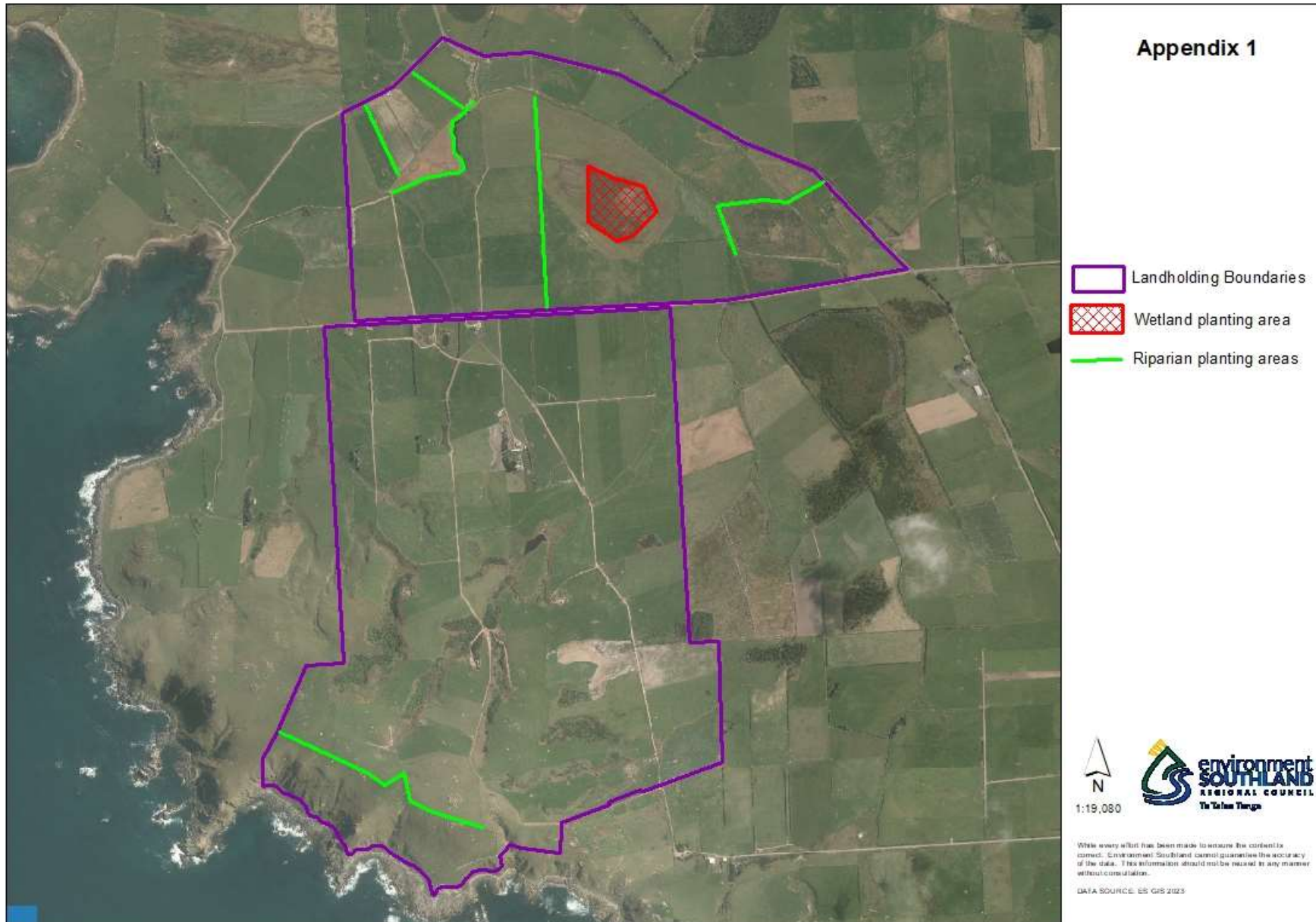
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Notes:

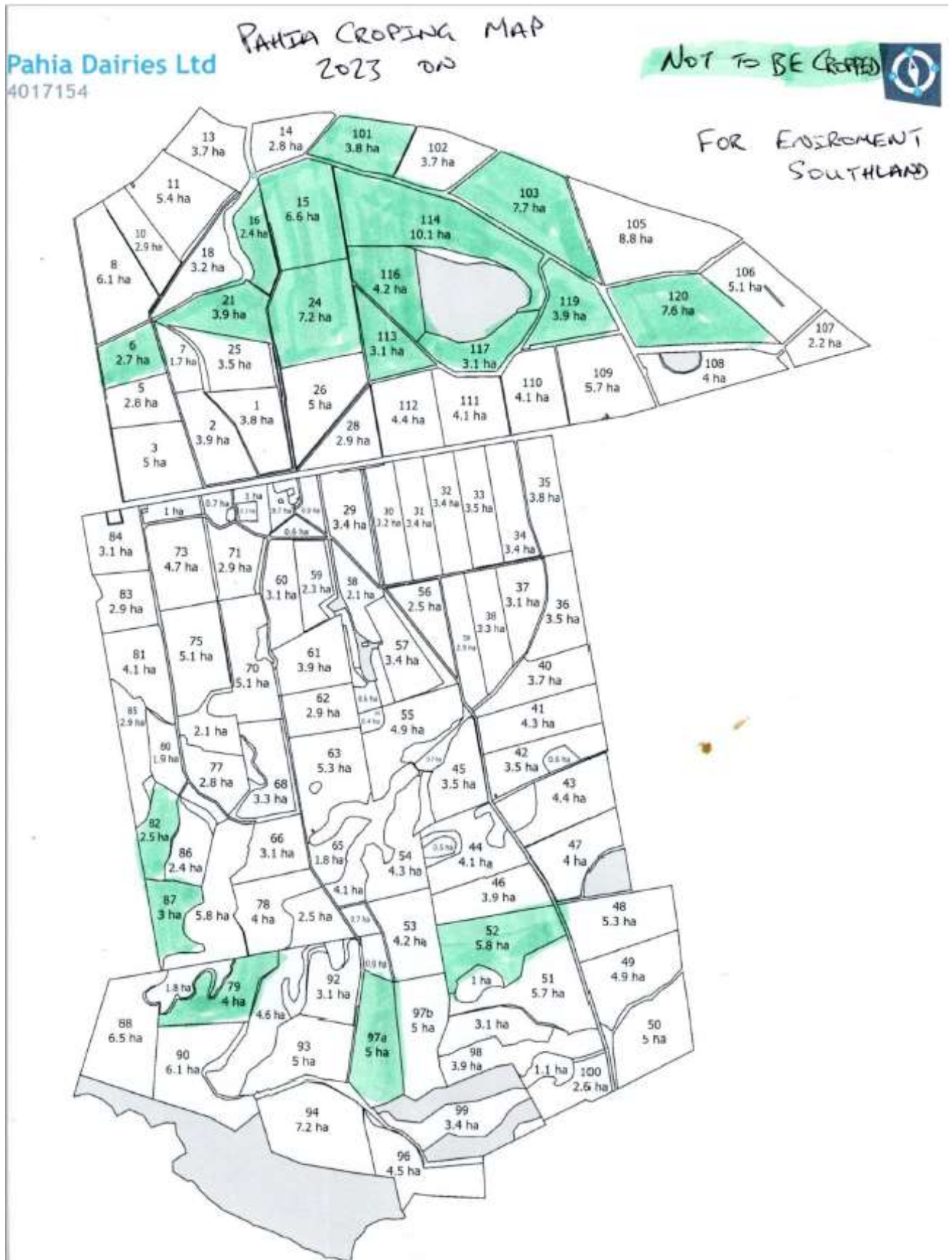
1. *Reporting to Council is required by conditions of your consent. The key dates for you to meet are listed below in table 1:*

Due date	Condition number	Requirement
<i>Prior to exercise</i>	<i>7</i>	<i>Notify Council of Person in Charge of dairy farming activity</i>
<i>30 Sept each year</i>	<i>17</i>	<i>Report summarising results of Overseer modelling</i>
<i>1 June 2023</i>	<i>24</i>	<i>Confirm installation of permanent fencing</i>
<i>31 May each year</i>	<i>31(a)</i>	<i>Provide updated version of FEMP if changes were made due to review</i>
<i>30 Sept each year</i>	<i>31(b)</i>	<i>Confirm no changes were made to FEMP</i>

2. *In accordance with Section 125(1)(a) of the Resource Management Act, this consent shall lapse after a period of five years after the date of commencement unless it is given effect to or an application is made to extend the lapse period before the consent lapses.*
3. *In accordance with Section 138 of the Resource Management Act, this consent may be surrendered by providing written notice to the Consent Authority. This written notice must be accompanied with evidence to demonstrate that the conversion is complete and that all of the conditions of this permit have been satisfied in full.*
4. *The Consent Holder shall pay an annual administration and monitoring charge to the Consent Authority, collected in accordance with Section 36 of the Resource Management Act, 1991, payable in advance on 1 July each year. This charge may include the costs of inspecting the site up to two times each year (or otherwise as set by the Consent Authority's Annual Plan).*
5. *The FEMP, supporting evidence and on-site practices may be audited by the Consent Authority at any time for compliance and enforcement purposes.*



Appendix 2: IWG Exclusion Map



Appendix 3: <i>Auditing criteria</i>

1. The audit shall assess the performance of the farming activity occurring on the property against:
 - (a) the objectives and good management practices specified in the FEMP;
 - (b) any additional mitigation measures implemented on the property either voluntarily or as required by the conditions of this consent; and
 - (c) the baseline contaminant loss rates specified in Condition 14 and 16.

2. The audit must determine the level of confidence of achieving each objective set out in the FEMP. This level of confidence shall be categorised into the following:
 - **High** - the objective is probably being achieved
 - **Medium** - the objective is possibly being achieved
 - **Low** - it is unlikely that the objective is being achieved.

3. The audit shall record the justification for each level of confidence assessment, including noting the evidence, or lack of, used to make the determination.

4. Where an objective has received a Medium or Low level of confidence, the audit shall include the actions required for the farm to meet the objective and a timeframe whereby these actions need to be undertaken.

5. Where an objective has received a Medium level of confidence (and the farm has received no Lows), the audit shall also determine whether or not the farm is on-track to achieve the objectives.

6. The audit report shall be provided to the Consent Authority within three months of the date of the Consent Authority issuing a requirement to undertake the audit.

7. The frequency of audit requirements may be annually except where, for two consecutive years, an audit report has concluded that all objectives are probably being achieved (received a high level of confidence). In that situation no further audit will be required for at least three years.

8. Where the audit identifies actions required to be undertaken for the farm to meet the objective the Consent Holder must implement these actions within the timeframes stated in the audit.

9. Upon completion of any changes made and/or mitigations implemented as required by the audit, the Consent Holder shall confirm in writing, including photographs (date and time stamped) to the Consent Authority that these actions have been completed and implemented.

10. Upon completion of all the changes made and/or mitigations implemented as identified in the audit, the Consent Holder must ensure the measures are properly maintained, continue to function and are not removed or altered for the duration of this consent (and any subsequent variation versions).

Discharge Permit

Under **Section 104B** of the Resource Management Act 1991, a resource consent is granted by the Southland Regional Council to **Pahia Dairies Limited** of **171 Ruahine Road West, RD 1, Riverton 9881** from **Date Consent Granted**.

Please read this Consent carefully, and ensure that any staff or contractors carrying out activities under this Consent on your behalf are aware of all the conditions of the Consent.

Details of Permit

Purpose for which permit is granted:	To discharge contaminants into or onto land associated with the use of land on a farm as dairy farm land and intensive winter grazing.
Location	<ul style="list-style-type: none"> - site locality 171 Ruahine Road West - map reference NZTM2000 1196630E 4854161N - physiographic zones Lignite Marine Terraces, Bedrock/Hill Country, Peat Wetlands, Oxidising - groundwater zone Orepuki - catchment Rurikaka Creek - FMU Aparima
Legal description of land at the site:	Section 11 Block V Longwood SD, Section 12 Block V Longwood SD, Lot 1 DP 401670 and Lot 2 DP 10746,
Expiry date:	31 December 2030

Schedule of Conditions

1. This consent authorises the discharge of contaminants into or onto land arising from the land use activity authorised by Land Use Consent AUTH-20222765-01 and shall be exercised in conjunction with Land Use Consent AUTH-20222765-01.
2. This consent does not authorise the discharge of contaminants directly to water as a result of the activity.
3. The discharge to land activity authorised by this consent must not result in:

- (a) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials
- (b) any conspicuous change in the colour or visual clarity
- (c) any emission of objectionable odour
- (d) the rendering of freshwater unsuitable for consumption by farm animals or
- (e) any significant adverse effects on aquatic life

in any river, lake, artificial watercourse, modified watercourse or wetland.

for the **Southland Regional Council**

Jayne MacDonald
Hearing Commissioner

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