

**BEFORE AN INDEPENDENT HEARINGS COMMISSIONER
AT INVERCARGILL**

COUNCIL REF: APP-20222765

UNDER THE

Resource Management Act 1991 (the Act)

IN THE MATTER OF

Applications by Pahia 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

**MEMORANDUM OF COUNSEL FOR NEW ZEALAND ANIMAL LAW ASSOCIATION REGARDING
APPLICATION OF PERMITTED BASELINE**

19 October 2022



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MAY IT PLEASE THE COMMISSIONER

1. New Zealand Animal Law Association (NZALA) seeks leave to present these brief submissions correcting the position presented by the Reporting Officer and Pahia Dairies Limited regarding the application of the permitted baseline.
2. NZALA agrees with PDL¹ that s 104(2) of the RMA confers a discretion to apply the permitted baseline. This allows you to disregard any adverse effects that would already be authorised by a rule in the proposed Southland Water and Land Plan (pSWLP) or the National Environmental Standard for Freshwater (NES-F).
3. For the reasons explained at the hearing, NZALA's view is that it is an incorrect interpretation of the permitted baseline principle to suggest that effects from the farming activities need only be assessed on 3 ha of the site as effects on some 52 ha are permitted by the plan rules and/or NES-F.
4. A key point that neither the Reporting Officer or PDL have raised is that the use of land for a farming activity is permitted under Rule 20 of the pSWLP in only very limited circumstances, eg if the landholding is less than 20 hectares in area or the dairy platform has a maximum of 20 cows.
5. The combined effect of Regulation 6 of the NES-F and s 43B of the RMA is that a rule in the pSWLP that is more restrictive than a rule in the NES-F, prevails over the NES-F.
6. Therefore, PDL's proposal to expand its dairy farm must be assessed under rule 20 of the pSWLP. The 'permitted activity' thresholds in the NES-F do not apply.
7. In any event, it is artificial to separate the parcels of land in the way PDL and the Reporting Officer seem to have done, to make the argument that IWG is 'permitted' up to a certain threshold on separate parcels and so when considered as one landholding, only the effects over and above those that are permitted on individual parcels need be considered. This is an artificial analysis. The NES-F and the pSWLP have similar definitions of 'landholdings' and both intentionally require an assessment of environmental effects across the landholding that is operated as a single business entity.

¹ Paragraph 11 of PDL's Closing Legal Submissions.

8. In addition, NZALA states that the effects of the proposed farming activities must be considered 'on the environment' but excluding that environment as modified by the unlawful grazing activities that have occurred on Browns Block since 2017.² Unlawful activities must be excluded from any assessment of adverse effects *on* the environment.



D Nightingale
Counsel for NZALA

² Paragraph 3.2.2 of the s 42A report.