



Ministerial Intervention – Environment Canterbury Under-Cover Farming
Resource Consent Applications

Date:	14 January 2010	MfE Priority:	Urgent
Security Level:	APPROVED FOR RELEASE	Number of Attachments:	2
		MfE Ref No:	10-B-00041

Action Sought

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Minister for the Environment Hon Dr Nick Smith	a) Agree that the appointment of a Project Coordinator, after Cabinet consultation, is the appropriate intervention for the applications for under-cover farming in the Mackenzie Basin b) Appoint Dr Paul Reynolds, Secretary for the Environment, as the Project Coordinator for these applications c) Agree that the Secretary for the Environment may delegate the Project Coordinator function to a Ministry employee d) Sign the attached letter to Dr Bryan Jenkins informing him of your decision to appoint a Project Coordinator e) Approve the attached Media Release for circulation, announcing your decision to appoint a Project Coordinator f) Refer this to Minister Carter and Minister Hide for information g) Note that, while the applications raise a number of broader policy questions, central government has no existing tools to intervene in these applications to address those broader matters.	15 January 2010

Ministry for the Environment Contacts

Name	Position	Telephone		1st Contact
		(cell)	(work)	
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Director- Approval to send to Minister's office

Director 	Date 15/1/10
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Executive Summary

This briefing note follows the briefing note (10-B-00003) which discussed options for Ministerial intervention on the applications made to Environment Canterbury for Under-Cover Dairy Farming in the MacKenzie Basin. It summarises the recommendation to appoint a Project Coordinator, provides oral briefing notes for Cabinet, related correspondence and a draft media release in anticipation of any direction to appoint a Project Coordinator to the applications.

Recommended Actions

We recommend that you:

- (a) **Agree** that the appointment of a Project Coordinator, after Cabinet consultation, is the appropriate intervention action for the applications for under-cover dairy farming in the MacKenzie Basin **Yes / No**
- (b) **Appoint** Dr Paul Reynolds, Secretary for the Environment, as Project Coordinator for these applications **Yes / No**
- (c) **Agree** that the Secretary for the Environment may delegate the Project Coordinator function to a Ministry employee
- (d) **Sign** the attached letter to Dr Bryan Jenkins informing him of your decisions to appoint a Project Coordinator **Yes / No**
- (e) **Approve** the attached Media Release for circulation, announcing your decision to appoint a Project Coordinator **Yes / No**
- (f) **Refer** this to Minister Carter and Minister Hide for information **Yes / No**
- (g) **Note** that, while the applications raise a number of broader policy questions, central government has no existing tools to intervene in these applications to address those broader matters.



Sarah Gardner
Manager, Consenting (EPA), Environmental Protection Directorate

15-1-2010

Date

Hon Dr Nick Smith
Minister for the Environment

Date

Purpose of Report

1. To provide you with speaking notes for discussions with on whether to appoint a Project Coordinator to advise Environment Canterbury on the processing of applications for under-cover dairy farming in the MacKenzie Basin. It also provides associated correspondence and a media release to be issued if an appointment is made.

Background:

2. It is recommended that a Project Coordinator be appointed to the applications made to Environment Canterbury listed below, under provisions for Ministerial intervention in the Resource Management Act 1991 (2005 amendment).

a) *Williamson Holdings Limited (also known as Southdown Holdings Limited)*

These applications are for the under-cover farming of 3850 cows. Effluent from the operation will discharge into three effluent ponds holding 24,000 cubic metres of effluent each. Effluent from the ponds will be spread onto land. Details of the applications are:

- **CRC100227** – a discharge permit to discharge solid effluent to land and up to 308,000 litres per day of diluted dairy effluent onto land.
- **CRC100475** – a land use consent to store dairy effluent in ponds.
- **CRC100478** – a land use consent for a stockholding pad (the cubicle stables).
- **CRC100479** – a land use consent to excavate land to create effluent storage ponds.
- **CRC101541** – a discharge permit to discharge contaminants to air from the storage of animal effluent in ponds and the housing of cows in cubicle stables.

b) *Five Rivers Limited*

These applications are for the under-cover farming of 7000 cows. Effluent from the operation will discharge into seven effluent ponds holding 30,000 cubic metres of effluent each. Effluent from the ponds will be spread onto land. Details of the applications are:

- **CRC100787** – a discharge permit to discharge solid effluent onto land and up to 875,000 litres per day of diluted dairy effluent onto land.
- **CRC100788** – a land use consent to store dairy effluent in ponds.
- **CRC100824** – a land use consent for a stockholding pad (the cubicle stables).
- **CRC100827** – a land use consent to excavate land to create effluent storage ponds.
- **CRC101540** – a discharge permit to discharge contaminants to air from the storage of animal effluent in ponds and the housing of cows in cubicle stables.

c) *Southdown Holdings Limited*

These applications are for the under-cover farming of 7000 cows. Effluent from the operation will discharge into six effluent ponds that hold 22,000 cubic metres of effluent each. Effluent from the ponds will be spread onto land. Details of these applications are:

- **CRC100224** – a discharge permit to discharge solid effluent onto land and up to 560,000 litres per day of diluted dairy effluent onto land.
- **CRC100480** – a land use consent to store dairy effluent in ponds.
- **CRC100481** – a land use consent for a stockholding pad (the cubicle stables).
- **CRC100482** – a land use consent to excavate land to create effluent storage ponds.
- **CRC101542** – a discharge permit to discharge contaminants to air from the storage of animal effluent in ponds and the housing of cows in cubicle stables.

Resource Consent Process

3. The above applications have all been publically notified. The last of the submission periods close for the Williamson Holdings Limited applications on 15 January 2010.
4. The Five Rivers and Southdown Holdings Limited proposals received in excess of 3000 submissions.
5. Applications for the same proposals for water permits have been in process with Environment Canterbury for the past eight years. Hearings on those applications commenced in October 2009 and will be complete by early March 2010.
6. Environment Canterbury advised EPA staff on 13 January 2010 that a decision had been made to hear the discharge permit applications (outlined above) using the same Hearing Commissioners, and as part of the water permit hearing process. The applications will be heard in March 2010.

Oral Notes for Cabinet:

Consultation with Cabinet on Ministerial Intervention

7. Cabinet Circular CO (06) 7 requires that you consult with Cabinet prior to Calling In any matter or making a Crown Submission on a matter.
8. Officials from the Ministry of Agriculture and Forestry, Treasury and the Department of the Prime Minister and Cabinet have met with officials from the Ministry for the Environment on this matter and continue to liaise over the broader issues (such as animal welfare) that have been raised.

Ministerial Intervention

9. Of the options for intervention available to you, the appointment of a Project Coordinator is recommended. Other options available have been extinguished because substantial processing of the discharge permits and the associated water permits has already been undertaken.

Call In

10. Call In is no longer possible for processing the applications for water permits made eight years ago. To Call In the discharge permits and land use consent applications would require further separation of the decision making on, what are substantially related applications. This is contrary to best practice and integrated resource management.

Hearing Commissioner Appointment

11. It would be impractical to appoint a Hearing Commissioner to hear and decide all of the discharge permit and land use consent applications as the water permits have already been substantially heard and the applications are being processed together.

Appointing a Project Coordinator

12. The appointment of a Project Coordinator is recommended because of the widespread public interest in the environmental effects of the applications. Processing applications with over 3000 submissions places a significant workload on the capacity of a single Consent Authority.
13. A Project Coordinator can be appointed to advise the Consent Authority on any matters to do with the applications.
14. Environment Canterbury has advised in writing that it would value the appointment of a Project Coordinator to advise them on this process.
15. Dr Paul Reynolds would be appointed Project Coordinator for these applications. In reality staff from the Ministry will undertake that responsibility.
16. A Terms of Reference for the Project Coordinator is being drafted in consultation with Environment Canterbury.
17. The Project Coordinator will report monthly to you on the progress of the applications. This report will include a summary of advice provided and the issues with the processing of the applications.
18. The Project Coordinator is an advisor on process and is not intended to have influence the outcome of the applications.
19. Costs for the work undertaken by the Project Coordinator will lie where they fall within the Ministry for the Environment and Environment Canterbury.

Following Discussions with Cabinet

20. Following discussion with Cabinet, should you wish to proceed with a decision on intervention, you need to consider the following factors
 - (a) The extent to which the matters are or are part of a proposal of national significance; and
 - (b) The capacity and views of the local authority.
21. Legal advice is that you do not have to determine whether these matters reach a threshold of national significance before exercising your powers of intervention, unless you intend to call in the matters. You must however consider the extent to which the

matters are part of a proposal of national significance. This suggests that you should consider where the matters fit on a spectrum of local and national significance.

22. Section 141B sets out a non-exhaustive list of factors that you may consider in assessing the national significance of a proposal. Of particular relevance in this case is section 141B(2)(a) which refers to matters that have “aroused widespread public concern or interest regarding its actual or likely effect on the environment”. These applications have generated widespread public concern about the environmental effects of the proposal and as such we consider that they do raise issues of national significance, as well as clear matters of local significance.
23. In terms of capacity, it is understood that Environment Canterbury has some challenges. Environment Canterbury’s consenting process is currently under review. The terms of reference of that review provide for “*a statutory investigation under section 24A of the RMA that seeks to identify what has led to ECan’s poor performance record over the last survey period and performance subsequently in resource consent processing*”.
24. It is understood that Environment Canterbury has significant project management challenges in its consenting process, due in part to its technically focused staff and lack of case management and planning capability. It is further noted that the processing of these applications to date has been contrary to best practice for integrated resource management. Environment Canterbury has rectified this by determining this week that it will continue the water permit hearings to hear the remaining applications.
25. Environment Canterbury has indicated its support for the appointment of a Project Coordinator.
26. Briefing note (BN10-B-0003] sets out our advice in respect of your powers of intervention. We reiterate our advice that the appointment of a project co-ordinator is the most appropriate form of intervention in these circumstances. If you decide to appoint a Project Coordinator, then we suggest that you appoint Dr Paul Reynolds, Secretary for the Environment. We also recommend that you approve Paul delegating this function to other Ministry employees.

Broader Policy Aspects:

27. These applications have raised issues concerning water, discharges, landscape and animal welfare that fall clearly within the scope of existing legislative processes. The environmental and animal welfare issues raised by the applications are not new or unique, and we see no grounds for central government to intervene on those matters except through the usual processes (as outlined in this and previous advice to you with regard to the RMA).
28. The applications have however raised a range of broader policy matters, such as:
 - the links between farming and processing methods and ‘Brand New Zealand’
 - trade and branding competition between different modes of farming
 - the relative roles of central direction and local decision-making under the RMA
 - governance questions, particularly regarding the difficult decisions to be made where local economic growth clashes with environmental and social values
 - the adequacy of water management and planning in Canterbury.
29. Having discussed the matter with other agencies, it appears that central government has no existing mechanisms to intervene on these specific applications on the basis of the broader policy issues outlined above.

30. Policy responses are already being developed with regard to most of the broader environmental and resource management questions raised by the applications through:
 - Phase Two of the resource management reforms, most particularly New Start for Fresh Water (work on governance, allocation and water quality) and the work of the Land and Water Forum
 - The current review of Environment Canterbury's performance.
31. Our discussions with the Ministry of Agriculture and Forestry indicate that they are considering how best to address the questions related to modes of production and 'Brand New Zealand' considerations.

Media Release

Following today's Cabinet meeting the Minister for the Environment, Dr Nick Smith, has exercised his powers for intervention under section 141A(4)(d) of the Resource Management Act 1991 and appointed a Project Coordinator to advise Environment Canterbury on matters relating to the processing of the applications before it for dairy farms in the MacKenzie Basin.

Dr Smith said "I have chosen to appoint Dr Paul Reynolds in his position as Secretary for the Environment as Project Coordinator for these applications. Dr Reynolds is likely to delegate these responsibilities to staff within the Ministry".

"The appointment of a Project Coordinator is an appropriate course of intervention because of the widespread concern about the environmental effects of the proposals, and the high workload that such a level of interest places on the capacity of the Consent Authority. Recognising that Environment Canterbury has substantially advanced the application process, I consider that central government support for the process is best provided in this capacity".

"The Project Coordinator will commence working with Environment Canterbury immediately and will continue to do so until the appeal period on the applications expires. I require the Coordinator to report to me on the monthly basis on the progress of the applications".



Office of Hon Dr Nick Smith

MP for Nelson

Minister for the Environment

Minister for Climate Change Issues

Minister for ACC

Dr Bryan Jenkins
Chief Executive
Environment Canterbury
P O Box 345
CHRISTCHURCH 8140

Dear Dr Jenkins

Resource Consent Applications for Under-Cover Dairy Farming in the MacKenzie Basin

Thank you for your letter responding to my consideration to appoint a Project Coordinator to provide advice on the processing of the above applications. I understand that you see value in such an appointment.

Having now discussed this matter with Cabinet, I have decided, pursuant to section 141A(4)(d) of the Resource Management Act 1991, that the Secretary for the Environment, Dr Paul Reynolds, be appointed as Project Coordinator for these applications. This appointment is effective immediately.

I recognise that your Council is now substantially advanced in the processing of these applications, with hearings on the discharge permits to commence early in March 2010. I have chosen to appoint a Project Coordinator to assist you with the applications because they have not only generated wide spread public interest and concern about the environmental effects of the proposals but also because they have created a substantial workload for Environment Canterbury. The Project Coordinator will provide advice on best practice resource consent processing, which I hope will assist in streamlining the process you have before you.

The Project Coordinator will make immediate contact with you to arrange an initial meeting to discuss the process from here. I understand that Environment Canterbury have been consulted on the Terms of Reference for the Project Coordinator, which are under development. In particular, I require that the Project Coordinator report to me on a monthly basis while the applications are processed.

I look forward to hearing of the progress made in the processing of these applications. Thank you for your cooperation and assistance on this matter. I acknowledge that Environment Canterbury does not have any easy task ahead in hearing and deciding these applications.

Yours sincerely

Hon Dr Nick Smith
Minister for the Environment