

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

10th Minute of Commissioners

Dated 18 November 2009

Introduction

- 1 This Minute responds to the following memoranda:
 - Memorandum of Counsel on behalf of Mackenzie Water Research Limited dated 13 November 2009;
 - Memorandum of Counsel on behalf of Meridian Energy Limited (Meridian) dated 17 November 2009; and
 - Memorandum of Counsel on behalf of Mackenzie Water Research Limited dated 18 November 2009.
- 2 All of the memoranda concern themselves with the conduct of the hearing, in particular, procedural issues and scheduling issues.
- 3 At the conclusion of hearing the evidence of Dr Mzila a full discussion was held with all legal counsel present in relation to all of the above described memoranda. Those counsel were: Mr Christian Whata, Mr Kelvin Reid, and Ms Jo Appleyard.

Directions

- 4 After hearing and considering a range of timetabling suggestions and other suggestions revolving around provision of evidence, scheduling and timetabling issues, we direct as follows:
 - 4.1 Mr Kelvin Reid will have all evidence relating to that part of his client's presentation, which will be taking place between Monday, 23 and Thursday, 26 November 2009, circulated no later than 12 noon Thursday, 19 November 2009. The balance evidence which is due to be represented on Friday, 27 November 2009 will be circulated no later than Friday, 20 November 2009;
 - 4.2 Mr Reid will proceed with the presentation of that evidence for the applicants he represents as scheduled on Monday, 23 November 2009 through to Friday, 27 November 2009;
 - 4.3 Subject to 4.4 below, Meridian will circulate all its evidence no later than Monday, 30 November 2009 and will commence its presentation as scheduled on Monday, 30 November and carry through to Friday, 4 December 2009.

- (a) It is understood that the Meridian evidence is complete however there may be some additional addendums that will be provided to all parties. Any Meridian materials that are new and are yet to be circulated need to be identified as new or additional;
- 4.4 In the instance that Meridian considers that it is disadvantaged by the late circulation of Mr Reid's evidence, particularly Mr Reid's MWRL expert evidence, Meridian are given leave to apply for appropriate directions;
- 4.5 Mr Whata will on or before 5.00pm Friday, 20 November 2009 provide in writing the matters of clarification referred to in paragraph 3 of his 13 November 2009 memorandum from Dr Gamage, Dr Ryder and from some of the other MWRL experts and circulate the same.
- 4.6 All parties to the hearing will be accorded a full right of reply. However, that right of reply is to be exercised strictly in reply by all parties. The right of reply may be exercised by legal counsel or experts or by way of expert evidence. However it is in all cases to be exercised strictly in reply.
- 5 All parties will be provided an opportunity to lead evidence, if required, in response to the Spigel review. This includes an opportunity for reporting officers to update their reports. The order of presentation will be applicants, submitters in support, submitters in opposition and reporting officers. The applicant will be entitled to respond within their right of reply to the submitters' evidence and reporting officers' comments concerning the Spigel review.
- 6 Dr Freeman is to circulate the Environment Waikato report entitled "*A simple sensitivity analysis of nitrogen leeching for 3 Taupo farming systems, estimated using the overseer nutrient budget model*" by Ian Power, Amanda Judge, Stewart Ledgard as soon as practicable and as soon as possible to have comments in relation to the same included within the Overseer audit report. All parties will be provided an opportunity to lead evidence if required in response to or comment upon the above described Overseer report. The order in which this is to occur will be as per the Spigel review response as above.
- 7 Mr Whata will exercise his right of reply following the right of reply by Mr Kelvin Reid, Mr Phil Page, Mr David Powell and Mr Ewan Chapman. It is not possible at this point to set precise dates for the exercise of the right of reply other than in the manner currently provided within the hearing schedule spreadsheet. Parties should prepare on the basis of that hearing schedule spreadsheet.

8 Taking into account the above matters there is no need to alter the hearing schedule and that remains as attached (with some minor alterations around the order of right of replies) and the schedule is attached. All parties should act and prepare in accordance with the hearing schedule and all relevant pre-hearing directions.

Other matters

9 Mr Whata also raised the issue of "hot-tubbing". After discussion, there was no agreement among other parties to the hearing that hot-tubbing should occur so that invitation was declined.

10 We signalled and reiterate going forward the Commissioner panel may have further queries and/or questions and declining Mr Whata's invitation in respect of hot-tubbing of experts does not preclude the Commissioner panel returning with various queries and/or questions for any expert we have heard from.

11 Mr Whata in his 18 November 2009 memorandum, at paragraph 13(b) referred to:

"An opportunity for the senior expert team to respond to questions of clarification at the conclusion of the hearing."

12 We had some discussion as to what was precisely meant by those words.

13 We determined that matters of concern to Mr Whata could be addressed in reply and secondly, because of the declining of the invitation as to hot-tubbing, paragraph 13(b) was no longer relevant subject to our comment referred to at paragraph 10.

14 Mr Whata sought that we give a direction in relation to the finalising by way of updating the reporting officers' s42A report. Dr Freeman noted the conclusion of the updates was dependent upon receiving in turn updates from Meridian. Ms Appleyard intimated that the updated anticipated from Meridian would not be substantial and they would be by way of appendices to the principal evidence which was already available. We understood that the provision of the additional materials from Meridian was imminent.

15 Dr Freeman intimated to us it was his intention to have all of the s42A officer reports updated and completed prior to the Christmas break.

- 16 We took this exchange to satisfy Mr Whata's concerns namely that he have the updated officer reports in sufficient time to prepare for his reply. Given his right of reply is likely to be exercised in early-mid February we do think that his concern could be alleviated. To be clear it is our expectation that the s42A officer reports will be updated and circulated as soon as practicable and no later than the intimated dates offered by Dr Freeman of 18 December 2009.
- 17 Some discussion ensued about caucusing. We intimated that the Commissioners panel was not involved in nor had we issued any directions in relation to caucusing.
- 18 Caucusing is a voluntary process between the parties to this proceeding. We record our observations that we do see caucusing as being valuable for the purpose of issue identification and issue resolution. However so that its true value can be realised in the context of this proceeding we consider it essential that instead of simply referring to the outcome of caucusing in briefs of evidence the parties should (if they wish to) present to us statements as to agreed positions.
- 19 Such joint statement must fully identify the issues, explain the matters taken into account and why, explain the matters or issues excluded and why and explain whether or not the matters excluded would have any difference or impact or effect in terms of outcome if they were included.
- 20 Unless such a joint statement follows this approach then the results of caucusing should not be reported back to us. The parties need appreciate we will make our decision based on evidence received and statements contained in evidence suggesting agreement without full explanation are not of assistance to us.

Dated at Christchurch this 18th day of November 2009



Paul Rogers

Commissioner Chair on behalf of the Committee