BEFORE THE SOUTHLAND REGIONAL COUNCIL

UNDER The Resource Management Act 1991

AND

IN THE MATTER OF Application APP-20222055 by Capil Grove Limited for resource consents associated with a dairy farm conversion at 444 Springhills Tussock Creek Road, Springhills.

DECISION OF HEARING COMMISSIONERS

Lyndal Ludlow and Bianca Sullivan

25 August 2023

REPRESENTATION AND APPEARANCES

Applicant

Mr Mark Mulholland – Counsel for Capil Grove Limited (Buddle Findlay)

Mr Carl Lindsay – Director of Arlake Limited

Mr Nelson Lindsay – Director of Arlake Limited

Mr Hamish Lowe – Principal Environmental Scientist (Lowe Environmental Impact Limited)

Mr Brian Ellwood – Senior Environmental Engineer (Lowe Environmental Impact Limited)

Submitters

Ms Stevie-Rae Blair – Kaitohutohu Taiao/Environmental Advisor at Te Ao Mārama Incorporated (TAMI), on behalf of Waihōpai Rūnaka

Southland Regional Council

Ms Jade McRae – Senior Consents Officer, Environment Southland

Ms Alexandra Badenhop – Technical Director, Water and Environmental Management (e3Scientific Limited)

Mr Mark Hamer – Senior Freshwater Ecologist (e3Scientific Limited)

Mr Reuben Edkins – Resource Management Advisor (Lumen Environmental Limited)

BACKGROUND AND PROCEDURAL MATTERS

1. This is the decision of hearing commissioners Lyndal Ludlow and Bianca Sullivan (Chair). We were appointed by the Southland Regional Council (SRC) to hear and decide an application for a suite of resource consents by Capil Grove Limited (CGL or the applicant) pursuant to the Resource Management Act 1991 (RMA).

2. CGL purchased a farm at 444 Springhills Tussock Creek Road, Springhills, as a support block for their existing Grove Bush dairy farm. Farm 444 had been operated as a high intensity sheep operation, including sheep milking. CGL were granted the following consents for original Farm 444 in June 2021:

    (a) A land use consent for dairy support, including winter grazing (AUTH-20211143-01);

    (b) A discharge permit to discharge agricultural effluent to land (AUTH-20211143-02);

    (c) A land use consent to construct, maintain and use an agricultural effluent storage facility (AUTH-20211143-03); and

    (d) A land use consent to use a wintering barn for up to 456 cows (AUTH-20211143-04).

3. CGL subsequently purchased four adjacent farming blocks that have been variously used for sheep farming, beef farming and dairy support. The combined farm is known as Farm 444 and the combined area of the properties is 340 hectares (ha).

4. CGL propose to convert the enlarged Farm 444 to a dairy cow milking operation. They have applied to SRC for the following consents, some of which will replace the existing consents listed above:

    (a) A discharge permit to discharge agricultural effluent to land from milking up to 640 cows and housing up to 840 cows in winter barns (APP-20222055-01);

    (b) A water permit to take up to 85,800 litres per day (L/day) of groundwater and use it for stock drinking and dairy shed use (APP-20222055-02);

    (c) A land use consent to use land for two winter barns to accommodate up to 840 cows (APP-20222055-03);

    (d) A second land use consent to authorise the use of land for dairy farming (that is, the dairy farm conversion) (APP-20222055-04); and

    (e) A discharge permit to discharge contaminants to land associated with the dairy conversion (APP-20222055-05).

5. The applications were lodged on 5 April 2022 and further information was requested under section 92(1) of the RMA on 19 July 2022. The applicant provided this information on 6 September 2022. The application was publicly notified on 19 October 2022. One submission in opposition was received from Te Ao Marama on behalf of Waihōpai Rūnaka, who sought to be heard. A pre-hearing meeting was held at Environment Southland's Invercargill office on 14 February 2023. We received a joint witness statement (JWS) from Mr Edkins and Mr Lowe, dated 29 June 2023, which recorded their agreement following expert conferencing on the Overseer modelling.

6. The section 42A report (including addendum), submitter's and applicant's evidence was pre-circulated to the parties prior to the hearing, in accordance with section 103B of the Act. All pre-circulated evidence was read prior to the hearing and was taken as read at the hearing.

7. We visited the site on Monday 3 July 2023. The hearing commenced at 9 am on Tuesday 4 July 2023 in Environment Southland's Council Chamber, and was adjourned at 3.20 pm that day. Mr Mulholland provided a written right of reply on 31 July 2023, along with an appended set of conditions with comments from the s42A officers and submitter. We closed the hearing on 7 August 2023.

THE APPLICATION

8. The application is detailed in the AEE and further information, and is summarised in the section 42A report and applicant's evidence. The Overseer modelling and proposed mitigation continued to develop post-lodgement, including through the hearing and the conditions provided with the right-of-reply. These conditions have been key for us in understanding where the applicant 'landed' with their proposed farm system and mitigation. We briefly outline the proposal below.

9. The 340 ha property (313.1 ha effective area) is located approximately 13 km southeast of Winton, within the Makarewa River catchment. It's comprised of the following adjacent properties:

    (a) The original, 177 ha Farm 444 block which was used for sheep grazing and milking, and was consented in June;

    (b) The 112 ha Tuffin Block which was used for beef and dairy support;

    (c) The 37 ha Hancox Farm which was used for dairy grazing, including winter grazing;

    (d) The 9 ha Sharks Tooth Block which was used for dairy support and winter grazing; and

    (e) The 15 ha Harwood Block which was used for sheep grazing and a small area of winter grazing.

10. CGL initially proposed to use Farm 444 as a dairy support property for their existing dairy farm in the Grove Bush area, and a land use consent was issued for dairy support in June 2021. The purchase of the adjacent four blocks meant that CGL's plan was amended, with the combined area proposed to be used as a dairy milking operation.

11. The property has an existing wintering barn and milking shed that was used for milking sheep. CGL propose to utilise these, with some modifications, for the proposed milking cow operation, with investment in an additional wintering barn, effluent storage facilities and water supply. The proposal is to milk up to 640 cows on the property, with up to an additional 200 cows on the property over winter. The proposed additional wintering barn, combined with the existing barn, will provide capacity for 840 cows.

12. CGL propose to purchase cull cows and breeding beef calves, and not rear any calves on the property. Water for stock drinking and dairy shed washdown will be abstracted from a spring on the Sharks Tooth Block, at a rate of 2 L/s and a volume of 21,834 m^3/yr. The effluent storage facilities will have a minimum capacity of 18,180 m^3 and be constructed with leak detection systems and synthetic liners. The volume is considered sufficient to store effluent over the

winter months. The effluent will be discharged to land by low rate pods and a slurry tanker, with a slurry tanker not applying effluent to land with a slope above 7 degrees (category C under the Regional Water Plan).

13. CGL initially proposed to develop the milking operation in four stages, however the applicant's evidence amended this to proceed directly to Stage 4.

14. Not surprisingly, the focus of the AEE, s42A and evidence was on nutrient losses from the farming operation. Many iterations of Overseer modelling have been done as part of developing the farm system and assessing its effects. The final iteration indicated a nitrogen loss rate of 32 kg N/ha/yr from the baseline farming system, compared to the proposed system at 28 kg N/ha/yr. For phosphorus, modelled losses for the baseline system and proposed system were each at 1.9 kg N/ha/yr. At the time the s42A report was prepared, the Overseer modelling indicated an increase in phosphorus loss from the proposed system.

15. A number of mitigation measures are proposed, including: the wintering barns, riparian planting, sediment traps, appropriately sized effluent ponds and good practice effluent application, relocating a farm race away from a surface waterway, and the construction of five sediment detention structures or bunds. These bunds would be designed to contain and slow the release of water, resulting in sediment settling out and reducing sediment entering surface water. We acknowledge the input of Rūnanga representatives in developing these mitigation measures and CGL's willingness to engage.

16. The soils on the farm are predominantly poorly drained, so the farm is drained by a network of subsurface drains. The location of the sub-surface drains is unknown but are assumed to be in all paddocks except on the hills of the Tuffin Block and Sharks Tooth Hill.

17. The applicant originally sought a 10-year consent duration, which was amended through Mr Ellwood's evidence to an expiry date of 30 December 2030. This was in response to Ms McRae's s42A report, as consents for discretionary activities under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) must expire before 1 January 2031.

NOTIFICATION AND SUBMISSIONS

18. The application was publicly notified on 19 October 2022. One submission was received from Te Ao Marama Incorporated (TAMI) on behalf of Waihōpai Rūnaka, who wished to be heard. They oppose the application and sought that it be declined. Their concerns centre around the degraded state of the receiving environment, which has significant cultural values, and they oppose additional cows.

THE HEARING

Applicant

19. **Mr Mark Mulholland** of Buddle Findlay presented legal submissions on behalf of CGL. He outlined the proposal, summarised the evidence and laid out the statutory considerations for the application. He also addressed the consent conditions. He considered that the application could be granted due to proposed mitigation measures resulting in effects that are less than the current operations.

20. **Mr Carl Lindsay** is a Director of Arlake Limited along with his brother Blake Lindsay. Arlake Limited was formed to run the farm owned by CGL. He discussed the proposed farm system and the process and considerations for developing it. He highlighted their commitment to invest in the proposed mitigations to minimise nutrient losses from the property. He considers that the proposed farm system is more environmentally friendly than the previous operation.

21. **Mr Nelson Lindsay** is the trustee of the family trust that owns CGL. He is the father of Carl and Blake Lindsay and has been in the dairy industry for three decades. He outlined their approach to farming and the key practices which he considers will reduce their environmental impact.

22. **Mr Hamish Lowe,** of Lowe Environmental Impact Limited, has provided technical advice to CGL throughout the development of the proposed farm system. He outlined the Overseer modelling process and the key mitigations to reduce the nitrogen and phosphorus loads, both within and outside of the Overseer modelling. He also discussed the engagement with Waihōpai Rūnaka, the approach to the consent conditions and commented on the conditions proposed in the s42A report.

23. **Mr Brian Ellwood**, also of Lowe Environmental Impact Limited, outlined the consenting process, the status of the application under the proposed Southland Water and Land Plan (pSWLP) and NES-F, and made comments on the s42A report recommendations.

Submitter

24. **Ms Stevie-Rae Blair** of TAMI summarised the submission on behalf of Waihōpai Rūnaka. She spoke of the Rūnaka's connection to the whenua and their desire to reverse the environmental degradation they have seen. She emphasised the Rūnaka's opposition to additional dairy cows, and stated that they wish for the application to be declined. She also commented on the consent conditions in case the consent is granted.

Section 42A reporting officers

25. **Ms Jade McRae**, Senior Consents Officer at Environment Southland presented her section 42A report and responded to the matters raised in the applicant's evidence and presentation of Ms Blair. Ms McRae also addressed the proposed mitigation and draft consent conditions. She maintained her recommendation to refuse the consent applications.

26. **Ms Alexandra Badenhop**, of e3Scientific Ltd, presented the statement of evidence that she had prepared with Dr Bryan McGlynn and Mr Simon Bloomberg. In response to a challenge from Mr Mulholland, Ms Badenhop explained that the evidence was a joint statement due to the limited time available to prepare it. She stated that she adopted the evidence in full as her own. We agree with Mr Mulholland that the evidence should have been prepared by a single person but accept Ms Badenhop's adoption of the evidence as her own. We refer to the statement in this decision as the evidence of Ms Badenhop. At the hearing, she addressed the water quality impacts from CGL's proposal and commented on the degraded nature of the receiving environment.

27. **Mr Mark Hamer**, of e3Scientific Limited, outlined the species that are present in the wider area's waterways and addressed the impacts of the proposed activity on freshwater ecology.

28. **Mr Reuben Edkins,** of Lumen Environmental, presented his review of the Overseer modelling, and commented on what mitigations are included within the modelling.

Applicant's right of reply

29. Mr Mulholland provided a written right of reply on behalf of CGL on Monday 31 July 2023. Accompanying this were amended sets of proposed conditions, with comments from the submitter and s42A officers.

CONSIDERING THE APPLICATION

30. We have considered all relevant documentation that applies to this application for the purposes of our assessment in the following sections, and for our final decision. This includes the application, AEE and subsequent further information, the submission, the section 42A report, expert evidence, the submitter's information and the applicant's right of reply.

Status of the application

31. Ms McRae's s42A report considered that the discharge of dairy effluent to land would be a non-complying activity under rule 50 of the operative Regional Water Plan. That rule specifies that "*the discharge of farm dairy effluent to land within soil/landscape category C as identified on Map 1 of Appendix N or determined by farm-scale soils mapping undertaken by a suitably qualified person using high rate irrigation is a non-complying activity"*. The application proposed the option of discharge by slurry tanker across the property. The applicant stated at the hearing that they would not use a slurry tanker to spread effluent on Class C land, and that the discharge of dairy effluent to land could therefore be treated as discretionary. Ms McRae agreed.

32. Ms McRae summarised the applicable rule and status of the activities in Table 2 of her s42A report. This is replicated below, with the discharge of effluent to land amended from non-complying to discretionary. Note that OP refers to the operative Regional Water Plan (RWP), PP refers to the pSWLP, and NES refers to the NES-F.

Activity	Relevant Rule	Activity Status
To discharge dairy shed from up to 640 cows and winter barn effluent from up to 840 cows to land via centre pivot, low rate pods and slurry tanker.	OP: Rule 50: Discharges of dairy farm effluent to land	Discretionary activity
	PP: Rule 35: Discharge of agricultural effluent to land	Discretionary activity
To take and use 85,800 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
To use land for two winter barns which accommodates up to 840 cows	PP: Rule 35A: The use of land for Feed pads/lots	Discretionary activity
To use land for farming in the form of a dairy farm conversion.	NES: Regulation 19(1): Conversion of land on farm to dairy farm land	
	PP: Rule 20: The use of land for a farming activity	Discretionary activity
		Discretionary activity
To discharge contaminants to land associated with the conversion of land on a farm to dairy farm land.	NES: Regulation 19(2): Conversion of land on farm to dairy farm land	Discretionary activity

33. As can be seen from the table above, all activities were considered as discretionary.

Scope of land use consent to farm

34. The final set of consent conditions proposed for the land use consent to farm[1] limit the farming activity to a maximum milking herd or 640 cows, and a maximum winter milking herd of 640 cows. The application seeks to also winter 200 cows on the property from CGL's other farm, which is not included in the consent conditions as provided to us. In comments on these conditions, the applicant explained that the consent would only allow for 640 cows to go outside to graze. The remaining 200 cows would remain in the wintering barn. The key question here is whether, if granted, this consent should include the additional 200 cows.

35. A land use consent is required by regulation 19 of the NES-F and Rule 20 of the pSWLP. Regulations 18 and 19 of the NES-F apply to conversions of land on a farm to dairy farm land. Dairy farm land is defined in the NES-F as meaning *"land on a farm that is used for grazing dairy cattle"*. We accept that, under regulation 19, consent would only be required for those cows that graze on the farm, which in this case is proposed as 640 milking cows. It would not include the 200 cows which remain in the wintering barn. This also applies to the discharge permit required under regulation 19.

36. Rule 20 of the pSWLP applies to the use of land for a farming activity. The proposed dairy farming activity does not comply with several of the permitted activity conditions and is a discretionary activity under rule 20(e). This rule does not distinguish between grazing cows or those kept in a barn and we consider that it would apply to the farming activity as a whole. This would include the maximum of 640 milking cows proposed year-round for the property, and the additional 200 cows from CGL's other property that will winter at the property. If granted, we consider that this consent should therefore include the additional 200 cows that are proposed to remain in the wintering barn.

Regulation 24 of the NES-F

37. As can be seen from the table above, regulation 19 of the NES-F applies to the use of land and the discharge of contaminants to land associated with a dairy farm conversion. Regulation 19(3) refers to regulation 24, which states:

> *(1) A resource consent for an activity that is a discretionary activity under this sub-part must not be granted unless the consent authority is satisfied that granting the consent will not result in an increase in either of the following:*
>
> *(a) contaminant loads in the catchment, compared with the loads as at the close of 2 September 2020:*
>
> *(b) concentrations of contaminants in freshwater or other receiving environments (including the coastal marine area and geothermal water), compared with the concentrations as at the close of 2 September 2020.*
>
> *Term of resource consent*
>
> *(2) A resource consent granted for the discretionary activity must be for a term that ends before 1 January 2031.*

[1] Provided with the applicant's right of reply and dated 31 July 2023.

38. Regulation 24(1) is a critical consideration for the land use and discharge permits for the dairy farm conversion. Mr Mulholland addressed this in both his opening submissions and right of reply, with the support of Mr Lowe and Mr Ellwood's evidence. The issue is how to practically apply the specified date of 2 September 2020. Mr Mulholland stated that[2]:

"There was no data collection snapshot as at 2 September 2020 (either at a farm or catchment level), and in any event, given stocking fluctuations depending on conditions it would not be practical to take the data of a single day as a benchmark.

Given these practical considerations, regulation 24 must be interpreted as referring to the annualised effect of the activities present as at that date. As such, the regulation will be satisfied where it can be demonstrated that a proposed activity will not increase contaminant loads leaching to a catchment relative to the annualised effect of the activities present on the relevant site as at 2 September 2020."

39. We acknowledge the difficulty in applying Regulation 24(1) and agree that it would be neither possible nor practical to determine the catchment loads or contaminant concentrations as at the close of 2 September 2020 for comparison with the proposed farming operation. While we are bound by the NES-F, we find ourselves in a position where we do not have the information to apply regulation 24 as drafted. We consider that Mr Mulholland's suggestion to apply an annualised approach to be a practical alternative. Usefully, Mr Lowe's modelling used 2020 as the baseline year for the farming operation.

40. Disappointingly, Ms McRae's s42A report provided no discussion on how we should apply regulation 24(1). She stated at the hearing that the sheep and beef farm at 2020 would be the baseline under regulation 24 of the NES-F, but had little comment on how we should apply the date restriction under subsection (1).

41. Ms McRae informed us at the hearing that there is no consistent baseline scenario, saying that *"the existing environment for NES-F regulation 24 is the sheep and beef farm (Stage 0) however when giving regard to the pSWLP objectives and policies then the authorised dairy support activity would be considered part of the existing environment"*.

42. We will return to regulation 24(1) later in our decision, but emphasise that it is a key consideration for us. If the land use and discharge permit applications for the dairy farm conversion do not meet the requirements of regulation 24, we cannot grant consent. For that reason we are treating 2020 as the baseline scenario.

43. The applicant requested a consent duration of 10 years. The s42A report recommended that, if granted, the consents should have a common expiry date of 31 December 2030 to be consistent with regulation 24(2) of the NES-F. This was accepted by the applicant and we acknowledge that, if we grant consent, we cannot do so beyond this date.

[2] Paragraphs 4 and 5 of the applicant's Right of Reply.

Statutory considerations

44. Section 104 of the RMA guides consideration of consent applications. Section 104(1) lists the matters that we must have regard to in considering the application, stating that:

When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to–

(a) any actual and potential effects on the environment of allowing the activity; and

(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; and

(b) any relevant provisions of—

(i) a national environmental standard:

(ii) other regulations:

(iii) a national policy statement:

(iv) a New Zealand coastal policy statement:

(v) a regional policy statement or proposed regional policy statement:

(vi) a plan or proposed plan; and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

45. Section 104B of the RMA states that we can grant or refuse an application that is a discretionary activity and, if granted, may impose conditions under section 108.

46. Section 105 applies to applications discharge permits and requires that, in addition to the matters in section 104(1), we must have regard to

(a) The nature of the discharge and the sensitivity of the receiving environment to adverse effects; and

(b) The applicant's reason for the proposed choice; and

(c) Any possible alternative methods of discharge, including discharge to any other receiving environment.

47. Section 107(1) also applies to applications for discharge permits, and precludes us from granting a permit to discharge contaminants to land in circumstances which may result in contaminants entering water if, after reasonable mixing, it is likely to result in any of the following:

"(c) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:
(d) any conspicuous change in the colour or visual clarity:
(e) any emission of objectionable odour:
(f) the rendering of fresh water unsuitable for consumption by farm animals:
(g) any significant adverse effects on aquatic life."

Exceptions to this are provided in section 107(2) and we will refer to these later in our decision if needed.

48. These sections of the RMA are considered in turn below.

Greenhouse gas emissions

49. The AEE and s42A report referred to the increase in greenhouse gas emissions that would result from the proposed farm system. This was also raised as a concern in the submission. Ms McRae's s42A report considered this to be a relevant matter under section 7(i) of the RMA, and questioned at the hearing whether these emissions should be considered a contaminant under regulation 24 of the NES-F. We questioned whether we could consider this effect and, if so, how. Section 7(i) of the RMA requires us to have particular regard to the *"effects of climate change"*, which does not encompass the current proposal.

50. Mr Mike Doesburg, the Council's legal advisor, advised us at the hearing that we do not have jurisdiction to consider greenhouse gas emissions. This was also the view of Mr Mulholland, who in his reply stated[3]:

    (a) Greenhouse gas emissions are not a 'contaminant' that regulation 24 of the National Environmental Standards for Freshwater 2020 is concerned with. In particular, that is clear from the statutory framing of that regulation, which relates to consents for discharges into or onto land associated with dairy activities.
    (b) The climate change amendments introduced through the Resource Management Amendment Act 2020 do not apply to the Application as it was submitted prior to the effective date of those amendments (30 November 2022).

51. Mr Mulholland referred us to relevant case law[4] which determined that addressing the effects of activities on climate change was outside the scope of section 104 considerations, and was outside of the functions of regional and territorial authorities. We therefore do not further consider the discharge of greenhouse gases.

SECTION 104(1)(A) – ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

The existing environment

52. Before addressing the actual and potential effects of the proposed activity, we briefly outline the environment against which the effects are assessed. The existing environment is described in section 3 of the AEE, with additional and updated information provided through the applicant's additional information, the section 42A report, and expert evidence. There is general agreement as to the nature and state of the receiving environment.

53. Table 4 of the s42A report summarises the soil types and physiographic zones on the property. Most of the farm overlies the Gleyed Physiographic Zone, in which soils are poorly drained and prone to waterlogging. Parts of the property are also in the Bedrock Hill Country Physiographic Zone and the Peat Wetlands Physiographic Zone. Drainage is aided by a network of subsurface tile drains. There was no dispute that the key nitrogen loss risk is from overland flow and artificial drainage.

54. The site is in the Makarewa Groundwater Management Zone (GMZ) which has available groundwater allocation. Groundwater beneath the site is shallow, with highest groundwater levels estimated to be within 2 m of the ground surface. Groundwater quality is variable with

[3] Paragraph 18 of the applicant's right-of-reply
[4] Paragraph 19 of the applicant's right of reply

evidence suggesting that nitrate concentrations are increasing but currently remain well within half of the Maximum Allowable Value (MAV)[5].

55. The Makarewa River is located approximately 1.3 km to the northwest, with small streams on the property flowing into the Makarewa River. This in turn flows into the Oreti River which flows into the New River Estuary. The site is in the Oreti Freshwater Management Unit under the pSWLP. There was no dispute that the surface water quality values in the downstream receiving environments are highly degraded and declining, with high concentrations of faecal indicators and nutrients.

Considering the effects

56. This application seeks five resource consents – two land use consents under section 9 of the RMA, one water permit under section 14 of the RMA and two discharge permits under section 15 of the RMA. The activities requiring consent are interrelated, with linkages through proposed consent conditions and overlapping effects, particularly relating to water quality and the cultural effects associated with any decline in water quality.

57. Other than the effects on water quality, the parties were in general agreement over the effects of the proposal. We will discuss some of these effects here and return to the effects on water quality, including cumulative effects, below. Effects on water quality are primarily associated with the land use and discharge permits to farm, and the discharge permit to discharge effluent to land.

58. There was no debate about the effects of the proposed water abstraction. Effects on surface water bodies, neighbouring bores, and groundwater quality were considered in section 6.2 of the AEE, along with a reasonable use assessment and comparison against the allocation zone limit. The assessment concluded that:

    (a) the rate and volume requested was reasonable and efficient for the proposed activity,

    (b) the proposed abstraction will not exceed 2 L/s, which equates to a low hydraulic connection to surface water,

    (c) neighbouring bores are sufficiently distant that they would not be affected, and

    (d) the Makarewa GMZ is currently 4.6% allocated, with the proposed abstraction representing approximately 0.1% of the GMZ's current allocation limit.

59. Ms McRae supported this assessment, concluding that the effects of the groundwater abstraction would be minor. We agree with this conclusion, noting that the abstraction is at the smaller end of the scale. We do not consider the effects of the groundwater abstraction further.

60. Neither the AEE, evidence or s42A report provide much consideration of the adverse effects of the winter barns. The barns are proposed as a mitigation measure to enable the cows to be taken off the paddocks when soil conditions aren't suitable. This prevents soil damage and reduces the potential loss of nutrients, pathogens and sediment. The parties agreed that the winter barns are a crucial aspect of the proposed mitigation, and it was accepted that the proposed barn size was sufficient for 840 cows.

[5] As per Table 2 of the Water Services (Drinking Water Standards for New Zealand) Regulations 2022

61. With regard to the discharge of dairy shed effluent, there was agreement that the dairy effluent pond is appropriately constructed and sized, and that the mitigation and management measures for the pond are best practice. Effluent is proposed to be discharged at low rates and depths, with the use of a slurry tanker as required and only on land that is less than a 7-degree slope angle. While the system itself appears to be sound and best practice, the discharge of effluent could contribute to effects on water quality if not appropriately managed. We return to this below.

Effects on water quality

62. There was no dispute that the key effect of the proposal is that from the farm operation on surface water and groundwater quality. The policy guidance in the NPSFM and pSWLP indicates that we should not grant consent unless we are satisfied that the proposal will result in no further deterioration of water quality. Regulation 24 of the NES-F precludes us from granting the land use consent and discharge permit to farm (required by regulation 19) if there will be an increase in contaminant concentration or load compared with a baseline of 2 September 2020. As such, water quality is a critical consideration.

63. Key sources of nutrients include the discharge from the cows on the paddocks, and the dairy shed and wintering barn effluent discharge. These effects were largely considered together by the applicant and Council representatives, through the Overseer assessment and with consideration of good management practices (GMPs) and mitigation measures included in the Farm Management and Conversion Environmental Plan and subsequent amendments.

64. Mr Lowe's and Mr Ellwood's evidence considered whether the proposed dairy farm system should be considered as intensification from the previous farm system. Both Ms McRae and Mr Lowe used a relative stock unit (RSU) approach to compare the number of grazing days between the baseline and proposed scenarios. We don't consider this to be critical to our decision, as intensification with appropriate mitigation can result in no further degradation of water quality. We agree with Mr Ellwood, who said[6] *"the debate should not be on the change in land use or intensification, but the effects on the receiving environment"*.

65. The AEE and evidence of Mr Lowe and Mr Ellwood conclude that the proposed dairy farm conversion will result in an overall reduction in contaminant losses from the property. Mr Lowe acknowledges concerns with the accuracy of Overseer modelling; however, he considers that it is the best model available for predicting nutrient losses from farming activities. He considers that the mitigation and evidence put forward supports the Overseer modelling results.

66. Ms McRae and Ms Badenhop's position is that, while Mr Edkins agrees with the Overseer modelling, we should exercise caution in accepting its results. They consider that the additional mitigations proposed aren't sufficient to ensure that the proposed dairy conversion won't result in additional contaminants entering waterways.

The Overseer modelling

67. Mr Edkins and Mr Lowe provided a JWS that recorded their agreement on the modelling approach and modelled nitrogen and phosphorus losses. Their JWS recorded the agreed losses as follows:

[6] At paragraph 25 of his evidence in chief

(a) Baseline (Stage 0): 33 kg N/ha/yr (11,112 kg N/yr) and 1.9 kg P/ha/yr (639 kg P/yr)

(b) Proposed (Stage 4): 28 kg N/ha/yr (9,450 kg N/yr) and 1.9 kg P/ha/yr (637 kg P/yr).

68. The JWS then states[7] that *"we agree that the proposed farming system does not fit neatly within the existing modelling guidance and another party could chose to model this system differently"*. They then stated[8] that *"we agree that the sensitivity testing conducted as part of the caucusing process showed that the modelled outcomes were quite consistent when some of these other approaches were tested"*.

69. The fact that Mr Edkins and Mr Lowe have used a similar approach to generate similar numbers gives us some confidence in the model results. There was agreement that the modelled reduction in nitrogen loss between the baseline and proposed farm systems is due to the use of winter barns and the removal of winter grazing. The evidence of Mr Lowe and Mr Ellwood focussed primarily on the advantages of the proposed scenario during winter.

70. We now turn to whether the use of Overseer is appropriate for this proposal and how much weight we should place on the Overseer modelling results.

Appropriateness of using Overseer

71. The use of Overseer in regulatory settings has been questioned for some time, and the release of an independent review of Overseer by the Ministry for the Environment (MfE) and Ministry for Primary Industries (MPI) in 2021[9] (the Overseer review) highlighted some key concerns. We are familiar with this report and the subsequent MfE and MPI response. The evidence of Ms Badenhop refers to part of the summary statement from this review, and we consider it is relevant to refer to part of it here:

"Our core concerns are that Overseer:

- *Is a steady state model attempting to simulate a dynamic, continually varying system;*
- *Uses monthly time-steps;*
- *Uses average climate data and, therefore, cannot model episodic events, or capture responses to climate variation;*
- *Does not balance mass;*
- *Does not account for variation in water and nutrient distribution in the soil profile;*
- *Does not adequately accommodate deep-rooting plants;*
- *Focuses on nitrate and omits ammoniacal nitrogen and organic matter dynamics; and*
- *Lacks consideration of surface water and nutrient transport, as well as critical landscape factors.*

As a result of these concerns, we do not have confidence that Overseer's modelled outputs tell us whether changes in farm management reduce or increase the losses of nutrients, or what the magnitude or error of these losses might be."[10]

[7] At paragraph 4.3
[8] At paragraph 4.4
[9] Overseer whole-model review: Assessment of the model approach. MPI Technical Paper no: 2021/12. Prepared for the Ministry for Primary Industries and the Ministry for the Environment by the Science Advisory Panel.
[10] Overseer review page 5

72. Mr Lowe told us at the hearing that *"Overseer is a great tool but has a lot of warts"*. He acknowledged the findings of the Overseer review but considers that there are limited other options available. He told us that Overseer is best used to compare farm systems on the same property, such as is the case here. This is consistent with the findings of the Overseer review.

73. Ms Badenhop considers that all of the bullet points listed above from the Overseer review apply to the application of Overseer in this case. She emphasised that Overseer cannot represent the nutrient fluxes that will occur on the applicant's site. The site is estimated to have over 100 tile drains, and Ms Badenhop considers that the rapid mobilisation of nutrients through these drains cannot be shown through the averaging approach of Overseer. She provided rainfall data to show that such events can occur year-round, with Winton experiencing on average 175 rain days/events per year. Mr Edkins also told us that Overseer doesn't include losses from tile drains.

74. Mr Lowe told the hearing that there were 45 iterations of Overseer modelling including the version from the expert conferencing. Aside from the concerns about the model itself, we are concerned that the subtle tweaks through the model iterations to achieve the desired reductions in nitrogen and phosphorus could be difficult to replicate in a practical way on farm.

75. Overseer does not model sediment and microbiological contaminants, which are both of concern in the Makarewa River catchment. There was agreement that modelling of phosphorus losses can be used to indicate sediment and microbiological contaminant losses due to phosphorus binding to sediment. Microbiological contaminants are lost via the same pathways. However, there appears to be considerable uncertainty in the ability of Overseer to model phosphorus losses.

76. We acknowledge that the uncertainties with Overseer would apply to both farm system scenarios and that the comparative assessment is useful. However, the issues raised by the Overseer review are serious and, while we consider it appropriate to place some weight on the Overseer modelling results, we consider that the proposed mitigation measures and the experts' views on their efficacy are more important. We discuss these below.

The additional mitigation

77. Key mitigation measures include the winter barns, shifting a laneway away from an adjacent waterway, building five sediment detention bunds, good practice effluent management and riparian planting. Mitigation of tile drains is also important.

78. Winter barns mean that the amount of time spent by cows on paddocks decreases during the winter months, when soil moisture is high. CGL also propose to use the winter barns outside of winter when soil moisture is saturated. We acknowledge the significant investment required for the winter barns and also the importance of the winter barns to mitigate effects.

79. Measures to mitigate the effects of contaminant transport via overland flow include sediment detention bunds, riparian planting and stock exclusions from waterway margins. CGL propose to stage construction, with Mr Lowe telling us that the learnings from the initial bunds would inform the construction of the remaining bunds. He indicated that such bunds have been constructed elsewhere in Southland but could not provide information on their effectiveness.

80. Mr Lowe referred us to research by Dr Chris Tanner from NIWA[11]. On review of this article, it appears that Dr Tanner is one of several authors of the referenced paper, with the lead author being Brian Levine from Massey University. The paper is from Dr Levine's PhD research in the Lake Rotorua catchment. This research found that, while detention bunds initially prevented significant portions of contaminants from reaching Lake Rotorua, declining soil infiltration rates and increasing soil phosphorus concentrations in the ponding areas could affect the longer-term performance of detention bunds. The research concluded that detention bunds are a cost-effective option in the Lake Rotorua catchment.

81. While we accept that the bunds will reduce contaminants entering surface waterways, we are unsure of how effective they will be, especially long term. We consider it important to note that the bunds will only treat runoff from 63 ha of the 340 ha farm.

82. We consider that riparian planting and stock exclusion proposals don't go far enough, especially given the steep slopes and heavy soils across the site. We refer in particular to CGL's resistance to extending stock exclusion buffers from 1 m to 3 m in the reply conditions, and proposal to allow controlled stock grazing within 1 m of waterways when soil and weather conditions allow. These conditions were opposed by Rūnanga and ES, and were inconsistent with the "3 m minimum" stock exclusion that Mr Lowe indicated at the hearing. We consider that 3 m stock exclusion buffers would be appropriate at this site.

83. Mr Lowe told us at the hearing that riparian planting areas were proposed for critical habitat areas rather than to mitigate overland flow. We are unsure how these areas were selected and agree with Mr Hamer that the areas currently proposed are minimal for the 5,000 m of waterways on the property. We accept that grass is effective at filtering overland flow, but acknowledge the importance of riparian planting for waterway health.

84. No treatment is proposed for discharges from the tile drains; however, CGL proposed in consent conditions provided with the right-of reply that these discharges be addressed through the FEMP, as follows:

A methodology for identification of any tile drains on the property, and actions to:

- *a) avoid contaminants entering tile drains e.g. not applying wastewater over drains or grazing hard when wet;*
- *b) stop and capture discharges from tile drains should obvious signs of contamination develop e.g. plug the drain and pump out and return to a suitable discharge location such as the effluent ponds.*

85. The applicant did not consider these in much detail at the hearing and, given the 100+ tile drains on the property, we question the practicality of this mitigation. We're not clear what "obvious signs of contamination" would look like in this context and consider that water quality sampling would be required to determine levels of contamination. However, if such sampling showed high levels of contaminant losses, which we suspect it would, how would CGL dispose of effluent (if not over the tile drains), how much tile drainage water would there likely be and how would the captured tile drain water be treated or disposed of? We suspect that these would not be simple questions to answer on such a wet and steep site.

[11] At paragraph 49 of Mr Lowe's evidence in chief

Discussion on effects on water quality

86. The key question for us is whether the proposed farm system will result in additional contaminant losses when compared to the baseline scenario. There was no contention that surface water is the main receiving environment for contaminant losses from the property and the receiving surface water catchment is highly degraded. This was highlighted in Ms Blair's evidence, which emphasised how the mauri of the catchment has declined and the impact this had had on whānau from Waihōpai.

87. We find the Council's contribution to the hearing to be lacking in this regard, especially as Ms McRae's report does not consider the statements of Mr Hamer or Ms Badenhop. The statements of Mr Hamer and Ms Badenhop do not compare the two farming scenarios which is the critical matter that we are considering. That said, we find Ms Badenhop's evidence on nutrient pathways to be compelling and much of this was not well-countered by Mr Lowe's more general claims.

88. The losses to surface water via overland flow and lateral movement, including tile drains, are critical and are in part dependent on the stocking rates. Both Ms McRae and Mr Lowe used a relative stock unit (RSU) approach to compare the number of grazing days between the baseline and proposed scenarios. Mr Lowe's Appendix B to his evidence was addressed at the hearing, but we find this comparison between the current, consented system and the proposed system to be unhelpful when assessing the proposal against regulation 24 of the NES-F. This is because the current, consented dairy support system was authorised in 2021, whereas the NES-F requires a comparison with 2020 sheep/beef and dairy support land use. Mr Lowe's Appendix B was useful in demonstrating that grazing days would likely be less in winter due to the use of the wintering barns, but higher in summer.

89. Mr Edkins' s42A report compared RSUs for the Overseer modelling for the 2020 and the proposed system, which is relevant for regulation 24. The baseline had a total RSU of 6,581 and an RSU per productive hectare of 21. The proposed scenario had a total RSU of 8,131 and an RSU per productive hectare of 25.94. Ms McRae also compared RSUs at the hearing, stating an increase from 6,581 to 7,602 (or 24.26 per productive hectare). We can only assume that Ms McRae's reduced number for the proposed scenario is due to Overseer modifications after Mr Edkin's evidence was prepared. Either way, we consider that the proposed scenario represents an increase in stock units.

90. We heard from Ms McRae and Ms Badenhop that contaminants, particularly nitrogen, accumulate in the soil during periods of low soil moisture. Contaminants derived from stock and effluent discharges are then transported to surface water via tile drains and overland flow during rain events and when soil moisture increases in autumn and winter. We agree that this is a key contaminant pathway and one that was not well addressed by the applicant's experts.

91. The focus of CGL's mitigation is to remove stock from grazing when soil moisture levels are high or at field capacity. While this is good practice, it does not address accumulation of contaminants in soil during periods of low soil moisture, which are then released when soil moisture increases. We consider that the increase in stock numbers will exacerbate losses by this pathway.

92. We accept that the proposed effluent management system is consistent with good management practice and that the proposed conditions will ensure that the effects of the discharge on water quality are minimised.

93. We accept that the bunds will go some way to mitigating losses of microbiological contaminants, sediment and phosphorus to surface water, and commend CGL for looking at such options. However, Mr Lowe's assertions that the bunds needed to be built in stages, so that they could learn as they went, didn't fill us with confidence, and we find that the long-term efficacy of these bunds for treatment is unknown. In addition, the bunds would only treat runoff from approximately 20 % of the site.

94. On balance, we consider that it is likely that there will be increased contaminant losses from the proposed scenario when compared to the 2020 baseline scenario. This includes nitrogen, phosphorus, sediment and microbiological contaminants.

Effects on freshwater ecology

95. The applicant's evidence focussed on mitigation to reduce effects on water quality, and only considered effects on freshwater ecology in a cursory manner. Mr Hamer's s42A report presented information regarding fish recorded in the New Zealand Freshwater Fish Database within a 7 km radius of the site. While no fish species have been recorded on CGL property, he considers that Gollum galaxias and lamprey (both threatened – nationally vulnerable) and longfin eel (at risk – declining) are likely to be present in waterways at the site.

96. Mr Hamer told us at the hearing that, if these species were present, they would likely be clinging on but not thriving. He considered that extended riparian planting would be beneficial, particularly on the north side of waterways where vegetation would provide shade and reduce algal growth. Fish surveys and fish removal should be undertaken before construction of bunds or any works in waterways. We anticipate that further consents may be required for such works.

97. We considered above that there will likely be a decline in water quality resulting from the proposed dairy conversion. We cannot therefore be confident that there will not be additional effects on freshwater ecology.

Effects on wetlands

98. There was debate at the hearing as to whether the area referred to as the gorse block should be considered a wetland. We viewed this area on our site visit and it appeared to have been recently cleared.

99. Ms Badenhop referred us to the Ministry for the Environment's "Pasture exclusion assessment methodology"[12] which was published in December 2022. Mr Lowe[13] referred us to the Ministry for the Environment's "Defining 'natural wetlands' and 'natural inland wetlands'"[14] which was published in September 2021. Ms Badenhop's document seems to provide further advice on interpreting the NES-F requirements over and above that provided in Mr Lowe's document. We also note that the NES-F was amended in January 2023.

100. The NPS-FM and NES-F provide for current pasture land use in wetlands and former wetlands to continue. A wetland assessment wasn't undertaken as part of the application process. Ms Badenhop considered that such an assessment should be undertaken as part of the application

[12] https://environment.govt.nz/assets/publications/Pasture-exclusion-assessment-methodology.pdf
[13] At paragraph 132 of his evidence in chief, footnote 33.
[14] https://environment.govt.nz/assets/publications/Defining-natural-wetlands-and-natural-inland-wetlands.pdf

process and, ideally, this would have occurred prior to the hearing. It didn't, and we consider a condition requiring such an assessment to be appropriate.

SECTION 104(1)(B) – RELEVANT PLANNING PROVISIONS AND SECTION 104(1)(C) – OTHER MATTERS

101. Section 104(1)(b) requires us to have regard to any relevant provisions of statutory planning documents. There was no dispute at the hearing as to the relevant statutory documents or the provisions that apply to the proposal. These are the:
    - Operative RWP;
    - Proposed SWLP (2018 Decisions version);
    - Southland Regional Policy Statement (RPS);
    - National Policy Statement for Freshwater Management 2020 (NPS-FM);
    - NES-F;
    - National Environmental Standard for Sources of Human Drinking Water Regulations 2007; and
    - Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 (Water Metering Regulations).

102. In her s42A report Ms McRae refers to Te Tangi a Tauira, the Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 (IMP), as a relevant matter to consider under section 104(1)(c).

103. Ms McRae's section 42A report contains what we consider to be a complete record of the relevant provisions in these documents. The AEE assessed the proposal against the relevant provisions, and this was also addressed at the hearing in Mr Mulholland's legal submissions.

104. We have considered the relevant objectives and policies of these documents in making our decision. We consider the NPS-FM to be a key document for these applications, in part because it was gazetted after the development of the RWP, pSWLP and RPS. These planning documents therefore were prepared without consideration of the NPS-FM.

105. Considering the provisions of the RWP and pSWLP, we agree with Ms McRae that greater weight should be placed on the pSWLP. The pSWLP was developed under the NPS-FM 2014 (amended 2017) and implements the RPS. Appeals on the pSWLP are currently before the Courts.

106. We have had regard to the NPS-FM objective and policies, in particular the objective and Policy 1, that require freshwater to be managed in a way that gives effect to Te Mana o te Wai. Te Mana o te Wai requires the resource to be managed in a way that prioritises the health and well-being of water bodies and ecosystems first, the health needs of people (drinking water) second, and the ability of people and communities to provide for their social, economic and cultural well-being third. We consider each of the applications in turn below, although note that the parties focussed their attention on the dairy conversion consents.

Discharge permit to discharge agricultural effluent to land

107. The proposed effluent management is considered best practice by Mr Lowe and Ms McRae, with leak detection systems and synthetic liners, and appropriate storage for the winter months. The discharge itself will be via low rate pods or a slurry tanker, with sufficient land available for

the discharge. We therefore agree with the parties that the discharge of effluent to land will be consistent with the relevant provisions, in particular policy 17 of the pSWLP.

108. Policy 9 of the IMP is to *"require that farm management plans include the location of tile drains on farm to ensure that farm workers know where drains are when irrigating"*. The proposed consent conditions require stored or discharged effluent to not enter surface water either directly or indirectly, including via a pipe. We consider that this condition satisfies this policy and acknowledge CGL's work to map the locations of the tile drains.

Water permit to take and use groundwater

109. Ms McRae considered the water permit application against the policies of the NPS-FM, stating that *"The volume of water the applicant is seeking will not cause over-allocation and it is deemed an efficient use of water at 120 L/cow/day (640 milking cows) plus 45 L/cow/day for the extra 200 cows housed in the winter barns during winter, which is consistent with Policy 11"*[15]. She also considers the application consistent with the RWP and pSWLP.

110. This position wasn't disputed by Ms Blair or Mr Mulholland, and we agree with Ms McRae's conclusions. The proposed consent conditions include water metering requirements that are consistent with the Water Metering Regulations.

Land use consent to use land for winter barns

111. There was no contention that the winter barns were consistent with the policy requirements, and these were viewed as a key mitigation measure for the dairy conversion. The barns are considered to be best practice, with impermeable bases, stormwater and effluent collection, and located away from sensitive receptors. We are therefore satisfied that the winter barns are consistent with the policy direction.

Land use consent and discharge permit associated with a dairy farm conversion

112. Mr Mulholland summarises the relevant planning provisions *"as requiring that an application for a dairy conversion should be declined where there will be adverse effects on water quality, but that such an activity may be permissible where there is an improvement in effects on water quality"*[16]. This is a clear position in the RWP, pSWLP, NPS-FM and in regulation 24 of the NES-F. The Council and applicant's representatives came to different conclusions regarding effects, so it follows that their policy assessments came to opposing conclusions.

113. There is a strong focus in the objectives and policies of the pSWLP on improving water quality where it is degraded. Objective 6 seeks to improve degraded water bodies and maintain water quality that is not degraded. Policy 16 seeks to minimise the adverse effects of farming activities on water quality and is particularly relevant to this proposal. Policy 16(1)(b) is to ensure that:

"…applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities will generally not be granted where:

(i) the adverse effects, including cumulatively, on the quality of groundwater, or water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes cannot be avoided or mitigated; or

(ii) existing water quality is already degraded to the point of being overallocated; or

[15] S42A report, page 37.

[16] Mr Mulholland's legal submissions, paragraph 42.

(iii) water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines;…"

114. From our effects consideration above, we have concluded that the proposed dairy conversion will likely result in further water quality degradation. We agree with Ms McRae that the proposed dairy conversion will not meet policy 16 of the pSWLP, and would be contrary to the overall policy direction of the pSWLP. Similarly, we agree with Ms McRae that the proposed dairy conversion would not prioritise the health and well-being of water bodies and freshwater ecosystems, and would therefore not give effect to the objective of Te Mana o Te Wai and policy 1 of the NPS-FM.

115. Turning to the Regulation 24 of the NES-F, Ms McRae considered that the proposal wouldn't meet regulation 24(1) because:

"(a) the nutrient budgets modelled in OverseerFM predict that phosphorus loads in the catchment will increase; and

(b) the applicant has not provided adequate mitigations over and above those that existed on 2 September 2020 to minimise contaminant losses to freshwater."

116. Point (a) of Ms McRae's was superceded by subsequent Overseer input variations, with Mr Edkins and Mr Lowe in agreement that there would be no modelled increase in phosphorus or nitrogen. However, we considered above that the proposed mitigations are not adequate to ensure that contaminant loads and concentrations from the property won't increase. Regulation 24 therefore precludes us from granting the land use consent and discharge permit for the proposed dairy conversion.

SECTIONS 105 AND 107

117. Section 105(1) requires us to have regard to the following matters for the two discharge permit applications:

(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.

118. There was no dispute that the receiving environment is highly sensitive to the proposed discharges. The heavy soils and hydrogeology of the area result in a high risk of overland flow to surface water and a prevalence of sub-surface drains. This has been considered in Ms McRae's s42A report and was considered by the applicant in evaluating options and developing the proposed mitigation.

119. Turning to section 105(b) and (c), reasons and alternatives were discussed in the AEE at section 9 and in the s42A report at section 3.3.5. We accept that the proposed discharge of effluent to land is appropriate for the receiving environment, and that the alternatives of discharging to water would have more significant adverse effects. Removal by tanker wasn't considered practical. The applicant did not consider alternatives for the incidental discharges from the cows resulting from the dairy conversion. This is a fundamental part of the application and we accept that considering alternative methods of discharge would be nonsensical.

120. We have considered the proposed discharges against the requirements of section 107, and we agree with the parties that the discharges will not give rise to the listed effects in the receiving waters.

PART 2 OF THE RMA

121. Section 104(1) of the RMA states that the matters to be considered must be done so subject to Part 2. We note that the Court of Appeal's decision in *RJ Davidson v Marlborough District Council*[17] clarifies how to approach the directive by section 104(1) to consider provisions subject to Part 2. It directs that there is no need to consider Part 2 unless there is invalidity, incompleteness or uncertainty of meaning in the statutory planning documents.

122. In this case, there is no conflict between objectives or policies that would benefit from consideration against Part 2. We have concluded that the proposed dairy conversion is not consistent with the relevant statutory documents, while the proposed dairy effluent discharge, water permit and winter barns are consistent with them. With reference to *Davidson*, we find that there would be no benefit to our evaluation of the proposal from consideration of Part 2.

TERM AND CONDITIONS

123. Policy 40 of the pSWLP provides guidance on consent duration and we have considered this along with the restrictions in the NES-F. As stated above, the applicant initially applied for a 10-year consent duration. This was amended to an expiry date of 30 December 2030, as consents for discretionary activities under the NES-F must expire before 1 January 2031. While the water permit and effluent discharge permit are not considered under the NES-F and a 10-year duration could be sought, Mr Ellwood acknowledges the advantage of a common expiry date. We agree that a common expiry date would be appropriate, should we decide to grant consents.

DECISION

124. We concluded above that the proposed dairy conversion would result in an increase in contaminant loads and concentrations in the catchment when compared to the baseline scenario. We accepted Mr Mulholland's submissions that the Overseer modelling for the 2020 season could be used as a proxy for the 2 September 2020 date in regulation 24 of the NES-F. Regulation 24(1) of the NES-F is replicated earlier, but in summary it precludes us from granting these consents if they would result in an increase in contaminant loads or concentrations in the receiving catchment, compared with those at 2 September 2020. We therefore cannot grant the land use consent or discharge permit for conversion of land to dairy farm land.

125. We have considered whether to grant the remaining consents, being the discharge permit to discharge agricultural effluent to land, the water permit to take and use groundwater and the land use consent for winter barns. We concluded above that the effects of these aspects of the proposal are acceptable and consistent with the relevant statutory guidance. However, these applications are intricately linked to the overall proposal for a dairy farm conversion and could not be exercised as proposed without the overarching dairy conversion consents. For this reason, it makes no sense to grant these three consents.

[17] [2018] NZCA 316

126. Under the powers delegated to us by the Southland Regional Council, for the reasons given above, pursuant to sections 104, 105 and 107, and subject to Part 2 of the Resource Management Act 1991, in relation to applications APP-20222055 by Capil Grove Limited we REFUSE the following consents:

(a) a land use consent for a dairy conversion (APP-20222055-04);
(b) a discharge permit for a dairy conversion (APP-20222055-05);
(c) a discharge permit to discharge agricultural effluent to land (APP-20222055-01);
(d) a water permit to take and use groundwater (APP-20222055-02); and
(e) a land use consent for winter barns (APP-20222055-03).

Dated at Christchurch this 25th day of August 2023

Bianca Sullivan (Chair)
Independent Hearing Commissioner

Lyndal Ludlow
Hearing Commissioner