

Before the Southland Regional Council

In the Matter of the Resource Management Act 1991

And

In the Matter Hearing of Application: APP-20222765
 171 Ruahine Road West, Riverton
 Pahia Dairies Limited

Submitter New Zealand Animal Law Association

**Evidence of James Hook
Dated 28 September 2023**

INTRODUCTION

1. My full name is James Ronald Hook.
2. My tertiary qualifications comprise a Bachelor of Surveying (BSurv) and a Master of Regional and Resource Planning (MRRP). I have worked as a Planning Consultant for 28 years. I am a full member of the New Zealand Planning Institute.
3. My professional experience has included a wide range of land use and subdivision consent applications, professional advice, and expert evidence services to a broad range of Clients, including companies and private individuals, local authorities, community and special interest groups (as detailed in my Curriculum Vitae – refer to **Attachment 1**).
4. Through the course of my work, I have made regular appearances at Council hearings and have regular and on-going experience in matters before the Environment Court. While not a hearing before the Court, this evidence has been prepared in accordance with the Code of Conduct for Expert witnesses, contained in section 9 of the Environment Court Practice Note 2023. This evidence is within my area of expertise, and I confirm that I have considered all material facts known to me that are relevant to the proposal.
5. This statement relates to the matters raised in the submission of the New Zealand Animal Law Association that relate to the dairy farm extension and proposal for intensive winter grazing on 55ha at 171 Ruahine Road West, Riverton (referred to by the Applicant as “Pahia”).
6. In preparing this evidence I have read the following documents associated with the application:
 - The Application for Resource Consent by Pahia Daries Limited (**PDL**) dated 21 October 2022 (including the appended Riparian Management Plan and Farm Environmental Plan);
 - The New Zealand Animal Law Association (**NZALA**) submission;
 - The response that PDL provided to the NZALA submission dated 24 April 2023
 - The section 42A report prepared on behalf of Environment Southland by Jade McRae (the S42A report) including attachments.
 - The evidence of Georgette Wouda, Simon Anderson, Nicole Mesman for PDL
 - The evidence of Helen Beatie for NZALA
 - The evidence of Oska Rego for NZALA.
7. I have also reviewed site photos, aerial photography, street view images. However, due to the time constraints applied to this brief, it has not been possible to visit the site in person.

The Scope of Evidence

8. I have been asked by NZALA to provide a planning assessment that addresses:
 - a) Whether the proposal (as submitted for consent) should, when assessed in terms of the relevant statutory provisions, be granted consent.
 - b) Whether the proposal, subject to amendments proposed by the Applicant (including any conditions volunteered or accepted), should be granted consent.
 - c) If consent is granted, the form and content of conditions of consent that would avoid, mitigate or remedy adverse effects of the proposal - particularly potential adverse effects on “animal welfare”.

The Proposal and NZALA Submission

9. The proposal requires both land use and discharge consent as a Discretionary Activity under the National Environmental Standards for Freshwater (Regulations 2020) and the Proposed Southland Water and Land Plan (PSWLP) as listed in Table 2 of the S42A Officers Report.
10. The NZALA Submission requests that the application is declined for the following reasons¹:

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.

11. The submission was subject to a S41D “strike out” application, which was considered and addressed by an Independent Commissioner – Clare Lenihan. Relevantly, I note the following matters recorded in the strike out decision:
 - There is no current case law considering the potential adverse effects of a land use consent activity on the applicant’s animals.
 - While the Resource Management Act 1991 (the **Act**) does not specifically refer to “animal welfare” there are numerous mentions to animals in the Act, and applicants for resource consent are specifically required to provide information about adverse effects of activities on animals².
 - Given the broad definition of “natural and physical resources” and “effects” under the Act, if certain categories of animals (or effects on animals) are to be excluded then Parliament would need to make that explicit.

¹ as summarised in Table 3 of the S42A Officers Report

² RMA, Schedule 4 – Information required in application for resource consent, Clause 7(1)(c) *any effect on ecosystems, including effects on plants or animals and any physical disturbance of habitats in the vicinity.*

- Accordingly, the Commissioner concludes³: “...that it is relevant to consider any consequential effects of the land use activity on the Applicant’s animals (which could include animal welfare).”

12. Additionally, I note that:

a) The requirement for a consent authority considering an application for land use consent as Discretionary Activity to consider “any actual and potential effects on the environment of allowing the activity” under s.104(1)(a).

b) The definition of “environment” in Section 2 of the Act includes:

environment includes—

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

c) The functions of regional councils in section 30 of the Act, which refers to achieving integrated management of natural and physical resources – as follows:

30 Functions of regional councils under this Act

- (1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:
 - (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:

d) The definition of natural and physical resources in Section 2 of the Act (which includes all types of animals):

natural and physical resources includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures

e) Finally, that the definition of “effect” in Section 3 of the Act is broad and all encompassing:

3 Meaning of effect

In this Act, unless the context otherwise requires, the term **effect** includes—

- (a) any positive or adverse effect; and
- (b) any temporary or permanent effect; and
- (c) any past, present, or future effect; and
- (d) 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—
- (e) any potential effect of high probability; and
- (f) any potential effect of low probability which has a high potential impact.

13. For Southland Regional Council (SRC) to be able to grant consent to the proposed dairy farm extension and intensive winter grazing activity S.104 requires the Council to be satisfied that the farming methodology, including specific measures to support the welfare of the dairy cows (including conditions of consent) are suitable to avoid, remedy or mitigate adverse effects on

³ at para 11.5 of the Strike Out decision by Clare Lenihan dated 10 July 2023

the environment, including the welfare of the animals (cows, heifers and calves) that occupy the property.

The Subject Land

14. The subject land known as Pahia comprises five land parcels as follows:

Legal Description	Record of Title	Area	Notes
Lot 2 DP 10746	SL6B/1445	82.0248ha	purchased August 2007
Section 12 Block V Longwood SD	SL195/169	101.0854	purchased August 2007
Section 11 Block V Longwood SD	405195	101.1714	purchased May 2008
Lot 1 DP 401670	405195	134.067	purchased May 2008
Part Section 14 Block V Longwood SD	SLB3/1317	96.8994	purchased October 2017 "100ha block"
		515.2480ha	

15. The original land blocks (purchased in 2007 and 2008) include 82ha located on the northern side of Ruahine Road West, with the balance of the land extending south to a steep coastal escarpment. The land includes a networks of water courses and areas of remnant native vegetation which I understand are fenced off from stock.

"100ha" or "Browns" Block

16. In 2017 PDL purchased an additional area 98.4ha area of pastoral land, approximately 28km west of Riverton, and 30km south of Tuatapere. The land has relatively gentle topography and is divided into approximately 17 separate paddocks. PDL's farming operation has been extended to encompass this land, of which up to 34ha will be used for intensive winter grazing out of a total of 55ha proposed⁴.
17. It is understood from the application that incorporation and use of the 100ha Browns block as part of the farming operation, and specifically as an area for intensive winter grazing will assist PDL to better manage (and potentially) reduce nutrient loading on the receiving environment and the migration of microbial contaminants including by adoption of the specified setback distances for slope and waterbodies.
18. In preparing for this hearing, I have not had the opportunity to inspect the subject property in person. I have driven through the area via SH99 (most recently in 2022) to visit family in Eastern Bush (via Tuatapere). I have conducted a virtual site visit (utilising Council GIS information and

⁴ Table 5, page 15 of PDL's Dairying land use application form (Version 3, December 2022)

Google Streetview, which is limited to the northern boundary of the PDL farm fronting onto Pahia-Wakapatu Road). In respect of the focus on the NZALA submission on animal welfare (with a particular focus on animal welfare effects associated with intensive winter grazing), I do not consider that the lack of a property inspection limits my ability to assess the effects of the proposed dairy farming operation as they relate to animal welfare considerations.

19. I am familiar with dairy farming practices as my brother-in-law is a farm worker on a property in the South Waikato with approximately 600 dairy cows that I visit every 3-4 months. I have variously helped with the movement of stock, milking, and training the heifers to use the races and milking shed. I note the farm I visit does not undertake intensive winter grazing, although it does provide supplementary baleage and palm kernel expeller (PKE) feed to stock over the winter.

The Proposed Activity

20. PDL proposes to expand their current dairy farming operation currently established on adjacent land to encompass the “100ha block” and to utilise the expanded 515ha land area for dairy farming purposes. The activities requiring consent include:
- Using land for dairy farming
 - Intensive Winter Grazing (IWG).
 - Discharge of contaminants to land.
21. I have read the detailed description of farming practices in Section 2 and the proposed dairy farming activities on the site contained in Section 3 of the Dairying land use application prepared by Lumen Environmental Limited. In total the effective area of land farmed is understood to be 441ha (346ha original plus 95ha Browns block). Intensive winter grazing is proposed for up to 55ha across the expanded area of the farm and is proposed to be managed in a manner that enables rotation and pasture replenishment.
22. The application refers to fodder beet as the proposed crop for winter grazing (replacing kale) and describes how the use of fodder beet will enable pasture rotation every 7 years on the flatter areas (approx. 350ha) of the expanded dairy farm⁵. The application identifies the potential for a reduction in N and P run-off to water by changing from kale to fodder beet, and net reduction of 12ha of winter grazing land area with associated environmental benefits.

⁵ Section 4.1 Assessment of Environmental Effects, Dairying land use application prepared by Lumen Environmental Limited (AEE).

23. Further details of the proposal are provided in the Farm Environmental Management Plan (FEMP) prepared by Lumen⁶. The FEMP acknowledges that there is a high risk of nutrient and sediment loss associated with IWG and cultivation and has identified eighteen paddocks that are not suitable for cropping due to the presence of peat soils to preserve their soil structure and to minimise contaminant loss to waterways⁷.

24. The FEMP includes the following “*Key Policies & Practices – Operation*” for IWG⁸, which are also summarised in section 4.2 of the AEE:

Intensive Winter Grazing:

- Stock grazed from top to bottom of slope where animal health allows or 20m last bite strip left at the base of the slope
- 5m vegetative buffer strip to all waterbodies at all times (to the side of the waterbody, not the fence around it)
- Critical source areas which flow to receiving waters left in pasture (& not grazed) or 10m buffer strip prior to receiving waters
- Back-fencing practiced avoiding structural damage to soil
- Southern bale system in use always (or portable feeders)
- Portable troughs used where needed to avoid soil structural damage
- Strip tillage used where agronomically practical (cultivation only used where needed for paddock renewal/severe pest/weed control)

25. Overall, I consider that the PDL application demonstrates that detailed consideration has been given to the adoption of farm management practices to minimise (where practicable) nutrient and sediment run-off associated with dairy farming operations, along with measures to protect soils and maintain water quality in farm drains and natural watercourses.

26. However, when submitted for consent the application did not address implications to animal welfare of the farming methodology proposed – in particular the use of IWG farming for mobs of up to 120 dairy cattle⁹ across up to 55ha of the expanded farm area. The potential adverse effects of that grazing method on stock welfare are not addressed in the AEE, FEMP or Officers S42A report. Similarly, I note that the application does not refer to or describe how the PDL farming operation will ensure that the management of dairy cattle will meet the Code of Welfare for Dairy Cattle (2019) or any subsequent updates to that Code of Welfare¹⁰ (CoW:DC).

Potential Adverse Effects of Intensive Winter Grazing

27. The potential adverse effects of IWG activities include damage to soils, increased run-off and negative impacts on animal welfare. Adverse effects noted by the Ministry for the Environment on the physical resources of an IWG site include:

- a) Pugging and damage to the structure of the soil;
- b) Increase overland flow resulting in loss of sediment, nutrients and bacteria to waterways;
- c) Nutrient leaching.

⁶ Pahia Dairies Limited – Farm Environmental Plan, Lumen, October 2022 (V4)

⁷ *ibid* at page 38

⁸ *ibid* at page 7

⁹ Section 4.2, Pahia Dairies Limited – Dairying land use application form, Lumen, Version 3, December 2022

¹⁰ Code of Welfare: Dairy Cattle (31 Oct 2019) issued by the Ministry for Primary Industries, updated 9 May 2021.

28. Potential adverse effects on animal health and animal welfare from IWG have been identified as (and are summarised in the evidence of Dr Beattie):
- a) Denying the opportunity for the cattle to display normal behaviours, including sufficient space to lie down and rest comfortably within a sufficiently dry and sheltered area (for up to 10-12 hours per day) and carry out normal grazing and foraging behaviours;
 - b) Lack of access to fresh drinking water or shelter
 - c) Creating conditions unsuitable for calving (i.e. into water logged/ pugged areas)¹¹;
 - d) Poor nutrition of stock (unless supplementary feed is supplied, including the potential of long-term health impacts raised by Dr Beattie.
29. The National Animal Welfare Advisory Committee (NAWAC) is currently in the process of reviewing the CoW:DC, to address particular stock management practices in more detail. Included in that review is a greater focus on IWG grazing practices to address the matters listed above, with a particular focus on animal welfare. The draft revisions to CoW:DC were released for consultation in April 2022 and were open for submissions until early June 2022.
30. The recommended minimum standards in draft CoW:DC include new regulations requiring:
- a) Clean drinking water to be available in the grazing area at all times¹² (i.e. via portable troughs).
 - b) That dairy cattle receive sufficient quantities of feed and nutrients¹³ to enable each animal to:
 - i) maintain good health;
 - ii) meet their physiological requirements; and
 - iii) minimise metabolic and nutritional disorders.The recommended process for monitoring animal welfare is to ensure that the “body condition score” of an individual animal remains within the good-health range.
 - c) The behavioural needs of dairy cattle are met by providing opportunity for the cattle to display normal behaviours, including sufficient space to lie down and rest comfortably. NAWAC has recommended a new regulation requiring cattle kept in intensive winter grazing systems to have access to a well-drained lying area (with no surface water pooling) of at least 10m² per cow so they can meet their daily lying requirements.
31. In addition, recommended best practice is that animals are drafted into mobs according to estimated calving date, to allow moving cows to well-drained areas prior to calving.

¹¹ Dairy NZ recommends cows are moved to pasture paddocks to avoid the risk of them calving on crops (<https://www.dairynz.co.nz/feed/crops/wintering/>)

¹² Proposed Minimum Standard No.5 – Drinking Water, Code of Welfare: Dairy Cattle (consultation draft)

¹³ Proposed Minimum Standard No.6 – Feed, Code of Welfare: Dairy Cattle (consultation draft)

PDL response to NZALA Submission

32. In April 2023 a detailed response was provided by Lumen on behalf of PDL to the matters raised in the NZALA submission. Helpfully, that response provided further details on various farm management practices available to (and utilised by) PDL to support good animal welfare on the expanded farming operation at Pahia.
33. The supplementary information provided includes clarification of the following matters:
- Due to the low protein content of Fodder Beat, up to 40% of feed within each break comprises grass baleage to provide additional protein and dry matter.
 - Cows receive mineral supplementation via a dosing system into their drinking water and a calcium dispenser in the dairy shed (under the guidance of PDL's vet).
 - The placement of a portable water trough in each break.
 - The use of a standoff grass paddock in wet conditions, with stock being moved daily after grazing the fodder beet break to a paddock where "supplement and stock water are supplied and cows have access to the clean, soft, dry lying space equivalent to 8-10 m² per cow."
 - That in dry conditions back fencing does not occur directly behind the animals to provide at least 8-10 m² lying space per cow.
 - Cows are moved back to pasture paddocks 7-10 days prior to their calving date to ensure they do not calve on a crop paddock.
 - All winter grazing is being transitioned to Waikiwi and Kaipaki soils.
34. NZALA responded to PDL's comments in a letter dated 10 May 2023. NZALA continued to raise a range of concerns with the management practices and mitigation measures proposed by PDL.

S42A Report

35. A S42A report has been prepared for the notified Application by Ms Jade McRae, Senior Consents Officer at SRC. The report details the land use and discharge consents required by PDL as a Discretionary Activity under the National Environmental Standards for Freshwater Regulations 2020 (NES-F) and the Proposed Southland Water and Land Plan (PSWLP).
36. I rely on the summary prepared by Ms McRae for "the description of the affected environment", which includes the soils and physiographic zones within the property and the relevant provisions of:
- the Regional Water Plan and the Proposed Southland Water and Land Plan;
 - the Southland Regional Policy Statement;
 - National Policy Statements and National Environmental Standards.

37. I concur with Ms McRae's assessment of Policy 39 of the PSWLP, where she states¹⁴:

“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”

38. While not addressed by the NZALA submission, I confirm that I concur with and accept Ms McRae's assessment of the actual and potential effects of the proposal on water quality effects, where she notes some improvement in nutrient loss arising from the proposal and summarises the good management practices and mitigation measures that have been adopted by PDL. I also accept that the applicant's proposed winter grazing programme and plans incorporate reasonable practical steps intended to avoid soil damage and other environmental effects arising from pugging of soils.

39. The matter that Ms McRae and I do not agree on is the relevance of “animal welfare” under the Act. In that respect I have read and followed the logical and rational approach to the matters set out in the Independent Commissioner's decision on the “strike out” application, and note the following relevant references to matters related to animal welfare in the Act:

- Section 14 – Restrictions relating to water, clause 3(b) permits the taking of water to be used for the reasonable needs of a person's animals for drinking water.
- Section 70 – requires a Regional Council to be satisfied that a rule permitting a discharge of contaminants does not adversely affect the suitability of fresh water for consumption by farm animals.
- Section 107 – restricts the grant of a discharge permit that renders fresh water unsuitable for consumption by farm animals.
- Section 331B permits the owner or occupier of rural land to take emergency preventative or remedial measures to *inter alia* prevent the loss of life or serious detriment to the health or well-being of animals.

40. Accordingly, I conclude that animal welfare considerations are relevant under s.104(1)(a) of the Act for the reasons set out above and in the earlier discussion of relevant considerations including the definitions of “environment” and “natural and physical resources” in Section 2, the definition of “effect” in Section 3, the functions of regional Councils relating to the integrated management of natural and physical resources and the AEE information requirements in Schedule 4 of the Act.

¹⁴ Section 3.3.1 of S42A Officers Report

41. Finally for completeness, I concur with Ms McRae's recommendation (for the reasons she provides at paragraph 4.2.3) that if consent is to be granted to the proposal an expiry date of 31 December 2030 would be appropriate, subject to the incorporation of specific conditions relating to animal welfare.

Evidence of Georgette Wouda (Veterinarian)

42. Dr Wouda's evidence focuses on veterinary animal health considerations associated with dairy farming involving IWG, in particular nutritional effects, the ability of animals to display normal patterns of behaviour and effects from injury or disease. Her evidence emphasises the importance of adopting good feed transition practices and providing trace element supplementation. I accept her knowledge and expertise on those matters.
43. Dr Wouda summarises the importance of providing lying areas for cattle that are as dry as possible and notes the importance of providing stand-down areas on drier firmer ground. She addresses the potential risks of injury and disease, noting in her view that those risks to dairy cattle are not significantly elevated by IWG. In her conclusion she states *[t]he critical point is how those animals are managed in relation to the other matters I've discussed in this evidence, such as nutrient balance, wet weather plans and proactive engagement with animal health professionals.*

Evidence of Simon Anderson (Shareholder, Director and Farm Manager)

44. Mr Anderson's evidence explains how the incorporation of the Browns Block will enable the existing 980 dairy herd to be grazed over the extended farm area, and for winter grazing to be undertaken over soils better suited to that activity. He explains how strip tilling is utilised to establish the winter grazing crops to minimise soil disturbance making it less prone to pugging in wet weather.
45. At his paragraphs 15-16, Mr Anderson explains the measures taken to manage the welfare of stock in particularly wet weather, including by relocating stock in paddocks of baleage or grass with harder ground conditions and ensuring that shelter (via shelterbelts/ wall of haybales) and lying space is available.
46. The balance of his evidence outlines the associated animal health measures undertaken on the farm, which include: -
- bi-annual blood testing and mineral supplementation
 - use of zinc mats to harden the feet of the dairy cattle
 - removing cattle off winter feed prior to calving

Evidence of Nicole Mesman (Farm Environmental Advisor)

47. The evidence of Ms Mesman summarises the details of the proposed dairy farm activity and reviews its actual and potential effects, with a particular focus on nutrient loading/loss, bacterial and sediment loss, and soil health.
48. Ms Mesman states that the proposal is not inconsistent with the relevant policy provision of the Regional Water Plan 2010 and PSWLP (2018) and is consistent with the relevant policies in the Regional Policy Statement (2017) without identifying any particular policies that the proposal supports, promotes or gives effect to.
49. In respect of proposed conditions of consent, she notes that “...*the suite of consent conditions included in the S42A report and endorsed by the applicant will ensure there is no reduction in water quality...*”
50. It is clear from Ms Mesman’s conclusion that the focus of her evidence is on nutrient loss and environmental (water quality) outcomes. The only reference she makes to “animal welfare” is in paragraph 18 where she states that a recommend condition relating to the pugging of soils and the Animal Welfare Act addresses the concerns raised in the (NZALA) submission. Accordingly, while I acknowledge and accept Ms Mesman’s knowledge and expertise regarding nutrient and run-off management, I note that she has not addressed matters relating to “animal welfare” in her evidence.

Evidence of Dr Helen Beattie

51. Dr Beattie’s evidence identifies a number of aspects of PDL’s proposed IWG regime that fall short of best practice in terms of animal welfare, and therefore fail to meet the animal welfare requirements of the Animal Welfare Act 1999. The specific areas she identifies are:
 - Access to shelter (at all times during winter grazing, not just in extreme weather events);
 - Provision of an appropriate lying surface
 - Readily accessible fresh water
 - The nutritional deficiencies of fodder beet (and the need to maintain balanced nutrition for cattle through the period of IWG).
52. For those reasons Dr Beattie emphasises the importance of including animal welfare conditions in any consent granted by the Council. She provides an explanation as to how conditions relating to animal welfare are mutually beneficial to achieving positive environmental outcomes on the physical resources of the farm (improved soil condition, reduced run-off and improved water quality).

S.104 Evaluation

53. In accordance with S.104 (1)(a) the evidence presented has identified the potential for adverse environmental effects from the dairy farm expansion and use of IWG as a winter feed method. The potential adverse effects are to soils, water quality and animal welfare. In relation to NZALA's focus on animal welfare Dr Beattie has identified the best practice associated with IWG is mutually beneficial in reducing the adverse effects on all three of those factors, with a particular consideration on the welfare of dairy cattle.
54. In the absence of any national policy statements, environmental standards or plans directly relating to animal welfare, it is necessary to consider S.5 the statutory purpose of the Act, which requires the use, development and protection of natural and physical resources (e.g. the soils present at Pahia and the dairy cattle) to be managed in a way that achieves sustainable management by:
- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (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.*
55. Should consent be granted, the application of measures (via Conditions of Consent) that protect the structure and integrity of soils, reduce water run-off (and the contaminant and nutrient loading within that run-off), and that avoid or minimise adverse effects on the welfare of dairy cattle would constitute a regulatory planning response that is consistent with the statutory purpose of the Act.
56. The objective of the National Policy Statement for Freshwater Management 2020¹⁵ is to
- ... ensure that natural and physical resources are managed in a way that prioritises:*
 - (a) first, the health and well-being 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 well-being, now and in the future.*
57. Effective management of IWG activities by PDL would contribute to the achievement of that objective by reducing adverse water run-off effects that impact the health of water bodies and freshwater ecosystems and supports the retention of productive soils on the property. Including measures to sustain the health and welfare of dairy cattle alongside those matters will ensure that a holistic approach is taken to those farm practices that contribute positively to the economic outcomes of the farming operation now and into the future.

¹⁵ amended February 2023

58. The Southland Regional Council's statutory functions (under S.30 of the Act) require it to establish objectives, policies and methods to achieve the integrated management of natural and physical resources of the region. In particular, Policy 39 of the PSWLP requires consideration of all effects arising from the dairy farming activities. When that policy is applied within the context of the application by PDL it is considered appropriate for the Council to consider adverse effects on animal welfare alongside its prescribed (and complementary) functions relating to soil conservation and maintenance and enhancement of water quality.
59. If SRC decides to grant consent to PDL, it must then consider whether or not to impose conditions of consent that directly relate to animal welfare in addition to those relating to soil conservation and water quality. In my view, there are clear reasons why the application of animal welfare conditions are appropriate, including:
- the requirement for land use consent to enable PDL to utilise the land as a dairy farm;
 - the specific requirement for consent to undertake IWG at Pahia;
 - the interrelated nature of potential adverse effects of IWG on soils, water quality and animal welfare;
 - the "sustainable management" purpose of the Act to avoid, remedy or mitigate actual or potential adverse effects;
 - the functions of regional council relating to the integrated management of natural and physical resources in its region (including dairy cattle).
60. I am therefore satisfied that if minded to grant consent, that SRC can reasonably impose conditions of consent that require PDL to manage its IWG activity to maintain the health and welfare of dairy cattle that are an integral part of that land use activity, in addition to conditions (such as those recommended in the S42A report relating to soil conservation and water quality).

Recommended Conditions

61. The S42A report includes a set of recommended conditions for Land Use Consent (AUTH-20222765-01) and Discharge Permit (AUTH-20222602), that address the proposed dairy cattle farming operation, including Nutrient Management (including soil testing), Nutrient Modelling, Mitigation Measures (including riparian planting); Farm Environmental Management Plan, Auditing, Lapse and Review.
62. Of particular relevance to NZALA are Condition 5, which sets limits on dairy cow herd size, total cattle numbers and the maximum area of intensive winter grazing (55ha) and Condition 6, which proposes conditions specific to intensive winter grazing. Subject to modifications to Condition 6 and additional animal welfare requirements (set out below) being applied via two new IWG conditions, the numerical limits on the size of the dairy herd and total dairy cattle numbers are considered to represent the upper limit of sustainable productive capacity for the

farming operation Pahia (based on current scientific knowledge of the long-term effects of intensive dairy farming activities on the productive capacity of the soils and water quality in surface water and groundwater systems).

63. The officers' S42A report recommends that the following management requirements for IWG activities are applied to Pahia (as proposed Condition 6):

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.

64. Proposed Condition 6 (includes two specific requirements relating to animal welfare – the provision of water troughs and the placement of supplementary feed in the area being grazed. Those measures would positively contribute to the welfare of dairy cattle within an IWG regime; however, they do not address (and therefore fail to avoid, remedy or mitigate) other potential adverse effects on the welfare of the dairy cattle.

65. In addition, Dr Beattie's evidence is that there are potential adverse welfare effects arising from the use of back fencing as it prevents animals from accessing sheltered areas. I understand that back fencing is a method that should only be utilised to prevent soil pugging in wet conditions when there is a standoff grass paddock available to the stock for rest.

66. Additionally, it is noted that Proposed Condition 6(h) specifies a 250 head limit on the number of cattle in each mob. I note that is substantially higher than the application for land use consent which seeks consent for IWG with mobs of up to 120 dairy cattle (only). The higher number in the recommended condition is not consistent with the scope of the application, and unless

justified by robust assessment, I consider that the mob limit condition 6(h) should be amended to be consistent with that applied for.

67. Proposed Condition 6 is primarily focussed on avoiding adverse run-off effects arising from IWG. It is recommended that clauses d) back fencing, e) water supply and f) supplementary feed are removed from Condition 6 and incorporated within a new condition that focuses specifically on animal welfare factors – as follows:

[Note the wording adapted from recommended clauses d), e) and f) in recommended Condition 6 is shown in *italics*]:

Intensive Winter Grazing – Animal Welfare

X. The use of forage crops for intensive winter grazing of dairy cattle shall at all times comply with the current Code of Welfare: Dairy Cattle published by the Ministry for Primary Industries and shall, as a minimum, be managed to ensure that the following performance standards are met:

- i. access to a balanced feed regime sufficient to meet the nutritional requirements of dairy cows *including the provision of supplementary feed (including silage, baleage or hay) in portable feeders in the area being grazed;*
- ii. readily accessible fresh water supply (replenished frequently and so to meet cows' immediate needs) including the provision of *transportable water trough(s) in or near the areas being grazed;*
- iii. mineral supplementation to ensure all animals receive nutrients to meet the Dairy NZ reference minerals requirements for dairy cows;
- iv. access to a clean, soft, dry lying space equivalent to 8-10 m² per cow each day e.g. ensure break area is sufficient, and/or by not back fencing in dry conditions; spreading straw to achieve a dry surface, or using a standoff grass paddock in wet conditions;
N.B. only *back fence cattle at all times to prevent the stock re-entering previously grazed areas* in wet conditions;
- vi. access to effective shelter in adverse weather conditions e.g. a shelter belt or shelter structure; and
- vii. relocation to pasture paddocks no less than 14 days prior to their calving date to ensure they do not calve on a crop paddock.

Advice Notes:

1. "Dry conditions" means soil conditions that achieve a gumboot score of 1, under the Dairy NZ "gumboot scoring method for wintering paddocks" i.e. a gumboot leaves a clear footprint with a visible tread pattern and does not fill up with water.
2. "Wet conditions" means soil conditions that achieve a gumboot score of 2 (with continued wet weather forecast) or 3 where surface water pooling is visible.
https://www.dairynz.co.nz/media/5795909/gumboot_score_method_chart_sept2022_update_v2.pdf
3. "Adverse weather conditions" means precipitation, sleet, snow, hail, or cold conditions in excess of the seasonal average for the location and time of year.

4. In the event there is an inconsistency between the current Code of Welfare: Dairy Cattle and this condition, the Consent Holder shall adhere to that regulatory standard or performance standard which specifies the higher standard of animal welfare.

68. A method of ensuring compliance with the performance standards specified above, a new condition requiring IWG Plans to be prepared for each paddock included within that season's winter grazing programme and submitted to SRC on an annual basis is recommended. The following condition is consistent with industry best practice and guidance issued (jointly) by the Ministry for the Environment and Ministry of Primary Industries¹⁶ on the preparation of IWG Plan in November 2022. Use of IWG Plans are encouraged by MPI and MfE as a method of demonstrating compliance with the NES:F IWG regulations (Permitted Activity under Reg 26), it is therefore appropriate to utilise the same method for the Consent Holder to demonstrate compliance with both the environmental and animal welfare performance standards specified in recommended Conditions 6 and X (above).

Annual Winter Grazing Plans

Y. Prior to any winter grazing activity commencing annually:

- a) The Consent Holder shall prepare and submit by 31 March a winter grazing plan for each paddock within that years' winter grazing rotation for certification.
- b) The winter grazing plans shall be prepared in accordance with the most recent version of the "Your Winter Grazing Plan" template published by Dairy NZ.
- c) The winter grazing plans shall include specific details on execution of the paddock plan that address the requirements of condition 6 (relating to buffers and mob size) and X (relating to animal welfare) to the satisfaction of the Council.

Advice Note:

1. The certified intensive winter grazing plans shall be included within the annual update to the FEMP required by 31 May each year under Condition 31.

Conclusion

69. I conclude that the PDL application and evidence demonstrates that the farm is operated and managed with a clear understanding of and focus on soil conservation, nutrient management and water quality. The evidence, particularly that of Mr Anderson and Dr Wouda also demonstrates a strong commitment to animal health and welfare by PDL that recognises current and emerging best practice in that area of dairy cattle management under the current (and draft) Code of Welfare: Dairy Cattle. However, the S42A report does not include a comprehensive condition to avoid the potential adverse effects on dairy cattle from the proposed IWG activity.

¹⁶ Intensive Winter Grazing Module – Template, November 2022, MfE and MPI

70. The NZALA submission seeks to elevate that current and emerging best practice into targeted, achievable and enforceable conditions of consent that incorporate existing farm practices. Amendments to recommended Condition 6 and inclusion of proposed conditions X and Y would elevate the welfare of dairy cattle involved in IWG operations at Pahia. The conditions and would then ensure that PDL maintains a consistent focus on “animal welfare” when winter grazing plans are prepared and implemented.
71. The proposed conditions incorporate the majority of farm practices outlined in the FEMP, existing winter grazing plans, and the evidence of Mr Anderson on farm management practices that are also (or are expected to shortly be) included within the Code of Welfare: Dairy Cattle. Its application is not intended to curtail farming operations, and in my view would require relatively minor refinement of management practices that are already in place/ proposed to be adopted by PDL.
72. Incorporation of the additional condition of consent would satisfy SRC’s statutory duty under S.5 and S.30 of the RMA and would ensure that the conditions of consent applied under s.108 fully and comprehensively address the actual and potential animal welfare effects of the proposed IWG activity.

James Hook
Planning Consultant
28 September 2023

Attachments:

- 1. Curriculum Vitae**
- 2. Feeding Fodder Beet – Nutritech (June)**
- 3. Gumboot Score Method Chart (Sept 2022)**
- 4. Intensive Winter Grazing Module – Template (Nov 2022)**
- 5. Your Winter Grazing Plan – Template (2023)**

Attachment 1 - Curriculum Vitae of James Ronald Hook (Planner)

Qualifications: 1991 – Bachelor of Surveying (with Credit)
1994 – Master of Regional and Resource Planning (with Distinction)
Member of New Zealand Planning Institute

Company Director of Envivo Limited
29 years' experience as a Planning Consultant
23 years' experience as a Company Director

Continuing Professional Development: on-going participation in NZPI, MfE, RMLA and related courses – RMA Amendments, Expert Witness, Alternative Dispute Resolution, Financial/Development Contributions. Completed Making Good Decisions Programme (with Merit 2011). Presented to Select Committee on RMA Amendments November 2021.

Experience: Wide-ranging professional experience with all stages of development projects, from pre-development planning, due diligence, and project formulation advice through to obtaining all necessary resource consents, including appearances at Council, Environment Court and High Court hearings as an Expert Witness.

Specialist areas include commercial, intensive residential, rural, mixed-use, industrial and retail development, plan changes, expert evidence, subdivision and coastal consents.

Recent experience includes preparing applications and providing planning advice on a number of commercial, retail, residential (including medium and high density) developments, complex subdivision, rural, coastal and mixed-use development projects and private plan changes. This has appearances at numerous Council hearings and hearings of Independent Hearing Panels.

Has appeared as an Expert Witness more than twenty-five times at the Environment Court and has attended mediation in relation to those and a range of other appeals. He has also appeared at the High Court and prepared affidavits for the Court in relation to various civil proceedings.

Specialist Skills:

- Strategic Planning advice
- Resource Consent applications
- Expert Evidence
- Urban Design Panel presentations
- Subdivision and Coastal Consents
- Plan Changes
- Appeals and mediations
- Due diligence investigations
- Development feasibility assessments
- Project formulation and strategy
- Assessment of environmental effects
- Policy analysis and submissions