

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of applications for water permits to abstract water, land use consents to excavate and disturb the bed of the Homestead Stream, the construction and operation of a dam and discharge of water from a dam for the proposed Foveran and Winterberg activities

BY ROBERT HAY ROBERTSON
Applicant

TO ENVIRONMENT CANTERBURY
Local Authority

**EVIDENCE IN REPLY OF PETER ALLAN CUBITT
IN SUPPORT OF THE APPLICATIONS BY ROBERT HAY ROBERTSON**

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INTRODUCTION

1. My name is Peter Allan Cubitt. My qualifications and experience are set out in my evidence in chief presented on the 21st August 2008.
2. Commissioner Skelton asked that I consider the proposed Winterberg Dam in the context of the Waimate District Plan and advise whether any land use consents are required from the Waimate District Council. A number of other issues were also raised at the 21st August 2008 hearing that require some comment as do a number of points raised by submitters. I will address these in turn below.

WINTERBEG DAM AND THE WAIMATE DISTRICT PLAN

3. The site of the Winterberg Dam is zoned Rural under the Waimate District Plan. Rule 2(b) of that zone provides for farming activities (excluding factory farming) as permitted activities subject to compliance with a number of conditions. The Plan defines farming activities as

"... the use of land and buildings for the primary purpose of the production of vegetative matter and/or commercial livestock, and includes the on-site sale of produce grown or reared on the site, but excludes residential activity, home occupations, factory farming and forestry activity. Farming activity includes Extensive Pig Farming."

4. Under this definition it would appear that an irrigation reservoir within a farm property would constitute a permitted activity as the primary purpose of such a land use is to facilitate the production of vegetative matter and/or commercial livestock. However Rule 1 of the Rural zone section states that the District-wide provisions of the Utilities section apply to the Rural zone. **Utility** is defined in the Plan as meaning *"...facilities, structures and works necessary for, incidental to and associated with providing the following:*

... □ the storage, treatment and conveyance of water and sewage; ...

5. Rule 1(f) of the Utilities section provides for *"reservoirs, wells, pumps and supply intakes for reticulation and provision of water supply"* as **permitted** activities, subject to compliance with the site standards of Rule 4. Rule 4(a) relates to riparian management within 20-metres of a river and provides as follows:

(i) *No earthworks shall:*

(a) *exceed 50m³ (volume) in any one hectare in any continuous period of 5 years;*

(b) *exceed 150m² (area) in any one hectare in any continuous period of 5 years;*
and

- (c) *be located on slopes of greater than 20°.*
- (ii) *No clearance of indigenous vegetation shall exceed 150m² in area in any one hectare in any continuous period of 5 years.*
- (iii) *No buildings shall be erected.*
6. These standards are very similar to the riparian margin rules that apply to activities within the Rural zone. Rule 4(b) relates to Sites of Natural Significance and as I advised in my evidence in chief, the property does not contain any such sites.
7. If one or more of the site standards set out in Rule 4 are not met, then the reservoir is a **discretionary** activity pursuant to Rule 3(a) of the Utilities section.
8. Building is defined in the District Plan as follows:
- “...for the purposes of this Plan, means any structure or part of a structure whether temporary or permanent, movable or immovable, but does not include:*
- a Any scaffolding or falsework erected temporarily for maintenance or construction purposes.*
- b Fences, walls or retaining walls of 2m in height or less not used for advertising or for any purpose other than as a fence, retaining wall or wall.*
- c Structures less than 5m² in area and in addition less than 2m in height.*
- d Masts, poles, radio and television aerials (excluding dish antennae for receiving satellite television), less than 7m above ground level.*
- e Any vehicle, trailer, tent, caravan or boat whether fixed or movable unless such vehicle, trailer, tent, caravan or boat shall be used as a place of accommodation, business or storage.*
9. Under this definition the dam wall would appear to be to be a building. Furthermore Mr Hall has advised me that the construction of the dam will involve earthworks that will exceed the area and volume levels set out in Rule 4(a)(i) (a) and (b). Consequently it would appear that the dam component of the applications will also require land use consent from the Waimate District Council.
10. This raises the issue of whether that application should be heard and decided with the current applications. Section 91 of the Act is relevant here. It provides that a consent authority may determine not to proceed with the notification or hearing of an application for a resource consent if it considers on reasonable ground that –
- (a) *Other resource consents under this Act will also be required in respect of the proposal to which the applications relates; and*

(b) *It is appropriate, for the purpose of better understanding the nature of the proposal, that applications for any one or more of those resource consents be made before proceeding further.*

11. While I have not checked with Environment Canterbury staff, it would appear that the consent authority did not deem it necessary to defer notification or hearing of the Winterberg applications under this section. I assume that this determination was made on the basis that the application to the Waimate District Council would not assist the consent authority (or this panel) to better understand the nature of the proposal. The key matter to be addressed here is the allocation of water. As these consents are being considered in conjunction with all other water takes in the Waitaki River catchment, it is appropriate to consider and decide this issue before consents relating to the construction of the dam are considered.

POLICY 43 – HAKATARAMEA CATCHMENT

12. In my evidence in chief I considered that the Homestead Stream take did not need to comply with the environmental flow regime for the Hakataramea River because it is not taking water from the main stem. Consequently the minimum flow of 5-year, 7-day low flow set out in Table 3(xxii) applied. On this basis I took a literal interpretation of Policy 43 and considered that it was not particularly relevant to the Homestead Stream application because it identifies the matters the Board took into account when setting the environmental flow regime in the Hakataramea River. However Commissioner Skelton suggested it may be relevant given the catchment wide approach adopted by the Plan. Irrespective of how the panel interprets this policy, I believe that the matters identified in the policy are relevant to the Homestead Stream applications from an environmental effects perspective at least. These matters have been addressed in evidence of Mr Heller, Dr Donovan and Mr Stewart. Without exception, all three experts considered the effect of these applications on the Hakataramea River to be minor. Consequently the proposal is not inconsistent with this policy.

ANNUAL ALLOCATIONS ABOVE AND BELOW BLACK POINT

13. Commissioner Skelton, along with a number of submitters, raised the issue of the allocation volumes above and below Black Point. Bridget Pringle, appearing for the Fish and Game Council, noted that the delineation at Black Point does not appear to have any ecological reasoning and ignoring that split would not have any material impact on the interests and aspirations of Fish and Game. She took the view that provided the total limit is upheld for the lower river, then the objectives and policies of the plan would still be met.
14. Sarah Dawson, appearing for Meridian Energy, suggests that the plans objective might not be met because it will impact on the hydro allocation (being “All other flows”) above Black Point. I have read her analysis of the issue at paragraphs at 9.1 to 9.11 of her evidence and can not disagree with her logic. It does appear to me that the Board made this split to make provision

for some allocation to hydro above Black Point. Taking a cumulative approach to the allocation for agricultural and horticultural activities could impact on this.

15. However I have not considered this matter further because I believe, regardless of what interpretation the panel may take on this issue, the Homestead Stream applications have minimal effect either way. Mr Stewart's evidence illustrates this point by showing the very limited contribution this stream makes to the Hakataramea River flow. Its contribution to the lower Waitaki River flow will obviously be significantly less.

FISH AND GAME SUBMISSION

16. Bridget Pringle at paragraph 122 of her evidence acknowledges the attempts of applicants to address water shortage issues by developing storage. However she goes on to say that Fish and Game is still opposed to these consents being granted because of water quality impacts and the current state of the river and fishery. In the context of these applications, Mr Heller and Dr Donovan have fully addressed these issues. They both concluded that effects will be no more than minor. Mr Heller in fact believes that in some instances water quality will improve.
17. On this same issue Ms Pringle (paragraph 120) states that the Board designed the EFR for the Hakataramea River to enable water harvesting but notes that applicants still need to satisfy Policy 8 – that sufficient flow variability will be maintained. Variability of flow will be maintained in Homestead Stream by spill during times of major flood flows and the augmentation regime for Foveran.
18. Ms Pringles evidence (at paragraph 58) addresses Policy 7 which dictates a cautious approach given the sensitivity of smaller streams. The explanation to that policy suggests that this cautiousness stems from the fact that the ecological values of these streams are often unknown. Dr Donovan has undertaken an assessment of this stream and his evidence indicates that ecological values are insignificant. However the minimum flow provided by the design leakage from the dam, along with the other mitigation measures suggested by Dr Donovan, will adequately provide existing ecological values.

Allan Cubitt

30 September 2008