

Our reference:
Pahia Dairies Limited
APP-20222765

27 October 2023

Before Commissioner Jayne MacDonald

Council reply to Commissioner Minute dated 20 October 2023

S104(2) of the Resource Management Act states that:

“When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.” This is generally known as application of the permitted baseline.

As set out in the [s42A](#) hearing report Policy 39 of the pSWLP¹ applies. The Policy wording has recently been modified and confirmed in the latest 9th interim decision issued by the Environment Court to say:

Policy 39 – Application of the permitted baseline

“When considering any application for resource consent for the use of land for a farming activity, the Southland Regional Council *shall*² consider all adverse effects of the proposed activity on water quality, whether or not this Plan permits an activity with that effect.”

This approach taken by the Reporting Officer, was in accordance with the policy with regard to adverse effects on water quality. However Policy 39 does not prevent application of the permitted baseline when considering other effects, such as effects on animal welfare.

A few points about the permitted baseline:

- i. While it may seem unusual that the permitted baseline cannot be taken into account for one effect, but can be considered for another, when making a determination on an activity, that approach does not conflict with s104(2).
- ii. Whether or not to apply a permitted baseline in determination of an application is at the Commissioner’s discretion. As such, the decision of whether or not to apply s104(2) should be made for the purpose of the RMA.

The Reporting Officer provided a summary at the hearing, to clarify what level of intensive winter grazing activity could be undertaken as permitted, on the land blocks separately; to understand what maximum area of intensive winter grazing could be undertaken lawfully if the land blocks were not bundled together.

Regarding points 4 & 6 of the NZALA memorandum:

The purpose of the abatement notice and subsequent application before the Commissioner, is that the use of land for farming the expanded area for dairying is not a permitted activity. As set out in the s42A hearing

¹ Proposed Southland Water and Land Plan

² “shall” replaces “should” ([9th Interim decision September 2023](#))

report (page 5 Table 2), the use of land for farming has been assessed and considered under Rule 20 of the pSWLP as required.

Regarding point 7 of the NZALA memorandum:

The assessment of the Browns Block intensive winter grazing area as a permitted activity during the NES-FW reference period is set out in the s42A hearing report on page 12. Council agrees with the clarification of point 7.2 of the Applicants additional submissions dated 27 October 2023.

Should the Commissioner consider it would be helpful, Council are able to make the recording of the hearing available to the parties.

The Council position remains that taking into account the proposed activities, consents should be granted on the conditions proposed.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Lacey Bragg', written in a cursive style.

Lacey Bragg
Consents Manager