

## ORC NOTIFICATION RECOMMENDATION REPORT

Document ID: A1782050  
 Objective File No: RM23.321  
 Consent No: RM23.321.01 and RM23.321.02  
 Prepared for: Staff Consents Panel  
 Prepared by: Alice Floyd, Consents Planner  
 Date: 24 April 2023  
**Subject: Consent application to use land and discharge contaminants for the purpose of intensive winter grazing**

### Purpose

To report and make recommendations under sections 95A-G and sections 104 and 104C of the Resource Management Act 1991 (the Act) on notification and the substantive decision of the above application.

- Consent for intensive winter grazing (IWG) is required under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-FW).

### Key issues/risks

The key issues/risks with the application are:

- Applicant intends to graze more than 50 ha or 10% of the farm area
- Applicant intends to graze slopes that are over 20 degrees

At this stage there are no principal issues in contention that need to be raised.

### Summary

I recommend the application is processed on a non-notified basis. This is because:

- The application proposes measures that adequately avoid, remedy or mitigate the actual or potential adverse environmental effects; and
- The adverse effects on the environment from the proposed activity will be less than minor.

### 1. Application Details and Description of the Environment

Activity	
<b>Applicant/s full names</b>	L.G. and J.M. Morris Limited
<b>Location of farm</b>	161 Wairuna Settlement Road, Popotunoa and 289 Burkes Ford Road, Wharetoa
<b>Legal description of farm</b>	As per consent application
<b>Total area of the farm that may be used for IWG over the life of the consent</b>	425 hectares
<b>Maximum area of land to be used for IWG each year</b>	70 hectares/annum



<b>Requested consent duration</b>	Five years
<b>Stock type</b>	M.A Dairy and R2 Cows and Heifers, R1 Dairy Calves
<b>Description of the Environment</b>	
<b>Slope of land to be used for IWG</b>	Maximum 18 degrees
<b>Soils</b>	Clay soils
<b>Catchment</b>	Pomohaka Catchment
<b>FMU and Rohe</b>	Clutha FMU
<b>Sensitive receptors near the areas to be used for IWG</b>	No sensitive receptors were noted within the application

A farm map and information on stock types and crops to be used are included in the application for consent. This information is adopted and is not repeated here.

## 2. Overall Activity Status

Regulation 26 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 is the permitted activity for IWG. The table below outlines why the applicant cannot comply with this rule.

<b>What is the reason consent is required?</b>	<b>Yes/No</b>
The area of the farm to be used for IWG will be greater than 50 hectares or 10% of the farm	Yes
The slope of any land under an annual forage crop will be more than 10 degrees, determined by measuring the slope over any 20 m distance of the land.	Yes
Livestock will not be kept less than 5m from the bed of any river, lake, wetland or drain (regardless of whether there is any water in it at the time).	No
Critical source areas within or adjacent to the grazing area will be grazed	No
Vegetation in critical source areas will not be maintained as ground cover over all of the critical source area	No
The applicant will cultivate or harvest vegetation cover to maintain vegetation in a critical source area	No
(CI 29) Land on the farm must have been used for intensive winter grazing in the reference period.	No
(CI 29) At all times, the area of the farm that is used for intensive winter grazing must be no greater than the maximum area of the farm that was used for intensive winter grazing in the reference period.	

Overall, the proposal has been assessed as a **restricted discretionary** activity. Unless discussed above, all other relevant permitted activity rules are complied with.

## 3. Assessment of Effects on the Environment

Council's discretion has been restricted to the below matters. I have assessed these below for this specific activity. I have focused my assessment on the reason why consent has been required.

<p><b>Effects of the activity on the water that affect the ability of people to come into the contact with the water safely</b></p>	<p>Intensively grazed crops result in considerably greater nitrogen leaching losses, and greater amounts of sediment and phosphorous in run-off, compared to grazed pasture. This has the potential to adversely affect water quality of nearby surface water bodies and groundwater. The IWG activity will be managed to ensure adverse effects on water quality are less than minor and avoided or minimised as best possible. This is due to the adoption of the mitigation measures outlined in the application.</p> <p>IWG and discharges from IWG, including sediment, nutrients, and microorganisms, can have adverse effects on water quality, especially surface water quality, when these activities are undertaken close to surface water or critical source areas. The applicants intend to exclude stock from critical source areas and therefore effects on water quality are considered to be less than minor.</p> <p>The good management practices that the Applicant implements to avoid or minimise adverse effects on soil, also serve to minimise adverse effects on surface water quality through prevention or minimisation of sediment run-off. Additionally, the exclusion of stock from CSAs and areas within 5 metres of a surface waterbody significantly reduce the likelihood and impact of any discharge that may travel over land and enter a waterbody.</p> <p>Overall, provided that the IWG activity is conducted in accordance with the application and the conditions of consent, adverse effects on water quality are expected to be less than minor and are avoided or minimised as far as possible.</p>
<p><b>Effects on ecosystems, freshwater and waterbodies</b></p>	

<p><b>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</b></p>	<p>The IWG activity will be managed to ensure effects on soil and land stability will be mitigated. The adverse effects on soil are less than minor and avoided or minimised as best possible. This is by:</p> <p>Good management practices are utilised as part of on-farm grazing management. These are outlined in the consent application and IWG management plan included in the application. these measures will be effective to ensure that the activity will not exacerbate or accelerate the loss of sediment and other contaminants to water.</p> <p>Overall, provided that the IWG activity is conducted in accordance with the application and the conditions of consent, adverse effects on soil are considered to be less than minor, and are avoided or minimised as far as possible</p>
<p><b>Effects of the activity on Māori cultural values</b></p>	<p>The IWG activity is not expected to have any adverse effect on Kāi Tahu values because there are no known nearby sensitive receptors such as wāhi tapu, or mahika kai areas, no surface water bodies within the property, and the IWG will occur on private land. Effects on water quality have been considered above less than minor.</p> <p>Overall, provided that the IWG activity is conducted in accordance with the application and the conditions of consent, it is considered that there will be no adverse effects on Kāi Tahu cultural and spiritual beliefs.</p>
<p><b>The timing and appropriateness of the methods (if any) proposed to avoid, remedy, or mitigate the loss of contaminants to water.</b></p>	<p>The Applicant has prepared and will implement a IWG Management Plan. This plan has specific methods in it to avoid, remedy and mitigate the losses of contaminants. There will be no direct discharge to water.</p>

#### 4. Notification and Written Approvals Section

##### Section 95A Public Notification

##### Step 1: Is public notification mandatory as per questions (a) – (c) below?

- (a) Has the applicant requested that the application be publicly notified? **No**
- (b) Is public notification required by Section 95C? **No**  
 Has further information been requested and not provided within the deadline set by Council? **No**  
 Has the applicant refused to provide further information? **No**

Has the Council notified the applicant that it wants to commission a report but the applicant does not respond before the deadline to Council's request? **No**

Has the applicant refused to agree to the Council commissioning a report? **No**

- (c) Has the application been made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977? **No**

**Step 2: Is public notification precluded as per questions (a) – (b) below?**

(a) Is public notification precluded by a rule in the plan or a NES? **No**

(b) Is the application for one or more of the following activities but no other activities:

(i) A controlled activity **No**

(ii) A restricted discretionary, or discretionary activity, but only if the activity is a subdivision of land or a residential activity? **No**

(iia) A restricted discretionary, discretionary or non-complying activity but only if the activity is a boundary activity? **No**

**Step 3: Does the application meet either of the criteria in (a) or (b) below?**

(a) Is the application for a resource consent for one or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification? **No**

(b) Will the activity have or be likely to have adverse effects on the environment that are more than minor in accordance with Section 95D? **No**

The adverse environmental effects on the environment from the proposal are discussed in elsewhere of this report. Based on this review, I consider that there will not be more than minor adverse effects on the environment (discounting the site and adjacent sites).

**Step 4: Do special circumstances exist in relation to the application that warrant the application being publicly notified? **No****

**Section 95B Limited Notification**

**Step 1**

**Section 95B(2)** Are there any affected groups or persons identified under Section 95B(2):

(a) Protected customary rights groups? **No**

(b) Customary marine title groups? **No**

**Section 95B(3)(a)** Is the proposed activity on or adjacent to, or may it affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11? **No**

**Step 2**

**Is Limited Notification precluded under Section 95B(6)?**

(a) Is the application for a resource consent for one or more activities, and each activity is subject to a rule or national environmental standard that preclude limited notification? **Yes**

(b) (i) Is the proposal a Controlled Activity that requires consent under the District Plan (other than a subdivision of land)? **No**

**Step 3**

**Having regard to Section 95E of the Resource Management Act, identify persons**

**who would be adversely affected by the proposed activity by effects that are minor or more than minor, but not less than minor and give reasons why affected parties were identified.**

In assessing an activity's adverse effects on a person, Council:

- May consider permitted activity baseline (NES or rule) and disregard effects permitted.
- Must for controlled or restricted discretionary activities disregard an adverse effect of the activity on the person if the effect does not relate to a matter under control or restriction.
- Must have regard to every relevant statutory acknowledgement

No parties have been identified to be affected parties due to effects on them that are minor or more than minor.

No written approvals were provided with the application.

**Have all persons identified as affected under Step 3 provided their written approvals? Not applicable**

**Step 4 Further notification in special circumstances**

Do special circumstances exist in relation to the application that warrant notification of the application to any other persons not already determined to be eligible for limited notification under this section (excluding persons assessed under Section 95E as not being affected persons)? **No**

**If notification or limited notification is required then has the applicant paid the additional notification fee? Not applicable**

**Other Notifications**

No other notifications are applicable.

**NOTIFICATION RECOMMENDATION:**

In accordance with the notification steps set out above, it is recommended that the application proceed on a non-notified basis.



Alice Floyd  
Consents Planner  
24 April 2023

## DECISION ON NOTIFICATION

### *Sections 95A to 95G of the Resource Management Act 1991*

**Date:** 24 April 2023

**Application No:** RM23.321

**Subject:** *Decision on notification of resource consent application under delegated authority*

### **Decision under Delegated Authority**

The Council decides that this resource consent application is to be processed on a **non-notified** basis in accordance with sections 95A to 95G of the Resource Management Act 1991.

The above decision adopts the recommendations and reasons outlined in the Notification Recommendation Report above in relation to this application. I have considered the information provided, reasons and recommendations in the above report. I agree with those reasons and adopt them.

This decision is made under delegated authority by



Rebecca Jackson  
**Acting Team Leader Consents**  
28 April 2023

## ORC SECTION 42A REPORT

### 1. Summary of Recommendation

I recommend that this application be approved, subject to the conditions discussed at the end of this report.

Please note that this report contains the recommendations of the Consent Planner and represents the opinion of the writer. It is not a decision on the application.

### 2. Section 104 Evaluation

Section 104 of the Act sets out the matters to be considered when assessing an application for a resource consent. These matters are subject to Part 2, the purpose and principles, which are set out in Sections 5 to 8 of the Act.

In considering this application, the proposed activity is categorised as a restricted discretionary activity under Regulation 27 of the NES-FW. The overall activity status is therefore a **restricted discretionary activity** and Council may consider any effects relating to matters over which discretion has been restricted. These effects were discussed in Section 3 of the report. The Council may impose conditions under section 108.

#### Section 104(1)

The remaining matters of Section 104 to be considered when assessing an application for a resource consent are:

- a) the actual and potential effects on the environment of allowing the activity;
- ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity
- b) any relevant provisions of a national environmental standard, other regulations, a national policy statement, the Regional Policy Statement (RPS), RPW; and
- c) any other matter the Council considers relevant and reasonably necessary to determine the application.

#### S104(1)(a) Actual and Potential Effects on the Environment of Allowing the Activity

The actual and potential adverse environmental effects of the proposed activity were considered in the notification recommendation report.

In addition to these adverse effects, it is considered that the proposal will have the following positive effects as noted in the application for consent dated 21 April 2023.

#### S104(1)(ab)

The Applicant has not proposed or agreed to any measures to offset or compensate for adverse effects that will or may result from allowing the activity. I consider this is appropriate as the potential adverse effects are expected to be less than minor.

#### Relevant Statutory Considerations (s104(1)(b))

<p><b>Is granting the consent consistent with Part 2 (Sections 5, 6, 7 and 8) of the Act?</b></p>	<p>Yes, due to the minor nature of the activity. The IWG is consistent with sustaining the potential of natural</p>
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	resources to meet the needs of future generations, the safe of the life-supporting capacity of water, and avoiding, remedying, and mitigating adverse effects on the environment.
<b>Is granting the consistent with the National Policy Statement for Freshwater Management 2020 (NPS-FM), in particular Objective 1 and Policies 1, 2, 3, 4, 12, 13, and 15.</b>	Yes, the proposal will be consistent with Objective 1 and Policies 1, 2, 3, 4, 12, 13, and 15 of the NPS-FM, with the proposal likely to aid in improving water quality through improvements in the management of the IWG activity from the status quo. Ongoing use of the farm for IWG will support the social, economic, and cultural wellbeing of the Applicant and their employees.
<b>National Policy Statement for Highly Productive Land The National Policy Statement for Highly Productive Land (“NPS-HPL”) came into force on 17 October 2022. This policy statement provides direction to local authorities and resource users regarding the protection of highly productive land for land based primary production – Policies 1, 4 and 8.</b>	The proposal is considered to be in accordance to the NPS-HPL.
<b>Is granting the consent consistent with the partially operative and proposed Regional Policy Statement (notified 2021 and 2022)? In particular those policies in Topics LF and ECO relating to freshwater, including wetlands.</b>	Yes, the proposal is likely to aid in improving water quality through improvements in the management of the IWG activity from the status quo. Ongoing use of the farm for IWG will support the social, economic, and cultural wellbeing of the Applicant and their employees.

#### Other matters (s104(1)(c))

Kai Tahu Ki Otago Natural Resource Management Plan 2005 and the Ngai Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 is the relevant Iwi Management Plan for this area. The application is consistent with the relevant objectives and policies in this plan on the basis that the land use is suitable for the type of land and conditions, stock are excluded from waterways, and there are no direct discharges to water.

#### Matters relevant to certain applications (s105)

Under s105, the consent authority must have regard to:

- the nature of the discharge and the sensitivity of the receiving environment to adverse effects
- the applicant’s reasons for the proposed choice
- any possible alternative methods of discharge, including discharge into any other receiving environment

The IWG activity described in this application is unlikely to give rise to any significant discharge of nutrients, sediments, or microorganisms to surface water. The Applicant has considered alternatives, but the activity and the location is the most appropriate.

For these reasons any discharge associated with the IWG proposed in this application is not expected to give rise to any significant adverse environmental effects.

#### **Restriction on grant of certain discharge permits (s107)**

Under s107, the consent authority shall not grant a discharge permit to discharge contaminants onto or into land in circumstances where the contaminants may enter water if, after reasonable mixing, the contaminant is likely to give rise to any of the following effects in the receiving waters:

- the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials
- any conspicuous change in the colour or visual clarity
- any emission of objectionable odour
- the rendering of fresh water unsuitable for consumption by farm animals
- any significant adverse effects on aquatic life

The discharge consent does not authorise the discharge of contaminants to water. Any discharge to land from the IWG activity in this application is not expected to give rise to any of the effects on surface water listed under s107. Therefore, the granting of consent for this application is not precluded under s107.

#### **Section 108 of the Act**

Recommended conditions of consent will ensure that any adverse effects are avoided, remedied or mitigated. As the NES-FW specifies that the activity is for the use of land *and* discharge of contaminants, two consents are required in order to undertake the activity. Each consent will be linked to the other by way of a concurrent use condition, meaning that one consent may only be used if the other is active.

#### **Recommendation**

I recommend that the Council grants to L.G. and J.M. Morris Limited Land Use Consent RM23.321.01 and Discharge Permit RM23.321.02, subject to the terms and conditions set out in the consents because:

- (a) The effects of the activity are expected to be less than minor;
- (b) The activity is consistent with the relevant statutory requirements; and
- (c) The activity is consistent with Part 2 of the Act.

#### **Term**

The Applicant has sought a duration of 5 years for the intensive winter grazing activity. The Applicant has sought this duration primarily to provide certainty and continuity with their farming operations and financing. Relevant planning factors to consider when determining the duration of a resource consent to discharge contaminants and use of land are:

- Requirement for Freshwater Farm Plan under Part 9A s217 of the Act to be introduced using a phased-approach.
- Revocations included in Regulation 31 of the NES-FW.

A consent term expiring on the 25 April 2028 is recommended for the following reasons:

- The potential adverse effects, including cumulative effects, of the use of land and the discharge to land for the purpose of intensive winter grazing, if conducted in accordance with the application and the conditions of consent, are considered to be less than minor.
- The Applicant is aware of the impending changes in the planning landscape as well as the upcoming introduction of Freshwater Farm Plans. To this end, the Applicant has developed such a plan which is updated annually, including to accommodate the IWG modules.
- Granting the term will provide the Applicant with continuity in their farming operations, certainty from a financing perspective, and provide for the social and economic wellbeing of the Applicant and their employees.
- Regulations 26(5); 27(3) and 28 to 30 are revoked on 1 January 2025 under Section 31 of the NES-FW so it is not appropriate to grant consent for a lengthy period after this time.



**Alice Floyd**  
**Consents Planner**  
**24 April 2023**

## DECISION ON RESOURCE CONSENT APPLICATION

### *Section 113 of the Resource Management Act 1991*

**Date:** 24 April 2023

**Application No:** RM23.321

**Subject:** *Decision on non-notified resource consent application under delegated authority*

#### **Notification**

The application was approved to be processed non-notified and under delegated authority.

#### **Decision and Reasons for Decision**

I have considered the information provided, reasons and recommendation in the above report.

No principal issues were in contention and no evidence was heard as this was a non-notified consent that did not require a hearing. There are no main findings as it relates to any principal issues in contention.

I agree with the reasons and recommendations provided by the Planner in the above report and adopt them as the reasons for decision under Section 113(1) to (3). This decision, report and any accompanying letter are the written decision under Section 113(4).

#### **Conditions (section 108)**

Pursuant to sections 108 and 108AA of the RMA, this consent is issued subject to the appended conditions.

#### **Decision under delegated authority**

Under delegated authority, this resource consent application is granted by the Otago Regional Council.



Rebecca Jackson  
**Acting Team Leader Consents**  
28 April 2023

