

BEFORE COMMISSIONERS APOINTED BY THE CANTERBURY REGIONAL  
COUNCIL

CRC 60938

**TABLED AT HEARING**

Date 11/11/2009

**IN THE MATTER** of the Resource Management  
Act 1991

**AND**

**IN THE MATTER** of application CRC 60938

**BETWEEN** **SJB MUNRO**  
**Applicant**

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**SUBMISSIONS OF COUNSEL**

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## Introduction

1. This application is for a water take consent to draw 100m<sup>3</sup> per day from Lake Aviemore at no more than 3 litres per second.
2. When the original application was filed, it included the water take for the neighbouring residential development. That component was separated off, and dealt with as a separate consent (CRC084090). This application deals only with the water take for the rural block and potential vineyard or other horticultural development.
3. The proposed 100m<sup>3</sup> take includes water requirements for irrigation. It is proposed to use the same intake installed under CRC084090 for the residential water take.
4. The section 42A report prepared by Maria Bartlett was largely favourable, although her final recommendation was to decline consent because no derogation approval had been obtained by Meridian. derogation approval has been given by Meridian Energy Limited subject to Meridian's standard conditions. The standard conditions are volunteered. Consent is now sought on those terms.
5. The section 42A reports raise some issues for you to resolve.

## Landscape

6. In Ms Bartlett's report, she identifies there being some potential for adverse effects on the landscape values caused by this application. She concludes that the application has not adequately addressed those potential effects and suggests a mitigation condition providing for a 60m setback from the maximum probable flood level Lake Aviemore.
7. This issue needs to be understood in light of the history of the planning history of the project. In the District Plan, the site is zoned Lake Aviemore Settlement Zone. That special purpose zone was introduced to the plan by way of decisions on submissions to the original Proposed District Plan. The rules of the zone were settled through a reference to the Environment Court brought by the Canterbury Regional Council. The Regional Council has already agreed that Farming Activity is permitted on the site. A vineyard could be established on the site as of right. Trees, however, are not permitted save as shown on the Outline Development Plan. The Regional Council would not agree to trees

planting as a permitted activity. A land use consent would therefore be required to establish an orchard.

8. Thus the effects of the land use (a vineyard) on the site have already been addressed and settled. This is not an opportunity to re-open that debate. What is at issue is the effect of taking water from Lake Aviemore, on the functioning of the catchment.
9. I am not aware of any rule in any plan that would trigger the need for a resource consent to discharge lawfully taken water onto grape vines on this site.
10. In any case, the recommendation is misconceived. The landscape assessment within the section 42A report is incorrect and is inconsistent with the landscape audit report ("the Glasson Audit Report") prepared in respect of the application. Ms Bartlett concludes at paragraph 71 that the development is within an area of Outstanding Natural Landscape. Therefore, landscape is a matter of national importance relevant to this proposal. This conflicts with the Glasson Audit report, which finds at paragraph 198 that no sites within the Aviemore landscape unit are within an Outstanding Natural Landscape area.
11. The Glasson Audit Report went on to say at page 65 that adverse effects of this application would be moderate to minor with no mitigation measures. It also highlighted the modified nature of the landscape unit this application site is within. Mr Glasson concluded that more modified landscape units such as Aviemore were more easily able to absorb and accommodate change. Further to that, Mr Glasson stated that no sites within the Aviemore landscape unit, including the application site, are within Outstanding Natural Landscape areas.
12. Therefore, landscape is not a matter of national importance relevant to this proposal. Nor are there any particular natural character values that require protection. I refer to the Glasson audit report which states:

*"[195] Much of the landscape is visible from State Highway 83, although because of its segmented nature, the visibility of the whole landscape unit is not apparent from any particular viewpoint.... There is more capacity for change to occur in this landscape. As well, the landscape has*

*already been substantially modified, allowing further changes to be more readily absorbed.*

...

*[198] Visual amenity of the lake is moderate, a lesser degree than for the Mackenzie Basin part of the Upper Waitaki catchment."*

The audit report notes that the application site is small and discrete and of an existing modified landscape. Therefore, there are no matters under section 6 relevant to this application.

13. The Glasson report is consistent with a decision of the Environment Court in *S J B Munro v Waitaki District Council* C98/07, in which the Court expressly declined to find that this site is within a landscape that is an ONL (page 16), instead preferring to call it "magnificent". That expression found its way into the zone provisions (paragraph 19.2.1) and are implemented by the rules mentioned above that permit a vineyard.
14. Should you conclude that a set back for landscape reasons is both relevant and necessary, Mr Glasson's report proposed "50m to the Lakes..." (page 65 para 199), not 60m from maximum probable flood level" per Ms Bartlett's report at para 42.

#### **Efficient and reasonable use**

15. The application was for 24,000m<sup>3</sup> per annum. The applicant holds 6 shares (i.e. one per hectare) representing 36,000m<sup>3</sup> per annum. That 36,000m<sup>3</sup> per annum is already allocated to Meridian and so is already accounted for in an allocative sense. An argument can be made that the take of that water is already part of (or lost from) the "environment" as that term was explained by the Court of Appeal in *Queenstown Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424.
16. Policies 15-20 of the WCWARP concern the efficient and effective use of water. It is apprehended that those policies are directed at ensuring that as much water as possible is available to be allocated to other competing water users. That is a reasonable goal. The problem is that restricting this application to something less than 24,000m<sup>3</sup> per annum does not achieve that end because the combination of Meridian's

permits and Mr Munro's MIC share subscription means that water is not available for re-allocation.

17. Ms Bartlett concludes that the proposed annual volume may be greater than what is reasonably required for the proposed activity. Alex Smith will provide evidence about the requirements for horticultural development on the site and evidence will show the requested volume is not unreasonable.
18. Mr Smith will also provide evidence on the anticipated returns from use of water on the site. His evidence will show that the proposed application will maximise the value of the water and use it in a highly effective manner. He will also establish that the water take will not give rise to any significant adverse effects on water quality or quantity within Lake Aviemore itself.
19. The topic of potential nutrient enrichment of Lake Aviemore has been raised with the applicant subsequent. No condition was proposed in the section 42A reports requiring a FEMP to be prepared to manage nutrient run-off. None is now proposed. Mr Smith will explain that vineyards can be expected to produce a lower level of nutrient discharge to the land (and thereafter to the lake) than dryland pastoral farming. In other words, vineyard irrigation produces no relevant effects on the environment that could warrant an FEMP condition.

### **Proposed conditions**

20. I have some comment in relation to the conditions proposed in Ms Bartlett's report:

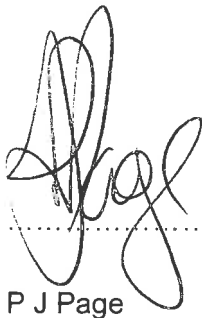
#### *Condition 2*

21. Specifying the method of irrigation is overly prescriptive, and has potential to unnecessarily increase costs and reduce inefficiency in the future. There may be other methods that provide better outcome in terms of crop yield and/or efficiency that would be precluded by this condition. Mr Smith will suggest a different condition that ensures a high level of efficiency from the irrigation equipment, but allows changes to be made without necessitating a variation application.

- 22. Mr Smith will address this further in his evidence, including suggesting a different condition.

*Condition 3*

- 23. In my submission, this condition does not address effects that are caused by this water take application. Given the condition is imposed to address landscape matters, it is irrelevant to this application.
- 24. Further to that, the Glasson audit report suggests a buffer of 50m would reduce effects of this application to no more than minor. No justification is provided in the section 42A report for increasing that to 60m.



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P J Page

Counsel for the Applicant

Dated: 11 / 11 / 2009