

BEFORE THE CANTERBURY REGIONAL COUNCIL

In the matter of

**61 consent applications to take, use, divert and dam water and
51 associated discharge and land use consent applications in
the Upper Waitaki Catchment**

4th Minute of Commissioner Rogers
Dated 10 September 2009

Introduction

- 1 I have received further information and case management memorandum from counsel representing some of the applicants for water takes. The correspondence and memorandum require a response from the Commissioners.
- 2 The Commissioners have "met" by way of telephone conference on Monday, 7 September 2009 for the purpose of making a range of hearing arrangements. This Minute also provides information for participants arising from that "meeting".

Memorandum 28 August 2009 from Meridian Energy Limited

- 3 Meridian Energy Limited (Meridian) through its legal counsel, Ms Appleyard, has advised us that Mr Stuart Ford who was to provide agricultural economic evidence has suffered a stroke injury. It is unclear whether or not Mr Ford will be in a position to provide evidence at the hearing when Meridian is due to appear in November.
- 4 I am told that Meridian will not be in a position to provide agricultural economic evidence by 16 September 2009.
- 5 I am expecting an update from Meridian no later than 16 September 2009.

Case Management Memorandum No. 2 of counsel on behalf of Mackenzie Water Research Limited (MWRL), Southdown Holdings Limited, Five Rivers Limited, and Killermont Station Limited dated 9 September 2009

- 6 At paragraph 2 of this memorandum counsel records:

"ECan officers have advised that all evidence for the Upper Waitaki catchment hearings may be read out in full."

- 7 The memorandum does not disclose when that information was imparted from ECan officers to counsel.

- 8 The memorandum continues and seeks directions that:

- the evidence for the above-named parties either be read by the Hearing Panel prior to the respective hearing (time permitting) or

- on the commencement of the respective hearing except in relation to the following briefs:

8.1 MWLR:

- (a) The joint statement of Dr Bright and Dr Robson relating to cumulative effects on water quality; and
- (b) Mr Kyle's planning evidence.

8.2 In relation to the Southdown Holdings, Five Rivers, and Killermont Station applications:

- (a) Dr Robson's evidence on farm management plans;
- (b) Part of Mr Brown's landscape evidence especially the presentation of visual materials;
- (c) Dr Bartlett, evidence on effects on terrestrial vegetation;
- (d) Mr Kyle's planning evidence, particularly in relation to proposed conditions of consent.

9 The basis of the application is seated in a concern held on behalf of the applicants that given the estimated total costs of the hearing are in excess of \$1.7 million, it is critical in their view that cost savings are made wherever possible.

10 I am further advised that if the requested approach is adopted, the hearing time for both MWLR and Southdown Holdings, Five Rivers, and Killermont Station would be substantially reduced to no more than three days each. The memorandum then identifies a list of experts preparing evidence for each applicant.

11 I am somewhat surprised to receive this memorandum from counsel for two reasons. Firstly, and less importantly, its proximity in time to the commencement of the hearing. Secondly, the issue of whether or not the MWLR report and the supporting evidence would be taken as read was considered at the pre-hearing procedural meeting at Twizel on 19 May 2009 and was the subject of a Minute issued by Commissioner P R Skelton on 29 May 2009.

12 At paragraph 11 of that Minute, Commissioner Skelton there records that there was general discussion about the hearing process for this MWLR report, which discussion took place over the course of an adjournment of the pre-hearing procedural meeting. Commissioner Skelton at paragraph 11 records:

"I had already stated that contrary to Mr Whata's expectation the report would not be read by the panel members before the hearings and the panel would require the various experts who compiled the report to give their evidence in full at the hearings. Mr Whata indicated that this would take about a week."

- 13 As I read the balance of Commissioner Skelton's Minute of 29 May 2009, particularly paragraph 12, it provides for a hearing procedure that clearly, to my mind, provides that the evidence will be presented in person and heard.
- 14 Importantly, there is no request recorded within the Minute from any counsel that the evidence be taken as read nor does the Minute of Commissioner Skelton make any such direction.
- 15 Thus, I am driven to the point that counsel have been aware since at least 29 May 2009 that the MWLR report and supporting evidence was directed by Commissioner Skelton to be given to the panel in full at the hearing. I take this to mean read by the witness and presented in the normal way.
- 16 Even irrespective of the above matters, which I think are in themselves determinative of the issue (to the extent that I should decline the request), I have a practical difficulty.
- 17 We are some six working days (including today) away from the commencement of the hearing itself.
- 18 As matters stand, at Thursday 10 September 2009, for various reasons the Canterbury Regional Council has not been able to provide the Commissioners with copies of all of the relevant materials. By relevant materials I mean the applications, the section 42A officer reports, the MWLR report and evidence of the applicant and their supporting experts.
- 19 On inquiry, I have been advised that all of the materials will be made available to the Commissioners, at the earliest, on Monday 14 September 2009.
- 20 One reason why the materials are not available to us is that the parties themselves have sought extensions to the evidence exchange timetable. This has resulted in Environment Canterbury not being able to copy and distribute materials to the Commissioners.
- 21 In addition, the sheer volume of material itself results in copying and distribution being a time intensive task in itself.

- 22 In our Commissioners meeting of 7 September 2009 consideration was given to whether or not we should endeavour to read what materials we could prior to the commencement of the hearing.
- 23 After discussion we concluded that notwithstanding the impact upon the length of hearing time it was the Commissioners preference that the evidence be read in the normal way, that is, presented and read to us.
- 24 Counsel's memoranda raised the issue of avoiding unnecessary costs given the very high level of costs that this process will court. I enquired of the Canterbury Regional Council as to when counsel was advised as to the likely hearing costs and I was told counsel was informed on 24 July 2009 as to the likely hearing costs being approximately \$1.4 million. Again, I observe that no application was then made to the Commissioners to have them read evidence to save hearing time and costs or to seek an alteration to the evidence exchange timetable.
- 25 Mr Whata requests that if we cannot pre-read all material in advance of the commencement of the hearing, we adjourn for a short period prior to the commencement of each case to read the evidence.
- 26 The parties can be assured that the Commissioners will do all they can to reduce the hearing time and thus save costs. If it is appropriate to adjourn for a short period prior to the commencement of each case and read some of the evidence that is what we will do.
- 27 If we do in fact manage to read evidence before the commencement of the hearing we will do our best to advise counsel so appropriate arrangements can be made.

Direction

- 28 At this point, counsel should proceed on the basis that all of the evidence will require to be read to us in the normal way unless advised by the Commissioners to the contrary.

Derogation approvals

- 29 All derogation approvals are required to be with Environment Canterbury on or before Friday 11 September 2009. I have checked with Environment and very few approvals are to hand.

30 To be clear, if applicants do not have the necessary derogation approval their application will not be heard. In this regard, I refer again to Commissioner Skelton's Minute of 29 May 2009, paragraph 27 where he succinctly states the position in relation to derogation approvals.

Direction

31 Can the applicant group urgently update Environment Canterbury on the status of derogation approval.

Dated in Christchurch this 10th day of September 2009



Paul Rogers

Commissioner Chair on behalf of the Committee