

Memo

Date	21 December 2017
Subject	Decisions on resource consent applications CRC182812 & CRC182813
From	Philip Burge, Principal Consents Advisor

Introduction

1. Cloud Ocean Water Limited have lodged an application to enable water abstracted under water permit CRC175985 to be used for the purpose of commercial bottling.
2. CRC175985 was originally issued to take water for the purpose of industrial use, specifically for the Kaputone Wool Scour in Belfast (as CRC971084).
3. A s42A report, including a recommendation on the notification and grant/refuse decision, was drafted by Consent Planner Mr Carlo Botha. The recommendations in that memorandum should be read in conjunction with this memo (HP records document ref C17C/217846). Where appropriate, I have adopted that report as per s113(3)(b) of the RMA rather than repeating information.
4. Prior to considering the application and s42A report of Mr Botha however, I note that concerns have been raised by members of the public, and in a letter from Mr Peter Richardson from Linwood Law. I have therefore considered these concerns as a preliminary matter.

Treatment of the application and the need to re-assess the take of water

Treatment of the application

5. Mr Richardson notes that, while there is an existing consent to take and use water (for an industrial purpose, being a wool scour), the consent has not been fully exercised for some time and, in his opinion, it would be more appropriate to reconsider the whole take and use of water, disregarding the effects of the already consented take.
6. While I acknowledge Mr Richardson's concern, exercised consents (and granted consents that are likely to be exercised) form part of the existing environment in terms of considering further applications under the RMA. I consider that the fact that the take is already consented needs to be taken into consideration when processing this application for a change in the use of that water.
7. The RMA authorises consents to be transferred to the new owner of a new site on simple notice to the Council (i.e. under s136(1)(2)(a) RMA). This sort of transfer is an administrative matter and would enable Cloud Ocean Water Ltd to re-establish the wool scour at its full rate of take (as that is what the current consent enables) without requiring any further consideration by the Council.

8. While Mr Richardson states that there has been no indication from the applicant/consent holder that the wool scour will be re-established, the fact remains that if the consent holder chose to do so, they could and the Council would have no grounds to prevent that.
9. The applicant has not proposed any changes to the consented depth, rate and volume of abstraction (i.e. take) from what was originally authorised to the Kaputone Wool Scour in 1997, and the adverse environmental effects of the consented rate and volume of take were considered when that consent was granted¹. The environmental effects of the existing take therefore form part of the receiving environment against which the proposed change in use must be considered.
10. I also note that if the exercise of the consented take does have a demonstrable adverse effect that was not anticipated at the time the take was granted, the RMA provides for a review of the consent conditions to address that effect.
11. On that basis, it does not seem unreasonable to enable the new owner to apply for an alternative use for the site and the associated consents, subject to a consideration on whether the proposed change in the use of water will achieve the purpose of the RMA.

Need to re-assess the take due to climate change and cumulative effects on the aquifer (as a result of the consent not being fully exercised)

12. Mr Richardson, and other members of the public via customer queries and comments in the media, have also raised the issue of the cumulative effects of the take on the aquifer (as a result of the consumptive take of water, which is already consented) given the potential longer-term effects of climate change, and the ability of Christchurch City to provide water for future generations. I consider that this concern may, at least in part, be driven by Christchurch City Council (CCC) requests for users of the reticulated network to reduce their usage.
13. There are two parts to this issue, the first the CCC restrictions. The second, the long-term future supply for Christchurch.
14. In regard to the first issue, CCC have clarified that the requested restrictions are not due to low water levels in the aquifer, but due to the limit of the CCC reticulation system to supply water when there is reduced pressure. Reduced pressure results from high demand from users of the network. Cloud Ocean Water's take is not from the reticulated system, and will therefore not impact on the pressure in the reticulated network.
15. In regard to the second issue (the ability of CCC to provide water for future generations), this is addressed by the allocation limits set in the plan framework. Section 9.6.2 of the LWRP has set an allocation limit for the Christchurch-West Melton groundwater allocation

¹ I am aware that Cloud Ocean Water Ltd have applied to drill a new, deeper bore, and that Christchurch City Council have expressed concerns around interference effects on their bores if water is abstracted from that bore. As of this decision however, Cloud Ocean Water Ltd have not applied to vary their take consent to abstract from that deeper bore. As I cannot consider a non-existent application, I have not considered that matter further. If such an application is received however, I note that effects such as well interference will need to be considered as part of that application.

zone, above which no new allocation can be taken except for non-consumptive uses or community or group water supplies.

16. That allocation was capped at the sum of the existing consented takes, including the consent now held by Cloud Ocean Water Ltd. This allocation limit therefore provides for Christchurch's longer-term water supply while not penalising existing consent holders abilities to achieve their economic and social well-being.

Conclusion

17. Having given consideration to the matters above, I conclude that the effects of the take form part of the existing (consented) environment, and are outside of what should be examined in regard to the proposed change in the use of water. The application has therefore been processed and considered as a new water permit to use water (CRC182812).
18. For ease of administration, if the new use permit is granted, it will be immediately amalgamated and issued as a combined "take and use" consent, resulting in a single consent document, i.e. CRC182813 which amalgamates CRC175985 and CRC182812.

Section 42A Officer Recommendation

19. Mr Botha has provided a summary of the activity and a description of the environment as part of his s42A officer's report. Rather than repeat those parts of his report, I adopt them as part of this decision.
20. Mr Botha has concluded that the proposal cannot be processed as a s127 change of conditions and has therefore considered the status of the proposal under the relevant regional plan (the Canterbury Land and Water Regional Plan; LWRP).
21. The use of water, as a stand-alone activity, is not addressed by a specific rule in the LWRP. The proposal to use water for water bottling therefore defaults to the "catch-all" rule 5.6, and is treated as a discretionary activity.
22. I accept Mr Botha's conclusions in regard to the status of this activity, and adopt it as my own.

Requirement for Public Notification

23. In regard to public notification, the RMA requires the consent authority to consider the matters in s95A in a set order, specifically:

Step One: Mandatory public notification in certain circumstances (s95A(2) RMA 1991);

Step Two: Public notification precluded in certain circumstances (s95A(4) RMA 1991);

Step Three: Public notification required in certain circumstances (s95A(7) RMA 1991);
and

Step Four: Public notification in special circumstances (s95A(9) RMA 1991).

I concur with Mr Botha's conclusions that mandatory public notification is not required under Step 1, or precluded by Step 2. I have therefore considered whether public notification is required under Step 3.

24. I note that the activity is not required to be notified due to rule in a plan or a National Environmental Standard. I must therefore consider whether the adverse effects of the activity on the environment are more than minor.

Consideration of Adverse Environmental Effects

25. In regard to the adverse effects of the proposal, I note:

- The original consent allowed for a fully consumptive take and use of water for an industrial process. The use proposed as part of this application is also fully consumptive.
- There is no additional consented effect on the aquifer, or on other water users, beyond what was previously authorised through the take consent, and the originally consented take and use could be re-established without any need to revisit the consent. As discussed previously, I have therefore concluded that the take forms part of the existing environment, and that the potential adverse effects of the take do not need to be re-examined as part of this process.
- I also note that the RMA does not provide the consent authority to consider the "merits" of the specific purpose for which consent is sought, relative to an alternative purpose (i.e. whether the use of water in a bottling plant is a better or worse use than the use of water in a wool scour).
- I have therefore limited my consideration, in regard to this notification decision, to the adverse environmental effects of the use of water.

26. Mr Botha has provided a discussion of those adverse effects of the use he considers relevant in his s42A officers report. He concludes that the adverse effects of the use on the environment will be less than minor, and that the application can be decided without public notification.

27. I concur with Mr Botha's assessment of those effects and adopt his conclusions.

28. I am aware however, that there has been some public concern around the effect of increased numbers of plastic bottles in the environment. While Mr Botha has not discussed this in his s42A report, I have given consideration to the relevance of that matter.

Relevance of the effect of increased numbers of plastic bottles in the environment

29. In considering the issue of increased numbers of plastic bottles in the environment, I have considered whether I could (if I determine consent can be granted) impose conditions

related to this issue. In doing so, I am mindful of s108AA of the Resource Management Act 1991 (RMA), which limits imposition of conditions to where:

... (b) *The condition is directly connected to 1 or both of the following:*

(i) an adverse effect of the activity on the environment...

[emphasis added]

30. The proposed “activity” is the act of putting water into plastic bottles. Once bottles are filled, they are shipped to distributors, wholesalers, then retailers, and finally the end user and it is that end user who finally disposes of the bottle into the environment.
31. Given the number of intervening parties involved prior to the disposal of the bottle, it is difficult to see how imposing a condition related to the end disposal of the bottle could be reasonably seen as “directly” connected to the “activity” of putting water into the bottles.
32. Furthermore, if the disposal of the bottle by the end user is to be considered as part of the “activity” of putting water into bottles, then similar connections should be drawn to other uses of water. For example, the use of water for brewing and winemaking will also result in increased numbers of plastic bladders, cans or glass bottles (inappropriate disposal of which can also have harmful environmental effects) while the use of water for irrigation and/or for stockwater may result in an end product involving plastic, such as milk in plastic bottles, or meat in shrink wrap on the supermarket shelf.
33. Ultimately, if this line of reasoning is applied to all activities related to the use of water, and which involve plastic packaging as part of an end product, it would result in a situation where a consent holder is responsible for the actions of a third party, significantly removed, and with no ability for the consent holder to control how that party behaves.
34. On that basis, no activity that would result in packaging being outside the control of the consent holder could be granted, as the (potential) adverse effects of that packaging in the environment could not be “avoided, remedied, or mitigated” by the applicant, except by not undertaking the activity in the first place.
35. This would effectively shut down most productive, manufacturing and industrial activities that require packaging, due to an inability to control the actions of the end user of a product and how they dispose of the packaging.
36. While I consider that the proliferation of plastic bottles in the environment is an issue, it arises due to inappropriate disposal of those bottles by the end user. It is unreasonable to prevent applicants from obtaining a consent for an activity on the basis that third parties outside of their control might dispose of the packaging (in this case plastic bottles) inappropriately. This would be an unreasonable expectation for any party who wished to make use of a natural or physical resource, not just water bottlers.

Consideration of Special Circumstances.

37. Having concluded that the notification of this application is not required under s95A Steps 1 – 3, I note that Step 4 requires notification if Special Circumstances apply.
38. Mr Botha has provided a very useful discussion of what constitutes special circumstances, including discussion of relevant caselaw. I adopt it for this decision.
39. Given the high level of public interest however, including a circulating petition to rescind the current take consent, on the basis of climate change and public feeling, I have given further consideration to this matter.
40. In considering whether the petition would constitute special circumstances, I note that it requests that Council rescind the current consent, however the powers imparted to the Council under the RMA severely limit when a consent can be cancelled. Those reasons do not include the matters above. Given that, I have no ability to give effect to that petition. While representative of a high level of public interest, I agree with Mr Botha that it is not Special Circumstances in and of itself.
41. In addition to the matters considered by Mr Botha, I have also considered:
- a. the issue of whether the take needs to be considered in light of climate change and the need to provide security of supply for Christchurch.

As discussed earlier in this decision, this was considered as part of the LWRP planning process. That process capped the Christchurch-West Melton groundwater allocation at the total of existing consents, including the take consent held by the applicant. As this application will not result in further allocation, I consider that this has been addressed; and
 - b. the effects of the end use/disposal of the plastic bottles.

As discussed above, I have concluded is outside the scope of the effects that can be reasonably considered as part of this application.
42. Ultimately, having considered the matters discussed by Mr Botha, and the additional matters above, I do not consider that notification would provide additional information that might inform the substantive decision, and that notification on the basis of special circumstances is not required.

Conclusion

43. Having consider the matters to be considered under s95A in the order required, I conclude that public notification is not required.

Requirement for Limited Notification

44. If the application is not publicly notified under section 95A of the RMA, the Council must follow the steps set out in section 95B to determine whether to limited notify the application. These steps are addressed below in statutory order in accordance with s95B RMA.

45. Mr Botha has considered these steps in the statutory order required by s95B of the RMA and concluded that limited notification of the application is not required for the reasons below:

Step One: Certain affected groups and affected persons must be notified (s95B(2) RMA 1991);

Step Two: Limited notification precluded in certain circumstances (s95B(5) RMA 1991);

Step Three: Certain other affected persons must be notified (s95B(7) and (8) of the RMA 1991);

Step Four: Further notification in special circumstances (section 95B(10) RMA 1991).

46. I have considered Mr Botha's reasoning, and concur with it. I therefore adopt his recommendation on limited notification as my decision.

Conclusion

47. Having consider the matters to be considered under s95B in the order required, I conclude that limited notification of this application is not required.

Substantive Decision

48. Having determined that public and limited notification is not required, I can now turn to the substantive decision.

49. Section 104 of the RMA lists the matters that the consent authority shall have regard to when considering a consent application. Section 104B states that a consent authority may grant or refuse a consent for a discretionary activity, and may impose conditions under section 108.

50. Mr Botha has provided a discussion of these matters in his s42A report. I agree with that assessment and, rather than repeat it here, I adopt it as part of this decision.

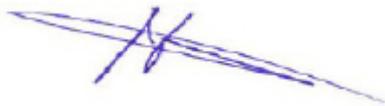
51. In conclusion, I have, subject to Part 2 of the RMA, had regard to those matters specified in section 104 RMA and

- a. consider that the adverse effects of the proposal on the environment are no more than minor, as determined for the notification determination. This assessment is also relevant to the assessment required under s104(1)(a). I also note that the application has identified potential positive effects in regard to proposed use of water.
- b. While the magnitude of those effects has not been quantified in the application, I note that unless the application is granted, the site is likely to remain inactive, and the water allocated to the current consent will provide no positive benefits to the community.

- c. subject to the conditions recommended by Mr Botha, any adverse effects arising from this specific use will be acceptable and able to be avoided, remedied or mitigated in accordance with Section 5 of the RMA;
- d. In accordance with s104(b)(i)-(vi), this activity is consistent with the relevant objectives and policies as discussed in Mr Botha's s42A report; and
- e. I have considered other relevant matters in accordance to s104(1)(c) as discussed by Mr Botha. In addition to those matters identified by Mr Botha (the Canterbury Water Management Strategy and Mahaanui Iwi Management Plan), I have also considered the high level of public interest in this application, including the petition to rescind the existing water permit.

Given that the adverse effects of the activity are no more than minor, and that it is consistent with the relevant planning provisions, I do not consider that these matters constitute a reason to refuse consent.

- 52. Overall, given the effects are not more than minor, and that the proposal is consistent with the relevant provisions of the relevant planning documents, I consider the proposal will, subject to conditions, achieve the purpose of the RMA.
- 53. Therefore, it is my decision that these resource consent applications be **granted** with the conditions recommended by Mr Botha and for a duration consistent with the original take and use consent.



Philip Burge

Principal Consents Advisor