

Resource Management Act 1991
Canterbury Regional Council
Decision of Dr Philip Burge (CRC Principal Consents Advisor)

Applications by Rangitata Dairies Limited Partnership (“the applicant”) to:

Canterbury Regional Council for:

A land use consent (under s9 RMA) to use land for a farming activity.

The Application

1. The application to the Canterbury Regional Council is for:

A land use consent to use land for farming.

2. This application seeks to authorise the use of land for a 223-hectare (ha) property for farming, specifically as a dairy farm. The applicant initially sought a consent duration of 15 years, but subsequently amended the duration sought to 31 December 2029.
3. The application was limited notified to three parties:
 - a. Land Information New Zealand (LINZ)
 - b. KiwiRail
 - c. Timaru District Council

with submissions due 23 August 2023. These parties all own land subject of the application but have not provided any form of written approval, although they have current lease agreements as specified in paragraphs 41 – 44 of the s42A officer’s report (CRC electronic file reference C23C/193607). No submissions were received.

4. The Canterbury Regional Council (CRC) has delegated to me (in my role as a Principal Consents Advisor and a member of the Council's Resource Managers Officers Group (RMOG)), the authority to decide whether an application should be granted if that application has been limited notified but where there are no submitters to be heard.
5. To assist in making this decision, a Section 42A Officer's report (CRC electronic file reference C23C/193607) has been prepared by Ms Caitlin Wallis, a consent planner employed by the CRC as the reporting officer for this application. Her report describes the details associated with the application, an assessment of the effects associated with the proposal and makes recommendations regarding whether the application should be granted or refused. The report also recommends conditions to be included on the consent, should the application be granted.
6. Where appropriate, I have adopted Ms Wallis’ report as per s113(3)(b) of the RMA rather than repeating information, and this decision should therefore be read in conjunction with the recommendations in that report.

Summary of Application and Description of the Receiving Environment

7. Ms Wallis has provided a summary of the proposal (paragraphs 20 - 36) and a description of the affected environment (paragraphs 37 – 38), in her s42A officer's report. Rather than repeat those matters, I adopt them as part of this decision.

Legal and Planning Matters

8. Ms Wallis has also provided an assessment of the legal status of the application (paragraphs 46 – 71). I agree with Ms Korevaar's assessment that the proposed activity is to be treated as a non-complying activity under rule 5.59 of the Canterbury Land and Water Regional Plan (LWRP).

Submissions

9. As noted above, no submissions were received, and this application can be decided 'on the papers'.

Substantive Decision

10. Ms Wallis has provided a recommendation on whether to grant or refuse consent in her s42A report. This recommendation includes discussion of Part 2 of the RMA, and those matters in s104, s104B and s104D which must be considered in making this decision.
11. For clarity, I have outlined my consideration of these matters below.

Consideration of the Application (s104 RMA)

12. Section 104(1) of the Resource Management Act 1991 (RMA) requires, subject to Part 2, decision makers to have regard to several matters.

Assessment of Actual and Potential Effects (s104(1)(a) and s104(1)(ab) RMA)

13. Section 104(1)(a) of the Resource Management Act 1991 requires decision makers to have regard to any actual and potential effects on the environment of allowing an activity.
14. Ms Wallis helpfully provides a discussion of the actual and potential effects that could arise from the proposal, in paragraphs 82 – 133 of her s42A report. These effects include:
 - a. Adverse effects on surface water quality,
 - b. Adverse effects on groundwater and sources of drinking water,
 - c. Methods to avoid or mitigate adverse effects on mahinga kai, wāhi tapu, wāhi taonga, waipuna or freshwater mātaihai, and methods to avoid adverse effects on rock art, and
 - d. Adverse effects on Tangata Whenua values.
15. I am satisfied that these are the relevant adverse effects that may arise from this activity and accept that these effects are acceptable subject to the mitigation and conditions proposed.
16. I note that Ms Wallis has also discussed the content of, compliance with, and auditing of Farm Environment Plans (FEP) as part of this section of her report. While not an effect arising from this proposal, I note that the FEP is intended to be an important tool in addressing the potential effects that may arise from the proposal, and that a poorly developed FEP may result in adverse effects. I note that the FEP with the application does not meet the requirements of the LWRP, however conditions have been proposed to ensure that the FEP and on-farm practice is brought up to the standard anticipated by the LWRP.
17. Positive effects are also relevant for me to have regard to when considering this application. I did not find any reference to positive effects in the application (CRC electronic file reference C19C/115526-3) and Ms Wallis addresses this in paragraphs 134 of her s42A rep. I note however, that should consent be granted then this will provide the applicant an ability to

operate their activity lawfully, with the associated economic and social benefits that would arise from that farming activity, although I have no means to determine the significance of those benefits.

18. I am also required (per s104(1)(ab) RMA) to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive adverse effects on the environment or offset or compensate for any adverse effects on the environment of allowing the activity. The applicant has not proposed any offset or compensation measures.
19. I am satisfied that the relevant effects have been had regard to, and given the mitigation proposed, am satisfied that the effects of the proposal are acceptable. I adopt the summary and consideration of these effects provided by Ms Wallis.

Provisions of relevant documents (s104(1)(b))

20. Ms Wallis has also provided a view on the relevant objectives and policies of those documents specified in s104(1)(b) in paragraphs 137 - 183 of her s42A report.
21. I thank Ms Wallis for this discussion and adopt her discussion of the National Policy Statement Freshwater Management 2020, the Canterbury Regional Policy Statement 2013, the LWRP, including the decisions on Plan Change 7 to the LWRP which has recently become partially operative.
22. I agree with Ms Wallis' conclusions that the proposed activity is largely consistent with the policies in the relevant planning documents. I adopt her discussion as part of this decision.

Other Relevant Matters (s104(1)(c))

23. Ms Wallis has considered the Iwi Management Plan for Kati Huirapa and the Canterbury Water Management Strategy as other matters that are relevant to the consideration of this application.
24. She has discussed the Iwi Management Plan for Kati Huirapa in paragraphs 185 - 191 of her report. While she concludes (based on technical advice from Aoraki Environmental Consultants on behalf of Te Rūnanga o Arowhena) that the activity is inconsistent with the relevant policies of the iwi management plan, but that the adoption of an amended duration has addressed the concerns raised with these inconsistencies.
25. Ms Wallis considers the Canterbury Water Management Strategy in paragraphs 192 – 195 of her report, noting that the proposal is consistent with the goal of the Zone Implementation Plan.
26. I agree with Ms Wallis' assessment and adopt her discussion as part of this report.

Consideration of Activities Affecting Drinking Water Supplies (s104G)

27. I am unaware of any registered drinking water supply that is likely to be affected by this proposal. As such, the considerations required by s104G are not relevant to this decision.

Part 2 Assessment

28. In having regard to the matters specified in s104(1) I recognise that that consideration is "subject to Part 2". I note that the Court of Appeal considered what "subject to Part 2" means in *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, [2018] 3 NZLR 283.

29. Ms Wallis has provided a discussion of that case in paragraphs 78 – 81, and I note that I must consider whether it is necessary to resort to “Part 2” to determine this application. Having considered the relevant planning documents, I consider that they are appropriately prepared to give effect to Part 2, and that there is no need to resort to Part 2 to determine this application.

Particular Restrictions for Non-Complying Activities (section 104D RMA)

30. As a non-complying activity, consent may only be granted if the proposal is able to meet one (or both) of the ‘gateway tests’ in s104D RMA.

31. Ms Wallis has provided a discussion of that case in paragraphs 204 – 207, and considers that:

- a. The adverse effects of the activity (except where s104(3)(a)(ii) applies) will be minor; and
- b. The application is consistent (and therefore not contrary) to the objective and policies of the relevant plan and/or proposed plan.

32. I agree with Ms Wallis and consider that the proposal is able to be granted.

Determination of the application (section 104B RMA)

33. Section 104B of the RMA states that, after considering an application for a discretionary (or non-complying) activity, the consent authority may grant or refuse consent and, if it grants consent, may impose conditions under s108.

Conditions (s108 RMA)

34. Section 108 allows conditions to be imposed on a consent. Ms Wallis has recommended a suite of conditions that should be included as part of the consent, should this change of conditions be granted. I agree that these conditions are appropriate.

Duration (123 RMA)

35. While the applicant initially proposed a duration of 15 years, they have subsequently amended their requested duration to an expiry date of 31 December 2029.

36. Ms Wallis has provided a discussion of the relevant matters to be considered when determining duration in paragraph 213 of her report. I agree those are the relevant matters to be considered, and that an expiry date of 31 December 2029 is appropriate.

Decision

37. In summary, I have, subject to Part 2, had regard to the matters in sections 104 of the RMA.

38. I am satisfied on the evidence before me that the application achieves the purpose of the RMA and can be granted subject to the imposition of the conditions recommended by Ms Wallis.

39. It is therefore my decision, under delegated authority on behalf of the Canterbury Regional Council, to **GRANT** Rangitata Dairies Limited Partnership the following resource consent:

- I. CRC200420 – a land use consent for a farming activity
subject to conditions and duration set out in Appendix 2 of Ms Wallis’ s42A report.

Dated at Christchurch this 18 September 2023

A handwritten signature in blue ink, consisting of a long horizontal stroke with a vertical stroke crossing it near the left end, and a small loop at the top of the vertical stroke.

Dr Philip Burge

Principal Consents Advisor

(Resource Managers Officers Group)

