ORIGINAL

Decision No A 30/94

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an appeal under section 120
BETWEEN	**D L NEWLOVE LIMITED and others**
	(Appeal RMA 484/93)
	Appellants
AND	**THE NORTHLAND REGIONAL COUNCIL**
	Respondent
AND	**J H J and I F M SCHREURS**
	Applicants

BEFORE THE PLANNING TRIBUNAL

Planning Judge DFG Sheppard (presiding)
Mr P A Catchpole
Mr J R Dart

HEARING at WHANGAREI on 18 and 19 April 1994

APPEARANCES

Mr K Chapple for the appellants
Mr R Bell for the respondent
Mr R G Whiting for the applicants

DECISION

This is an objectors' appeal against a decision granting the right to take 4,600 cubic metres per day of water from the Kaihu River for irrigation. By their appeal, the

appellants sought cancellation of the consent, but at the appeal hearing they sought instead changes to the conditions imposed by the respondent on the grant of the water permit.

The applicants own a 308 hectare farm near Mamaranui, about 20 kilometres north of Dargaville. They propose to irrigate about 115 hectares of flat land on the farm by a border dyke irrigation system. The proposal would involve 4 millimetres of irrigation per day with water pumped from the river by an Archimedean screw pump for 6.5 hours per day at a maximum pumping rate of 197 litres per second.

The applicants' property has about 3 kilometres' frontage to a stretch of the Kaihu River which has a low gradient and carries high suspended and benthic sediment loads. The ecological values of that stretch of the river are low but it is used by migrating fish.

The proposed taking is in excess of the amount expressly allowed by a rule in the transitional regional plan (formerly a general authorisation under the Water and Soil Conservation Act 1967) and a resource consent is therefore required by section 14. The application and appeal fall to be considered and decided in terms of the Resource Management Act as amended by the Resource Management Amendment Act 1993.

The appellants expressly accepted the hydrological and water quality data collected by the respondent and raised three principal issues: the adequacy of the residual flow of the Kaihu River, the efficiency of the irrigation system proposed, and the availability of alternative water sources on the applicants' farm. In addition they submitted that sufficient detail had not been provided with the application to enable submitters to assess the effects of the proposal on the environment; and that there is uncertainty about the impact on the environment of reduced flows in the river.

Concerning the residual flow, the respondent's conditions required that the consent holder allow a continuous flow of 697 litres per second to pass the downstream gauging site when the flow in the river was greater than that; and when the flow was less than that, the total flow was to pass the gauging site.

In the light of measurements of low flows over the recent summer, the Regional Council proposed amendments to that limit by which the references to flows of 697 litres per second would be replaced with references to 675 litres per second. That

flow is equivalent to 75 per cent of the revised design (1 in 5-year) drought flow in the Kaihu River of 900 litres per second. The applicant did not dispute that proposed amendment to the limit on its abstraction.

The appellants sought to replace that limit with one requiring the consent holder to allow a continuous flow of not less than one of two alternatives. The first was the seven-day annual average low flow with 50 per cent of the remaining water allocated in-stream and 50 per cent allocated for consumptive uses. The second was the annual monthly mean flow.

No expert evidence was called to substantiate the abstraction limits advanced for the appellants. We accept that on the flow patterns of the Kaihu River, the second measure (the average monthly mean flow, which we were informed would be equivalent to 4,400 litres per second) would have the effect of rendering the grant of a water permit nugatory, because the flow would not exceed that level in the dry summer months except on days of rain when irrigation would not be needed anyway.

The maximum daily quantity that would be available to the grantee would be equivalent to 6 per cent of the design drought flow at the gauging station downstream of the applicants' site and together with existing allocations would leave more than 10,000 cubic metres per day in excess of the Regional Council's new policy, and a flow of 128 litres per second in excess of that policy (which is referred to below).

The effects of the proposed abstraction on the environment of the Kaihu River was addressed in evidence by two expert witnesses: Mr M R Poynter, a consultant in marine and fresh water biology called for the applicants, and Dr J G Cooke, a consultant scientist from the National Institute of Water and Atmospheric Research Ecosystems Division, called for the respondent. The evidence of those two witnesses was in general agreement, and no contradictory evidence was given by any expert on behalf of the appellants. The evidence of those witnesses was not affected by cross-examination. In reliance on their evidence we find that the proposed abstraction, if carried out in compliance with the amended conditions, would have no significant adverse effect on the environment. No justification for the more stringent abstraction limit based on a residual flow equivalent to the seven-day annual average low flow contended for by the appellants was made out.

In support of the appellants' case that insufficient details of the proposal had been provided, their representative referred to the Tribunal's decision in *AFFCO New Zealand Limited v Northland Regional Council* (Decision A6/94). In that decision the Tribunal reminded applicants and consent authorities that sufficient particulars are to be given with an application to enable those who might wish to make submissions on it to be able to assess the effects on the environment and on their own interests of the proposed activity; and that it was the applicants' responsibility to provide the details and information necessary to enable that to be done.

Section 88(4) requires that the application include an assessment of any actual or potential effects that proposed activity may have on the environment; and section 88(6)(a) directs that the assessment is to be in such detail as corresponds with the scale and significance of the actual or potential effects that the activity may have on the environment.

The present application was accompanied by a two-page description of the proposal, and a locality map; and was followed by four pages of further particulars and a layout diagram and also a four-page environmental assessment accompanied by two further diagrams.

The *AFFCO* case concerned a proposal for a new abattoir, and its scale and the significance of potential effects on the environment called for full design of the proposal. That may be contrasted with the present proposal to abstract a relatively small quantity of water from the Kaihu River for farm irrigation. The scale and significance of the actual and potential effects of that activity on the environment are not such as to call for fully detailed design. The appellants contended that the environmental assessment had failed to provide an assessment of the environmental effects of the proposed activity. Having studied the assessment document, we do not accept that contention. No doubt it is always possible for additional investigations to be made and more detailed assessments provided. However, section 88(6)(a) contemplates that what is done should be proportionate to the potential effects. In our opinion the cost of more detailed research and assessment and design of the present proposal would have been disproportionate and unnecessary. In any event, because of the appeal, the matter now falls to be considered in the light of the evidence given at the appeal hearing which, as we have recorded, enabled us to make a finding that the proposed abstraction would not have significant adverse effect on the environment.

The other principal matters raised for the appellants may be considered together: the efficiency of the irrigation system proposed, and the availability of alternative water sources on the farm. Those matters may be relevant as bearing on the efficient use of the natural resource represented by the river water (section 7(b)), as an aspect of sustainable management as defined in section 5(2).

One witness for the appellants claimed that the proposal was not properly described as border-dyke irrigation but as wild flooding or wild water pasture irrigation, and that it would be less efficient than controlled border dyke irrigation, and considerably less efficient than sprinkler irrigation. Other witnesses for the appellants asserted that underlying the topsoil of the land proposed to be irrigated there are tight yellow subsoils and blue marine pug (implying that the full benefit of the proposed irrigation could not be achieved), and that it would be practicable to store water on the farm for irrigation so as to avoid taking river water for the purpose.

The application itself recites that the water is to be taken to irrigate pasture "by border-dyke system", and the description of the proposal given in evidence by the first-named applicant accords with that. The proposed border-dyke method (also called border-strip method) would involve discharge of water from headraces overland in strips between borders or dykes. The amount of water proposed to be taken is no more than would be permitted to be taken for sprinkler irrigation and we accept that the applicants would have an incentive to use and apply that water efficiently, and not to waste it. The benefits to the productivity of their farm of effective use of irrigation would be considerable. We accept Dr A R Taylor's opinion that the border-strip irrigation would be as efficient as sprinkler irrigation.

Although consent authorities are required by section 7(b) to have particular regard to the efficient use of natural resources, that does not necessarily require that consent authorities are to be concerned with the detailed management of farms for which water is taken for irrigation. We are satisfied that the applicants have given responsible consideration to the possibility of storing rainwater for irrigation on the farm; and that they have rejected those possibilities in favour of taking river water for irrigation for sound farm management reasons. In particular, a 35-hectare area of flat land behind an existing stopbank has highly fertile soil. To store rainwater for irrigation behind that stopbank would not be an efficient use of the fertile soil, nor an efficient use of the stopbank.

An adjoining farmer had experimented unsuccessfully with irrigation some 24 years ago. He ascribed his lack of success to the nature of the subsoil. It does not necessarily follow that the applicants' proposal would be unsuccessful; but the risk would be theirs, and there would be no significant harm to the environment if the abstraction was not continued because the irrigation was not found effective.

By section 104 (as substituted by section 54 of the Resource Management Amendment Act 1993) in considering this application for resource consent we are required to have regard to various matters. We have already recorded our consideration of the actual and potential effects on the environment of allowing the activity and our finding that if carried out in accordance with the proposed amended conditions, there would be no significant adverse effects. In particular the water quality is unlikely to be affected, there would be positive effects on pasture growth, and (by virtue of the conditions) on amenity values because of the requirement for riparian strips and treatment of cowshed effluent. The abstraction would be less than 25 per cent of the design drought flow.

A proposed regional policy statement was published last year, more than 200 submissions have been received, and its final form cannot be predicted with certainty. The statement contains a proposed general policy that as a minimum not less than 75 per cent of the one-in-five year low flow (design drought flow) and not less than 50 per cent of the flow above that limit are to be retained as residual flows. The proposed policy statement also contains a policy on irrigation to a maximum of 5 millimetres per day or 50 cubic metres per hectare per day. There are also general objectives for the protection of habitats, taonga, scenic landscapes, and high ecological values; and an objective for mitigation of adverse runoff effects of irrigation. The respondent's decision and the associated conditions have clearly been cast with those proposed policies in mind, and we find that the exercise of the water permit in accordance with the proposed conditions would conform to them.

There are no other instruments of any of the kinds listed in section 104(1) that are applicable to the case.

Having had regard to such of the matters listed in section 104(1) as are applicable, the Tribunal has a discretionary judgment, under section 105(1)(c) (as substituted by section 55(1) of the Resource Management Amendment Act 1993) to grant or refuse the consent. Although section 105(1) is not expressed to be subject to Part II, section 104(1) is expressed to be subject to that part. The implication of that is

not clear. However, we accept that the discretionary judgment should be informed by the purpose of the Act declared in section 5 (which is in Part II) which we now address. We find that the proposed taking of water would enable the applicants' farm to have increased carrying capacity and productivity while the conditions would avoid, remedy or mitigate any adverse effects on the environment. In our opinion that would support people and communities providing for their economic wellbeing, would sustain the potential of the river and the land to meet the reasonably foreseeable needs of future generations, and would safeguard the life-supporting capacity of the water and the soil. Among the elements in subsequent sections of Part II that contribute to sustainable management, we find that the proposal would serve the efficient use of natural resources (section 7(b)); that the proposed riparian strip would enhance amenity values (section 7(c)); and that the limits on abstraction would recognise the finite characteristics of the natural resource represented by the river (section 7(g)). We conclude that the proposal, if carried out in compliance with the proposed amended conditions, would serve the statutory purpose of the sustainable management of natural and physical resources.

Having regard to that finding, to the absence of conflict with any instruments listed in section 104(1), and the absence of any significant adverse effects on the environment, it is our judgment that subject to the proposed amended conditions the application deserves to be granted. The conditions should be amended as proposed by the respondent (and not contested by any party) by replacing the references in Condition 1 to flows of 697 litres per second with references to 675 litres per second, and amending the references in conditions 4 and 7 so as to refer to the next irrigation season 1994/95.

The appeal is therefore disallowed except to the extent of those amendments to the conditions.

DATED at AUCKLAND this 27th day of April 1994

DFG Sheppard
Planning Judge

(DE-0150.DOC)