

**TABLED AT HEARING**

Date 4/2/2010

BEFORE THE CANTERBURY REGIONAL COUNCIL

**Under** the Resource Management Act 1991

**and**

**In the matter** of resource consent applications by various parties to take and use water in the Upper Waitaki Catchment

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**MEMORANDUM TO COMMISSIONERS**

**Call-in Procedures Southdown Holdings Limited and Others**

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## Impacts of Call-in Procedures on UWAG Applicants: Synopsis of UWAG's Submissions

1. The Call-in procedures do not apply to the UWAG group of applicants in any way. Their fundamental position is that they wish to remain unaffected by the call in.
2. Any suggestion of a deferral of the determination of their applications is opposed. UWAG's position is that it wishes this hearings panel to complete the officer reporting and closing of the applicants' case so that this panel can determine the applications before it, in so far as the UWAG applications are concerned.
3. UWAG applicants are not engaging in the same form of intensive agriculture as the SHL suite of applicants. The intensive nature of their activities has been known for some time (years). Their decision not to apply for effluent consents at the same time at their take consents was, in my submission, a deliberate choice. It is undoubted that the intensive nature of their activities was used to "drive" nutrient allocations and lock them in.
4. The decision to defer applying for all applications at one time – and thereby bring into play the call in procedures should not prejudice the determination of the UWAG consent applications which have applied for all consents necessary to undertake their farming activities.
5. UWAG submits that their preferred method would be for the take consents to join the call in procedures so that the decision making body can make a decision on the overall proposal or activity of cubicle farming in the MacKenzie Basin. UWAG has no position on the procedure for getting all consents before one decision – making body – but submits that this will produce the "best outcome" having regard to the purpose and principles for determining joint applications under the RMA.

### Panel's ability to Continue to hear all Applications

6. In its Minute of 6<sup>th</sup> December the Commissioners have already determined
  - 6.1 That the effluent applications are intimately related to the principle applications
  - 6.2 That it is necessary to hear the applications together

6.3 That hearing the applications separately will prevent a full understanding of the proposals

6.4 That it was necessary to join the applications.

7. Having made those findings it is submitted that any decision to split off the effluent consents will produce a degree of artificiality in the hearings process and a result where in some cases ( the UWAG consents ) the commissioners are able to consider a whole proposal and impose conditions on the overall activity. Whereas in the case of the called-in applications the commissioners will be precluded from acting in a consistent manner – particularly insofar as the imposition of conditions is concerned.
8. While not directly applicable the principles set out in section 102 should be a guide for how to proceed at this point.
9. The issue in terms of the monitoring of the health of the water bodies will involve consent conditions which monitor the on farm activities ( the overall activity). However it will be the case that consent issues relating to the discharge of contaminants (nutrients) will be a matter regulated by the effluent consents rather than the take consents for the SHL and other applications.

#### **And if priority issues are raised**

10. If the position of SHL and others is that this panel should ensure that their position on the priority queue is to be protected in the continuation of these proceedings, UWAG makes the following comments.
11. The law is unsettled. The recent Court of Appeal decision involving Central Plains and Synlait is being appealed.
12. Notwithstanding that issue there is a fundamental difference with these applications. SHL and others have for strategic reasons avoided making their effluent applications until after the commencement of this hearing.
13. It is submitted that they cannot preserve their position to nutrient bank – when their whole suite of applications is not before the consent authority so that all parties can have a full understanding of the proposal.

## Other issues

14. Any downsizing of the proposals in relation to the effluent consents – either in terms of the land area or the stock numbers or farming practices will affect nutrient allocations with a downstream effect on all applicants in the Ahuriri Catchment
15. Some UWAG applications have been waiting over 10 years for these hearings – now involving two call in procedures – any further delay is unacceptable.
16. This is not a static environment in two respects. The UWAG applicants have indicated that granting consents will lead to an overall improvement in the environment – those sustainable management issues to deal with weed and pest issues (Hawkweed/ wilding pines) and erosion issues need to be managed urgently. Secondly there are other applications for renewals/ variations which are awaiting the outcome on this decision, that cannot be delayed.

Dated 4<sup>th</sup> of February 2010



Ewan Chapman