
in the matter of: the Resource Management Act 1991

and

in the matter of: an application for resource consent **CRC071029** by the South Canterbury Irrigation Trust and Meridian Energy Limited to take and use water from the Waitaki River

TABLED AT HEARING

Date 2/3/2010.....

Synopsis of submissions on behalf of the applicant for reconvened hearing

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**CHAPMAN
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SYNOPSIS OF SUBMISSIONS ON BEHALF OF THE APPLICANT FOR RECONVENED HEARING

May it please the Commissioners

Introduction

- 1 These submissions are presented on behalf of Meridian Energy Limited (*Meridian*) and the South Canterbury Irrigation Trust as joint applicants for the Hunter Downs Irrigation Scheme (together *HDI*) in response to the minute of the Commissioners dated 11 December 2009 that raises *inter alia*:
 - 1.1 whether the 251Mm³ per annum sought by the applicants is necessary and the use of the Schedule WQN9 v2 method;
 - 1.2 in-catchment and out-of catchment water needs and the potential exclusion of the Timaru District component;
 - 1.3 lapsing and the appropriateness of a 10 year lapsing period following the decision of the Environment Court in NBTC.
- 2 In addition, I will address the appropriateness of the proposed review conditions set out in the memorandum of counsel on behalf of the Mid River New Applicant Group (*MRNAG*) and existing irrigators dated 23 February 2010 and will respond to Mr Scarf's evidence for Central South Island Fish and Game.
- 3 In a separate set of submissions on behalf of Meridian as submitter on the above BlackPoint applications I will also cover the apparent errors in the Environment Court's decision relating to NBTC that have been described in the minute of the Commissioners dated 21 January 2010.

Annual volumes

- 4 In approaching annual volumes it is accepted that there is at the present point in time an inconsistency between the Duffill Watts methodology and the literal wording of policy 16(c) of the Waitaki Catchment Water Allocation Regional Plan (*WRP*).
- 5 On the one hand Schedule WQN9v2 has been widely accepted by practitioners in the relevant industry as being inadequate in terms of its ability to appropriately assess annual volumes, while on the other it is operative in the *WRP* context through its incorporation into policy 16 (although the extent to which a single policy has to be applied in a literal way is debatable).
- 6 Mr Potts considers that WQN9 v2 allocation would likely result in an allocation inconsistent with that applying to other consents already granted and in particular recently granted in the area. The originally requested **251 Mm³/year** is, based on almost all other assessment methodologies, a reasonable and efficient use of this water - particularly as it also includes off-farm conveyance, is based

on a very high proportion of the rainfall being effective and ultimately is not too dissimilar to the higher end of the WQN9 V2 method values.

- 7 Mr Potts has assessed that even with using Schedule WQN9 V2, the annual volume (based on 100% pastoral agriculture), would be **239.3 Mm³/year** (once a 90% off-farm efficiency is taken into account).
- 8 The Commissioners will therefore need to reconcile the apparent inadequacies of Schedule WQN9v2 against policy 16 but I submit that the policy should be read a whole and also in the context of the other objectives and policies of the Plan. On this aspect Mr Potts continues to maintain that the Duffill Watts methodology appropriately meets policy 16(a) and (b) and that unlike a rule in a plan a literal interpretation of which might determine activity status that the policy should be interpreted in the context of other policies in the Plan which are pitched at enabling and ensuring efficient irrigation.
- 9 On a more commercial basis if WQN9v2 is used the applicant is potentially faced with implementing an annual-volume deficient scheme when viewed in comparison to the much higher volumes recently granted through the Morven Glenavy application process. It is submitted that it would be desirable to ensure this inconsistency is avoided by allowing efficient irrigation to be applied consistently throughout the South Canterbury Region.

Timaru area

- 10 Based on the Commissioners minute, the applicants have approached inclusion of Timaru within the command area on two bases:
 - 10.1 the appropriateness of including part of the Timaru District in the HDI command area given the provisions in the plan relating to both in catchment and out of catchment use; and
 - 10.2 notwithstanding the above considering whether sufficient annual volume nevertheless remains for a new application to be made to take water below BlackPoint for irrigation on the south bank of the lower Waitaki River even if the Timaru District is included in the HDI command area.
- 11 In respect of the latter it is assumed for the purposes of these submissions and evidence that Irrigation North Otago (*INO*) would be the entity making new applications to take water below BlackPoint and the historic application to take water which is no longer being progressed is referred to so as to provide some factual context to the discussion - although there would obviously be nothing to prevent a new applicant or one of the existing irrigation schemes from seeking to irrigate the same area.

The WRP

- 12 The previous planning assessment completed by Ms Dawson concluded that the proposed HDI water take will not preclude both existing and likely future water uses from having appropriate access to water from the Lower Waitaki River. She concluded that in-catchment needs would also be able to be satisfied, with sufficient water left for allocation to HDI.
- 13 However, the applicant (and Ms Dawson) did not focus specifically on the provision of irrigation water to an application like INO's, particularly as there is no application that is being progressed and nor were the demands of the INO part of Waitaki District assumed to have any preference over the demands of Timaru District, both of which fall outside the catchment.
- 14 This analysis has now been completed by Ms Dawson who concludes that the WRP expresses no relative preference for water allocation to either the INO area or the Timaru area of HDI. She has also considered the evidence of Mr McKenzie and Dr Brookes who focus closely on the wording of policy 11. However, she concludes that:
- 14.1 policy 11 is ultimately just a definition policy. It states that "*In considering effects when allocating to activities*", "*local effects*" are to be taken as referring "to those that arise in the Mackenzie District, the Waimate District and the Waitaki District" (policy 11(c)). In other words the policy does no more than define what local effects are;
- 14.2 the *Explanation* notes that effects are to be "*considered from both national and local perspectives*", with, under policy 11(b), "*national effects refer[ing] to those that arise within New Zealand*" – confirming that consideration of effects can include those that arise in the Timaru area; and
- 14.3 there is not any direction in the WRP policies which confines the consideration of effects, or of the allocation of water from the Waitaki River to the Waitaki, Waimate and Mackenzie Districts.
- 15 For this reason, Ms Dawson considers that there is no basis for referring to the Plan as a reason why the Timaru area should be excluded from the HDI command area.
- 16 It is also noted that in relation to Timaru District, paragraph 200 of the WRP states that:
- "The Board appreciated that the Timaru area could benefit from using water from the Waitaki catchment, particularly for irrigation". However, the Board "found that the Timaru District does have some access to alternative water sources, and judged that it should not be included in the local area for the purposes of allocating water to

activities. Benefits arising to the Timaru District are treated in the same way as those arising in the rest of New Zealand”.

- 17 On this basis it appears that the Board did not make a specific allocation in Rule 6, Table 5 for water use in Timaru District (but neither did it include the INO part of the Waitaki District). However, it also appears that the WRP does not preclude the consideration of a water allocation for use in the Timaru District in the same manner as any other part of New Zealand.
- 18 Further, as will be discussed by Ms Dawson and Mr Potts, the potential “*alternative water sources*” originally identified by the Board are either unviable or are already allocated to other existing users.

INO and HDI: allocation

- 19 In light of a potential application by an entity such as INO to take water in the lower Waitaki catchment, Mr Potts has reconsidered his original allocation assessments to consider whether even with the inclusion of Timaru in the HDI command area, sufficient allocation for what might reasonably also be required by INO is nevertheless available.
- 20 Mr Potts concludes that the reasonable requirements for an INO type scheme would be a take rate of 7.5 m³/s and an annual volume of 71.5 Mm³. On this basis, Mr Potts concludes that there is sufficient allocation within the 90 m³/s limit in Table 3 and almost sufficient annual water allocation within Table 5 if both INO and HDI are included in the allocation analysis for the area below Black Point (1103.94Mm³ per annum compared with 1100Mm³ in Table 5), the shortfall being only 4Mm³ per annum.
- 21 Mr Potts also considers that it is very likely that efficiency gains over time, particularly for the large existing irrigation schemes, will result in decreases in the existing water allocations that are greater than the 4Mm³ per annum shortfall. That this is occurring is evidenced by the recent application by Morvan Glenavy which shows a reduction by 31Mm³ per annum.
- 22 I would also note the ability of INO to apply for a consent for a non-complying activity authorising this small exceedance but on the basis that it does not set a precedent for other non-complying applications as the 90 m³/s allocation for the river would then be reached. In my submission further allocations beyond 90 m³/s would be precluded.
- 23 For this reason there is no reason why the Timaru area should not be included within the command area for HDI as a reasonable development on the southbank would not be precluded.

Lapsing

- 24 Following the decision of the Environment Court in the North Bank Tunnel matter¹ it is agreed that an alternative approach to the drafting of the lapsing condition is appropriate.
- 25 This will be discussed in more detail by both Mr Ellwood and Ms Dawson – however in simple terms the applicants are now seeking a lapsing condition that still provides for a 10 year lapsing but like NBTC now includes a 5 year milestone by which the applicants will need to show that the substantive applications necessary for stage II of the consenting process have been made.

Mr Scarf's evidence

- 26 It is also submitted that there is no need for the HDI scheme to refer to the NBTC as is set out as a possibility in the evidence of Mr Frank Scarf. With ramping down beginning at 175 m³/s and a 152 m³/s cut-off, condition 15 of NBTC as amended by Meridian and the irrigators back to its original form as set out in the Commissioners' decision will have no relevance to HDI during times of tunnel shutdown.
- 27 The balance of Mr Scarf's analysis of suggested changes to the NBTC conditions have no relevance to the HDI application and are more appropriately directed to Meridian in the context of finalising the Environment Court decision on NBTC.

Memorandum of MRNAG and existing irrigators

- 28 MRNAG raise the possibility of the 175-152 m³/s cut off condition relating to HDI being reviewed in the event that other existing consents are reviewed by CRC and amended to themselves require a cut off of say, 150 m³/s.
- 29 It is unclear why this issue is raised only in the context of HDI. If it is an issue that requires addressing now it applies equally to MRNAG's applications for new consents above BlackPoint and others below BlackPoint in addition to HDI.
- 30 The applicants do not accept that such a condition is required as the Commissioners should consider the application on the information presented without assumptions about reviews occurring in the future nor commenting on the expected outcome of any review if it did occur.
- 31 However, in the event that the Commissioners consider it appropriate that the HDI consent and all other consents relating to applications in the current process be subject to a review process in the event other existing consents are amended on review then it would be appropriate for this contingency to be covered in the review clause.

¹ C80/2009

- 32 On this basis the applicant acknowledges that a condition could be drafted to make its consent subject to a review process but would be concerned if the conditions went further to pre-empt what the outcome of that review process might be, i.e. by imposing a condition now requiring a higher cut off condition for HDI if other consents are reviewed as is suggested by MRNAG and existing irrigators.
- 33 In the separate set of submissions I have included reasons why the delivery of a decision on applications below BlackPoint need not await the finalisation by the Court of the conditions relating to NBTC.

Dated: 2 March 2010

Jo Appleyard and Ben Williams

Counsel for the South Canterbury Irrigation Trust
and Meridian Energy Limited