

7 May 2014

Hon Dr Nick Smith
Minister of Conservation
Freepost Parliament
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Parliament Buildings
WELLINGTON 6160

Hon. Amy Adams
Minister for the Environment
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Dear Ministers

BOARD OF INQUIRY INTO THE TUKITUKI CATCHMENT PROPOSAL

I write on behalf of Hawke's Bay Regional Council (HBRC) and with the support of Hawke's Bay Regional Investment Company Limited (HBRIC Ltd), the two applicants in relation to the Tukituki Catchment Proposal, to request that you exercise your discretion to grant a further extension of time of one month under section 149S of the Resource Management Act 1991 (RMA) for the Board of Inquiry to deliver its final report.

The Board of Inquiry released its draft report on 15 April 2014. The statutory deadline for the parties to make comments on the draft decision is 16 May. As a result of the decision you made in early February on the application of the Board of Inquiry, granting a one month extension, the final day for release of the Board of Inquiry's Final Report is 28 May 2014. In practice, allowing time for the Environmental Protection Authority to prepare the Final Report for release, the Board of Inquiry will have a maximum of 10 calendar days from the final day for receipt of comments to consider the comments it receives, and make whatever amendments it deems appropriate to its decision report and the accompanying documents.

In its comments, HBRC seeks to draw the Board of Inquiry's attention to aspects of the Board's draft decision which, if confirmed, will have significant adverse implications in terms of the administration of the RMA and its effect on the farming communities of the Tukituki Catchment.

Specifically, HBRC's analysis of the Board of Inquiry's draft decision is that it would, among other things:

- Put in place a water quality limit for dissolved inorganic nitrogen (DIN) that is not currently met at a number of strategic points in the Tukituki catchment and that would require a reduction of the nitrogen footprint of existing farming operations in the upper half of the catchment by up to 45%;

- As a consequence, require every landowner farming more than 4 hectares in the upper half of the catchment (some 615 farms) to apply for and obtain a resource consent in order to continue farming after a trigger date in 2018;
- Depending on water quality trends in the catchment, potentially require the balance of farmers in the catchment (a further 447 farms, or 1062 in total) to apply for and obtain a resource consent to continue farming.
- Effectively preclude any land use intensification of dryland farms in future, including through the Ruataniwha Water Storage Scheme.

It is clear that the Board of Inquiry did not intend these outcomes. Paragraph 330 of its draft decision records the Board of Inquiry's view that the DIN limit it had in mind was set "at a pragmatic level that balances ecological health with the desire for more intense land use".

Paragraph 401 records that the Board had strived to arrive at a limit that will achieve environmental values without putting farmers, orchardists or horticulturalists out of business, and considered the limits imposed would allow high performance farmers to intensify.

The draft decision records separately (at paragraph 439) the Board of Inquiry's view that, "For the majority of farms within the catchment consent is unlikely to be required".

In their letter to you of 31 January, counsel for the Board of Inquiry described both the complexity and the size of the task confronting the Board. HBRC does not believe their description was overstated, demonstrated among other things by the fact that the Board of Inquiry's draft decision was released in three volumes totalling over 1000 pages.

HBRC's concern is that with a decision of this size and complexity, while it has lodged its comments before the deadline in order for the Board of Inquiry to have as much time as possible to consider them, the time available, as above, will be completely inadequate for the Board of Inquiry to determine whether HBRC's concerns are well founded, and if so, to amend its draft decision in order to achieve its intention of fixing a pragmatic control on the amount of nitrogen entering the waterway. This is the principal technical matter that HBRC has commented upon. It is accepted that the Board of Inquiry may find that HBRC's concerns are not valid, for reasons not apparent to us. In that case no harm will have been done by the Board of Inquiry having the opportunity for a considered review, perhaps assisted by an independent expert in land use and water quality, of the comments made on its draft decision.

It is submitted that this situation satisfies the statutory test of 'special circumstances'.

It is submitted that special circumstances arise also by virtue of the Supreme Court having released its decision in *Environmental Defence Society v The King Salmon Company Limited* [2014] NZSC 38 on 17 April, some two days after release of the Board of Inquiry draft decision. The Supreme Court's decision has potentially far reaching implications for the interpretation and implementation of National Policy Statements and is a matter about which, the parties to the Tukituki Catchment Proposal can be expected to have divergent views. Natural justice will require that parties have the opportunity to comment on the positions advanced by others, something that simply will not be possible if the Board of Inquiry has to meet a 28 May 2014 deadline.

For all of these reasons, HBRC seeks a one month extension of the timeframe for release of the Board of Inquiry's final report.

Yours sincerely

A handwritten signature in cursive script that reads "Liz Lambert".

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cc: Stephanie Frame/Amy Selveraj
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