

**BEFORE THE SOUTHLAND REGIONAL COUNCIL  
BY ITS INDEPENDENT COMMISSIONER**

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**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of Titipua Limited Partnership

**AND**

**IN THE MATTER** an application for a range of resource consents in relation to the operation of a dairy activity at 354 Hedgehope Block Road, Hedgehope

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**DECISION OF COMMISSIONER  
ON APPLICATION BY  
TITIPUA LIMITED PARTNERSHIP**

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## 1. Introduction

- [1] I have been delegated the authority to hear and determine an application made by Titipua Limited Partnership for a series of consents in relation to a dairy farm operation at 354 Hedgehope Block Road, Hedgehope. The application relates to renewing current discharge and water permits (AUTH-301081-V1 and AUTH-301082-V1), which both expire on 1 September 2022, as well as the expansion of the consent holder's dairy platform to include a recently purchased 84.2ha block of land. Land use consents are also required for an existing 1,300m<sup>2</sup> feed pad, a proposed herd home and a new effluent storage facility in the form of a herd home bunker.
- [2] The application was publicly notified on the 10<sup>th</sup> December 2021, and two submissions in opposition were received. A hearing was set down for the 7<sup>th</sup> of April 2022. However, in the intervening period agreement was reached with both submitters, one of whom withdrew their submission with the other withdrawing their right to be heard. With matters no longer in contention, a hearing was not considered necessary.
- [3] As a consequence, this application has been considered and decided on the papers. In doing so, I have considered the following documents:
- The resource consent application/s documents;
  - The further information requested under Section 92(1) of the RMA, the report commissioned under Section 92(2) of the RMA and the responses to those;
  - the submissions received on the application and the agreements reached around the issues in contention;
  - the section 42A report prepared by Ms. Jade McRae, a Senior Consents Officer with Environment Southland;
  - the evidence prepared by the applicant for the hearing from Mr. Koretweg, Ms. Topham and Ms. Ballinger.
- [4] I advise here that I have determined that the consents should be **granted** subject to conditions imposed under Section 108 of the Act. The conditions are shown in the attached decision certificates. The following decision is relatively brief because I largely agree with,

and adopt, Ms McRae's s42A report assessment and conclusions. I wish to record my thanks to Ms McRae for what is comprehensive but succinct assessment of the proposal.

## 2. The Proposal

- [5] The proposal is fully described in the application documentation and summarised in the s42A report and the evidence of the applicant's team, but I briefly set out the key facts here. The existing site is an operational dairy farm located within the Titipua Stream catchment, which is part of the wider Oreti FMU. Soils on the property comprise a mix of Pukemutu, Makarewa and Arthurton. These soils are known to have a number of vulnerabilities including severe vulnerability to structural compaction and water logging. The physiographic zones with the property are mainly Lignite/Marine Terraces and Peat Wetland with a small area of Gleyed. Within these zones, contaminant loss to surface water is the main water quality risk, via both artificial drainage and overland flows in sloping areas.
- [6] The dairy farm is currently operated under discharge permit AUTH-301081-V1 and water permit AUTH-301082-V1, which are due to expire 1 September 2022. The discharge permit authorises the discharge of dairy shed effluent from 600 cows onto 88 ha via low-rate rain gun. The water permit authorises the abstraction of 72,000 L/day of groundwater. Despite being authorised to milk 600 cows on the property, the applicant states that typically they only milk 500 cows. This is because they believe 600 cows would be too intensive for the existing platform and would put the farm on the edge of its capabilities from an animal welfare and environmental perspective (paragraph 7 of Mr Korteweg's evidence).
- [7] The applicant recently purchased an 84.2 ha parcel of land from a neighbouring property (known as the 'Schrama block') which has historically been a sheep farm and has never been utilised in a dairy operation. The block has been used for growing winter crop by the previous owner in the reference period stipulated in the National Environmental Standards for Freshwater 2020 (NES-F), which the applicant has continued since purchase.
- [8] The applicant is proposing to renew its current discharge and water permits and expand the dairy farm by incorporating the Schrama block into the dairy platform. This will enable them to increase the peak milking herd to the currently consented threshold of 600 cows. The expansion also requires land use consents for an existing 1,300 m<sup>2</sup> feed pad, which can accommodate up to 120 cows, a proposed herd home that can accommodate up to 200 cows during winter and up to 490 cows at other times of the year, and a new effluent storage facility in the form of a herd home bunker

[9] Ms McRae identified the new suite of consents sought by the applicant and their activity status in Table 2 of her report, which is set out below.

Activity	Relevant Rule	Activity Status
To discharge dairy shed from up to 600 cows and feed pad effluent from up to 120 cows to land low rate travelling irrigator, umbilical system and slurry tanker.	OP: Rule 50: Discharges of dairy farm effluent to land	Discretionary activity
	PP: Rule 35: Discharge of agricultural effluent to land	Restricted Discretionary activity
To take and use 72,000 L per day of groundwater for the purpose of stock drinking and dairy shed wash down.	OP: Rule 23: Abstraction and use of groundwater	Discretionary activity
	PP: Rule 54: Abstraction and use of groundwater	Permitted activity
To use land for a 1,300 m <sup>2</sup> wood material base feed pad which accommodates up to 120 cows.	NES: Regulation 11: Feedlots	Non-complying activity
	PP: Rule 35A: The use of land for Feed pads/lots	Permitted activity
To use land for a 720 m <sup>2</sup> herd home winter barn for up to 200 cows in winter and 490 cows at other times of the year.	NES: N/A	
	PP: Rule 35A: The use of land for Feed pads/lots	Discretionary activity
To use land for a new agricultural effluent storage facility in the form of a herd home bunker.	OP: N/A	
	PP: Rule 32B: Construction, maintenance and use of new agricultural effluent storage facilities	Non-complying activity
To use land for farming in the form of a dairy farm expansion.	NES: Regulation 19: Conversion of land on farm to dairy farm land	Discretionary activity
	PP: Rule 20: The use of land for a farming activity	Discretionary activity

[10] An updated set of conditions were provided in the evidence of Ms Ballinger although Ms McRae updated these with some minor amendments, which were agreed by the parties.

### 3. Notification and Submissions

[11] The application was publicly notified on 10 December 2021. Two submissions were received. These are summarised in the following table:

Submitter	Oppose/Support	Issues/comments	Decision Sought
Te Ao Marama Inc.	Oppose	Effects on cultural values, rights and interests. Intensification of land. Proposed mitigation measures do not adequately mitigate the effects on water quality.	Decline the application.
Forest and Bird	Oppose	Inadequate mitigation measures. No consideration of climate change. Inconsistent with the Act, NPS-FM, RPS and pSWLP.	Decline the application.

[12] Both submitters indicated that they wished to be heard at the hearing. While a pre-hearing meeting was not held, the parties reached resolution on the issues of concern which led to the applicant incorporating a number of new conditions into the consent. On that basis, Te Ao Marama withdrew their submission in full and Forest & Bird withdrew their right to be heard at hearing. As a consequence, no hearing was required.

[13] However, the resolution of the issues in contention did have the unintended consequence of impacting on the decision release timeframe, given that a hearing is no longer required. Section 115 of the RMA provides that *"If the application was notified and a hearing is not held, notice of the decision must be given within 20 working days after the closing date for submissions on the application."* Submissions closed on 31 January 2022 so this date is 1 March. However, the issues were only fully resolved on 30 March 2022 and hence, an extension of this date was required. With the applicant's consent, the decision notification date was extended to 22 April 2022, pursuant to s37A(5) of the Act.

### 4. Assessment of Proposal

[14] The proposal is for a bundle of restricted discretionary, discretionary and non-complying activities. While the key consents appear to be only discretionary activities, Ms McRae bundled the activities in accordance with the usual practise and treated them collectively as

a non-complying activity. I note that the application treated the activities as discretionary but it was acknowledged in the s92 response that the feedlot was non-complying. In her evidence, Ms Ballinger agreed with Ms McRae that the proposal is a non-complying activity. The application has been treated as a non-complying activity in this decision.

- [15] Section 104 of the Act sets out what must be considered when deciding a resource consent application. Section 104B provides that once those matters have been considered, I can grant or refuse an application for a non-complying activity. If the application is granted, conditions may be imposed under Sections 108 of the Act. Because this is a non-complying activity, it must first pass through the Section 104D gateway test before it can be considered for consent. The matters contained in Section 104A and Section 104 have all been considered in arriving at this decision.

### ***Assessment of environmental effects***

- [16] Ms McRae provides a comprehensive assessment of the actual and potential effects of the proposal at Section 3.3 of her report, with the main focus being on the water quality effects of the proposal. In regard to this key matter, she highlighted that the proposal will lead to a reduction in total nitrogen loss to water by 8.6% and a reduction in phosphorous loss to water of 6.6% across the total property. Overall, she concluded that any actual or potential adverse environmental effects are likely to be no more than minor if the mitigations are implemented correctly. In her view (paragraph 4.1.3), *“[t]he proposed dairy farm expansion activity has appropriate mitigation measures proposed by the applicant, including constructing a wetland, building a brand new herd home winter barn to house cows during adverse weather and incorporating plantain into their re-grassing programme. Recommended conditions of consent include implementing a soil testing regime, restrictions on intensive winter grazing, maintaining a Farm Environmental Management Plan and ensuring proposed mitigation measures are implemented to improve water quality.”*
- [17] The exception here was the potential effect on cultural values because Ms McRae did not consider herself a person suitably qualified to comment on this aspect of the proposal.
- [18] Ms Topham’s evidence identified the key drivers for the decrease in nitrogen and phosphorous loss at her paragraphs 17 and 18. She also addressed the uncertainties, assumptions and limitations of the Overseer modelling, and outlined the difficulty with determining the magnitude of nitrogen losses from the use of plantain. Ms Topham outlined

the steps taken to minimise the impact of these factors. She confirmed that the Overseer version 6.4.2 modelling along with the adjustments made outside of Overseer, estimate that losses from Nitrogen and Phosphorous would decrease by 8.6% and 6.5 respectively.

- [19] Ms Ballinger agreed with Ms McRae's effects assessment. In relation to the cultural effects matter, she highlighted the fact that since the production of her report, Te Ao Marama Inc. on behalf of Waihopai Runanga had formally withdrawn their submission, agreeing that the cultural effects of the proposal will be less than minor, subject to the mitigations being put in place. This includes a riparian planting plan agreed in consultation with Te Ao Marama Inc.
- [20] Having reviewed the application documentation, and the evidence presented by the applicant, I agree with Ms McRae's assessment of the environmental effects of the proposal, and adopt it accordingly. In doing so, I acknowledge and accept the technical corrections highlighted by Ms Topham. The outcome remains the same in that the actual and potential adverse environmental effects of the proposal will be no more than minor.
- [21] As a consequence, I conclude that the proposal passes through the effects limb of the s104D gateway test.

### ***The Provisions of Relevant Planning Instruments***

- [22] Ms McRae's report contains a comprehensive assessment of the proposal against the following documents:
- the National Policy Statement for Freshwater Management (2020) (NPS-FM);
  - Resource Management (National Environmental Standards for Sources of human Drinking Water) Regulations 2007;
  - the Southland Regional Policy Statement 2017 (PRS);
  - the Regional Water Plan 2010 (RWP);
  - the Proposed Southland Water and Land Plan (2018 Decisions version) (pSWLP);
  - Environment Court decisions on the Proposed Southland Water and Land Plan; and
  - the Ngāi Tahu Murihiku Natural Resource and Environmental Iwi Management Plan 2008.
- [23] In relation the RWP and the pSWLP, Ms McRae concluded that *"[t]he key policies from the RWP relate to water quality, soil health and water quantity. I consider that the proposed*



*activities are consistent with these provisions. The key policies in the pSWLP relate to the physiographic zones which the site is located in and directions around maintaining and/or improving water quality. I consider that the proposed activities are generally consistent with these provisions.”* She also concluded that the proposal was consistent with the relevant provisions of the RPS and the NPS-FM and that any potential effects on water supply are likely to be negligible.

- [24] In her evidence, Ms Ballinger acknowledged Ms McRae’s comprehensive planning assessment, which she considered very thorough. She agreed with her conclusions in relation to all relevant planning documents.
- [25] I also agree with Ms McRae and have adopted her analysis and conclusions accordingly. Again, I agree that the proposal also passes through the policy limb of the s104D gateway test.
- [26] In relation to the Te Tangi a Tauira, the Iwi Management Plan for Murihiku, Ms. McRae addressed this at her Section 3.9.1. To the extent possible, Ms. McRae assessed the proposal against this plan and did not find any inconsistency. With the resolution of the issues raised by Te Ao Marama, the proposal is unlikely to be inconsistent with this plan.

### **Sections 105 and 107 of the RMA**

- [27] Because this involves a discharge permit, in addition to the matters in Section 104(1), I must have regard to the matters in Section 105 as follows:
- (a) *the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
  - (b) *the Applicant’s reasons for the proposed choice; and*
  - (c) *any possible alternative methods of discharge, including discharge into any other receiving environment.*
- [28] The sensitivity of the receiving environment was considered in Ms. McRae’s assessment and she highlighted the key risks being to surface water quality through overland flow of contaminants and to groundwater quality through leaching of contaminants via deep draining soils. Ms. McRae considered the low-rate discharge irrigation method to be appropriate for the receiving environment and also highlighted discharge buffers to surface

waterways and bores. She also assessed the alternatives considered by the applicant and agreed with the applicant that those alternatives would likely result in greater adverse effects. The application noted “there are no other practicable environmentally acceptable alternatives to applying farm dairy effluent to land”.

[29] I have concluded that the matters identified in s105 are no barrier to granting the consents sought.

[30] I have also had regard to the requirements of Section 107 in relation to the discharge, and I have concluded that this proposal does not contravene this section.

## 5. Conclusion

[31] I have determined above that any adverse environmental effects that the proposal may have will not be more than minor. The key factor in this is that the proposal will lead to a reduction in nitrogen loss to water by 8.6% and a reduction in phosphorous loss to water of 6.6% across the total property. This is an improvement in the water quality of the catchment. The relevant provisions of the national and local planning instruments have been thoroughly considered and I have concluded that the proposal is generally consistent with the outcomes sought by all of these documents. I have also considered the provisions of the Ngai Tahu Ki Murihiku Resource and Environmental Iwi Management Plan 2008 (as another relevant matter) and have also found the proposal consistent with the outcomes sought by that document.

[32] In relation to Part 2, there is no longer any need to consider Part 2 matters unless there is invalidity, incompleteness or uncertainty of meaning in the statutory planning documents. In this instance, there are some of the local planning instruments that have not been updated to incorporate the NPS-FM 2020. I have concluded that the proposal is consistent with that document.

[33] Ms McRae has undertaken an assessment of Part 2 matters and concluded “*that the application meets the relevant provisions of Part 2 of the RMA as the proposal achieves the*

*purpose of the RMA which is the sustainable management of natural and physical resources.”*

I agree and consent has been granted accordingly.

**DATED** at Dunedin this 21<sup>st</sup> day of April 2022.

A handwritten signature in black ink, appearing to read 'Allan Cubitt', written in a cursive style.

**Allan Cubitt**

**Independent Hearings Commissioner**