

Resource Management (Waitaki Catchment) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Resource Management Act 1991 (**RMA**) to provide for an improved process to determine the use of water in the Waitaki catchment. The aim of the legislation is to enable the merits of competing water uses for the Waitaki catchment to be considered and to establish a framework for the allocation of the water that will allow for sustainable development.

The Bill provides for the Waitaki Catchment Water Allocation Board to be established to develop a water allocation framework for the Waitaki catchment. Matters covering the appointment and the conduct of the Board are set out in the Bill. The directions on procedure for the Board are to be confirmed by the Minister for the Environment in consultation with other Ministers. The water allocation framework will identify instream values, identify the quantities of water available for different types of uses and allocate water for those uses, and provide direction on any applications for resource consents. The matters to be considered by the Board, when developing the framework, are set out in the Bill. Water is to be allocated in accordance with the purpose and principles of the RMA and, if those tests are met, the Board may also have regard to the economic and social benefits of the uses of the water. The allocation framework will operate as a regional plan.

Schedule 2 in the Bill lists consent applications related to the use of water in the Waitaki catchment and notices of requirement. These are put on hold and are not able to be considered or decided until after the framework has been approved by the Board. The Govern-

General is able, by Order in Council, to add to *Schedule 2* any application for a water permit, land use consent, discharge permit for any activity, or any notice of requirement for a designation, in the Waitaki catchment.

The Bill also provides for a Panel of Commissioners to be appointed with the powers and functions, of a consent authority under the RMA. The Panel must decide which of the consent applications and notices of requirement that have been put on hold it will consider and determine, and which it considers the local authority should decide. If the Panel determines that the local authority should decide the applications, the local authority must consider and decide these in accordance with the Act and the Waitaki Catchment Water Allocation Regional Plan.

The Panel must determine the applications it is dealing with and make decisions on those in terms of the Act and the Waitaki Catchment Water Allocation Regional Plan. The Panel can determine the order in which applications will be considered. It can make a comparative assessment of applications, applying the RMA, the Waitaki Catchment Water Allocation Regional Plan, and then have regard to the national economic and social benefits and costs of the uses of the water. A decision of the Panel, on any application for a consent or notice of requirement, is to be treated as a decision of the relevant local authority or requiring authority.

The Bill clarifies that the Resource Management Amendment Act 2003 applies.

Clause by clause analysis

Clause 1 is the Title clause.

Part 1

Preliminary provisions

Clause 2 is the commencement clause. The Bill is to come into force on the day after the date on which it receives the Royal assent.

Clause 3 states the purpose of the Bill.

Clause 4 defines terms used in the Bill. Terms used but not defined in the Bill have the same meaning as in the RMA.

Part 2

Waitaki Catchment Water Allocation Board

Clause 5 establishes the Waitaki Catchment Water Allocation Board. The Board is a body corporate that continues in existence until dissolved in accordance with *clause 12*.

Clause 6 provides that the function of the Board is to develop and approve the framework. The Board is required to complete its function within 8 months after the appointment of its members.

Clause 7 gives the Board full powers for the purpose of exercising its function.

Clause 8 provides for the appointment of members to the Board and for the appointment of a chairperson and deputy chairperson.

Clause 9 provides for the Minister for the Environment to give directions on procedure to the Board.

Clause 10 authorises the Minister for the Environment to arrange for work to be done for the Board or to supply information to the Board. A copy of any work or information that relates to the framework must be made available for public inspection at or before a hearing on the framework.

Clause 11 applies the provisions in *Schedule 1* to the Board. The provisions relate to various aspects of membership.

Clause 12 provides for the Board to be dissolved by Order in Council, but the Board cannot be dissolved until it has completed its function and all appeals relating to its function have been decided.

Clause 13 makes the Board subject to the Official Information Act 1982.

Part 3

Framework for allocation of water in Waitaki catchment

Part 3 provides for the development and approval of the framework under which water in the Waitaki catchment must be allocated.

Clause 14 states that the framework has the status of a regional plan for water allocation in the Waitaki catchment.

Subpart 1—Development of framework

Clause 15 requires the Board to develop and approve a framework in accordance with this Part.

Clause 16 states how the RMA applies to the development, content, and approval of the framework. It applies as if the framework were a regional plan unless the Bill specifies otherwise. Part V of the RMA, which relates to standards, policy statements, and plans under the RMA, does not apply, except for specified provisions which are saved.

Clause 17 sets out the mandatory relevant matters for the Board's consideration in developing the framework.

Clause 18 sets out the matters that must be included in the framework, including the instream values that the Board identifies. The framework may provide differently for different parts of the catchment, for different classes of effect that may arise from an activity, and for different periods of time or different seasons of the year.

Clause 19 provides for other matters that may be included in the framework, including methods to avoid, remedy, or mitigate adverse effects from the use of water and other matters that may be included and in a regional plan.

Under *clause 20*, the Board is required, after applying the purpose and principles of Part II of the RMA, to allocate the available water identified in the framework among the categories of competing activities it identifies. Those allocations must be included as part of the framework.

Clause 21 requires the Board to undertake an evaluation of the policies, rules, or other methods it proposes for the framework in order to determine whether they are appropriate for achieving the purpose of the Bill. This evaluation is in substitution for the section 32 evaluation under the RMA.

Clause 22 provides that the Board may change the Otago Regional Water Plan as it relates to the Waitaki Catchment to ensure that the Plan gives effect to the framework.

Subpart 2—Procedures

Clause 23 states that, with certain exceptions, the First Schedule of the RMA does not apply to the development and approval of the framework.

Clause 24 confers power on the Board to obtain information in order to perform its functions.

Clause 25 provides that any person may make a submission to the Board on the framework. A submission must be in writing but no other form is prescribed.

Clause 26 requires the Board to hold a public hearing into submissions and keep a written record of the hearing. The Board may allow cross-examination of witnesses.

Clause 27 provides for the Board and the Panel to hear evidence together.

Clause 28 states that the framework has no effect until it has been approved by the Board and has become operative.

Clause 29 provides that the framework must be approved at a meeting of the Board attended by all members, with provision that if a unanimous decision is not reached, each member of the Board must vote individually on whether to approve the framework.

Clause 30 provides that unless and to the extent that there is an outstanding appeal on a point of law, the framework becomes operative on the day that is 15 days after the approval of the framework by the Board under *clause 29*. All the provisions of the RMA that apply to an approved regional plan apply to the framework from the day on which it becomes operative, unless that is modified under *clause 31*.

Clause 31 provides that the Canterbury Regional Council must not change the conditions of a permit by way of review under section 128(1)(b) of the RMA while the framework or any part of it is operative, unless the Council is satisfied that the activity will continue to be viable under the framework. This provision also applies to the Otago Regional Council in relation to a permit under the Otago Regional Water Plan for the Waitaki catchment.

Subpart 3—Right of appeal

For a person who made a submission, or for a local authority that is located in whole or in part in the Waitaki catchment, whether or not it made a submission on the framework, *clause 32* provides a right of appeal to the High Court on a question of law only. The High Court Rules apply to an appeal, except to the extent that they are inconsistent with the rules applying to appeals to the High Court under the principal Act.

Part 4

Panel of Commissioners

Clause 33 defines the term **application** for the purposes of this Part as an application for a resource consent or a notice of requirement for a designation specified in *Schedule 2*. Further applications may be added to the Schedule by Order in Council.

Clause 34 precludes a local authority from considering and making a decision on an application until certain matters have been done and the Panel has notified the authority that it can consider and decide the application.

Clause 35 cancels any Ministerial call in that an application is subject to.

Clause 36 requires the Minister for the Environment to appoint a Panel of Commissioners. The number of members and the terms on which they are appointed is to be set by the Minister.

Clause 37 provides for the Minister for the Environment to give directions on procedure to the Panel.

Clause 38 gives the Panel the status, powers, and functions of a consent authority.

Clause 39 requires the Panel to decide which of the applications specified in *Schedule 2* are to be decided by the Panel and which are to be decided by the relevant local authority.

Clauses 40 and 41 provide for the powers of the Panel.

Clause 42 provides for a comparative consideration of applications by first applying the purpose and principles of Part II of the RMA, and then having regard to the economic and social benefits and costs of each use of the water from a national perspective.

Clause 43 requires the Panel to decide applications in accordance with the Waitaki Catchment Water Allocation Regional Plan. This clause overrides a comparative consideration under *clause 42*.

Clause 44 gives a decision of the Panel on an application the status of a decision of the local authority concerned.

Clause 45 provides that section 171 of the RMA does not apply to notices of requirement considered by the Panel. The Panel's recommendation is the decision.

Clause 46 requires the applicant for a resource consent or the requiring authority who issued a notice of requirement to pay to the Crown

the costs, including the Panel's costs associated with the Panel's consideration of and decision on the application or notice.

Clause 47 provides that the amendments made to the RMA by the Resource Management Amendment Act 2003 apply in relation to an application to which *Part 4* applies.

Clause 48 provides for a right of appeal from a decision of the Panel to the Environment Court.

Clause 49 applies Part XI of the RMA to appeals to the Environment Court and requires appeals to be heard as if they had been granted a priority fixture and by way of rehearing.

Clause 50 specifies requirements relating to documentation for appeals from the Panel to the Environment Court.

Clause 51 requires a judicial conference within 10 working days after the Registrar of the Environment Court receives the appeal documents.

Clause 52 authorises an Environment Judge sitting alone to strike out proceedings if a party fails to comply with a direction given at the judicial conference held under *clause 51*.

Clause 53 requires the Environment Court to make its decision under this Part in accordance with the Waitaki Catchment Water Allocation Regional Plan.

Clause 54 provides for appeals from decisions of the Panel to the High Court.

Clause 55 makes the Panel subject to the Official Information Act 1982.

Schedule 1 contains further provisions applying in relation to the Board.

Schedule 2 lists the resource consent applications and notices of requirement for designations that *Part 4* applies to.

Regulatory impact and compliance cost statement

Background

The Waitaki catchment (predominately in the Canterbury region) consists of a number of lakes and tributaries and is important for its renewable energy resource, irrigation potential, and natural and fishery values. A number of features in the Waitaki catchment are

important to Ngāi Tahu and are acknowledged in the Ngāi Tahu Claims Settlement Act 1998.

Statement of the problem and need for action

There are over 40 RMA resource consent applications for use of water from the Waitaki catchment being processed by councils. The Canterbury Regional Council is the lead agency. Otago Regional Council and Waitaki, Waimate, McKenzie and Timaru District Councils are also involved.

The applications include Meridian Energy's Project Aqua (seeking diversion of 340 m³/second), and large irrigation proposals - Aoraki Water Trust (seeking extraction of 15 m³/s from the top of the catchment) and Irrigation North Otago (25 m³/s from the bottom of the catchment). Another 37 other applications seek a total 4.6 m³/s, primarily for irrigation. Proposals that have not reached the stage of having applications lodged include: a group intending to seek 25 m³/s water from Lake Pukaki for irrigation and another proposal of 27.7 m³/s for irrigation in association with Project Aqua.

The resource consent processes under the RMA do not allow for the applications to be considered together, or for strategic allocations to be made between competing applications. Applications are considered on a first-come first-served basis.

The lack of a decision-making framework for prioritising water uses compounds the problem: Environment Canterbury does not have a regional water plan, but such plans are not mandatory under the RMA.

If the existing consent processes had continued without government intervention, decisions on allocation of water use would have to be made in the order in which the applications were notified. The assessment of the applications would be based on their individual environmental effects. In the absence of any regional plan, there would have been no guarantee that the national, regional, or local benefits of using the water would be optimised. Although the economic value for the different uses has not been fully quantified, each has significant economic effects. The scale of some of the proposed developments is reasonably significant. For example, Meridian Energy's preliminary assessment suggests potential net benefits of Project Aqua to the economy of around \$600 m. Irrigation also has the potential to be of significant economic benefit to the region: work by the Ministry of Agriculture and Forestry in 2001 suggested

irrigation produced on average \$2,000/ha/annum net return above the best dryland landuse at the farmgate.

In addition, parts of the RMA decision-making process can take significant time. Appeals on consent application under the existing RMA process of a de novo hearing in the Environment Court are likely to take 6 to 10 months to resolve, resulting in high holding costs for some applicants. A recent survey of local authorities showed that approximately 2% of all consents are appealed. Research on 8, large, complicated consent applications showed it takes approximately 16 months for the resolution of appeals in the Environment Court (although this time has recently begun to be reduced).

Statement of the public policy objective

The public policy objective is to create a decision-making process that results in equitable, efficient, and transparent decisions on competing uses of water in the Waitaki catchment for both existing and future uses, while delivering a decision consistent with the RMA principle of promoting sustainable management. The process also needs to be expeditious while retaining effective opportunities for public participation.

Statement of options for achieving the desired objectives

Option A

Status quo

Under the RMA, applicants apply to the relevant councils for consent to use or take water and any associated land uses that require consent.

The council makes a decision on each application in turn (first in, first considered) and assesses acceptable environment effects and effects on existing water users.

The decision can be appealed to the Environment Court, where the matter would be considered afresh with all of the evidence as if for the first time.

In the Waitaki situation there is no planning framework that provides priorities for water use, nor can the current process address the most efficient or beneficial use of water. Accordingly, the status quo option does not meet the stated public policy objective.

Option B

Give councils involved ability to consider comparative merits of different water uses

This option required an amendment to the RMA to allow the councils to consider together and compare the competing water use applications together.

Characteristics of this option are—

- legislation would put a short-term stop on the known significant applications (including Project Aqua and two known irrigation applications) to bring them all to the same stage in the consent process. These would then be considered together by the councils:
- the other 37 applications (and any others) would maintain their place in the queue and be heard under normal RMA processes:
- decision making would occur at the local level, using independent decision makers rather than councillors. There would be one hearing after which the councils would make decisions on the significant consents:
- normal rights of appeal to the Environment Court would apply.

Councils do not support this option and there were difficulties in bringing together the responsibilities of the six councils involved. The process would not have given certainty to instream users (eg, fishers, recreational users) nor to future applications for water use. In addition, this option does not result in a policy framework that will guide future decisions. The potential for delays at the Environment Court remained. This option does not meet the public policy objective and it was rejected.

Option C

Develop a water allocation framework that councils could apply to existing and future consent applications

This option requires an amendment to the RMA. Stage 1 would involve setting up a statutory body to develop and confirm a water allocation framework for Waitaki water. The framework would then provide an appropriate sharing of water between instream values and essential uses (public water supply, stock drinking, etc), irrigation

and hydro-electricity. Under stage 2, councils would hear all resource consent applications.

Stage 1: development of a water allocation framework

This stage involves—

- a short-term stop (by legislation) on all but minor current and future applications while the allocation framework is developed:
- a statutory body being set up to hear matters related to water allocation and determine the allocation framework, in consultation with applicants and interested parties:
- councils being involved, including use of council information and officers:
- the Government funding the statutory body, which could take a year to reach conclusions, and also helping fund participation:
- the allocation framework being given statutory weight (for example equivalent to a regional plan) so that it could guide decisions on resource consents:
- appeals on the allocation framework being the same as those that apply in the case of a regional plan process, or being more limited.

Stage 2: councils to hear consent applications

This stage involves—

- councils deciding applications consistently with the allocation framework:
- normal rights of appeal to the Environment Court applying to the decisions.

The councils favoured this option. It would address uncertainty with allocations and provide a forum for discussing the competing uses: irrigation, hydro, and instream. It would also confirm councils as the primary decision-makers and have minimal effect on RMA processes. But, there would be delays as a result of the unchanged appeal processes (for consent applications) to the Environment Court. There is no provision for reducing time delays in the Environment Court. So, for individual consent applications, the time to

decision would be extended by the time taken to complete stage 1 – potentially a year.

This option was rejected because of unavoidable time delays, and associated costs for applicants and interested parties.

Option D

A statutory body to develop an allocation framework and then a Panel of Commissioners to make resource consent decisions on the water take and use consents for the significant applications (preferred option and option provided for by this Bill)

This Bill amends the RMA. It provides for the features of stage 1 of option C with appeals on the allocation framework being limited to points of law. Stage 2, however, has a Panel of Commissioners deciding on the significant competing applications, with the Environment Court being given specific powers to limit evidence, so reducing time spent on appeals.

*Stage 2: Panel of Commissioners decides on significant applications
14 November 2003*

Features of this stage are—

- the Panel of Commissioners would make decisions on the significant applications:
- parties could apply for financial assistance to aid involvement (outside the legislation):
- costs to the Government would be recovered from the applicants, but the Crown would have the ability to waive fees:
- councils would be involved, including use of council information and officers:
- the Environment Court could consider new circumstances or changes in the law. It may also admit further evidence, though it does not hear all the witnesses again.

Statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options

Government

The set up and ongoing costs of the statutory body (the **Board**) set up by the Bill are estimated to be in the order of \$2 m over two years (including the cost of providing for adequate participation of third parties).

The Bill could lead to delays in decisions on applications currently being processed and so affect the confidence that investors and existing water users have in RMA processes. But, in this instance the Government is being seen to be acting decisively in response to an existing problem and this should assist confidence in New Zealand and its decision-making processes. There are benefits in having an expeditious appeal process and in bringing forward decisions on matters of national interest. This process will optimise the use of water over time. Using comparative assessment of applications provides more efficient outcomes in relation to using a scarce resource.

Local government

The local councils will vary in their involvement with the consent applications affected by this Bill (as infrastructure owners, applicants, or as advocates for community well-being). Hence, their costs of involvement will vary. Councils have different capacities to undertake resource investigations to provide information for the decision-making processes. The Bill could reduce the difficulties small district councils would encounter, dealing with extensive community interest and large numbers of submissions in deciding the significant applications. Long term, having a policy framework in place for water management will be beneficial. The cost of producing the framework will be borne by the Crown, so local councils will not have the costs associated with their regulatory functions under the RMA. However, they will have costs as submitters.

Applications to use water

Significant applications

The time taken to make a decision on the significant applications is potentially no longer than under the existing process. Environment Canterbury has estimated that it would take 15 to 17 months for it to process the Project Aqua consents. The development of the allocation framework is an additional process that will take time, but this

will be offset by processes to reduce delays at the Environment Court, following decisions by the Panel of Commissioners.

All applications

Costs of delay are likely to be a concern to applicants. However, the development of an allocation framework will provide more long-term certainty. Although existing consents are able to be considered by the Board, the Bill provides a specific protection that will ensure that any review of conditions as a result of the framework cannot undermine the viability of activities allowed by permits granted under the principal Act.

Some applications may need to be notified again, following approval of the framework. This represents an added cost. Costs can be recovered by the Crown, and the Bill also provides for the hearing of evidence by the Board and Panel together to reduce costs.

A process that takes a strategic approach and considers cumulative effects of water use may lead to a positive net benefit for applicants such as reducing the present cost of ongoing uncertainty about water allocation.

Community interests, eg local business, residents, and users of the river and the economy

There are benefits to the community of having greater involvement and participation in decisions on water use. A process that brings together all the catchment issues is beneficial because it takes a strategic rather than a piecemeal approach and should result in more efficient use of water.

A process that is viewed as fair and not protracted will also be a positive outcome. This proposal will allow for discussion of both local and regional development and discussion of regional benefit as a component of national benefit. There will be costs to the community in taking up opportunities to be involved, for example, making submissions.

Under the Bill the process of decision making could be more equitable and the outcome could better recognise all available information and future options for water use. This would better meet future community needs (locally, regionally, and nationally).

An appeal process on consents which will give more emphasis to the primary decision has benefit in that time spent involved in costly

Environment Court processes is reduced. Also, Court decisions will be made earlier, giving more certainty to those with an interest in the outcomes of the cases (success or otherwise).

Statement of the consultative programme undertaken

The Ministry for the Environment has consulted with officials from the Ministry of Economic Development, Ministry of Justice, Ministry of Agriculture and Forestry, Department of Conservation, Department of Internal Affairs, Te Puni Kokiri, Land Information New Zealand, the Treasury and the Department of the Prime Minister and Cabinet. There is agreement over the matters set out in this Bill.

Discussion has occurred with chief executives, mayors, chairs, and officers of the 6 local authorities, officers at Local Government New Zealand, Te Rūnanga o Ngāi Tahu, New Zealand Fish and Game and Federated Farmers. Comment has also been sought from applicants (including Meridian Energy, Aoraki Water Trust and Irrigation North Otago) and community groups (including Kurow Action Liaison Committee, Waitaki First and North Bank Land Owners Group).

The councils are supportive of a process that provides the allocation framework for the Waitaki catchment. They would prefer to make the resource consent decisions, although the smaller district councils are concerned about their capacity to deal with the scale of the processes associated with the Project Aqua applications. They seek a mechanism developed in partnership with them. They will be involved in the development of the water allocation framework and in the appointment of the Panel of Commissioners.

The applicants for water generally see government intervention as an opportunity to take a strategic view of the catchment. If the Bill will assist them to compete with other applications, that is also attractive. There are, however, applicants, particularly Meridian Energy Limited, that are very concerned about the potential for time delays. Applicants at the “front of the queue” are also wary about the implications of the intervention. The effect of any government intervention on existing rights (including for water take and use) is of concern. This will require clarification through a communications strategy. The Bill also gives added protection to existing resource consents when conditions are reviewed as a result of the framework.

Consultation on appeal matters in the Bill showed general support for limiting rights of appeal on the allocation framework, because of

the need for an expeditious process. It is recognised that some parties may feel aggrieved if their rights are being curtailed.

Both applicants and community representatives emphasised that they would need assistance to effectively participate in a new process. It is proposed that the government provide some funding to help participation to accompany this Bill.

Te Rūnanga o Ngāi Tahu seeks recognition of the importance of the catchment and would seek representation on the statutory body. They would be consulted on membership.

Business compliance cost statement

For the significant applications there could be higher costs because of needing to provide additional information on the comparative merits of the different applications. Uncertainty, in the interim, about the implications of the process to be established by the Bill can lead to costs to applicants and expenses in regard to legal advice etc. But, increased certainty for water allocation in the future will reduce compliance costs.

The other businesses affected are those that are opposing one or more of the applications (for example, businesses within Kurow are concerned about the impact of large scale construction work on their businesses). For these organisations the Bill will potentially decrease costs because of concentrating discussion in one forum. Being involved in development of the framework may reduce the need to be involved in multiple consent hearings.

The number of applications that were being processed by councils was around 40. The largest organisation being Meridian Energy Limited (with around 300 individual consents). At the other end of the scale are a large number of farm operations seeking water rights for irrigation and other uses.

It is not possible to quantify the impact of compliance costs on businesses. There are too many variables in relation to how business will be affected by the proposed legislation.

Business compliance costs can be reduced through involving affected parties (including applicants) in the design of the procedures for the Board. This might include practicalities of when and where hearings are held. The Ministry for the Environment will work with local councils to make businesses aware of the process, using press

releases, distributing fact sheets, providing information to existing council “help desks” and using council and government web sites.

Hon Marian Hobbs

Resource Management (Waitaki Catchment) Amendment Bill

Government Bill

Contents

1	Title	17	Other matters relevant to Board's consideration
	Part 1		
	Preliminary provisions		<i>Contents of framework</i>
2	Commencement	18	Matters that must be included in framework
3	Purpose	19	Matters that may be included in framework
4	Interpretation		<i>Certain allocations by Board</i>
	Part 2		
	Waitaki Catchment Water Allocation Board	20	Allocations of water by Board
5	Establishment of Board		<i>Evaluation</i>
6	Function of Board	21	Evaluation of policies, rules, or other methods
7	Powers of Board		<i>Otago Regional Water Plan</i>
8	Membership of Board	22	Otago Regional Water Plan must give effect to framework
9	Minister may give directions on procedure		Subpart 2—Procedures
10	Minister may arrange for work to be done for, or supply information to, Board	23	Procedures for development and approval of framework
11	Further provisions applying to Board	24	Power to obtain information
12	Dissolution of Board	25	Submissions
	<i>Amendment to Official Information Act 1982</i>	26	Board must hear submissions
13	Official Information Act 1982 amended	27	Evidence may be heard by Board and Panel together
	Part 3	28	Effect of framework
	Framework for allocation of water in Waitaki catchment		<i>Approval of framework</i>
14	Status of framework	29	Approval of framework by Board
	Subpart 1—Development of framework		<i>When framework becomes operative</i>
15	Development of framework by Board	30	Operative date
	<i>Matters relevant to the framework</i>	31	Other instruments affected by framework
16	Application of principal Act to development, contents, and approval of framework		Subpart 3—Right of appeal
		32	Appeal to High Court on question of law

	Part 4		
	Panel of Commissioners		
33	Interpretation	46	Costs of application
	<i>Decisions on applications to be made after framework developed and approved</i>	47	Resource Management Amendment Act 2003 applies to applications and notices
34	Consideration and decision on applications deferred		<i>Appeals from Panel</i>
35	Ministerial call in cancelled	48	Right to appeal from decisions of Panel
	<i>Panel of Commissioners</i>	49	Appeals from decision of Panel
36	Minister to appoint Panel of Commissioners	50	Documents to be lodged by Panel with Registrar
37	Minister must give directions on procedure	51	Conference powers
38	Panel has powers and functions of consent authority	52	Powers for Courts in respect of appeals from decision of Panel
	<i>Hearing and decision on applications</i>	53	Regional plan for water allocation
39	Panel to determine who is to decide each application	54	Appeal on question of law from decision of Environment Court
40	Powers of Panel in relation to hearing applications		<i>Amendment to Official Information Act 1982</i>
41	Additional powers of the Panel	55	Official Information Act 1982 amended
42	Comparative consideration of applications		
43	Applications must be decided in accordance with Waitaki Catchment Water Allocation Regional Plan		Schedule 1
44	Decision of Panel to be treated as decision of local authority or requiring authority		Further provisions applying in relation to Board
45	Notices of requirement		Schedule 2
			Resource consent applications and notices of requirement for designations to which Part 4 applies

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Resource Management (Waitaki Catchment) Amendment Act **2003**.
- (2) In this Act, the Resource Management Act 1991¹ is called “the principal Act”. 5

¹ 1991 No 69

Part 1 Preliminary provisions

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is to provide for the strategic allocation of water in the Waitaki catchment and, to this end,—

- (a) to establish the Waitaki Catchment Water Allocation Board; and 5
- (b) to require the Board to develop and approve a water allocation framework which is to have effect as if it were a regional plan; and
- (c) to establish a Panel of Commissioners; and
- (d) to confer on the Panel— 10
 - (i) the function of determining which of certain applications for resource consents and notices of requirement relating to the Waitaki catchment will be decided by the Panel and which will be decided by the relevant local authority; and 15
 - (ii) for the purpose of deciding applications under this Act, the powers and functions of a consent authority; and
- (e) to provide a right of appeal from decisions of the Panel.

4 Interpretation 20

(1) In this Act, unless the context otherwise requires,—

Board means the Waitaki Catchment Water Allocation Board established by **section 5**

framework means the water allocation framework developed by the Board 25

instream values means qualities important for sustaining intrinsic values and amenity values

Panel means the Panel of Commissioners appointed under **section 36**

Waitaki catchment— 30

- (a) means the area of land bounded by watersheds draining into the Waitaki river; and
- (b) includes aquifers within that area of land

Waitaki Catchment Water Allocation Regional Plan means the framework as approved by the Board 35

Waitaki river means the river known by that name the confluence of which with the sea is shown on grid references NZMS 260-J41 (2002 version) J41:2364-5584.

- (2) Terms and expressions used but not defined in this Act have the same meaning as in the principal Act.

Part 2

Waitaki Catchment Water Allocation Board

5 Establishment of Board

5

- (1) This section establishes the Waitaki Catchment Water Allocation Board.
- (2) The Board is a body corporate.
- (3) The Board continues in existence until dissolved in accordance with **section 12**.

10

6 Function of Board

- (1) The function of the Board is to develop and approve the framework.
- (2) The Board must complete its function within 8 months after—
- (a) the day on which all the members of the Board are appointed; or
- (b) if all the members of the Board are not appointed on the same day, the day by which 2 members are appointed.

15

7 Powers of Board

- (1) For the purpose of carrying out its function, the Board has full rights and powers.
- (2) **Subsection (1)** applies subject to this Act.

20

8 Membership of Board

- (1) The Board comprises not fewer than 2 and not more than 5 members appointed by the Minister.
- (2) The chairperson of the Board is the member appointed by the Minister to be the chairperson.
- (3) The deputy chairperson of the Board is the member appointed by the Minister to be the deputy chairperson.
- (4) The members of the Board hold office at the pleasure of the Minister.
- (5) A member of the Board may resign by notice in writing to the Minister.

25

30

9 Minister may give directions on procedure

- (1) The Minister may, after consulting any other Minister that he or she considers appropriate, give directions on procedure to the Board.
- (2) Without limiting **subsection (1)**, the directions on procedure may—
- (a) set times for any matter or alter the time fixed for any matter; and
 - (b) set places for the hearing of any matter; and
 - (c) fix a quorum for any meeting except the meeting of the Board to approve the framework; and
 - (d) set requirements in relation to voting for deciding any matter except the decision to approve the framework; and
 - (e) specify any person who must be consulted by the Board when preparing the proposed framework; and
 - (f) set additional requirements for notifying any matter; and
 - (g) set any other matters that the Minister thinks fit.
- (3) The directions on procedure given under—
- (a) **subsection (2)(a)** may modify or override the principal Act;
 - (b) **subsection (2)(e) and (f)** are additional to requirements in the principal Act.
- (4) The directions on procedure must, as soon as practicable after being given, be published in the *Gazette*.

10 Minister may arrange for work to be done for, or supply information to, Board

- (1) The Minister may, to assist the Board in carrying out its function,—
- (a) arrange for work to be done for the Board;
 - (b) supply any information to the Board.
- (2) The Board must, in relation to any work arranged or information supplied under **subsection (1)** that relates to the framework, make a copy of the work or information available for public inspection at or before the hearing on the framework.

- 11 Further provisions applying to Board**
The provisions set out in **Schedule 1** apply in relation to the Board.
- 12 Dissolution of Board**
- (1) The Board is dissolved on such date as may be specified by the Governor-General by Order in Council. 5
- (2) An Order in Council may not be made under **subsection (1)** unless the Board has completed its function and all appeals relating to the function have been decided.
- Amendment to Official Information Act 1982* 10
- 13 Official Information Act 1982 amended**
The Official Information Act 1982 is amended by inserting in the First Schedule, in its appropriate alphabetical order, the following item:
- Waitaki Catchment Water Allocation Board. 15

Part 3 Framework for allocation of water in Waitaki catchment

- 14 Status of framework**
- (1) The framework developed and approved under this Part is a regional plan for water allocation in the Waitaki catchment. 20
- (2) The framework, as soon as it is operative in accordance with **section 30(1)**, must be treated as if it is also approved by the Canterbury Regional Council under the principal Act.
- (3) While the framework is operative, any other plan for the Canterbury region that relates to the use or allocation of water does not apply in the Waitaki catchment. 25

Subpart 1—Development of framework

- 15 Development of framework by Board**
The Board must develop and approve a framework in accordance with this Part. 30

Matters relevant to the framework

- 16 Application of principal Act to development, contents, and approval of framework**
- (1) The principal Act, including the provisions of Part II, applies, with the necessary modifications, to the development, contents, and approval of the framework as if it were a regional plan, except as expressly provided otherwise by this Act. 5
- (2) Except as provided in **subsection (3)**, the provisions of Part V of the principal Act do not apply to the development of the framework under this Act. 10
- (3) Sections 63(1), 66(2A), 67(1) and (2)(a), 68(1), (2), (5), and (7), 69, 70, 77A, 77B, and 77D apply, with the necessary modifications, as if the Board were a regional council.
- 17 Other matters relevant to Board’s consideration**
- (1) In developing the framework, the Board must consider, in relation to the Waitaki catchment,— 15
- (a) the hydrology of the Waitaki river, its lakes, tributaries, and canals and the associated wetlands and aquifers; and
- (b) the qualities of the environment that could be affected by instream uses, and by the taking, use, damming, and diversion of water in accordance with section 14(3)(a), (b), and (e) of the principal Act; and 20
- (c) the present and likely future taking or use of water in accordance with section 14(3)(b) and (e) of the principal Act; and 25
- (d) the effect of and provision for discharges into water; and
- (e) other activities authorised by resource consents; and
- (f) the present and likely future categories of activities for which resource consents have been or may be granted under section 14(3)(a) of the principal Act for the taking, use, damming, or diversion of water; and 30
- (g) the methods available to allocate water for instream values and for the matters set out in **paragraphs (c) and (f)**; and 35
- (h) the effects of activities that would be authorised by resource consents if any applications listed in **Schedule 2** were granted; and

- (i) the methods available to avoid, remedy, or mitigate the adverse effects of the taking, use, damming, or diversion of water; and
 - (j) management plans and strategies prepared under other Acts, to the extent that they are consistent with this Act; and 5
 - (k) whether the framework should provide differently for—
 - (i) different parts of the catchment:
 - (ii) different classes of effects that may arise from an activity: 10
 - (iii) different periods of time or different seasons of the year.
- (2) In addition, in developing the framework the Board may consider any other information that it considers relevant, including the submissions made by any person in relation to an application listed in **Schedule 2**. 15

Contents of framework

- 18 Matters that must be included in framework**
- (1) In addition to the matters required to be included in a regional plan under section 67(1) of the principal Act, the framework must— 20
- (a) state the present and likely future taking or use of water from the Waitaki catchment in accordance with section 14(3)(b) and (e) of the principal Act; and 25
 - (b) provide for water that is taken or used, or may be taken or used, in accordance with section 14(3)(b) and (e) of the principal Act; and
 - (c) state the instream values identified by the Board for the Waitaki river, its tributaries, and lakes, and the associated wetlands; and 30
 - (d) provide for water to sustain the important instream values referred to in **paragraph (c)**; and
 - (e) state the present and likely future categories of activities competing for resource consents under section 14(3)(a) of the principal Act in relation to the Waitaki catchment; and 35
 - (f) after providing for the water taken or used in accordance with **paragraph (b)** and after providing for water in

accordance with **paragraph (d)**, state the amount of water from the Waitaki catchment available for allocation in accordance with section 14(3)(a) of the principal Act.

- (2) The framework must also—
- (a) provide for the allocations required by **section 20**; and 5
 - (b) set priorities for the matters relevant to the decisions on applications listed in **Schedule 2** and any other applications for resource consents; and
 - (c) provide for any other matter that the Board considers relevant and reasonably necessary to enable it to fulfil its functions. 10
- (3) When making provision for the matters required by subsections (1) and (2), the framework—
- (a) must include all the matters required under section 67(1) of the principal Act; and 15
 - (b) must provide rules and policies to sustain the important instream values referred to in **subsection (1)(c)**, including rules that set—
 - (i) maximum or minimum levels or flows, or a range of levels or flows; or 20
 - (ii) the rate of change of levels or flows; and
 - (c) may provide—
 - (i) for the transfer of water permits in accordance with section 136(2)(b) of the principal Act: 25
 - (ii) differently for—
 - (A) different parts of the catchment;
 - (B) different classes of effects that may arise from an activity;
 - (C) different periods of time or different seasons of the year. 30

19 Matters that may be included in framework

The framework may include—

- (a) methods to avoid, remedy, or mitigate any adverse effects arising from the use of water:
- (b) provisions to address matters such as the adverse effects on water quality or habitat arising from the use of water: 35
- (c) provisions to ensure that, after reasonable mixing, the discharge of contaminants is not likely to give rise to any adverse effect in addition to the effects identified in

section 70 of the principal Act, in the receiving waters within the Waitaki catchment:

- (d) any other matter that may be included in a regional plan.

Certain allocations by Board

5

20 Allocations of water by Board

- (1) The Board must allocate the available water identified under **section 18(1)(f)** among the categories of competing activities identified under **section 18(1)(e)**.
- (2) The allocations made by the Board under **subsection (1)** must be included in the framework. 10
- (3) In making allocations of available water under **subsection (1)**, the Board must—
- (a) first apply the purpose and principles of Part II of the principal Act; and 15
- (b) then have regard to the social and economic benefits and costs of each category of competing activity referred to in **subsection (1)** from a national perspective; and
- (c) then take into account the discharges into water, and the taking, use, damming, and diversion of water authorised by resource consents. 20
- (4) In this section, **national perspective** includes the sum of the relevant regional and local social and economic benefits and costs. 25

Evaluation

21 Evaluation of policies, rules, or other methods

- (1) During the development of the framework, the Board must examine whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods included in the proposed framework are appropriate for achieving the purpose of this Act. 30
- (2) For the purposes of the examination required by **subsection (1)**, an evaluation must take into account—
- (a) the benefits and costs of the policies, rules, or other methods proposed; and 35

- (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.
- (3) Section 32 of the principal Act does not apply to the examination required under this section. 5

Otago Regional Water Plan

22 Otago Regional Water Plan must give effect to framework

- (1) The Board may change the Otago Regional Water Plan as it relates to the Waitaki catchment as necessary to ensure that the Otago Regional Water Plan gives effect to the framework. 10
- (2) A change made to the Otago Regional Water Plan under this section must be—
 - (a) consistent with the matters set out in **sections 18 to 21**; and 15
 - (b) included in the framework.

Subpart 2—Procedures

23 Procedures for development and approval of framework

- (1) The First Schedule of the principal Act does not apply to the development and approval of the framework. 20
- (2) However, clauses 3(1) and (2), 5(1), (1C), (2), (3), (4), and (5), 10(2) and (3), 16(2), and 16A to 17 of the First Schedule of the principal Act do apply to the development of the framework.

24 Power to obtain information 25

The Board may, for the purpose of performing its functions under this Act,—

- (a) require reports on any matter relevant to the development of the framework to be provided to it; and
- (b) require information to be provided to it in relation to an existing permit relating to the Waitaki catchment or an application listed in **Schedule 2** by—
 - (i) the holder of a water permit or associated resource consent: 30
 - (ii) an applicant for a water permit or associated resource consent: 35

- (iii) a requiring authority that has issued a notice of requirement for a designation; and
- (c) require information or assistance to be given to it on any matter relevant to the framework by—
 - (i) the Canterbury Regional Council: 5
 - (ii) the Otago Regional Council:
 - (iii) any territorial authority within the Canterbury or Otago regions.

- 25 Submissions**
- (1) Any person may make a submission to the Board on the proposed framework after its public notification under clause 5 of the First Schedule of the principal Act. 10
- (2) A submission made under **subsection (1)** must be in writing, but may otherwise be in any form considered appropriate by the Board. 15

- 26 Board must hear submissions**
- (1) The Board must hold a hearing into submissions on the proposed framework.
- (2) The hearing must be held in public, except to the extent that there is evidence or information to which section 42(1) of the principal Act applies. 20
- (3) In conducting the hearing, the Board—
 - (a) may allow cross-examination of witnesses; and
 - (b) must keep a written record of the hearing.

- 27 Evidence may be heard by Board and Panel together** 25
- (1) This section applies if a person that makes a submission under **section 25**—
 - (a) intends to give evidence to the Board on the framework; and
 - (b) is likely to give the same evidence to the Panel in support of, or in opposition to— 30
 - (i) an application for a water permit or associated resource consent in respect of the Waitaki catchment:
 - (ii) a notice of requirement in relation to the Waitaki catchment. 35

- (2) An applicant or requiring authority to which **subsection (1)** applies may notify the Board that an application or notice is likely to be heard by the Panel and that the same evidence is likely to be heard by both the Board and the Panel.
- (3) If the applicant or requiring authority consents to the evidence being heard jointly by the Board and the Panel, and the Board and the Panel agree, they may jointly hear the evidence. 5
- (4) At the hearing of the application or notice, the Panel may decline to rehear evidence given in a hearing conducted in accordance with **subsection (3)**, but may ask further questions or allow further cross-examination of the witnesses. 10

28 Effect of framework

The framework is of no effect until—

- (a) it has been approved by the Board under **section 29**; and
(b) it has become operative in accordance with **section 30(1)**. 15

Approval of framework

29 Approval of framework by Board

- (1) The framework must be approved at a meeting of the Board attended by all members.
- (2) If the Board cannot reach a unanimous decision to approve the framework,— 20
- (a) each member of the Board must vote individually on whether or not to approve the framework; and
- (b) the decision of the Board must be decided by a majority of the valid votes cast by the members in accordance with the procedures of the Board. 25

When framework becomes operative

30 Operative date

- (1) Except to the extent that there is an outstanding appeal on a point of law, the framework becomes operative on the day that is 15 working days after the date on which the framework is approved by the Board under **section 29**. 30
- (2) All the provisions of the principal Act that apply to regional plans apply to the framework from the date on which it becomes operative, except to the extent that **section 31** modifies the provisions of the principal Act. 35

31 Other instruments affected by framework

- (1) If, while the framework or any part of it is operative, the Canterbury Regional Council reviews under section 128(1)(b) of the principal Act a water permit or discharge permit that relates to the Waitaki catchment, it must not change the conditions of the permit unless it is satisfied that the viability of the activity allowed under the permit will not be reduced, despite the change in conditions. 5
- (2) A reference in **subsection (1)** to the Canterbury Regional Council must be treated as a reference also to the Otago Regional Council and a reference to the framework must be treated as a reference also to the Otago Regional Water Plan as amended by the Board under **section 22**. 10

Subpart 3—Right of appeal

32 Appeal to High Court on question of law 15

- (1) A person who made a submission on the framework under **section 25** and who is dissatisfied with the decision of the Board to approve the framework as being erroneous on a question of law may appeal against that decision to the High Court on a question of law only. 20
- (2) A local authority that is located in whole or in part within the Waitaki catchment, and that is dissatisfied with the decision of the Board to approve the framework as being erroneous on a question of law may appeal against that decision to the High Court on a question of law only, whether or not it made a submission on the framework. 25
- (3) An appeal under this section must be made in accordance with the High Court Rules, except to the extent that those rules are inconsistent with sections 300 to 307 of the principal Act.
- (4) Sections 300 to 308 of the principal Act apply (except sections 300(3) and 301(1)(d)), with the necessary modifications, to an appeal under **subsection (1)** as if every reference in those sections— 30
- (a) to a party to, or a person who appeared in, a proceedings were a reference to a person or a local authority who made a submission under **section 25**; and 35
- (b) to the Environment Court or Court, were a reference to the Board; and

- (c) to the Registrar of the Environment Court, were a reference to the Board; and
 - (d) a decision, report, or recommendation of the Environment Court, were a reference to the framework.
- (5) The decision of the Board to approve the framework is deemed to be a decision for the purposes of Part X of the High Court Rules. 5

Part 4 Panel of Commissioners

- 33 Interpretation** 10
- (1) In this Part, **application** means an application for a resource consent or a notice of requirement for a designation specified in **Schedule 2**.
- (2) The Governor-General may, by Order in Council, amend **Schedule 2** to add— 15
- (a) any application for a water permit, land use consent, or discharge permit for any activity in the Waitaki catchment:
 - (b) any notice of requirement for a designation in the Waitaki catchment. 20

Decisions on applications to be made after framework developed and approved

- 34 Consideration and decision on applications deferred**
- (1) A local authority must not consider and decide an application unless— 25
- (a) the framework is operative; and
 - (b) the Panel of Commissioners has completed its function under **section 39(1)**; and
 - (c) the Panel has notified the local authority under **section 39(2)** that the application is to be decided by the local authority. 30
- (2) A local authority must consider and decide an application in accordance with the principal Act and the Waitaki Catchment Water Allocation Regional Plan.

35 Ministerial call in cancelled

If an application is subject to a direction by the Minister under section 140 of the principal Act, the direction is cancelled.

*Panel of Commissioners***36 Minister to appoint Panel of Commissioners**

5

- (1) The Minister must appoint a Panel of Commissioners to carry out the functions specified in this Part.
- (2) The Panel of Commissioners comprises such number of members as the Minister determines.
- (3) The terms on which a member of the Panel of Commissioners is appointed are the terms set by the Minister when appointing the member. 10
- (4) However, members of the Panel of Commissioners may not be appointed for a fixed term, but hold office at the pleasure of the Minister. 15
- (5) A member of the Panel of Commissioners may resign by notice in writing to the Minister.
- (6) **Section 10 and clauses 2 to 6 of Schedule 1** apply in relation to the Panel of Commissioners, with all necessary modifications, as if the Panel were the Board. 20

37 Minister must give directions on procedure

- (1) The Minister must, after consulting any other Minister that he or she considers appropriate, give directions on procedure to the Panel.
- (2) The directions on procedure— 25
 - (a) must include criteria on which the Panel must make its determination under **section 39** on which applications it is to decide; and
 - (b) may include 1 or more of the following matters:
 - (i) setting times for any matter or altering the time fixed for any matter; and 30
 - (ii) setting places for the hearing of any matter; and
 - (iii) fixing a quorum for any meeting; and
 - (iv) setting requirements in relation to voting for deciding any matter; and 35
 - (v) setting additional requirements for notifying any matter; and

- (vi) setting any other matters that the Minister thinks fit.
- (3) The directions on procedure given under **subsection (2)(b)(i) and (v)** may modify or override the principal Act.
- (4) The directions on procedure must, as soon as practicable after being given, be published in the *Gazette*. 5
- 38 Panel has powers and functions of consent authority**
- (1) The Panel must be treated as if it were a consent authority, and has all the powers and functions of a consent authority under the principal Act— 10
- (a) to consider and decide applications for resource consents:
- (b) to consider notices of requirements.
- (2) **Subsection (1)** applies subject to this Act.
- Hearing and decision on applications* 15
- 39 Panel to determine who is to decide each application**
- (1) The Panel must, in accordance with the criteria in the directions on procedure, determine—
- (a) which applications the Panel must decide; and
- (b) which applications the relevant local authority must decide. 20
- (2) The Panel must, as soon as practicable after making its determination, notify each local authority concerned.
- 40 Powers of Panel in relation to hearing applications**
- In carrying out its functions under this Part, the Panel— 25
- (a) may accept variations to an application or a notice of requirement; and
- (b) must publicly notify an application even if the application has already been publicly notified; and
- (c) must comply with section 208 of the Ngāi Tahu Claims Settlement Act 1998 as if it were a consent authority; and 30
- (d) may consider any evidence presented to the Board under **section 27**; and
- (e) may allow cross-examination of witnesses; and 35

- (f) must consider all relevant submissions lodged with a consent authority whether before, on, or after the commencement of this Act; and
- (g) must keep a record of the hearings before it.
- 41 Additional powers of the Panel** 5
- When considering applications, the Panel has the following additional powers:
- (a) 2 or more applications may be considered and decided at the same time:
- (b) an application does not have priority over any other application considered and decided by the Panel, except to the extent decided by the Panel: 10
- (c) the applications may be considered in accordance with **section 42**.
- 42 Comparative consideration of applications** 15
- (1) The applications considered under this section must be compared by—
- (a) first applying the purpose and principles of Part II of the principal Act; and
- (b) then having regard to the economic and social benefits and costs of each use of the water from a national perspective. 20
- (2) In this section, **national perspective** includes the sum of the relevant regional and local social and economic benefits and costs. 25
- 43 Applications must be decided in accordance with Waitaki Catchment Water Allocation Regional Plan**
- (1) The Panel must decide applications in accordance with the Waitaki Catchment Water Allocation Regional Plan.
- (2) This section overrides **sections 41(c) and 42**. 30
- 44 Decision of Panel to be treated as decision of local authority or requiring authority**
- A decision of the Panel on an application for a resource consent must be treated as if it were a decision of the local authority concerned. 35

45 Notices of requirement

- (1) Section 171 of the principal Act does not apply to a notice of requirement considered by the Panel.
- (2) The Panel's recommendation on a notice of requirement is to be treated as if it were a decision of the requiring authority. 5

46 Costs of application

- (1) The applicant for the resource consent or the requiring authority who issued a notice of requirement must pay to the Crown the actual and reasonable costs associated with the consideration of and decision on an application or notice by the Panel. 10
- (2) The costs include the costs of the Panel.
- (3) The Crown must notify each applicant or requiring authority of the costs payable by them.
- (4) Any costs payable under this section constitute a debt due to the Crown and may be recovered in any court of competent jurisdiction. 15
- (5) The Crown may remit in whole or in part the costs payable to it under this section.

47 Resource Management Amendment Act 2003 applies to applications and notices 20

- (1) The amendments made to the principal Act by the Resource Management Amendment Act 2003 apply, to the extent relevant, to an application for a resource consent or a notice of requirement to which this Part applies.
- (2) This section overrides section 112 of the Resource Management Amendment Act 2003. 25

Appeals from Panel

48 Right to appeal from decisions of Panel

- (1) Any one or more of the following persons may appeal to the Environment Court in accordance with **section 49** against the whole or any part of a decision of the Panel on a resource consent or notice of requirement: 30
 - (a) the applicant to which the decision relates;
 - (b) a person who made a submission to the Panel on the application. 35

- (2) Section 121(1) of the principal Act applies, with all necessary modifications, in respect of an appeal under **subsection (1)**, as if reference to the consent authority were a reference to the Panel.
- (3) To avoid doubt, the prescribed form under section 121 of the principal Act applies, with all necessary modifications, in respect of an appeal under **subsection (1)**. 5

49 Appeals from decision of Panel

- (1) Part XI of the principal Act (other than section 274) applies to a decision of the Panel on an application with all necessary modifications as if references to a consent authority were a reference to the Panel. 10
- (2) An appeal to the Environment Court under this Part must be heard and determined—
 - (a) as if it had been granted a priority fixture by the Environment Court; and 15
 - (b) by way of rehearing, and the evidence used on appeal must be the same as that used before the Panel, and no further evidence may be given, except with the leave of the Court. 20
- (3) To avoid doubt, sections 276(1) and 290(1) apply subject to **subsection (2)(b)**.

50 Documents to be lodged by Panel with Registrar

- (1) The Panel must, within 30 working days after the date on which notice of appeal is lodged, send to the Registrar of the Environment Court— 25
 - (a) two copies of the application, documents, written submissions, statements, reports, and other papers lodged with the Panel and relating to the decision appealed from; and 30
 - (b) any exhibits in the custody of the Panel; and
 - (c) two copies of the whole of the decision appealed from.
- (2) **Subsection (1)** applies subject to any direction of the Environment Court.
- (3) If there has been a hearing before the Panel, the Panel must also send to the Registrar 2 copies of such notes of any evidence given at the hearing and made for the purposes of or 35

- under the direction of the Panel as have been transcribed or such greater number of copies as is required by **subsection (4)**.
- (4) If the transcript referred to in **subsection (3)** is certified to be correct by the Panel, no further verification of its contents is required. 5
- (5) **Subsection (3)** does not apply to any notes made personally by the members of the Panel.
- (6) If the evidence given at the hearing was recorded but has not been transcribed, the Environment Court may order, subject to such conditions as it thinks fit, that a transcript of the whole of the evidence be made and sent to the Registrar. 10
- (7) The Panel may, at any time, make application to the Court for an order that the cost of making any transcript in accordance with this section be paid by any of the parties to the appeal.
- (8) If an order under this section requires a transcript to be made, the Panel must certify the correctness of the transcript and send a copy of it to the Registrar. 15
- 51 Conference powers**
- (1) Within 10 working days after the Registrar of the Environment Court receives the documents referred to **section 50**, a notice of a judicial conference must be sent to all parties to the appeal, and the judicial conference must be presided over by an Environment Judge sitting alone. 20
- (2) The Environment Judge presiding at any conference under **subsection (1)** must, after giving the parties an opportunity to be heard, do the following things: 25
- (a) assess the grounds of appeal to ascertain whether an order for striking out an appeal under section 279(4) of the principal Act should be made;
- (b) assess any applications for leave to hear new evidence, and any applications to have any witness cross-examined: 30
- (c) issue a direction to fix the dates by which the respective parties must deliver to the Court and to the other parties statements of the evidence to be given on behalf of the respective parties. 35
- (3) The Environment Judge presiding at any conference under **subsection (1)** may, after giving the parties an opportunity to be

	heard, do 1 or more of the things specified in section 267(3) and (4) of the principal Act.	
52	Powers for Courts in respect of appeals from decision of Panel	
(1)	In respect of a direction issued under section 51 , if a party fails to comply with any direction, an Environment Judge sitting alone may, at any stage of the proceedings and on such terms as the Judge thinks fit, order that the whole or any part of that person's case be struck out.	5
(2)	When assessing any award of costs under section 285 of the principal Act a relevant consideration is whether a party has complied with any direction issued under section 51 (as to the dates by which statements of evidence are to be provided).	10
53	Regional plan for water allocation	
	When deciding an appeal under this Part, the Court must make its decision in accordance with the Waitaki Catchment Water Allocation Regional Plan.	15
54	Appeal on question of law from decision of Environment Court	
	Sections 299 to 308 of the principal Act apply with all necessary modifications in respect of an appeal against a decision of the Panel to the High Court, as if every reference in those sections to the Environment Court were a reference to the Panel.	20
	<i>Amendment to Official Information Act 1982</i>	25
55	Official Information Act 1982 amended	
	The Official Information Act 1982 is amended by inserting in the Schedule 1, in its appropriate alphabetical order, the following item:	
	Panel of Commissioners for the Waitaki Catchment.	30

Schedule 1

s 11

Further provisions applying in relation to Board

- 1 Deputy chairperson has functions, powers, and duties of chairperson** 5
- The deputy chairperson of the Board has and may exercise all the functions, powers, and duties of the chairperson of the Board if—
- (a) the office of chairperson is vacant; or
 - (b) the chairperson is, for any reason, unable to perform his or her functions, powers, and duties. 10
- 2 Appointments valid despite defect**
- The appointment of a person as a member, chairperson, or deputy chairperson is not invalid because of a defect in the appointment.
- 3 Validity of member's acts** 15
- Anything done by a person as a member, chairperson, or deputy chairperson of the Board is valid—
- (a) despite any defect in his or her appointment;
 - (b) even though the occasion for the person acting or for his or her appointment had not arisen or had ceased. 20
- 4 Remuneration and travelling allowances**
- The members of the Board are entitled to receive—
- (a) remuneration determined by the Minister in accordance with the fees framework for members of statutory and other bodies; and 25
 - (b) payment of reimbursing allowances or actual and reasonable expenses incurred in undertaking the functions of the Board.
- 5 Members not liable for things done or omitted in good faith** 30
- A member of the Board is not liable for anything done or omitted in the performance of the Board's function if done or omitted in good faith.

6 No entitlement to compensation

A member of the Board is not entitled to compensation or other payment or benefit if he or she ceases for any reason to hold office as a member of the Board.

7 Board may regulate its procedure

Subject to this Act, the Board may regulate its own procedure.

5

Schedule 2 s 33
**Resource consent applications and notices of
requirement for designations to which Part 4 applies**

Part 1
Applications as called in on 11 September 2003 5

Canterbury Regional Council

Applicant	Application number	
Anderson I	CRC040335	
Anderson K J, S R & D K	CRC012017	
Anderson K J, S R & D K	CRC012019	10
Anderson K J, S R & D K	CRC031578	
Aoraki Water Trust	CRC031390	
Awakino Station Limited	CRC012807	
Black Forest Limited	CRC030360	
Black Forest Limited	CRC030361	15
Dunstan Peaks Limited	CRC011361	
Foveran Deer Park	CRC032220	
Glenbrook Run Co Limited	CRC012291	
Goldwyn Farming Company Limited	CRC012503	
Goldwyn Farming Company Ltd & Warwick W G & R M M	CRC020329	20
Goldwyn Farming Company Limited	CRC012506	
Hakataramea Station 1990 Limited	CRC981376	
Irishman Creek Station Limited	CRC011845	
Irrigation North Otago Limited	CRC031136	25
Irrigation North Otago Limited	CRC032157	
Irving R J	CRC012640	
Lone Star Farms Ltd	CRC031175	
Mcaughtrie D W	CRC011940	
Meridian Energy Limited	CRC030573	30
Meridian Energy Limited	CRC030574	
Meridian Energy Limited	CRC030575	
Meridian Energy Limited	CRC030576	
Meridian Energy Limited	CRC030577	
Meridian Energy Limited	CRC030578	35
Meridian Energy Limited	CRC030579	
Meridian Energy Limited	CRC031800	
Meridian Energy Limited	CRC031801	
Meridian Energy Limited	CRC031802	
Meridian Energy Limited	CRC031803	40
Meridian Energy Limited	CRC031804	
Meridian Energy Limited	CRC031805	
Meridian Energy Limited	CRC031806	
Meridian Energy Limited	CRC031811	
Mitchell J B, Mcaughtrie D W & Cooke T J & J	CRC991473	45
Munro H M	CRC011987	
Ophi River Augmentation Society	905285a	

Part 1—*continued*

Canterbury Regional Council		
Applicant	Application number	
Otago Station Estates Limited	CRC011878	
Otamatapaio Station (1993) Limited	CRC012047	
Otematata Station Limited	CRC011908	5
Padkins Creek Community Race	CRC011989	
Pukaki Farming Co Ltd	CRC040327	
Robertson R H & J Family Trust	CRC031592	
Rosehip Orchards NZ Limited	CRC021749	
RPNZ Properties Limited	CRC021585	10
The Wolds Run Co (1972) Limited	CRC952550	
Upper Waitaki Community Irrigation Company	CRC001128	
Van Der Salm J & J	CRC002082	
Waiareka Valley Irrigation Limited	CRC030005	
Waihao Irrigation Ltd	CRC040428	15
Waitaki District Council	CRC011415	
Waitaki District Council	CRC011743	
Waitangi Station Limited	CRC030944	
Warwick R M M	CRC020471	
Watherston A R & B A Parker D J	CRC012877	20
Westmere Estate Limited	CRC012051	
Zealandicus Freshwater Crayfish Limited	CRC000949	

Part 2

Applications as called in on 29 October 2003

Canterbury Regional Council		
Applicant	Application number	
Hakataramea Valley Irrigation Limited	CRC032177	25
Killemont Station Limited	CRC040180	
Otematata Station Limited	CRC020355	
Ruataniwha Farm Limited	CRC040159	30
Totara Farming Co Ltd	CRC020584	
Zealandicus Freshwater Crayfish Limited	CRC990121	

Part 3

Other applications

Canterbury Regional Council		
Applicant	Application number	
Anderson K J, S R and D K	CRC012032	35
Anderson K J, S R and D K	CRC012033	
Aoraki Water Trust	CRC031392	
Aoraki Water Trust	CRC031394	40
Aoraki Water Trust	CRC031395	
Aoraki Water Trust	CRC031396	
Aoraki Water Trust	CRC031397	
Aoraki Water Trust	CRC031398	

Part 3—*continued*

Canterbury Regional Council

Applicant	Application number	
Aoraki Water Trust	CRC031399	
Aoraki Water Trust	CRC031400	
Aoraki Water Trust	CRC031401	5
Aoraki Water Trust	CRC031402	
Aoraki Water Trust	CRC031403	
Aoraki Water Trust	CRC031404	
Black Forest Ltd	CRC030359	
Black Forest Ltd	CRC030393	10
Dunstan Peaks Ltd	CRC011362	
Dunstan Peaks Ltd	CRC011363	
Elephant Hill Limited	CRC040823	
Foveran Deer Park	CRC032221	
Foveran Deer Park	CRC032222	15
Foveran Deer Park	CRC032223	
Glenbrook Run Co Ltd	CRC012290	
Goldwyn Farming Company Limited	CRC021332	
Goldwyn Farming Company Ltd & Warwick W G & R M M	CRC020331	20
Goldwyn Farming Company Limited	CRC012504	
Hakataramea Valley Irrigation Limited	CRC032178	
Hakataramea Station 1990 Limited	CRC982000	
Hakataramea Station 1990 Limited	CRC981377	
Irishman Creek Station Ltd	CRC011846	25
Irrigation North Otago Limited	CRC031137	
Irrigation North Otago Limited	CRC031139	
Irrigation North Otago Limited	CRC031138	
K W Pheasant - Waiareka Valley Irrigation Ltd	CRC030004	
Killermont Station Limited	CRC040181	30
Lone Star Farms Ltd	CRC031176	
Mcaughtrie D W	CRC011939	
Meridian Energy Limited	CRC031962 to CRC031974	
Meridian Energy Limited	CRC031807 to CRC031810	35
Meridian Energy Limited	CRC031812 to CRC031940	
Mitchell J B, Mcaughtrie D W & Cooke T J & J	CRC991474	
Mitchell J B, Mcaughtrie D W & Cooke T J & J	CRC991475	40
Munro H M	CRC012733	
Opihi River Development Company Ltd	CRC905285 b and c	
Otamatapaio Station (1993) Ltd	CRC012049	
Otamatapaio Station (1993) Ltd	CRC012727	
Pukaki Farming Co Ltd	CRC040328	45
Pukaki Farming Co Ltd	CRC040329	
Pukaki Farming Co Ltd	CRC040330	
Pukaki Farming Co Ltd	CRC040331	
Rosehip Orchards NZ Ltd	CRC021750	

Part 3—*continued***Canterbury Regional Council**

Applicant	Application number	
RPNZ Properties Ltd	CRC021258	
RPNZ Properties Ltd	CRC021684	5
Totara Farming Co Ltd	CRC031315	
Upper Waitaki Community Irrigation Company	CRC001129	
Waihao Irrigation Ltd	CRC040427	
Waihao Irrigation Ltd	CRC040429	
Waitaki District Council	CRC011416	10
Waitangi Station Ltd	CRC031013	
Waitangi Station Ltd	CRC031014	
Williamson Holding Limited	CRC040835	
Williamson Holding Limited	CRC040836	
Zealandicus Freshwater Crayfish Limited	CRC990119	15
Zealandicus Freshwater Crayfish Limited	CRC990122	

Mackenzie District Council

Applicant	Application number	
Aoraki Water Trust	RCO30017	

Otago Regional Council

Applicant	Application number	
Meridian Energy Limited	ORC2003.400 to ORC2003.510	20
Meridian Energy Limited	ORC2003.642 to ORC2003.644	25

Waimate District Council

Applicant	Application number	
Meridian Energy Limited	RM031036	
Meridian Energy Limited	RM031071	
Meridian Energy Limited	RM031072	30

Waitaki District Council

Applicant	Application number	
Meridian Energy Limited	LRC03/52	
Meridian Energy Limited	LRC03/124	
Meridian Energy Limited	LRC03/125	35