

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

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Cashmere Bay Dairy Limited

AND

IN THE MATTER an application for a range of resource consents in relation to
the operation of a dairy activity at 145 Jaffray Road, Otamita

**DECISION OF COMMISSIONER
ON APPLICATION BY
CASHMERE BAY DAIRY LIMITED**

TABLE OF CONTENTS

1.	Introduction.....	3
2.	The Proposal.....	3
3.	The Process.....	6
4.	Assessment of Proposal.....	8
	(i) Freshwater Management in the Region.....	9
	(ii) Assessment of Environmental Effects.....	13
	(iii) The Provisions of Relevant Planning Instruments.....	16
	(iv) Sections 105 and 107.....	17
5.	Terms and Conditions.....	18
6.	Conclusion.....	20

1. Introduction

- [1] I have been delegated the authority to hear and determine an application made by Cashmere Bay Dairy Limited for a series of consents in relation to a dairy farm operation at 145 Jaffray Road, Otamita. The applicants are seeking to renew current discharge and water permits (AUTH-301811-V2 and AUTH-301812-V1), which both expire on 19 December 2022, as well as expanding the dairy farm by increasing the peak milking herd by 140 cows and incorporating an 80ha support block into the dairy platform. A land use consent is also required for an existing 1,500m² feed pad, which can accommodate up to 150 cows.
- [2] A reasonably comprehensive request for further information was made on the 27th of November 2021. That information was provided by the applicant on the 19th January 2022. Council's Section 95-95G notification report was prepared on the 26th of January 2022 and recommended public notification of the application. This duly occurred on the 21st February 2022, and three submissions in opposition were received, along with one neutral submission from the Ministry of Education. Three of the submitters requested to be heard although in the intervening period, two of those submitters withdrew that right. The hearing was held in Invercargill on the 17th of May 2022.
- [3] I advise here that I have determined that the consents should be **granted** subject to conditions imposed under Section 108 of the Act. The conditions are shown in the attached decision certificates.

2. The Proposal

- [4] The proposal is fully described in the application documentation and summarised in the s42A report and the evidence of the applicant's team, but I briefly set out the key facts here. The existing site is an operational dairy farm located approximately 14km north west of Gore. The property lies within the Matura Freshwater Management Unit and is divided between three different catchment boundaries of the Otama Creek, the Matura River, and the Okapua Stream. Surface water in these catchments is considered to be degraded, in particular for E.coli, Total Nitrogen and Nitrate Nitrogen. In terms of groundwater, the property overlays the Knapdale Groundwater Management Zone (RWPS) and the Croydon GMZ

(PSWLP). Groundwater nitrate levels are considered to be high in this area, with the New Zealand Drinking Water standards often exceeded.

- [5] There are a range of soils on the property with most known to have a number of vulnerabilities including severe vulnerability to structural compaction, nutrient leaching and water logging. The physiographic zones with the property are mainly Oxidising (69%), with small areas of Gleyed (16%), Old Mataura (11%) and Bedrock/Hill Country (4%). The main risk in the Oxidising and Old Mataura physiographic zones is to groundwater due to contaminant movement via deep drainage. Within the Bedrock/Hill Country zone, the main risk is contaminant loss to surface water via overland flows which can also occur in the Gleyed zone, although some nitrogen will be removed from soil and aquifers via denitrification in this zone.
- [6] The dairy farm is currently operated under discharge permit AUTH-301811-V2 and water permit AUTH-301812-V1, which are due to expire 19 December 2022. The discharge permit authorises the discharge of dairy shed effluent from 1000 cows onto 100 ha via two centre pivots, K-line pods, cobra rain gun and umbilical system. The water permit authorises the abstraction of 120m³/day of groundwater. In addition to the milking cows on the property, the applicant also runs 120 beef calves/yearlings and 90-120 beef R2s.
- [7] The applicant is proposing to renew its current discharge and water permits and expand the dairy farm by incorporating an 80ha support block into the dairy platform, increasing it from 344ha to 424ha. Milking cows are to increase to 1,140 with the beef grazing being removed from the farm operation. The water take is to increase to 136.8m³ per day, while both a discharge and land use consent is needed for a 1,500m² wood material base feed pad.
- [8] Ms McRae identified the new suite of consents sought by the applicant and their activity status under the Regional Plans and the National Environmental Standards for Freshwater (NES-F) in Table 2 of her report. That table is set out below.

Activity	Relevant Rule	Activity Status
To discharge dairy shed from up to 1,140 cows and feed pad effluent from up to 150 cows to land via centre pivot, low-rate rain gun, K-line pods, umbilical system and slurry tanker.	OP: Rule 50: Discharges of dairy farm effluent to land	Restricted Discretionary activity
	PP: Rule 35: Discharge of agricultural effluent to land	Discretionary activity
To take and use 136,800 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
	PP: Rule 54: Abstraction and use of groundwater	Discretionary activity
To use land for a 1,500 m ² wood material base feed pad which accommodates up to 150 cows.	NES: Regulation 14: Stockholding Areas	Discretionary activity
	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 expansion.	NES: Regulation 19: Conversion of land on farm to dairy farm land	Discretionary activity
	PP: Rule 20: The use of land for a farming activity	Discretionary activity

- [9] On my reading of the NES-F, it would also appear that discharges of contaminants associated with a dairy conversion that do not meet the relevant condition are also discretionary activities under regulation 19(2). That regulation reads as follows:

The following discharge of a contaminant is a discretionary activity if it does not comply with the applicable condition in regulation 18(3) or (4):

(a) the discharge is associated with the conversion of land on a farm to dairy farm land; and

(b) the discharge is into or onto land, including in circumstances that may result in the contaminant (or any other contaminant emanating as a result of natural processes from the contaminant) entering water

- [10] These circumstances exist here, so consent for the discharges associated with the conversion as a discretionary activity is also required under regulation 19(2) of the NES-F.

3. The Process

[11] The application was publicly notified on 21 December 2022. Four submissions were received.

These are summarised in the following table:

Submitter	Oppose/ Support	Issues/comments	Decision Sought	Wish to be heard at hearing?
Hokonui Rūnanga	Oppose	Lack of engagement with mana whenua. Inconsistent with Te Mana o te Wai, NPS-FM and Te Tangi a Taurira. Proposed mitigation measures have in appropriate timeframes.	Decline the application	Yes
Jenny Campbell & Dave Kennedy	Oppose	Inadequate mitigation measures. No consideration of climate change. Degraded groundwater quality. Inconsistent with the NPS-FM, RPS and pSWLP. Lack of consultation with iwi.	Decline the application	Yes
Clare Winifred Ryan	Oppose	High groundwater nitrate levels in the area.	Decline the application	No
Ministry of Education	No formal response	Drawdown effects on Otama School groundwater bore, reduction in quality of drinking water due to discharge of contaminants.	If granted then appropriate monitoring specified as a consent condition	Yes

[12] By the time of the hearing, only Mrs Campbell wished to speak. The hearing was conducted at Invercargill on the 17th May 2022 and the following people attended:

The Applicant

Cashmere bay Dairy Limited was represented by the following people:

- Bridget Irving (Legal Counsel)
- George and Sarah Raymond (Directors and shareholders of the applicant company)
- Dr Michael Freeman (Senior consultant scientist/planner)
- Ms Matilda Ballinger (Planning consultant)

Council Staff

The Council was represented by the following people:

- Ms Jade McRae (Senior Consents Officer and s42A report author)
- Leny Tambo (Consents Co-ordinator)

Submitters

The following submitter appeared at the hearing:

- Mrs. Jenny Campbell for Coal Action Murihiku, supported by Ms. Racheal Johnston

- [13] Ms McRae's s42A report and the applicant's evidence was pre-circulated while Ms Irving presented legal submissions at the commencement of the applicant's case. The s42A report and the applicant's evidence was taken as read. Ms McRae clarified the level of cropping proposed on the farm, and answered a number of questions I had around the relevant policy framework and the proposed term for the consents.
- [14] Written evidence was also produced for the applicant by Ms Miranda Hunter, a Farm Consultant, that addressed nutrient management and the Overseer Modelling on the property. However, Ms Hunter was not required to attend the hearing, as I had no questions for her.
- [15] Mrs Campbell read from a written statement while both the Ministry of Education and Hokonui Runanga, who had withdrawn their right to be heard, tabled written statements. Hokonui Rūnanga advised that they had agreed a number of conditions with the applicant in relation to riparian planting, fencing of critical source areas and processes to be included in the Farm Environmental Management Plan. On the basis that these conditions were incorporated into the application, Hokonui Rūnanga's position on the proposal became neutral. The Ministry of Education also advised that their concerns had been addressed by proposed condition 24 of the s42A report, which requires water quality monitoring at bore F45/0422.
- [16] Copies of the statements of evidence and submissions presented at the hearing are held on file by ES. I do not separately summarise the matters covered here, but refer to or quote from that material as appropriate in the remainder of this decision. I wish to record here my thanks to Ms McRae for her comprehensive s42A report, much of which I adopt as part of this decision.
- [17] I also record my thanks to Mr Jonathan Hall, a farm consultant based in Gore, who guided me on my site visit of the property at the conclusion of the formal hearing.

4. Assessment of Proposal

[18] The proposal is for a number of restricted discretionary and discretionary activities, which Ms McRae bundled in accordance with the usual practise and treated them collectively as a discretionary activity. I note that in her evidence, Ms Ballinger considered the proposal to be a non-complying activity but changed her evidence at the hearing to reflect the position of Ms McRae. The application has been treated as a discretionary activity in this decision.

[19] Section 104 of the Act sets out what must be considered when deciding a resource consent application. Section 104B provides that once those matters have been considered, I can grant or refuse an application for a discretionary activity. If the application is granted, conditions may be imposed under Sections 108 of the Act. Because this is a discretionary activity, it does not need to first pass through the Section 104D gateway test before it can be considered for consent. The matters contained in Section 104 have all been considered in arriving at this decision.

[20] I note that to grant a discretionary activity under Regulation 19 of the NES-F, Regulation 24 requires that the consent *“may be granted only if the consent authority is satisfied that granting the consent will not result in an increase in—*
(a) contaminant loads in the catchment, compared with the loads as at the close of 2 September 2020; or
(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.”

[21] The matters in contention, prior to the hearing, were as follows:

- Lack of consultation with local Iwi;
- Potential impact on cultural values, and a lack of assessment on this;
- That the discharges are proposed in an area where surface and groundwater quality is already degraded;
- That the mitigation proposed was insufficient;

- That allowing an increase in cow numbers would contribute more greenhouse gas emissions;
- That the proposal is not supported by the relevant planning documents;
- That the proposal has the potential to adversely impact on the Otama School bore.

[22] A number of these issues were resolved prior to the hearing so will only be briefly touched upon in this decision. In relation to greenhouse gas emission levels, Mrs Campbell acknowledged in her presentation that it is not a relevant matter under the Resource Management Act, a fact confirmed in Ms Irving's legal submissions.

[23] In my view, the key matter to address is how this proposal fits within the strategic direction for freshwater management in the Region.

(i) Freshwater Management in the Region

[24] The Southland Regional Policy Statement 2017 (SRPS) became operative on 9 October 2017 and accordingly, it pre-dates the National Policy Statement for Freshwater Management 2020 (NPSFM). However, it was developed under the 2014 iteration of the NPSFM. It seeks to maintain or improve water quality in accordance with freshwater objective formulated under the NPSFM 2014 (Objective WQUAL.1, Policy WQUAL.1). Policy WQUAL.5 is to:

Improve water quality by:

- (a) *identifying water bodies that are not meeting freshwater objectives, including identifying priority freshwater management units;*
- (b) *specifying targets to improve water quality within those water bodies within defined timeframes;*
- (c) *implementing management frameworks to meet the targets taking into account;*
 - (i) *the values supported by the water body/ies;*
 - (ii) *national or legislative standards and requirements;*
 - (iii) *the benefits and costs associated with achieving improvement in water quality*

[25] Policy WQUAL.2 focuses the attention on the following contaminants:

- (a) nitrogen;
- (b) phosphorus;
- (c) sediment;
- (d) microbiological contaminants.

- [26] Ms McRae advised at paragraph 3.4.1 and 3.4.2 that there are two regional plans in effect, being the Regional Water Plan for Southland (RWP) and the proposed Southland Water and Land Plan (pSWLP), but that more weight should be given to the pSWLP because it is *“a more recent planning document, which has been developed under the National Policy Statement for Freshwater Management and has been through a submissions and hearing process where the majority of the objectives have been resolved.”* I agree but note that it too was only prepared under the 2014 version of the NPSFM and hence, the NPSFM 2020 must be considered as there are likely to be gaps in implementing the national policy direction on freshwater management.
- [27] Objective 6 of the pSWLP essentially reflects the overall policy direction for freshwater management. It requires water quality in freshwater bodies to be maintained where it is not degraded and improved where it is degraded by human activities. Objective 8(a) of the pSWLP requires groundwater quality that meets both the Drinking Water Standards for New Zealand and any freshwater objective established under the Freshwater Management unit process to be maintained. Where it does not meet these standards, it must be progressively improved to achieve them.
- [28] The development of freshwater objectives under the Freshwater Management unit planning process has yet to occur in Southland. However, it is well established by the evidence of Mr Freeman and Ms McRae that both groundwater and surface water quality in this location is degraded, a fact highlighted by the submissions of Clare Winifred Ryan and the Coal Action Group (Mrs Campbell). Mr Freeman’s evidence (paragraph 37) was that *“to achieve significant reductions in nitrate nitrogen concentrations in groundwater in this area would require a new catchment-scale approach to water quality management.”*
- [29] As a consequence, Policy 16(1)(b) of the pSWLP is particularly relevant in this case as it requires that further intensifying dairy farming of cows should generally not be granted prior to the development of freshwater objectives under Freshwater Management Unit processes,

in circumstances where adverse effects cannot be avoided or fully mitigated; or where existing water quality is already degraded to the point of being over-allocated; or where certain water quality standards are not met. On the face of it, at least one, if not all, of these circumstances exist here. Hence, the starting point in this case would appear to be 'not to grant'.

[30] For her part, Ms McRae did not directly address this issue in her s42A report, but noted that the applicant was not the sole contributor to the degraded groundwater quality in the area and considered the overall reduction in contaminants under the new proposal sufficient to comply with Policy 16. In her review, she noted that 'intensification' is not defined in the pSWLP but considered intensification of existing dairy farming would include an increase in cow numbers and/or an increase in dairy platform size, as they are the two main triggers of Rule 20 and Policy 16 is directly related to Rule 20. In this case, she felt it was arguable that de-intensification was occurring because of the increase in the size of the dairy platform and removal of beef cows size results in the stocking rate dropping from 2.8 to 2.6 cows/ha. She was, however, concerned that an increase in dairy cow numbers would require more R1s and R2s to establish and maintain herd size, and highlighted the ability to graze beef cows, without regulation, which *"would most certainly result in intensification above what is currently occurring on the land."* To guard against that, she recommended amendments to condition 8 of the Land Use consent for farming in order to make the condition more robust with regard to 'intensification'.

[31] For the applicant, Ms Irving highlighted the nuanced nature of the policy and the fact that the activity status is 'discretionary' as opposed to non-complying. In her submission, the 'generally not grant' phrase means something different is required and that developments need to be carefully scrutinised. In her submission, the applicants were 'pulling all the levers' to achieve better outcomes in this catchment.

[32] Dr Freeman reiterated his position that this is a catchment wide land use issue, and if all land users made the changes proposed here, there would be a significant change in groundwater quality. He noted that 'overallocation' has not been defined in the pSWLP (although I noted that it is defined in the NPSFM) so it is challenging to assess this proposal in that context. He

highlighted the fact that the pSWLP policy approach on this issue has not been tested in the Environment Court and he was not convinced that it was consistent with the clear direction of the NPSFM.

- [33] Ms Ballinger felt that the reduction in stocking rate was indicative of 'deintensification'. Significantly, she considered the reference to 'generally' in the policy meant that there would be exceptions and that the direction of the NPSFM was important in this context. She suggested that one of the aims of Policy 1 of the NPSFM (that Freshwater is managed in a way that gives effect to Te Mana o te Wai) is to make immediate improvements and granting these applications would be an immediate improvement. She did note that improvements would need to be made without this consent being granted (in reference to the NES-F), but there is no guarantee of the scale of those improvements. In Ms Ballinger's opinion, this application was an exception that Policy 16 anticipated.
- [34] In her reply, Ms Irving addressed Ms McRae's comments around intensification, noting that cow numbers and the platform size were 'inputs' but the reference to 'generally' in the policy recognises that there are other inputs that can deal with the issue. In her submission, one needs to look at the overall approach adopted to the loss of contaminants to the environment, and in this sense, she considers the proposal was consistent with Policy 13 of the NPSFM in that action is 'being taken' to achieve Policy 11 of the NPS, which seeks to phase out overallocation and future over-allocation is avoided.
- [35] I agree that consideration of the direction of the NPSFM is critical in this case because the plan predates the latest iteration of the NPSFM, so is unlikely to be entirely consistent with that document (although it does appear to me that Policy 16 goes some way to giving effect to Policy 3 and 11 of the NPS). Furthermore, as Ms McRae and the applicant's team advised, Policy 16 is also the subject of an Environment Court appeal so is in a state flux.
- [36] Having considered the evidence in the round, the question of whether this is an intensification or not, does not weigh heavily in the outcome. Either way, I have concluded that the proposal is achieving Objectives 6 and 8. If it is intensification, and Policy 16(1)(b)

applies, I agree with Ms Ballinger that the phrase 'generally' means that the policy anticipates exceptions and that this proposal falls to being an exception.

[37] On the face of it, I would tend to agree with Ms McRae that the structure of the relevant rule (rule 20) indicates that the trigger for intensification is the increase in platform area and cow numbers. The exception here, in terms of Policy 16(1)(b), is that the applicant has done this but has reduced the overall effects of their overall farming operation.

[38] Having said that, I note that Policies 9 and 10 of the pSWLP, which are relevant here as they deal with the Old Mataura and the Oxidising physiographic zones, use the phrase 'additional dairy farming' in relation to increasing contaminant losses. It is unclear whether a deliberate distinction has been made here but the use of 'further intensify' in Policy 16(1)(b) without the connection to contaminant loss may suggest intensification needs to be more than additional cows.

[39] Regardless, I agree that the proposal is giving effects to the NPS, as far as it can, as I accept Ms Irving's submission that the catchment-based water quality issue will require changes catchment wide. As Ms Irving pointed out, the proposal is heading in the right direction, even though we don't know the limits that will be put in place through the FMU process. This proposal is taking action in a freshwater catchment that is degraded (Policy 13), which will assist in phasing out the over-allocation of water quality (Policy 11). As Ms Ballinger noted, the changes will have immediate effect, without waiting for the limits being set through the FMU process.

(ii) Assessment of Environmental Effects

[40] By arriving at this point, it will be evident that I accept the evidence of the applicant and Ms McRae regarding the environmental effects of the proposal.

[41] Under the proposed farming model, Ms Hunter's Overseer calculations indicate that across the total property:

- N loading would be reduced from 24,970 to 22,512 kg N/ha/yr, a 9.8% reduction.
- P loading would be reduced from 405 to 384 kg P/ha/yr, a 5.2% reduction.

- [42] While dairy cows will increase, this reduction has been achieved by an increased discharge area, removal of beef animals, reduction in nitrogen fertiliser use and reduction in farm Olsen P to 30.
- [43] This evidence indicates that the proposal meets the requirements of Regulation 24 of the NES-F, so there is no bar to granting consent under the NES-F.
- [44] In relation to this issue, Ms Hunter clarified two matters in the s42A report. She noted that the use of catch crops had not been included in the Overseer Modelling, but highlighted the reduction in nitrogen leaching losses achieved in Canterbury, being around 25- 30%. She did not expect these results in Southland but did expect significant mitigation from this practice. While Ms McRae did not give significant weight to it, Ms Hunter advised any mitigation achieved from it will be over and above the modelling result. In his evidence, Mr Raymond indicated that the right conditions occur for this practise around 50% of the time and that he uses it when he can. On this basis, I accept that the reduction in nitrate losses is, at times, likely to be better than modelled by Overseer.
- [45] Ms Hunter also noted that in her opinion, reducing the Olsen P level is not a 'good management practice' but a mitigation measure. She highlighted the link of Olsen P to pasture production and noted the higher-than-average pasture production at this property, evidenced by higher-than-average milk production. At her paragraph 29, she stated that *"constraining Olsen P to 30 (and thereby reducing phosphorus loss from soil) is likely to have an impact on pasture growth on a high performing farm and therefore in my opinion should be considered a mitigation."*
- [46] Ms Hunter also addressed the uncertainties, assumptions and limitations of the Overseer modelling and outlined the steps taken to minimise the impact of these factors. She stated at paragraph 38 that *"applying Overseer output figures and farm system input parameters, combined with mitigations outside of Overseer are well established methods to reduce contaminant loss to water."*

- [47] I accept Ms Hunter's evidence and note that no further concerns were raised in Ms McRae's report regarding the use of Overseer. In relation to elevated groundwater nitrates in the area, Ms McRae concluded at paragraph 3.3.3.3 that she does *"not consider Cashmere Bay's current or proposed activities to be the sole contributor to the elevated groundwater nitrates in the area and its proposed mitigations that target the deep drainage contaminant pathway (utilising catch crops, removing beef stock and reducing crop area) adequate to avoid, remedy or mitigate any potential or actual adverse effects on groundwater quality."* I agree.
- [48] Overall, I conclude that while there will be adverse effects on the environment, the evidence is that they will be adequately avoided, remedied or mitigated to the point that they are minor. In the context of the existing farming operation, environmental effects will be reduced through the adoption of practices that will result in nitrate and phosphorus losses.
- [49] Whether these improvements are sufficient into the future, once the FMU process is complete, only time will tell. This is likely to be of great significance to iwi, and Mrs Campbell and Ms Ryan, who recorded their concern that cultural values have not been assessed by an appropriately qualified or informed party. Ms Irving highlighted the submission process as meeting the statutory obligation around consultation. However, there is a strong policy direction to consult with iwi in all the relevant planning documents, with the NPSFM significantly strengthening the role of iwi in the management of freshwater.
- [50] While I acknowledge the position of the Runanga on this matter, I note that a site visit did take place and a range of conditions addressing riparian management, critical source areas and monitoring have been agreed, which address some of the matters raised in their submission. This has led to the Rūnanga now adopting a position of neutrality, although it would appear that residual concerns remain. Without the ability to question the Rūnanga around these concerns, I cannot address them here. However, as I noted above, I suspect that the FMU process will be of great interest to iwi, and this will likely be the opportunity to address the wider impact of land use on cultural values within this catchment.
- [51] I note the concerns of submitters about groundwater quality and am aware that this is very much a live issue across the country. The potential effects on groundwater quality is the key

focus of this application and as a consequence, I have considered it very closely in my decision making. However, that consideration is with the recognition that there are limits to which I can deal with potential cumulative effects by way of an individual application. I am satisfied that with the range of good management practices and mitigations outlined in these applications, along with the imposition of the conditions attached the consents, the granting of these consents will not accentuate any potential cumulative effects. As Dr Freeman highlights, broader contaminant management in the Catchment will need to be considered as part of a separate future process.

(iii) The Provisions of Relevant Planning Instruments

[52] I have considered the strategic direction of freshwater management above and concluded that the proposal is achieving that. Ms McRae's report contains a comprehensive assessment of the proposal against all the relevant policy documents, being the following:

- the National Policy Statement for Freshwater Management (2020) (NPS-FM);
- Resource Management (National Environmental Standards for Sources of human Drinking Water) Regulations 2007;
- the Southland Regional Policy Statement 2017 (PRS);
- the Regional Water Plan 2010 (RWP);
- the Proposed Southland Water and Land Plan (2018 Decisions version) (pSWLP);
- Environment Court decisions on the Proposed Southland Water and Land Plan; and
- the Ngāi Tahu Murihiku Natural Resource and Environmental Iwi Management Plan 2008.

[53] In relation the RWP and the pSWLP, Ms McRae concluded at section 3.4, page 33 that “[t]he key policies from the RWP relate to water quality, soil health and water quantity. I consider that the proposed activities are consistent with these provisions. The key policies in the pSWLP relate to the physiographic zones which the site is located in and directions around maintaining and/or improving water quality. I consider that the proposed activities are generally consistent with these provisions.” She also concluded that the proposal was consistent with the relevant provisions of the RPS and the NPSFM and that, in terms of the National Environmental Standard for Sources of Human Drinking Water Regulations 2007,

any potential effects on water supply are likely to be negligible. I note that the Ministry of Education were comfortable with the recommendations of the s42A Report. r

[54] In her evidence, Ms Ballinger acknowledged Ms McRae's comprehensive planning assessment, which she considered very thorough. She agreed with her conclusions in relation to all relevant planning documents.

[55] Subject to the discussion in relation to the strategic direction of freshwater management above, I also generally agree with Ms McRae and have adopted her analysis and conclusions accordingly.

[56] In relation to the Te Tangi a Tauria, the Iwi Management Plan for Murihiku, Ms. McRae addressed this at her Section 3.9.1. To the extent possible, Ms. McRae assessed the proposal against this plan and did not find any inconsistency.

(iv) Sections 105 and 107 of the RMA

[57] Because this involves a discharge permit, in addition to the matters in Section 104(1), I must have regard to the matters in Section 105 as follows:

- (a) *the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
- (b) *the Applicant's reasons for the proposed choice; and*
- (c) *any possible alternative methods of discharge, including discharge into any other receiving environment.*

[58] The sensitivity of the receiving environment was considered in Ms. McRae's assessment and she highlighted the key risks being to surface water quality through overland flow of contaminants and to groundwater quality through leaching of contaminants via deep draining soils.

[59] This risk is reasonably significant given the hydrogeology of the area. Mr. Freeman summarised the key conclusions of the Knapdale Groundwater Zone Technical Report undertaken in 2012 as:

- *The Knapdale aquifer away from the Mataura River is recharged predominantly from local soil moisture infiltration.*
- *The aquifer is shallow and thin.*
- *This combination of factors means that the aquifer is vulnerable to contamination from nitrate nitrogen in drainage from local land use.*

[60] Given the predominance of Old Mataura and Oxidising physiographic zone on the property, there is a high potential in this area for nitrate nitrogen leaching.

[61] Ms. McRae considered the low-rate discharge irrigation method to be appropriate for the receiving environment and also highlighted discharge buffers to surface waterways and bores. She also assessed the alternatives considered by the applicant and agreed with the applicant that those alternatives would likely result in greater adverse effects. The application noted “there are no other practicable environmentally acceptable alternatives to applying farm dairy effluent to land”.

[62] I have concluded above that the proposal is consistent with the policy direction for freshwater management and that there will be an improvement in the level of nutrient loss from this property. The existing groundwater issues will be addressed by FMU process but this proposal is actively reducing its impact on groundwater. Hence, I have concluded that the matters identified in s105 are no barrier to granting the consents sought.

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

5. Term and Conditions

[64] The applicant applied for a 10-year consent period, which would take the consents out to June 2032. Ms McRae recommended a common expiry date of 31 May 2032, to align with the end of the dairy milking season. However, the draft consents showed a 31 May 2033 expiry date.

[65] I questioned Ms McRae about the various different dates at the hearing, noting the fact that the NES-F requires the term of a discretionary activity to expire before 1 January 2031. Ms McRae advised that 2033 date was selected as she assumed the decision would come out after the 31 May, so to maintain a 10-year period that aligns with the dairy season, she pushed the date out to 2033. In relation to the NES, she noted that as the Regional Plan also requires resource consent for the activity controlled by the NES activity, she considered the 10-year term sought by the applicant to be appropriate for all activities.

[66] However, that is legally not possible for any consents required under this NES. Section 43B(3) of the RMA states that *“a rule or resource consent that is more lenient than a national environmental standard prevails over the standard if the standard expressly says that a rule or consent may be more lenient than it.”* Section 6 of this NES provides as follows:

(6) Relationship between regulations and plan rules and resource consents

(1) A district rule, regional rule, or resource consent may be more stringent than these regulations.

(2) A district rule, regional rule, or resource consent may be more lenient than any of regulations 70 to 74 (culverts, weirs, and passive flap gates) if the rule is made, or the resource consent is granted, for the purpose of preventing the passage of fish in order to protect particular fish species, their life stages, or their habitats.

[67] As a consequence, all the NES consents must have an expiry date of no later than 31 December 2030, which includes the land use to expand the dairy farm and the associated discharge consents. It is of course possible to grant the other consents for a 10-year term however this would require the farm to be scaled back to its current size from 31 December 2030. However, I consider the consents all intrinsically linked with the activity of dairy farming so granting the other consents for a longer term would not be appropriate nor practical.

[68] While compliance with the NES effectively ties my hands on this issue, there are also compelling reasons for a shorter term in this case. Policy 40 of the pSWLP provides as follows: *“When determining the term of a resource consent consideration will be given, but not limited, to:*

1. *granting a shorter duration than that sought by the applicant when there is uncertainty regarding the nature, scale, duration and frequency of adverse effects from the activity or the capacity of the resource;*
2. *relevant tangata whenua values and Ngāi Tahu indicators of health;*
3. *the duration sought by the applicant and reasons for the duration sought;*
4. *the permanence and economic life of any capital investment;*
5. *the desirability of applying a common expiry date for water permits that allocate water from the same resource or land use and discharges that may affect the quality of the same resource;*
6. *the applicant's compliance with the conditions of any previous resource consent, and the applicant's adoption, particularly voluntarily, of good management practices; and*
7. *the timing of development of FMU sections of this Plan, and whether granting a shorter or longer duration will better enable implementation of the revised frameworks established in those sections."*

- [69] Policy 40(5) highlights the desirability of ensuring common expiry dates when the same resource is affected by different types of consents. The degraded nature of the water resource in this catchment, together with the fact that the FMU process is not complete, points to a shorter duration than what might normally be expected. A shorter duration will better enable the implementation of any new approach that may be developed for freshwater management in this catchment.
- [70] With respect to the conditions of the consent, these were discussed and agreed to between the parties during a recess at the hearing. Outside of amending the expiry date, they remain untouched.

6. Conclusion

- [71] I have determined above that any adverse environmental effects that the proposal may have will not be more than minor. The key factor in this is that the Overseer Modelling predicts that the changes made to the farm model will lead to a reduction in nitrogen loss to water by 9.8 % and a reduction in Phosphorus loss to water of 5.2% across the total property, while additional mitigating factors, not modelled, are likely to reduce these losses further. This will assist in improving the water quality of a catchment that is considered degraded and as a consequence, the direction of the relevant national and local planning instruments in respect

to such catchments is being achieved. I have also considered the provisions of the Ngai Tahu Ki Murihiku Resource and Environmental Iwi Management Plan 2008 (as another relevant matter) and while I acknowledge that this document precedes the dairy boom in Southland, so may not address all issues relevant today, the proposal is generally consistent with the outcomes sought by this plan.

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

[73] Ms McRae has undertaken an assessment of Part 2 matters and concluded *“that the application meets the relevant provisions of Part 2 of the RMA as the proposal achieves the purpose of the RMA which is the sustainable management of natural and physical resources.”* I agree and consent has been granted accordingly.

DATED at Dunedin this 8th day of June 2022.



Allan Cubitt
Independent Hearings Commissioner