

BEFORE THE SOUTHLAND REGIONAL COUNCIL

Under The Resource Management Act 1991 ('**The Act**')

In the matter of an application for resource consent

**STRIKE OUT APPLICATION PURSUANT TO SECTION 41D OF
THE RESOURCE MANAGEMENT ACT 1991 ON BEHALF OF
PAHIA DAIRIES LIMITED**

Duncan Cotterill
Solicitor acting: Jamie Robinson
PO Box 5, Christchurch | Ōtautahi 8140

Phone +64 3 372 6459
jamie.robinson@duncancotterill.com

MAY IT PLEASE THE COUNCIL:

INTRODUCTION

- 1 Pahia Dairies limited (**PDL** or **the Applicant**) requests that the Southland Regional Council (**Environment Southland**) strikes out the submission of the New Zealand Animal Law Association (**NZALA**) on PDL's application (Environment Southland reference APP-20222765) pursuant to s41D of the Resource Management Act (**RMA**).
- 2 This application for strike out addresses:
 - 2.1 the background to the application;
 - 2.2 the reasons for the strike out; and
 - 2.3 the relief sought.

BACKGROUND

- 3 PDL owns a 419 hectare dairy farm located between Colac Bay and Orepuki. In 2017, PDL purchased a 100ha block of land, referred to as "Browns Block" which was incorporated into the dairy platform.
- 4 In September 2022 Environment Southland issued an abatement notice, requiring that Browns Block cease being used for dairy purposes, as that use was not authorised by the regional rules.
- 5 As a result of that abatement notice, PDL applied to Environment Southland for resource consent to authorise the use of Browns Block for dairy purposes, particularly to:
 - 5.1 Use land to expand a dairy farm by 95ha (with no increase in peak milking herd); and
 - 5.2 Use land for intensive winter grazing of cattle on 55ha of crop on slopes over 10 degrees.
- 6 The resource consent was publicly notified, with submissions closing on 23 March 2023. Only one submission was received, from the NZALA (**NZALA submission**). A copy of that submission is enclosed with this application to strike out, as **Appendix 1**.
- 7 That submission raised purported issues of animal welfare from the winter grazing of cattle on fodder beet.

GROUNDS FOR STRIKE OUT

8 Section 41D of the RMA authorises an authority conducting a hearing to strike out a submission (in part or in whole), if certain conditions are met:

(1) *An authority conducting a hearing on a matter described in section 39(1) may direct that a submission or part of a submission be struck out if the authority is satisfied that at least 1 of the following applies to the submission or the part:*

(a) *it is frivolous or vexatious:*

(b) *it discloses no reasonable or relevant case:*

(c) *it would be an abuse of the hearing process to allow the submission or the part to be taken further:*

(d) *it is supported only by evidence that, though purporting to be independent expert evidence, has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert evidence on the matter:...*

(2) *An authority*

(a) *may make a direction under this section before, at, or after the hearing; and*

(b) *must record its reasons for any direction made.*

9 The grounds for strike out are that the NZALA submission:

9.1 discloses no reasonable or relevant case; and

9.2 would be an abuse of the hearing process to allow the submission to be taken further.

It discloses no reasonable or relevant case

10 To disclose a reasonable or relevant case, a submission must raise issues which are within the scope of an application under the RMA.

11 The sole issue raised in the NZALA submission is animal welfare. Animal welfare is **not** an issue which is within the scope of the RMA, rather it is addressed under the Animal Law Act 1999 (**AWA**) (which is referenced throughout the NZALA submission).

12 The issue of animal welfare and its relevance to the RMA was thoroughly traversed in the matter of several resource consent applications to Environment Canterbury (**ECan**) for intensive indoor dairy farming in the Mackenzie Basin. In particular, in that situation:

- 12.1 Over 75% of the submissions received on the publicly notified applications raised animal welfare concerns.
- 12.2 ECan received legal advice that effects on animal welfare could not be considered because issues in terms of animal welfare are more appropriately addressed via the AWA. This position was communicated to the Ministry for the Environment, as part of discussions about whether the Minister should call in the applications.
- 12.3 In advising the Minister, the government officials' advice¹ confirmed that animal welfare issues sit outside the RMA, and so in this instance could not be a matter for call in.
- 12.4 The Minister (Nick Smith) agreed with the advice of his officials, and animal welfare was **not** an issue for the resource consent application.

Abuse of the hearing process

- 13 Allowing the NZALA submission to progress to a hearing would amount to an abuse of process, and put PDL to unnecessary expense.
- 14 The NZALA submission is the only submission on the application. At the pre-hearing meeting (which NZALA did not attend) the Environment Southland planning officer proposed draft conditions, and advised that if those conditions were imposed the officer was minded to recommend a grant of consent. On that basis, the only reason for a hearing would be the NZALA submission, which does not raise valid RMA issues.
- 15 If the submission is not struck out, PDL will need to immediately commence the preparation of evidence to protect its position. This may need to include expert evidence on animal welfare, feed/supplement nutritional make up, and planning. There are no cost recovery mechanisms for PDL if the submission is subsequently found to be out of scope of RMA considerations at the hearing. At that point, evidence will already have been prepared and costs incurred, as well as the Council costs for a publicly notified hearing.

¹ [10-B-00003: Resource Consent applications for or Dairy Farming Under-Cover in the MacKenzie Basin V2 \(environment.govt.nz\)](#)

16 PDL are prejudiced by this process as the NZALA submission raises no valid RMA submission points, and so PDL should not be put to the cost of responding to these points via a hearing.

RELIEF SOUGHT

17 PDL seeks the following relief:

17.1 The submission of NZALA is struck out in its entirety; and

17.2 To prevent unnecessary costs PDL respectfully requests that a decision is made in advance of any evidence exchange timeline or hearing.

Dated 15 May 2023



J A Robinson

Solicitor for Pahia Dairies Limited

APPENDIX 1 – New Zealand Animal Law Association submission