

NOTIFICATION AND DECISION REPORT

CRC181650

Application for New Consent

**By NJ and LM Harris and Harakeke Nominees Limited
for a Land Use Consent for Farming**

NOTIFICATION DECISION

I have considered the application and officer's report.

In regard to public notification the Resource Management Act 1991 requires the consent authority to consider the matters in section 95A in a set order, as discussed in the officer's report.

I concur with the steps undertaken in the officer's assessment (paragraphs 69-139). However I do not agree fully with the analysis in paragraphs 74-135 or the conclusion in paragraph 139 that the adverse environmental effects will be less than minor.

Overall, having considered the nature of the proposal, and the information supplied by the applicant, I consider that the application meets the test in section 95D and must be publicly notified in accordance with section 95A(8)(b).

My analysis and reasons and for reaching this decision are set out below.

1. The existing environment has significant value (and potential value) but water quality is already degraded

The section 42A report notes that the Hurunui River is a Statutory Acknowledgement Area, a wetland of regional importance, a site of special wildlife significance, and is an important river for native river birds and open water habitat. The mouth of the river is a wetland of high significance (Hurunui River Hāpua) and is an area of significant natural and physical values (Schedule 2 of the Regional Coastal Environment Plan). The river is also noted to have important recreational values and part of the river adjacent to the applicant's property is within the protection zone for the Hurunui Lower Rural Water Scheme (a drinking water supply scheme). These values are those referred to in sections 6(a) and 6(e) (matters of national importance, which are to be recognised and provided for in achieving the purpose of the Act) and 7(d) (other matters to be given particular regard in achieving the purpose of the Act).

Tables 1 and 2 of the section 42A report show that dissolved inorganic nitrogen (DIN) load in the river is elevated by ~600-700 tonnes/yr at the SH1 monitoring location. Dissolved reactive phosphorus (DRP) is elevated by ~9-18 tonnes/yr at the same location (approximately 10 km upstream from the applicant's farm).

DIN load is currently below plan limits, whereas DRP load is close to, and has recently exceeded plan limits.

In addition to water quality monitoring, ecological monitoring has noted some nuisance periphyton growth (December 2020), although observations appear limited with no biomass

data and some observations of periphyton cover (but generally not of prolific nuisance growth, except for in December 2020). Nevertheless periphyton growth, an indicator of water quality degradation by nutrients, has been observed.

Initially I note from these matters discussed in the section 42A report, that water quality is certainly degraded in this part of the Hurunui River.

2. National policy is for water quality to be improved where degraded

The National Policy Statement for Freshwater Management 2020 is the overarching policy for freshwater in New Zealand. Policy 5 of that document states that:

Policy 5: Freshwater is managed (including through a National Objectives Framework) to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved [emphasis added].

Objectives (what is sought to be achieved) and policies (how) are legitimate considerations¹ in the evaluative process of assessing and determining – beyond empirically stating the scale and severity of an adverse effect – whether adverse effects *matter*, and to what extent (i.e. whether they are they minor or more than minor). In this case, the effect of the proposal is to be evaluated in a framework that expects the health and wellbeing of water and its ecosystems, where they are degraded, to be improved.

The section 42A report author considered the application to be consistent with Policy 5 and the NPSFM as a whole, but I do not agree.

I have also noted the discrepancy between the NPSFM and the Hurunui and Waiau River Regional Plan (HWRRP). The HWRRP (made operative 2013 and changed though PC1 in 2020) includes policies 5.1 to 5.3B, which provide for limits to be set and for contamination of the river to occur up to those limits. As discussed above, those limits appear to be close to being fully utilised (for DIN and DRP), and sometimes are exceeded (in the case of DRP).

The discrepancy arises because the cascade provided by sections 45A, 62 and 67 requires that regional plans ‘give effect to’ national policy statements. However, in this case the regional plan policy provides for water quality to be further degraded as long as it does not exceed a limit, whereas the national policy statement calls for degraded water quality to be improved. Consequently, in evaluating the significance of the effects of the proposal, I have given weight to the NPSFM and relatively little weight to the HWRRP.

3. The application is to intensify farming and increase nutrient losses, which will likely degrade water quality further

The section 42A report covers in some detail the proposed intensification and consequent increase in nutrient losses from the farm. The irrigated area is proposed to increase from 300 to 370 ha, and production and stocking rate are both proposed to increase. Nutrient losses are regarded as a proxy for environmental effects (as is commonly the case – though they are not environmental effects *per se*). In this case N losses are modelled to increase 244% from

¹ Tasti Products Ltd v Auckland Council [2016] NZHC 1673

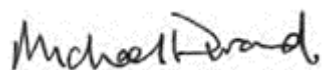
the baseline and increase 72% from the limits previously consented under the (now expired) permit CRC169646 (which can no longer be considered part of the existing environment). P discharges are modelled to increase 150% from the baseline but not to change relative to CRC169646.

The application asserts that the effects (including potential effects) of these increased losses will be mitigated (i) through implementation of farm management plans (FMPs), and (ii) through a remedial action plan (RAP) to be triggered by exceedances of DRP and DIN limits in the Hurunui River. However, any farm management practices to be adopted and their likely effectiveness are not known, as the FMP for the McLaughlan's Block has not been provided with the application. Furthermore, the farm adaptations likely to be adopted under the RAP have not been described and (according to the draft conditions) do not need to be approved by Environment Canterbury, nor do their efficacy need to be demonstrated, prior to being adopted into the FMP and implemented.

The effectiveness of these measures for remedying a breach to the limits in the HWRRP seems relatively unclear. Conversely it appears from the application that such significant increases in nutrient losses from the baseline will inevitably contribute to further degradation of water quality in the Hurunui River. If that is not the case it has not been made clear how, and it seems more likely than not that the very significant increases in nutrient losses proposed will increase the overall adverse effects the farming operation has on the river.

Overall the assessment and the mitigating actions give me no reason to agree that the effects of the activity will be, or are likely to be, less than minor as the s42A report concluded. Rather there is proposed to be a significant increase in nutrient losses occurring on a site adjacent to the Hurunui River, which has significant values, is degraded already, and where national policy requires improvements to be made in the wellbeing of the waterbody and its ecosystems.

For these reasons I have decided that the adverse effects of the proposed activity will be, or are likely to be, more than minor. This meets the test in section 95D and the application must be publicly notified under section 95A.

A handwritten signature in dark ink, appearing to read 'Michael Durand', with a stylized, cursive script.

Dr Michael Durand

Date of Decision: 3 March 2023

Delegation: Independent Commissioner