

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of applications for resource
consents to take and use water in
the Upper Waitaki Catchments

**MEMORANDUM OF COUNSEL ON BEHALF OF CANTERBURY REGIONAL
COUNCIL**

3 February 2010

CANTERBURY REGIONAL COUNCIL

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MAY IT PLEASE THE COMMISSIONERS

Background

1. Canterbury Regional Council ("Council") has been asked to respond to a question raised by Mr Whata at this hearing.
2. This question is whether or not, in light of the Minister's direction of 27 January 2010 to call-in:
 - Southdown Holdings Limited;
 - Williamson Holdings limited; and
 - Five Rivers Limited ("Applicants") effluent applications;the Panel must now determine the Applicants' water right applications without resolution of the effluent applications.
3. Prior to the call-in, the two particular kinds of consent applications, being water permits and discharge permits, were intended to be heard and decided by this Panel. This subsequent severing of the determination of the two types of consent applications presents a new situation for the Commissioners.
4. There is a question of whether or not the Commissioners have to now proceed to make a determination on the remaining water permits and land use permits. Presumably an alternative is to defer the further hearing and determination of these applications until the Board appointed by the Minister has made its own determination.

Timeframes

5. Provision for stopping the statutory clock when there is a request under s92 is set out in s88C. Section 91 also allows for the clock to stop. The time for s92 has passed and s91 does not apply as no other applications are sought by the Commissioners before they can make a determination.
6. Section 37A provides for the extension of time limits under certain conditions. Under that section the Commissioners have no ability to extend a time limit beyond a doubling of a limit, unless the applicant agrees and no other person is adversely affected i.e. the requirements of s37A(2)(b).
7. There is a statutory timetable provided for including s115 relating to the issuing of a decision.
8. The statutory timeframes do not capture all aspects of the process. For example there is no direction, as to time that a hearing can remain open, under the legislation that applies to this hearing. There is however a statutory direction under section 21 that duties carried out under the Act must be done as promptly as is reasonable in the circumstances.
9. There is no provision of the Act that would allow this Panel to defer the completion of hearing these applications or the issuing of a decision.

Information

10. There may be an issue arising because of the removal from the hearing process of information supplied as part of the discharge permit applications. This may be needed by the Commissioners to make a determination on the water permits.
11. That could be information in relation to cumulative effects.

12. I note that Dr Freeman has stated that nutrient modelling provided as part of the AEE for the water permits includes the effects of the nutrients relevant to the discharge permits.
13. The requirement to describe the proposal, referred to in the Fourth Schedule of the Act, highlights that any application for a proposal is not intended to be processed in isolation from the wider picture. It may be necessary to take account of some information supplied as part of the discharge activity applications in order to consider cumulative effects.
14. The applicant is required to provide a description of the other consents in the Form 9 of the RMA Forms Fees and Regulations.
15. Any further information requested would have to be relevant to the applications now before the Commissioners.
16. If the Commissioners consider they need such information the opportunity has past to make a s92 request, as the hearing is in progress. The Commissioners could request further information from the Applicants under s41C(3). This allows the Panel to ask for additional information to be supplied once a hearing has commenced. The supply of the information is under the control of the applicant.
17. It would be up to the Applicants to decide whether or not to provide it, and if not, then the Commissioners would make any determination without it.

Further point

18. This advice is given in the context of identifying the provisions of the Act that give guidance in regard to the question posed.
19. These are provisions that the Panel has to give effect to.

20. There are in addition principles espoused in case law that address what constitutes good resource management practice, which are not addressed in the context of this advice.

Conclusions

21. The Commissioners have to continue to hear and determine these applications.
22. The information supplied with the discharge permit applications may be relevant to the deciding of the water permits. If that information is no longer before the Panel, and the Panel requires it, then the Panel may request it under s41C(3). The request must be for information relevant to the applications being determined.

Dated this 3rd day of February 2010



M C Dysart

Counsel for Canterbury Regional Council