

Decision of the Southland Regional Council

Publicly notified resource consent application

Section 104B and Section 113 of the Resource Management Act 1991

Applicant:	Kanadale Limited	
RM reference:	AUTH-20222376	
Location:	135 Boundary Road, Mataura	
Legal description:	Lot 2 DP 15385, Lot 1 DP 979, Section 22 Block I Tuturau SD, Section 23 Block I Tuturau SD, Section 34 Block I Tuturau SD, Section 35 Block I Tuturau SD Section 37 Block I Tuturau SD, Section 12 Block III Tuturau SD, Section 58 Block III Tuturau SD, Section 1 Block XVII TN OF Mataura Bridge, Section 2 Block XVII TN OF Mataura Bridge, Section 3 Block XVII TN OF Mataura Bridge, Section 4 Block XVII TN OF Mataura Bridge, Section 5 Block XVII TN OF Mataura Bridge, Section 6 Block XVII TN OF Mataura Bridge, Section 7 Block XVII TN OF Mataura Bridge, Section 8 Block XVII TN OF Mataura Bridge, Section 9 Block XVII TN OF Mataura Bridge, Section 10 Block XVII TN OF Mataura Bridge, Section 11 Block XVII TN OF Mataura Bridge, Section 12 Block XVII TN OF Mataura Bridge, Section 13 Block XVII TN OF Mataura Bridge, Lot 1 DP 565316, Section 41 Block I Tuturau SD, Section 42 Block I Tuturau SD, Section 46 Block I Tuturau SD and Lot 1 DP 1109.	
Decision date:	25 May 2023	
Expiry date:	31 December 2030	
Class of activities	Discretionary	
Activities authorised:	To discharge agricultural effluent to land from up to 800 cows	RWP rule 50; pSWLP rule 35
	To take and use groundwater	RWP rule 23; pSWLP rule 54
	To use land for two calving pads	NES-F reg 14(1)
	To use land for an expanded dairy farm and	pSWLP rule 20, NES-F reg 19(1)
	To use land for intensive winter grazing	NES-F reg 27(1)
	To discharge contaminants to land associated with the use of land as dairy farm land and for intensive winter grazing	NES-F reg 19(2) and NES-F reg 27(2)

1. Decision

Resource consent is **granted** under delegated authority.

2. Reasons for the decision

In making this decision I have considered the application, the Irricon Resource Solutions OVERSEER Nutrient Budget Review Report commissioned on behalf of Council, which confirmed the figures used in the budgets were appropriate and the Overseer Best Practice Data Input Standards have been followed, the submission received in opposition, and the relevant planning documents.

The existing environment

The existing site is an operational dairy farm located directly east of Matura Township. Currently the applicant holds discharge permit AUTH-302684-V1, water permit AUTH-302685-V2 and land use consent AUTH-302687. Both the discharge and water permits expire 27 November 2028. The land use consent was granted in perpetuity. The discharge permit authorises the discharge of dairy shed effluent to land from milking up to 745 cows via low rate pods onto 172ha. The water permit authorises the abstraction of 89,400 L/day of groundwater for a dairy operation.

The applicant recently purchased two blocks of land known as the Murray Block (58.2ha) and the Bastaansian Block (50.2ha). Neither block has been utilised as a dairy farm in the past. The landholding is located in the Matura River catchment which is part of the wider Matura FMU and overlies the Bedrock/Hill Country, Gleyed and Oxidising physiographic zones. The water quality in the receiving environment is degraded, in particular, the Matura River at Matura sits in the worst 25% of all sites for all water quality indicators including E.coli, Total Nitrogen, Total Oxidised Nitrogen, Ammoniacal Nitrogen, Nitrate Nitrogen and Dissolved Inorganic Nitrogen. It also sits in the worst 50% of all sites for Total Phosphorus. However, it does sit in the best 50% of all sites for Dissolved Reactive Phosphorus. There are no groundwater monitoring bores on the property, however the closest monitoring bore to the property are located 5km down gradient and shows groundwater nitrate levels of minor to moderate land use impacts (1.0 – 3.5mg/L).

Effects on the environment

I have had regard to the actual and potential effects on the environment of allowing the activity, as follows:

- Nutrient loss to surface water and groundwater in the underlying aquifer due to the land use change activity will be no more than minor due to a combination of a predicted 0.6% decrease in N and 6.6% decrease in P losses (modelled in OverseerFM version 6.4.3) and the mitigation measures proposed or agreed to by the applicant.
- Potential adverse effects of discharging agricultural effluent onto land include contamination of groundwater and contamination of surface waterways. The applicant has confirmed they will adhere to standard GMPs such as providing sufficient storage to enable deferred effluent, applying effluent at low rates and depths, avoiding irrigating on sloping land over 7 degrees via high rate methods, and adhering to buffer distances from surface waterways and bores.
- Efficient and reasonable use of the groundwater source will be achieved and effects will be minor as the daily take is the equivalent of 140L/dairy cow/day whilst the yearly take equates to 120L/dairy cow/day. These figures are considered industry standard of efficient use for shed and stock water use.

- Stream depletion effects and over-allocation will be less than minor because the increase in daily volume will not over-allocate the relevant groundwater zone and the maximum abstraction rate of 2L/sec is considered to have low hydraulic connection to surface water.
- Effects on adjacent properties and wider community arising from odour will be minimal due to the separation distances between effluent storage facilities and the neighbouring dwellings (>600m) and the property boundary (>300m).

Positive effects

I have had regard to the measures proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to mitigate or offset any adverse effects that will or may result from allowing the activity. These are:

- Effluent discharge can act as a nutrient, as long as it is applied to soils in an appropriate manner. The discharge provides the applicant an opportunity to offset fertiliser use without increasing the nutrient loads.
- Implementing a 10 metre buffer when intensive winter grazing on flat land and increasing that buffer to 20 metres on sloping land over 10 degrees will protect freshwater quality during high risk winter months.
- Utilising temporary sediment traps in the form of hay bales placed in gullies as and when required during the intensive winter grazing period to capture sediment and other contaminants.
- Monitoring water quality in an unnamed tributary of the Mataura River upstream and downstream of the property boundary, in order to protect the Mataura River which is a Statutory Acknowledgment Area under Schedule 42 of the Ngāi Tahu Claims Settlement Act 1998 and subject to the Water Conservation (Mataura River) Order 1997.
- Maintaining existing sediment traps/ponds present on farm to capture and filter run-off.
- Restricting synthetic nitrogen fertiliser use on pasture to 186kg/ha/year.
- Reducing Palm Kernel Extract (PKE) use to no more than 1 kg/animal/day/season.
- The effluent disposal field is 180 hectares larger than the minimum area required to ensure the maximum loading of 150 kg of nitrogen/hectare/year is not exceeded. Furthermore, it is 148 hectares larger than the minimum area recommended in the Best Practice Guidelines Booklet¹.
- The calving pads give the applicant the ability to remove cows from pasture during adverse weather events or when the ground conditions are not suitable.

Assessment under relevant plans

I have had regard to the relevant provisions of the National Policy Statement for Freshwater Management 2020, the proposed Southland Water and Land Plan 2018 and the operative Regional Water Plan for Southland 2010. The principal provisions of relevance to this application are:

- National Policy Statement for Freshwater Management 2020 (NPS-FM)
 - Objective 1 seeks to ensure that natural and physical resources are managed in a way that prioritises first, the health and well-being of water bodies and freshwater ecosystems, second, the health needs of people, third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.
 - Policy 1 seeks to manage freshwater in a way that gives effect to Te Mana o te Wai.

¹ Farm Dairy Effluent, Best Practice Guidelines (2007), Environment Southland

- Policy 2 seeks to actively involve Tangata Whenua in freshwater management and Māori freshwater values are identified and provided for.
- Policy 3 seeks to manage freshwater in an integrated way that considers the effects of the use and development of land, including the effects on receiving environments.
- Policy 8 seeks to protect the significant values of outstanding water bodies.
- Policy 9 seeks to protect the habitats of indigenous freshwater species.
- Policy 11 seeks to ensure freshwater is allocated and used efficiently, all existing over-allocation is phased out and future over-allocation avoided.
- Policy 12 seeks to achieve the national target for water quality improvement.
- Policy 15 seeks to enable communities to provide for their social, economic, and cultural well-being in a way that is consistent with the NPS.

➤ Proposed Water and Land Plan 2018 (pSWLP)

- Objective 1 - Land and water and associated ecosystems are sustainably managed as integrated natural resources, recognising the connectivity between surface water and groundwater, and between freshwater, land and the coast.
- Objective 2 - The mauri of water provides for te hauora o te taiao (health and mauri of the environment), te hauora o te wai (health and mauri of the waterbody) and te hauora o te tangata (health and mauri of the people).
- Policy 6 seeks to avoid, remedy, or mitigate adverse effects on water quality from contaminants in the Gleyed and Bedrock/Hill Country Physiographic zones by requiring implementation of GMPs to manage contaminants transported via artificial drainage, and overland flow where relevant and having particular regard to adverse effects from these contaminant pathways when assessing resource consent applications and Farm Environmental Management Plans.
- Policy 10 seeks to avoid, remedy, or mitigate adverse effects on water quality from contaminants in the Oxidising Physiographic zone by requiring implementation of GMPs to manage contaminants transported via deep drainage, and artificial drainage and overland flow where relevant, and having particular regard to adverse effects from these contaminant pathways when assessing resource consent applications and Farm Environmental Management Plans. Decision makers generally not granting resource consents for additional dairy farming of cows where contaminant losses will increase as a result of the proposed activity.
- Policy 13 seeks to manage land use activities to enable the achievement of Policies 15A, 15B and 15C.
- Policy 15A-C seek to maintain water quality where standards are met and improve water quality where standards are not met.
- Policy 16 seeks to minimise the adverse environmental effects, including cumulatively, on groundwater and surface water quality from farming activities and require all farming activities to implement a Farm Environmental Management Plan.
- Policy 17 seeks to avoid adverse effects on water quality from FDE discharges, and to manage FDE systems by operating at best practice.
- Policy 20 seeks to manage groundwater abstraction to avoid adverse effects on aquifer sustainability, other existing water users, groundwater quality and surface water, particularly instream habitat. Policies 21, 22 and 23 provide direction on how the water take is to be assessed in order to avoid or mitigate such effects.
- Policy 39 - *When considering any application for resource consent for the use of land for a farming activity, the Southland Regional Council should consider all adverse effects of the proposed activity on water quality, whether or not this Plan permits an activity with that effect.*
- Policy 40 ensures consideration is given to a range of factors, fully listed in the policy, when determining the term of a resource consent.

➤ Regional Water Plan (RWP)

- Policy 28 seeks to manage groundwater abstraction to avoid significant adverse effects on long term aquifer volumes, existing water users, surface water flows, aquatic ecosystems and habitats and ground water quality.
- Policy 31C seeks to manage discharges of contaminants onto land to avoid, remedy or mitigate adverse effects on soil, habitats, ecosystems, indigenous biodiversity, outstanding natural landscapes and historical and cultural values.
- Policy 31D supports the beneficial reuse of nutrients by the discharge of wastewater and effluent to land.
- Policy 42 seeks to avoid adverse effects on water quality by aligning effluent storage and irrigation rates with soil and topography.

I consider that granting consent will assist and not detract from achieving the objectives of those plans. In particular, Policies 1 and 2 of the NPSFM and Objective 2 of the pSWLP, are essential to considering and determining the outcome of this application.

I have had regard to Section 3.5.1 and Section 3.5.13 of Te Tangi a Tauria. The discharge permit conditions include application rates that are designed to fit with soil conditions and topography, and buffer distances will be applied, which is consistent with the policies of Section 3.5.1. The nature of the discharge and receiving environment are considered and consistent with Policy 3 of Section 3.5.13 of the iwi resource management plan.

The activities described in the application do not trigger any further considerations under any other National Policy Statements or National Environmental Standards. The Southland Regional Policy Statement 2017 became operative on 9 October 2017. It pre-dates the NPS-FM 2020, so may not fully give effect to it and therefore regard should be given to the higher order document.

The applicant requested under Section 95A (2) (a) the application be publicly notified. The application was subsequently publicly notified on 10 October 2022. One submission was received from Jenny Campbell & Dave Kennedy opposing the application due to increase in stock numbers, increase in GHG emissions and climate change, degraded water quality in the Maitai River, degraded groundwater quality in Murihiku, cumulative effects on the environment and inadequate mitigation measures. The submitter withdrew their right to be heard at hearing on 5 May 2023 after extensive consultation with the applicant. In accordance with Section 100(a) of the RMA, Council considered that a hearing was not necessary. The applicant also confirmed it did not wish to be heard at a hearing as per Section 100(b) of the RMA.

Under Regulation 24 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 *“a resource consent for an activity that is a discretionary activity under this subpart 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.”*

I am satisfied that granting this consent will not result in an increase in contaminant loads or concentrations because:

- The nutrient budgets modelled in OverseerFM predict that contaminant loads in the catchment will decrease.

- The applicant has provided adequate mitigations to minimise contaminant losses to water, such as implementing a riparian planting plan, utilising two calving pads, increasing buffers to waterways when intensive winter grazing and capping the synthetic nitrogen fertiliser use on pasture at 186kg/ha/year.
- Concentrations of contaminants in freshwater will not increase specifically with the mitigations proposed because the regulation 19 change in land use on the Murray Block and Bastaansian Block has resulted in permanent stock exclusion fencing of surface waterways (with 3 metre minimum riparian margins) that were not fenced on 2 September 2020. Furthermore the increased dairy effluent discharge area does not include the Murray Block or the Bastaansian Block.

Section 105 matters need to be considered as the application is for a discharge that would contravene Section 15. The sensitivity of the receiving environment has been considered, in particular, the key risks to surface water quality through the overland flow of contaminants. The main irrigation method is low rate discharge which is considered to be appropriate for the receiving environment, and the proposal includes buffers from surface waterways. The alternative discharge methods considered by the applicant include discharging to water. The application notes "*direct discharge to water would almost certainly be more detrimental to the receiving environment than discharging to land*". I agree with the applicant that this alternative would likely result in greater adverse effects.

In terms of the discharge arising from the conversion of land to dairy farm land and use of land for intensive winter grazing, the applicant has considered the use of 'stand-off' structures or pasture based winter grazing. These alternatives were disregarded due to the significant financial investment required and the heavy reliance on supplementary feed. The applicant has also chosen methods of carrying out these land use activities while mitigating adverse effects on the environment. Alternatives to the conversion of dairy farm land would require either a different land use activity or a different combination of mitigation measures which may be less effective than those currently proffered by the applicant.

I have had regard to the value of the investment the applicant has made exercising their current resource consent. This investment includes a dairy farm conversion in 2014 which included constructing a brand new milking shed and synthetically lined effluent storage pond, and drilling a new bore for groundwater abstraction in 2019.

Granting this resource consent is not contrary to section 107 or section 217 of the Resource Management Act 1991.

All considerations are subject to Part 2 of the RMA, which sets out the purpose and principles that guide this legislation. Section 5 states the purpose of the RMA and Sections 6, 7 and 8 are principles intended to provide additional guidance as to the way in which the purpose is to be achieved. In my view granting this resource consent achieves the purpose of the Resource Management Act 1991 as set out in Part 2 of the Act. The key issues, as discussed above, were adverse effects on water quality and I consider that they have been addressed by the mitigations proffered and agreed to as conditions of consent.

3. Conditions

As the applications are bundled, the overall activity status is a **discretionary activity**. Under Section 104B the Council may grant or refuse consent for a **discretionary activity**, and if it grants the application, may impose conditions under Section 108 of the RMA. The consents are granted subject

to conditions. These conditions are consistent with Section 108 of the Resource Management Act 1991.

The applicant has requested a consent expiry date of 31 December 2030. Policies 14A and 43 of the Regional Water Plan set out factors to consider specifically in relation to the term of water and discharge permits but not land use consents. Policy 40 of the proposed Southland Water and Land Plan has requirements for term and should be given greater weighting over the RWP policies. Having had regard to policy 40 of the proposed Southland Water and Land plan, I am satisfied that there is reasonable certainty about the effects of the activity and I do not consider that there are factors that would warrant a significantly shorter duration. Additionally, the land use activities that require resource consent under regulations 19 and 27 of the NES-F must expire before 1 January 2031 as per Regulation 24 of the NES-F. Consequently, the application is granted and all permits are given the common expiry date of 31 December 2030.

Please read and ensure you understand and implement these conditions. By law you are required to comply with them for the duration of the consent. Failure to show compliance with conditions of a consent on inspection may result in enforcement action.

For the **Southland Regional Council**



Bruce Halligan
Consents Manager

Notes

1. **Right to object:** Applicants and consent holders have the right to object to any part of this decision to Environment Southland. Objections must be in writing and received by Environment Southland within 15 working days of the decision being notified. Objectors can request the objection be heard by an independent commissioner. The procedure for making and hearing objections is set out in sections 357A to 357D of the Resource Management Act 1991.
2. **Right to appeal:** The applicant, the consent holder (if different), and any person who made a submission on the application may appeal against any part of this decision (including the consent conditions) to the Environment Court. A submitter's appeal is limited in scope by the matters raised in their submission. Appellants have 15 working days to lodge an appeal, from the date they received notice of this decision. The right to appeal and procedure for lodging appeals is outlined in sections 120 and 121 of the Resource Management Act 1991.
3. **Our costs:** An invoice for our costs of working on your application will be forwarded to you shortly.
4. **Expiry of consent:** Please note the expiry date of your resource consent(s). The expiry date will be printed in on the first page of the consent. You can only undertake the activity legally between now and the expiry date. If you wish to continue with the activity after the consent expires, you

will need to apply for and obtain a new resource consent in advance. We recommend you re-apply at least six months before any current consent will expire.

5. Lapse of consent: Please note that the resource consent(s) will lapse if you do not 'give effect' to it within five years of it being granted (or otherwise within a different period specified on the particular consent). Lapse of a consent has the same effect as an expiry. The consent will not lapse if you commence the activity within five years. A longer lapse period can be applied for. Please contact us in advance if you think you are not likely to give effect to the consent before it lapses.
6. Cancellation of consent: Resource consents can be cancelled if they are unexercised for a period of five years. Cancellation of a consent has the same effect as an expiry.