

**BEFORE THE SOUTHLAND REGIONAL COUNCIL**

**UNDER** The Resource Management Act 1991

**AND**

**IN THE MATTER OF** Application APP-20211740 by Platinum Dairies Limited for a discharge permit to discharge agricultural effluent to land; a water permit to take and use groundwater; a land use consent and discharge permit for a feed pad; and a land use consent and discharge permit to expand a dairy farm.

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**DECISION OF HEARING COMMISSIONER**

**BIANCA SULLIVAN**

**Dated 17 August 2022**

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## **REPRESENTATION AND APPEARANCES**

### **Applicant**

**Mr. Jared Collie** – Chairman of Platinum Dairies Limited

**Ms. Miranda Hunter** – Farm Consultant (Roslin Consultancy Limited)

**Ms. Matilda Ballinger** – Planner (Landpro Limited)

### **Submitters**

**Ms Jenny Campbell** – for Jenny Campbell and Dave Kennedy

### **Southland Regional Council**

**Ms Jade McRae** – Senior Consents Officer, Environment Southland

## **BACKGROUND AND PROCEDURAL MATTERS**

1. This is the decision of independent hearing commissioner Ms Bianca Sullivan. I was appointed by the Southland Regional Council (SRC) to hear and decide this application by Platinum Dairies Limited (PDL or the applicant) pursuant to the Resource Management Act 1991 (RMA). The following consents are sought:
  - (a) a replacement discharge permit to discharge agricultural effluent to land from milking up to 1,000 cows via low-rate pods and slurry tankers onto 213 hectare (ha);
  - (b) a replacement water permit to take and use 120,000 litres per day (l/day) of groundwater;
  - (c) a land use consent and discharge permit for three existing calving pads; and
  - (d) a land use consent and discharge permit associated with a dairy farm expansion.
2. PDL is a dairy equity partnership and operates a dairy farm at 149 McKenzie Road, Lochiel. It currently has a 256 ha dairy platform. An additional 61.5 ha, known as the Muir Block, was purchased in 2019 and is sought to be added into the dairy platform through this land use consent application (application (d) above).
3. PDL's current effluent discharge permit (AUTH-302423) expires on 6 September 2024 and application (a) above seeks to replace this consent. This proposal also seeks to replace the existing water permit (AUTH-302424) which expires on 1 October 2023 (application (b) above). This consent authorises the abstraction of up to 120,000 l/day of groundwater for stock drinking and dairy shed wash down.
4. The application was lodged on 7 December 2021 and further information was requested under section 92(1) of the RMA on 9 February 2022. The applicant provided this information on 23 February 2022. The application was publicly notified on 21 March 2022. One submission in opposition was received from Jenny Campbell and Dave Kennedy, who sought to be heard.
5. The hearing was held at SRC's office in Invercargill on Wednesday 6 July 2022, commencing at 10 am.
6. The section 42A report (including addendum) and applicant's evidence were pre-circulated to the parties prior to the hearing, in accordance with section 103B of the RMA. The submitter did not prepare evidence in advance of the hearing, but read from and provided a written statement. All pre-circulated evidence was read prior to the hearing and was taken as read at the hearing.
7. Ms Ballinger provided a written right of reply on 13 July 2022, at which time I also received an amended set of conditions from Ms McRae. I closed the hearing on 27 July 2022.

## **THE APPLICATION**

8. The application is detailed in the AEE and further information, and is summarised in the section 42A report. These provide a consistent and accurate description of the application.

9. The farming operation is currently authorised by a discharge permit (AUTH-302423) and a water permit (AUTH-302424). This application seeks to replace these consents, as well as authorise the three existing calving pads and the extension of the dairy farm platform to include the 61.5 ha Muir Block.
10. Discharge permit Auth-302423 authorises the discharge of dairy shed effluent from up to 1,000 cows onto up to 213 ha of land. The applicant has to date been milking less than 1,000 cows, with numbers varying from year to year but generally less than 950 cows. This replacement application seeks to retain the 1,000 cow maximum, with the addition of the Muir Block providing additional comfort for higher numbers of milking cows. The existing effluent pond is synthetically lined, has a leak detection system and a capacity of 4,214 cubic metres (m<sup>3</sup>). Effluent is proposed to be discharged via low rate pods or, as a contingency measure, via a high rate slurry tanker and/or umbilical system.
11. The application also seeks to authorise the use of land for three existing calving/feed pads, which each accommodate up to 120 cows. The base of the calving/feed pads is a thick layer of woodchips or bark, which absorbs effluent. This will be spread as a permitted activity under Rule 38 of the proposed Southland Water and Land Plan (pSWLP). Two of these pads are roofed or partially roofed. The third is not roofed and is connected to the effluent pond by a sump. The pads are used on the shoulders of the season when the weather and/or ground conditions are adverse; for feeding in May and for calving in August and September.
12. PDL seek to retain their current authorised water abstraction of 120 m<sup>3</sup>/day and 43,800 m<sup>3</sup>/year (currently authorised by Auth-302424). Water is used for dairy shed washdown and stock drinking water, with the rate sought equating to 120L/cow/day. The rate of abstraction is less than 2 L/s.
13. A land use consent is also sought for the expansion of the dairy farm platform, with the proposed inclusion of the 61.5 ha Muir Block. The Muir Block was run by the previous owners as a sheep block and by PDL as a winter grazing block since purchase in 2019.
14. The dairy farm is located approximately 20 km north of Invercargill and 10 km south of Winton, in the Oreti Freshwater Management Unit. It is generally flat and much of the property is underlain by artificial drainage. It is in the Makarewa River catchment and two unnamed tributaries of the Makarewa River run through the property in a north-south direction. Surface water quality is poor, with elevated concentrations of *E.coli*, total nitrogen and total phosphorus.
15. The property is in the Lower Oreti and Makarewa groundwater management zones, which have allocation available. Nitrate concentrations in groundwater are within the maximum acceptable value (MAV) set by the New Zealand Drinking Water Standards and are generally within half of the MAV.
16. The property is in the Gleyed physiographic zone, which is characterised by soils that are finely textured and poorly drained. Nutrients are generally lost via artificial drains or overland flow.
17. The applicant originally sought a 10-year consent duration, which was amended through Ms Ballinger's evidence to an expiry date of 30 December 2030. This was in response to Ms McRae's s42A report, as consents for discretionary activities under the Resource Management

(National Environmental Standards for Freshwater) Regulations 2020 (NES-F) must expire before 1 January 2031.

## NOTIFICATION AND SUBMISSIONS

18. The application was publicly notified on Monday 21 March 2022. One submission was received from Jenny Campbell and Dave Kennedy, who wished to be heard. They opposed the application and sought that it be declined. Their concerns are around the degraded state of the receiving environment, and they considered that the proposed mitigation measures were inadequate to contribute to remedying this. They also expressed concerns regarding the impact of the increased cow numbers on climate change, and considered that local iwi should have been consulted about the proposal.

## THE HEARING

### Applicant

19. **Mr. Jared Collie** is a Director and the Chairman of Platinum Dairies Limited. He discussed how the property is operated and detailed the background and reasons for the application. Mr Collie highlighted their investment in mitigations to improve water quality and how they work with their contract milkers. Mr Collie was accompanied by Mr Jamie McConachie, a fellow Director of PDL.
20. **Ms. Miranda Hunter** of Roslin Consultancy Limited is PDL's Farm Consultant. She provided further detail on the operation of the farm in the context of the current application, presented her Overseer nutrient loss analyses, and discussed the mitigation and management measures proposed in the Farm Environmental Management Plan (FEMP). She considers that the proposal to expand the dairy platform to include the Muir Block will provide the farm with greater flexibility and, along with the additional mitigations, will result in a reduction in both phosphorus and nitrogen losses.
21. **Ms. Matilda Ballinger**, a Planner at Landpro Limited, addressed the applicable regional planning framework and activity status, discussed the scope of the application and the environmental effects, and considered the application against documents including the pSWLP and National Policy Statement for Freshwater Management (NPS-FM). She also provided updated consent conditions.

### Submitter

22. **Ms Jenny Campbell's** oral submission presented her connection to the whenua and the changes that she has witnessed over her lifetime. She is concerned that proposals such as that of PDL will continue the current degradation of water quality and contribute to climate change. She is particularly concerned about the increasing number of dairy cows. She requested that the application be declined or, if granted, additional mitigation measures are imposed to ensure that there is no increase in contaminants. Ms Campbell was supported in her presentation by Ms Robina Johnson.

### Section 42A reporting officer

23. **Ms Jade McRae**, Senior Consents Officer at Environment Southland presented her section 42A report and responded to the matters raised in the applicant’s evidence and presentation of Ms Campbell. Ms McRae also addressed mitigation and draft consent conditions, which she had prepared in consultation with Ms Ballinger.

### Applicant’s right of reply

24. Ms Ballinger provided a written right of reply on behalf of the applicant on 13 July 2022. Accompanying this were amended sets of proposed conditions.

### CONSIDERING THE APPLICATION

25. I have considered all relevant documentation that applies to this application for the purposes of my assessment in the following sections, and for my final decision. This includes the application, AEE and subsequent further information, the submission, the section 42A report, expert evidence, the submitters information and the applicant’s right of reply.

### Status of the application

26. Ms McRae and Ms Ballinger were in agreement as to the applicable planning framework and the status of the applications as restricted discretionary and/or discretionary.
27. Ms McRae summarised the status of the required consents in Table 2 of her s42A report, which is replicated below. Note that OP refers to the operative Regional Water Plan (RWP), and PP refers to the pSWLP. The rules in the pSWLP that are under appeal are highlighted in grey.

Activity	Relevant Rule	Activity Status
To discharge dairy shed from up to 1,000 cows and calving pad effluent from up to 150 cows to land via low rate pods 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 120,000 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 three calving pads with covered barns which accommodate up to 120 cows each.	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

28. At the hearing Ms McRae acknowledged that Regulations 14 and 19 of the NES-F cover both the use of land and discharges from the proposed activities. Therefore, discharge permits are also required for the calving pads and dairy farm expansion. The proposed conditions for the discharge permit, provided with the right-of-reply, were amended to this effect.
29. Ms Ballinger and Ms McRae both considered that the activities should be bundled and treated as discretionary. I support this and have treated the application as a discretionary activity.

## Statutory considerations

30. Section 104 of the RMA guides consideration of consent applications. Section 104(1) lists the matters that I must have regard to in considering the application, stating that:

*When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*

- (a) any actual and potential effects on the environment of allowing the activity; and*
  - (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
  - (b) any relevant provisions of—*
    - (i) a national environmental standard:*
    - (ii) other regulations:*
    - (iii) a national policy statement:*
    - (iv) a New Zealand coastal policy statement:*
    - (v) a regional policy statement or proposed regional policy statement:*
    - (vi) a plan or proposed plan; and*
  - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
31. Section 104B of the RMA states that I can grant or refuse an application that is a discretionary activity and, if granted, may impose conditions under section 108.
32. Sections 105 applies to applications discharge permits and requires that, in addition to the matters in section 104(1), I must have regard to
- (a) The nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
  - (b) The applicant's reason for the proposed choice; and*
  - (c) Any possible alternative methods of discharge, including discharge to any other receiving environment.*

33. Section 107(1) also applies to applications for discharge permits, and precludes me from granting a permit to discharge contaminants to land in circumstances which may result in contaminants entering water if, after reasonable mixing, it is likely to result in any of the following:

- “(c) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:*
- (d) any conspicuous change in the colour or visual clarity:*
- (e) any emission of objectionable odour:*
- (f) the rendering of fresh water unsuitable for consumption by farm animals:*
- (g) any significant adverse effects on aquatic life.”*

Exceptions to this are provided in section 107(2) and I will refer to these later in my decision if needed.

34. An additional statutory consideration is provided by Regulation 24 of the NES-F, which applies to all discretionary activities under Subpart 2. The dairy farm expansion is to be considered under Regulation 19 of the NES-F, to which Regulation 24 applies. Regulation 24 requires that

a 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.”*

35. The above sections of the RMA, along with Regulation 24, are considered in turn below.

## **SECTION 104(1)(a) – ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT**

### **The existing environment**

36. Before addressing the actual and potential effects of the proposed activity, I outline the environment against which the effects are assessed. While there was no dispute between the applicant’s experts and Ms McRae, Ms Campbell did express concerns as to the effects of additional milking cows. This is an important matter to consider in determining whether the proposal amounts to intensification.
37. The effluent discharge permit AUTH-302423 authorises the discharge from 1,000 milking cows. However, a slightly lower number of milking cows has been on the property under PDL’s ownership. Ms Ballinger and Ms McRae both consider that the existing environment includes the 1,000 cow limit authorised by the existing consent. This is consistent with my understanding of the law. I therefore agree with Ms Ballinger and Ms McRae that, from a planning perspective, this application will not result in an increase of milking cows on the property.
38. Related to this, I asked Ms Ballinger and Ms McRae whether section 124 of the RMA applies to the water permit and discharge permit applications. I asked this to determine whether the wider proposal to extend the dairy platform would affect the application of section 124. Ms McRae responded at the hearing while Ms Ballinger addressed this in her right-of-reply. Both considered that section 124 does apply to the water permit and discharge permit as the activities authorised by these existing consents are not changing. I agree that this is the correct approach and note that the expansion of the dairy platform is covered by the land use consent to farm.
39. The existing environment is described in section 3 of the AEE, with additional and updated information provided through the applicant’s additional information, the section 42A report, and expert evidence.
40. No evidence was provided to suggest that the permitted baseline, as provided for by section 104(2), should apply in this case.

### **Considering the effects**

41. This application seeks four resource consents, two land use consents under section 9 of the RMA, one water permit under section 14 of the RMA and a discharge permit under section 15



of the RMA. There are some overlapping effects of these activities, particularly those that relate to water quality.

42. Other than cumulative effects which were raised by Ms Campbell, the applicant's consultants and Ms McRae were in general agreement over the effects of the proposal. I will discuss some of these effects here and return to the effects on water quality, including cumulative effects, below.
43. There was no debate about the effects of the proposed water abstraction and these were considered by Ms McRae and Ms Ballinger to be acceptable. This is a continuation of an existing activity and, in my experience, is at the smaller end of the scale. The connection to surface water does not need to be considered under the RWP and pSWLP, as the rate of abstraction is less than 2 L/s. Ms McRae and Ms Ballinger considered the volume to be reasonable and efficient for the end use of stockwater supply and dairy shed washdown. They also considered that there is adequate allocation available for the abstraction. I agree with their conclusions and do not consider the effects of the abstraction further.
44. With regard to the discharge of dairy shed effluent, there was agreement that the dairy effluent pond is appropriately constructed and sized, and the mitigation and management measures for the pond are best practice. Effluent is proposed to be discharged at low rates and depths, and a slurry tanker would be used as required. While the system itself appears to be sound and appropriate for the site and operation, the discharge of effluent will contribute to effects on water quality. I return to this below.
45. The effects of the calving/feed pads were not discussed in detail at the hearing, primarily because both the applicant's experts and Ms McRae agreed that the effects were small in scale and the design and operation of the pads are best practice. The use of the barns and pads is considered a mitigation measure, as they allow the cows to be removed from the pasture during adverse weather and ground conditions.
46. The key question regarding the effects of the additional Muir Block is whether this would result in additional nutrient losses from the property. This would potentially result in increased effects on water quality and is discussed below.
47. Relevant to all consents sought, Ms Campbell was concerned about the lack of consultation with iwi. The AEE states that no parties were considered to be affected by the proposal and so no consultation was undertaken. The AEE assessed the effects on tangata whenua values through consideration of the iwi management plan Te Tangi a Tauira. It concluded that the proposed mitigation and assessments undertaken addressed Te Tangi a Tauira. Iwi did not submit on the application and I have therefore been unable to consider their position. I will return to effects on tangata whenua values when I further consider effects on water quality below.

### **Effects on water quality**

48. There was no dispute that the key effect of the proposal is the cumulative effects from the farm operation on surface water and groundwater quality. Included in this is the discharge from the calving/feed pads, the effluent discharge and the addition of the Muir Block. These effects were largely considered together by the applicant and Ms McRae, through the Overseer assessment and with consideration of good management practices (GMPs) and mitigation measures included in the FEMP.

49. The use of Overseer has been questioned in recent times, however I accept the evidence before me that it is an appropriate tool in this case, especially when used alongside other lines of evidence. Ms Hunter's Overseer calculations compared the current farming operation to the proposed operation with the included Muir Block. Her Overseer assessment and conclusions were the subject of considerable scrutiny, with a peer review by Mo Topham of AgriAce, and Environment Southland commissioning a review by Nicky Watt of Irricon Resource Solutions (appended to the s42A report).
50. Ms Hunter's evidence at paragraph 18 concluded that:
- there will be a reduction in total farm nitrogen (N) loss from 17,635 kilograms per year (kg/yr) to 16,541 kg/yr, a 6.2 % decrease
  - there will be a reduction in total farm phosphorus (P) loss from 419 kg/yr to 399 kg/yr, a 4.8 % decrease.
51. Alongside the Overseer modelling, Ms Hunter discussed the key drivers to the above reductions as well as additional reductions from proposed mitigations not accounted for in the Overseer modelling. Ms Hunter's conclusions were accepted by Ms McRae. I accept that there will be a likely reduction in overall N and P loss resulting from the proposal. I have also considered whether there will be any increases in water quality contamination in specific areas of the farm, resulting from the proposed changes to the farming operation. I accept that the proposed mitigations will ensure that there will be no localised increases in nutrients.
52. I have paid careful attention to the proposed consent conditions to ensure that they lock in the key mitigations to reduce nutrient loads. At her paragraph 16(b), Ms Hunter considers the following to be the key drivers to nutrient reductions: reductions in cows wintered and the area used for intensive winter grazing, reduced nitrogen fertiliser use, the removal of jersey bulls, a reduction in the numbers of young stock and a reduction in Olsen P from 35 to 30. Also of note are the fencing of a wetland identified as a critical source area, and the maintenance of fencing and planting of riparian buffers. These are all covered through the proposed consent conditions.
53. As discussed above, water quality in the receiving environment is degraded. Directions in the NPS-FM and regional plans are that degraded water quality should be improved. This is discussed further below in my statutory considerations, however I conclude here that the proposal will not result in degradation of water quality. The applicant is proposing to increase the cow numbers up to the current consented maximum but the stocking rate of cows per hectare will decrease through the addition of the Muir Block. That, and the proposed mitigations, will reduce the effects of the farming operation on the environment.

#### **SECTION 104(1)(b) – RELEVANT PLANNING PROVISIONS**

54. Section 104(1)(b) requires me to have regard to any relevant provisions of statutory planning documents. Ms McRae's section 42A report contains what I consider to be a complete record of the relevant documents and provisions, assessing the application against the relevant provisions of the RWP (section 3.4.4), pSWLP (section 3.4.5), Southland Regional Policy Statement (RPS) (section 3.5), NPS-FM (section 3.6.1), and NES-F (section 3.8.1). There was no dispute at the hearing as to the relevant statutory documents or the provisions that apply to the proposal.

55. I have considered the relevant objectives and policies of these statutory documents in making my decision. I consider the NPS-FM to be a key document for this application, in part because it was gazetted after the development of the RWP, pSWLP and RPS. These planning documents therefore were prepared without consideration of the NPS-FM.
56. I have had regard to the NPS-FM objective and policies, in particular the objective and Policy 1, that require freshwater to be managed in a way that gives effect to Te Mana o te Wai. Te Mana o te Wai requires the resource to be managed in a way that prioritises the health and well-being of water bodies and ecosystems first, the health needs of people (drinking water) second, and the ability of people and communities to provide for their social, economic and cultural well-being third.
57. Referring to my finding on the effects, I consider that the proposal will meet Te Mana o Te Wai. I agree with Ms McRae and Ms Ballinger that the proposal will result in a small reduction in nutrient losses from the property and a corresponding small improvement in groundwater and surface water quality.
58. Considering the provisions of the RWP and pSWLP, I agree with Ms McRae that greater weight should be placed on the pSWLP. The pSWLP was developed under the NPS-FM 2014 (amended 2017) and implements the RPS. Appeals on the pSWLP are currently before the Courts.
59. There is a strong focus in the objectives and policies of the pSWLP on improving water quality where it is degraded. Objective 6 seeks to improve degraded water bodies and maintain water quality that is not degraded. Policy 16 seeks to minimise the adverse effects of farming activities on water quality and is particularly relevant to this proposal. Policy 16(1)(b) is to ensure that:
- “...applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities will generally not be granted where:*
- (i) the adverse effects, including cumulatively, on the quality of groundwater, or water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes cannot be avoided or mitigated; or*
- (ii) existing water quality is already degraded to the point of being overallocated; or*
- (iii) water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines;”*
60. Ms McRae and Ms Ballinger both considered whether the proposal should be considered as intensification. The pSWLP does not define intensification, however Ms McRae in her hearing summary took direction from the triggers in Rule 20, suggesting that intensification would include an increase in cow numbers and/or an increase in the dairy platform. I accept that this is a reasonable approach. Considering this approach against Policy 16(1)(b), I find no fault in the conclusion of Ms Ballinger and Ms McRae that the adverse effects in this instance will be mitigated.
61. Turning to Regulation 24 of the NES-F, I am satisfied that the proposal will not result in further water quality degradation. There is therefore no barrier to granting the land use permits under the NES-F.
62. I discuss the key documents and provisions below that are material to my decision and determine if the proposal is acceptable against this framework.

## **SECTION 104(1)(c) – OTHER MATTERS**

63. In her s42A report Ms McRae refers to Te Tangi a Tauira, the iwi management plan for Murihiku, as a relevant matter to consider under section 104(1)(c). She comments on the proposal against the relevant provisions and considers that the mitigation included in the proposed conditions is consistent with Te Tangi a Tauira. While it is difficult to make such an assessment without input from local iwi, I consider that Ms McRae’s conclusions are reasonable.

## **SECTIONS 105 AND 107**

64. Turning to section 105, I consider that the receiving environment is highly sensitive to the proposed discharges. This is due to the soils and hydrogeology of the area which results in a high risk of overland flow to surface water and prevalence of sub-surface drains. This has been considered in Ms McRae’s s42A report and taken into consideration by the applicant in determining appropriate mitigation for the proposal.
65. The AEE discussed alternatives to the proposed discharges in section 6.7, which were considered in sections 3.3.5 and 3.10.3 of Ms McRae’s s42A report. I accept that the proposed low-rate discharge of effluent is appropriate for the receiving environment and that the additional mitigation measures are best practice for reducing contaminant loss to water.
66. I have evaluated the proposed discharges against the requirements of section 107, and I do not consider that the discharges will give rise to the listed effects in the receiving waters.

## **PART 2 OF THE RMA**

67. Section 104(1) of the RMA states that the matters to be considered must be done so subject to Part 2. Ms McRae assessed the proposal against Part 2 and concluded that it achieves the purpose of the RMA. I note that the Court of Appeal’s decision in *RJ Davidson v Marlborough District Council*<sup>1</sup> clarifies how to approach the directive by section 104(1) to consider provisions subject to Part 2. It directs that there is no need to consider Part 2 unless there is invalidity, incompleteness or uncertainty of meaning in the statutory planning documents.
68. In this case, there is no conflict between objectives or policies that would benefit from consideration against Part 2, and I have concluded that the proposal is generally consistent with the relevant statutory documents. With reference to *Davidson*, I find that there would be no benefit to my evaluation of the proposal from consideration of Part 2.

## **TERM AND CONDITIONS**

69. Policy 40 of the pSWLP provides guidance on consent duration and I have considered this when determining an appropriate duration. As discussed in paragraph 17, the applicant initially applied for a 10-year duration. This was amended to an expiry date of 30 December 2030, as consents for discretionary activities under the NES-F must expire before 1 January

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<sup>1</sup> [2018] NZCA 316

2031. While the water permit and effluent discharge permit are not considered under the NES-F and a 10-year duration could be sought, Ms Ballinger acknowledges the advantage of a common expiry date. A common expiry date is supported by Policy 40(5) for applications which may affect the quality of the same resource.

70. I have considered whether a shorter duration should be applied to these consents, particularly considering that the Council is currently undertaking its FMU process and preparing a plan change to implement the NPS-FM. This is balanced against the investment required by the applicant to implement the proposed mitigations and farm system changes. Overall, I consider that a common expiry of 30 December 2030 is appropriate for these consents.
71. I have considered the conditions attached to Ms Ballinger's right-of-reply which have been agreed to by Ms McRae. These incorporate changes in response to my questions and subsequent discussions at the hearing. I consider that these sets of conditions are appropriate for the proposed activities.

## DECISION

72. Under the powers delegated to me by the Southland Regional Council, for the reasons given above, pursuant to sections 104, 105, 107 and 108, and subject to Part 2 of the Resource Management Act 1991, I GRANT the application APP-20211740 by Platinum Dairies Limited for the following consents:
- a) a discharge permit to discharge agricultural effluent to land;
  - b) a water permit to take and use groundwater;
  - c) a land use consent and discharge permit for feed pads; and
  - d) a land use consent and discharge permit to expand a dairy farm.
73. These consents are granted with an expiry date of 30 December 2030.

Dated at Christchurch this 17th day of August 2022



**Bianca Sullivan**  
**Independent Hearing Commissioner**