

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of the hearing by Environment Canterbury of resource consent applications by Southdown Holdings Limited, Five Rivers Limited and Killermont Station Limited to take and use water in the Upper Waitaki Catchment.

---

**SUPPLEMENTARY LEGAL SUBMISSIONS IN RELATION TO SECTION 103  
ISSUE ON BEHALF OF SOUTHDOWN HOLDINGS LIMITED, FIVE RIVERS  
LIMITED AND KILLERMONT STATION LIMITED**

**24 OCTOBER 2009**

---

---

**RUSSELL McVEAGH**

C N Whata  
Phone 64 9 367 8000  
Fax 64 9 367 8163  
PO Box 8  
DX CX10085  
Auckland

## Introduction

1. These further submissions address the issue raised during the hearing in relation to whether it is necessary for any further consents that may be necessary to be heard at the same time as the current applications, pursuant to section 103.
2. I maintain that it is unnecessary to hear related applications dealing with farm management, provided that the Committee has sufficient information before it to understand the potential effects of irrigation. You have heard from me on this and I do not propose to repeat those submissions.
3. In terms of section 103, I contend:
  - (a) A consent authority must first resolve to hear the related applications - Commissioner Skelton resolved not to do so;
  - (b) The "proposal" is water take and irrigation, not effluent management. This dichotomy is demonstrated by regional practice with consenting irrigation proposals.
  - (c) If there is any further information required by the committee, then the applicants would seek to provide that information prior to the close of the period allocated for presenting their applications.
4. I am conscious however, that the Committee has signalled a view that it would be better placed to understand the present applications in tandem with the effluent management applications.
5. Accordingly, if the Committee is minded to require consideration of both sets of applications, then the applicants' request that the Committee join the applications and case manage the application processes to avoid undue delay. It should be a simple matter of allowing additional hearing time following the completion of the submission period to address specifically the effluent management applications.
6. A proposed timetable is set out below at paragraph 29.

## Section 103

*Decision to proceed without related applications.*

7. Section 103 states:

### **103 Combined hearings in respect of 2 or more applications**

- (1) Where 2 or more applications for resource consents in relation to the same *proposal* have been made to a consent authority, *and that consent authority has decided to hear the applications*, the consent authority

shall hear and decide those applications together unless—

- (a) The consent authority is of the opinion that the applications are sufficiently unrelated so that it is unnecessary to hear and decide the applications together; and
  - (b) The applicant agrees that a combined hearing need not be held.
- (2) This section shall also apply to any other matter the consent authority is empowered to decide or recommend on under this Act in relation to the same proposal.
- (3) If a consent authority delegates its functions, powers, and duties in relation to a matter to 1 or more hearings commissioners in accordance with section 100A, and the matter is to be heard and decided together with other matters under this section, then all of the matters must be heard and decided by those commissioners.
8. It is relevant to note at the outset that there has been no resolution to hear related applications in accordance with subsection (1). To the contrary, a resolution has been made that it is unnecessary to hear related applications.
9. Having reviewed the background material, this issue was raised and dealt with by Commissioner Skelton at the pre-hearing conference. Commissioner Skelton's minute of 19 May 2009 records:

**Other Matters**

22. Mr Chapman produced a letter from the Waitaki District Council clarifying that while some of the applicants would require land use consent in terms of its district plan and in particular Change 2 to that plan, that Council did not consider that a joint hearing would be required. I am not entirely clear about this but I understood Mr Chapman to be also referring to another Plan Change 4 as well although this is not referred to in the letter from the Waitaki District Council.
23. Be this as it may I also understood from Mr Chapman that the land use consents (if required) would be for infrastructure and applications cannot sensibly be made for these until it is known what areas of land the affected applicants will be able to irrigate in terms of the consents that are now the subject of the present proceedings.
24. While generally speaking the scheme of the RMA is that all necessary consents for a project should be applied for and heard and determined at the same time (and at a joint hearing if so required in terms of section 102 of the Act) for the present purpose I am prepared to continue with these hearings in the absence of these applications having been sought. Many of these applications have been outstanding now for a number of years, the Canterbury Regional Council has not exercised its powers under section 91 of the RMA, the Plan changes are quite recent and have some way yet to go in the process and I think the Panel will have enough

information before already to be able to fully understand and assess the various projects.

10. Commissioner Skelton's minute of 29 May 2009 was endorsed in Commissioner Roger's first minute of 28 July 2009.
11. The introductory section 42A officer's report of Ms Claire Penman also states:
  78. However, the following types of additional resource consents may be required on a case by case basis:
    - (a) District Council resource consents for land use activities associated with the irrigation infrastructure, and/or the use of land for irrigation in landscape or significant natural areas.
    - (b) Regional Council resource consents for a variety of activities such as:
      - (i) The damming of water (pursuant to section 14 of the RMA);
      - (ii) Disturbing the bed or banks of a river or lake to install an intake structure (pursuant to section 13 of the RMA);
      - (iii) To discharge contaminants to land, such as fertilisers or effluent (pursuant to section 15 of the RMA);
      - (iv) To use land in a manner that may result in contaminants entering surface or ground water (pursuant to section 9 of the RMA).
  79. The applicants' noted at the pre-hearing meeting held in May 2009 that any land use consents (if required) would be for infrastructure, and applications cannot sensibly be made for these until it is known what area of land the affected applicants will be able to irrigate in terms of the water permit applications subject to this hearing.
  80. In consideration of this view, Commissioner Peter Skelton, noted in his Minute from the pre-hearing meeting on 19 May 2009 that he was agreeable to this approach given the nature of the proposals, the length of time they have been in process, the potential changes to the District Council Plan variations given they are not yet operative, and that the Panel will already have enough information available to them to be able to fully understand the proposals.
  81. Details of any additional resource consents that may be required for each proposal are contained in the individual section 42A report for each proposal.
12. While it is accepted that Commissioner Skelton's minute was issued in the context of discourse on land use applications, it is plain that he did not consider it necessary to hear related applications provided the Committee had sufficient information upon which to base a decision. With respect, this reasoning remains cogent. You will have all the information you need to understand the effects of the proposed irrigation, including relating to

effluent management. In addition the precise scope of the effluent management required will not be known until the irrigation consents are granted.

13. This understanding of Commissioner Skelton's decision is consistent with the view of Ms Penman in her report.
14. Accordingly, the Consenting Authority having already resolved to proceed with these applications without related applications, I submit that s103(1) has not been triggered.
15. I submit further that to treat the current applicants differently from other applicants in relation to related applications (including Lower Waitaki applicants in relation to both the Meridian tunnel project and the Hunter Downs proposal), would engender a sense of unfair treatment, particularly if that affected the timing of a decision.
16. It will be obvious that to varying degrees most if not all applicants will have aspects of their farming activities that will require further consents before exercise of the water consents. These may relate to effluent management, consents relating to infrastructure or mitigation measures.
17. Unless there is a very bright line distinction, the applicants will be left with the impression that they have been singled out for special adverse treatment in a context where the applications are sought for mitigation rather than exacerbation of effects.

*"Proposal"*

18. The 'proposal' before the Committee squarely relates to the allocation of water and related irrigation activity and the effects of that activity.
19. Consents are sought under the WRP specifically for this activity.
20. Effluent management is relevant to the effects assessment. But under the WRP, no consent is required for that activity. In planning terms, it is treated as a separate activity and subject to a separate planning regime.
21. I accept that the proposed farming operation in the round involves combined use of irrigation water and infrastructure, and that the management of effluent is a key component of mitigation. But this does not make them the same 'proposal' under the WRP.
22. By analogy, water for town and community supply may be used for sewage disposal purposes, but they are not treated as the same proposal. However the effects of such disposal may be relevant to the assessment of the effects of the take and assessed.
23. The short point is that while the activities are causally and operationally related, they are not necessarily sufficiently related to warrant a joint hearing.

24. This is further demonstrated by the regional practice of hearing applications for water take and irrigation use separately from end-use applications. Refer:
- (a) Other recent consents issued for effluent management in the Canterbury region. This process is detailed by Ian McIndoe in **Appendix A**.
  - (b) The Synlait and Ngai Tahu proceedings<sup>1</sup> - from our review of these decisions no question of the need for end-use applications arose in the context of a large irrigation scheme.
25. I also note for completeness that while the land use components of effluent management is a discretionary activity, the effluent discharge component is a controlled activity provided certain standards are met.<sup>2</sup> This indicates the extent to which the NRRP seeks to otherwise regulate effluent discharges that comply with requisite standards.

### **Way forward**

26. As foreshadowed, I am conscious that the Committee has signalled a desire to understand the wider picture. This is understandable, though I submit you have the requisite information. In this respect if the Committee is not satisfied that there is sufficient information about the effluent management, then Applicants would seek 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.
27. In this regard, we provide with these submissions a copy of the effluent applications and associated AEEs as **Appendix B**.
28. Alternatively, if therefore the Committee is minded to hear and decide all the applications together, Southdown, Five Rivers and Killermont would not object to orders being made for the effluent applications to be formally joined to these proceedings with a timetabling orders made to enable them to be heard early in 2010.
29. In particular I propose the following:
- (a) The timetable in relation to the water related applications, including presentation of legal submissions and evidence on those applications proceed as directed;
  - (b) Notification of the effluent management applications by 6 November 2009;

---

<sup>1</sup> See *Synlait Ltd v Central Plains Water Trust* (11/3/08, Chisholm J, HC Christchurch CIV-2007-409-1157) and *Central Plains Water Trust v Ngai Tahu Properties* [2008] NZRMA 200

<sup>2</sup> I note that the effluent applications record that a discretionary activity consent is required for the discharge of solids onto land in respect of WQL24, however further advice has indicated that the proposals will now meet the standards of this rule and therefore the discharge of solid effluent is a permitted activity.

- (c) Submission period completed by 4 December 2009;
  - (d) Section 42A reports completed by 18 December 2009;
  - (e) Any additional evidence on the effluent applications by the applicants lodged 21 days prior to the hearing;
  - (f) Any submitter evidence on the effluent applications only, presented 7 days prior to the hearing;
  - (g) A hearing, including a final reply on all matters on first available date in 2010.
30. I note that any current submitters will be deemed by the applicants to be submitters on the effluent applications and there will be no need for them to submit further.
31. In addition, the applications will include the evidence provided to this Committee, so there will be no prejudice to any new submitter by a tight timetable for the application process.

**Christian Whata / Stephanie Bond**  
**Counsel for Southdown Holding Limited, Five Rivers Limited, Killermont Station Limited.**

## **Appendix A: Effluent consents**

---

Aqualinc Research Ltd, over the last few years, has made applications for hundreds of water take and use consents and discharge consents for clients in the Canterbury region. The Company has also audited effluent discharge consents for CRC.

It is rare for Aqualinc to submit water take consents and effluent discharge consents at the same time. Generally, applicants or their consultants work through the process of getting the water take and use consents first because that is usually the most difficult and most uncertain. For new developments, effluent consent applications are usually submitted after the water take is granted. Sometimes farmers will submit their own effluent consent application because traditionally, they have been quite straight forward to do.

The water take and use consent deals with the impacts on the environment of the change in land use that occurs as a result of irrigating. That includes increases in nitrate loading to groundwater and any other relevant effect.

The effluent consent has to meet its own specific requirements in terms of nitrogen loading, application rates, pond leakage rates and so on, which are specific to the storage and application of effluent.

In terms of processing consents, CRC internally has separate sections for water take consents and effluent discharge consents. One section processes the water take consents. Another section processes the effluent consents. There is little, if any, cross linkage between the two sections during consent processing on individual properties. They are treated as different operations.



Signed \_\_\_\_\_ Ian McIndoe

October 2009

**Appendix B - Effluent applications and AEEs**