

**Before the Commissioner appointed by Canterbury
Regional Council and the Ashburton District Council**

IN THE MATTER OF The Resource Management Act
1991

AND

IN THE MATTER OF Applications by the Ashburton
Community Water Trust for water,
discharge and land use permits to
construct a primary intake and canal
system to enable the taking of water
for hydro-electricity generation and
irrigation.

**REPORTING OFFICER'S SUMMARY
(CANTERBURY REGIONAL COUNCIL)**

Points of Clarification

1. In relation to Mr. Jolly's evidence regarding avifauna, there was some confusion surrounding conditions I had proposed restricting timing of works. The condition that refers to 1 May to 30 September is to avoid fish spawning, with three exceptions listed. The condition that refers to 1 September to 1 February is specifically for bird breeding season.
2. Rule WQL40 refers to the excavation of material over an unconfined aquifer. As a result of evidence presented by Mr. Woods in relation to CRC072646 that excavation immediately downstream of the drop structures will exceed 5m (up to 7m), and excavation will exceed a volume of 100 cubic metres in any 12 month period, does not meet condition 1(a) because where this occurs is within 100m of the edge of a permanently flowing river, and therefore, is non-complying.
3. Rule WQL 41 refers to the deposition of material over an unconfined aquifer. It is my understanding that this rule is triggered by the deposition of back fill, and not the

structures themselves. The activity does not meet condition 5 of this rule with respect to the management plan and therefore is discretionary.

4. However, the changing of status from discretionary to non-complying for CRC072646 under Rule WQL40, by means of “bundling”, would normally result in the overall status for all applications being non-complying.
5. In this regard s104D states that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either:
 - 5.1 the adverse effects of the activity on the environment (other than any effects to which section 104(3)(b) applies) will be minor; or
 - 5.2 the application is for an activity that will not be contrary to the objectives and policies of -
 - 5.2.1 the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
 - 5.2.2 the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or
 - 5.2.3 both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.
6. I am satisfied that the application s104D(a) has been met with respect of resource consent application CRC072646.
7. In relation to rule WQN37 (permitted) and WQN41 (discretionary) for the damming and diverting of water that is not in the bed of a surface water body is outlined in paragraphs 96 – 98 of my report. The only reason that rule is triggered is due to the surface area of the settling pond exceeding one hectare.
8. There are also now the two proposals for discharging material from the scheme via bed deposition or the now considered sluicing proposal.
9. CRC072642 as applied for and notified is for a discharge to land in circumstances where it may enter water.
10. EA did not apply for a consent to discharge sediment and water from the sluicing channel into water, but rather have it is held by BCIL (CRC990089), and authorizes the discharge directly into water.
11. Being black and white, the option to sluice is not completely covered by CRC072642. This consent would be required anyway as there will still be some sediment that cannot be sluiced, and therefore will need to be deposited to land, however, the discharge

directly into water has not been applied for, however, it is acknowledged that the effects from sluicing are potentially “better” than what was applied for!!

12. In this case, there are three options:

- 12.1 As EA have done, rely on the BCIL consent.
- 12.2 There are still a couple of minor consents that will be required by ACWT, such as storage of hazardous substances and discharge of dewatering water. If ACWT really felt the need for their own consent to discharge into water, then it could be applied for at this stage.
- 12.3 Do it now! I don't believe it is outside the scope of what was applied for – the end result is the same – sediment ends up in the river...!!!

Issues

13. Now I will address issues raised in my report, and throughout the course of the hearing, and having considered the applicant's evidence and conditions, and the evidence of submitters, and my opinion now on each of these in turn.

Intake Safety and River Works

- 14. This was a significant issue raised in the CPW hearing.
- 15. It is acknowledged that the Rakaia River is not currently utilized as much by kayakers and other paddlers as the Waimakariri River, however, popularity of such rivers does change and in the future, it is not to say that the Rakaia River will be a kayaking Mecca!
- 16. In my opinion, conditions relating to intake safety need to be consistent for both CPW and ACWT.
- 17. Frequency and extent of river works has again been raised as an issue, and it was for CPW.
- 18. Conditions were proposed by me for CPW to address this and these could also be applied to ACWT.

Potential Effects on Highbank Power Station

19. Given that Trustpower has reached agreement with ACWT subject to conditions, I am satisfied that the potential effects on Highbank Power Station have been addressed.

Change of flow regime on other users – diversion of water and the increase in discharge at Highbank Power Station

20. Having reviewed the evidence of Mr. Borrie, I am satisfied that this effect has been addressed.

Other Matters

21. The applicant seeking a lapsing period of 10 years has been a point of discussion. I am of the opinion that a 10 year period is too long in this case, and could result in “locking up” the resource for this period. If there is a real intention to construct and operate the scheme, and given that BCI have to exercise consents in 2010 and the EA consents were only granted with a lapse date of 30 June 2013, then there is no reason why the same lapse date as EA should not be applied in this case, on the pretense that if construction is underway, but the consent to take will not be exercised prior to this, than an extension to the lapse date may be sought.

22. In relation to the conditions, I have reviewed and provided comment directly to Mr. Dunning on the conditions presented in his evidence, and am satisfied that with a few minor modifications and inclusion of a few more conditions such as plans showing the area and extent of works, frequency and duration of works, conditions relating to intake safety (CPWT) and finalizing the discharge conditions with respect to the disposal options, the conditions will be appropriate and adequate for the activities applied for.

23. It is also acknowledged that many of the conditions were prepared with stakeholders and other interested parties through the EA process, and there is also the BCIL conditions as well, therefore in the interest of maintaining consistency, I consider it good practice to using these conditions as a base for these applications – there is nothing worse than having competing sets of conditions for effectively the same activity at the same location.

24. Having taken all this into consideration, I am satisfied that my concerns have been and can be addressed by way of conditions.

Keri Johnston
September 2008

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