

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

Under the Resource Management Act 1991

In the matter of an application for resource consent

**ADDITIONAL LEGAL SUBMISSIONS FOR PAHIA DAIRIES LIMITED
RELATING TO THE PERMITTED BASELINE
27 OCTOBER 2023**

- 1 These submissions are filed in response to the supplementary submissions for NZALA. They address only concerns with the permitted baseline, and its application (noting this issue have been well traversed in both my opening and closing submissions).
- 2 I note at the outset that the NZALA, through both its planning expert and its lawyer, appear to misunderstand or misapply the permitted baseline concept. The evidence of Mr Hook was confused on the issue (and seemed to include reference to existing use rights, when questioned on this matter by the Commissioner).
- 3 The NZALA submissions state¹ that both the reporting officer and the Applicant have “missed” Rule 20 of the Proposed Plan. It is on this basis that the NZALA disagrees with the permitted baseline as explained by both the Applicant and the reporting officer at the hearing.
- 4 I disagree that Rule 20 has been missed. The section 42A report at Table 2² sets out the required resource consents and relevant rules which require them. That is relevant as it separates the dairy expansion and the Intensive Winter Grazing (**IWG**) activity.
- 4.1 The extension of the dairy platform requires resource consent under Rule 20 of the Proposed Plan. That has been considered as part of this application, by both the Applicant and the reporting officer.
- 4.2 Intensive winter grazing (**IWG**) on the existing milking platform is a **permitted activity** as the farm held, in 2016, a resource consent authorising the milking of 1000 dairy cows on the milking platform³. IWG is therefore a permitted activity pursuant to Rule 20 (a)(iii) as long as IWG does not occur on more than 15% of the landholding or 100 hectares, whichever is the lesser.
- 4.3 IWG requires a resource consent under Regulation 27(1) of the NES-FW, as the application is for IWG that:
- 4.3.1 Exceeds 50 hectares or 10% of the landholding, whichever is the greater (here, 52 hectares); and
- 4.3.2 Would occur on land with slope of 10 degrees or more.
- 5 The submission for the NZALA seems to be confused by mixing these two consent requirements – for expansion and IWG. We agree that there is no permitted baseline that is applicable to the extension of the milking platform, which requires resource consent under Rule 20 of the Proposed Plan⁴. However, there **is** a permitted baseline for the use of land for IWG, which requires consent under Regulation 27(1) of the NES-FW. As a permitted activity **within the existing milking platform**, the Applicant could undertake 52 hectares of IWG provided it complied with the slope requirements. Mr

¹ At paragraph 4

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³ The NZALA submission completely ignores Rule 20(a)(ii)(2), despite specifically referring to controls contained in Rule 20(a)(ii)(1).

⁴ Although I refer to my opening submissions which discussed the interplay between the permitted baseline and the existing environment. The application is not to increase the number of cows, only the area across which the milking platform applies. Therefore, the existing environment already includes a lawful farming activity of 1000 cows, this application simply seeks to extend the area in which they can be grazed.

Anderson gave evidence confirming there is at least 52 hectares of land that would meet that requirement.

- 6 I turn then to paragraph 7 of the NZALA submissions, which refer to the “artificial” separation of the Browns Block and the main milking platform. This is not what the Applicant, or the reporting officer has done. At the hearing, the reporting officer set out that during the reference period, there was 64 hectares of lawful IWG – 30 hectares on Browns Block and 34 hectares on the milking platform. If the two properties were to be split back out (say this application failed, and the Applicant sold Browns Block), that remains a completely legitimate use. However, that is **not** the permitted baseline we have asked you to apply. Instead, we are disregarding the potential 64 hectares of IWG, as the Applicant agrees that the two properties will be managed as one ‘landholding’ for the purpose of the NES-FW. One landholding has a maximum permitted baseline of 50 hectares or 10%, whichever is the greater, which gives a total of 52 hectares when calculated across both blocks. This is the permitted baseline that I submit you should consider.

- 7 Finally, in paragraph 7 of the NZALA submissions, it is inferred that any grazing on the Browns Block since 2017 was unlawful, and so must be disregarded. This is a misunderstanding of the NES-FW. The reference period is the critical period for establishing IWG baselines, which covers 1 July 2014 to 30 June 2019.
 - 7.1 I agree that the use of Browns Block as part of the milking platform (i.e. extended dairy farm) was unlawful pursuant to Rule 20 of the Proposed Plan. An abatement notice was issued to that effect, which has resulted in this application. Resource consent has been sought under that rule.

 - 7.2 I disagree that this is relevant to the lawfulness of the IWG on Browns Block. As explained by Ms McRae at the hearing, during the reference period Browns Block had 30 hectares of IWG as a lawful activity. During the reference period, for at least some of the time, Browns Block operated as an entirely separate landholding (as it was separately owned). The grazing of dairy cows is irrelevant to the matter of IWG under the NES-FW.

- 8 In my submission, the relevant process and consideration is:
 - 8.1 Policy 39 explicitly excludes permitted baseline from considerations on water quality – so it can’t be relevant to your considerations on those matters. The evidence before you is consistent that there will be improved water quality from existing situations, so the permitted baseline is not particularly relevant anyway, and has not been relied upon by the Applicant.

 - 8.2 Policy 39 does not limit the use of the permitted baseline for all other matters. NZALA submission is concentrated on **adverse effects on animal welfare arising from IWG**. It is submitted that the Proposed Plan authorises you to refer to the permitted baseline (noting your discretion to rely on it or not), when considering that matter – if you determine it is indeed a relevant matter under the RMA.

 - 8.3 For the reasons outlined above, when considering the two applications before you, the relevant considerations are:

- 8.3.1 The existing environment, being the resource consent authorising 1000 cows on the milking platform, when considering the expansion of the dairy platform.
- 8.3.2 The permitted baseline for IWG authorised within that milking platform by Rule 20 of 15% or 100 hectares, whichever is the lesser; and
- 8.3.3 The permitted baseline for IWG authorised by the NES-FW across the entire Browns Block, of 52 hectares (being the greater of 50 hectares or 10% of the total landholding).
- 8.4 Given the above, we submit the permitted baseline does assist you in your decision making, and it would be appropriate to apply it at your discretion. We also note that there have been no arguments put forward which provide reasons not to use your discretion to apply the permitted baseline.
- 8.5 If you decide to apply the permitted baseline, the matter to be assessed is the difference in effects on animal welfare from the permitted 52 hectares, to the 55 hectares sought (noting that some of that 55 hectares will be on slope above 10 degrees, where the permitted baseline is not).
- 9 As a final point, and with all due respect, the Applicant expresses its frustration with having to re-address matters which were not raised by the planning expert for the NZALA at the hearing, or in legal submissions. There was ample opportunity to raise the permitted baseline as part of the normal hearing process, which was not taken by the NZALA. By raising this matter following the adjournment of the hearing, the NZALA has put the Applicant to additional cost, as well as delaying any decision.
- 10 The Applicant thanks the Commissioner for providing an opportunity to respond to the errors or misunderstandings in the NZALA submissions on this point, as the relevance and importance of the permitted baseline to this application should not be understated.

Dated 27 October 2023



J A Robinson
Solicitor for PDL