

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

applications for resource consents to take and use
water in the Waitaki River Catchments

**MEMORANDUM OF COUNSEL ON BEHALF OF SOUTHDOWN HOLDINGS
LIMITED, WILLIAMSON HOLDINGS LIMITED AND FIVE RIVERS LIMITED**

22 DECEMBER 2009

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MAY IT PLEASE THE COMMISSIONERS:

Introduction

1. This memorandum is lodged on behalf of Southdown Holdings Limited, Williamson Holdings Limited and Five Rivers Limited ("**Applicants**").
2. The purpose of this memorandum is to request that the Applicants' effluent applications be directly referred to the Environment Court for determination under s87D of the Resource Management Act 1991 ("**RMA**"). In particular, this request relates to the following applications:
 - Williamson Holdings Limited - CRC100227, CRC100475, CRC100478, CRC100479 & CRC101541;
 - Southdown Holdings Limited - CRC100224, CRC100480, CRC100481, CRC100482 & CRC101542; and
 - Five Rivers Limited - CRC100787, CRC100788, CRC100824, CRC100827 & CRC101540.

Direct referral

3. Section 87D states:

87D Request for application to go directly to the Environment Court

- (1) The applicant must request the relevant consent authority to allow the application to be determined by the Environment Court instead of the consent authority.
 - (2) The applicant must make the request in the period:
 - (a) starting on the day on which the application is made; and
 - (b) ending 5 working days after the date on which the period for submission on the application closes.
 - (3) The applicant must make the request electronically or in writing on the prescribed form.
4. The Applicants have satisfied the requirements of Section 87D(2) as the Applicants are making the request within the period starting on the day on which the application is made and 5 working days after the date on which the period for submissions on the application closes:

- The Williamson Holdings Limited application was notified on 28 November 2009 and closes on 15 January 2010.
 - The Southdown Holdings Limited and Five River Limited's applications were notified on 21 November 2009 and closed on 18 December 2009.
5. While section 87D(3) requires the applicant to make the request on the prescribed form in the new Resource Management Regulations we have been advised by the Parliamentary Counsel Office that the new 2009 Regulations have not yet been released.

Reasons for the request

6. The reasons for the request are set out as follows:
- The anticipated scale of the Council hearing proceedings means that it is more appropriate and efficient to allow the applications to be determined by the Environment Court. Over 4300 submissions have been received on the applications and five weeks has been scheduled for the Council hearing.
 - The substantial costs associated with a Council hearing of this scale will be unreasonable and unrealistic for the Applicants to absorb especially when there is no guarantee that the water consents will be granted.
 - Further, given the public significance of the applications, including the recent media attention, it would now seem appropriate for the Environment Court to determine the applications.
 - I also maintain that it is not necessary to hear the water rights applications at the same time as the effluent applications as the Committee has sufficient information before it to understand the potential effects of irrigation. In particular, the Committee can safely assume that the exercise of the irrigation consents will require management from the Applicants of nutrients by way of condition of consent capable of being imposed by you, including in the form of the effluent management proposed in the Farm Environmental Management Plans.

- Finally I record my concerns, and my Applicants' concerns, with the conduct of Environment Canterbury in relation to the advice given to the public on its website. In particular (the entire website page is included at Appendix A):

If you have concerns about these applications of these proposed farms from an animal welfare point of view, there are a number of things you can do apart from writing a submission.

- You can write a letter to the editor of your local paper.
- You can write to your local MP or regional or city/district councillor (Local territorial councils are the ones who have the power to control land-based activities).
- You can write to the Minister of Agriculture, c/- Parliament Buildings, Wellington.
- You can also read this information on the Biosecurity New Zealand website:

<http://www.biosecurity.govt.nz/regs/animal-welfare>
or

<http://www.biosecurity.govt.nz/animalwelfare/codes/dairy-cattle/index.htm#4>.

In my submission this is entirely inappropriate conduct for Environment Canterbury as an independent public body should not be encouraging, in any way, this type of public involvement. Further, a number of the submitters on the effluent applications are using the media as a vehicle for promoting their views and therefore it is more appropriate for the applications to be determined by the Environment Court.

- You have also seen the memorandum from Mr Chapman today on behalf of UWAG, which sets out further reasons for keeping the effluent applications and the water take applications separate.

Decision

7. Accordingly, for the reasons detailed above, the Applicants seek that the Committee makes a decision under s87E of the RMA to directly refer the applications to the Environment Court for determination.

Dated 22 December 2009

C N Whata

Counsel for Mackenzie Water Research Limited

Appendix A


Mackenzie Basin Dairy Application


Advice and information for submitters to the Upper Waitaki three dairy effluent applications.


Environment Canterbury has a number of applications by three companies currently being notified relating to the management of dairy effluent on proposed dairy farms which propose to house dairy cows indoors for most of the year.

These farms are located between Lake Ohau and west of Omarama, Waitaki District.

These applications focus on the potential environmental impact of the storing and disposing of this effluent, which will be collected from the indoor sheds. You can read the full outline of each application online:

 [Upper Waitaki - Williamson Holdings Ltd - Supplementary submissions - application for effluent disposal \(pdf 3 MB\)](#)

 [Upper Waitaki - Five Rivers Ltd - Supplementary submissions - application for effluent disposal \(pdf 1 MB\)](#)

 [Upper Waitaki - Southdown Holdings Ltd - Supplementary submissions - application for effluent disposal \(pdf 2 MB\)](#)

The three companies making these applications are Five Rivers Limited, Southdown Holdings Limited and Williamson Holdings Limited.

The deadline for submissions for the first two applicants was 5pm, Friday, December 18 2009, Williamson Holdings had to be renotified, hence its submissions are open until January 15 2010.

If you wish to make a submission regarding the management of the animal effluent produced from the cows, please use the [online submission form](#) on our website:

- [Williamson Holdings Limited](#) - CRC100227, CRC100475, CRC100478, CRC100479 & CRC101541
- Five Rivers Limited - submissions closed
- Southdown Holdings Limited - submissions closed

Please ensure you reference the resource consent numbers you wish to submit on as part of your submission. (See tips below from the MfE website):

Visit the [Ministry for the Environment \(MfE\) website](#) for tips on how to make a submission.

If you have concerns about these applications of these proposed farms from an animal welfare point of view, there are a number of things you can do apart from writing a submission.

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- You can write to your local MP or regional or city/district councillor (Local territorial councils are the ones who have the power to control land-based activities).
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