

## MINUTES

**TITLE:** Environment & Planning Subcommittee -  
Commissioner Hearing  
**DATE:** Monday, 2 November 2009  
**TIME:** 10.00 am  
**VENUE:** Council Chamber, 189 Queen Street, Richmond.

**PRESENT:** Mr B Cowie (Commissioner)

**IN ATTENDANCE:** Principal Resource Consents Advisor (J Butler), Consent  
Planner (N Tyson), Executive Assistant (V M Gribble)

### 1. TASMAN DISTRICT COUNCIL - APPLICATION No. RM041343, RM061023

The application seeks to undertake the following activities associated with the Eighty Eight Valley Rural Water Scheme:

**Water Permit  
RM041343** To dam water behind a dam intake structure and to take up to 450 cubic metres of water per day from an unnamed tributary of the Eighty Eight Valley Stream (locally known as Parkes Stream) for water supply purposes.

**Land Use Consent  
RM061023** To use the bed of an unnamed tributary of the Eighty Eight Valley Stream (locally known as Parkes Stream) for a dam structure, intake pipe, and water supply pipeline.

The intake is located within the Mt Richmond Forest Park. The application site is located at Eighty Eight Valley, Wakefield. Being legally described as Pt Section 6 Block IV Gordon Survey District

Easting:2512271, Northing:5969445

The above resource consent applications are for replacement consents at unchanged rates of taking. However, there is little information on actual dry summer (stream) flows at the intake and the rate of take exceeds both recommended rates of 10% or 33% of the 1-in-5-year flow specified in the Proposed Tasman Resource Management Plan.

The Commissioner proceeded to hear the application, presentation of submissions and staff reports as detailed in the following report and decision.

## **2. TASMAN DISTRICT COUNCIL - APPLICATION No. RM041343, RM061023**

**THAT pursuant to Section 104B of the Resource Management Act, the Commissioner GRANTS consent to Tasman District Council as detailed in the following report and decision.**

**CARRIED**

**IN THE MATTER OF** the Resource Management Act 1991

**AND  
IN THE MATTER OF**

Application RM041343 by **Tasman District Council** to Tasman District Council for resource consents associated with damming, taking and use of water for Rural Water Supply.

**Decision of the Hearing Commissioner  
Dr Brent Cowie**

### **Appearances**

#### **Applicant**

Mr Nick Regnault, MWH New Zealand  
Mr Phil Benvin, MWH New Zealand  
Mr Kim Arnold, Tasman District Council  
Ms Brenda Clapp, Envirolink Limited  
Dr John Stark, Stark Environmental Limited

#### **Submitters**

Mr Ed Ladley representing DW and LJ Ladley and DG and SD Ladley

#### **Reporting Officer**

Mr Neil Tyson, Consent Planner, Natural Resources

#### **In Attendance**

Mr Jeremy Butler, Principal Resource Consents Adviser (assisting the Commissioner)  
Ms Val Gribble, Minutes Secretary

### **Introduction**

1. This is the decision of an independent hearing commissioner, Dr Brent Cowie, appointed to hear and decide an application by the Engineering Department of Tasman District Council ("TDC" or "the Council") to take and use water for the Wakefield Rural Water Supply. As the TDC is a unitary authority it is both the applicant and the consent authority, so an independent commissioner was used. I am a registered hearing commissioner.

2. I heard the application on Monday 2 November 2009 in the offices of the TDC. This was followed by a site inspection, including the Ladley water take and the site of the take in the Parkes Stream. I heard from five representatives of the applicant, Mr Ed Ladley on behalf of his family, and the Council's reporting officer, Mr Neil Tyson. The applicant chose to give their right of reply in writing; this was received on Friday 13 November and updated on Monday 16 November, when I closed the hearing.

### **Background to the Application**

3. The current application was lodged on 10 December 2004 to replace a consent that expired on 31 May 2005. It sought to continue to dam, take and use water at unchanged rates from Parkes Stream<sup>1</sup>, a tributary of Eighty-Eight Valley Stream in the Wai-iti Zone, Waimea Catchment, for rural water supply. The scheme is known as the 88 Valley Rural Water Supply. The Wai-iti Zone is a fully allocated water management zone and no new consents to take summer flow have been granted since the early 1980's. The hearing of the application was delayed for several reasons, as detailed in the officer's report.
4. The water supply scheme was established in 1981. It originally took up to 600 cubic metres per day (m<sup>3</sup>/d), but this was reduced in 2002 to 450 m<sup>3</sup>/d, which equates to a maximum instantaneous rate of 5.2 litres per second (l/s). Consent was originally obtained in 1980 and "renewed" in 2002, so the application before me is the third time the activity has been considered for resource consent.
5. The take is from the upper reaches of Parkes Stream within a bush reserve area in the tenure of the Department of Conservation (DoC). The stream arises at an altitude of 830m, and above the site of the take has a catchment area of 2.6km<sup>2</sup>. A weir has been constructed across a natural waterfall in the stream. A small ponding area behind the weir is the site of the take. A 125mm PVC pipeline feeds water to a 100 cubic metre reservoir near Wakefield. From here water is reticulated via pipelines to property owners within the scheme.
6. There are 463 water units, each equating to a cubic metre per day, provided water by the scheme. Allocation is controlled by restrictor units at the inlet of individual water tanks. According to Mr Benven the scheme is fully allocated; this means for example that if a property has access to one water unit and is subdivided, the subdivided property still has access to only one water unit. About 70% of the scheme water is used for stock, with the balance used for domestic supply, including watering of gardens. Rationing can occur during droughts.
7. The scheme is effectively demand driven. As it is entirely gravity fed, water used within the scheme is replaced via the pipeline and reservoir to individual tanks. The flow into individual tanks is constrained by flow restrictor valves so that no users may exceed their maximum daily allowance. Although this means that in theory a maximum daily take of 463 cubic metres could occur, this has not happened during the five years of summer record provided by Mr Benven.<sup>2</sup> During that time the maximum weekly water use averaged 418 cubic metres per day in February 2009, and on only one other occasion, also in 2009, did weekly average water use exceed 400 cubic metres per day. The lower weekly use in other years, such as 2007/08 is not necessarily due to lower demand but because water rationing occurred during low flow conditions.

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<sup>1</sup> This is a local name and will be used throughout this decision.

<sup>2</sup> These were for the years 2004/05 to 2008/09 inclusive.

## Notification and Submission

8. The application was processed by TDC on a limited notification basis, with potentially affected parties being DoC and the Ladley family. DoC provided written approval to the application on 10 September 2007, conditional on the application being granted for a term expiring on 31 May 2016, which is when other consents in the Wai-iti zone have their common expiry date.
9. One submission was received from DW and LJ Ladley and DG and SD Ladley (“the Ladleys”). They did not oppose the scheme continuing, but submitted that:
  - The current arrangement does not provide a secure supply as required by the consent condition and given they were existing abstractors prior to the scheme’s construction, it is unacceptable that they struggle when the scheme is unrationed.
  - Scheme abstraction is having an unacceptable affect on instream values and natural character including at the Scheme intake.

## Status of the Applications

10. In his officer’s report Mr Tyson said that the take of water is potentially a controlled activity under Rules 31.1.2 and 31.1.3 in the Tasman Resource Management Plan. However the use of the bed of the river for the scheme intake, weir and pipeline is not covered by any rules in the regional plan, and so is effectively a discretionary activity under s13 of the Act. He considered both applications should therefore be assessed as discretionary. Mr Regnault questioned this, saying that the application to take water could be considered as controlled still.
11. In the end this is a rather academic argument as no party opposed the granting of the consents. I have assessed both applications as fully discretionary.
12. As the applications were lodged in 2004 the relevant provisions of the Act that must be particularly considered in relation to s104 matters are those listed prior to the August 2005 amendments. Again in practise this makes little difference to my decision.
13. Section 104 required that, subject to Part II of the Act, I consider the following matters:
  - a) *any actual or potential effects on the environment of allowing the activity;*  
*and*
  - b) *any relevant provisions of-*
    - (i) *a national policy statement;*
    - (ii) *a New Zealand Coastal Policy Statement;*
    - (iii) *a regional policy statement or proposed regional policy statement;*
    - (iv) *a plan or proposed plan; and*
  - c) *any other matter the consent authority considers relevant or reasonably necessary to determine the application.*
14. The effects of the proposed activity are primarily on natural character, amenity values and on the life supporting capacity of Parkes Stream. These are discussed later in this decision.

15. There are no national policy statements relevant to the present application, nor do the provisions of the New Zealand Coastal Policy Statement apply. The provisions of the Tasman Regional Policy Statement and the Tasman Resource Management Plan are also discussed later in this decision.
16. I have considered the one “other matter” that I consider relevant – the statutory duty of TDC to supply water under the provisions of the Local Government Act – in making my decision to grant the consents sought.

## Summary of Evidence

### The Applicant

17. Five people appeared for the applicant at the hearing. Much of what they said is summarised elsewhere in this decision and does not need to be detailed here.
18. **Mr Nick Regnault**, who led the applicant’s case, is a senior planner with the consultancy MWH New Zealand. He has a Bachelor of Regional Planning and 17 years experience.
19. Mr Regnault gave an overview of the applications. He said that although the original application, which was lodged in December 2004, sought a term to May 2016 for both consents, the applicant now sought a term to May 2031 for the water take (this coincides with the second review date of all consents in the Wai-iti management zone) and 35 years for the structure in the stream. He acknowledged that the approval given by DoC is only for a term to 2016, and that they had written to DoC about a possible longer term, but no reply had been received.
20. S104 matters were discussed. Mr Regnault said that relevant “other matters” under s104(3) included the statutory duty of the TDC to supply water to ratepayers under the Local Government Act, and the existing investment in the scheme.<sup>3</sup> He then went on to discuss aspects of the officer’s report, and comment on Part 2 matters.
21. **Mr Phil Benvin** is a Project Engineer who has worked for MWH in Nelson since 2000. Prior to that he worked for Waimea County, and after that the TDC. He was personally involved with the investigation, design, construction and the subsequent operation and management of the 88 Valley Rural Water Supply Scheme.
22. Mr Benvin gave a helpful description of the history of the scheme and its current operations. Water use by the scheme is metered, with the meter read on a weekly basis and a close watch kept on use during summer months. During drought conditions water demand is managed first by appealing to users to reduce demand, with more severe restrictions introduced as appropriate. Mr Benvin considered that the rationing approach recommended in the officer’s report was less suitable than the existing condition in the 2002 consent.
23. **Mr Kim Arnold** is a Utilities Asset Manager at the TDC. He has professional qualifications and 13 years experience in local authority engineering, the last five of them at TDC.

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<sup>3</sup> This is not a relevant consideration in this case as the provisions requiring consideration of existing investment under s104(2A) were included in the August 2005 amendments to the Act, which post date when the current applications were lodged.

24. The rural water supply scheme has 511 customers and a current book value of just over \$2 million. Users pay for the full operating and capital costs of the scheme. There are currently no alternative viable options for water supply for scheme users.
25. Within the next five years the Council intends to augment or replace entirely the existing Wakefield water supply with a new source of supply – most likely from bores near Spring Grove. This potential new supply may eventually serve some users on the 88 Valley rural supply scheme, although demand may not be reduced.
26. Mr Arnold said that the Council had offered a metered connection to the Ladley property allowing them to take up to 20 cubic metres per day via a restrictor. It had also offered to fund the connection to the boundary and waive the scheme joining fee, but that the Ladleys would have to pay for the water taken. He said that this offer was rejected by the Ladleys, apparently because they wanted the connection to their existing well and that they should not have to pay for water.
27. **Ms Brenda Clapp** is a hydrologist employed by Envirolink Limited. She has an M.Sc with honours, and has worked as hydrologist for both Wellington Regional Council and the TDC, the latter for five years.
28. Ms Clapp described what little flow monitoring had taken place in Parkes Stream. The water level above the intake was measured continuously from 6 May to 5 October 2009. Up to five flow gaugings have been taken in the same period from three sites: above the intake, at the ford about 1km downstream and at the Ladley “weir”. All the gaugings show an increase in flow downstream, despite water being taken at the weir. The data collected however are too few to establish a relationship between the water level behind the weir and flow downstream. No relationship could be established between the flow in Parkes Stream and the most nearby recording site with a long term record, which is a site in the much larger Wairoa River.
29. **Dr John Stark** now runs his own business Stark Environmental Limited. Prior to this he worked for the Cawthron Institute for 21 years, and undertook the survey he reported on while working for that company. He has a Ph.D in freshwater ecology, a field he has been working in for over 30 years.
30. A biological survey was carried out of Parkes Stream in February 2006. Unfortunately flow was not measured, although the photographs taken at the time show it was certainly not particularly low. Four sites were sampled – above and just below the intake, at the ford on Parkes’ property and at the road bridge.
31. Habitat quality can be assessed by the composition of the invertebrate fauna. It was high at all sites, with some evidence of minor degradation at the two downstream sites, very likely due to farm run-off. Dr Stark described the two sites near the intake as “pristine”.
32. Three species of fish were recorded during an electric fishing survey. Long finned eels were present at all sites, dwarf galaxias were present at the ford site only, and upland bullies only at the road bridge site. Fish densities were quite high. Juvenile eels can pass up the weir; in response to a question Dr Stark said that koaro may also be present in the stream.

33. Dr Stark gave three reasons why he considered it was not necessary to provide a minimum flow below the weir. These were that two of the fish species present are not migratory, that long finned eels can find their way past the weir, and that in extreme low flows 2l/s may not provide any surface flow below the weir.

#### **The Submitter**

34. Mr Ed Ladley gave evidence on behalf of the Ladley family. He was supported by Donald Wyn Ladley and Mr DW Ladley's son, Donald Gordon Ladley. Mr Ed Ladley is an engineering geologist, but was not giving expert evidence.
35. Their farm, known as "Karanga", covers 233 hectares and typically supports nearly 100 cattle, up to 4,500 sheep and two households. It has been owned by the family since 1937.
36. Mr Ladley covered a number of matters in his evidence. He made it very clear that the Ladleys do not want to become part of the Rural Water Supply Scheme. They sought adequate water in the stream to supply stock and domestic uses, an adequate flow in the stream and that amenity values be restored to what they were prior to the inception of the scheme.

#### **The Officer's Report**

37. Mr Neil Tyson spoke briefly to his officer's report, and answered several questions. He reiterated his view that the consent to take and use water should be granted for a term expiring in 2016, but agreed that the s13 consent for the weir could be granted for a 35 year term.

#### **The Right of Reply**

38. In his right of reply Mr Regnault discussed several matters, including further detail of the operation of the Scheme, the connection to the Ladley property, and the term and conditions of consent. I discuss all this matters later in this decision.

#### **principal issues**

39. No party opposed the continuance of the scheme or its associated taking and use of water. Rather in the submission and evidence to the hearing three main issues arose:
- Should there be a minimum flow provided below the weir to sustain instream life during extreme low flows?
  - Should the "Ladley condition", which requires that the scheme provide water to the Ladley well, be retained?
  - On what term and conditions should consent be granted?

#### **Provision of a Minimum Flow**

40. In his officer's report Mr Tyson had recommended that a minimum flow of 2 l/s be provided at all times below the weir in Parkes Stream. The applicant opposed such a condition on two main grounds. First, the survey by Dr Stark found the biota immediately below the weir showed no clear evidence of being adversely affected by the water take and so a minimum flow was not necessary. Second, there were too few data to determine what the natural low flow of the stream might be (which is largely because the applicant only begun flow monitoring in May 2009).

41. Section 5 of the Act defines sustainable management of natural and physical resources. Part of that definition requires that the life supporting capacity of water and ecosystems be safeguarded. If the stream goes dry below the source of the take it will very likely not have any medium or long term effect on the biota, which as Dr Stark said will recover rapidly. It will however have a short term effect during the drought events that may lead to such an occurrence. While as Dr Stark said a minimum flow below the weir may not provide surface flow during an extreme drought, it will certainly provide a much greater likelihood of surface flow being retained.
42. In a situation like Parkes Stream, which is in an impressive and near natural environment, I do not consider such a potential effect is acceptable and it should be appropriately mitigated. Accordingly, I have decided that the applicant should provide for a flow of at least 2 l/s past the weir at all times. I do not consider that this will significantly constrain the applicant's ability to take water, particularly as the take will have to be restricted at times of low flow to meet other consent conditions. In this way life supporting capacity will be better safeguarded than if no minimum flow is provided.
43. The provision of a minimum flow will also have some benefits for retaining water levels in the Ladley well by providing more flow in Parkes Stream during drought conditions.

#### **The "Ladley Condition"**

44. This condition arose from an appeal to the then Planning Tribunal from the original "water right" applications granted in 1981 by the then Nelson Regional Water Board to the the Waimea County Council. In essence it requires that whenever water is being taken from the stream the consent holder shall provide at least 20 cubic metres per day, or the amount available from the stream, whichever is the lesser, to a well on the Ladley property.
45. I saw the well during the site inspection. It is within three metres of the stream, and undoubtedly has a direct hydraulic connection to the stream, so the take is effectively of surface water. Water is pumped up to a 30,000 litre tank on a hill about 90 vertical metres above the point of the take, and from there it is distributed by gravity to about 36 farm watering troughs and for domestic supply and garden watering.<sup>4</sup>
46. The existing take from the stream for stock water and domestic use is provided for as a permitted activity in the Tasman Resource Management Plan. Although the Ladleys asserted that they can take up to 31 m<sup>3</sup>/d, the actual amount authorised by the Plan is just over 26 m<sup>3</sup>/d. This equates to an instantaneous take of about 0.3 l/s, compared with 5.2 l/s authorised to be taken by the scheme.
47. My understanding is that the reason that the Ladleys did not want to be connected to the scheme originally is that they do not get on with Mr Parkes, their upstream neighbour, across whose land a pipeline would need to cross to supply their property.

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<sup>4</sup> As an aside, why a "well" is used to provide such water puzzles me, as it would be easily contaminated from the surface and is a potential breeding ground for microbial contaminants that could cause sickness or disease. Better quality water could be obtained by pumping directly from the stream.



48. As a result of this the applicant has never provided a connection to the Ladley well as required as a condition of consent. According to Mr Arnold the TDC have offered to do so, while also providing a connection to the boundary and waiving the connection fee. However this offer was rejected by the Ladleys, apparently for two reasons. First, because they wanted water supplied to their well, and second, they did not want to pay for that water. This would be quite inequitable when all other users supplied by the scheme pay for water used. There is no reason why the Ladleys should be treated any differently.
49. One possible solution mooted by the Ladleys was that the applicant provide water to their header tank up on the hill. In their right of reply the applicant offered to provide a connection to the Ladley boundary, and waive the scheme joining fee of \$3,700, but water used would have to be paid for, and rationing could occur during low flow periods. Such a connection would not have to pass over third party land, but the Ladleys would have to provide a connection to the water tank. I have instructed that the right of reply be provided to the Ladleys; if they wish to take this offer this is a matter between them and the applicant, but it is not one that I am going to compel be offered again as a condition of consent.
50. In answer to a question Mr Ladley commented that since the applicant “fixed the scheme” the well has only run dry a “handful of times”, although “it would have been more than that if we had not told TDC operations when it was running dry”. With the provision of a 2l/s minimum flow below the weir at all times, and Ms Clapp’s finding to date that flows generally increase downstream, this should provide sufficient water to provide for the Ladleys’ permitted take at all times. But of this there can be no absolute certainty. The TDC have made what I consider to be a very reasonable offer to the Ladleys to supply water from the scheme, and if they choose not to accept it, they must live with the consequences of doing so.
51. The new minimum flow provision is also consistent with what Mr Ed Ladley sought in his evidence. He wanted sufficient water in the stream to provide for their permitted take for stock water and domestic use, and he wanted a residual flow to maintain and enhance environmental values downstream of their well.

### **Provisions of Statutory Instruments**

52. There are two statutory instruments relevant to the present applications. These are the Tasman Regional Policy Statement (“the TRPS”) and the Tasman Resource Management Plan (“the TRMP”). The TRPS became operative on 1 July 2001 and the objectives and policies contained therein are largely duplicated in the TRMP.

#### ***Objective 30.1.0(1)***

*The maintenance, restoration and enhancement, where necessary, of water flows and levels in water bodies that are sufficient to:*

- (a) preserve their life-supporting capacity (the mauri of the water);*
- (b) protect their natural, intrinsic, cultural and spiritual value, including aquatic ecosystems, natural character, and fisher values including eel, trout, salmon habitat, and recreational and wildlife values; and*
- (c) maintain their ability to assimilate contaminants.*

30.1.9 *When assessing resource consent applications to take water, particularly those applications to take water from water bodies where no allocation limit has been established, to take into account actual and potential adverse effects, including cumulative adverse effects of the proposal in combination with any existing authorised takes, on:*

- (a) natural character of the water body and its margins;*
- (b) associated wetlands;*
- (c) cultural and spiritual, amenity and recreational values;*
- (d) aquatic habitat, including plants and animals;*
- (d) other water users;*
- (e) water reserved for other uses;*
- (f) hydrological regime of the water body;*
- (g) capacity to dilute contaminants;*
- (h) uses and values identified in Schedule 30.1;*
- (i) not applicable*

and

30.1.11 *Except:*

- (i) not applicable*
- (ii) not applicable*

*To manage the allocation of water for consumptive uses from rivers that*

- (a) have no established minimum flow or allocation limit; and*
- (b) do not have regionally or nationally significant aquatic habitat value as identified in Schedule 30.1;*

*so that the cumulative abstraction between November and April inclusive, other than in relation to hydro power, from the proposed and all existing authorised takes from the river does not exceed 10 percent of the 5-year, 7-day low flow, provided that up to 33 percent of the 5-year, 7-day low flow may be allocated if the cumulative adverse effects listed in Policy 30.1.9 from the proposed take in combination with any other authorised take are avoided, remedied or mitigated.*

53. With the maintenance of a residual flow of 2 l/s I am satisfied that the proposal will not be inconsistent with this objective and these relevant policies. On occasions the low flow may be lower than that sought in Policy 30.1.11 but the evidence presented by Dr Stark shows that there have been no ongoing significant adverse effects from low flow events in the past.

## **Part 2 of the Act**

54. Section 5(2) of the Act defines sustainable management, while the remainder of Part 2 lists matters of national importance (s6), other matters (s7) and Treaty of Waitangi considerations (s8) that must be taken account of in this decision.

## **Section 6**

55. Two matters of national importance are potentially significant to the present applications.
56. The weir in the stream and the associated PVC pipeline carrying water do have some effects on the natural character of the stream environment. These effects cannot be avoided. However I consider them to be relatively minor in the context of the overall high character of the stream environment and the associated bush reserve. They do not in my view constitute “inappropriate” use and development.
57. Mr Ed Ladley suggested that Parkes Stream is a “significant habitat of natural fauna” given the presence of long finned eels, which are a native species considered to be “in decline” by the Department of Conservation. I do not agree. Just because native species such as long finned eels, which are very widely distributed, are present in a stream does not make that stream a significant habitat. If that were the case, the great majority of New Zealand rivers, streams and lakes would be “significant habitats”. There are many dozens of streams with which I am familiar that carry populations of indigenous fish, but nationally few would be regarded as significant habitats.
58. I also note that long finned eels were recorded both above and below the weir, which does not form a barrier to passage by eels, which are well known for their ability to climb wet waterfalls and rock or dam faces.

## **Section 7**

59. The rural water supply scheme is an efficient use and development of natural and physical resources. The water is all piped and metered, its use is restricted and it is to provide for essential uses – namely domestic supply and stockwater. In what is sometimes a water short area it is difficult to conceive of a more efficient supply of essential water to end users.
60. Mr Ed Ladley asserted that the scheme has some effect on amenity values on their property. While I accept this, I consider those effects no more than minor as they will occur only during very low flow events in the stream.

## **Section 8**

61. There was no evidence that granting the present application would be contrary to the provisions of the Treaty of Waitangi.

## **Section 5**

62. The purpose of the Act is to promote the sustainable management of natural and physical resources. In relation to its definition I note:
- The water supply scheme has substantial positive effects by helping the local community to provide for their social and economic well being and their health and safety via the provision of a reliable water supply.
  - The scheme sustains the potential of the water resource in Parkes Stream to meet the reasonably foreseeable needs of future generations.

- While the existing scheme does not have significant adverse effects on the life supporting capacity of Parkes Stream, that life supporting capacity can be further safeguarded by the provision of a minimum flow below the weir.
- The adverse effects of the activities for which consent is granted cannot be avoided, but can largely be mitigated.

63. Case law requires that in making a decision on this application I make a broad overall judgment as to whether the proposal promotes the sustainable management of natural and physical resources. In this case it clearly does, particularly as the positive effects of the scheme substantially outweigh its relatively minor adverse effects.

## **Term and Conditions**

### **Term**

64. The applicant sought a term until May 2031 for the consent to take and use water, and a 35 year term for the weir in the stream.

65. There is no reason not to grant the 35 year term for the weir. It is constructed on a natural waterfall, and does not prevent the passage of eels (or koaro), which are the only migratory fish species likely to inhabit the headwaters of Parkes Stream.

66. For several reasons I have decided that the consent to take and use water should be granted for a term expiring on 31 May 2016:

- Although monitoring of stream flows has commenced, it is much too short term to provide any robust information on which any decision about granting a long term consent could be made.
- This is the common expiry date for all other consents in the Wai-iti catchment, and no good reason was provided to make an exception for this take. I note also that the “renewal” of the consent at that time is a controlled activity, and so consent must be granted (acknowledging though that conditions could be substantially changed).
- My understanding is that all other community water supply takes in the Tasman District have expiry dates that are common with other consents in the same catchment or sub-catchment.
- Alternative water supplies are being considered by the Council for some users in the scheme. This may involve the scheme take eventually being reduced.
- The written approval of the Department of Conservation to granting the application was conditional on this expiry date. I have not been made aware of any change to this approval.
- Effectively the consent has been granted for 11 years given the previous consent expired in March 2005. This is not an unreasonably short duration.

### **Conditions**

67. There was not a great deal of difference between the conditions proffered by the applicant and those recommended by Mr Tyson.

68. As already noted I have decided that the applicant must provide a minimum flow of at least 2 l/s at all times below the dam, and that the Ladley condition be deleted.
69. The only other significant difference was how rationing would be controlled at times of low flows. Mr Tyson recommended a condition that is different from that on the present consent, which I found more difficult to follow, would be more difficult to enforce, and which was opposed by the consent holder. I agree with Mr Benvin that the present condition is quite satisfactory.
70. The applicant also questioned that part of a condition recommended by Mr Tyson that required there be no significant adverse effects on aquatic life or fish passage. I am satisfied that given the minimum flow provided for that will not be the case. Further, such a condition is very subjective, and not one that I believe should be placed on any consent.
71. Finally, Mr Tyson had recommended a condition requiring the applicant to provide a report to Council in 2015 that looks at options to avoid, remedy or mitigate effects on biota. I do not think this is necessary for two reasons. First, such effects are not significant, and will be mitigated in part by the provision of a minimum flow. Second, such considerations will be required as part of the Assessment of Environmental Effects with the new consent application lodged close to that time. Such a report may have been appropriate had the consent to take and use water been granted for a term until 2031, but I have decided against that.

## Decision

72. Pursuant to Section 104B of the Act, the Commissioner **GRANTS** consents subject to conditions.
73. The document identifying the consents granted and the conditions (pursuant to Section 108 of the Act) is set out as below this decision.

Dated this 2<sup>nd</sup> day of December 2009

A handwritten signature in black ink that reads "Brent Boewie". The signature is written in a cursive, slightly slanted style.

**Hearing Commissioner**

## RESOURCE CONSENT

**RESOURCE CONSENT NUMBER:** RM041343

Pursuant to Section 104B of the Resource Management Act 1991 (“the Act”), the Tasman District Council (“the Council”) hereby grants resource consent to:

**Tasman District Council**  
(hereinafter referred to as “the Consent Holder”)

### ACTIVITY AUTHORISED BY THIS CONSENT:

To dam and take water for rural water supply for a term expiring on 31 May 2016 subject to the following conditions:

### LOCATION DETAILS:

Address of property: Eighty-Eight Valley Road, Wakefield  
Certificate of title: 450878  
Valuation number: 1937064400A

Pursuant to Section 108 of the Act, this consent is issued subject to the following conditions:

### CONDITIONS

#### 1. Site, Dam, Take and Use Details

Legal Description:	Pt Sec 6 Blk IV Gordon SD
Category of Source:	Surface
River or Stream being dammed:	Parkes Stream, tributary of 88 Valley Stream
Zone	Wai-iti
Catchment:	Waimea Catchment
Maximum rates of take authorised:	5.2 litres per second 18.75 cubic metres per hour 450 cubic metres per day 3,150 cubic metres per week

#### Dam Details

Dam Height (m):	2.00
Crest length (m):	2.5
Storage (m <sup>3</sup> ):	2
River Number:	R 583
Location:	Easting: 2512271 Northing: 5969445
Meter Required:	Yes

## **Water Meter Specifications, Maintenance and Readings**

2. The Consent Holder or their agent shall, at their own expense, install, operate and maintain a water meter that complies with the Council's Water Meter Specifications as stated in the Tasman Resource Management Plan.
3. The Consent Holder shall as a minimum record their meter reading on the same day each week and, throughout every November to April inclusive, shall return their weekly meter readings to the Council's Co-ordinator, Compliance Monitoring at the end of each two week period by the dates specified each year by Council, provided that Council reserves the right to require returns on a weekly basis during periods of water rationing in the zone.

### **Advice Note:**

The Consent Holder is required to supply a complete and accurate record of their water usage.

4. The Consent Holder shall pay the reasonable costs associated with the monitoring of this consent including, if and when requested by Council, the full costs associated with water meter calibration to confirm their meter's accuracy is within the range of  $\pm 5\%$  provided that meter calibration is not more frequent than five yearly and the full cost of monitoring compliance with the conditions of this consent, including the reasonable costs associated with maintaining a water meter-usage database.

## **Rostering and Rationing of Water Usage**

5. Rostering of the taking of water under this consent is required in accordance with the requirements of (and following notification by) the Wai-iti Zone Water User Committee whenever the river flow at the Council's Livingstone Road recorder reaches 100 litres per second during the months of November to April inclusive. In addition, during the months of May to October inclusive, rostering and rationing may be required to maintain a minimum flow of 400 litres per second at the Livingstone Road recorder during these winter months.

### **Advice Note:**

Rostering and rationing is required to achieve reductions in total instantaneous extraction rates from surface waters and from groundwater. Rostered pumping times will be determined between the Wai-iti Zone Water User Committee and the Council's Environment & Planning Manager and rostering is implemented by the User Committee to achieve the agreed staged reductions.

## **Rationing Implementation**

6. For the purposes of rationing, the reduction in usage will comprise a series of 20% cuts from the maximum weekly quantity authorised:

Step 1: Allocation = 2,520 cubic metres per week

Step 2: Allocation = 2,016 cubic metres per week

Step 3: Allocation = 1,612 cubic metres per week

## **Review**

7. The Council may within three months following the anniversary of the granting of the consent each year review any or all of the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991 for all or any of the following purposes:
  - a) to deal with any unexpected adverse effect on the environment that may arise from the exercise of the consent; and/or
  - b) to require the adoption of the best practical option to remedy or reduce any unexpected adverse effects on the environment; and/or
  - c) to comply with requirements of an operative regional plan, including any allocation limit, minimum flow regime, rate of use limit, or rationing or rostering restriction; and/or
  - d) to comply with relevant national environmental standards made under Section 43 of the Resource Management Act 1991; and/or
  - e) to reduce the quantities of water authorised to be taken if the consent is not fully exercised.
8. This consent may be cancelled upon not less than three months' notice in writing by the Council to the Consent Holder, if the Wai-iti Community Water Augmentation Scheme ceases to operate but without prejudice to the right of the Consent Holder to apply for a further consent in respect of the same matter provided that the rates applied for are no greater than those authorised prior to the Scheme's operation.
9. The Consent Holder shall keep such other records as may be reasonably required by the Council and shall, if so requested, supply this information to the Council. If it is necessary to install measuring devices to enable satisfactory records to be kept, the Consent Holder shall, at his or her own expense, install, operate and maintain suitable devices.

## **Adverse Effects on Aquatic Life**

10. Any stream intake shall have a screen or screens installed with a screen mesh-size not greater than 5 millimetres and constructed so that the intake velocity at the screen's outer surface is less than 0.3 metres per second. All screens shall be maintained in good working order at all times.
11. Within three months of the grant of this consent, the Consent Holder shall install and thereafter maintain a flow bypass system which shall take and discharge to below the intake weir a residual flow of at least two litres per second. The bypass intake shall be screened and/or constructed to avoid the entrapment of fish.

The Consent Holder shall advise the Council's Co-ordinator, Compliance Monitoring when the flow bypass system is completed and functioning.



## Promotion of Efficient Water Use

12. The Consent Holder shall through the appropriate Council asset management plans, Scheme operation contracts etc, ensure that water use efficiency outcomes remain a high priority, and such plans and contracts shall include, but not be limited to, appropriate, timely and regular leak detection programmes, low flow restrictor checking, water meter accuracy checking and user education.
13. Council reserves the right to require from the Consent Holder a Scheme Management Plan identifying the location of all scheme pipelines, turnouts, discharge points, reservoirs and other infrastructure (including their location relative to Council's road reserve or other Council assets), as well as measures adopted to achieve efficient water use including leak detection programmes, repairs and maintenance and measures to achieve full compliance with these consent conditions.
14. For the avoidance of doubt the granting of this consent replaces and cancels NN000374.
15. The Consent Holder shall provide a report to Council's Co-ordinator, Compliance Monitoring by 30 June 2010 confirming the stream flow data at the intake site for the mean annual low flow (MALF), the five year and the 10 year seven day low flow.

## ADVICE NOTES

1. Access by the Council or its officers or agents to the land subject to this consent is reserved pursuant to Section 332 of the Resource Management Act 1991.
2. The Consent Holder shall pay the reasonable costs associated with the monitoring of this consent.

Dated this 2<sup>nd</sup> day of December 2009



**Hearing Commissioner**



## RESOURCE CONSENT

**RESOURCE CONSENT NUMBER:** RM061023

Pursuant to Section 104B of the Resource Management Act 1991 (“the Act”), the Tasman District Council (“the Council”) hereby grants resource consent to:

**Tasman District Council**  
(hereinafter referred to as “the Consent Holder”)

### ACTIVITY AUTHORISED BY THIS CONSENT:

To use the riverbed to the extent of the operation and maintenance of existing weir, intake and pipeline for a term expiring on 30 November 2044 subject to the following conditions:

### LOCATION DETAILS:

Address of property: Eighty-Eight Valley Road, Wakefield  
Certificate of title: 450878  
Valuation number: 1937064400A

Pursuant to Section 108 of the Act, this consent is issued subject to the following conditions:

## CONDITIONS

### 1. Riverbed Use Details

Legal Description:	Pt Sec 6 Blk IV Gordon SD
River or Stream bed:	Parkes Stream, tributary of 88 Valley Stream
Zone:	Wai-iti
Catchment:	Waimea Catchment

#### Dam Details

Dam Height (m):	2.00
Crest length (m):	2.5
Storage (m <sup>3</sup> ):	2
River Number:	R 583
Location:	Easting: 2512271 Northing: 5969445

2. The Council may within three months following the anniversary of the granting of the consent each year review any or all of the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991 for all or any of the following purposes:

- a) to deal with any unexpected adverse effect on the environment that may arise from the exercise of the consent; and/or
  - b) to require the adoption of the best practical option to remedy or reduce any unexpected adverse effects on the environment; and/or
  - c) to comply with requirements of an operative regional plan.
3. The dam structure shall be maintained in a good functional state of repair. Any damage to the dam structure shall be repaired as soon as practicable and any parts of the structure that may break free shall be removed from the river bed.

#### **ADVICE NOTES**

1. Access by the Council or its officers or agents to the land subject to this consent is reserved pursuant to Section 332 of the Resource Management Act 1991.
2. The Consent Holder shall pay the reasonable costs associated with the monitoring of this consent.
3. These resource consents only authorise the activities described above. Any matters or activities not referred to in these consents or covered by the conditions must either:
  - a. comply with all the criteria of a relevant permitted activity rule in the Proposed Tasman Resource Management Plan (PTRMP);
  - b. be allowed by the Resource Management Act; or
  - c. be authorised by a separate resource consent.

Dated this 2<sup>nd</sup> day of December 2009



**Hearing Commissioner**

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**Date Confirmed:**

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**Chair:**