

BEFORE THE SOUTHLAND REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Fawna Farms Limited and an application for a series of consents in relation to a dairy farm operation at 1620 Ohai Clifden Highway

DECISION OF COMMISSIONERS

Neville Cook and Allan Cubitt

13 April 2023

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1. Introduction

- [1] The Hearings Panel, comprising Commissioners Neville Cook and Allan Cubitt (Chair) has been delegated the authority to hear and determine an application made by Fawna Farms Limited for a series of consents in relation to a dairy farm operation at 1620 Ohai Clifden Highway. The applicant is seeking to replace current resource consents for the property as well as expand the existing dairy farm by increasing the peak milking herd from 900 to 1,200 cows. The expansion will see the incorporation of an additional 165.9 ha into the existing 370.9 ha dairy farm, and requires a new land use and discharge consent under the National Environmental Standards for Freshwater 2020 and the relevant regional planning documents.
- [2] Council's Section 95-95G notification report was prepared on 8 November 2022 and recommended public notification of the application. This duly occurred on the 16 November 2022, and two submissions in opposition were received. The two submitters both requested to be heard and the hearing was held in Invercargill on 21 March 2023.
- [3] We advise here that we 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 prepared by Senior Consents Officer, George Gericke, and the evidence of the applicant's team, but we briefly set out the key facts here. The existing Fawna dairy farm is an operational dairy farm that has a total farm area of 370.9 ha (effective – 365 ha). The farm operates under two consents, being discharge permit AUTH-20146434-01-V2 (expiry date 23 May 2024) and water permit AUTH-20202016 (expiry date 20 April 2030). The dairy shed is accessed from Scotts Gap Feldwick Road, near Feldwick.
- [5] The proposal is to expand the dairy farm (from 900 to 1,200 cows) onto the 165.9 ha of the adjoining land to the north, which is currently been run as a dairy support, sheep, and beef trading property. Once the additional 165.9 ha block has been incorporated into the dairy farm, the balance land of 288.7 ha is to be planted in forestry (*Pinus radiata*) by IFS Growth Ltd and will not be grazed. The forestry block is to be used as a contaminant loss offset for

the proposed dairy expansion, which will be secured by a Forestry Right in favour of the applicant. The expanded dairy activity will not commence on the new block until the 288.7 ha block has been planted in trees, which will be held in the ownership of IFS Growth Limited. A range of other mitigation measures are also proposed.

- [6] The majority of the property is contained within the Waiau Surface Water Management Zone and is not currently located within a groundwater management zone. The Orauea River runs along the western boundary of the property in a north-south direction and several tributaries pass through the farm and discharge to the river.
- [7] While there has been no past groundwater quality monitoring at the site, the applicant provided some information on groundwater quality within the wider area (but not from the property) which suggests that TON (nitrite-nitrogen + nitrate-nitrogen) are well below the drinking water limit of 11.4 mg/L for nitrate-nitrogen, although this is unlikely to reflect groundwater quality at the site. With respect to surface water quality, the nearest existing state of the environment monitoring site on the Orauea River is approximately 8 km south of the application site. At this monitoring site, the river falls within the lowest quality band for *E.coli* (which indicates elevated health risk for contact recreation) but for Ammoniacal Nitrogen, Nitrate Nitrogen, and Dissolved Reactive Phosphorus concentrations, water quality is above national bottom lines.
- [8] The soils on the property primarily comprise Ohai, Aparima and Lyoncross. They are known to have various vulnerabilities including a moderate vulnerability to structural compaction and low-medium vulnerability to nitrogen leaching, and high vulnerability to water logging. The physiographic zones are Oxidising and Gleyed with a small component of Bedrock Hill Country. Contaminant loss to surface water via overland flow and artificial drainage and some deep drainage, are the main water quality risk transport pathways associated with these zones.
- [9] Mr Gericke identified the new suite of consents sought by the applicant and its activity status under the Regional Plans and the National Environmental Standards for Freshwater (NES-F) in Table 2 of his report. That table is set out below.

Activity	Relevant Rule	Activity Status
To discharge agricultural effluent to land from milking up to 1,200 cows	OP: Rule 50: Discharges of dairy farm effluent to land	Restricted Discretionary activity

Activity	Relevant Rule	Activity Status
via low-rate pods, travelling irrigator, slurry tanker or umbilical system onto 271.4 ha, plus increase the discharge area with an additional proposed 23 ha.	PP: Rule 35: Discharge of agricultural effluent to land	Discretionary activity
To take and use 179,625 L/day of groundwater for the proposed dairy operation and stock drinking water for 1,200 cows (increase from 140,000 L/day)	OP: Rule 23: Abstraction and use of groundwater	Discretionary activity
	PP: Rule 54: Abstraction and use of groundwater	Discretionary activity
To convert land on a farm to dairy farm land that was not used as dairy farmland prior to 2 September 2020	NES: Regulation 19(1): Conversion of land on farm to dairy farm land	Discretionary activity
	PP: Rule 20: The use of land for a farming activity	Discretionary activity
To discharge contaminants to land associated with the conversion of land to dairy farming that was not used as dairy farmland prior to 2 September 2020.	NES: Regulation 19(2): The discharge of contaminants associated with the conversion of land on a farm to dairy farm land	Discretionary activity

3. The Process

[10] The application was publicly notified on 16 November 2022. Two submissions were received.

These are summarised in the following table from Mr Gericke's report:

Submitter	Oppose/Support	Issues/comments	Decision Sought
Te Ao Marama Inc. on behalf of Oraka Aparima Rūnaka	Oppose	<ul style="list-style-type: none"> Risk from intensification on the mauri of the water and potential adverse effects on cultural values, rights and interests and on achieving kaitiaki responsibilities. Lack of meaningful engagement with mana whenua. Concern that the mitigation of planting forestry is not suitable, and has significant risks albeit different 	Decline the application

Submitter	Oppose/ Support	Issues/comments	Decision Sought
		<p>from dairy support. This also relates to the mitigation not being a part of the land parcel that is being intensified.</p> <ul style="list-style-type: none"> • Concerns around other mitigations and their effectiveness to provide any certainty around effects on water. • Cumulative effects of further dairy intensification. • No assessment of alternatives such as only adding extra land and no extra cows. • Concerns around the overall health of the Orauea catchment. • Unclear whether the application has assessed the hierarchy of obligations correctly under the National Policy Statement for Freshwater 2020 (NPS-FM). 	
Coal Action Murihiku - Jenny Campbell & Dave Kennedy	Oppose	<ul style="list-style-type: none"> • Levels of nitrogen having an adverse effect on quality of groundwater • Levels of nitrogen, phosphorus, sediment and microbial contaminants as a result of proposed activities having adverse effects on the quality of surface water, especially with regard to this property being in the Waiau River catchment. • Lower catchment of Waiau River adversely affected by cumulative effects of the proposed activities. • Cultural aspects along with the mauri of the Waiau River being adversely affected by the proposed activities. • Impacts on soil structure and erosion caused by increased stock numbers. • Proposed planting of <i>Pinus radiata</i> with all its associated issues around impacts on ground water, increase in soil acidity and wilding issues across adjacent farmland. • It will be years before new plantings of recommended native vegetation species, are established. 	Decline the application

[11] The Panel visited the site on 20 March 2023. The hearing was conducted the following day at Invercargill. The following people attended:

The Applicant

Fawna Farms Limited was represented by the following people:

- Rex Chapman (Legal Counsel)
- Simeon Ward (shareholder of the applicant company)
- Zach Ward (shareholder of the applicant company)
- Ross Conder (shareholder of the applicant company)
- Daniel Minehan (Director and shareholder, IFS Forestry group)
- Monique Topham (Certified Dairy Farm Systems Consultant, Certified Nutrient Management Adviser and Certified Greenhouse Gas Advisor)
- Christina Railton (Planning consultant, Landpro)

Council Staff

The Council was represented by the following people:

- George Gericke (Senior Consents Officer and s42A report author)
- Bruce Halligan (Consents Manager)
- Catherine Ongko (Consents Co-ordinator)

Submitters

The following submitters appeared at the hearing:

- Jenny Campbell for Coal Action Murihiku
- Stevie-Rae Blair for Te Ao Marama Inc. on behalf of Oraka Aparima Rūnaka

[12] Mr Gericke's s42A report, along with the evidence of the applicant and Ms Blair was pre-circulated as required, and was taken as read at the hearing. Mr Chapman presented legal submissions at the commencement of the applicant's case. Ms Railton presented a short-written statement summarising her evidence and addressing matters raised by Ms Blair. The remainder of applicant's witnesses presented brief oral statements summarising their position before being asked questions.

- [13] Mrs Campbell read from a written statement that highlighted the submitter’s concerns around the effects of increasing cow numbers and the effects of using *Pinus radiata* forest to offset contaminants. Ms Blair also presented a short written summary of her evidence.
- [14] Copies of the statements of evidence and submissions presented at the hearing are held on file by Environment Southland. We do not separately summarise the matters covered here, but refer to or quote from that material as appropriate in the remainder of this decision. We wish to record here our thanks to Mr Gericke for his comprehensive s42A report, much of which we adopt as part of this decision. We also wish to thank Ms Ongko and Mr Halligan for their assistance throughout the process.

4. Assessment of Proposal

(i) Introduction

- [15] The proposal is for a restricted discretionary activity and a number of discretionary activities, which Mr Gericke bundled in accordance with the usual practice and treated them collectively as a discretionary activity. This was not contested by any of the parties and the application has been treated as a discretionary activity in this decision.
- [16] 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, we 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.
- [17] We note that to grant a discretionary activity under Regulation 19 of the NES-FW, Regulation 24 requires that the consent:

“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.”

[18] The matters in contention were as follows:

- compliance with Regulation 24(1)(b) of the National Environmental Standards for Freshwater that relates to effects on contaminant concentrations as at 2 September 2020;
- whether forestry on land being owned and managed by someone else can be considered an offset for the expanded dairy farming effects;
- whether the proposed forestry can legally proceed, or if further authorisations are required under the National Environmental Standards for Plantation Forestry and/or the Southland District Plan;
- the adequacy of forestry as mitigation given perceived negative effects of exotic forestry;
- lack of meaningful engagement with mana whenua;
- risk from intensification on water quality, soil quality and the mauri of the water, and potential adverse effects on cultural values, rights and interests and on achieving kaitiaki responsibilities.

[19] In our view, the key matter to address is whether the proposal meets the criteria set by Regulation 24 of the NES-FW. If it does not, we cannot grant the consent.

(ii) Regulation 24 of the NES-FW

[20] As we have highlighted above, a key plank of the proposal to ensure compliance with the NES-FW is the utilisation of the forestry block as a contaminant loss offset for the proposed dairy expansion. To support the applicant’s view that Regulation 24 requirements will be met, and hence consent is able to be granted, the applicant has proposed the following mitigation measures:

- a reduction in grazed area due to conversion to forestry;
- reduction in fertiliser applied on winter crops;
- decrease in phosphorus fertiliser use;
- overall reduction in stocking capacity as measured by RSU across the entire landholding;

- reduction in revised stock units (RSU) per hectare on the original Fawna Farms dairy area;
- increase in effluent disposal area;
- removal of sheep and beef and third-party dairy grazing operation;
- decrease in imported feed.

[21] Ms Topham used Overseer (OverseerFM) modelling to compare the estimated long-term annual average nitrogen (N) and phosphorus (P) losses to water from the current farming operations across the two properties (for 2019/20 season), with what will occur under the proposed land use arrangement. This illustrated a 6.8% decrease in N loss and a 39.54% decrease in P loss across the two properties. The nutrient budgets also predict a reduction in RSU of 14.1% from 14,671 to 12,598. Council's peer reviewer, Ms Watt, confirmed that the figures used in the budgets by Ms Topham were appropriate and that the Overseer Best Practice Data Input Standards have been followed.

[22] Ms Topham noted in her evidence that OverseerFM version 6.5.0 has since been released but advised that the version change has not had any effect on the estimated losses of nitrogen and phosphorus.¹

[23] Both the application and Mr Gericke's s42A report also advised that while sediment and microbiological contaminants are not modelled within Overseer, phosphorus losses provides an indication for sediment and microbiological contaminant losses. The assumption is that if P losses are predicted to reduce then there is likely to be a roughly similar level of reduction in sediment and microbe losses to freshwater.

[24] A number of other mitigation practises are also proposed across the two properties that are not recognised in the Overseer model:

- a 10 m buffer from all waterways to winter forage crops (grazed 1 May to 30 September), where the buffer will be uncultivated and retained in pasture;
- planting of a 5.5 ha area with a mix of exotic and native plants between dairy shed and Gap Creek;
- buffers applied in the new forestry block between existing vegetation, and waterways

¹ Evidence of Ms Topham, paragraphs 23 - 24

[25] On the basis of these factors, Mr Gericke concluded²:

Overall, I consider that the applicant has demonstrated that the proposed expanded dairy activities in conjunction with the adjacent block (IFS Growth Limited forestry block of 288.7 ha) planted in forestry will result in significantly less phosphorus, sediment and microbiological contaminants and some nitrogen losses, which in my opinion will contribute to improving the quality of groundwater and surface water at the catchment scale.

[26] As a consequence, he was comfortable that the proposal achieved the outcome sought by Regulation 24(1)(a), which relates to contaminant loads in the catchment, on the proviso that the forestry land, being owned and managed by someone else, can be considered an offset for the expanded dairy farming effects. We record here that we agree with this conclusion and confirm that we are comfortable that the proposed forestry easement, as amended in accordance with Mr Chapman's legal submissions, creates a legal right in favour of the applicant sufficient to overcome this concern.

[27] Mr Gericke's main concern related to compliance with Regulation 24(1)(b), which relates to concentrations of contaminants in freshwater or other receiving environments. He noted that *"because Overseer considers contaminant loads at a catchment scale, it cannot be relied on to demonstrate reductions of contaminant concentrations within the receiving environment and freshwater bodies on the application site, and particularly within the freshwater bodies on and adjacent to the proposed additional 165.9 ha block..."*³

[28] Ms Topham agreed that the Overseer model does not give information regarding the nitrogen concentration of water leaving the property and advised that due to various factors, *"it is not possible to compare YE2020 estimated nitrogen concentrations with the proposed system estimated nitrogen concentrations."*⁴ However, she went on to say that *"logic would dictate that a decrease in contaminant load will have a corresponding decrease in concentration assuming other key factors such as climate, soil type and location are held consistent."*⁵

² s42A report, page 15

³ s42A report, paragraph 3, page 36

⁴ Evidence of Ms Topham, paragraph 42

⁵ Ibid, paragraph 43

- [29] Mr Chapman submitted that Mr Gericke may not have correctly interpreted Regulation 24 in two respects. Firstly, he believed that Mr Gericke was wrong in only applying the test in Regulation 24 to the land being added to the platform. In his opinion the test should apply to the land use consent to use both the existing and the additional land for dairying, citing Regulation 3 of the NES-FW 2020 which defines “farm” as “*a landholding whose activities include agriculture*” with “landholding” meaning “*1 or more parcels of land (whether or not they are contiguous) that are managed as a single operation*”, while noting that the forestry block is legally linked to the expanded dairy farm by way of the proposed easement instrument. He also highlighted the fact that Council’s draft conditions referred to the wider property.⁶
- [30] The second point Mr Chapman made was that in his view Mr Gericke misconstrued what is meant by the terms “*freshwater or other receiving environments*” stating that in the absence of a definition in the Regulation, the ordinary and natural meaning of that phrase must be the “*catchment*”, in this case the Orauea catchment. In his submission, when the test is correctly applied, the evidence indicates that the test is “*met because the “activity” (the expanded dairy farm and forestry block) will not result in an increase in concentrations of contaminants in the Orauea catchment.*” He concluded that “*based on this, ... it is difficult to understand how the Consent Authority could conclude that the granting of consent would result in an increase in concentrations of contaminants in the catchment.*”⁷
- [31] With respect to Mr Chapman’s first point, we largely agree with his submission. As Ms Railton noted in her supplementary evidence⁸, offsetting is not an uncommon resource management approach and to narrowly interpret the Regulations so that it only applies to the land that triggered the consent would severely restrict innovative approaches to dealing with environmental issues, such as is proposed here. As Mr Ward stated “*the proposed change in land use mix represents a deintensification of farming and improves environmental outcomes*”⁹ and the proposal “*provides a good example of how different industries can work together to achieve a sensible and positive outcome for all stakeholders*”.¹⁰

⁶ *Submissions in reply, paragraphs 6 to 13*

⁷ *Ibid, paragraphs 14 to 20*

⁸ *Supplementary evidence of Ms Railton, paragraph 5(f)*

⁹ *Evidence of Mr Ward, paragraph 21*

¹⁰ *Ibid, paragraph 26*

- [32] In relation to the second point, we are not entirely convinced by Mr Chapman's argument. We disagree with Mr Chapman's definition of "freshwater" as there is a definition of "freshwater" in the parent Act (and we note that the National Policy Statement for Freshwater Management 2020 contains a definition of "freshwater" because of this). That definition means "all water except coastal water and geothermal water". In our opinion, the exclusion of "coastal marine area and geothermal water" from this definition has led to the addition of "or other receiving environments" in the regulation because activities (such as this) can obviously discharge directly to these environments. Furthermore, if part 1(b) was to apply to the catchment, surely it would have used that term as it does in part 1(a).
- [33] The point we think Mr Gericke was trying to convey was that it is conceivable that the water quality of an individual body of freshwater within a catchment could be detrimentally affected by an activity even though the load across the wider catchment is reduced (essentially a trade-off somewhere in the catchment system) and that part 1(b) does not allow this. We agree with Mr Gericke that this is what the regulation is guarding against. In relation to this property, it would prevent one of the smaller streams on the new block receiving a higher concentration of contaminants to reduce the concentration of contaminants that may be lost to, for example, the Grass Burn in the existing block.
- [34] Having said that, we accept the logic of the applicant's argument that decreases in load will have a corresponding decrease in concentration in relation to this particular property (but we do not think that this necessarily applies in all instances – an application specific, case-by-case analysis would be required). In relation to the additional block, the retirement of 288 hectares from grazing will see a significant reduction in contaminant load. The reduced stock numbers will now only be grazed on the flatter land of this block, which does not appear to contain many surface water bodies or overland flow paths (although there are some). This, in combination with the targeted mitigation measures required by the proposed conditions, will ensure nutrient concentrations will reduce. In relation to the existing dairy farm, stocking rate has also lowered, while the disposal area has increased. Further mitigation is proposed on this block which will again ensure nutrient concentrations will reduce.
- [35] Notwithstanding this, we agree with Mr Gericke that the applicant needs to consider further targeted mitigation on the additional block to provide as much certainty as possible that the regulations are met. Given contaminant losses to surface water via overland flow is the key

issue here, we are concerned that very little riparian mitigation is proposed on this block. We do acknowledge that the applicant does not currently own this block, so is not fully conversant with the drainage patterns of the property, but there does appear to be overland flow opportunities on this block as well as potential wet areas.

- [36] Furthermore, in the wider context, Ms Blair's evidence highlighted the importance of this catchment (and the wider Waiau catchment, which is a Statutory Acknowledgement Area) to iwi and outlined how the mauri of the catchment has declined and the impact this has had on whanau from Oraka Aparima. Her evidence is supported by the fact that the Orauea is within the lowest quality band for *E.coli*, which indicates elevated health risk for contact recreation.
- [37] In respect to the proposed mitigation, she stated in her summary that iwi *"have little faith in the actual outcomes we are seeing on the ground or ways in which to measure this"*¹¹ and went on to highlight the fact that part of their focus *"is around improving mauri and the life supporting capacity of our water and land is around biodiversity"* and went on to say that *"indigenous localised plantings is what I would consider would be offsetting/mitigations and giving back to Papatuanuku, hence it improves mauri"*.¹² Mrs Campbell, on behalf of Coal Action Murihiku raised similar concerns and also highlighted the need for *"more wetlands and riparian strip plantings"*. In her view, such mitigation should be well established before additional dairying is permitted.¹³
- [38] We believe the submitter's concerns reflect not just iwi values, but the concerns of the wider community, which are reflected in the fundamental concept of the National Policy Statement for Freshwater Management 2020, Te Mana o te Wai. While we acknowledge that the applicant has offered additional plantings at three locations around the farm, we agree with the submitters (and Mr Gericke) that there needs to be more of a focus around riparian plantings.
- [39] We also believe that it is also necessary and appropriate to review this matter on the existing block, acknowledging again that the applicant has not owned this property long. The applicant advised that riparian planting had been carried out in accordance with the previous

¹¹ Summary of Ms Blair, paragraph 10

¹² Ibid, paragraph 11

¹³ Statement of Mrs Campbell, page 2

consent for this block.¹⁴ While the 2014 application for that block stated *“Some planting of shelter and riparian margins has already occurred on the property. It is intended to complete the planting programme to include areas which have not already been planted. The riparian management plan prepared will guide the planting to occur”*, we could not find any condition requiring that and a copy of the plan referred to was not on the Council file or attached to the consent. Outside of rank grass on the stream margins, we did not see evidence of any significant riparian planting on the property.

- [40] In relation to the riparian planting conditions recommended by Mr Gericke, Ms Railton advised that *“the applicant is not proposing to prepare a Riparian Planting Plan. Any Riparian Planting Plan to be prepared in future will be done so through the Certified Freshwater Farm Plan process to be rolled out in 2023. Once operating the proposed property, if consent is successful, Fawna Farms Limited would like to determine the priority areas for any riparian planting once gaining an understanding of the environment, as compared to selecting any nominal locations for planting and specifying an area now that in fact may not result in meaningful improvement or be in an inappropriate location.”*¹⁵ When questioned why such a plan could not be advanced now, no compelling answer was given.
- [41] We think it is appropriate that this plan be prepared and implemented now, not only to ensure certainty of compliance with the NES-FW, but also to achieve wider environmental goals. To that end, we have retained the riparian planting conditions recommended by Mr Gericke, with some amendments to reflect the objectives of such planting.
- [42] Related to this issue is the proximity of farming activities to the Orauea River. While we note the Orauea has a reasonably well vegetated riparian margin on much of the existing dairy farm boundary, there are areas on the new block that appear to be grazed very near to the river’s edge. While the conditions require a 20 m effluent disposal buffer to the legal boundary of the river, we consider additional measures are needed to ensure there is no possibility of overland flow paths concentrating contaminant discharges to the river, particularly in times of heavy rain. For that reason, we have imposed a condition that also prevents grazing of cows within 20 m of the river. This area need not be planted in natives but leaving it ungrazed, rank grass will assist in this objective.

¹⁴ *Submissions in reply, paragraph 30*

¹⁵ *Evidence of Ms Railton, paragraph 101*

(iii) The Effects of the Forestry Offset

- [43] Both submitters raised concern with the use of exotic forestry as a mitigation tool to offset contaminant loss, highlighting issues around biodiversity, wilding pine spread and landscape effects, along with the future effects of harvesting. Ms Blair raised the commercial nature of this proposal¹⁶ while Mr Gericke queried whether further authorisations are required for the forest operation under the National Environmental Standards for Plantation Forestry and/or the Southland District Plan.
- [44] We have confirmed above that we are comfortable with the use of an offset approach to address contaminant losses. Mr Minehan's evidence confirms the forestry operation is permitted under both the Southland District Plan and the National Environmental Standard for Plantation Forestry and goes on to address the perceived effects of the industry.¹⁷ At the hearing he discussed the recent issue in the North Island with forestry slash during times of flood, noting that this is an entirely different environment and that this land is not as steep or as susceptible to erosion as the problem areas in the North Island.
- [45] We accept Mr Minehan's evidence on this matter and note that the proposed plantation will in fact adjoin an existing forestry block to the east of the subject property. In terms of the commercial nature of the operation, as raised by Ms Blair, Mr Minehan noted that this application is the culmination of several years of thought around how diverse land uses can be tied together to create better environmental outcomes while still being commercially viable.¹⁸ While acknowledging that environmental enhancement/restoration does not necessarily need to be driven by commercial imperatives, we do agree with his sentiment *"that unless good environmental outcomes can be recognised and rewarded, then change is not going to naturally occur. Change is primarily driven by reward and the associated capital investment, if capital cannot see a clear path, it will not be funnelled into an investment."*¹⁹
- [46] In the context of this issue, we note that Mrs Campbell was concerned that the increase in dairy cows will increase production of methane gas and that this is at odds with the Council's

¹⁶ Summary of Ms Blair, paragraphs 7 and 14

¹⁷ Evidence of Mr Minehan, paragraphs 4.1 to 4.14

¹⁸ Evidence of Mr Minehan, paragraph 3.7

¹⁹ Ibid, paragraph 3.9

draft Climate Action Plan and national direction on the issue. We note Mr Minehan's evidence around the significant carbon sequestration benefits of the forestry proposal²⁰ and Ms Topham's evidence on the reduction in agricultural emissions under this particular proposal.²¹ The evidence suggests that this proposal is achieving the outcomes sought by Mrs Campbell and this can be considered a positive effect of the application.

(iv) Effect on Cultural Values

[47] We have touched briefly on the concerns of Te Runanga o Oraka Aparima above. Ms Blair's evidence highlighted the importance of the catchment to iwi and outlined how the decline in the mauri has impacted on mahinga kai resources and other values such as wahi tapu and wahi taonga. In her presentation at the hearing, she acknowledged the efforts that the applicant had made to address environmental issues but highlighted the main issue to Oraka Aparima as being the addition of further cows to this environment for milking purposes.

[48] In our role as decision makers, the type of activity being proposed is not of great relevance. Rather, it is the environmental effects and outcomes that will be achieved when it is undertaken. In her evidence, Ms Blair highlighted the importance of halting environmental decline²² and stated that for "*ngā rūnanga, an important Kaupapa for land use in Southland, which has been well-documented in Te Tangi a Tauira (2008, pg. 117) is "matching land use with land capability". This means taking a precautionary approach to land use, to ensure that what we do on land is consistent with what the lands can withstand, and not what we would like it to withstand.*"²³ In our view, this particular proposal will achieve these outcomes. While the dairying component of the current land use will increase, there is an overall deintensification of land use across the two properties, with a subsequent improvement in nutrient losses to freshwater. As Ms Railton noted in her summary²⁴, this goes a step above halting environmental decline. With the additional plantings required by the conditions, we would find it hard to accept that the proposal was not having a positive impact on the mauri of this particular environment.

²⁰ *Ibid*, paragraphs 5.4 and 5.5

²¹ *Evidence of Ms Topham, paragraphs 47 to 50*

²² *Evidence of Ms Blair, paragraph 43*

²³ *Ibid*, paragraph 39

²⁴ *Summary of Ms Railton, paragraph 5(e)*

(v) Conclusion of environmental effects

- [49] While we understand and acknowledge the concerns raised by the submitters, we have concluded that the discharge aspects of the application meet the relevant NES-FW tests and will reduce nutrient losses to freshwater across the two properties. We are satisfied that the forestry easement proposed provides sufficient legal connection between the two properties for the duration of the consent. This, in combination with additional plantings proposed, will enhance life supporting capacity and mauri of the environment. The overall proposal will also make a contribution to reducing greenhouse gas emissions.
- [50] Mr Gericke's report also assesses the effects of the water take, and the effects of effluent storage and its disposal to land. He considers these aspects of the proposal comply with the relevant standards and this evidence was uncontested. As a consequence, we accept and adopt Mr Gericke's assessment and conclusion on these matters.

(vi) The Provisions of Relevant Planning Instruments

- [51] Mr Gericke'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);
 - the Ngāi Tahu Murihiku Natural Resource and Environmental Iwi Management Plan 2008.
- [52] Mr Gericke finds the proposal to be consistent with the relevant policy direction, although we note that this was, in part, conditional on the offsetting mechanism being satisfactorily linked to the dairy farm. Ms Railton agreed with Mr Gericke's assessment and conclusions and did not repeat that analysis in her evidence.
- [53] Having reviewed Mr Gericke's finding, we also find ourselves in agreement with his conclusions. Objective WQUAL.1 and Policy WQUAL.1 of the RPS seeks to maintain or

improve water quality in accordance with freshwater objective formulated under the NPSFM 2014 (the RPS pre-dates the 2020 iteration of this document). 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.**

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

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

[55] 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. Because freshwater objectives under the Freshwater Management Unit planning process have yet to be developed, Policy 16(1)(b) of the pSWLP (acknowledging that it is still under appeal) is relevant in this case. 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. It also requires farming activities to actively manage sediment and nutrients through a range of mitigation measures, including riparian planting and management of critical source areas.

[56] We find this proposal is consistent with both Policy 16 and the wider outcomes sought by this policy framework. We also find that it is consistent with the direction of the NPSFM 2020. Policy 1 of the NPSFM is that freshwater is managed in a way that gives effect to Te Mana o te Wai, which puts the health and well-being of the waterbody first. While this proposal does allow an increase in dairy cows on the property, overall, it is a deintensification of land use which should see immediate improvements in the catchment. The proposal has

been framed in such a way that it achieves Policy 5, which is that freshwater is being managed to ensure that the health and well-being of water bodies is maintained and improved.

[57] In relation to the Te Tangi a Tauira, the Iwi Management Plan for Murihiku, Mr Gericke addressed this at his Section 3.9.1. While he acknowledged that the plan does not address dairy expansion specifically, he noted that it does address water quality. He did not find any inconsistency with the relevant policies on this issue. As will be evident from our discussion above, we agree with Mr Gericke's position on this.

(vii) Sections 105 and 107 of the RMA

[58] Because this involves a discharge permit, in addition to the matters in Section 104(1), we must have regard to the matters in Sections 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.*

[59] The sensitivity of the receiving environment was considered in Mr Gericke's assessment and he highlighted the key risk being to surface water quality through overland flow and artificial drainage. He did not raise any concerns with s105 matters and we 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. Hence, we have concluded that the matters identified in s105 are no barrier to granting the consents sought.

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

5. Term and Conditions

[61] The applicant applied for a consent period of just over seven years to align with the maximum term established by NESF Regulation 24 (2), being an expiry date of 31 December 2030. Mr Gericke recommended 31 May 2030 to align the expiry date to the end of the milking season. However, the applicant considered this inappropriate as *"on a dairy system that*

includes winter crop, the end of the milking season is largely irrelevant to the Land Use Consent for Farming, that includes also conditions for other activities, such as Intensive Winter Grazing, and the presence or not of young stock grazing and/or cow wintering occurring on farm which are not necessarily defined by the 31 May each year.”²⁵

- [62] We are comfortable with 31 December 2030 and have adopted it accordingly.
- [63] We have discussed in part (ii) above the need for further targeted mitigations to provide certainty that the NESF Regulations are met and that the submitters’ concerns are addressed. These have been included in a redrafted version of Mr Gericke’s riparian planting condition. As added security around compliance with the regulations, we have retained Mr Gericke’s original conditions 15 to 20, with the amended requested by Ms. Railton.
- [64] A number of other minor changes, more for administrative purposes have been made to the land use consent.

6. Conclusion

- [65] We 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 6.8 % and a reduction in Phosphorus loss to water of 39.4% across the two properties. Significantly, the applicant has offered, and we have imposed further, mitigation measures that are likely to reduce these losses further so that there is more certainty that the tests in the NESF Regulations are met. As a consequence, the direction of the relevant national and local planning instruments is being achieved. We have also considered the provisions of the Ngai Tahu Ki Murihiku Resource and Environmental Iwi Management Plan 2008 (as another relevant matter) and while we 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.
- [66] 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

²⁵ Evidence of Ms Railton, paragraph 102 and 103

to incorporate the NPS-FM 2020. We have concluded that the proposal is generally consistent with the direction of that document.

[67] In our view the application meets the relevant provisions of Part 2 of the RMA and the proposal achieves the purpose of the RMA which is the sustainable management of natural and physical resources.

DATED at Dunedin this 13th day of April 2023.

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

Allan Cubitt
(Chair)
Independent Hearings Commissioner

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

Neville Cook
Hearings Commissioner