

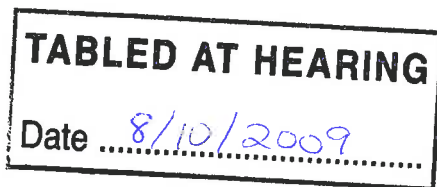
In The Matter

Of the Resource Management Act 1991 ("the Act")

And

In The Matter

Of an application by Haldon Station Limited for consents to disturb the bed of Stony River, carry out maintenance on the existing weir and diversion structure, take water for stock water use and irrigation and discharge bywash water (CRC082268, CRC082269, CRC082270, CRC082271, CRC042561)



SUBMISSIONS OF COUNSEL FOR HALDON STATION LIMITED

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The applicant

1. The applicant operates a high country farm located on the eastern shores of Lake Benmore. With the recent acquisition of the 7,700 ha Stony Creek block, it now comprises approximately 22,000 ha in total. The topography of Haldon Station changes from approximately 200 metres above sea level near Lake Benmore, to approximately 1,600 metres above sea level at the highest parts of the farm. The farm is in several titles but is generally described and managed in three sections; being Haldon, where the existing and proposed irrigation is to take place, the newly acquired Stony Creek block, and Back Hut, the highest of the three blocks.
2. The farm is stocked with sheep, deer and cattle and it focuses on the production of extra fine merino wool, venison and velvet. The existing and proposed irrigation allows the farm to make the required winter feed, baleage and hay to carry its stock through droughts and harsh winters. However to put the irrigation proposed in context with the size of the station, it will irrigate around 3% of the total farm area.

The applications

3. Haldon Station has five applications before you. The first four relate to the existing irrigation set up and are as follows:

CRC082269

- (a) To divert water at a rate of 320 litres per second and 4 million m³ per year from Stony River;
- (b) To take and use water at a maximum rate of 280 litres per second, up to 24,192 m³ of water per day with a total of 73,780 m³ per year for stock water and 3,163,100 m³ from the diversion race for irrigation of up to 470 ha of pasture.

CRC082268

To disturb the bed of Stony River for the purposes of maintaining an existing weir and irrigation intake structure for take and diversion of water under consent CRC082269;

CRC082270

To dam water and Stony River to a maximum height of 1 metre above the bed of the river for the purpose of maintaining continuous flow to an irrigation take;

CRC082271

To discharge water from an irrigation intake race at a maximum rate of 40 litres per second from where it enters Stony River and to discharge irrigation bywash water at a maximum rate of 150 litres per second from a collection pond into Stony River.

4. CRC082269 replaces three existing consents to undertake the same activities to divert take and discharge irrigation water, which expired on 30 June 2008, but which have continued to be exercised under section 124 of the RMA.
5. The applicant has, over time, increased the number of hectares it irrigates with this water, by collecting the borderdyke bywash water in settling ponds and reusing this water to irrigate an additional 90 ha via a mobile centre pivot. The current application therefore seeks to use the water on no more land than it is currently being used on. Furthermore the total annual volume of water being abstracted is reduced from that allowed under the existing consent. It should also be noted that this is the only consent for irrigation water from this River.
6. The other three consents all relate to the same irrigation take, reflecting the current activities of maintaining the weir at the abstraction point in Stony River and discharging water back to the river. The term sought for these consents is 35 years.
7. Haldon Station is also applying for a new irrigation take, to irrigate 190 ha using groundwater. This application is:

CRC042561

To take and use water at a maximum combined rate of 100 litres per second and a volume not exceeding 8,640 m³ per day and not exceeding 1,140,000 m³ per year from bores 139/4 and 139/5 for the spray irrigation of 190 ha of pasture.

This application was made in May 2004 and seeks an expiry date of 30 April 2025 which is consistent in to the expiry of the Mackenzie Irrigation Company shares.

UWAG

8. Haldon is a member of the UWAG applicants group and as such, relies on the general evidence and legal submissions which have been presented to date on behalf of that group, particularly as to the cumulative effects of the proposal. However, the use of irrigation has been an integral part of Haldon's operation since the 1970s and, because of the importance of irrigation both now and in the future to its farming operation, it has instructed me as separate legal counsel to present its application-specific submissions and evidence.

Priority

9. Mr Chapman, for the UWAG applicants has identified how legal questions as to priority have featured in the processing of the applications to date.¹ Haldon Station was particularly concerned when it became aware that its existing water take, for which a replacement consent application was only made 6 months prior to its expiry in 2008, was near the end of the priority queue of applicants, whereas its new application, having been made in 2004 was much further up the priority order.² While both applications fall within the 275 M m³ WAP allocation, Haldon Station is concerned that, if for any reason relating to cumulative effects, it was felt not all applications should be granted, that a simple first-in, first-served approach to allocation, without any more sophisticated analysis, could potentially put its existing farming operation risk at the expense of new applicants with no existing investment in the irrigation they propose. While that situation has now been addressed in legislation by S124A-C of the RMA, that amendment became effective too late to assist Haldon's position.
10. Haldon subscribes to the view advanced by UWAG that all applications which are within the WAP allocation limit will not, cumulatively, have such adverse effects that they should not be granted, so long as appropriate conditions are opposed on those applications. If that approach is adopted, the priority order of applicants is not relevant. However, for the avoidance of doubt, we state Haldon's position on how the applications are to be treated if there are

¹ See paragraphs 93 – 99.

² As set out in attachment 2 to the section 42A Officers' report of Maria Bartlett.

reasons why the commissioners consider not all applications can be granted and they fall to be assessed in their priority order.

11. The Court of Appeal's decision in *Central Plains v Ngai Tahu Property Limited* [2008 NZRMA 200] is the most recent and authoritative decision to date on priority as it applies to water application³. It held in that instance that “an application for resource consent to take water... which... could not as filed be rejected as a nullity, takes priority over an application which relates to the same resource and which, although complete in itself, was filed later...”
12. The decision endorsed the first-in, first-served approach which the Court of Appeal first articulated in *Fleetwing Farms Limited v Marlborough District Council* [1997] NZRMA 385. That case had decided that priority is to be determined on a “first-come first-served basis,” and that each later application is to be considered on its own merits without regard to other applications, but it did not determine at what stage priority is achieved (i.e. at lodging, notification or some other date). Later cases have focused on establishing when that date is reached.
13. That said, the debate as to when that point is achieved, is not relevant in the present case. There has been a determination of the priority order between the current consent applicants and that has not been appealed (nor could it obviously change materially on appeal given the outcome in the Court of Appeal's decision in *Ngai Tahu*).
14. The real issue for the Commissioners today is deciding what is meant by approaching the applications on a “first-in, first-served basis” if, in fact, the priority order established becomes material.
15. On this point Haldon endorses the UWAG legal submissions. A priority order does no more than establish an order in which the applications are to be heard, without having to assume, or take account of, the grant of subsequent applications in the priority queue. It is not an entitlement to be granted the resource. Each application must still be considered in its own unique set of circumstances. These will include considerations of whether it is proposed to take place in a particularly sensitive sub-catchment, whether it is for an existing or new irrigation proposal, and of the applicant's willingness and ability to accept conditions which will avoid, mitigate, or remedy adverse effects.

³ The Court of Appeal has again heard the issue in proceedings by Central Plains Water Trust appealing a decision on priority of its application over those of Synlait Limited, but no decision has yet issued.

16. To put the situation in its crudest terms, the first application cannot come along and say, because you can disregard the effects of later applications in the queue, there is existing capacity in the environment for it to discharge excessive nutrients, and it should therefore be granted. It must also demonstrate it is a sustainable use of the resource, and that the applicant will avoid remedy and mitigate adverse effects. If it doesn't, it can be declined.
17. It would be perfectly feasible, if applications were considered in their priority order, that some earlier consents might not be granted and some later ones are. For example if an application was the last of several applications in a sensitive sub-catchment, it may not be allowed to proceed, whereas the next application, in a separate catchment, could be granted consent. Similarly, it could be possible to decline an earlier application for a new consent where there was uncertainty about the level of adverse effects generated, but grant a subsequent consent in the priority queue where the effects of the activities were known, and formed part of the environment, and where, having regard to the positive effects of the existing application (such as ongoing employment for staff on the farm, and considerations of existing investment), Part 2 considerations weighed in its favour.
18. Thus, in any circumstances where the priority order becomes of consequence, Haldon invites you to look at the individual merits of its applications when you come to them, including weighing up the positive effects of granting the applications. It considers that if this approach is taken, and bearing in mind that the water take applications are for discretionary activities anticipated by the Waitaki Association Plan so long as effects are managed, both the consents it seeks can be granted, and the relative place in the priority queue should be no impediment to that.

Positive effects

19. Much of the focus of the evidence, and of the analysis in the section 42A reports, is on potential adverse effects which might arise if the applications are granted. There is little if any consideration of the positive effects of granting these applications. However, as decision makers you must, of course, bring these into the mix when considering the applications up under section 104 and assessing whether the grant of the application is consistent with Part 2 of the RMA.
20. The positive effects include, but are not confined to, the improved profitability of the farm. That is a relevant effect as it is enabling of people's economic

wellbeing. However, that, in turn, provides many other benefits. Employment opportunities are generated on the farm and such opportunities are more likely to be stable when a farm has certainty from year to year that it can carry the stock that is required to generate the income needed to pay staff. Farms which have relatively reliable income streams are more likely to invest in appropriate management of their farms and address environmental issues, such as control of plant and animal pests. It should be remembered that the whole community benefits when farms undertake control of nuisance species such as wilding pines or rabbits. Farmers can also invest in improving their on-farm systems, and you will hear evidence about the various improvements which Haldon Station has been able to implement because of its successful investment in irrigation to date.

Section 42A reports

21. 42A reports have been prepared on each of the five applications by Ms Vesey. Ms Vesey generally declines to make a recommendation on whether consents should be granted. However, in summary, she says as follows:

CRC082269 (existing take and use). Says more information required on the proposed fish screen, mitigation measures to address surface water quality impacts and cultural values is required. No recommendation given.

CRC082268 (disturb bed of Stony River). Says effects of proposed activities are acceptable, but no recommendation made.

CRC082270 (permit to dam). Recommends granting.

CRC082271 (discharge). Says not satisfied that the adverse effects of the activity on the environment will be minor. No recommendation made.

CRC042561 (take and use of groundwater). Says more information needed on mitigation measures to address water quality impacts, possible effects on landscape values and effects on cultural values. No recommendation made.

Fish Screens

22. Mr de Joux gives evidence of the proposal to install a buried gallery-type fish screen, at the head of the borderdyke scheme. A schematic diagram has been provided to ECan and discussions about its operation held with Mr Webb of Central South Island Fish and Game Council. The applicant understands that this information is sufficient to address this issue.

Water quality

23. It is considered that the concerns about water quality impacts are now fully addressed by the evidence which has been presented by MWRL, and for UWAG, and which is further covered in the brief of evidence of Richard de Joux for Haldon Station. Specifically, Haldon Station can operate within the nitrogen and phosphorous output predictions set out in the research done for the UWAG applicants to date. Indeed, as Mr Macfarlane's evidence will show, it is likely that the estimates of output for Haldon Station provided in Melissa Robson's report are conservative. Because he has factored in additional information about the way Haldon operates, he considers it should be able to achieve lower levels of nitrogen and phosphorous loss.
24. The applicant has also developed a comprehensive FEMP, and the draft FEMP is provided with Haldon's evidence. As Mr de Joux will explain, given that the N and P thresholds from the MWRL study can be met by Haldon and the applicant's commitment to addressing on farm risk with the implementation of the FEMP, the effects of the use of water on water quality for both the local receiving environment, and cumulative effects, are considered to be minor.

Landscape effects

25. The reporting officer raises the issue of effects on landscape values of the new take and use of groundwater. It is appropriate that she does not raise this for the existing consent, given that the landscape changes effected by this have been in place for many years. However, Haldon Station adopts in its entirety, the UWAG submissions on the relevance of landscape effects and in particular the view that, although these effects which are an "*inevitable and reasonably foreseeable consequence*" of the grant of consents in the *Cayford or Aquamarine* sense, it is highly relevant that the applicable district plan has recognised that effect and not sought to control it in this area.
26. The proposed new irrigation takes place in the Mackenzie District. As discussed in landscape evidence presented for UWAG applicants, that district has a plan which, as required under the RMA, expressly provides protection of adverse effects on the landscape. In Haldon's submission it is inappropriate to use this process to undermine or to counter decisions which have been made on what comprises sustainable management of land use activities under the RMA by the local authority charged with addressing those issues.

Cultural values

27. The section 42A reports refer generically to provision of more information on effects on “*cultural values*”. It is acknowledged when they say that, that they are likely to be referring to section 6(e) of the RMA which requires decision makers to recognise and provide for “*the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, Waahi Tapu and other taonga*”. From Haldon’s perspective it seems that the primary relevance of Te Runanga O Ngai Tahu’s submission to its applications is in respect to the potential deterioration of water quality. It considers that the evidence provided both by UWAG and Haldon witnesses individually, should satisfy Ngai Tahu that water quality effects are appropriately addressed. It also notes that the request for more information on effects on cultural values of Ngai Tahu has been provided in the cultural impact assessment commissioned on behalf of MWRL and provided to the Commissioners.
28. Cultural effects, does however have a wider relevance. Section 5 of the Act speaks of people and communities providing for, among other things, their “*cultural wellbeing*”. By the end of this hearing, you will no doubt have a strong feeling for the culture of the communities which have farmed these high country farms, often for generations. Some, like Haldon Station, provide a living and working environment for a number of families and even houses a local school on it. The jobs they do are not 9 to 5 jobs, but require sufficient affinity with the land to live full-time with their families in this environment. The farm therefore provides for the cultural and social wellbeing of a group of New Zealanders, who also caretake a landscape that others feel a cultural affinity to. That aspect of cultural and social well being should not be ignored in the decision making process.

Evidence for Haldon

29. Haldon Station is calling three witnesses:

(a) **Mr Paddy Boyd, Manager of Haldon Station Limited**

Mr Boyd will give an overview of the Station’s operation, including the environmental initiatives which have been implemented during his time as manager, and which has seen Haldon established as a leading example of how a farm should be sustainably managed in this harsh and difficult environment.

(b) **Andy Macfarlane, Farm Advisor**

Mr Macfarlane has been the professional farm adviser to Haldon for a number of years. He has been instrumental in advising Haldon on the environmental initiatives which it has implemented to date, and also on the Farm Environmental Management Plan which is provided in draft to this hearing.

(c) Richard de Joux, Hydrologist

Mr de Joux provides a full analysis of the consents sought, the potential adverse effects of those and how they are addressed. He also provides a supplementary brief of evidence which makes specific comments on the recommended conditions for the Haldon consents.

Conclusion

30. Haldon Station is seeking consent to continue and to expand its existing irrigation. The irrigation proposed, while modest in percentage terms when looking at the size of the farm overall, is critical to the farm's security of operation. Without it, the risks of farming here would increase dramatically and there would be a consequent loss of production and employment. There would also be less income to undertake work to maintain and improve the farm environment.
31. Haldon, like other UWAG members, has responsibly contributed to the research and further work which has been undertaken to assess the cumulative effects of the applications before you. These should satisfy the Commissioners that they have sufficient information on every issue to be able to grant the consents sought.



Rachel Dunningham
Counsel for Haldon Station Limited