



22 March 2023

Environment Southland Regional Council
service@es.govt.nz
esconsents@es.govt.nz

CC: Lumen Environmental Limited
Attention: Nicole Mesman
nicole@lumen.co.nz

Tēnā koe Environment Southland,

NEW ZEALAND ANIMAL LAW ASSOCIATION'S SUBMISSION OPPOSING RESOURCE CONSENT APPLICATION APP-20222765

Background

1. Pahia Dairies Limited ("**the Applicant**") has applied to Environment Southland ("**the Authority**") for a consent for nine years to:
 - a. increase the area of the dairy farm by 100 hectares;
 - b. to use that land for intensive winter grazing; and
 - c. to discharge contaminants to land associated with intensive winter grazing.
2. The New Zealand Animal Law Association ("**NZALA**") opposes these applications.
3. The Applicant owns a 419-hectare dairy farm at 171 Ruahine Road West, Ruahine. In 2017, the Applicant extended their dairy farm by purchasing a 100-hectare block of land known as "Browns Block". Since 2017, the Applicant has been unlawfully using this land for grazing dairy cows and was issued an abatement notice by the Authority in September 2022.
4. The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 ("**NESF**") permits intensive winter grazing where certain conditions are met. Browns Block fails to meet two of these conditions because it is greater than

50 hectares or 10% of the area of the farm,¹ and parts of the farm can slope in excess of 10 degrees over a 20-metre distance of land.² Therefore, as the Applicant's proposal does not comply with these conditions, the joint application for winter grazing and dairy expansion constitutes a restricted discretionary activity under the NESF.³

The definition of “environment” includes cattle

5. The purpose of the RMA is to promote the sustainable management of natural and physical resources.⁴ “Sustainable management” can be defined as avoiding or mitigating any adverse effects of activities on the environment.⁵ The term “environment” is defined as including “all natural and physical resources”, which includes cattle, given the definition encompasses “*all* forms of plants and animals” (emphasis added).⁶ When the courts have determined animals do not fall under the definition of “environment”, it has been regarding activities that were already regulated under other regulatory regimes and not regulated or controlled under the RMA.⁷ By contrast, intensive winter grazing is regulated and controlled under the RMA and its secondary legislation.⁸ Therefore, NZALA submits that the Authority must consider the potential adverse effects of the proposed intensive winter grazing on the cattle before approving this application.

The potential adverse effects of the Applicant's proposal

6. The Authority's assessment of potential adverse effects on cattle includes potential effects of low probability, which have a high potential impact.⁹ Case law has confirmed that absolute certainty of an event or effect is not required under the RMA.¹⁰
7. NZALA argues that the intended operation is likely to be inconsistent with section 10 of the Animal Welfare Act 1999 (“**AWA**”), by failing to meet the cattle's physical, health and behavioural needs in accordance with good practice and scientific knowledge.

¹ Breaching reg 26(4)(a).

² Breaching reg 26(4)(b).

³ Resource Management (National Environmental Standards for Freshwater) Regulations 2020, reg 27.

⁴ Section 5(1).

⁵ Resource Management Act 1991, s 5(2)(c).

⁶ Resource Management Act, s 2(1).

⁷ For example, the management of kaimanawa horses was regulated under the Wildlife Act 1953 in *Kaimanawa Wild Horse Preservation Society Inc v Attorney-General* NZEnvC A27/97, 5 March 1997, and coal mining was regulated under the Coal Mines Act 1979 in *Powelliphanta Augustsus Inc v Solid Energy New Zealand Ltd* HC Christchurch CIV-2006-409-2993, 30 April 2007.

⁸ Resource Management Act 1991, pt 6 and Resource Management (National Environmental Standards for Freshwater) Regulations 2020, subpt 3.

⁹ Resource Management Act, s 3(f).

¹⁰ *Living in Hope Inc v Tasman DC* [2011] NZEnvC 157.

These needs include the provision of proper and sufficient food and water, adequate shelter, the opportunity to display normal patterns of behaviour and protection from significant injury or disease.¹¹ NZALA submits the proposed activity could leave the Applicant exposed and potentially liable to criminal liability under section 12 of the AWA.

(A) Potential adverse effects on proper and sufficient food

8. The Applicant refers to the loss of nutrients per hectare of land when they repeatedly refer to fodder beet being more beneficial to the environment than other options, such as kale. However, the Applicant failed to consider the implications on cattle welfare, as part of the environment.
9. NZALA submits there are significant concerns associated with the use of fodder beet, which must be considered by the Authority, including:
 - a. long-term implications on milk composition, reproduction, bone development in young stock and longevity;¹²
 - b. the need for careful observation of the impact of low protein intake and understanding the impact of a low phosphorus diet;¹³
 - c. the increasing evidence that mineral deficiencies caused by fodder beet can lead to serious consequences, including spontaneous humeral fractures in replacement heifers, occurring in up to 25% of herds.¹⁴

(B) Potential adverse effects on the opportunity to display normal patterns of behaviour and accessing adequate shelter

10. The Code of Welfare (Dairy Cattle) 2019 (“**COW19**”) stipulates that when dairy cattle have suitable soft lying surfaces and space available that is not exposed to adverse environmental conditions, they prefer to lie down for 10-12 hours each day.¹⁵ Minimum standard 6(b) of the COW19 provides that the ability “to lie and rest comfortably for sufficient periods to meet their behavioural needs” must be provided to dairy cattle. This was also identified by the Winter Grazing Taskforce, confirming that cattle “...should always be able to lie down comfortably (on a soft dry substrate) for as long

¹¹ Animal Welfare Act 1999, s 4.

¹² Dairy NZ “Transitioning and health risks” <<https://www.dairynz.co.nz/feed/crops/fodder-beet/transitioning-and-health-risks/>>

¹³ Dairy NZ, above n 12.

¹⁴ Michaela Jane Gibson “Broken shoulders in dairy heifers in New Zealand: Investigating the relationship between live weight and bone morphology in the bovine forelimb” (Doctor of Philosophy in Animal Science, Massey University Palmerston North, 2021).

¹⁵ At 12.

as they want [and] there should always be an ability to readily move animals to shelter/dry land in adverse weather before harm occurs.”¹⁶

11. The Applicant submits they will manage the impacts of intensive winter grazing with a plan for each paddock and wet weather management strategies, including dry lying areas and fencing with portable troughs and feeders.¹⁷ The Applicant has not specified how much space will be dedicated to dry lying or how these areas will be kept dry. Further, the number and location of troughs have not been specified and how this will minimise the effects of winter grazing where the cattle are kept at higher than normal density.
12. NZALA is further concerned with Browns Block’s susceptibility to pugging. Pugging happens when soil structure becomes damaged, uneven and muddy from animals grazing during wet conditions.¹⁸ The majority of Browns Block is comprised of Otway and Kaipaki soils, which the Applicant notes are susceptible to pugging due to their high waterlogging risk.¹⁹ Therefore, given the substrate's makeup, NZALA submits that pugging is inevitable if the Authority permits intensive winter grazing on Browns Block. While the Applicant has indicated back fencing will be implemented to minimise pugging,²⁰ this reduces the space for the cattle and thus the ability to display their normal behaviours.²¹
13. The Winter Grazing Taskforce also highlighted that adverse weather could prevent normal birthing,²² and the conditions created by intensive winter grazing could exacerbate this. Such conditions could impede normal maternal behaviour, breaching section 10 of the AWA.
14. Therefore, NZALA submits that Browns Block’s susceptibility to pugging and insufficient drainage will likely impede the cattle’s opportunity to display normal patterns of behaviour, and the Applicant has failed to address how they will sufficiently mitigate or eliminate these adverse effects.

¹⁶ Ministry for Primary Industries *Winter Grazing Taskforce Final report and recommendations: Improving Animal Welfare on Winter Grazing Systems* (November 2019) at 7.

¹⁷ Nicole Mesman *Application for Resource Consent* (Lumen Environmental Ltd, 21 October 2022), at 55.

¹⁸ Beef and Lamb New Zealand “Factsheet September 2021 Pugging and Soil Compaction - What Influences Pugging” <[¹⁹ Mesman, above n 17, at 7.](https://beeflambnz.com/knowledge-hub/PDF/FS265-pugging-and-soil-compaction#:~:text=Pugging%20is%20when%20soil%20structure,looks%20rough%2C%20uneven%20and%20muddy.></p></div><div data-bbox=)

²⁰ Mesman, above n 17, at 55.

²¹ Ministry for the Environment and Ministry for Primary Industries *Report and recommendations on intensive winter grazing amendments* (April 2022) at 6.

²² Ministry for Primary Industries, above n 16, at 43.

(C) Potential adverse effects on the cattle's protection from significant injury or disease

15. As stated, Browns Block is susceptible to water pooling and pugging, which can lead to significant injury and disease in cattle, including the following:
 - a. Weakened hoof material and softened skin of the interdigital space and coronet, leading to infection and lameness.²³
 - b. An increase in mastitis.²⁴
 - c. A significant reduction in lying time can lead to acute and chronic stress and possible immunosuppression.²⁵

Code of Welfare for Dairy Cattle under review

16. Pursuant to section 104(1)(c) of the RMA, the Authority must have regard to any other matter the Authority considers relevant and reasonably necessary to determine the application. As the Authority may be aware, the Code of Welfare for Dairy Cattle (and its associated regulations) is currently under review by the National Animal Welfare Advisory Committee to ensure that it is consistent with animal welfare legislation. A significant part of the review relates to intensive winter grazing and whether such practices are consistent with the AWA. It is NZALA's and the Winter Grazing Taskforce's position that the animal welfare standards need to increase in relation to intensive winter grazing due to its adverse effects on dairy cattle.²⁶
17. NZALA submits that in light of the current review, the Authority must strongly consider whether such practices are consistent with the AWA.

Conclusion

18. The Applicant suggests that the cumulative effects on the environment will be "less than minor" as a result of management practices.²⁷ NZALA submits that the effects of the proposed activity on cattle will be more than minor and the Applicant has failed to sufficiently eliminate or mitigate the risk of potential adverse effects on the cattle. Therefore, the application is inconsistent with the requirements of the RMA and should not be granted.

²³ Beef and Lamb New Zealand, above n 18.

²⁴ Beef and Lamb New Zealand, above n 18.

²⁵ Ministry for the Environment and Ministry for Primary Industries, above n 21, at 43.

²⁶ See Ministry for Primary Industries, above n 16, at 8.

²⁷ Mesman, above n 17, at 4.

NZALA wishes the Authority to:

19. Decline the applications in accordance with section 104B(a) of the Act.
20. If the Authority grants the applications, NZALA submits that the resource consent should be granted for a maximum of 3 years.
21. If it is considered helpful to the Authority, NZALA can appear and speak in support of this submission.

Ngā mihi,

The New Zealand Animal Law Association