
in the matter of: the Resource Management Act 1991

and

in the matter of: an application CRC021091 by the Ashburton Community Water Trust and Central Plains Water Trust to take water from the Rakaia River

and applications by the Central Plains Water Trust to use water from the Waimakariri and Rakaia Rivers and for all associated consents required for the construction and operation of the Central Plains Water Enhancement Scheme

and applications by the Ashburton Community Water Trust to use water from the Rakaia River and all associated consents required for the construction and operation of a hydro-electric power scheme

Memorandum of counsel for the Ashburton Community Water Trust

Dated: 14 April 2009

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MEMORANDUM OF COUNSEL FOR THE ASHBURTON COMMUNITY WATER TRUST

Introduction

- 1 This memorandum addresses the issue of priority that was raised by the Hearing Panel in paragraph 11 of their minute dated 2 April 2009.
- 2 It also formalises some of the discussion that took place on the final day of the hearing in September 2008 regarding the possible 'split' of the currently joint application CRC021091 with the Central Plains Water Trust (CPWT).

Background

- 3 The Hearing Panel issued an interim decision which has granted consent to the Ashburton Community Water Trust (ACWT) on 28 November 2008. Since then:
 - 3.1 Synlait Limited (*Synlait*) has lodged an appeal with the Environment Court raising *inter alia* the issue of the priority between the joint CPWT/ACWT application CRC021091 and the two Synlait applications CRC054384 and CRC062685 to take water from the Rakaia River; and
 - 3.2 It has become clear that there is some doubt over whether the CPWT 'share' of the joint take application CRC021091 will be able to be granted on the basis of what was originally sought in the 2001 application (i.e. up to 40 cumecs of water periodically being taken on the north bank of the Rakaia).
- 4 It is our understanding that Counsel for Synlait will also not be aware of the discussion that occurred on the last day of the ACWT hearing in September 2008 to the effect that ACWT considered it preferable for the joint application CRC021091 to be 'split' so that:
 - 4.1 ACWT held a separate consent to take up to 40 cumecs from the south bank of the Rakaia; and
 - 4.2 CWPT held a separate consent to take up to 40 cumecs from the north bank of the Rakaiaprovided the total take between the two did not exceed that originally applied for (i.e. 40 cumecs), or as alternative, what is currently available for allocation in accordance with the National Water Conservation (Rakaia River) Order 1988.
- 5 It is noted that the ability to 'split' the current application can already be seen from the split of the current joint application

between the Rakaia and Waimakariri Rivers (previously just CRC021091 and now CRC021091 & CRC063699) – and ultimately the assignment of a consent number to an application is for administrative purposes only and does not reduce the flexibility to consider, or eventually grant an application on a different *administrative* basis.

Revised conditions

- 6 Given the above, this memorandum provides a revised set of conditions 1 to 3 (now conditions 1 to 4) of that proposed in September 2008 to account for the split in the joint application; and further, to clarify the relationship between what will now be a separate ACWT consent to that possibly held by CPWT.
- 7 These are provided in **Annexure 1**.
- 8 We note that:
- 8.1 The conditions deal with the issue of priority on the basis that there is yet to be a final determination as to the respective priority between the ACWT(/CPWT) application(s) and those made by Synlait Limited;
- 8.2 In terms of minimum flow cut-offs, these have been based on the existing cut-off conditions for 'administrative band 5'. As the Hearing Panel is still to make a determination on actual available flows these may need to be updated prior to the grant of any final consent (and thus the reason why these are highlighted in the current version).
- 8.3 We also understand that even if the joint take application CRC021091 has priority over those made by Synlait, there is some uncertainty as to whether there is in fact 40 cumecs available for allocation. It may again be necessary to reduce the total possible take to accord with whatever determination is made by the Commissioners on this issue.
- 8.4 The proposed conditions are intended to provide for the possibility of Barrhill Chertsey Irrigation Limited (*Barrhill*) also taking water through a shared Barrhill/ACWT intake, or alternatively, ACWT being operated as a standalone scheme.
- 9 To the extent necessary, ACWT's wish to split the 'joint take consent' (CRC021091) and have a separate consent to that of CPWT is confirmed.

Dated: 14 April 2009

A handwritten signature in blue ink, appearing to be 'BG Williams', written over a light grey rectangular background.

JM Appleyard / BG Williams
Counsel for the Ashburton
Community Water Trust

ANNEXURE 1: PROPOSED FLOW/PRIORITY CONDITIONS

[ACWT – new consent number] – To take water from the Rakaia River

- The rate at which water is taken from the Rakaia River, at or about map reference NZMS 260 K36:064-382 shall not exceed 40 cubic metres per second

Provided that the maximum rate at which water shall be taken:

- under this consent and any granted under application [CPWT] by the Central Plains Water Trust to take water from the true left (north) bank of the Rakaia River at about map reference NZMS 260 K36:078-387 shall not exceed 40 cubic metres per second.
 - under this consent and any other consent through the intake structure at or about map reference NZMS 260 K36:064-382 shall not exceed 40 cubic metres per second.
- Whenever the average flow for the 24 hour period ending at noon on any one day (expressed in cubic metres per second) in the Rakaia River, as estimated by the Canterbury Regional Council from measurements at either the Gorge Recorder Site (at or about map reference NZMS 260 K35:015-424) or the recorder site at Fighting Hill (at or about map reference NZMS 260 K35:997-437) falls below the following flows (Y m³/s), the taking of water in terms of this permit shall cease

Month	JAN	FEB	MAR	APR	MAY	JUN
Flow (Y m ³ /s)	184.8	168.8	165.8	157.8	155.8	156.8

Month	JUL	AUG	SEP	OCT	NOV	DEC
Flow (Y m ³ /s)	151.8	152.8	150.8	166.8	189.8	199.8

Advisory note: In the event that water in higher priority bands is or becomes available for allocation to other water users, then the minimum flows in this condition will require amendment to recognise the priority rights of the consent holder

- Whenever the average flow for the 24 hour period ending at noon on any one day (expressed as X cubic metres per second) in the Rakaia River, as estimated by the Canterbury Regional Council from measurements at either the Gorge Recorder Site (at or about map reference NZMS 260 K35:015-424) or the recorder site at Fighting Hill (at or about map reference NZMS 260 K35:997-437), exceeds the minimum flow Y contained in condition 2 then the take shall not exceed Z m³/s where

$$Z = (X-Y)/2 \quad \text{and} \quad Z \leq 40 \text{ m}^3/\text{s}$$

Provided that whenever the Canterbury Regional Council, in consultation with the water Users Group representing all water users who are subject to the same minimum flow restriction, has determined

upon a water sharing regime which restricts abstraction from the Rakaia River to an alternative regime to that specified in condition 2, then the taking of water in accordance with that determination shall be deemed to comply with this condition.

4. In the event that application CRC054384 or CRC062685 has priority to be heard over this consent and consent is granted to either CRC054384 or CRC062685 then:
 - a. Y shall increase by the rate of take under CRC054384 or CRC062685 which is determined to have priority over this consent (plus any additional amount required to comply with clause 7(4) of the Water Conservation Order (Rakaia River) 1988); and
 - b. the rate at which water is able to be taken from the Rakaia River under condition 1 and the maximum Z value in condition 3 shall decrease by the rate of take under CRC054384 or CRC062685 which is determined to have priority over this consent.