

**BEFORE AN INDEPENDENT HEARINGS COMMISSIONER  
AT INVERCARGILL**

**COUNCIL REF: APP 20222765**

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**UNDER THE**

Resource Management Act 1991

**IN THE MATTER OF**

Applications by Paihia Dairies Limited for land use consents to use land for intensive winter grazing, to expand an existing dairy farm and to discharge contaminants to land at 171 Ruahine Road West, Orepuki, Southland

**SUBMITTER**

NEW ZEALAND ANIMAL LAW ASSOCIATION

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**STATEMENT OF EVIDENCE OF OSKA REGO ON BEHALF OF NEW ZEALAND ANIMAL LAW  
ASSOCIATION**

28 September 2023

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## INTRODUCTION

1. My name is Oska Rego. I am an Associate at HWL Ebsworth Lawyers in Victoria, Australia. I am a New Zealand citizen and member of the New Zealand Animal Law Association (**NZALA**). I was a member of the NZALA executive between 2018 and 2021.
2. I am authorised to provide this evidence on behalf of NZALA.
3. I have been involved in animal welfare advocacy for around ten years, primarily in a volunteer capacity. Although I currently live in Australia, I have worked as a local government and resource management lawyer in New Zealand and provided advice in that capacity on consent applications regarding animals. In 2017, I wrote a dissertation on *Animal Welfare and the Resource Management Act 1991*.<sup>1</sup>
4. My evidence discusses:
  - (a) who NZALA is;
  - (b) why NZALA is concerned about intensive winter grazing (**IWG**);
  - (c) why it is appropriate for land use practices that improve animal welfare to be provided for through resource management consent conditions and the co-benefits of doing so;
  - (d) a range of conditions that have been imposed on other resource management consents to provide for improved animal welfare;
  - (e) Pahia Dairies Limited's (**PDL**'s) approach to IWG; and
  - (f) Specific comments made by PDL's experts relating to NZALA.
5. I have read the Application and Assessment of Environmental Effects, and the briefs of evidence filed on behalf of PDL and NZALA.

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<sup>1</sup> Oska Rego *Animal Welfare and the Resource Management Act 1991* (6 October 2017).

**NZALA**

6. NZALA is a coalition of lawyers, law students and law graduates working together to improve the welfare and lives of animals through the legal system in Aotearoa New Zealand. It currently has over 500 members nation-wide, and is entirely volunteer-run.
7. NZALA regularly links members with relevant legal expertise to people and organisations looking for assistance on matters affecting animals. Its other functions include:
  - (a) running seminars and conferences on animal law issues;
  - (b) drafting and submitting on primary and secondary legislation;
  - (c) working on projects, policies and regulations with government, industry, and other charities; and
  - (d) conducting litigation (NZALA has successfully run two judicial reviews and a private prosecution).<sup>2</sup>
8. As the present Application was publicly notified, NZALA has followed its stated purpose of improving the lives of animals through the legal system by presenting Southland Regional Council with legal, planning, and animal welfare science considerations relevant to having regard to the actual and potential effects of PDL's Activities on animals.

**INTENSIVE WINTER GRAZING**

9. As Dr Beattie explains in her statement, IWG is a farming practice where livestock are grazed over winter on paddocks planted with forage crops.

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<sup>2</sup> *New Zealand Animal Law Association v The Attorney-General* [2020] NZHC 3009; *New Zealand Animal Law Association v Attorney-General* [2022] NZHC 1844; and *New Zealand Animal Law Association v Robinson* [2020] NZDC 21942.

10. NZALA has been concerned about IWG practices in Aotearoa for some years. A report it has published on animal welfare law in New Zealand highlights animal welfare impacts associated with IWG.<sup>3</sup>
11. In June 2022, NZALA lodged a joint submission with Greenpeace Aotearoa, Save Animals From Exploitation – SAFE, SPCA NZ and Animals Aotearoa on the National Animal Welfare Advisory Committee (**NAWAC**) review of the Code of Welfare: Dairy Cattle (**Code**), which noted that:
- (a) the number of dairy cows farmed has doubled over the last thirty years;
  - (b) farming has intensified; and
  - (c) IWG can have negative welfare effects as it does not allow cows to display normal patterns of behaviour such as lying down as needed for rumination, rest and digestion, and lack of access to warm, sheltered refuge with compressible, dry surfaces.
12. The amendments proposed to the Code by NAWAC would address many of the key concerns with IWG, namely access to clean water, sufficient lying space and the prevention of calves being born in mud. Unfortunately, the amendments have not yet been adopted and remain in draft form, as Dr Beattie explains.
13. The primary sector and the Government acknowledge the importance of animal welfare in IWG.<sup>4</sup>
14. In 2021, Federated Farmers stated that IWG “can be a high-risk activity with regards to both the environment and animal welfare” and that “the practice requires careful

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<sup>3</sup> New Zealand Animal Law Association *Farmed Animal Welfare Law in New Zealand* (February 2021) <[https://static1.squarespace.com/static/62b2caeb504e402d6ea5f73e/t/6504f754dfdc12f54ac3a1/1694824288657/NZALA\\_Farmed\\_Animal\\_Report.pdf](https://static1.squarespace.com/static/62b2caeb504e402d6ea5f73e/t/6504f754dfdc12f54ac3a1/1694824288657/NZALA_Farmed_Animal_Report.pdf)>.

<sup>4</sup> See for instance, Beehive press release “*Changes to intensive winter grazing regulations better for farmers and the environment*” (28 April 2022); and Dairy NZ, *Intensive Winter Grazing checklist*, <[https://www.dairynz.co.nz/media/5796464/dnz\\_wintering\\_checklist\\_a4\\_2023.pdf](https://www.dairynz.co.nz/media/5796464/dnz_wintering_checklist_a4_2023.pdf)>.

management and planning, along with the adoption of good management practices”.<sup>5</sup>

15. Federated Farmers acknowledged that industry and government expectations regarding IWG practices are not met by some farmers and that “overall improvements are still needed in some areas”.<sup>6</sup>
16. More recently, Federated Farmers have published statements about the importance of industry making “every effort to avoid negative public perception, and to minimise impacts on the environment and animal welfare”.<sup>7</sup>
17. In 2019, the Ministry for Primary Industries’ Winter Grazing Taskforce report on “Improving Animal Welfare on Winter Grazing Systems” identified numerous animal welfare issues associated with IWG. It also found that:<sup>8</sup>

“1) not all compliance tools available are being used, 2) enforcement activity is hindered by a lack of clear, enforceable rules and further tools are needed. Codes of welfare are not aligned with emerging scientific understandings of sentience. There are no enforceable regulations that directly address access to water, shelter and requirements for lying, depth of mud, and proper nutrition when winter grazing.”

#### **LAND USE PRACTICES THAT IMPROVE ANIMAL WELFARE – NZALA’S PERSPECTIVE ON WHY REGULATION UNDER THE RMA IS APPROPRIATE**

18. An occasionally expressed view is that animal welfare is managed under the Animal Welfare Act 1999 (**AWA**), and environmental effects are managed under the Resource Management Act 1991 (**RMA**).
19. My view is that this analysis is overly simplistic, and disregards that animal welfare can be managed under the RMA without cutting across the purpose and function of either statute.

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<sup>5</sup> Federated Farmers of New Zealand *Submission on Proposed Changes to the Intensive Winter Grazing Regime under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020* (7 October 2021) <[https://fedfarm.org.nz/FFPublic/FFPublic/Policy2/National/2021/Submission\\_on\\_Managing\\_Intensive\\_Winter\\_Grazing.aspx](https://fedfarm.org.nz/FFPublic/FFPublic/Policy2/National/2021/Submission_on_Managing_Intensive_Winter_Grazing.aspx)>, at [13].

<sup>6</sup> Above, at [15].

<sup>7</sup> Federated Farmers of New Zealand *Getting Winter Grazing Right – best practice tools*, <[https://fedfarm.org.nz/FFPublic/FFPublic/Policy2/National/2020/Getting\\_Winter\\_Grazing\\_Right.aspx](https://fedfarm.org.nz/FFPublic/FFPublic/Policy2/National/2020/Getting_Winter_Grazing_Right.aspx)>.

<sup>8</sup> Winter Grazing Taskforce *Final report and recommendations: Improving Animal Welfare on Winter Grazing Systems* (Ministry for Primary Industries, November 2019), at 5 <<https://www.mpi.govt.nz/dmsdocument/38210/direct>>.

20. Numerous concerns have been made by researchers about the deficiencies in the Code including lack of enforcement, reliance on industry self-regulation and under-resourcing of inspectors.<sup>9</sup> Irrespective of implementation and enforcement issues, NZALA’s perspective is that management should not be left entirely to the AWA.
21. As identified in the AWA, animals have an inherent value as sentient beings. Although they are much more than just “natural resources”, this term is defined in the RMA to include “animals”. Animals are part of environmental ecosystems and the RMA requires effects on animals to be assessed as part of the statutory Assessment of Environmental Effects.<sup>10</sup>
22. Therefore, where an activity that requires resource consent may or will affect animals, then it is entirely appropriate that actual or potential effects on those animals are considered as part of the assessment of the application. This is particularly the case where, as with IWG, adverse impacts on animal welfare can be managed or at least improved through land use practices such as a requirement to provide cattle with adequate shelter, a plentiful water supply, suitable lying down areas and ensuring there are separate areas for calving.
23. Proactive management of animal welfare issues upfront has mutual benefits. As Dr Beattie explains, practices that improve animal welfare are also likely to have positive environmental and reputational effects. The farming sector is aware that improved environmental and animal wellbeing outcomes will also improve industry’s social licence and is something that is expected by customers, consumers, and communities.<sup>11</sup> PDL’s Manager, Mr Anderson, states in his evidence, at paragraph 28, that there are economic benefits for PDL in keeping their cattle in excellent health and condition.

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<sup>9</sup> Marcelo Rodriguez Ferrere, Mike King and Levi Mros Larsen (*Animal Welfare in New Zealand: Oversight, Compliance and Enforcement* (New Zealand Law Foundation, 2019), at 3 and 14 to 16 <<http://www.nzlii.org/nz/journals/NZLFRRp/2019/4.pdf>>.

<sup>10</sup> RMA, Schedule 4.

<sup>11</sup> See for instance, the Fonterra “*Winter Grazing Management Factsheet*” (2022), which talks about the need to have plans in place to manage and mitigate the impact of winter grazing on water quality and animal wellbeing outcomes to “reflect those expectations of our customers, consumers and communities” <<https://www.fonterra.com/content/dam/fonterra-public-website/fonterra-new-zealand/campaign-images/codof/docs/winter-grazing-management-factsheet-2022.pdf>>.

24. Proactive management to provide for improved animal welfare outcomes does not present any risks of ‘overlapping regulation’ or over-reach of roles and responsibilities. The AWA regime is largely an ‘ambulance at the bottom of the cliff’ management approach, except in this case, the ambulance is either often late or does not arrive at all.<sup>12</sup>
25. NZALA’s primary position is that IWG practices should not be granted consent, particularly in Southland where the winter climate does not allow cattle to exhibit their natural behaviours and therefore IWG practices have a more than minor effect on cattle and do not promote the RMA’s sustainable management purpose. However, if the Commissioner is minded to grant consent, NZALA strongly supports the inclusion of land use conditions to avoid or at least mitigate animal welfare issues.
26. This proactive land use management approach is:
- (a) not provided for under the AWA or any other regulatory regime, but is
  - (b) supported through the RMA’s statutory framework as explained by NZALA’s counsel and in Mr Hook’s planning evidence.

#### **OTHER RMA CONSENTS THAT INCLUDE CONDITIONS RELATING TO ANIMAL WELFARE**

27. Consent conditions directed at animal welfare considerations have been included in resource management consents.
28. Airport Farm Trustee Limited sought consent for a broiler poultry farm in New Plymouth. Independent Commissioners granted consent on behalf of Taranaki Regional Council (**TRC**) on 11 May 2022.<sup>13</sup> The consent conditions included a range of “special conditions” which, among other things:

<sup>12</sup> Poor enforcement of the Code is well documented, see for instance the report cited at footnote 9 above.

<sup>13</sup> Taranaki Regional Council *Decision of Independent Commissioners: Philip Milne and John Iseli* (11 May 2022), at PDF pages 43 and 44 (Appendix 1) <<https://www.trc.govt.nz/assets/Documents/Environment/Consent-applications/AirportFarm/DecisionAnnexures11May2022.PDF>>.

- (a) required each of the four intensively housed poultry sheds to have “an associated free-range area” that was no less than the shed area in size;
- (b) required “natural ground cover” to be “maintained over at least 70% of the range area of each shed” within six months from the consent commencing;
- (c) set a stocking intensity of no more than “15 birds per square metre at any time”;
- (d) required ammonia, humidity levels and other atmospheric conditions inside each shed to be regulated and monitored to maintain bird health;
- (e) required the consent holder to ensure “the proper care of all poultry on the site in terms of litter management, bird care, and diet”; and
- (f) required the consent holder to provide TRC with records of shed clean out operations.

29. While most of the conditions on the consent were included to manage discharges to air and odour, the conditions described above providing for a minimum free-range area for chickens with natural ground cover, a maximum poultry stocking density, air quality standards in the barns, the provision of records to TRC, and "proper care of all poultry" clearly all have an animal welfare intent. I have set out the relevant conditions in **Annexure A** to my evidence.

30. A further example is a consent granted by Otago Regional Council (**ORC**) on 28 April 2023 for IWG.<sup>14</sup> Condition 10 states:

*The Consent Holder must have and maintain an Intensive Winter Grazing Management Plan for the site at all times. For every winter grazing season the plan must include at a minimum:*

- a) Paddock scale plan for the paddocks to be used for the upcoming grazing season that shows where applicable: Critical source areas, buffer zones, areas of slope, gateways, **permanent water troughs, shelter, fencing, grass strips, baleage placement and portable troughs.***
- b) **Plans for wet weather, adverse events and poor soil conditions.***
- c) How the Consent Holder will undertake the grazing activity.*

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<sup>14</sup> Otago Regional Council *Land Use Consent* granted to LG and JM Morris Limited (RM23.321.01, 29 April 2023).

- d) *How and when the Consent Holder will monitor the grazing activity and management strategies to ensure effectiveness.*
- e) *How the Consent Holder will review the management plan and make any changes for the next season.*
- f) **Records of:**
  - i. *How many hectares of intensive grazing occurs each year;*
  - ii. *What types of stock are and were intensively grazed;*
  - iii. *Any changes made to the management plan and management of the grazing activity over the season;*
  - iv. *Photographs of the grazing areas taken before, during and after the grazing season; and*
  - v. ***Type of forage crop grazed.***

[emphasis added]

31. The condition suite is set out in **Annexure B** to my evidence and I understand that the above conditions are standard for ORC IWG consents. They seem to me to be sensible and helpful conditions. The provision of water troughs, shelter to cattle, and the recording of forage crops used, are all important animal welfare considerations.

#### **PDL'S PROPOSAL**

32. I acknowledge PDL's constructive approach regarding animal welfare concerns. Mr Anderson's evidence illustrates a willingness to improve animal welfare and reduce the environmental impacts of the farming operation.
33. For instance, Mr Anderson explains, from paragraph 12 of his evidence, some of the steps PDL has taken to provide dry-lying areas for cattle and to reduce pugging. He also explains that some paddocks have natural windbreaks such as shelterbelts, that they can build shelter or protection if required, and the transitioning system they use to allow cows time on pasture prior to calving.
34. While these assurances are welcome, it is entirely appropriate that they are provided for as suitable consent conditions in the event consent is granted. Doing so will ensure transparency, improved accountability and improve animal welfare outcomes for the reasons set out in Dr Beattie's evidence. While Mr Anderson's explanation of PDL's current approach to animal welfare is noted, NZALA supports

the condition set attached to Mr Hook's evidence and as supported by Dr Beattie's expert evidence.

#### **RESPONSE TO SPECIFIC COMMENTS MADE BY PDL'S EXPERTS**

35. I make the following brief comments in response to statements by Ms Mesman and Mr Anderson in their evidence.
36. Ms Mesman notes in paragraph 35 of her evidence that NZALA did not attend the pre-hearing meeting on 28 April 2023. NZALA was provided with PDL's extensive response to its submission on 24 April 2023, four days before the pre-hearing meeting. While NZALA was prepared to attend the meeting to discuss the Consent Application and its submission, more time was needed to obtain legal and technical advice required to address PDL's response. After communicating this with Southland Regional Council, NZALA was grateful to instead be given the opportunity to provide further written feedback, which was submitted on 10 May 2023.
37. In paragraph 16 of Mr Anderson's evidence, he states he suspects NZALA would take issue with wintering barns. However, NZALA does support measures which improve outcomes for animals. NZALA may, in a particular situation, support a wintering barn should it mitigate adverse effects on animals more effectively than alternative measures.



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**Oska Rego**

**Annexure A      Taranaki Regional Council *Discharge Permit* (Consent 5262-3.0, 1 June 2022) [Extract]**

**Special conditions**

1. This consent authorises emissions to air from up to four poultry sheds and associated free-range areas located and configured generally as shown in the application for this consent.
2. The total area of the four sheds used for intensively housing poultry shall not exceed 4,068 square metres, and each shed shall have an associated free-range area that is no less than the shed area.
3. The stocking intensity of poultry in any shed shall not exceed 15 birds per square metre at any time.
4. ...
6. The consent holder shall minimise the emissions and impacts of contaminants discharged into air from the site by installation and implementation of:
  - i) ...
  - vi) the proper care of all poultry on the site in terms of litter management, bird care, and diet;
7. In particular, the consent holder shall install and operate –
  - i) ...
  - iv) devices to monitor the atmospheric conditions inside each shed, including but not limited to carbon dioxide, temperature, humidity and ammonia concentrations, and shall retain monitoring records for a period of three months beyond the end of each broiler rearing cycle.
8. ...
10. Within six months following the initial exercise of this consent and thereafter, natural ground cover shall be maintained over at least 70% of the range area of each shed.
11. ..
12. (a) ...
  - (c) The consent holder shall keep a record of the timing of all shed clean out operations and the meteorological conditions occurring during those times. Such records shall be provided to the TRC on request.

**Annexure B****Otago Regional Council *Land Use Permit* (Consent No. RM23.321.01, 28 April 2023)  
[Extract]****Performance Monitoring**

10. The Consent Holder must have and maintain an Intensive Winter Grazing Management Plan for the site at all times. For every winter grazing season the plan must include at a minimum:
  - a) Paddock scale plan for the paddocks to be used for the upcoming grazing season that shows where applicable: Critical source areas, buffer zones, areas of slope, gateways, permanent water troughs, shelter, fencing, grass strips, baleage placement and portable troughs.
  - b) Plans for wet weather, adverse events and poor soil conditions.
  - c) How the Consent Holder will undertake the grazing activity.
  - d) How and when the Consent Holder will monitor the grazing activity and management strategies to ensure effectiveness.
  - e) How the Consent Holder will review the management plan and make any changes for the next season.
  - f) Records of:
    - i. How many hectares of intensive grazing occurs each year;
    - ii. What types of stock are and were intensively grazed;
    - iii. Any changes made to the management plan and management of the grazing activity over the season;
    - iv. Photographs of the grazing areas taken before, during and after the grazing season; and
    - v. Type of forage crop grazed.