

**Before the Hearing Panel appointed by Canterbury
Regional Council**

IN THE MATTER OF The Resource Management Act
1991

AND

IN THE MATTER OF 60 applications for water permits,
30 applications for land use
permits and 20 applications for
discharge permits in the Upper
Waitaki catchment

Introductory Section 42A Officer's Report

Date of Hearing: 21 September 2009

Report of Claire Penman

1. I have been employed by MWH NZ Ltd as an Environmental Consultant since December 2005. I have 4 years relevant experience in resource management particularly focused on water resources. I hold a Bachelor of Applied Science (with Honours) in Environment Management from the University of Otago. I have been engaged by Canterbury Regional Council (CRC) to act as Investigating Officer for these applications.
2. This report and all accompanying section 42A reports are prepared under the provisions of Section 42A of the Resource Management Act 1991 (RMA). This section allows a Council officer to provide a report to the decision-maker on a resource consent made to the Council, and allows the decision-maker to consider the report at the hearing. Section 41(4) of the RMA allows the decision-maker to request and receive from any person who makes a report under Section 42A "*any information or advice that is relevant and reasonably necessary to determine the application*".
3. This report, and all accompanying reports (included as appendices and under additional report tabs), will provide the decision-makers with information and advice related to:
 - (a) The background to the applications;
 - (b) Details of the notification of the applications and any submissions received;
 - (c) An outline of the relevant legal and planning provisions;
 - (d) Comments on the assessment of environmental effects provided;
 - (e) Details of statutory documents relevant to the applications; and
 - (f) Comments in relation to the matters specified in Part II of the RMA; and

- (g) Comments on the decision to be made by the decision-makers including whether each application can be granted or should be refused; if the application is to be granted what measures are required to avoid, remedy or mitigate any adverse effects; what monitoring should be undertaken and the duration of consent.
- 4. It should be emphasised that any conclusions reached or recommendations made in these reports are not binding on the decision-makers. It should not be assumed that the decision-makers will reach the same conclusion or decision having considered all the evidence to be brought before them by the applicants and submitters.
- 5. This introductory section 42A report introduces the applications to be heard and includes details of notification, submissions, an overview of the consent requirements for applications, identification of the effects that have been considered for each activity type, including what that effect may be and establishing the relevant planning provisions to be considered.
- 6. The purpose of this introductory report is to reduce the repetition of information that is relevant to all applications.
- 7. Appendices to this introductory report are:
 - (a) Appendix 1: Flow chart showing all applications by sub-catchment
 - (b) Appendix 2: Overview maps showing the location of each application
 - (c) Appendix 3: Table showing applications and derogation approvals
 - (d) Appendix 4: Notification details (dates of public notification and wording)
 - (e) Appendix 5: Summary of submissions received on all applications
 - (f) Appendix 6: List of conditions commonly recommended for each activity
 - (g) Appendix 7: Table showing applications and activity type
 - (h) Appendix 8: List of key effects of concern and relevant plan provisions.
- 8. There are several issues that are common to groups of applications. Where this is the case and it is appropriate, one or more section 42A reports dealing with a common topic have been prepared. There are separate reports which cover the following:
 - (a) Environmental flow and level regimes for water bodies (Reports 2A and 2B).
 - (b) Existing and proposed annual allocations to activities (Report 3).
 - (c) Water quality and landscape effects (Reports 4A – F and 5).
- 9. In addition to the above, a section 42A report has been prepared for each application. In some instances, one section 42A report has been prepared per applicant which may include multiple applications for a proposal. Where this is not possible (the different activities may be too complex for this to occur), a section 42A report has been prepared for each application. The individual section 42A reports cover the following:

- (a) Description of the proposal, background and detail of each application
- (b) Consent requirements
- (c) Description of the affected environment
- (d) A review of the assessment of actual and potential effects, including mitigation
- (e) Discussion of the activities in the context of the relevant statutory documents
- (f) A recommendation for each application, including comments on duration and conditions.

10. The section 42A reports for each application have been prepared by the following persons. Because each person has prepared multiple reports, in order to avoid repetition their qualifications are included in this report.

- (a) Ms Claire Penman – MWH NZ Limited (Consultant)
- (b) Ms Maria Bartlett – Canterbury Regional Council (Consents Investigating Officer)

Maria has been employed as a Consents Investigating Officer for Canterbury Regional Council since March 2008, and was previously employed by Canterbury Regional Council as a Consents Investigating Officer for 1½ years, ending January 2006. Prior to auditing, she held the role of Consents Project Coordinator during the processing of the Project Aqua applications lodged by Meridian Energy Limited in 2003. The majority of her time with the Regional Council has been focussed on applications to take, use, dam and divert water in the Waitaki Catchment. Maria holds a Bachelor of Arts, with a Graduate Diploma in Political Science (with Distinction) from the University of Canterbury.

- (c) Ms Susannah Vesey – Canterbury Regional Council (Consents Investigating Officer)

Susannah has been employed as a Consents Investigating Officer for Canterbury Regional Council since March 2008. The majority of her time with the Regional Council has been focussed on applications to take, use, dam and divert water in South Canterbury and in the Waitaki Catchment. Susannah holds a Master of Applied Science (in Environmental Management) from Lincoln University and a Bachelor of Science (Geography) from University of Canterbury.

- (d) Ms Yvette Rodrigo – MWH NZ Limited (Consultant)

Yvette is employed by MWH New Zealand Limited as an Environmental Scientist. Until recently, she was employed by Environment Canterbury as a Senior Consents Investigating Officer. Her qualifications include a Master of Science degree (with Honours) from the University of Canterbury in Environmental Science, specialising in Applied and Environmental Microbiology.

11. The section 42A reports prepared by other experts (Reports 2B, 4A-F and 5) have been prepared by the following persons:
- (a) Cumulative water quality effects:
 - (i) Mr Tom Heller – Hydrology and hydrogeology (Report 4A)
 - (ii) Dr Brent Clothier – Land management (Report 4B)
 - (iii) Mr Carl Hanson – Groundwater quality (Report 4C)
 - (iv) Dr Adrian Meredith – Surface water quality (Report 4D)
 - (v) Dr Marc Schallenberg – Limnology (Report 4E)
 - (vi) Dr Mike Freeman – Overview report on cumulative water quality and landscape effects (Report 4F)
 - (b) Landscape effects:
 - (i) Mr Chris Glasson – Landscape effects (Report 5)
 - (ii) Dr Mike Freeman – Overview report on cumulative water quality and landscape effects (Report 4F)
 - (c) Environmental flow and level regimes:
 - (i) Mr David Stewart – Hydrology (Report 2B)

INTRODUCTION

12. Appendix 1 sets out a flow chart which shows how all applicants and applications at this hearing are grouped. The water permit applications are grouped by the sub-catchments identified in Map 2 of the Waitaki Catchment Water Allocation Regional Plan (WCWARP). These sub-catchments are:
- (a) **Mid-catchment tributaries** (from Lake Waitaki to Lake Benmore);
 - (b) **Ahuriri catchment**;
 - (c) **Upper catchment tributaries** (waterbodies upstream of Lake Benmore but below the outlets of the three glacial lakes);
 - (d) **Tributaries of glacial lakes** (separated into three subgroups based on Rule 6, Table 5 groups which are upstream of Lake Ohau outlet, upstream of Lake Pukaki outlet, and upstream of Lake Tekapo outlet);
 - (e) **Canals** (applications to take water from Meridian Energy Limited's hydro canals).
13. Where a proposal includes an application to undertake works in the bed or banks of a river or stream (pursuant to section 13 of the RMA) and/or discharge water or a contaminant to water (pursuant to section 15 of the RMA), this is included in the group with the water permit application.

14. This hearing is to hear and decide 110 resource consent applications in the upper Waitaki catchment; 60 water permit applications (pursuant to section 14 of the RMA), 30 landuse permit applications (pursuant to section 13 of the RMA) and 20 discharge permit applications (pursuant to section 15 of the RMA). The applications were lodged at varying times, the earliest being 1998 and the latest in 2008.

Applications & allocations

15. Appendix 2 contains a map of the Upper Waitaki catchment which shows the location of each application (including irrigation areas).
16. Report 2A is an overview report which deals with environmental flow and level regimes and provides details on how the applications fit within Rule 2, Table 3 of the WCWARP. The instantaneous allocations are presented for each waterbody where there is an application. Figure 1 below summarises the instantaneous allocations for each water body that has an allocation limit set in Rule 2. It does not summarise the allocations for water bodies where there is not an allocation limit (tributaries that fall within Rule 2, Table 3 row i and row xxii, and those water bodies that fall within the Ahuriri Water Conservation Order). However details of how much water is allocated to existing consents and sought by applications for those waterbodies is provided in Attachment 6 of Report 2A.

| Rule 2, Table 3 | | | Calculated cumulative rate of take or divert authorised by existing and proposed resource consents |
|-----------------|--|--|---|
| Water bodies | Allocation limit specified in the environmental flow regimes | | |
| iv. | Mary Burn, Irishman Creek and their tributaries | 0.3 m ³ /s – For Irishman Creek upstream of State Highway 8 | E = 0 m ³ /s A = 0.14 m ³ /s T = 0.14 m³/s |
| v. | Grays River and tributaries | 0.5 m ³ /s – for the remainder of the Grays River catchment (excluding the Sawdon and Edward Stream) | E = 0 m ³ /s A = 0.35 m ³ /s T = 0.35 m³/s |
| viii. | Wairepo Creek and tributaries | 0.2 m ³ /s – for the whole catchment (upstream and downstream of State Highway 8) No allocation limit above flow sharing threshold | E = 0.22 m ³ /s A = 0.072 m ³ /s T = 0.292 m³/s Flow sharing: A = 0.03 m ³ /s |
| xi. | Quail Burn and tributaries | 0.31 m ³ /s No allocation limit above flow sharing threshold | E = 0 m ³ /s A = 0.31 m ³ /s T = 0.31 m³/s Flow sharing: A = 0.09 m ³ /s |
| xii. | Hen Burn and tributaries | 0.08 m ³ /s | E = 0.08 m ³ /s A = 0.03 m ³ /s T = 0.110 m³/s |

Figure 1: Summary of instantaneous allocations for water bodies where there is an allocation limit

Key

E = Existing consents

A = Consent applications

T = Total (existing plus applications)

17. Report 3 deals with the existing and proposed annual allocations for activities under Rule 6, Table 5 of the WCWARP and presents the annual allocations for the zones where there is an application. Figure 2 below summarises the annual allocations for these zones.

| | | Agricultural & horticultural activities | |
|-----|--------------------------------|---|--|
| i | Upstream of Lake Tekapo outlet | Overall allocation limit is 275 Mm ³ except that: a. no more than 8 Mm ³ can be taken upstream of Lake Tekapo outlet. b. no more than 8 Mm ³ can be taken upstream of Lake Pukaki outlet. c. no more than 12 Mm ³ can be taken upstream of Lake Ohau outlet. | Overall allocation Limit = 275 E = 128.00 A = 144.15 T = 272.15 |
| ii | Upstream of Lake Pukaki outlet | | Lake Tekapo limit = 8 E = 0.87 A = 5.25 T = 6.12 |
| iii | Upstream of Lake Ohau outlet | | Lake Pukaki limit = 8 E = 0.17 A = 30.00 T = 30.17 |
| iv | Upstream Waitaki Dam | | Lake Ohau limit = 12 E = 0 A = 23.76 T = 23.76 |

Table1: Summary of existing and proposed annual allocations for the Upper Waitaki Catchment in Mm³ (taken from Report 3).

Key

E = Existing consents

A = Consent applications

T = Total (existing plus applications)

Notification

18. Some of the applications at this hearing were publicly notified more than once, either individually and/or as part of the Minister for the Environment's call-in of all consent applications in the Waitaki catchment in 2003.
19. A complete list of the applications as they were publicly notified (including the date(s) that an application was notified) is provided in Appendix 4. Comments on all public notifications are also included in the individual section 42A report for each application.
20. Section 33(a) of the Resource Management (Waitaki Catchment) Amendment Act 2004 (the Waitaki Act) directs the Council to publicly notify an application that is included in Schedule 2 of the Waitaki Act (whether previously notified or not) if, had the application been made after the Waitaki Catchment Water Allocation Regional Plan (WCWARP) became operative, the local authority would have been required to notify the application, or would, in the exercise of a discretion, have decided to notify the application.

21. Appendix 7 contains a list of all applications and activity type. It also identifies applications that are included in Schedule 2 of the Waitaki Act.
22. For this reason, all applications at this hearing that were lodged with the Council when the WCWARP became operative (water permits and their related land use and discharge permit applications) were publicly notified in August 2007 after the WCWARP became operative pursuant to section 93 of the RMA. Public notices were contained in the Christchurch Press, Otago Daily Times and Timaru Herald.
23. Additional water permit applications (and their associated land use and discharge permits) that have been lodged since August 2007 were publicly notified at various times since that date. Public notices for these applications were contained in the Otago Daily Times and Timaru Herald.
24. Due to the large number of applications that were notified at the same time in August 2007, the time limit for serving a submission on the consent authority was doubled to forty working days. For all other public notifications, the time limit for submissions was twenty working days.

Submissions

25. Section 33(c) of the Waitaki Act 2004 states that the local authority must consider all relevant submissions lodged with the local authority or Minister whether before, on, or after the commencement of this Act.
26. Therefore, if an application was publicly notified more than once, all submissions must be considered.
27. A summary of the key issues identified in submissions lodged in support and in opposition to all applications publicly notified together on 4 August 2007 is provided in Appendix 5. Reference is also made in Appendix 5 to submissions received as part of the December 2003 notification of applications called-in by the Minister for the Environment. Submissions from August 2007 that were lodged on an individual application or lodged on all applications but with issues specific to an individual application, are summarised in the section 42A report for that application. All submissions from later notifications, in 2008 and 2009, are included in the section 42A report for that application.

Derogation

28. It is relevant here to comment on the existing allocation of water within the upper catchment. In a recent High Court declaration decision (*Aoraki Water Trust and Others v Meridian Energy Limited*¹) the Court held that where a resource was fully allocated to a permit holder a consent authority could not lawfully grant another party a permit to use the same resource, unless specifically empowered to do so by statute. To do so would derogate from the existing holder's rights.
29. The Court then concluded in paragraph 55 of that decision that:

“...there is nothing in ss104-104D or elsewhere in the Act that would authorise CRC to grant Aoraki or any other party a water permit for Lake Tekapo if the grant would have the effect of reducing the amount of water available to satisfy the terms of Meridian's consents...”

¹ [2004] NZMRA 251

30. Footnote 23A on page 52 of the WCWARP, introduced upon Appeal to the High Court in July 2006, records that *[w]hile the consents to operate the Waitaki power scheme remain in force, the Upper Catchment is already fully allocated to a holder of those consents and other existing consent holders (see discussion at p14 of the s32 report).*
31. Therefore, the derogation principle established in the *Aoraki* decision applies throughout the Upper Catchment, which is generally accepted as being above the Waitaki Dam. The provisions in the WCWARP that set an allocation limit for activity types do not over-ride this. Resource consent for additional water for any activity, anywhere within the upper catchment, cannot be granted unless existing consent holders agree to the derogation of their consents.
32. Meridian Energy Limited (MEL) has an agreement with Mackenzie Irrigation Company Limited (MIC) to give its derogation approval to the allocation of water to members of the irrigation company who hold water shares for new agricultural and horticultural activities, subject to various conditions. For those applicants seeking to replace an activity previously authorised by resource consent, practice to date is that MEL has been considering providing its derogation approval on a case-by-case basis.
33. A list of all applicants who Environment Canterbury holds a copy of MEL's derogation approval at the time that this report was prepared is provided in Appendix 3.

LEGAL AND PLANNING MATTERS

34. This part of the report outlines the key legal and planning matters that must be considered.

The Resource Management Act 1991 (RMA)

35. Part 3 of the RMA sets out duties and restrictions. Relevant provisions are generally those relating to sections 13, 14 and 15. For the purpose of this hearing, in relation to sections 13, 14, and 15, consent is required, with some exceptions, unless the activity is authorised as a permitted activity in the relevant regional plan and any relevant proposed regional plan.
36. Part 5 of the RMA sets details regarding National Policy Statements, National Environmental Standards, Regional Policy Statements, Regional Plans and District Plans. Details regarding relevant statements, standards and plans to be considered are set out later in this report.
37. Part 6 of the RMA includes provisions relating to the processing of resource consent applications. It sets out the criteria for making various decisions, including the decision to grant or refuse an application.
38. Part 9 of the RMA sets details regarding Water Conservation Orders. Section 199 of the RMA outlines the purpose of a water conservation order. Section 217 of the RMA sets out the effect of a water conservation order. Details regarding any relevant water conservation orders that must be considered are set out later in this report.

The Resource Management (Waitaki Catchment) Amendment Act 2004

39. The Resource Management (Waitaki Catchment) Amendment Act 2004 (the Waitaki Act) established the Waitaki Catchment Water Allocation Board (the Board) with the function of developing a regional plan for the allocation of water in the Waitaki catchment on a basis consistent with the purpose and principles of the RMA.

40. The Waitaki Act includes a schedule of applications that the Waitaki Act affects (Schedule 2). It includes details of what must occur when the regional plan developed by the Board (the Waitaki Catchment Water Allocation Regional Plan) becomes operative, including details regarding the processing of applications, including hearing and deciding applications.

Canterbury Regional Policy Statement

41. The Canterbury Regional Policy Statement (RPS) has been operative since 26 June 1998. The chapters relevant to applications at this hearing are: Chapters 5 and 6, regarding matters of resource management significance to Tangata Whenua and the relationship of Tangata Whenua with resources; Chapter 8, regarding landscape, ecology and heritage; Chapter 9, regarding water management; and Chapter 10, regarding management of the beds of rivers and lakes and their margins.

Regional Plans

42. The Waitaki Catchment Water Allocation Regional Plan (WCWARP), Transitional Regional Plan (TRP) and proposed Natural Resources Regional Plan (PNRRP) all contain rules relevant to the applications. The PNRRP and WCWARP contain objectives and policies that are relevant to the proposed activities. The TRP does not contain any policies.
43. An overview of the regional plan rules relevant to the resource consent applications are provided in the following sections of this report.

Activity Status

44. With the exception of prohibited activities, section 88A of the RMA deals with activity status types if this is altered since the time an application was made.
45. Section 88A was amended on 31 July 2003. The transitional provisions provide for resource consent applications existing at that time to continue under the original principal Act (section 112(1) of the Resource Management Amendment Act 2003).
46. The effect of both versions of section 88A is that an application must continue to be processed, considered and decided as an application for the type of activity that it was for, or was treated as being for, at the time the application was first lodged. From 31 July 2003, section 88A(2) makes it clear that any plan or proposed plan which exists when the application is considered must be had regard to in accordance with Section 104(1)(b).
47. The applications at this hearing were lodged between 1998 and 2008, many before the WCWARP or PNRRP had legal effect, and therefore it is important to consider each application with regard to section 88A of the Act.
48. For water permit applications, section 31(2) of the Waitaki Act states that section 88A of the principal Act does not apply to an application included in Schedule 2.
49. This means that for an application for a water permit which is included in Schedule 2 of the Waitaki Act, the activity status is determined under the operative WCWARP.
50. A list of all applications, activity status and whether an application is included in Schedule 2 of the Waitaki Act is contained in Appendix 7.

51. For discharge and land use applications, section 88A of the RMA applies. For those applications that were lodged before the public notification of Chapters 4 and 6 of the PNRRP in July 2004, it is the Transitional Regional Plan which controls the activity status of these applications.
52. An overview of the consent requirements for each activity type (s14, s13 and s15 permits) in the context of the relevant regional plan(s) is presented in the following paragraphs. More detail regarding the consent requirements for each individual application is provided in the section 42A report for each application.
53. It should also be noted that for a proposal where there are multiple resource consent applications, the activity status for each application has been determined individually, and the applications activity status has not been bundled.

Transitional Regional Plan (TRP)

54. The TRP is operative. It has not been withdrawn in relation to activities covered by the WCWARP so Environment Canterbury's legal advice is the rules within it still apply.
55. The Canterbury Regional Council adopted the General Authorisations (GA) notified under Section 22 of the Water and Soil Conservation Act 1967 as part of the Transitional Regional Plan under s368 of the RMA.
56. For water permit applications, the TRP permits the taking of water from Lakes Tekapo, Pukaki, Ohau, Benmore (excluding the protected waters covered by the Ahuriri Conservation Order), Aviemore and Waitaki up to a volume of 100 cubic metres per day per property, at a rate not exceeding 10 litres per second. Taking up to ten cubic metres per day of water, per property, from any other water body, at a rate not exceeding 5 litres per second, is also permitted.
57. The damming of intermittently flowing streams and the diversion and discharge of water for the purpose of minor realignment of a stream are also permitted under the provisions of the TRP, provided certain conditions are met.
58. The majority of the proposed water permit applications are not permitted under the provisions of the TRP which authorise the abstraction of natural water and the diversion and discharge of natural water. Resource consent is therefore required as a discretionary activity.
59. For discharge permit applications, there are no provisions of the TRP which permit the discharge of water into water as described in the proposed activities. Resource consent is therefore required as a discretionary activity.
60. For land use permit applications (under section 13 of the RMA), the TRP is silent on matters relating to works in the bed and banks of rivers and lakes in the upper Waitaki catchment. These activities require resource consent as a discretionary activity under section 77C of the RMA.

Proposed Natural Resources Regional Plan (PNRRP)

Chapter 5

61. Chapter 5 of the PNRRP deals with water quantity and allocation issues and was notified on 3 July 2004.

62. Section 14 of the Waitaki Act 2004, states:

“The regional plan developed and approved under this Part, when it is operative in accordance with section 27, -

(a) is the Canterbury Regional Plan for the allocation of water in that part of the Waitaki catchment that is within the Canterbury region; and ...”

63. Therefore, for water permit applications, the rules in Chapter 5 of the PNRRP are not relevant to the allocation of water within the Waitaki catchment, and the taking and use of water does not require resource consent under this plan.

Chapter 4

64. Chapter 4 of the PNRRP deals with water quality and contains rules which are relevant to applications to discharge excess irrigation or bywash water into water. It was notified on 3 July 2004. None of the discharge permit applications which were lodged after this chapter was notified in July 2004 are permitted under the rules of this plan and therefore require consent under either Rule WQL56 (discretionary activity) or Rule WQL60 (non-complying activity).

65. I return to Chapter 4 of the PNRRP under the heading ‘additional consents’ below.

Chapter 6

66. Chapter 6 of the PNRRP deals with beds and margins of lakes and rivers and contains rules which are relevant to applications to undertake works in the beds and margins of lakes and rivers. It was notified on 3 July 2004. None of the land use permit applications lodged after this chapter was publicly notified in July 2004 are permitted under the rules of this plan and therefore require consent under Rule BLR8 (discretionary activity).

Waitaki Catchment Water Allocation Regional Plan (WCWARP)

67. The WCWARP deals with the taking, diversion, damming and use of water within the Waitaki catchment and became fully operative in July 2006. The following rules apply to applications to divert, take, use and dam water.

68. Rule 2 deals with environmental flow and level regimes for specific water bodies and in part states:

“(1) Except as provided in (2) and (3), no person shall take, use, dam or divert surface water or groundwater unless:

(a) the flow in the relevant river or stream, or the level in the relevant lake, is above the minimum flow or level in Table 3; and

(b) the amount taken or diverted from the relevant river or stream is for a replacement consent² or in combination with the amount of water authorised to be taken or diverted by existing resource consents, does not exceed the allocation limits in Table 3; and

(c) the take or diversion complies with a flow-sharing regime such that no more than half of the water above or between the thresholds in Table 3 can be taken or diverted; and

² With the same or lesser amounts of water to be taken or diverted.

(d) the consent holder provides the flushing flows in Table 3 xvii(b) where applicable.”

69. Rule 6 deals with annual allocation limits and in part states:

“(1) Except as provided in (2), no person shall take, use, dam or divert water when, by itself or in combination with any other take, use, dam, or diversions, the sum of the annual volumes authorised by resource consent, exceeds the annual allocation to that activity in Table 5.”

70. The consent requirements for each application are discussed in the section 42A report prepared for each application. In general, for water permit applications, most applications are classified as discretionary activities under Rule 15 or 17 as they fall within the allocation limits in Rule 6, Table 5 and within the environmental flow and level regimes of Rule 2, Table 3 and Rule 3, Table 4. There are however some exceptions to this:

(a) Some applications to take water upstream of Lakes Pukaki and Ohau outlets are classified as non-complying activities under Rule 16 or 18 as they exceed the annual allocation limit above the lake outlets in Table 5.

(b) Several other applications are also classified as non-complying as they do not fall within the environmental flow and level regimes specified in Rule 2.

71. Rules 2 and 6 authorise the damming of water. There are applications to dam water in out-of-stream storage ponds. Any barrier to the flow of water is classified as a “dam” and consent must be sought under the WCWARP.

72. The RMA provides no guidance as to what is considered as a “dam”. The WCWARP and PNRRP also provide no definition of a “dam”. Dictionary definitions consider a “dam” to be “*a barrier constructed across a waterway to obstruct the flow of water or to control the flow or raise the level of water.*”

73. Environment Canterbury’s practice is to consider a storage pond as a “dam” if the hole dug into the ground has a bund of more than 1 metre in height. Where the bund is higher, the pond would be considered as a dam given the potential effects on other people from flooding would be greater, should the dam wall/bund be breached or have a failure.

74. This approach has been consistently adopted by the applicants’ at this hearing in deciding whether or not they need to apply for permits to dam water for small storage and/or buffer ponds which are shallow and cover only small surface areas.

Additional consent requirements

75. It is worth mentioning here additional consents that may be required for a proposal.

76. Section 91 of the RMA requires that a consent authority may determine not to proceed with the hearing of an application if it considers that other resource consents under the RMA, both district and regional, may be required in relation to a proposal and it would assist with better understanding a proposal if those additional applications were made before proceeding further.

77. Form 9 of the Act sets out information that must be included in an application. An applicant must include details of whether additional resource consents are needed for the proposed activity and whether they have been applied for. There were no

additional resource consents identified in the resource consent applications or in correspondence with the applicants since that time.

78. However, the following types of additional resource consents may be required on a case by case basis:
- (a) District Council resource consents for land use activities associated with the irrigation infrastructure, and/or the use of land for irrigation in landscape or significant natural areas.
 - (b) Regional Council resource consents for a variety of activities such as:
 - (i) The damming of water (pursuant to section 14 of the RMA);
 - (ii) Disturbing the bed or banks of a river or lake to install an intake structure (pursuant to section 13 of the RMA);
 - (iii) To discharge contaminants to land, such as fertilisers or effluent (pursuant to section 15 of the RMA);
 - (iv) To use land in a manner that may result in contaminants entering surface or ground water (pursuant to section 9 of the RMA).
79. The applicants' noted at the pre-hearing meeting held in May 2009 that any land use consents (if required) would be for infrastructure, and applications cannot sensibly be made for these until it is known what area of land the affected applicants will be able to irrigate in terms of the water permit applications subject to this hearing.
80. In consideration of this view, Commissioner Peter Skelton, noted in his Minute from the pre-hearing meeting on 19 May 2009 that he was agreeable to this approach given the nature of the proposals, the length of time they have been in process, the potential changes to the District Council Plan variations given they are not yet operative, and that the Panel will already have enough information available to them to be able to fully understand the proposals.
81. Details of any additional resource consents that may be required for each proposal are contained in the individual section 42A report for each proposal.

Land use consent under Chapter 4 of the PNRRP

82. At the time of preparing this report, Meridian Energy Limited (MEL) who is a submitter in opposition to all applications, has discussed with Council officers the requirement for resource consent to use land pursuant to section 9 of the RMA.
83. At the time of public notification of Variation 1 (3 July 2004) to the PNRRP, Proposed Chapter 4 introduced the requirement for a land use consent to be obtained to use water for irrigation which may result in contaminants entering groundwater or surface water in the Inland Basin Zone (Zone IB) defined on the planning maps associated with Variation 1. This requirement is found in Rule WQL19, which is a discretionary activity rule, provided the property management plan detailed as part of Condition 1 is prepared and complied with. This rule is limited to the use of water for irrigation authorised under Rule WQN26 (Using of water to irrigation and that is not permitted -

discretionary activity)³. Within the Activity column of Rule WQL19, failure to meet Condition 1 results in a resource consent being required as a non-complying activity in accordance with the Rule WQL61. Referring to Rule WQL61 suggests that this is a cross-referencing error, and the controlling non-complying activity rule is Rule WQL62.

84. In July 2006 all the relevant rules of the WCWARP became operative, effectively superseding the rules in Chapter 5: Water quantity of the PNRRP, including Rule WQN26. This resulted in Rule WQL19 no longer being of relevance in the Waitaki catchment. The effect of this, given the manner in which Rule WQL62 Activity 1 is drafted, is to require any land use in Zone IB which is also within the geographical area of the WCWARP to obtain a land use consent as a non-complying activity pursuant to section 9 of the RMA if it may result in contaminants entering water.
85. It is clear from the explanation to Rule WQL19 that the general purpose of this rule is to enable the effects of land-use intensification on surface water and groundwater quality to be controlled. This is the generally the same issue and effects being considered as part of the applications before this hearing. Consequently, the land use consent requirements found in proposed Chapter 4 would not provide a better understanding of the nature of the proposals before this hearing. For this reason, Environment Canterbury's approach is not to defer the consideration of the current applications pursuant to section 91 of the RMA.
86. This does not avoid the obligation of a land owner or occupier to obtain any necessary land use consent required by proposed Chapter 4 prior to land-use intensification occurring. However, what the future land use requirements may be is uncertain. I'm conscious that there are drafting issues with Rules WQL19 and WQL62. Further, in the extreme the submissions to Rule WQL19 could result in it either being deleted or becoming a non-complying activity. Similarly, in the extreme the submissions to Rule WQL62 could result in it either being deleted or becoming a prohibited activity.

Other documents to be considered

87. Other documents which are relevant to some or all of the applications are outlined below.

Ngai Tahu Claims Settlement Act 1998

88. The Ngai Tahu Claims Settlement Act 1998 (the Settlement Act) gave effect to the Deed of Settlement signed by the Crown and Te Runanga o Ngai Tahu in 1997, to achieve a final settlement of the Ngai Tahu historical claims against the Crown. The Settlement Act includes statutory acknowledgements, which recognise the special relationship of Ngai Tahu with a range of areas in the South Island. The purpose of statutory acknowledgements are to ensure that the particular relationship Ngai Tahu

³ There are three permitted activity rules which avoided the need to obtain resource consent for the use of water for irrigation under Rule WQN26 being: Rule WQN2 in relation to individual reasonable domestic and stock water use; Rule WQN13 in relation to small quantities of groundwater; and Rule WQN25 in relation to a property supplied entirely from private surface or groundwater takes only supplying that property, or a property supplied entirely from an irrigation scheme with the appropriate water permit for the use of water.

has with these areas is identified and Ngai Tahu are informed when a proposal may affect one of the areas.

89. In the upper Waitaki catchment, Aoraki/Mt Cook, Lake Aviemore (Mahi Tikumu), Lake Benmore (Te Ao Marama), Lake McGregor (Whakarumoana), Lake Tekapo (Takapo), Lake Pukaki and Lake Ohau are all statutory acknowledgement areas.

Ahuriri Water Conservation Order 1990

90. The Ahuriri Water Conservation Order was gazetted in July 1990. It declares that the Ahuriri River and its tributaries include and provide for outstanding wildlife habitat, outstanding fisheries, and outstanding angling features (Clause 3).
91. The Order states that the 'protected waters' covered are the Ahuriri River, excluding the east branch, the Omarama Stream downstream of the bridge, and all rivers, streams and lakes which are situated within 400 metres either side of the true left and true right banks of the Ahuriri River (Clause 2).
92. For the purposes of classifying activities at this hearing under Rule 2, Table 3 (row x), the interpretation of the Board, noted on page 3 of the WCWARP, has been adopted in that the provisions of the Order only apply to the 'protected waters' within the Ahuriri catchment. Therefore, any tributary water bodies which fall outside the 'protected waters' are classified under Rule 2, Table 3 (row xxii).
93. However, it may still be appropriate to require the minimum flows on either the Ahuriri River or Omarama Stream to be included as part of a consent to take, divert or dam water from a water body that is not included in the 'protected waters', but which may influence the flows in those water bodies. This is dealt with further in Report 2A and the individual s42A reports for activities in the Ahuriri Catchment.

National Policy Statements

94. The National Policy Statement on Electricity Transmission has been operative since 10 April 2008.

95. Policy 10 of the NPS states:

"In achieving the purpose of the Act, decision-makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised."

96. Policy 11 of the NPS states:

"Local authorities must consult with the operator of the national grid, to identify an appropriate buffer corridor within which it can be expected that sensitive activities will generally not be provided for in plans and/or given resource consent. To assist local authorities to identify these corridors, they may request the operator of the national grid to provide local authorities with its medium to long-term plans for the alteration or upgrading of each affected section of the national grid (so as to facilitate the long-term strategic planning of the grid)."

These policies will be applicable for activities occurring in close proximity to transmission lines, including land use activities and water permits to use water for

irrigation where transmission lines cross the irrigation area, where an appropriate corridor may be required between lines and irrigation infrastructure.

National Environmental Standards (NES)

97. Section 43 of the RMA allows the Governor-General, by Order in Council to make regulations known as national environmental standards.

NES for drinking water quality

98. The NES for Sources of Human Drinking Water is intended to reduce the risk of contaminating drinking water sources including rivers and groundwater. This is achieved by requiring regional councils to consider the effects of activities on drinking water sources in their decision making.
99. The NES for drinking water quality came into effect on 20 June 2008.
100. In particular this NES requires regional councils such as the Canterbury Regional Council to:
- (a) Decline discharge or water permits that are likely to result in community drinking water becoming unsafe for human consumption
 - (b) Place conditions on relevant resource consents requiring notification of drinking water suppliers if significant unintended events occur that may adversely affect human drinking water sources.

NES for measuring and recording abstractions

101. This NES has just passed the report and recommendation stage and is at the legal drafting stage. After this has been completed, the NES Measurement of Water Takes will become regulation. Therefore, currently it has no effect.
102. The purpose of this proposed NES is to help improve the management of water resources by ensuring accurate measuring of the extent of water takes. ("Water takes" means water taken from source, including rivers, lakes, dams and aquifers). The standard is likely to set minimum requirements for the installation and operation of new water measuring and recording devices, and for the transfer of data to regional councils. It is also likely to apply to all water takes that need resource consent, but it will not apply to household use of water (Ministry for the Environment).

District Plans – Mackenzie, Waitaki and Waimate Districts

103. The Mackenzie District Plan applies to the Upper Catchment down to the Ohau River. The Waitaki District Plan applies from the Ohau River to the bottom of the catchment. The Waimate District Plan applies on the north shores of Lakes Aviemore and Waitaki, and the eastern shores of part of Lake Benmore.
104. These plans may control land use activities including the installation of infrastructure associated with irrigation systems and the use of land in identified areas of outstanding landscape, and often the clearance of indigenous vegetation.

Iwi Management Plans

105. There are three iwi management plans that are recognised by Te Runanga o Ngai Tahu and lodged with Environment Canterbury:

- (a) Te Runanga o Ngai Tahu Freshwater Policy
- (b) Te Whakatau Kaupapa – Ngai Tahu Resource Management Strategy for the Canterbury Region
- (c) Kai Tahu ki Otago Resource Management Plan.

106. Whilst these plans do not contain any statutory requirements under the RMA, they identify the Tangata Whenua values associated with the land and water resources in the Waitaki Catchment and may be considered by the decision-makers for these applications under s104(1)(c).

Historic Places Act 1993

107. There is no formal relationship between the consenting process in the RMA and the Historic Places Act (HPA), but activities applied for under the RMA have the potential to affect heritage sites covered by the HPA. Works affecting archaeological sites, including structures dated before 1900, are subject to a consent process under the HPA, managed by the NZ Historic Places Trust (NZHPT), and it is an offence under that Act to damage or destroy a site without an archaeological authority.

108. For some of the applications there are archaeological sites likely to be affected by proposed activities. An advice note is recommended to be included on consent (see Report 1, Appendix 6 Conditions), which will be indicated in individual section 42A reports, where applicable.

Crown Pastoral Lease Land

109. Section 18 of the Crown Pastoral Land Act 1998 governs activities on Crown pastoral lease land, including activities that disturb soil, requiring that the leaseholder obtain written consent from the Commissioner of Crown Lands. Some land use applications at this hearing will involve disturbance of soil on pastoral lease land and will therefore require additional written consent from the Commissioner.

110. Section 60 of the Land Act 1948 governs creation of easements on Crown pastoral lease land, which will be relevant to proposals involving construction of irrigation infrastructure, such as pipelines or canals, on leased land. The Commissioner of Crown Lands may grant an easement as a discretionary action under s18(c) of the Crown Pastoral Land Act upon application from the lease holder.

111. Again, for applications affected by requirements of the Crown Pastoral Land Act and the Land Act an advice note is recommended to be included on consent (see Report 1, Appendix 6 Conditions). The individual section 42A reports will specify when this is necessary.

DESCRIPTION OF THE AFFECTED ENVIRONMENT

112. This section deals with the nature and values of the environment affected by the proposed activities, and its sensitivity to adverse effects resulting from the activities.

113. Each applicant has described in their application, the environment affected by the proposed activities.

114. The applicants' description of the affected environment is generally comprehensive and mostly consistent with information held by Environment Canterbury. Any exceptions to this are provided in the section 42A reports for individual applications.
115. A summary of the generic features of the affected environment are contained in the following paragraphs. These are separated into five main sections, firstly dealing with the affected environment of the Mackenzie Basin as a whole, subsequently looking at the sub-catchments of: the Glacial Lakes (Tekapo, Pukaki and Ohau); the Upper Catchment basin and tributaries; the Ahuriri River catchment; and Lakes Benmore, Aviemore & Waitaki and the Mid-Catchment tributaries.
116. Some of the information that is referenced in these summaries, including those in individual section 42A reports, includes:
- (a) Environment Canterbury's Geographic Information System;
 - (b) WCWARP, including Annex 1 and the Section 32 Report;
 - (c) Information provided to the WAB including the "*Working papers about the Natural and Physical Resources of the Waitaki Catchment by locality*" (Keller & Pfluger, 2005)
 - (d) Information available from Land Information New Zealand prepared as part of the pastoral land/tenure reviews in the catchment.
 - (e) Reporting of significant natural habitats known as Recommended Areas of Protection (RAP) which best represent the ecological character and diversity of ecosystems and landscapes in the designated ecological district from the Government initiated Protected Natural Areas Programme (PNAP).
 - (f) Reporting of Sites of Special Wildlife Significance (SSWI) that provide important habitat for wildlife by the New Zealand Wildlife Service.
 - (g) Information contained in submissions.
 - (h) Site visits by Investigating Officers to the subject properties.

Mackenzie and Waitaki Basins

117. The Waitaki Catchment Water Allocation Regional Plan includes an overview description of the Waitaki catchment upstream of the Waitaki Dam, which covers: climatic conditions; geology and land cover; surface water flows and groundwater connection; ecological values; community supply, irrigation and hydroelectricity infrastructure; and social, cultural and economic values.
118. Also referred to as the Waitaki basin and including the Ahuriri Basin, the Mackenzie basin, one of the South Island's large intermontane basins containing three of the great southern lakes, is a well known and distinctive landscape. It is one of the most extensive outstanding natural landscapes in the Canterbury Region and "one of the most investigated, painted, written about, visited, eulogised and argued over landscapes in New Zealand" (Boffa Miskell Partners and Lucas Associates 1993).

119. This 1993 study and a 1992 study by Boffa Miskell Partners on landscape change in the Mackenzie Basin looked at its landscape values (primarily visual values) in some detail (BMP 1992) and identified a range of key attributes to support its outstanding status making particular note of the variety, the huge scale and clear expression of landforms as well as the basin's visual character particularly its openness, vastness, and strong horizontal emphasis. Other distinctive characteristics were general absence of trees, overwhelming dominance of landform, high apparent naturalness, tussockland character, and overall unity, simplicity and coherence of the landscape.
120. Other attributes described in the study include the way the Basin is clearly recognisable as a large basin, due to the strongly defined enclosing ranges, and the ability to see right across the basin floor, particularly in clear light conditions. The absence of features across the plains gives the impression of vast open space and distance.
121. Additional features of the Mackenzie Basin is that most of it is seen as a highly "natural" landscape. From an ecological perspective, much of it is in fact considerably modified, with hieracium and exotic grasses widespread throughout the basin. However, the Basin retains very high "natural" qualities because of its overwhelming dominance of natural landform and extensive presence of short grassland which still retains a component of native species and continues to support a diversity of indigenous insects, lizards and birds. It is still regarded overall as one of the region's, and arguably, the nation's, largest outstanding natural landscapes.
122. It is also a highly visible landscape. A major tourist highway (SH8) passes through the middle of the basin and much of it can be viewed from the highway. The combination of the physical features, and the diversity and distinctiveness of the area all contribute to the high inherent scenic and visual values.

Glacial lakes – Tekapo, Pukaki and Ohau

123. Lake Tekapo, Lake Pukaki and Lake Ohau are fed by largely unmodified glacial rivers flowing from the mountains of the main divide through areas of high natural character. These headwater tributaries tend to be dynamic and flood prone braided rivers, providing habitat for a number of threatened indigenous bird, fish, lizard, invertebrate and plant species, including: black stilt, Southern crested grebe, black fronted terns, wrybill, and banded dotterel; and long-finned eel, koaro, upland long-jaw galaxias, lowland longjaw galaxias, and Bignose galaxias. Brown and rainbow trout tend to congregate in spring-fed side streams. Recreational opportunities are varied and include sightseeing, tramping, mountain biking, canoeing and boating, game hunting and angling throughout the upper tributaries,
124. The lakes themselves are characterised by a distinctive milky blue colour originating from inflows of glacial meltwater containing rock flour. The levels of Lake Tekapo and Lake Pukaki were raised to provide storage for hydroelectricity generation, and levels in the lakes fluctuate according to the needs of generation and infrastructure. Smaller Lake Ohau has not been raised, providing natural storage for generation. Waterfowl and wading birds are abundant at each of the lakes, as well as indigenous fish species, salmonids, and threatened indigenous aquatic plant species. The lakes are highly valued for recreation, including sightseeing and boating,
125. Rivers leading from the lakes are highly modified due to hydroelectricity development, with release flows to Pukaki River and Tekapo River controlled by Meridian Energy Limited, and the majority of lake inflows directed to hydroelectricity canals supplying the Upper Waitaki power scheme. The canals support salmonid populations

Upper catchment basin and tributaries

126. Key landscape elements of the basin floor are vast expanses of outwash plain with sinuous braided patterns; rolling to hummocky moraines frequently littered with angular boulders; occasional hard rock hills protruding from the floor; and dry grey gravel riverbeds with rectilinear terraces. Short tussock grassland and mat plant communities are a ubiquitous cover. Homesteads are like oases in the generally brown-grey landscape, although the presence of cultivated and planted areas is becoming more frequent.
127. The 1992 Boffa Miskell landscape study separated this area into landscape compartments.
128. The Mackenzie compartment is an expansive flat basin, A large fluvio-glacial outwash plain bisected by the braided Tekapo River that has formed large, but simple terraces and floodplains. It is dominated by open grassland, giving the whole area a fine textured cohesion and simplicity that is very striking. There are very extensive views of the Basin across and from within this landscape.
129. The Twizel compartment has similar qualities to the above, but lacks the overall unity and simplicity of the Mackenzie compartment. There is more development (e.g. Twizel township, the canals) and greater variety in landforms.

Ahuriri River catchment

130. The upper reaches and headwaters of the Ahuriri River are found within the Ahuriri Conservation Park. The Department of Conservation website provides the following information about the upper Ahuriri River.
131. The river valleys and wetlands are outstanding habitat for many species including the endangered black stilt, black-fronted tern and wrybill. The beech forests are home to the main forest birds, including the threatened yellow-crowned parakeet, kea and NZ falcon. The river itself provides habitat for native fish including alpine galaxias (*Galaxias paucipondylus*), koaro (*Galaxias brevipinnis*), common river galaxias (*Galaxias vulgaris*), and upland bully (*Gobiomorphus breviceps*).
132. Young (1987) provides a physical description of the Ahuriri River and its catchment. The river drains from the Barrier Range in the west and flows for 87 kilometres to where the river feeds into Lake Benmore. There are eight tributaries feeding the Ahuriri River: Snowy Gorge Stream, East Branch of the Ahuriri, Avon Burn, Longslip Creek, Hen Burn, Quail Burn, Willow Burn and Omarama Stream, totalling a catchment area of 1,382 kilometres above Lake Benmore.
133. The Draft Ahuriri Water Management Plan discusses values of the Ahuriri River. The river is an important draw card within the tourist industry given the range of recreation values the river holds (scenery, shooting, camping, picnicking, walking, fishing, jet boating, canoeing and rafting).
134. As discussed above, the Ahuriri River catchment provides an important habitat for a large number of native species. The explanatory note at the end of the National Water Conservation (Ahuriri River) Order 1990 (WCO) states:

“the Order declares that the Ahuriri River and its tributaries include and provide for outstanding wildlife habitat, outstanding fisheries, and outstanding angling features”.

Lakes Benmore, Aviemore, Waitaki and mid-catchment tributaries

135. The topography in this area is dominated by high, barren-looking hills and mountain ranges. Hill and range slopes are steep and angular, and rock outcrops are a characteristic feature. The area is notable for the transition from Canterbury greywacke mountains (e.g. Benmore range) to Otago block-faulted schist mountains (e.g. Hawkdun range). The sparse low-stature vegetation adds to the distinctive character. The seasonal bright-green of sweet briar, and of willows and poplars along stream courses and around the lakes, contrasts vividly with the brown-grey scrub and grassland on the surrounding hills. Tussockland is patchy on lower slopes, through more dominant on cooler, moister upper slopes and summits.
136. The valley floor has been greatly modified through the creation of the Benmore, Aviemore and Waitaki hydro dams and lakes. These structures are now dominant features in the valley. The lakes are popular for camping and water-based recreation, and much of the valley landscape is visible from the highway or lakes.
137. Whilst the landscape appears natural (dominated by landforms, lakes and vegetation of natural form and pattern) and is distinctive and memorable in many places, it lacks the particular visual quality and aesthetic value of other parts of the high country such as the Mackenzie Basin. The Canterbury Regional Landscape Study (Boffa Miskell & Lucas Associates, 1993) considered the lakes and their settings regionally significant, except for the narrow neck of Lake Benmore. The uppermost part of the valley west of Glen Creek and Totara Peak was considered outstanding as it is part of the renowned Mackenzie Basin landscape. However, the majority of the Waitaki Valley was not considered either regionally outstanding or significant.

ASSESSMENT OVERVIEW

138. In order to avoid duplication in each individual section 42A report, the effects on the environment that are considered relevant to each activity type are identified in this report. Appendix 8 includes a summary of each effect and identifies the relevant planning provisions (RPS and relevant regional plan). The relevant planning provisions for each effect are not repeated in each individual s42A report, however they are discussed in the context of each application.
139. The following list of effects have been identified by the applicants, submitters, investigating officers, including the values and issues identified in the WCWARP, PNRRP, Waitaki District Plan, Mackenzie District Plan, Waimate District Plan, and other relevant planning documents.
140. For activities to take, divert, dam and use water (surface and ground water), the following effects are considered relevant:
 - (a) All activities:
 - (i) Adverse effect on aquatic ecosystems
 - (ii) Adverse effect on terrestrial ecosystems
 - (iii) Adverse effect on other water users
 - (iv) Adverse effect on people, communities and amenity values

- (v) Adverse effect on water quality
 - (vi) Adverse effect of inefficient take and use on other users
 - (vii) Adverse effect on Tangata Whenua values.
- (b) Additional effects to be considered for applications to take groundwater include:
- (i) Adverse effects on surrounding groundwater users
 - (ii) Cumulative effect of take on other groundwater users
 - (iii) Adverse effects on surface water flows
 - (iv) Adverse effects from cross-connection on groundwater quality
 - (v) Adverse effects on aquifer stability.
- (c) Additional effects to be considered for applications to dam water include the adverse effect of dam failure (damming of water)
141. For activities to disturb the bed and banks of a river, the following effects are considered relevant:
- (a) Adverse effect on water quality and ecosystems
 - (b) Adverse effect on bed erosion and flooding
 - (c) Adverse effect on artificial structures
 - (d) Adverse effect on amenity values
 - (e) Adverse effect on Tangata Whenua values.
142. For activities to discharge water into water, the following effects are considered relevant:
- (a) Adverse effect on flood carrying capacity and erosion
 - (b) Adverse effect on water quality and ecosystems
 - (c) Adverse effect on downstream water users and amenity values
 - (d) Adverse effect on safety of river users
 - (e) Adverse effect on Tangata Whenua values.

DURATION

143. Page 21 (Administrative issues) of the WCWARP advises the Plan does not include provisions relating to consent duration. It continues to say that the provisions addressing duration in the relevant statutory planning instruments that apply to the Waitaki catchment remain available to the Canterbury Regional Council.

144. As such, Chapter 1.3.5 of the PNRRP (which is now beyond challenge) lists the following matters which the consent authority should have regard to when considering the duration of any consent application to be granted:

- (a) *“The nature and sensitivity of the affected environment, including*
 - (i) *the degree to which the sensitivity of the affected environment may become more sensitive over time; and*
 - (ii) *the risk of unforeseen adverse effects arising from the consented activity; and*
 - (iii) *the level of knowledge about the affected environment; and*
- (b) *The nature of the activity, including;*
 - (i) *the degree to which the methods to control the adverse effects of the consented activity are of a temporary nature or inconsistent with the requirements of the RMA and the time that is practicable for the consent holder to implement other options; and*
 - (ii) *the level of compliance monitoring, environmental impact monitoring, reporting and action required by the conditions on the resource consent; and*
 - (iii) *the significance of the activity relative to the existing situation and the capacity of the affected environment; and*
 - (iv) *the duration of the consent sought by the applicant; and*
 - (v) *the rate of change in technology that may mitigate adverse effects resulting from the activity; and*
 - (vi) *the permanence of the economic life of the activity; and*
 - (vii) *the costs and benefits of the activity to the community; and*
 - (viii) *the consent holder’s capital investment in a pre-existing activity; and*
 - (ix) *any documented history of non-compliance with the requirements of the RMA; and*
 - (x) *guidance from resource management case law; and*
- (c) *any other relevant matters.*

The above list does not restrict the consent authority’s discretion in each case to grant a resource consent based on the particulars of individual consent applications”.

145. Where the Investigating Officers are recommending that an application be granted, they provide discussion of the above factors in the individual section 42A reports.

146. Where no recommendation to grant an application has been made, the Investigating Officers do not provided a discussion in relation to duration as they are not able to determine the potential degree of effects.

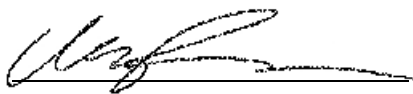
147. In general applications for ‘replacement’ water permits are seeking a duration of 35 years while applications for ‘new’ water permits are seeking a duration until 30 April

2025, which is consistent with the expiry of Meridian Energy Limited's consents for the Waitaki Power Scheme.

CONDITIONS

148. If the Commissioners make a determination to grant the applications, they may impose conditions under section 108 of the RMA (as outlined in section 104 of the RMA).
149. Appendix 6 of this report provides a list of recommended conditions for resource consents for water, land use and discharge permits to avoid, remedy or mitigate potential adverse effects.
150. More specific suites of conditions are included in the section 42A report for each application. These suites of conditions will reference those in Appendix 6 and include application specific details (particularly in relation to setting the scope of the application). Additionally, they may include unique conditions proposed by the applicant or recommended by the Investigating Officer.
151. It should be noted that the suite of conditions included in each report may not be a complete list – in this instance the report will identify any outstanding potential adverse effects.
152. At the time these section 42A reports were prepared, in most circumstances no mitigation had been proposed by the applicants in relation to addressing any adverse effects on landscape and water quality. Correspondence with a number of the applicants indicates they intend to provide details of any mitigation, if required, after the section 42A reports are completed, and possibly not until the hearing commences.
153. In March 2009 Environment Canterbury was provided a copy of a draft suite of consent conditions which would give effect to the MIC/MEL agreement. Comments were provided on the draft suite of conditions. At the time this report was prepared, the applicants have not provided a final suite of conditions to be included as conditions of consent.

Signed:



Date: 31st August 2009

Claire Penman
Consultant Investigating Officer

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