

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of applications for water permits to take and use water from the Hakataramea River and its tributaries

BY ROBERT HAY ROBERTSON
RPNZ PROPERTIES LIMITED
RG AND ZL PRINGLE
RW AND ME SUTTON
STAR HOLDINGS LIMITED
NJ SMALL
HAKATARAMEA STATION (1990) LIMITED

Applicants

TO ENVIRONMENT CANTERBURY

Local Authority

**SUPPLEMENTARY STATEMENT OF EVIDENCE BY PETER ALLAN CUBITT
IN REPLY TO COMMISSIONERS' MINUTE DATED 3 DECEMBER 2009**

NORTH SOUTH ENVIRONMENTAL LAW

Barristers & Solicitors
PO Box 37893
Parnell
AUCKLAND

Phone: 09 304 0043
Fax: 09 303 2427

Counsel: P Steven / R A Makgill

INTRODUCTION

1. My name is Peter Allan Cubitt. My qualifications and experience are set out in my evidence in chief presented on the 21 August 2008.
2. This additional evidence is provided to the Commissioners in response to their minute to the parties dated 3 December 2009.

THE WHOLE CATCHMENT APPROACH

3. As I understand it, if the Commissioners were to adopt the whole catchment approach as proposed by the 3 December 2009 minute, then the allocation limit of 0.5 m³/s for the Hakataramea River would now be over allocated because of the addition of the tributary takes.
4. My view has always been that the allocation limit set in Table 3 row xix applies to the main stem of the Hakataramea River only. Given the Commissioners tentative view as expressed in the 3 December 2009 minute, I have again reviewed the Waitaki Catchment Water Allocation Regional Plan (Plan) on this issue. I am not convinced that the Plan has adopted a whole-catchment approach in each of the individual catchments within the greater Waitaki River catchment area. Policies 1 to 28 follow the subheading of "Catchment-wide policies". I agree that at the broader policy level, the plan promotes a whole-catchment approach as articulated in Policy 1. The connections recognised in this policy must obviously be considered when determining any resource consent, regardless of any more specific policies. However, I believe this policy has more significance when determining a resource consent for a large scale activity that has implications for the greater Waitaki River catchment area such as a major hydro development.
5. The policies that follow Policy 1 deal with issues that are generic throughout the whole catchment. Those policies outline the matters that were considered when setting the various environmental flow and level regimes; deal with the mixing of water; address the matters relevant to allocation; address efficient and effective use, water metering, transfer of resource consents, restrictions during low water availability and replacement of existing consent. These are matters that are relevant to managing the water allocation regime across the whole catchment.
6. Even in these catchment-wide policies, the language used is very specific in respect to what water body or part of the water body is being targeted. Policy 2, for example, is very clear in referring to the "mainstems and tributaries" of a number of creeks, streams and rivers. However, it is appropriate, in my view, that Policy 2 sits within the catchment-wide policy section because it deals with water body types (high natural character water bodies) that are

found throughout the entire Waitaki River catchment – i.e. they are not confined to a sub-catchment.

7. Policy 6 and Policy 26 also identify tributaries of sub-catchments of the Waitaki River and catchments of other rivers. But again they address issues that are common in these catchments. It is more efficient to draft one policy dealing with the issue than repeat the same policy in each of the relevant locality specific policies.
8. After dealing with the issues that need to be addressed across the board, the Plan then contains the subheading “Locality-specific policies”. Policies 29 to 46 follow this subheading and recognise the different character and values found within the sub-catchments and identify specific sub-catchment management regimes. Again, the language used throughout these policies is specific in respect to what water body or part of the water body is being targeted (see for example Policy 39 (upper Ohau River) and Policy 43 (Hakataramea river), which merely refer to the “River” as opposed to the “mainstem and tributaries” or “catchments”).
9. More importantly, the language used in the rules is also very specific. Table 3 rows iii, iv, v, vii, viii, xi, and xii all refer to the mainstem of the waterbody and its tributaries. These references seem consistent with the related policies. With respect to the other rivers/streams dealt with in this table, rows ii, vi, xiv, xviii, xix (the Hakataramea River), xx, and xxi only refer to the “river” as opposed to any tributary. Again these references seem consistent with the related policies.
10. The choice of language appears deliberate. Paragraph 171 of Annex 1 to the Plan (which sets out the decision and principal reasons for adopting the Plan provisions) indicates that the Board received many submissions requesting that other rivers and streams be added to Table 3. However the Board states that it was not persuaded to do this as those requested are already included in provision for “all other rivers and streams”, or are tributaries of a sub-catchment already listed. They were deliberate in what specific individual water bodies/catchments were identified and what were left to be caught by the catch all of row xxii.
11. It became clear to me in my discussions with Mr Stewart and Mr Hall in preparation for the original hearings, that the tributaries of the Hakataramea contribute very little to the flow of the main stem of that river and that it would be very difficult to determine the flows in these tributaries with any accuracy. It was this understanding that lead me to conclude that attaching the 0.5m³/s allocation limit to the main stem of the Hakataramea only was indeed deliberate. This seems to be confirmed by the supplementary evidence of Mr Stewart, Mr Hall and Ms Keri Johnston, who has reviewed the evidence presented to the Waitaki Allocation Board on the Hakataramea River and its tributaries.

12. Consequently I remain convinced that the Plan has taken a very deliberate approach in relation to the Hakataramea catchment which excludes the tributaries from the allocation limit in Table 3 row xix. This appears to be the most practical approach to managing the catchment given the characteristics of the tributaries.

HOMESTEAD CREEK APPLICATIONS

13. The Homestead Creek application is effectively a water harvesting activity. Because the allocation sought, in combination with other existing and proposed takes, exceed the annual volume allocated to agricultural and horticultural activities under Table 5 of Rule 6, this application has always been promoted as a non-complying activity.
14. Furthermore, it has always been assessed by the various experts representing Mr Robertson on the basis that the design leakage would essentially met the minimum flow of 5-year, 7-day low flow being provided downstream and that the variability required in the stream would be met at times of heavy rain in the catchment when the dam is full. Without exception, these experts consider that the environmental effects of the proposal (including effects on the main stem) will be no more than minor for the reasons set out in their evidence in chief. Given the nature of the activity, the characteristics of the stream and the existing environment (in particular the limited contribution it makes to the Hakataramea River), it was never considered necessary to relate the harvesting activity to the flow in the Hakataramea or to adopt the mean flow/flow sharing approach set out in Table 3 row xxii.
15. My assessment of this proposal also concluded that it passed through the objectives and polices limb of the gateway. However I did not consider it necessary to assess it against Policy 43, as in my view it applies to the main stem only. After reviewing the evidence in chief of Dr Donovan (ecology), Mr Stewart (hydrology) and Mr Heller (water quality), I can not see how a water harvesting activity in a tributary of this character, that is encouraged by Policy 8 of the plan, would compromise any of the values listed in Policy 43. It could not said to be contrary to that policy.
16. However adopting Mr Stewart's recommendation of aligning the water harvesting activity with the 4.5 cumec minimum flow in the Hakataramea River would provide the Commissioners with the certainty that the proposal is not contrary to the Plans policy framework. The proposed method of abstraction for water harvesting as stated in Mr Stewart's evidence should also ensure that flow variability is maintained in the stream. Again this should give a level of certainty that the environmental effects of the proposal will be no more than minor.
17. This approach, rather than reducing the ability to harvest water through the application of a flow-sharing regime threshold at the mean flow of the tributary, will ensure the proposal is sustainable on both the economic and environmental front. The Plans objective of encouraging water harvesting in tributary catchments such as this would be achieved while ensuring the ecological values of the main stem are unaffected. Adopting such a pragmatic

approach rather than forcing farmers to apply for further water from the main stem of the river, which does contain ecological values, is more aligned with the sustainable management principle of the Act.

Dated 3rd March 2010

Allan Cubitt