BEFORE THE SOUTHLAND REGIONAL COUNCIL

IN THE MATTER OF	The Resource Management Act 1991 (Act)
AND	
IN THE MATTER OF	an application by Woldwide One Ltd and Woldwide Two Ltd for various land use, discharge and water permits associated with expansion of a dairy farm (APP-20191052).

DECISION OF HEARING COMMISSIONERS

ON WW1 AND WW2 CONSENTED BASELINE

13 NOVEMBER 2019

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1. DECISION

This decision relates to which suite of resource consents form part of the existing environment for the Woldwide One (WW1) and Woldwide Two (WW2) applications. It is not a decision on those applications, but has been made at the request of the parties to:

(a) ensure that we have correct information on which suite of resource consents have been both granted and exercised, and therefore form a mandatory part of the relevant existing environment; and

(b) determine whether additional baseline monitoring is required in order for a decision on the applications to be made.

Our decision is that on the balance of evidence, the WW2 2017 resource consents have not been exercised; and the WW2 2011 resource consents, which have been exercised, form part of the lawfully established existing environment. The varied WW3 discharge consent also forms part of the lawfully established existing environment. The WW2 2011 resource consents therefore provide the appropriate baseline for modelling the nutrient loss for the 'current' scenario.[1)] The OVERSEER modelling that has been provided, while not always representing the authorised land use, is conservative and no additional modelling is required.

Any decision on the merits of the applications is still pending, and we have not made any decision whether consent will be granted or refused; and, if granted, then on what conditions. We reserve our ability to provide supplementary reasons to those set out below. Finally, to the extent that the consent holder may have operated outside the terms of the 2011 resource consent, this is an enforcement issue for Council.

2. BACKGROUND

A hearing for the WW1 and WW2 applications was held between 28 and 30 October 2019. It was adjourned pending caucusing and the provision of further information and legal submissions, primarily in relation to the issue of the appropriate consented baseline for the applications.

By way of background, the farms have previously operated under discharge and water permits granted in 2012 (WW1) and 2011 (WW2)[2)]. Under the planning rules at the time, no land use consents for existing farming were needed. We understand that the practice at the time was that the dairy effluent discharge permit effectively identified the area that could be used as dairy platform[3)].

In 2016, the proposed Southland Water and Land Plan (pSWLP) was notified. This introduced land use rules, such that an increase in the area of dairy farming, or an increase in the number of cows, required a land use permit.

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1) For convenience, we refer to this as the consented baseline.

2) There were several changes made to the WW2 2011 consents (under s127 RMA). These are identified in the joint statement of Aurora Grant and Alex Erceg (dated 30 Oct 2019) at [21]; and the 2011 and WW2 2017 consents are fully identified at [21]-[32] of that joint statement.

3) Statement of evidence Nessa Legg, dated 8 November.

Applications were made in 2017 to expand both farms. The proposals included expanding WW2's dairy platform to incorporate an adjoining support block. Part of the WW2 property (54 ha) was to be incorporated into the WW1 dairy platform. Associated with this expansion, existing winter barns on each property were to be expanded to increase the number of cows wintered in them, and the herd size on both farms was to increase.

In addition, effluent slurry from both winter barns was to be discharged onto a nearby block called the Horner block, and in return, grass and silage removed from this block in a cut and carry operation, to supply WW1 and WW2. The Horner block would have no stock on it.

At the time, the Horner block received effluent from WW1 and a third related farm, Woldwide 3 (WW3). Under the proposal, Horner would receive effluent from WW1, WW2 and WW3 on separate areas of the block. As part of the suite of applications, the WW3 discharge consent was varied in August 2017, to limit the discharge area to only part of the block. In this way, there would be no overlap between the discharge area for WW3 and the area intended to be used for WW2.

Various land use, discharge and water permits were required. By virtue of the fact that land was being transferred from WW2 to WW1, the proposals were related and intended to work together.

The history of processing these applications is complex and has been fully described in the evidence of Ms Legg, Mr and Mrs de Wolde, the s42A reports and supplementary evidence by the s42A report writers, and in legal submissions.[4] In short, the WW2 applications were heard and granted first, in October 2017 ("the 2017 consents"). However, errors were made during the processing of these consents, for which the applicant accepts some responsibility[5].

The primary error was described in evidence from Nicole Matheson, planner for the applicant in relation to those consents, in her evidence for the subsequent WW1 hearing[6].

> "[9] *It seems a key error was made when [processing the WW2 applications] as the processing officer failed to note that 54ha of the land that had been farmed as part of WTL [Woldwide Two Ltd] was to be farmed as part of the WOL operation under the new arrangement and that the WTL applications did not seek to authorise activities on that 54ha. The Applicant has a degree of sympathy for the processing officer in this regard, as it has to accept that the way the modelling information was presented was not the clearest means of identifying this or enabling the correct comparison to be made.*
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> *[10] Nevertheless, the nutrient loss for the existing use of land for the farming of cows on the land subject to the WTL application was therefore seriously over-assessed, as the land subject to the WTL application was incorrectly assessed as having an existing nutrient loss that included the loss from that 54 ha, which did not form part of the application. That nutrient loss has to remain with that 54 ha, meaning it has to be removed from WTL because that block is not part of the proposed WTL operation, as per the application. [...]*
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> *[11] However, it is important to note that the current application for WOL does include the 54ha. Therefore the nutrient loss associated with the existing (pre-application) land use of that 54 ha (erroneously included in the assessment of the WTL property) must be included in the*

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4) A useful chronology is provided by the joint statement of Aurora Grant and Alex Erceg dated 30 October 2019 in table form at [44].

5) Counsel for Applicants suggested this was purely the fault of the Council (e.g. reply submissions at [6] but this does not reflect the balanced view put forward by Ms Matheson in her evidence.

6) Brief of evidence of Nicole Matheson for WW1 hearing, dated 20 March 2018, paras 9-11.

existing nutrient loss from the use of the land to which this application applies for the farming of cows. …"

In addition, some errors were made in terms of the land area shown on the map attached to the discharge permit, and the land authorised under both land use and discharge permits[7]. The applicant did not challenge these errors by way of objection or appeal.

Mr van der Wal advised that when the WW1 application was assessed by processing officers, they indicated that including the 54 ha in the application would increase the baseline[8], and as a result recommended refusal of the application. The applicants consequently put the WW1 application on hold, and investigated with Council officers the option of starting the process again. The intent was that the WW2 2017 consents would be set aside and new joint applications for both properties made, to avoid the same issue occurring again.

The applicant's evidence was that the WW2 2017 consents were never exercised and there was no intention to exercise them. The current suite of applications ("the 2018 applications") was made on the basis described above. However, the 2018 application documentation stated that that the WW2 2017 consents were in use, and the processing officers assessed the proposal on this basis. Ms Legg accepted responsibility for this error.

The issue as to whether the WW2 2017 consents were exercised, therefore forming part of the existing environment, is partly legal, partly factual. Therefore, the acknowledged error in planning opinion by Ms Legg[9] is not determinative, and has low persuasive value. It did however cause understandable difficulties for Council officers and their experts, when assessing the subject proposal in reliance on the applicant's erroneous planning assessment.

At the hearing in October 2019, a number of questions and issues arose in relation to this matter, as follows:

(a) What is the appropriate consented baseline from which to consider the current joint applications for WW1 and WW2?

(b) If the appropriate baseline is the 2011 consents, are there issues of scope in relation to the application and public notice for the applications?

(c) Is any additional modelling of baseline nutrient losses (the "current" scenario) required in order to make a decision on the applications?

3. WHAT IS THE APPROPRIATE CONSENTED BASELINE FROM WHICH TO CONSIDER THE CURRENT JOINT APPLICATIONS FOR WW1 AND WW2

It is common ground that:

(a) the 2011 resource consents were granted and exercised;

(b) the 2011 consents were not surrendered (notice of surrender not having been provided to Council under s138 RMA);

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7) Brief of evidence of Janita and Albert de Wolde, dated 8 October 2019.

8) we infer this to mean increase the nutrient loss of the proposal compared to the baseline. Submissions in reply of Counsel to the applicant as to existing environment, dated 10 October, at [6].

9) i.e. her error in stating that the WW2 2017 consents had been exercised, when it is now asserted by her clients that they were not exercised.

(c) the WW2 2017 consents were granted;

(d) it is not legally possible to exercise the 2011 and 2017 consents at the same time for the WW2 site;

(e) it is mandatory under Hawthorn[10] to identify the existing environment, which includes the effects of activities authorised by resource consent granted and exercised on the subject site. Where it applies, the permitted baseline removes certain effects from consideration under s104(1)(a) RMA. The existing environment may also include consents that are granted and likely to be exercised. The WW2 2017 consents do not fall into this category; because a pre-condition for their exercise is that the 2011 consents have been surrendered, and exercise of the earlier is inconsistent with exercise of the later.

(f) the key issue is therefore whether the WW2 2017 consents were exercised, rendering the 2011 consents inoperable for the WW2 site, despite failure to surrender the same.[11]

We were assisted by legal submissions by Counsel for both parties; it is not necessary for us to recite argument received in detail. The principal question is whether the WW2 2017 consents were exercised, with consequential impacts on identification of the existing environment[12].

Both Counsel raised the issue as to whether subjective intention of the consent holder was relevant to whether a consent has been "exercised". Counsel for the applicants submits that "exercise" includes a subjective component; and the evidence of Mr and Mrs de Wolde identifies that they did not intend to exercise the WW2 2017 consents.

We agree with Counsel for the s42A report writers that subjective intent is problematic.[13] It may be a relevant consideration to look at what the consent holder intended, but the primary focus should be on objective factors, particularly conduct. We do not agree that subjective intent should "weigh heavily".[14] Focus on actions, not intent, is consistent with the effects-based approach taken by the RMA; and reliance on subjective intention is fraught, especially given enforcement consequences for breach of a resource consent.

It is more relevant to assess whether the consent holder has assumed the benefits and burdens of the new consent regime. We consider that the course of conduct taken by Mr and Mrs Wolde is consistent with non-reliance on, and non-exercise of, the WW2 2017 consents. This includes not increasing the size of the milking herd to that provided for in the 2017 consents and not taking advantage of the opportunity to include the Marcel block in the dairy platform; rather, this block continued to be used for intensive winter grazing, which was not provided

for in the 2017 consents. Conversely, activities undertaken that were not authorised by the 2011 consent were either minor in nature[15] or could understandably be assumed to be authorised under the 2011 permits in the absence of a working knowledge of the proposed plan[16].

Counsel for the s42A report writers submitted that we should rely by analogy on the approach taken by s125 RMA to whether a consent has been "given effect to", this being an evaluative, factual assessment, having regard to steps taken to implement consent. Counsel for the applicants disagreed, arguing that s125 RMA applies a specific statutory test not relevant to the factual matrix.

We have found s125 RMA of assistance, but this does not lead to the result contended for by Counsel for the s42A report writers. The High Court in the *Kilmarnock* decision has recently identified the relevant test as to whether a resource consent has been given "effect to" (under s125 RMA) involves assessment of the putative consent holder's conduct, particularly whether establishment conditions have been factually implemented. The decision relevantly notes that:

> *[8] The relevant legal principles relating to the application of s 125 and the lapsing of resource consents are not in dispute. Whether a consent has been "given effect to" will be a question of fact and degree. It will turn on the particular facts of the individual case but will not include an evaluation of the consequences that would flow from the consent having been held to have lapsed. Whether there has been compliance with the conditions of a consent will be a central consideration. In that regard, a distinction is to be drawn between resource consent conditions which prescribe methods for establishing an activity, "establishment" conditions, and those conditions which prescribe methods for continuing an activity, "continuation" conditions.*
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> *[9] Continuation conditions are generally considered to relate to ongoing compliance and enforcement issues, whereas establishment conditions, particularly where they involve a prohibition on the operation of a resource consent until fulfilled, are likely to inform the question of whether a consent has been given effect to.*
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> *[10] Neither party disputes the Environment Court's approach to the application of these principles. Each accepts that the Court was correct to find that the distinction between establishment conditions and continuing conditions was a useful one and that the most important question it was required to address to determine whether the resource consents had lapsed, was whether the establishment conditions set out in the water permits had been "substantially and reasonably satisfied".[Footnotes omitted]* [17)]

Although the decision is limited to s125 RMA, the focus on factual matrix ("fact and degree") is sound, and assists by analogy to the issue before us ("whether a consent has been exercised, which must relevantly include whether consent conditions have been exercised, including establishment conditions"). To be clear, we have not applied the s125 RMA test. It is only relevant by analogy. Mander J's approach assists in reviewing the factual matrix.[18)]

Counsel for the Applicants seems to have made a partly similar argument to that in *Kilmarnock*, noting that the WW2 2017 discharge and water permits include an express condition requiring that the 2011 consents are surrendered. This is arguably akin to an "establishment" or implementation condition. It is certainly an important condition. We note that the Council, as the consent authority and keeper of the official record, was on enquiry that the 2011 consents had not been surrendered, and so could have taken steps to require clarification of the position.

The *Kilmarnock* decision was not identified or discussed by Counsel for either party, perhaps due to its recency. We therefore reserve leave if either party wishes to advance a competing view on our interpretation of the decision. Any submissions on the relevance of *Kilmarnock*[19] will need to be raised as a preliminary issue at recommencement of the hearing at 0900 on Monday 18th November 2019.

In relation to the varied WW3 discharge permit, the situation is different. This consent was subject to a change of conditions under section 127. There is no dispute that the consent had been exercised prior to the change of condition, and subsequently, as slurry from WW3 continued to be applied to the Horner block. A change of condition differs from a new consent application in that there remains only one consent. A separate consent is not issued; it is the same consent with, in consequence of the s127 decision, changed suite of conditions.

Counsel supporting the reporting officers relied on the text of section 127, which does not refer to s125. We agree with Counsel that additional words cannot be read into a statute and that the omission of s125 from s127 is deliberate. Once the change of conditions has commenced under s116, the resource consent is amended and must be complied with.

We therefore conclude that the 2017 version of the WW3 consent (AUTH-301665-V2) forms part of the consented baseline.

4. ARE THERE ISSUES OF SCOPE IN RELATION TO THE APPLICATION AND PUBLIC NOTICE FOR THE APPLICATIONS?

The Council officers considered that if the appropriate baseline was the 2011 WW2 consents, there is a potential question of scope. They identified three issues:

(a) The effects of the proposal, and the baseline, will be different, particularly in relation to the additional land that is to be incorporated into the platform;

(b) The public notice will be based on an activity that was not applied for; and

(c) The application and s42A assessment may no longer be relevant.

There is no dispute that the ultimate proposal is unchanged from what was applied for. This is clearly described in the application document and has not changed. The primary issue appears to be the statement in the application, and implication (by omission) in the public notice, that there will be no increase in the area of land included within the dairy platform.

The primary case, as identified by Counsel for the reporting officers, is *Atkins*. The High Court found that scope depends on:

> [20] ··*whether the activity for which resource consent is sought, as ultimately proposed to the consent authority, is significantly different in its scope or ambit from that originally applied for and notified (if notification was required) in terms of:*
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> - *The scale or intensity of the proposed activity, or*
> - *The altered character or effects/impacts of the proposal*. "[20]

We would also note the Court of Appeal decision in *Shell*, discussed by *Atkin*s. In *Shell*, the Court of Appeal identified that scope depends in part upon relevant effects arising from any intended change to a proposal:

> [7]... that jurisdiction to consider an amendment to an application is reasonably constrained by the ambit of an application in the sense that there will be permissible amendments to detail which are reasonably and fairly contemplatable as being within the ambit, but there may be proposed amendments which go beyond such scope. Whether details of an amendment fall within the ambit or outside it will depend on the facts of any particular case, including such environmental impacts as may be rationally perceived by an authority. "[21]

Some alterations are permissible, some are not. This is an evaluative question. We have outlined our finding that the 2011 consents regime forms part of the existing environment, and that the public would not reasonably be misled about the scope of the application, despite the Applicants' error in relying on the WW2 2017 consents.

Considering the application and the assessment of effects provided with it, we consider the activity is not significantly different in scope or ambit. The area to be included within the proposal is clearly identified. The effects assessment relied heavily on modelling of nutrient loss, and for the dairy platforms this was based on the 2013/14 to 2016/17 season, prior to the granting of the 2017 consents, and therefore reflecting the 2011 consented baseline.

For this reason, we do not agree that the effects will differ if the proposal is considered with a 2011 consented baseline compared to a 2017 baseline. This is discussed further below. We do not find the public notice misleading and consider it unlikely that a notice that referred to an increase in land area would have attracted additional submitters to those interested in the effects of an increase in cow numbers.

We consider the application and s42A report remain highly relevant. While it is now clear that both contain inaccuracies, that is a matter for us to use our judgment on in terms of the reliance we place on certain parts of those documents. The scope of the application is sufficient for us to issue a decision (in due course) on the merits of the proposal.

5. WHAT ARE THE IMPLICATIONS FOR THE BASELINE MODELLING?

Having determined that the WW2 2011 consents (along with the WW1 2012 consents, and the varied WW3 discharge permit) form the consented baseline and therefore part of the existing environment, is additional modelling necessary to ensure we have an appropriate understanding of the nutrient loss in the 'current' scenario, against which to compare nutrient loss under the proposal?

The modelling provided with the application and evidence is as follows:

WW1 and WW2 farms

Modelling of the WW1 and WW2 farms (that is, the dairy platforms and adjoining support areas SH96 and Marcel) was provided for the 2013/14, 2014/15, 2015/16 and 2016/17 years. Details of the modelling is outlined in the Nutrient Budget/Analysis Report prepared by Mr Duncan, which forms part of the application, and Mr Duncan's evidence dated 16 September 2019. Both dairy platforms were modelled as a single unit. Ms Phillips audited the modelling undertaken on behalf of the Council and raised no concerns in relation to its accuracy or appropriateness. Relevant details of the modelling for each year are outlined below.

2013/14

1128 cows were milked on the dairy platforms. Part of SH96 block and all of Marcel block were used as dairy support (silage and winter grazing etc). The remainder of the SH96 block was not owned by Woldwide Farms and no accurate information on its use is available. Mr Duncan therefore estimated nutrient losses based on an average nitrogen loss from a sheep farm.

2014/2015

The remainder of the SH96 block was purchased and incorporated into WW2 as a support block. The WW2 dairy platform expanded to cover 30ha of SH96. This was authorised as the SH96 block is included in the effluent discharge area in the 2011 WW2 discharge permit. Land use consent for an expanded dairy platform was not required under the rules at the time. 1222 cows were milked.

2015/16 and 2016/17

No changes to land use from the above. In 2015/16, 1213 cows were milked. In 2016/17, 1206 cows were milked.

2017/2018

Modelling for the 2017/18 year was not provided. Mr Duncan explained that this was due to cow numbers increasing at times beyond what was authorised under the farms' discharge permits (a maximum of 1340). While modelling could be undertaken, Mr Duncan deemed it inappropriate as it could inflate the farms' current nutrient loss averages.

2018/2019

The application was made prior to the end of the 2018/19 season and so modelling for this year was not initially provided. We requested that it be provided at the hearing.

Cow numbers increased to 1339, and the WW2 dairy platform was expanded over the remainder of the SH96 block. While this area is authorised for discharge of dairy effluent under the 2011 discharge permit, land use consent was required for the expansion under Rule 20 of the pSWLP. The expansion was therefore unauthorised.

Assessment

Generally, modelling should reflect the activities that have occurred on the ground, provided that they are legally authorised. Unauthorised activities should not be included.

The 2018/2019 modelling, which included expansion of WW2 dairy platform onto SH96, should therefore be disregarded. We have considered whether this modelling should be repeated with the unauthorised dairy farming on part of the SH96 block being replaced with the activities previously occurring there, or activities which could lawfully occur there; however, we think this is unnecessary. Four robust years of modelling have been provided for the WW1/WW2 properties and there is little to be gained by requiring an additional year. Further, the assumptions that would have to be made regarding the land use of the SH96 block would make this modelling less robust. For the same reason, we agree that there is no benefit to be gained from modelling the 2017/18 year.

We also note that in the 2017/2018 and 2018/2019 years, cows numbers increased, and any modelling would be on the basis of these increases, up to the limit authorised by the 2011/2012 discharge permits. This exceeds the number of cows milked in the four earlier years and, as explained by Mr Duncan,[22] is likely to increase the modelled nutrient loss.

Excluding these years is therefore the more conservative approach, as the nutrient loss under the proposal will need to be compared against the lower baseline nutrient loss in 2013/14 to 2016/17.

We therefore conclude that the modelling undertaken for the WW1 and WW2 properties for the years 2012/14 to 2016/17 is appropriate. The modelling for 2018/19 should be disregarded. No additional modelling for the farms is required.

We also note for completeness that if we had found that the 2017 WW2 consents were the appropriate baseline, we would have reached the same conclusion. The four years modelled pre-date the 2017 consents, and so the activities that could be lawfully undertaken are not affected by those consents. The 2017/18 and 2018/19 years both include activities unauthorised by the 2017 consents – the inclusion of the 54ha of land transferred from WW2 to WW1, which is not legally authorised as dairy platform under either the WW1 discharge permit or the WW2 land use permit, and intensive winter grazing that occurred on the Marcel block in 2018/19 (and possibly 2017/18). These years would therefore have been disregarded, and the earlier modelling relied on.

Horner Block

Mr Duncan's evidence was that in recent years the Horner block has been used for a cut and carry silage operation, wintering of mixed age cows and young stock on grass and crops. The evidence is not explicit, but it appears that in 2017/18 the entire block was used for cut and carry[23]. Winter barn slurry is taken from WW1 and WW3 and discharged onto the Horner block. In return, silage and grass is taken back to those properties. The applicant's evidence was that no slurry had been discharged onto the block from WW2.

Modelling for the Horner block for the 'current' scenario was only provided for the 2017/18 year. Mr Duncan explained that accurate records of the crop areas and cow numbers were not available, and so the modelling was based solely on the 2017/18 cut and carry operation described above. Mr Duncan considered that this was a very conservative approach to modelling, as cut and carry is a low nutrient loss system and the nutrient loss from winter grazing activities in previous years would be significantly higher[24].

The 2012 WW1 discharge permit allows slurry to be discharged onto the eastern part of the block. The varied WW3 permit (V2) allows effluent to be spread on the southern and eastern part of the block (this does not overlap with the WW1 discharge area). The 2011 WW2 discharge permit does not authorise effluent discharge on the Horner block. There is a central part of the block that will be used by WW2 under the proposal, which is not authorised for effluent discharge under the WW1, 2011 WW2 or varied WW3 discharge permits.

The legally authorised land use in 2017/18 would therefore have been effluent discharge from WW1 and WW3 onto approximately 2/3 of the block, and another land use, for example winter grazing (as previously occurred), grazing non-milking cattle, or cut and carry using fertiliser instead of barn slurry, on the remainder.

The modelling undertaken does not reflect the authorised land uses on the central part of the Horner block. If re-modelling was carried out using authorised land uses, there are several alternatives that could modelled. At one end of the scale, it could be assumed that the land was used for winter grazing of young stock, as occurred in the recent past. Mr Duncan's evidence was that inclusion of winter grazing would significantly increase the average nutrient loss[25]. Alternatively, it could be assumed that the land use in 2017/18 was cut and carry, but using fertiliser instead of slurry to provide the required nutrient input on part of the block. This would be very similar to what was modelled – application of slurry across the block, with additional fertiliser to make up the extra nutrients required. The nutrient loss from this approach would be likely to be similar to what was modelled. From the evidence we have received, we find it unlikely that any authorised land use modelled would result in appreciably lower nutrient loss.

Regardless, the modelling undertaken and provided to us is conservative when compared to the activities undertaken in previous years and so provides a high bar against which to assess the proposal. Re-modelling the 2017/18 year to obtain a higher or similar baseline nutrient discharge will in practice achieve nothing in terms of assessing the appropriateness of this proposal. While the estimated nutrient loss derived from OVERSEER may accurately represent the authorised baseline, we heard significant evidence that it is not the accuracy of the estimate that is important, it is the relative change from current to proposed. In this case, a modelled reduction in nutrient loss from the conservative baseline to the proposal is likely to be sufficient to demonstrate that nutrient discharge is likely to reduce, rather than increase.

A further issue raised by the Council officers in the relation to the modelling on the Horner block was that nitrogen (N) was modelled at an application rate of 166 kg N/ha/year, rather than the 150 kg/ha/year authorised under the WW1 discharge permit.

Mr Cain addressed this[26], acknowledging it as a mistake. He ran a scenario to test the impact of replacing the additional 16 kg N/ha from slurry with 16 kg/ha from fertiliser. This resulted in increased N losses. Hence the modelling undertaken is again conservative.

We conclude that the 2017/18 modelling for the Horner block, while not reflecting authorised land use activities on part of the block, is likely to under-estimate nutrient loss over recent years and is therefore acceptable as a conservative baseline. There is no benefit to requiring further modelling.

For the record, we note that if the 2017 consents were the baseline, the land use modelled reflects what is authorised under those consents. It would represent a conservative current scenario (as it does not include previous intensive winter grazing) and no additional modelling would be required.

RESULT

For the reasons given, we conclude that:

(a) The WW2 2017 consents have not been exercised;
(b) The 2011 consents form part of the consented baseline;
(c) The 2017 version of the WW3 consent (AUTH-301665-V2) forms part of the consented baseline;
(d) It remains within scope, and therefore jurisdiction, for us to provide a decision on the WW1 and WW2 proposals;
(e) Additional modelling is not required for the WW1 and WW2 proposals.

Dated this 13th day of November 2019.

E. Christmas.

Commissioner Emma Christmas (Chair)

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Commissioner Rob Enright