

**BEFORE THE COMMISSIONER APPOINTED BY
ENVIRONMENT SOUTHLAND**

IN THE MATTER

of an application
for resource
consent APP-
20211381

BY

**CASHMERE BAY
DAIRY LIMITED**

Applicant

SUBMISSIONS OF COUNSEL FOR THE APPLICANT

DATED 16 MAY 2022



GALLAWAY COOK ALLAN LAWYERS
B Irving
bridget.irving@gallowaycookallan.co.nz

P O Box 143
Dunedin 9054
Ph: (03) 477 7312
Fax: (03) 477 5564

SUBMISSIONS OF COUNSEL FOR THE APPLICANT

Introduction

1. Cashmere Bay Dairy Limited has applied for a suite of resource consents to continue and expand their dairy operation at 145 Jaffray Road, Otama.
2. The existing operation is a 1,000 cow dairy platform with two separate dairy support blocks of approximately 80ha each. The current application seeks to incorporate one of the support blocks (Support Block 2) into the dairy platform with an associated decrease in beef cattle and increase in milking cows to 1,140.
3. The other support block (Support Block 1) will continue to be used in the same way as it is currently.
4. The application includes a Farm Environmental Management Plan that sets out the various GMP and extra mitigation practices that will be deployed as part of the proposed farm system.
5. Comparative Overseer modelling has been undertaken that demonstrates nutrient losses across the overall operation will be reduced as a result of the proposal, relative to the existing land use configuration.
6. Evidence has been filed on behalf of the applicant as follows:
 - (a) George Raymond – On behalf of the applicant
 - (b) Miranda Hunter – nutrient management
 - (c) Mike Freeman – water quality
 - (d) Matilda Ballinger – planning.
7. Overall, the application falls to be considered as a discretionary activity. The section 42A report concludes that consent may be granted subject to conditions. A conclusion with which the Applicant agrees.
8. These legal submissions will traverse the following:

- (a) Decision making framework:
 - (i) Existing environment
 - (ii) Section 104(2A)
- (b) Matters raised in submissions:
 - (i) Relevance of greenhouse gas emissions.
 - (ii) Land use intensification.
 - (iii) Groundwater quality.
- (c) Conditions proposed by Applicant
 - (i) Hokonui [Rūnanga](#) agreed conditions.

9. These submissions do not address matters relating to section 104(1)(b) given as Counsel agrees with the position outlined in the section 42A report with respect to the relative weight of the various planning documents and the level of alignment between the Planners on the policy assessment.

Decision making framework

10. As set out the application is for a discretionary activity. Therefore consent may be granted under section 104B and if it is conditions may be imposed.
11. The application needs to be assessed under section 104. This assessment includes:
- (a) The actual and potential effects on the environment. This includes both the positive and negative effects of the proposal.
 - (b) The relevant provisions of the various statutory documents.
 - (c) Any other relevant matter.

Existing Environment

12. For the purposes of assessing the effects under section 104(1)(a) it is first necessary to determine what the 'existing environment' is. That

being the environment against which the effects of the proposal will accrue.

13. This application seeks to replace resource consents for an existing dairy operation, which would otherwise expire in December this year. Therefore, the effects of the existing dairy operation cannot be considered to be part of the existing environment beyond the expiry of the permits in December.¹
14. However, that does not mean that the 'environment' will include no farming land use. As set out in *Hawthorn*² the environment includes the future state of the environment as it might be affected by exercise of permitted activity rights and implementation of consents already granted.
15. Further, in accordance with *Save Kapiti Inc v. New Zealand Transport Agency* assessment of the future environment must apply a 'real world lens'. Therefore it should only include those activities that are likely to be undertaken to ensure that the future environment is not artificial.
16. In the current circumstances those permitted activity rights would include utilising the dairy platform for permitted winter grazing. They would also include Sheep and Beef grazing. The extent of likely losses from such a land use are demonstrated by the modelling undertaken by Ms Hunter in relation to current support block 2.³ That work reveals that nutrient losses are very similar to what is proposed.
17. Permitted activities are obviously also required to deploy GMP and operate in accordance with a Farm Environmental Management Plan, but there would be no obligation on the Applicant to utilise extra mitigation methods that go beyond GMP. Such as the Riparian Planting Plan, use of catch crops and so on.
18. It is submitted that the existing environment closely reflects the level of nutrient losses occurring under the existing farming regime.

¹ *Ngati Rangī Trust v. Manawatu-Whanganui Regional Council* [2016] NZHC 2948

² *Queenstown Lakes DC v. Hawthorn Estate Ltd* [2006] NZRMA 424 (CA)

³ Ref application.

19. The correct assessment of the existing environment is also relevant when considering the matters raised by the Ministry of Education. As the Ministry indicates in its submission it has drilled a bore, but does not currently utilise it. Given the existing groundwater quality, and fact that the ministry does not utilise the bore, it is submitted that it is unlikely that the bore will be relied upon for drinking water supply (and almost certainly not without treatment). On this basis it is submitted that the use of the school bore for drinking water supply is not part of the existing environment.

Section 104(2A)

20. Where an application is subject to section 124, regard must be had to the investment of the existing consent holder.
21. As set out in the application the property has been extensively developed for the purpose of the dairy operation including:
- (a) Pivot irrigators, K-line, rain guns;
 - (b) Dairy shed
 - (c) Stock lanes
 - (d) Effluent storage, including synthetic liner and leak detection etc.
22. In the event that the consent sought are not granted only some of this infrastructure would become completely redundant, but notably it would include the 'big ticket' items such as the dairy shed, milking infrastructure, and effluent storage system.
23. Declining the application would strand these assets and lock the applicant in to a less financially productive farming system.

Relevance of Greenhouse gas emissions

24. Coal Action Murihiku raises concern about the impact of the application on the community's ability to reduce methane emissions if/when that is required. As things currently stand greenhouse gas emission levels are not a relevant matter under the Resource Management Act.

25. This application does not include any air discharge applications and therefore section 104E is not relevant. However, the jurisprudence is clear with respect to section 7(i).
26. Section 7(i) is directed towards consideration of the effects of climate change, not the effect on climate change.⁴
27. On this basis, despite the genuine concern expressed by Coal Action Murihiku the issue is simply not relevant under section 104(1)(a).

Intensification v. deintensification

28. A number of the submissions effectively express concern about the potential effects arising from the proposal because it features an 'increase in cow numbers'.
29. This is an oversimplification of what is proposed. Whilst it is accepted that the number of dairy cows will increase, there is a reduction in beef cattle.
30. The incorporation of Support Block 2 into the dairy platform allows for a larger area of land to be available for irrigation of dairy effluent. As set out by Ms Ballinger the minimum requirement is 4ha/100 cows. Under the existing system there are 20ha/100 cows available and under the proposed there will be 23ha/100 cows.
31. Further the annual application of nitrogen fertiliser is reducing from approximately 250kg/yr to 190kg/yr.
32. It is submitted that what is proposed is in overall terms a less intensive farm system. This is supported by the evidence of Mr Raymond, where he discusses the reasons for the application.⁵
33. This approach aligns with policy direction of the NPSFM and the Regional Planning framework, particularly the need to maintain and improve water quality where it is degraded.

⁴ *Royal Forest and Bird Protection Soc of NZ Inc v. Buller Coal Ltd* [2012] NZRMA 552, and upheld by the Supreme Court on appeal in *West Coast ENT Inv v. Buller Coal Ltd* [2014] 1 NZLR 32.

⁵ Evidence of George Raymond at [10]-[15], [21].

Groundwater Quality

34. A number of submitters raise concerns about the existing groundwater quality surrounding the application site. In the case of Ms Ryan, she submits this should be sufficient to simply decline the application.
35. As set out by Dr Freeman, groundwater quality is a catchment-based issue and will require changes catchment wide. This application is discrete and relates to only one operation within the wider area. In light of that the catchment problem will not be solved by this one application.
36. However, that does not mean this applicant should not be required to make improvements that will contribute to the catchment response. It is submitted that this is exactly what the application achieves.
37. The nutrient loss modelling indicates the proposed farm system will reduce overall losses from the property. The applicant is also committing to further mitigation methods that go beyond GMP. In that sense they will be doing more than others may be doing around them.
38. As discussed by Mr Raymond, the proposed amalgamation of the existing dairy platform and Support Block 2 gives the Applicant more options for managing 'riskier' activities such as winter grazing which is also likely to reduce the risks during adverse weather conditions. It is submitted that this demonstrates the thought and care that the Applicant takes towards their environmental responsibilities.
39. From a catchment perspective, it is also important to be cognisant of the wider regulatory regime that will influence wider groundwater quality – all of which will contribute to improving water quality. In particular:
 - (a) National Environmental Standards Freshwater:
 - (i) Imposition of 190kg/ha synthetic nitrogen fertiliser cap.
 - (ii) Controls on intensive winter grazing.

- (iii) Controls on dairy conversions.
 - (b) Resource Management Regulations
 - (i) Riparian fencing
 - (c) Proposed Southland Land and Water Plan rules becoming operative, particularly implementation of Farm Environmental Management Plans for permitted activities.
40. It is submitted that when assessing this application, you need to focus on this application site and the factors that are within the control of the applicant. It is submitted that the application demonstrates that this operation will be 'doing its bit' and hence the conclusions of the experts and the section 42A report that it is appropriate to grant consent.

Proposed Conditions

41. Ms Ballinger suggested some relatively minor amendments to the conditions attached with her evidence.
42. Since evidence was filed conversations have taken place between the Applicant and Hokonui Rūnanga. This has led to some further conditions being agreed to between the applicant and Hokonui Rūnanga as recorded in the letter filed by Riki Parata on Friday. An updated suite of conditions is attached to these submissions incorporating the changes.
43. I note that the letter tabled for Hokonui Rūnanga expresses some frustration about a lack of early engagement, in particular the formal engagement of Hokonui Rūnanga to assess potential cultural values. Whilst this appears to have arisen out of a misunderstanding between the Applicant's team and Hokonui Rūnanga, the frustration is acknowledged and I can advise that the applicant has formally engaged Hokonui Rūnanga to assist in the development and completion of the planting plan etc. It is hoped that this will support the development of an ongoing and enduring relationship that will support and enhance the cultural values of the application site.

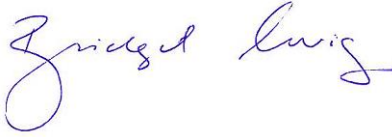
44. It is submitted that the concerns about the way this application has progressed through the informal consultation phase should not weigh on the decision making process. At the end of the day Hokonui Rūnanga have had an opportunity to fully participate through the submission process, including producing evidence on any cultural values that they considered might be imperilled by the application. The onus of proof sits with the party making an allegation of adverse effects. As noted in the letter filed on Friday Hokonui Rūnanga's position with respect to the application has now moved from one of opposition to neutrality. This enables an inference to be drawn that any cultural values (that may not have been identified by the application and section 42A report) but held by Hokonui Rūnanga have been adequately addressed through the conditions that are now proposed.
45. The Applicant and its team will takeaway the message being conveyed about the engagement process so that future applications do not follow the same path. But this is not, in my submission fatal to the granting of this consent (and nor does Hokonui Rūnanga appear to expect that it will be).

Conclusion

46. Based on the evidence filed and the conclusions of the section 42A report it is submitted that consent can, and should be granted.
47. It represents an opportunity to:
- (a) Reduce nutrient losses from the overall operation;
 - (b) Contribute to improving water quality in the wider catchment and to contribute to the achievement of high order objectives and policies related to water quality;
 - (c) improve engagement and understanding between the Applicant and Hokonui Rūnanga;

- (d) Improve the resilience of the farming system to adverse conditions, giving the applicant more options to manage environmental risk;
- (e) Improve the ability of the operation to provide for the social and economic wellbeing of the applicant and their employees.

48. It is a win-win, and an opportunity to achieve sustainable management.

Signed: 

B Irving
Counsel for the Applicant

Dated 16 May 2022