

NOTICE IS HEREBY GIVEN THAT THE MONTHLY MEETING OF THE REGULATORY AND PLANNING COMMITTEE, WILL BE HELD IN THE COUNCIL CHAMBERS, 29 CIVIC AVENUE, GORE, ON TUESDAY 10 FEBRUARY 2009, AT THE CONCLUSION OF THE OPERATIONS COMMITTEE

**Stephen Parry
CHIEF EXECUTIVE**

4 February 2009

A G E N D A

1. Application for Declaratory Judgment – Canterbury Regional Council
(Pages 1-17)
2. Submission to Proposed National Policy Statement for Water Management
(Pages 18-26)
3. Building Consent Authority Accreditation
(Page 27)
4. Croydon Ground Water Take Resource Consent Application
(Pages 28-29)
5. Regulatory Bulletin
(Pages 30-36)

REGULATORY AND PLANNING COMMITTEE AGENDA

FEBRUARY 2009

1. APPLICATION FOR DECLARATORY JUDGMENT: CANTERBURY REGIONAL COUNCIL

(Memo from Chief Executive – 23.01.09)

- ↳ Enclosed is a letter and associated application for a declaratory judgement received from the Canterbury Regional Council. The letter in essence seeks support for the Council's application which centres around the premise that a ruling which prevents Councillors from adjudicating on planning documents while sitting on a hearing panel is an unreasonable intrusion and impediment to democratic decision making.

While Environment Canterbury has afforded us the courtesy of giving a reasonably detailed background to how this decision came about via a proposed change to its regional policy statement, the real issue of interest to this Council and I would guess many others, is contained in the last paragraph on page one and the first and fourth paragraphs of page two.

I am sure most councillors, if not all, would agree that the ability of an elected councillor to represent the Community's interest on a hearing panel concerning the interpretation of a local planning document is a cornerstone of local democracy.

The letter from Environment Canterbury seeks either other Councils to join the declaratory judgement proceedings or alternatively a letter of support and/or a motion of support at a council meeting.

I would suggest that if Council is in favour of the proposition put forward by Environment Canterbury, then a motion of support accompanied by a formal letter of support should suffice in this instance.

RECOMMENDATION

THAT the Council express its support for the application for a declaratory judgement sought by the Canterbury Regional Council in specific regard to whether it is lawful for local authorities to appoint elected members to hearing panels convened under the Resource Management Act and that a formal letter of support conveying the Council's resolution on this issue be forwarded to Environment Canterbury.

2. SUBMISSION TO PROPOSED NATIONAL POLICY STATEMENT
FOR WATER MANAGEMENT

(Memo from Planning Consultant – 26.01.09)

Attached for the Committee's information, is a copy of the Council's submission lodged to the proposed National Policy Statement for Water Management.

RECOMMENDATION

THAT the information be received.

**Submission on Proposal for National Policy Statement
for Freshwater Management
Section 49 of the Resource Management Act 1991**

To the Chairperson
Board of Inquiry – Freshwater Management
c/o Ministry for the Environment
P O Box 10362
WELLINGTON 6143

The **Gore District Council** makes the following submission on the Proposed National Policy Statement for Freshwater Management.

1. This submission is to the proposed national policy statement in its entirety, and specifically to the following provisions:
 - Objective 2 – Ensuring integrated management of effects on fresh water
 - Objective 4 – Recognising and protecting life supporting capacity and ecological values
 - Objective 5 – Addressing freshwater degradation
 - Objective 7 – Efficient use of freshwater
 - Objective 9 – Ensuring effective monitoring and reporting
 - Policy 1, paragraphs (f), (h), (i) and (j)
 - Policy 3
 - Policy 5
 - Policy 6
 - Definition of “Land Use Development”
2. The provisions listed in paragraph 1 above are **opposed** for the following reasons:

General

Within the Gore District there is one main river system, being the Mataura River. This river has as its source the Eyre Mountains south of Lake Wakatipu, within the Southland District. The main stem of the Mataura River flows south and east via Athol to the Waimea Plains before entering the Gore District and the Mataura Valley. Within the Gore District its flow is supplemented by the Waikaka Stream. On leaving the Gore District the Mataura River again passes through the Southland District, via Wyndham before entering Cook Strait at Toetoes Bay. The river is some 250 km in length, with some 45 km contained in the Gore District. There are however a substantial number of tributaries and associated ground water resources (generally unconfined) that feed into the river.

The split of the river between two territorial authorities impedes efficient management of the freshwater resource at a district council level. For this, and other reasons, co-ordinated management of water quality matters is best achieved at a regional level.

For most of its length, the Mataura River is bounded by pasture. Historically, sheep farming has been the mainstay, but over the past ten years a transmission to dairying has occurred.

The Mataura River has an international reputation as a self sustaining brown trout fishery, with the fishing season commencing on 1 October and running to 31 April for that portion above Gore and until 31 May below the town. The Gore District promotes itself as the brown trout capital of the world, and this factor alone assists in attracting a good number of national and international tourists to the district.

Within the Gore District, the gravel nature of various reaches of the river results in water flows occurring below ground as well as within the main river channel. These subterranean flows extend some distance from the main channel and a number of bores within these areas supply water to farms. The water supply for township of Gore is also accessed in this manner.

The gravels that underlie the Waimea Plains, the and Mataura Valley and the adjacent river terraces result in areas of very porous ground, through which water (and any contaminants from discharges) is able to flow. Over an extended time period all flows will likely reach the Mataura River. However there is neither data available, nor can it be readily obtained with an adequate degree of confidence, that indicates the length of time that it takes for water (or discharges) to move through the various subterranean systems from one part of the catchment to the main river system. *It is not practical in the case of the minor takes and discharges that occur to assess their impact on the overall water quality of the Mataura River system.*

The values of the Mataura River are recognised through:

- The Mataura Water Conservation Order 1997 which controls the quantity of water, and prohibits the erection of any dam, within the river.
- A statutory acknowledgement under the Ngai Tahu Claims Settlement Act 1998. The effect of such status is:
 - (a) To require that consent authorities forward summaries of resource consent applications to Te Runanga o Ngai Tahu as required by regulations made pursuant to section 207 (clause 12.2.3 of the deed of settlement); and
 - (b) To require that consent authorities, the Historic Places Trust, or the Environment Court, as the case may be, have regard to this statutory acknowledgement in relation to the Mataura River, as provided in sections 208 to 210 (clause 12.2.4 of the deed of settlement); and
 - (c) To empower the Minister responsible for management of the Mataura River or the Commissioner of Crown Lands, as the case may be, to enter into a Deed of Recognition as provided in section 212 (clause 12.2.6 of the deed of settlement); and
 - (d) To enable Te Runanga o Ngai Tahu and any member of Ngai Tahu Whanui to cite this statutory acknowledgement as evidence of the association of Ngai Tahu to the Mataura River as provided in section 211 (clause 12.2.5 of the deed of settlement).
- A freshwater Mataitai under the provisions of the Fisheries Act 1996 on a 10 km portion of the Mataura River, both north and south of Mautara.
- Te Tangi a Taura (The Cry of the People) being the Ngai Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008. This document provides a resource to the Gore District Council when preparing its plans under the RMA and in considering resource consents. The three territorial authorities of Southland and Environment Southland have in place a Charter of Understanding with the Murihiku tangata whenua through which funding is provided to Te Ropu Taiao as a management conduit to facilitate communication and consultation.
- The Regional Policy Statement for Southland which provides an integrated regime for the management of the water resources of the region. Environment Southland is the prime agency to give effect to these provisions through its Regional Fresh Water Plan.
- The Gore District Plan which contains a policy framework requiring as part of any resource consent for the consideration of adverse effects of activities and subdivision on the Mataura River. Resource consent approval is also required to undertake activities (excluding farming), otherwise permitted by the district plan, as follows:

Within the area 20 metres each side of the bed of the Mautara River where land is zoned Rural, the following is a discretionary activity:

- (1) Mining or quarrying activities.
- (2) The erection of any structure greater than 3 metres in height or 6 square metres in area.
- (3) Earthworks, other than those associated with the tilling of the soil,

fencing or pest plant management, exceeding:

- (a) more than 100 linear metres along the river; or
- (b) 1 metre in depth in the case of excavation; or
- (c) 3 metres in height in the case of stockpiles or fill; or
- (d) 50 cubic metres in volume.

These various instruments provide an efficient and effective means for the management of the freshwater resources of the River system. It is the view of the Gore District Council that the no additional “tools” are required for the management of the river system. In particular, no additional levels of administration of freshwater management need to be added via a National Policy Statement in a broad brush manner to district plans.

If any direction is needed, it should flow from the Regional Policy Statement and regional plans as required on a case by case basis. Each region must be assessed individually and on its merits. The best approach to adopt in Northland may not be workable in Southland. Similarly, the high degree of co-operation between the territorial authorities and regional council in Southland enables co-ordinated actions and approaches to be taken across the Southland Region in a manner that is not achievable, and possibly not appropriate, in other parts of the country.

Given the divergence of environmental and administrative circumstances that exist nationally, the Gore District Council is of the view that government should assess the issues for each part of the country on a regional basis. It should do that through the consultation and submission procedures for regional policy statements and regional plans, not through a national policy statement.

When the Gore District Plan was publicly notified in 1995, it included provisions generally consistent with the thrust of the proposed national policy statement. The district plan included a rule requiring resource consent approval for any discharge to land that could adversely impact on water resources.

A number of submissions opposed this approach for the reasons that:

- Requiring such approval was beyond the statutory powers of Council
- It could not be readily determined if a discharge would impact upon water resources.
- Council did not have any expertise in the dealing with such matters, whereas Environment Southland did
- The level of assessment and information required as part of a resource consent application is virtually impossible to provide with any degree of confidence, and the cost of obtaining such information was extremely high
- The time delays likely to be incurred in obtaining information for a resource consent and processing by Council would result in unnecessary delays

Taking these, and other, submissions into account the rule was withdrawn.

*Having regard to these issues, **the Gore District Council requests that the proposed national policy statement be withdrawn.***

If the policy statement is not withdrawn it should at least be amended to put in place a policy framework for consideration of issues on a region by region basis utilising the existing framework of regional policy statements and regional plans. It would then be a matter to be assessed in those documents as to any action required at a district council level.

Land-use Development

The Proposed National Policy Statement defines land-use development to include “*land-use intensification, land-use change, and subdivision of land*”.

The definition is deficient and confusing. It uses the word “includes” yet fails to indicate whether the examples given are the full scope of the meaning, or whether they form part of a class that could be expanded.

“Land-use intensification” in a rural environment such as the Gore District could represent changes in stocking rates, either within a defined paddock, an unfenced mountain top within a single property over which stock can roam, or an entire farm. At what level is intensification to be measured? What degree of change is required before an effect arises that is captured by this definition? What time period applies? Is increasing stock numbers in paddocks over winter months, or an even shorter period, deemed to be intensification?

“Land-use change” is relatively simple concept when rural land is being developed for industrial or residential purposes. However, when the change is from one rural land use to another it is less clear. It would be anticipated that a change from pastoral sheep farming to dairying would give rise to a potential impact on water resources. However, do changes from one form of pastoral farming to another represent a land use change, for example, from sheep to beef cattle, deer, ostriches, or pigs? Further, is a change to cropping to or from pastoral sheep grazing represent a change? What if the crop is to provide feed for stock? What is the difference in effect from crops used for feed to stock and crops sold for human consumption? Is a change from one crop, turnips, to another such as asparagus, lettuces, flowers or forestry represent a land-use change?

What is the effect arising from the subdivision of land that causes concern? In cases where existing surplus farm houses with surrounding land are being provided for on a separate title there is no off-site impacts. Similarly, boundary alterations do not alter land use. If the effect relates to a potential change in land use, or the manner in which earthworks are undertaken in providing infrastructure such as roads, water and sewerage

reticulation, or the manner in which land is cleared for future use, then the effects arising from these should be referred to.

*Having regard to these issues, **the Gore District Council requests that consideration be given to an alternative approach, and that land development be defined in terms of the effects of concern, with regard also being given to the intensity of effect.** For example, it only those changes to the use of the land which increase the potential for water takes, water run-off or the discharge of other contaminants that are likely to be of concern.*

In areas where there is intense existing development and a significant shallow groundwater resource, then even the erection of one dwelling relying on a septic tank for sewage disposal may be of concern. However, as is the case through much of the Gore District, the creation of a number of rural residential lots within an area removed from major water bodies is unlikely to give rise at any concern at all. This reinforces the need for a case by case approach, with an initial framework developed at a regional level through the regional policy statement and a regional water plan.

The Objectives

All of the objectives are matters that should be included, if appropriate, within a regional policy statement and/or regional plan. Whether they are appropriate is dependent upon the circumstances of each region and framework within which that region determines is the most appropriate to provide for the sustainable management of freshwater.

Given that section 5(2)(b) of the Act already provides for “*Safeguarding the life-supporting capacity of air, water, soil, and ecosystems*” it appears unnecessary and inefficient to then duplicate a provision in another statutory document.

The section 32 Evaluation at paragraph 3.2.1 discusses the option of changes to the RMA, indicating that amendments to the Act “*would not build or enhance partnerships with local government, industry, Maori, science agencies and providers, and rural and urban communities*”. Such partnerships are not created from statute or regulation but evolve over time based on experience and trust.

Objective 9 requires both regional councils and territorial authorities to undertake effective monitoring. However, the effect of most concern that requires monitoring is the quality and quantity of freshwater resources. That is a matter capable of being monitored and reported on by regional councils. It is not a function that can be carried out efficiently or cost effectively by district councils. Duplication is not required.

*Having regard to these issues, **the Gore District Council requests that, if the national policy statement is retained:***

- (i) *Objectives 2, 4, 5, 7 and 9 be limited in scope to matters that should be dealt within in regional policy statements and regional plans, and for those documents to then determine if any action is required at a district level.*
- (ii) *Reference to “land-use development” be expressed in a manner that enables identification of the effects of concern.*

The Policies

The Policies set out the means of implementing the Objectives, and comments made above will also apply to the Policies as a whole.

Policy 1 requires a change to the Regional Policy Statement for Southland to be undertaken within two years of any national policy statement being adopted. The policy does not recognise that:

- (a) Some regional councils have likely dealt with the issue already, both within their regional policy statement and regional water plan; while
- (b) Other regional councils are in the process of reviewing of their regional policy statements, and the issues contained within the proposed national policy statement have already been included in consultation documents.

It is possible that as a result of consultation and formal submissions received, and taking into account the provisions of section 32 of the Act, the best approach for that region is different to that contained in the proposed national policy statement. The Gore District Council opposes repeating of processes where the issue has been fully assessed and dealt with. It is a waste of the financial resources of the regional council and local authorities, and an inappropriate imposition on the people of the region.

To the extent that is necessary, the various statutory documents referred to above (water conservation order, Mataitai, iwi management plan, regional policy statement, regional plans and district plan) together provide for in the Gore District all of the matters (a) – (j) in Policy 1.

Policy 3(b) and (c) will require the Gore District Council to include rules in its district plan that set out matters to be the subject of conditions on all relevant land use and subdivision consents and their monitoring.

Firstly, this Council highlights in some cases by way of policies, where appropriate, matters to be subject to conditions. It is not appropriate for government to direct the form of the provision to be included in the district plan.

Secondly, it is unclear in practice how monitoring will be undertaken, by whom, over what time period, and what action is taken if monitoring raises any issue of concern. Land when subdivided is sold to new owners and

held by them. The original subdivider rarely has any ongoing interest in the land.

*Having regard to these issues, **the Gore District Council requests that, if the national policy statement is retained:***

- (i) The policies be limited in scope to matters that should be dealt within in regional policy statements and regional plans, and for those documents to then determine if any action is required at a district level.*
- (ii) The policies, if retained, list the outcome sought not the technique to be used to achieve that outcome.*

The Gore District Council **wishes to be heard** in support of its submission.

If other local authorities within Southland make a similar submission, the Gore District Council will consider presenting a joint case with them at a hearing.

Dated at Gore this 22nd day of January 2009



K J Hovell
Person authorised to sign on behalf of submitter

Address for service of submitter:

Gore District Council
P O Box 8
GORE 9710

Telephone number:

Office: 03 209 0330
Direct Dial 021 778477

Fax number:

03 209 0357

Email:

khovell@goredc.govt.nz

Contact person:

Keith Hovell

3. BUILDING CONSENT AUTHORITY ACCREDITATION

(Memo from Chief Executive – 02.02.09)

As reported in the local news media recently, the Council has finally achieved the milestone of achieving accreditation as a Building Consent Authority under the Building Act 2004. Accreditation was awarded to the Council by International Accreditation New Zealand (IANZ) on 12 January 2009.

The awarding of accreditation is the culmination of approximately two and a half years work in which processes and policies had to be extensively critiqued, revised and documented. This work had to be undertaken in the midst of a surge in building activity in the District and some changes in staff.

The achievement of accreditation is a shining testimony to the dedication and team work of the Building Control Department. For Building Control Manager Russell Paterson and Senior Regulatory officer, Frances Cowan, the input required to meet the demand of accreditation has been considerable.

IANZ will next visit in June 2010, to check whether building control practice at the Council is being carried out in accordance with the approved policies and processes.

RECOMMENDATION

THAT the information be received.

4. CROYDON GROUND WATER TAKE RESOURCE CONSENT APPLICATION

(Memo from General Manager, District Assets – 30.01.09)

Environment Southland has advised that it has received a resource consent application for a water permit. Steeghs Partnership Limited, Croydon located at 768 Waimea Highway is the consent applicant.

The applicant seeks to take an additional 3,600 cubic metres of water per day from the Knapdale ground water zone for pasture irrigation. The annual extraction rate will not exceed 351,000 cubic metres a year. A concession in the consent application is that when the Mataura River drops below 16.5 cubic metres per second, water extraction will be halted in order to honour the conservation order on the Mataura River. Environment Southland has given the Council the opportunity to support, oppose or comment on this submission.

Environment Southland considers that the aquifer in the Knapdale water zone feeds the wells that supply the Gore township. Given the Gore community's present difficulties in extracting sufficient water during drier months, the proposed irrigation could be viewed in some quarters as somewhat of an extravagance.

The 3,600 cubic metres per day requested by the applicant for irrigation represents three quarters of the average daily use by the Gore township.

Currently during the summer period the Gore well levels drop 2.4 metres below the levels experienced in winter resulting in restrictions to conserve water being imposed on the township. Last summer the levels dropped to a point where a total hosing ban had to be implemented. As a result the Council is now planning further expenditure to enable the consented volume of water to be extracted. Our concern is that the Knapdale ground water zone is already over allocated by 123% should the current consent holders take the consented volume on a daily basis. This figure is based on a 25% land surface recharge used by Environment Southland in the Regional Water Plan.

With water becoming recognised as a finite resource it is essential that its use is prioritised. The welfare of people and also animals would appear to be a greater priority for water allocation. Water allocation needs to accommodate the community's needs now and for the future.

RECOMMENDATION

THAT the report be received,

AND THAT the Council oppose the Croydon ground water take resource consent application.

5. REGULATORY BULLETIN

(Memo from Chief Executive – 02.02.09)

Attached is a schedule of building consents issued for December 2008 and January 2009, together with comparisons with the previous two years.

A schedule of resource consents issued to 11 January and 1 February is also attached.

RECOMMENDATION

THAT the information be received.