

**BEFORE THE SOUTHLAND REGIONAL COUNCIL**

Under the Resource Management Act 1991

In the matter of applications by Capil Grove Limited for resource consents under section 88 of the Act to discharge agricultural effluent to land from up to 840 cows, to take 85,800L/day of groundwater and to use land for two winter barns, a new agricultural effluent storage facility, and to establish a new dairy farm at 444 Springhills-Tussock Creek Road

---

**LEGAL SUBMISSIONS ON BEHALF OF THE APPLICANT**

30 June 2023

---

**BUDDLE FINDLAY**

Barristers and Solicitors  
Wellington

Solicitor Acting: **Mark Mulholland**  
Email: mark.mulholland@buddlefindlay.com  
Tel 64 4 462 0423 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

## INTRODUCTION

1. These legal submissions support Capil Grove Limited's (**Applicant**) application under section 88 of the Resource Management Act 1991 (**RMA**) for resource consents to discharge agricultural effluent to land from up to 840 cows, to take 85,800L/day of groundwater and to use land for two winter barns, a new agricultural effluent storage facility, and to establish a new dairy farm at 444 Springhills-Tussock Creek Road (**Application**). The Applicant is owned by, and farm is run by, the Lindsay family.
2. In support of the Application, these submissions:
  - (a) set out the background and context to the Application;
  - (b) describe the statutory framework for the Panel's decision;
  - (c) summarise the evidence filed in relation to the environmental effects of the Application and highlight key issues for determination;
  - (d) identify relevant national and regional planning documents;
  - (e) address the conditions proposed to attach to the resource consents;  
and
  - (f) address the application of Part 2 of the RMA to the Application.

## EXECUTIVE SUMMARY

3. The Lindsays propose to farm in a different way. They are acutely aware of the harm that traditional dairy farming operations can have on the environment and the need for Southland to promote new sustainable approaches if the important economic contribution dairying brings to the region can be maintained in the future without sacrificing environmental health.
4. The Lindsays propose a range of management practices to ensure nutrient losses and other environmental effects are lower than the previous operation of the combined farms on the Application site. This includes lower stocking rates than standard, the use of wintering barns during winter and periods of inclement weather, and buying in cull cows as replacements instead of rearing replacements from calves, among other practices.
5. The applicable planning framework for this proposal can be distilled down to one key question for the decision-makers: Will the effects of the application,

particularly in terms of nutrient losses, be an improvement from the existing farming operations? If so, the application should be granted.

6. The evidence for the Applicant is that the proposed mitigation measures, which have been further developed since lodgement (including through the valuable input of Te Ao Mārama Inc) mean that the environmental effects of the proposal will be an improvement from the current operations, including through a significant reduction in nitrogen and phosphorus losses. Accordingly, the application should be granted.

## **BACKGROUND AND CONTEXT TO THE APPLICATION**

7. The Lindsays operate a dairy support property of approximately 180 hectares in Springhills. In late 2021 and early 2022, the Lindsays purchased three neighbouring properties, with the combined farm increasing to 340 hectares. In addition to dairy support, previous activities on the various farm blocks were a combination of high intensity sheep grazing, sheep milking, winter dairy grazing, and beef operations. One of the properties has a wintering barn and a dairy shed which had been used for sheep milking (the barn is currently being used for wintering dairy cows).
8. The evidence of Mr Nelson Lindsay and Mr Carl Lindsay, respectively, outline the intentions for these purchases, which includes:
  - (a) a strong understanding that environmental regulations (and societal expectations) require that things are done better than in the past;
  - (b) that intensive winter grazing causes damage to soil, livestock health, and water quality and needs to change; and
  - (c) innovation and significant investment would be required to enable a dairy farm to operate in a way that is environmentally and financially sustainable.
9. Taking learnings from their existing farm, the Lindsays decided to take on this challenge, hoping to play a small role in improving broader environmental outcomes for the region. The proposal they have developed seeks to achieve this through:
  - (a) no winter grazing, but rather the use of wintering barns during winter and periods of inclement weather;

- (b) lower stocking rates compared to traditional farming operations in the area;
  - (c) utilising the additional pasture to grow feed to be used for housed stock;
  - (d) the use of cull cows brought from off-site rather than rearing replacement cows on-site;
  - (e) large effluent storage and carefully managed effluent application; and
  - (f) a range of other farm environmental mitigation practices, such as grazing management, waterway protection and standoff facilities.
10. Through the combination of the above actions, the Lindsays seek to increase production and output per hectare while achieving a lower nutrient leaching rate.
11. The Lindsays have continued to further develop mitigation measures since submission of the Application. As described in the evidence of Mr Carl Lindsay and of Mr Hamish Lowe (as well as the evidence of Ms Stevie-Rae Blair for Waihōpai Rūnaka), there has been meaningful engagement with iwi on the Application. With input from Te Ao Mārama Inc on behalf of Waihōpai Rūnaka, the proposed measures have been improved, including through the addition of:
- (a) an enhanced approach to riparian planting;
  - (b) improved sediment management through the use of sediment traps and detention facilities;
  - (c) shifting several races away from waterways and ensuring any drainage water from races, lanes and around gateways travels over land before entering the drains; and
  - (d) greater monitoring and reporting of the condition of farm infrastructure and adoption of a fresh water monitoring regime.

## **STATUTORY FRAMEWORK FOR THE PANEL'S CONSIDERATION OF THE APPLICATION**

12. The consents required for the Application under the Regional Plan are set out in the AEE and repeated in the s42A report.
13. The Applicant agrees with Ms McRae as to the consents required. Now that discharge from a slurry tanker is no longer proposed on Category C land, the Applicant understands that there is consensus that the Application should be 'bundled' and assessed as a discretionary activity under sections 104 and 104B of the RMA.
14. Section 104(1) provides that when considering the applications for resource consent and any submissions, the decision-maker must, subject to Part 2 of the RMA, have regard to:
  - (a) any actual and potential effects on the environment of allowing the activity;
  - (b) any relevant provisions of statutory planning documents; and
  - (c) any other matter the decision-maker considers relevant and reasonably necessary to determine the application.
15. When considering discharge permits, section 105 requires that regard must be had to the following three matters:
  - (a) the nature of the discharge and the sensitivity of the receiving environment;
  - (b) the applicant's reasons for the proposed choice; and
  - (c) alternative methods of discharge and any other receiving environment.
16. Section 107 relates to restrictions on the grant of certain discharge permits where there is a discharge of contaminants.
17. The application of these statutory considerations to the Application is considered later in these submissions.

## **EFFECTS ON THE ENVIRONMENT**

18. Under section 104, the consent authority is to have regard to any actual and potential effects on the environment of allowing the activity, while section 5(2)(c) also refers to "*avoiding, remedying, or mitigating any adverse effects*

*of activities on the environment"* as part of the sustainable management purpose of the RMA.

19. The Assessment of Environmental Effects (**AEE**), supplementary materials provided in response to various section 92 requests, and the expert evidence for the Applicant extensively consider the environmental effects of the Application.
20. In many areas, there is agreement between expert witnesses for the Southland Regional Council (**Council**) and for the Applicant that the effects of the Application will be acceptable. This includes in respect of matters such as soil health<sup>1</sup>, water quantity<sup>2</sup>, and odour<sup>3</sup>.
21. These submissions focus on the few matters that are in contention (noting that the evidence for the Council has not taken into account the full suite of conditions and mitigation measures now proposed and as such the conclusions reached by those experts may have changed).

#### **Expert evidence for the Council**

22. While specific points in contention between expert witnesses are addressed below, there are a number of general issues with the expert evidence for the Council that must be addressed. These are:
  - (a) The brief of evidence by Ms Alexandra Badenhop, Mr Brian McGlynn, and Mr Simon Bloomberg (the **Three Authors**) does not abide by basic rules of expert evidence. That is, expert witnesses cannot jointly author the same evidence in chief. In doing so it becomes unclear which aspects of the evidence can be attributed to which expert. This is important given the special status ascribed to the opinion of an expert in the law of evidence.<sup>4</sup>
  - (b) The Three Authors and Mr Hamer do not assess the effects of the Application against the existing environment. That is, there is no reference in their evidence to any comparative assessment between the existing and proposed farming operations. A comparison between the existing and proposed environments is necessary to inform decisions under s104(1)(a).

---

<sup>1</sup> S42A report at 3.3.2.3.

<sup>2</sup> S42A report at 3.3.2.2.

<sup>3</sup> S42A report at 3.3.2.4.

<sup>4</sup> Evidence Act 2006, sections 23 and 25.

- (c) Ms McRae's s42A assessment does not refer at all to the briefs of evidence on behalf of the Council. It is unclear where and to what extent she is relying on evidence of other Council witnesses (or, alternatively, how she otherwise came to her conclusions on the significance of effects).
23. These issues are significant deficiencies in the evidence for the Council, and accordingly the expert evidence of Mr Lowe and Mr Brian Ellwood for the Applicant should be preferred where there are matters in contention.

### **Nutrient loads**

24. The entire farm system was developed with the goal of reducing nutrient loss compared to the existing operations. It is the evidence of Mr Lowe that, through the combination of measures described above, this will be achieved.
25. This is demonstrated in part through the use of OverseerFM (**Overseer**) modelling. As updated following engagement between Mr Lowe and Mr Reuben Edkins (for the Council), the modelling shows that the proposal is predicted to have a significant reduction in nitrogen loss (from 33 kg N/ha/y reducing to 28 kg N/ha/y) and a slight reduction in phosphorus (from 639 kg P/y to 637 kg P/y) compared to existing operations.<sup>5</sup> Importantly, compared to the initial modelling, the results from the modelling agreed by Mr Edkins and Mr Lowe show a slight reduction in P, rather than the slight increase in P.<sup>6</sup>
26. However, there are limitations to Overseer (as discussed further below), which mean that additional mitigation measures beyond those fully taken into account through the modelling are important in providing additional confidence that there will be material reductions in nutrient loss. In respect of the Application, these measures are extensive, including:
- (a) detention structures to allow temporary ponding and to provide for sediment to drop out of the water column;
  - (b) sediment traps, which slow water velocity, allowing sediment to settle out of the water column; and

---

<sup>5</sup> Joint evidence statement of Mr Edkins and Mr Lowe, 29 June 2023, at 4.2.

<sup>6</sup> The modelling as assessed in the s42A report showed a 4.1% increase in P loss to water (from 630 kg/yr to 656 kg/yr).

- (c) extensive riparian planting beyond the buffer areas assumed in Overseer.

27. While the above measures target phosphorus in particular, there is also likely to be a marked reduction in sediment and microbes, and to a lesser degree nitrogen. As Mr Lowe will explain, the mitigation measures proposed for the site will result in a significant reduction of between 89 to 187 kg P/yr (which compares favourably with a total Overseer projected loss of 637 kg/yr).

#### *Overseer*

28. For the Council, the Three Authors criticise the use of Overseer as a tool for assessing nutrient loss for the proposal. As they note, the Overseer Whole Model Review by the Science Advisory Panel identified a number of limitations to using Overseer.<sup>7</sup> However, the Three Authors omit a number of important contextual matters in regard to the use of Overseer:

- (a) The Government response to the review did not direct that Overseer should not be used, but rather cautioned against placing too much emphasis on Overseer in a resource consent context prior to the development of any suitable replacement tool;<sup>8</sup>
- (b) As recorded in Annex C to Mr Lowe's evidence, the Council along with a number of other Regional Councils continue utilise Overseer as part of their standard practice for assessing resource consent applications;
- (c) A range of recent and broadly similar applications for land use consent for dairy conversions to the Council have utilised Overseer as a key assessment tool<sup>9</sup> (and those applications were granted relying, in part, on the outcomes of Overseer modelling); and
- (d) As Mr Lowe states in his evidence, despite its many discussed limitations, Overseer is a comprehensive nutrient management tool that remains useful in predicting relative nutrient losses from changes in farming operations.<sup>10</sup>

29. In addition, in respect of this Application, specifically:

---

<sup>7</sup> Parliamentary Commissioner for the Environment, *Overseer and regulatory oversight: Models, uncertainty, and cleaning up our waterways* (2018).

<sup>8</sup> *Government response to the findings of the Overseer peer review report* (August 2021), Section 4.1.

<sup>9</sup> See, for example, the applications by Fawna Farms Limited (APP-20222565), Platinum Dairies Limited (APP-20211740) and Cashmere Bay Dairy Ltd (APP-20211381), among others at:

<https://www.es.govt.nz/environment/consents/notified-consents>

<sup>10</sup> At [61].



- (a) The issue of the use of Overseer was raised at the pre-hearing meeting on 21 February 2023. The result of that discussion, as recorded in Pre-hearing Meeting Report, was that the parties agreed that "*.. Overseer is currently the best modal [sic] available.*"<sup>11</sup>
- (b) The Council commissioned an audit of the Overseer modelling for the Application, and Ms McRae's report relies in part on the findings of the Overseer modelling and audit. The Applicant agrees with Ms McRae's framing that:
- "In light of the Government's Science Advisory Panel's review of the effectiveness of Overseer in assessing and predicting farm-scale nitrogen losses, and the conclusion that the current Overseer model is not fully fit-for-purpose in the way it is being currently used in the consenting process, mitigation measures are of the utmost importance when assessing this application."*<sup>12</sup>
- (c) The Council also engaged Mr Reuben Edkins to review the Overseer modelling for the Application, and Mr Lowe and Mr Edkins have engaged at length with the aim of agreeing appropriate modelling. As recorded in the joint witness statement, these experts now agree on appropriate models reflecting the current (Stage 0 (conf rev)) and proposed (Stage 4 (v3)) farming systems.<sup>13</sup>
- (d) The Three Authors mischaracterise the water quality improvements as being 'entirely predicated on the results of the Overseer model'.<sup>14</sup> As discussed above, this is clearly not the case.
30. The Application uses Overseer appropriately as a tool for estimating and demonstrating there will be a reduction in nutrient loss. However, it is the mitigation measures proposed (and particularly those that go beyond the modelling) that can give confidence that the Application will result in reduced nutrient losses compared to existing operations.

---

<sup>11</sup> At paragraph [22].

<sup>12</sup> S42A report at page 14.

<sup>13</sup> At 4.1.

<sup>14</sup> At paragraph [30].

## Other environmental effects addressed by Council experts

31. Many of the other findings of the Council's experts rely on assumptions that there will be increased nutrient losses from the proposal. For the reasons outlined above, that will not be the case.

### *Site constraints and effluent application*

32. The Three Authors note a range of site constraints (including climate, soils, surface water) which, as Mr Lowe addressed in his evidence, are well known, apply equally to existing farming operations, and are taken into account in the proposal. The Three Authors' suggestion appears to be that the proposed systems for effluent application and management will be inadequate. However, this contrasts with Ms McRae's view as expressed in the s42A report that:

- (a) *"The applicant has demonstrated that there will be sufficient storage available in the newly constructed ponds when the land is not suitable to discharge effluent to."*<sup>15</sup>
- (b) *"Effluent can be discharged at low rates and depths, which is consistent with the key policies in avoiding and mitigating effects on water quality."*<sup>16</sup>

33. Mr Lowe's evidence is that through the storage and management system proposed (as set out in the conditions), the application of effluent will not have adverse environmental effects. It should also be noted that there is a current consent for managing effluent on the site which consistent with what is proposed with this Application.

### *Wetlands*

34. The Three Authors note the likelihood of historic wetlands on the site and refer to the policies in the National Policy Statement for Freshwater Management 2020 (**NPSFM**) and National Environmental Standards for Freshwater 2020 (**NESFM**) relating to the protection of wetlands. The Three Authors suggest that the Applicant has not provided any documentation regarding assessment, delineation, and mapping of wetlands on the site. It is not clear whether the authors have reviewed the response to the further information request received from Ms McRae about an area she considered

---

<sup>15</sup> Section 42A Report at 3.3.3.1.

<sup>16</sup> Ibid.

may be an existing wetland.<sup>17</sup> That response explains why that area is not a wetland, and that in any event, the area is grazed and covered in gorse.<sup>18</sup>

35. Wetlands were not identified elsewhere on the site either. In particular, this is because even if there were areas that might feasibly be wetlands, the 'pasture exclusion' under the NPSFM would apply because the broader site is grazed and there is more than 50% coverage of exotic pasture species.<sup>19</sup>
36. The Three Authors go on to suggest that the 'pasture exclusion' in the NESFM "*may not apply since an application for land use change consent is necessary and the area is proposed to largely be used for effluent disposal (FDE Application) rather than grazing.*"<sup>20</sup> This statement demonstrates a misunderstanding of the proposal. The farm is cropped and grazed now and under the proposal this will stay the same (albeit that there will be no intensive winter grazing and a reduction in the cropped area). It is not clear why the Three Authors consider that an application for land use change might mean that the pasture exclusion does not apply, but such an interpretation is not supported by the wording of the NPSFM, NESFM, or any relevant guidance documents.

### **Cultural effects**

37. Te Ao Mārama Inc on behalf of Waihōpai Rūnaka have had a very positive impact on the proposal, enhancing its alignment with te ao Māori (particularly kaitiakitanga) through their recommendations for further refinement of the proposed mitigation and conditions to take a more holistic approach. As noted earlier, these measures have been adopted by the Applicant and include enhancing riparian planting, improved sediment management, greater monitoring and recording, water sampling and improved drainage layout.
38. Ultimately, Waihōpai Rūnaka take a standpoint that they "*remain opposed to the application due to the increase in cow numbers.*"<sup>21</sup> That is a view they are entitled to take, however such a view does not align with the planning

---

<sup>17</sup> See Attachment 2 to the s42A Report.

<sup>18</sup> See Attachment 2 to the s42A Report.

<sup>19</sup> National Policy Statement for Freshwater Management 2020, 3.21, definition of 'natural inland wetland' "*means a wetland (as defined in the Act) that is not:... (e) a wetland that:*

*(i) is within an area of pasture used for grazing; and*

*(ii) has vegetation cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species using the Pasture Exclusion Assessment Methodology (see clause 1.8)); unless*

*(iii) the wetland is a location of a habitat of a threatened species identified under clause 3.8 of this National Policy Statement, in which case the exclusion in (e) does not apply."*

<sup>20</sup> At [48].

<sup>21</sup> Evidence of Stevie-Rae Blair, at [64].

framework. Adding cows to a catchment is not a prohibited or non-complying activity, but rather is permissible where environmental values are maintained and enhanced. For the reasons set out above, this is the case in respect of the Application.

## **REGULATIONS, POLICY AND PLANNING DOCUMENTS AND OTHER MATTERS**

39. The consent authority is directed by section 104 to have regard to relevant provisions of certain statutory planning documents. The Applicant agrees that the provisions identified by Ms McRae in her s42A report are relevant to the application, albeit that certain provisions in respect of Proposed Southland Water and Land Plan (2018) that were appealed have been modified by decisions of the Environment Court.<sup>22</sup>
40. The policies that are most relevant to the matters in contention in the Application are those that relate to the water quality effects of dairy conversions and are directive in a resource consent context. These policies, set out in full in Appendix A, are:
- (a) Policy 13A of the Regional Water Plan 2010, which directs that (among other things) "*(d) Where the risks to the water quality of water bodies... cannot be avoided or mitigated, the Council may decline consent for the establishment of a new dairy farm.*"
  - (b) Proposed Southland Water and Land Plan (2018)
    - (i) Policy 11, which applies to the Peat Wetlands physiographic zone (which makes up part of the Application site) and directs to "*avoid dairy farming and intensive winter grazing where contaminant losses will increase as a result of the proposed activity*".
    - (ii) Policy 13(1), which recognises that "*the use and development of Southland's land and water resources enables people and communities to provide for their social, economic and cultural wellbeing*";
    - (iii) Policy 16 directs to "*avoid where reasonably practicable, or otherwise minimise*" adverse environmental effects from farming activities, including by "*(a) ensuring that all farming activities:*

---

<sup>22</sup> For the most up-to-date version of the plan, see the version attached to the Environment Court's Sixth Interim Decision: *Aratiatia Livestock Limited (and ors) v Southland Regional Council* [2023] NZEnvC 051.

- (i) *do not increase nitrogen, phosphorus, sediment or microbial contaminant discharges; and*
- (ii) *minimise nitrogen, phosphorus, sediment or microbial contaminant discharges; and*
- (iii) *reduce adverse effects on water quality where the farming activity occurs within the catchment of a waterbody identified in Schedule X; ..."*

41. *While not a plan provision, Regulation 24 of the NESFM is also directive to decision-makers and applies to the Application, providing that resource consent for a dairy conversion "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."*

42. The applicable provisions can be summarised 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.

43. There are a handful of policies which Ms McRae considers the Application is inconsistent with. Her reasoning relies on findings that the proposed activities will lead to increases in phosphorus loss and or that the proposed mitigations are not adequate enough to avoid and mitigate effects on water quality.<sup>23</sup> As noted above, since the s42A report was authored, the Overseer modelling now agreed between Mr Edkins and Mr Lowe shows a slight decrease in P. Further, for the reasons set out above and the evidence of Mr Lowe and Mr Ellwood that the effects of the proposal will be positive when compared with the existing environment. Accordingly, the Application is consistent with these policies and objectives.

---

<sup>23</sup> Throughout sections 3.4-3.6 of the s42A report, for example at pages 25 and 27.

## **Other statutory tests**

### *Section 105*

44. In terms of the proposed discharge permits, for the reasons set out in the S42A report,<sup>24</sup> adequate regard has been had to:
- (a) the nature of the discharge and the sensitivity of the receiving environment;
  - (b) the Applicant's reasons for the proposed choice; and
  - (c) alternative methods of discharge.

### *Section 107*

45. Section 107 relates to restrictions on the grant of discharge permits where the discharge is likely to give rise to certain effects. Ms McRae agrees that granting the Application is not precluded by s107 matters.<sup>25</sup>

## **CONDITIONS**

46. Section 108 provides that the consent authority may impose conditions on resource consents (if granted). The Applicant has proposed an extensive set of conditions to be imposed and there is a high level of agreement with those proposed in the s42A report and with modifications by Waihōpai Rūnaka. It should be noted that many of the conditions proposed in the s42A report are consistent with recently granted diary shed effluent discharge and barn consents.
47. An updated version of the proposed conditions is attached to these submissions. In summary, the changes from the version appended to Mr Lowe's evidence respond to the comments from Ms Blair (for Waihōpai Rūnaka) and seek to provide further detail on the proposed mitigation measures.
48. Overall, should the suggested amendments be incorporated, the proposed conditions will appropriately avoid, remedy and mitigate any adverse effects.

---

<sup>24</sup> At 3.9.

<sup>25</sup> At 3.10.3.

## **PART 2 RMA ASSESSMENT**

49. Following the reasoning of the Court of Appeal in *R J Davidson Family Trust v Marlborough District Council*<sup>26</sup>, it is unnecessary to refer to Part 2 in respect of the Application as the relevant plan provisions have given effect to Part 2. Nevertheless, it is respectfully submitted that the Project will achieve the sustainable management purpose of the RMA, and is consistent with sections 6 and 7, for the reasons as set out in the AEE.<sup>27</sup>

## **CONCLUSION**

50. The Application:

- (a) will achieve the sustainable management purpose of the RMA;
- (b) is consistent with the objectives and policies of the relevant planning documents; and
- (c) will appropriately avoid, remedy, or mitigate adverse effects on the environment; and

for these reasons, the Application should be granted.

**DATED** this 30<sup>th</sup> day of June 2023

**Mark Mulholland**

**Counsel for the Applicant**

---

<sup>26</sup> [2018] NZCA 316, [2018] 3 NZLR 283.

<sup>27</sup> At 12.1.1.

## **APPENDIX A: KEY PLANNING PROVISIONS**

### **Proposed Southland Water and Land Plan (2018)**

#### **Policy 11 – Peat Wetlands**

In the Peat Wetlands physiographic:

1. avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:
  - i. identifying contaminant pathways to ground and surface water bodies;
  - ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, deep drainage, and lateral drainage;
  - iii. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, deep drainage, and lateral drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and
2. avoid dairy farming and intensive winter grazing where contaminant losses will increase as a result of the proposed activity.

#### **Policy 13 - Management of land use activities and discharges**

1. Recognise that the use and development of Southland's land and water resources enables people and communities to provide for their social, economic and cultural wellbeing.
2. Manage land use activities and discharges (point source and non-point source) to enable the achievement of Policies 15A, 15B and 15C.

#### **Policy 16 - Farming activities that affect water quality**

1. Avoid where reasonably practicable, or otherwise minimise any adverse environmental effects (including on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes, and groundwater) from farming activities by:
  - (a) ensuring that all farming activities:
    - (i) do not increase nitrogen, phosphorus, sediment or microbial contaminant discharges; and
    - (ii) minimise nitrogen, phosphorus, sediment or microbial contaminant discharges; and
    - (iii) reduce adverse effects on water quality where the farming activity occurs within the catchment of a waterbody identified in Schedule X; and
  - (b) ensuring that new, or further intensification of existing, dairy farming of cows, or any intensive winter grazing or pasture-based wintering activities are not located in close proximity to Regionally Significant Wetlands, Sensitive Water bodies identified in Appendix A, nohoanga listed in Appendix B, mātaītai reserves, taiāpure, estuaries or the coastal marine area; and



- (c1) subject to (a) and (b) being achieved across the whole of the land holding, recognising that a limited proportion of intensive winter grazing or pasture-based wintering is required on most land holdings to carry stock over winter; and
- (c) Requiring all farming activities to:
  - (i) be undertaken in accordance with a Farm Environmental Management Plan; that:
    - (1) identifies whether the farming activity is occurring, or would occur, in a catchment of a waterbody identified in Schedule X;
    - (2) identifies and responds to contaminant loss risk, and the contaminant pathways (and variants) for the relevant Physiographic Zones;
    - (3) sets out how adverse effects on water quality from the discharge of contaminants from farming activities will be minimised or, where the farming activity is occurring in a catchment of a waterbody identified in Schedule X, reduced;
  - (ii) avoids where reasonably practicable, or otherwise minimises sediment run-off risk from farming and hill country development activities by identifying critical source areas and implementing actions and maintaining practices including setbacks from water bodies, sediment traps, riparian planting, limits on areas or duration of exposed soils and the prevention of stock entering the beds of surface water bodies; and
  - (iii) avoids where reasonably practicable, otherwise minimises collected and diffuse run-off and leaching of nitrogen, phosphorus, microbial contaminants and sediment through the identification and management of critical source areas and the contaminant pathways identified for the relevant Physiographic Zones (and variants) within individual properties.

2. When considering a resource consent application for farming activities, consideration should be given to the following matters:

- (a) whether multiple farming activities (such as cultivation, riparian setbacks, and winter grazing) can be addressed in a single resource consent; and
- (b) granting a consent duration of at least 5 years where doing so is consistent with Policy 40.

## **Regional Water Plan 2010**

### **Policy 13A**

- (a) Recognise that the establishment of new dairy farms poses risks to water quality, including the quality of water in coastal lakes, lagoons, tidal estuaries, salt marshes and coastal wetlands, that needs to be addressed when establishing a new dairy farm.
- (b) Manage the risk posed by the establishment of new dairy farms by requiring resource consent and requiring the documentation of risks and measures to avoid or mitigate them in a Conversion Environmental Plan.
- (c) Consideration should be given to, but not be limited to, the following matters;
  - (i) the assimilative capacity and drainage characteristics of the soil and consequential effects on water quality;
  - (ii) the risks posed by the establishment of a new dairy farm to the water quality of water bodies, coastal lakes, lagoons, tidal estuaries, salt marshes and coastal wetlands;
  - (iii) the extent to which those risks can be avoided or mitigated through measures proposed in the Conversion Environmental Plan;

- (iv) the likely effectiveness of the measures contained in the Conversion Environmental Plan;
  - (v) how, and within what timeframe, those measures will be implemented.
- (d) Where the risks to the water quality of water bodies, coastal lakes, lagoons, tidal estuaries, salt marshes and coastal wetlands cannot be avoided or mitigated, the Council may decline consent for the establishment of a new dairy farm.

## **APPENDIX B: PROPOSED CONDITIONS**

(overleaf)