

**BEFORE THE CANTERBURY REGIONAL COUNCIL**

In the matter of            **61 consent applications to take, use, divert and dam water and  
51 associated discharge and land use consent applications in  
the Upper Waitaki Catchment**

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**8<sup>th</sup> Minute of Commissioners**

Dated 6 November 2009

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## Hearing timetable

- 1 As will be apparent to all participants and as we signaled at the outset of the hearing proper, the hearing timetable for this process is subject to a degree of change. Flexibility has been sought by the participants. As a hearings panel we are prepared to try and accommodate the needs of participants as much as possible.
- 2 Those applicants represented by legal counsel, Mr Kelvin Reid, did intimate some time ago difficulty with meeting the then proposed hearing timetable. Changes were required, particularly to the hearings schedule and a two-week break from the hearing has ensued. This rescheduling has resulted in the loss of the breaks we refer to below. This rescheduling has also impacted upon one submitter, namely Ngai Tahu, who now seek to change their presentation date from 11 December 2009 to 25 January 2010.
- 3 The original hearing timetable provided for breaks in the hearing process to allow all participants, and the Commissioners for that matter, to have breaks from the hearing proper to enable reading to be undertaken.
- 4 While we appear to be on schedule in terms of the hearing timetable matters have arisen that require fresh consideration of the hearing schedule. Firstly, we have been giving consideration to the exercise of the applicants' right of reply. Intimations have been received from both Mr Christian Whata and Mr Ewan Chapman that they would prefer to give a verbal right of reply. We are unsure of Mr Kelvin Reid's plans in this regard. The timing of delivery of those replies, given that they must take place following receipt of all evidence by us, has been under consideration.
- 5 It appears based on the hearing schedule dated 27 October 2009 that the right of replies could be exercised in the week commencing 21 December 2009.
- 6 Mr Whata has responded in a memorandum dated 2 November 2009, intimating that he is not available at that time and seeks alternate directions as to the presentation of the MWLR, Southdown Holdings Limited, Five Rivers Limited, and Killermont Station Limited right of reply, suggesting a date to be fixed in the New Year.

- 7 We have also been giving consideration as to the timing of our site visit. In addition, we must consider the impact of our request for a report from Dr Spigel, and finally, how to deal with the section 103 issue that has arisen for MWRL, South Down Holdings Limited, Five Rivers Limited, and Killermont Station Limited. That is, how all of these matters impact on the hearing schedule.
- 8 We are also mindful of the need to keep the hearing as limited as we can in terms of duration while at the same time enabling fulsome participation to occur.
- 9 Taking all matters into account, including those we discuss subsequently within this minute, we have directed the consents hearing officer to amend the hearing timetable as follows:

**Week 5**            **10-12 November 2009** (as per existing schedule) but commencing at **9.00am** Tuesday, 10 November. A **9.30am** start is proposed for Wednesday, 11 November and Thursday, 12 November. Friday, 13 November 2009 is a Provincial public holiday in Canterbury;

**Week 6**            **16-17 November 2009** at Twizel, commencing Monday 16 November 2009 at **1.00pm** and **site visit (part 1)** commencing Tuesday 17 November 2009.

*Break*            *(18-20 November 2009)*

**Week 7**            **23-27 November 2009**

**Week 8**            **30 November to 4 December 2009**

**Week 9**            **7 – 11 December 2009**

*Break*            *(14 December 2009 to 29 January 2010)*

**Week 10**          **25-26 January 2010**

*Break*            *(27 January 2010)*

**Site visit**          **(part 2) 28-29 January 2010**

**Week 11**          **1-5 February 2010**

**Week 12**          **8-12 February 2010**

**Week 13**          **15-19 February 2010** (if required)

- 10 This amended timetable does not result in any changes, subject to one exception we will refer to, for the submitters or applicant groups in terms of timing (i.e., dates) of their presentations. Time of presentation changes for the reporting officers.

- 11 The only exception is Ngai Tahu. As mentioned in paragraph 2 above, changes to the timetable to accommodate Mr Kelvin Reid's grouping have resulted in impacts on Ngai Tahu as a submitter. A key witness in the presentation of their case is not available to present at an alternative date, which was previously scheduled for Ngai Tahu and its presentation, namely 11 December 2009. They have requested that they present to us on 25 January 2010. That request is granted due to the change brought about Mr Kelvin Reid and his group and the consequent unavailability of a key witness for Ngai Tahu on the earlier rescheduled date of 11 December 2009. Ngai Tahu will now present its case to us on 25 January 2010.
- 12 We understand that Dr Spigel will be able to present on 11 December 2009. We are satisfied that fits with an appropriate sequencing of the hearing.
- 13 We anticipate the week following the conclusion of the submitters' presentations (which we anticipate will conclude on 11 December 2009) is an appropriate place to break until the New Year.
- 14 The hearing would recommence with the reporting officers' presentations on Monday, 25 January 2010 through to 26 January 2010. With a break on Wednesday, 27 January 2010, the balance of the site visit would take place on 28 and 29 January 2010.
- 15 The balance of the hearing would proceed in the next three weeks of February 2010.
- 16 If any participant has any serious issues or difficulties posed by the revisions to the schedule, they are without delay to advise Ciana Cerri, Environment Canterbury.

### **Section 103 issue**

- 17 We have received Mr Christian Whata's supplementary legal submissions in relation to the section 103 issue on behalf of South Down Holdings Limited, Five Rivers Limited, and Killermont Station Limited.
- 18 Mr Whata contends for a range of reasons that section 103 does not impact upon the above-described applications.
- 19 We do not agree with him. It is our conclusion that there are two or more applications for resource consents in relation to the same proposal, which applications have been made to Environment Canterbury. The two applications

are firstly, what we describe as the principal applications, being applications to take and apply irrigation water. The second group of applications is those applications attached as Appendix B of Mr Whata's memorandum of 24 October 2009, which he describes as effluent applications. Those applications (the effluent applications) include the storage of animal effluent, the discharge of solid and discharge of liquid effluent to land, a land use consent for a stock holding pad, land use for excavation, and discharge of contaminants to air.

20 Mr Whata invites us to take what we consider to be an extremely narrow view of the meaning of "proposal". We have determined that the proposal before us is to take (in relation to these applications) water and to apply water mixed with effluent to the sites identified within each of the applications.

21 We are of the very firm view that the effluent applications described in paragraph 18 above are clearly and intimately related to the principal applications, such that it is necessary for us to hear and decide the applications together so that we can fully understand what is proposed and we can understand the effects of what is proposed on the environment after taking into account conditions to avoid, remedy or mitigate potential adverse effects.

22 We do think that Mr Whata recognizes that point at his paragraph 23.

23 The linkage between the take and spray irrigation of water and spray irrigation of the effluent is, in our view, clearly made out when one considers that the mechanism to be used and process to be used to apply the liquid effluent is the same as that which will be used to apply the irrigation water on the same site.

24 One of the key effects of the activity we are here concerned with is nutrient run-off from the activities. Thus, in our view, understanding effluent application on the subject site is critical.

25 We note within the resource consent applications for the effluent applications sought by the above-named applicants the very strong linkage between the water take and spray application of water and spray application of effluent is made out. For example, in the Williamson's Holdings Limited applications for further consents at the bottom of page 3, the following appears:

*"All applications (of liquid effluent) will be recorded and accounted for when determining fertilizer requirements."*

26 Again, within the additional resource consent application lodged by WHL Killermont, the following appears:

*"An assessment of the average annual nitrate leaching loss from the effluent irrigated areas has been made using Overseer. Overseer input parameters were selected to represent the farm's climate and soils and the proposed pasture management, animal management, irrigation management, effluent management, and farm production. The assessment was undertaken by a person qualified to use Overseer for this purpose ...*

27 Within the proposed conditions of consent for WHL Killermont at condition 14 there is reference to the farm environmental management plans (FEMPs). Of course, FEMPs are a critical matter that we are concerned within the applications before us.

28 Similar information is found in the application for the additional consents for Ohau Downs.

29 In addition, it is our conclusion that the consents relating to land use activities, such as the storage of effluent, are sufficiently related to the discharge of dairy effluent. This is so because the size of the storage ponds dictates the amount of effluent that needs to be discharged and the timing of that discharge. It is our clear view therefore that these issues cannot be considered and determined separately.

30 Mr Whata referred to Commissioner Skelton's Minute of 19 May 2009. We agree with him when he notes at paragraph 12 of his memorandum of 24 October 2009, that Commissioner Skelton was there referring to land use applications. Commissioner Skelton was not referring to the discharge applications for solid and liquid effluent. Also, we have formed the view and we acknowledge it is an assumption only, that when the matter was considered by Commissioner Skelton not all of the relevant information that confirmed the linkage between the principal consents and the effluent consents was before him. We have concluded that the proposal before us squarely relates to the allocation of water and related irrigation activity **and** application of effluent to the land and its prior storage.

31 At his paragraph 20, Mr Whata agrees that effluent management is relevant to the effects assessment, but he submits that because under the WRP no consent is required for that activity and, because it is treated as a separate activity and subject to a separate planning regime, we should not consider the effluent applications now. However, section 103 and the RMA itself does not preclude

the consideration of resource consents that are clearly related simply because they are treated as separate activities and are subject to a different planning instrument.

- 32 We acknowledge that the regional practice referred to at Mr Whata's paragraph 24, occurs. We have not spent time delving into the issue, but it is clear from what Mr Whata states and what Mr McIndoe states that the regional practice involves seeking resource consents in a sequential basis. However, what has occurred here is that the applicant has made an application for these additional consents. That is how section 103 has been triggered.
- 33 In any event, Mr Whata proposes a way forward and we think that that suggestion is well made.
- 34 At paragraph 28 Mr Whata records that South Down, Fiver Rivers, and Killermont do not object to orders being made for the effluent applications to be formally joined to these proceedings, with a timetabling order made to enable them to be heard early in 2010.
- 35 We have sought advice from the relevant Environment Canterbury reporting officers as to whether or not this is achievable and we have been told that it is.
- 36 We have also been told that the revision to the scheduling of the timetable will enable the effluent applications to be formally joined to these proceedings.
- 37 Accordingly, in respect of the section 103 matter we direct that:
- (a) The effluent consent applications as identified at paragraph 18 above be formally joined to these proceedings;
  - (b) The applicants be given leave to produce any relevant information (in addition to that already provided) prior to the close of the time allocated to the applicants for presentation of their cases;
  - (c) Notification of the effluent consent applications shall occur as soon as possible. The submission period and timing of the s442A reports and notification of the hearing date will flow from the notification of the effluent applications;
  - (d) Any additional evidence on the effluent applications by the applicants be lodged 21 calendar days prior to the hearing;

- (e) Any submitter evidence on the effluent applications only be presented 7 calendar days prior to the hearing;
- (f) A hearing including of final reply on the effluent applications occur on the first available date in 2010;
- (g) The effluent applications will be heard and determined immediately following the conclusion of the take applications. This is likely to occur late in the week commencing 8 February 2010 or in the week commencing 15 February 2010. The applicant and submitters should therefore work to those dates for the purpose of calculating provision of evidence. Similarly, the s42A reporting officers should work to those dates as well.

38 For the sake of completeness, we note that at paragraph 30 of his memorandum Mr Whata noted that the applicants will deem any current submitters to be submitters on the effluent applications and there will be no need for them to submit further. Submitters need to take this point into account.

#### **Audit**

39 We have been provided with a document headed "Outline of proposed nutrient management plan audit process" from Dr Mike Freeman dated 23 October 2009. This document was provided to us by the Environment Canterbury reporting officers.

40 We understand that the audit process has been discussed and agreed between the participating parties.

41 We support the audit process as outlined by Dr Freeman. However, we would like the consultant performing the audit to keep in mind the key issue we would like to see resolved from the audit process, which is:

"The sensitivity of the nutrient loads in leachate/runoff to the range of possible input values, and the set up of model parameters."

Dated at Christchurch this 6<sup>th</sup> day of November 2009



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Paul Rogers

Commissioner Chair on behalf of the Committee