

**Before the Decision Makers appointed by the
Canterbury Regional Council**

IN THE MATTER OF The Resource
Management Act 1991

AND

IN THE MATTER OF Applications CRC201187
to undertake earthworks;
and CRC201191 to take
groundwater for
dewatering; and
CRC201192 for
discharge of dewatering
water to land or water
CRC201188 for a land
use consent to place
structures within Coastal
Hazard Zones 1 and 2,
and CRC201190 for a
coastal permit to disturb,
deposit material, erect
and place structures and
occupy the Coastal
Marine Area and
CRC201194 for a coastal
permit to discharge
contaminants to the
Coastal Marine Area by
Oceania Dairy Limited.

Section 42A Officer's Report – Supplementary Report

Date of Hearing: 20 July 2020.

INTRODUCTION

1. The Section 42a Officer's Reports for Oceania Dairy Limited's consent applications were circulated on 24 March 2020.
2. Following the circulation of the Officer's Reports, further evidence was provided by the applicant and submitters.
3. During the nationwide lockdown caused by the Covid-19 pandemic, the Commissioners provided written questions which were responded to by the Reporting Officer. These questions were received in two sets on 13 May 2020 and 18 May 2020 and responded to.
4. The evidence supplied on behalf of the applicant provided further details on the proposal and on points raised within the Officer's Report.
5. This supplementary report is intended to supply a response to additional matters raised within the evidence circulated, evidence provided within the hearing by the applicant and submitters, and questions from Commissioners both prior to and during the Hearing.

PLANNING MATTERS

6. The six consents were bundled into two groups: three consents relating to the terrestrial section of pipeline assessed as restricted discretionary under the Land and Water Regional Plan (LWRP) rules, and three consents relating to the coastal section of the proposal, assessed as discretionary under the Regional Coastal Environment Plan (RCEP).
7. My recommendation for the three pipeline construction consents CRC201187, CRC201191 and CRC201192 was grant for a duration of 10 years. The areas of discretion are listed in paragraphs 18 and 25 of the pipeline s42A report. I consider these areas of discretion are broad and I do not consider the proposed conditions cover anything outside the areas of discretion.
8. My recommendation for the three coastal consents CRC201188, CRC201190 and CRC201194 was that I could not recommend grant as sought by the applicant due to uncertainty on:
 - a. Whether the level of wastewater treatment proposed is adequate to protect coastal water quality; and
 - b. Whether potentially adverse effects on Ngai Tahu cultural values are addressed and mitigated.
9. My objective and policy assessment in relevant planning documents, on the effects of the discharge also differs from that of Ms. Singh for policies that relate to the above uncertainties. These were outlined in the Joint Witness Statement-Planning.
10. In terms of other effects, I have relied on advice from internal and external experts. Several requests were made in the s92 request for further information for the proposal to be fully assessed by experts. Information was provided on several matters, and the level of effects as assessed in the AEE was assessed to be minor or less than minor for most effects, except as outlined above. I do not consider there are outstanding areas of disagreement aside from the two points mentioned above.
11. Submitters have raised issues with the applicant's level of detail on assessment of alternatives. s105 of the RMA does not provide guidance on the adequacy or otherwise as to the level of assessment of alternatives. However Schedule 4 states an AEE should include, if it is likely that the activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity; and any information required by this schedule, including an assessment under clause 2(1)(f) or (g), must be specified in sufficient detail to satisfy the purpose for which it is required. In terms of acceptance under s88 of the RMA, I consider the assessment provided by the applicant was adequate. The applicant has provided further details on assessment of alternatives in the evidence of Mr. Lodge and Mr. Duder.
12. In terms of the relative weight that can be placed on an Iwi Management Plan where it appears to be in conflict with higher level planning documents, e.g. Policy 23 of the NZCPS as opposed to the Waitaki IMP (2019):
 - a. Under s104 of the RMA: In relation to consents - When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, **have regard to**—(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

- b. Under s61 of the RMA: In relation to a Regional Policy Statement - When a regional council is preparing or changing a regional policy statement, it must deal with the following documents, if they are lodged with the council, in the manner specified, to the extent that their content has a bearing on the resource management issues of the region: (a) the council **must take into account** any relevant planning document recognised by an iwi authority; and
 - c. Under s66 of the RMA: In relation to a regional plan- When a regional council is preparing or changing a regional plan, it must deal with the following documents, if they are lodged with the council, in the manner specified, to the extent that their content has a bearing on the resource management issues of the region: (a) the council **must take into account** any relevant planning document recognised by an iwi authority; and
13. **'have regard to'** means that the decision maker must give those matters genuine attention and thought but the decision maker is not necessarily required to accept them.
 14. The RMA is silent on how IMPs are developed, and they therefore assume a variety of shapes and forms.
 15. To summarise this, my understanding is that the IMPs provide direction when putting into effect a regional policy statement or plan, and anything specific in them that is relevant to a consent application must be considered, but not necessarily adopted, by a decision-maker on a resource consent.
 16. In relation to the proposed South East Marine Protection Area (SEMPA), at this time, with submissions not yet closed, it has some, but little, weight; it indicates the potential values at the site, which are currently protected by the NZCPS and RCEP. CRC's position that the site is "pristine" likely reflects these values.

COMMENTARY ON EVIDENCE SUPPLIED

17. The applicant's lawyer states that overall, the dual system of discharge to land and via coastal outfall will result in an improvement on environmental effects from the discharge of factory wastewater overall. My position on this is that I do not consider this can be quantified in any meaningful way, therefore the change in effects of the proposed shift to a dual system cannot be assessed.
18. The applicant states that the cumulative effects of two coastal outfalls located 15 kilometres apart at Studholme and Glenavy may be decreased due to a set number of farmers in the area, and the low likelihood of further conversions. i.e. just swapping farmers between Studholme and ODL. I do not consider we have enough information to comment on this e.g. size of the potential dairy farm catchment areas for both factories, and possible changes over the proposed duration of consent.
19. Mr. Khareedi discussed in his evidence that "water-blasting" could be used to install the outfall pipeline. This was not discussed in the original application, where three methods were proposed: continuation of micro-tunnelling, self-sinking anchors, or dredging. Condition 10, which the applicant now proposes to remove, requires turbidity sampling "if a dredging method is used". If the applicant is proposing to use water-blasting, I consider this method will need to be added to condition 10 or variation thereof. In addition, further consents may be required under s12/s14 for the use of coastal water for water-blasting.

WATER QUALITY EFFECTS.

20. Dr. Bolton-Ritchie still considers that it is possible the discharge may have more than minor cumulative effects beyond the mixing zone, for example, leading to an increase in phytoplankton blooms.
21. The applicant has not proposed increasing treatment level particularly in terms of dissolved inorganic nitrogen and dissolved reactive phosphorus, and therefore has not proposed adjusting trigger values for treated wastewater in condition 12 of CRC201194 at the stage this supplementary report was written.
22. The applicant has proposed to delete condition 10 of CRC201190 requiring turbidity monitoring if dredging is used, in its entirety. Dr. Bolton-Ritchie considers this condition should be retained or an alternative suggested by the applicant.

CULTURAL MATTERS.

23. I consider the applicant has made repeated attempts to consult with Runanga regarding the proposal, including the commissioning of a Cultural Impact Assessment report and via a hui with Waihao Runanga prior to lodging the application. The Cultural Impact Assessment was received the week prior to the report being sent to the Hearings Officer, and no further mitigation regarding this was proposed by the applicant.
24. Prior to the hearing, the following mitigation was proposed as conditions by the applicant:
 - a. Accidental Discovery Protocol conditions on construction-related consents
 - b. Consultation to occur with Waihao Runanga during writing of the Lizard Management Plan; and
 - c. Runanga to be invited to join the community liaison group specified in conditions on the coastal discharge permit (CRC201194).
25. Mr. King, Ms. Hall and Ms. Robillard provided evidence on effects on cultural matters as submitters, as part of this, Ms. Robillard proposed four changes to conditions if the decision was made to grant these consents:
 - a. Water will only be discharged to the ocean when it is not practicable to discharge to land;
 - b. Water should be treated to a higher standard before discharge;
 - c. The maximum discharge volume is significantly less than the proposed volume; and
 - d. The duration of consents should be no more than 10 years.
26. I am unaware of any changes to the conditions proposed by the applicant in response to this. In my opinion, a condition regarding point (a) would be beneficial but how CRC201194 and the land-based consents (CRC164414-active and CRC174198-inactive) operate in conjunction with each other would need to be confirmed by the applicant.

OTHER SUBMITTER CONCERNS

27. In terms of Mr. Peter Francis, I consider the concerns from this submitter in terms of effects on shelter trees, and on his water take, are mitigated by proposed conditions.

28. In terms of Mr. Francis's concerns re erosion being exacerbated on his property, I note the cliff face is eroding due to natural processes, and this is monitored in the area by CRC Coastal Hazard Scientists as discussed in the evidence of Mr, Bruce Gabites, attached to the Coastal s42A report. Mr. Craig Evans of Morven Glenavy Ikawai Irrigation indicated in his evidence, that the end of the irrigation race, which Mr. Francis indicated was contributing to erosion at the base of the gully, has now been capped. Mr. Gabites agreed in the joint witness statement-coastal hazards that capping the irrigation race will likely reduce erosion on the northern side gully due to the decrease in flowing water.
29. Mr Gabites has proposed adding the following wording to condition 18 of CRC201190: "If, during the regular visual inspections of the gully and beach that evidence of significant short-term or ongoing erosion of the gully is found to have occurred within the past six months, then stabilisation measures would be required to be undertaken". This has been passed onto the applicant but I am unsure at the time of writing this supplementary report whether or not the applicant has adopted it.
30. MGI Irrigation company has proposed a wording change to condition 7 of CRC201187, which the applicant has agreed to. I also note the word "Ikawai" should be added to the company's name in this condition.
31. Forest and Bird has provided proposed changes to conditions. Some of these could be amended however others will need further assessment and discussion with the applicant. This has not been provided at the time this report was written.

CONSENT CONDITIONS

32. Several minor amendments were proposed by CRC to conditions resulting from written questions from the Commissioners sent to the Reporting Officer in May 2020. These are discussed under the original condition numbers in the s42 reports under each CRC number in Addendum 1 and 2 to the s42A reports. I consider relevant amendments have been included in the current proposed condition set.
33. The applicant also provided proposed tracked condition changes in the evidence of Ms. Singh. Further proposed changes to these were discussed by CRC Reporting officers and the applicant's experts during the course of the hearing. Dr. Bolton-Ritchie liaised with the applicant's experts to finalise wording of proposed conditions relating to monitoring (16 to 21 regarding pathogen monitoring, 22 and 23 regarding benthic and sediment monitoring, and 24 regarding receiving water sampling) of the discharge consent CRC201194 and has agreed to proposed wording of these conditions.
34. Overall, the wording of most proposed conditions is agreed between the applicant and CRC with the exception of:
 - a. Applicant proposal to delete Condition 10, turbidity monitoring, of CRC201190 in its entirety;
 - b. The trigger levels for dissolved reactive phosphorus and dissolved inorganic nitrogen in Condition 12 (b) vi and x.
 - c. The requirement for any additional conditions to mitigate concerns raised by Runanga.

Summary

35. On the above basis I do not consider conditions mitigate the outstanding issues that affected my recommendation. Specifically, in relation to adequate treatment

level of wastewater prior to discharge and whether effects on cultural values are mitigated by conditions.

36. Therefore, my recommendation to not grant as sought has not changed.

A handwritten signature in black ink that reads "KJ Walker". The signature is written in a cursive, flowing style.

Kelly Walker

Consents Planner, Canterbury Regional Council

22 July 2020.