

Mackenzie Dairying Call-In: Call-In Direction, Appointment Letters and Terms of Reference for the Board of Inquiry

Date:	22 January 2010	MfE Priority:	URGENT
Security Level:	APPROVED FOR RELEASE	Number of Attachments:	6
		MfE Ref No:	08-B-0117

Actions sought

	Actions Sought	Deadline
Hon Dr Nick Smith Minister for the Environment	(a) Consider each of the three proposals for resource consents and decide if you wish to call them in.	You have indicated that you wish to announce a call-in decision in the week of 25 January 2010.
	(b) Sign the attached Direction to Call-in the Southdown Holdings Limited, Williamson Holdings Limited and Five Rivers Limited applications for resource consents to discharge effluent in the Mackenzie basin.	
	(c) Approve and sign the attached appointment letters for the Board of Inquiry	
	(d) Approve the attached Terms of Reference for the Board of Inquiry	

Ministry for the Environment Contacts

Name	Position	Telephone		1st Contact
		(cell)	(work)	
Sarah Gardner	Manager	027 694 6279	439 7584	✓
Kevin Currie	Director, Environmental Protection	027 240 5643	439 7590	

Mackenzie Under-Cover Dairying Call-In

Executive Summary

You have indicated that you may call-in the Southdown Holdings Limited, Williamson Holdings Limited and Five Rivers Limited applications for intensive dairying in the Mackenzie Basin. If you do decide to call-in these applications you are required to sign a Call-in Direction to formally call-in the resource consents. The Call-in Direction, referring the consideration to a board of inquiry, is attached for your signature.

In addition, you are asked to consider the appointment of proposed board members to a board of inquiry and, should you agree, sign their appointment letters. You are also asked to approve the attached Terms of Reference for the board of inquiry.

Recommended Actions

We recommend that you:

- (a) **Consider** each of the three proposals for resource consents and decide if you wish to call them in.

If you do decide to call them in:

- (b) **Sign** the attached Direction to Call-in the resource consent applications for Southdown Holdings Limited, Williamson Holdings Limited and Five Rivers Limited under-cover dairying proposal in the Mackenzie Basin and refer the matters to a board of inquiry.

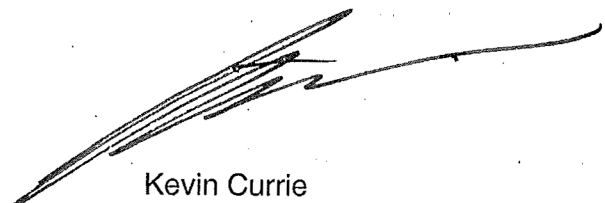
- (c) **Appoint** the proposed board of inquiry members and sign their appointment letters.

- (d) **Approve** the attached Terms of Reference for the Board of Inquiry.

~~Yes / No~~

~~Yes / No~~

~~Yes / No~~



Kevin Currie
Director
Environmental Protection

26-1-10
Date



Hon Dr Nick Smith
Minister for the Environment

27-1-10
Date

Mackenzie Under-Cover Dairying Call-In

Purpose of Report

1. You have indicated that you may call-in the Southdown Holdings Ltd, Williamson Holdings Ltd and Five Rivers Ltd applications for under-cover dairying in the Mackenzie Basin. This report sets out the process for call-in and its appendices contain all necessary documents required to make a Direction and appoint a board of inquiry.

Background

2. On 19 January 2010 you discussed with Cabinet the possibility of calling-in the resource consent applications of Southdown Holdings Ltd, Williamson Holdings Ltd and Five Rivers Ltd and appointing a board of inquiry to consider and decide the applications.
3. Following this, you requested that the Ministry for the Environment prepare the necessary documentation to enable you, in anticipation of a decision, to call-in the applications and appoint a board of inquiry in the week of 25 January 2010.

Powers of intervention

4. Under section 141A of the Resource Management Act, an applicant or any of the councils required to process and decide a matter are able to formally request that you intervene in a matter. Neither Environment Canterbury nor the applicants have made this request. However you may also decide to intervene of your own volition.
5. You may intervene by calling-in the applications and referring them to either:
 - a board of inquiry; or
 - the Environment Court.
6. You have been advised in a prior briefing note (10-B-00003) of your other options for intervention such as appointment of a Project Co-ordinator or Hearing Commissioner.
7. Should you decide to intervene on these applications you must have regard to the following factors, when making your decision:
 - a. the extent to which a matter is, or is part of, a proposal of national significance and
 - b. whether the council that would process and decide the applications if you do not intervene
 - i. have the capacity to process and decide it; and
 - ii. consider that the exercise of any of the powers would be appropriate.

Assessment of national significance

8. Section 141(B) requires you to consider a number of factors when deciding to call in a matter.
9. The most relevant factors to consider when deciding if the applications are, or are part of a proposal of national significance are:

Mackenzie Under-Cover Dairying Call-In

Has aroused widespread public concern or interest regarding its actual or likely effect on the environment, including the global environment

Of the large number of submissions received on the applications, a significant number cite environmental effects.

While there are submissions that have raised animal welfare as an issue, you do not have any evidence that such issues would necessarily arise in this case and, if they did, it is difficult to see how they would be relevant to considering the environmental effects of the discharges applied for and the associated applications for consents. The matter is best addressed via specific legislation in the Animal Welfare Act 1991.

Affects or is likely to affect any structure, feature, place or area of national significance

The Ahuriri River has had a Water Conservation Order on it since 1990. It is specifically in place to provide for outstanding wildlife habitat, outstanding fisheries and outstanding angling characteristics. The applications of Williamson Holdings Ltd share a boundary with the Ahuriri River. Submissions raise specific water quality concerns.

In its legal submission on the water permit applications for each proposal the Department of Conservation reported that "The water bodies of the Upper Waitaki are of national significance. The basin is nationally significant habitat for indigenous freshwater fish and riverbed and wetland birds some of which are particularly vulnerable having the highest possible threat rating. These species already face significant threats".

The location of these proposals upstream of three lakes increases the potential effect of any nutrient enrichment.

Involves or is likely to involve technology, processes, or methods that are new to New Zealand and that may affect its environment,

As noted by Environment Canterbury in its attached letter, the housing of dairy cows indoors for substantial periods is not new to New Zealand. This factor is not considered to be a strong reason for calling these matters in.

Results or is likely to result in or contribute to significant or irreversible changes to the environment, including the global environment,

There is a potential for nutrient effects on ground and surface water quality as a result of the discharge of dairy effluent to land. The discharges could raise the nutrient levels in the resident aquifers and water courses in the Upper Waitaki. This is of particular note because of the Water Conservation Order on the Ahuriri River as noted above.

Consultation with local authorities and applicant

10. The Resource Management Act requires you to have regard to the local authority capacity to process the applications and its opinion of whether Ministerial intervention in the process is appropriate.
11. Environment Canterbury intends to hear all of the applications for the discharge permits and land use consents in March 2010. Environment Canterbury has

Mackenzie Under-Cover Dairying Call-In

appointed the Hearing Commissioners to determine the water permits for the farms and has now appointed the same Commissioners to consider the discharge permits and land use consent applications. Officials consider that the Commissioners have the skills and experience necessary to determine these matters and the applications for water permits.

12. Officials consider that Environment Canterbury has internal issues regarding resource consent processing timeframes, project management and processing capacity.
13. Officials sought Environment Canterbury's opinion on the call-in option. In a letter dated 22 January 2010 its Chief Executive, Dr Jenkins, comments on the matters you may have regard to in making your decision. He notes the number of submissions is similar to other applications Environment Canterbury have received for water projects in Canterbury. Regarding effects on a place of national significance it notes that the major issue is that of cumulative effects of land use intensification on the water quality of Lake Benmore and therefore all of the current consent applications should be called in, although the time limit for doing so on these has passed.
14. Environment Canterbury notes the requirement under the Resource Management Act to combine hearings and asks you to give consideration to how the cumulative effects of all current applications and existing use can be considered and how integration with the water applications will be achieved if you elect to call in these matters.
15. As requested, officials also sought the views of the applicants. The applicants oppose the applications being called in and referred to a Board of Inquiry, preferring direct referral to the Environment Court – either by you calling them in and referring them to the Court, or by using the direct referral provisions introduced by the Resource Management (Simplifying and Streamlining) Act 2009. Officials believe that the argument that the provisions of the 2009 amendment apply to these applications that precede that enactment is tenuous, and is not what was intended.
16. Copies of letters from the applicants and Environment Canterbury are attached.

Notice of Direction

17. Section 141C of the Resource Management Act requires that you sign a Direction to call-in the resource consent applications. Should you call-in the applications the Direction will outline the reasons for call-in and lists the resource consent applications that have been called in. We have prepared a Call-in Direction for your signature.
18. The Resource Management Act requires you to serve a copy of the Direction on the local authorities concerned. Officials have been in contact with the relevant local authority, Environment Canterbury, and will send them a copy of your Direction once it is signed.
19. Once you have signed the Direction you will be able to make a press statement announcing your decision to call-in the applications and appoint a Board of Inquiry. A press statement has been prepared in anticipation of your decision.

Membership of Board of Inquiry

20. Should you decide to appoint a Board of Inquiry to consider and decide the applications you must, under section 146(4) of the Act, have regard to the need for board members to have knowledge, skill and experience relating to the Resource Management Act, relevant matters likely to come before the board and tikanga Maori.

Mackenzie Under-Cover Dairying Call-In

21. Section 146(5) of the Resource Management Act requires you to appoint a current, former or retired Environment Judge as the Chair of the Board of Inquiry. Officials have been in contact with the Ministry of Justice and the Environment Court who have confirmed the availability of Judge Jane Borthwick to act as the Chair of this Board, should you choose to call-in the applications.
22. Environment Canterbury has already appointed Commissioners to consider the applications. These Commissioners are also those who are considering the applications for water permits for these proposals. As per your request, officials have contacted the current Commissioners, excluding the current Chair, Paul Rogers, and all three have verbally indicated their availability. Mr David Hamilton has also indicated his availability.
23. The persons proposed for a board of inquiry are therefore as follows:
 - a. Judge Borthwick who was appointed an Environment Judge in November 2008. Her principle focus is resource management law; with a minor practice in employment law. She has considerable experience working on applications for water takes in Canterbury.
 - b. Edward Ellison who has extensive experience on boards, in resource consent hearings and in the area within which the consents have been applied for. He is of Ngai Tahu and Te Atiawa descent and has wide ranging knowledge and skill in tikanga Maori. In addition, he is a certified Commissioner through the Making Good Decisions course.
 - c. Michael Bowden, a registered professional engineer (since 1975) specialising in the investigation of both surface and ground water resources, design and maintenance of public water supply and sewage systems. He has acted as a Commissioner to hear and decide resource consents on behalf of a number of South Island Councils and is a certified Commissioner, having completed the Making Good Decisions course.
 - d. Dr James Cooke who has over 30 years experience in environmental sciences, specialising in water quality issues, nutrient cycling in agricultural and aquatic systems, and diffuse source pollution. Dr Cooke spent a significant part of his career at NIWA before becoming a Director at Diffuse Sources Limited.
 - e. David Hamilton, a lake ecologist with 19 years experience. He specialises in ecosystem modelling and dynamics of nutrients and algae. He has relevant expertise in lake management and restoration, land-water interactions and climate change effects on aquatic systems.
24. Curriculum vitae's for the above persons are attached to this briefing note. Should you wish to appoint the board, appointment letters for each board member are attached to this briefing note for your signature.

Board Member Fee Exemption

25. *[Withheld]*

26. *[Withheld]*

Mackenzie Under-Cover Dairying Call-In

Terms of Reference for the Board of Inquiry

27. Attached are the draft Terms of Reference for the Board of Inquiry for you to approve. They will be sent to the Board members with their appointment letters.