

# FILE



23 December 2009

Hon Dr Nick Smith  
Minister for the Environment  
Parliament Office  
Private Bag 18888  
Parliament Buildings  
**WELLINGTON 6160**

Dear Minister

## **RESOURCE CONSENT APPLICATIONS IN THE MACKENZIE BASIN**

The purpose of this letter is to address issues which have arisen as a consequence of resource consent applications, made under the Resource Management Act 1991 ("RMA") to Canterbury Regional Council (Regional Council), by Williamson Holdings Limited, Five Rivers Limited and Southdown Holdings Limited to undertake under-cover dairy farming operations in the Mackenzie Basin.

By way of overview, the applicants have applied for the following consents:

- (a) Land use consent to store animal effluent;
- (b) Discharge consent to discharge solid effluent to land;
- (c) Discharge consent to discharge liquid effluent to land;
- (d) Land use consent for a stockholding pad;
- (e) Consent to excavate land; and
- (f) Discharge consent for contaminants to air.

Submissions in relation to the Five Rivers and Southdown Holdings' applications closed on Friday, 18 December 2009. The submission period for the Williamson Holdings application closes on 15 January 2010.

Over 3000 submissions have been lodged in relation to the first two applications. The submissions have not been analysed in detail yet. However, an analysis of a sample of around 10% of the applications shows that approximately 75% of those submissions raise issues in relation to animal welfare.

The Regional Council appointed Commissioners to hear these applications and the hearing process is currently underway. The Regional Council will continue to process these applications, and the Commissioners will deal with the issues that arise in the context of that hearing. A decision was previously made by the Regional Council that it was appropriate to consider these applications with others being considered by the same Commissioners. This is because of the cumulative effects of land use intensification and effluent discharge on water quality in Lake Benmore. This hearing is dealing with complex issues of cumulative effects and priority. In regard to the part of the hearing that is already underway, a

**Our Ref:**  
**Your Ref:**  
**Contact:**

considerable amount of time and effort has been put in by the applicants, submitters and Commissioners to date. The Regional Council is aware that any disruption to this process could be costly and frustrating for all parties who are already involved. Therefore, the Regional Council is continuing to keep processing, including hearing the related applications.

Independently of the hearing process a media debate has arisen around the submissions and the proposal to which they relate. The issues have now been raised in Parliament. In that regard, I note that the Prime Minister indicated during question time on 8 December 2009 (Hansard, Volume: 659, Page: 8292) that the Minister of Agriculture has sought urgent advice on the factory dairy farming issue from the National Animal Welfare Advisory Committee which has recently developed a Dairy Welfare Code.

A further point arising from the submissions that is being debated in the media is that consent be declined on the basis that the applications are contrary to New Zealand's international reputation as a source of pastoral free-range dairy products.

In that context, I note that Dr Russel Norman has raised an issue as to whether the Minister will:

*"Use his expanded resource management powers and the new Environmental Protection Agency to call in the resource consent applications for factory farms under section 142 of the Resource Management Act that includes matters that have "... aroused widespread public concern or interest regarding its actual or likely effect on the environment", if not, why not?"*

As a result of that inquiry and the extent of public discussion outside of the hearing process I have sought legal advice as to whether issues relevant to animal welfare can be considered and assessed in the context of the resource consent applications lodged with regional councils.

The advice I have received is that the effects which are relevant and which need to be assessed in the context of all applications relate to the effects of the activity for which consent is sought. In the case of effluent discharge permits that is the effects (in the main) of the discharges of effluent to land and associated earthworks (in riverbeds). Therefore, the advice we have received is that the effect of factory dairy farming on the welfare of the dairy cattle is not an "effect" of the activity when the subject application is for a discharge permit and further, issues in terms of animal welfare are more appropriately addressed via the Animal Welfare Act 1999.

I have been advised that there is a stronger argument to suggest that a detrimental effect on New Zealand's image abroad could fall within the scope of the definition of "effect" under the RMA. Nevertheless, my advice is that any such effect would again, be associated with a land use activity rather than any discharge and earthworks (in riverbeds) permits which have to be processed by a regional council. In other words, it is unlikely that any regional council as a consent authority can place significant weight on this issue.

I also wish to raise with you, in light of the question to the Prime Minister from Dr Norman, the matter of a call in. The issues addressed in this letter are relevant to any decision you may wish to make in relation to the possible call in of the applications under section 142 of the RMA. Given my advice is that the matter of animal welfare could not be the subject of a Ministerial call in I wish to inquire whether the Ministry shares the same view as to the legal position.

Continuing with the processing of these applications in the current hearings is desirable, not only with respect to addressing cumulative effects on water quality in Lake Benmore but also the priority of applications in relation to availability of assimilative capacity (if any) and in avoiding delays in consent processing.

In regard to the particular applications which led to the raising of the questions about the relationship between the RMA and animal welfare, I note that any decision in relation to the call in of the applications by Five Rivers Limited and Southdown Holdings Limited needs to be made by 15 January 2010, and in relation to the Williamson Holdings Limited application, by 22 January 2010.

In addition yesterday we received a request from the applicants' legal advisor to refer the applications directly to the Environment Court. However as these consents were received prior to the 2009 amendments becoming law, this is not an available option.

I trust the above is clear and sufficient for present purposes. Please do not hesitate to make contact if you wish to discuss further.

Yours sincerely

Dr Bryan Jenkins  
**CHIEF EXECUTIVE**

