

**Before the Commissioners appointed by Canterbury  
Regional Council**

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

**AND**

**IN THE MATTER OF** Application CRC082211 and  
CRC082212 by Birchwood Run  
Ltd for a Water Permit to divert &  
use surface water and a  
Discharge Permit to discharge  
water to water.

**Section 42A Officer's Report of Claire Penman**

**Date of Hearing: 21 September 2009**

1. This report should be read together with the introductory s42A report which gives an overview of all applications presented at this hearing (Report 1), the planning and technical reports on hydrology and minimum flows (Report 2A and 2B), the planning report outlining annual allocations (Report 3) and the reports on cumulative landscape and water quality effects in the catchment (Reports 4A–F and 5).

**INTRODUCTION**

2. Birchwood Run Ltd (the applicant) has applied for a resource consent to:
  - (a) Divert water from Spring Creek (a tributary of Wairepo Creek) at a maximum rate of 15 litres per second with an annual volume of 473,040 cubic metres for stock water and domestic purposes at Glenbrook Station;
  - (b) Discharge surplus water from the diversion channel into Wairepo Creek at a maximum rate of 15 litres per second.

See Attachment One for a map of the location of take and irrigation areas.

3. The applicant engaged Ms Cathy Begley of GHD Ltd to prepare the application and assessment of environmental effects on their behalf and to respond to further information requests.
4. A 35 year duration is sought.
5. These are applications for replacement consents.
6. A site visit was undertaken during the audit of this application on 28 January 2009.

**Background**

7. The consents that these applications are replacing – WTK774871A.1 and WTK774871B.1 – expired on 30 June 2008 (A copy can be found in Attachment

Two). As these applications were lodged 6 months prior to the expiry of the above consents, the applicant is currently operating under s124 continuation.

8. Applications CRC082211 and CRC082212 were lodged on 13 December 2007 and considered to be notifiable on 23 October 2008. Requests for further information were sent covering effects including, but not limited to, annual volumes, use of water, location of diversion and discharge, aquatic ecosystems, water quality and derogation approvals.
9. There has been no change to the applications since they were lodged and notified.
10. Applications CRC012290 and CRC012291 have also been lodged by the applicant dealing with the diversion of water and associated land use activity for renewal of an irrigation proposal. They are addressed in Report 8A and the plan attached in Appendix One identifies the respective locations for all applications.
11. The applicant also holds the following consents - CRC940428A.1 CRC940428B.1 and CRC940428C.1 – to dam, take and use up to 90 litres per second from three tributaries of Wairepo Creek for stock water and irrigation of up to 90 hectares. I am unsure exactly how much stock water is taken under this consent and what part of the property it supplies.

## Notification

12. Details of the notification and wording are contained in Appendix 4 of the introductory s42A report (Report 1). These consents were publicly notified on 4 November 2008.

## Submissions

13. In total, 4 submissions were received on these applications, with 2 in support and 2 in opposition. Details of the submissions are contained in Table 1 below.
14. Overall, the key effects of concern to submitters include effects on: economic benefits, ecosystems, water quality, allocations, minimum flows and efficiency.

Submitter	Issues	Support/ Neutral/ Oppose	To be heard
A J Gloag	Imperative for sustaining physical resource and for maintaining domestic and stock water for farming enterprise.	Support	No
Ruataniwha Farms Ltd	Good improvement to former dry pasture in area and should continue.	Support	No
Fish & Game NZ	Consider there is little detail of the scheme and whether there is stock access, concerned about reduction in flow in 3km reach affected, potential inefficiency of the scheme, potential fish screen issues, consider it is all to be included in allocation for Wairepo Creek. Cumulative effects in catchment on flows in Wairepo Creek as supports good brown and rainbow trout fishery. Oppose 35 year duration.	Oppose	Yes
Meridian Energy Ltd	Concerned about water quality, metering, duration and reasonable use	Oppose	Yes

**Table 1: Summary of submissions on applications CRC082211 & CRC082212**

## DESCRIPTION OF THE PROPOSED ACTIVITY

15. The applicant proposes to divert water from Spring Creek to provide stock water and domestic supply for the property (see photos of take point in Attachment Three). The diversion is proposed at a rate of 15 litres per second, however, in the application it is stated that this diversion is only required when irrigation water is not already being diverted, which would infer that this would be predominantly in the winter months. This also indicates that water taken in accordance with the applicant's irrigation consent is used for stock and domestic purposes.
16. The diversion structure is the same as that used for the irrigation diversion and an associated land use consent has been lodged with that proposal (CRC012290 – see Report 9A).
17. Water will be conveyed from the diversion point through a race system that discharges excess water back into Wairepo Creek approximately 2.5 kilometres downstream.
18. The proposed annual volume of 473,040 cubic metres for stock and domestic water is based on a continuous diversion of 15 litres per second for 365 days of the year. However, the applicant considers that the take and use of water for provision of stockwater is covered by section 14(3)(b) of the RMA. Notwithstanding this, the application stands and must be considered and decided. The implication of this is that either the applicant:
  - (a) Considers it will take water at times when this is not provided for in section 14(3)(b) – that is when it has, or is likely to have, adverse effects on the environment; or
  - (b) Is seeking to take water over and about that provided for in section 14(3)(b) – that is, in excess of reasonable needs for domestic and stock water purposes.
19. The applicant proposes the following activities:

CRC082211

  - (a) To divert water from Spring Creek at a maximum rate of 15 litres per second, with a volume not exceeding 473,040 cubic metres per year, at or about map reference NZMS 260 H39:7534-4837.
  - (b) Water shall be used for stock water and domestic purposes at Glenbrook Station.
  - (c) No fish screen is proposed.
  - (d) The diversion of water will be metered.
  - (e) The consent will not be exercised concurrently with CRC012291.

CRC082212

  - (a) To discharge water from a diversion channel into Wairepo Creek at a maximum rate of 15 litres per second, at or about map reference NZMS 260 H39:7607-5079.

- (b) Water shall only be surplus stock and domestic water diverted in accordance with CRC082211.
- (c) The discharge shall not cause erosion to the bed or banks of Wairepo Creek.

## LEGAL AND PLANNING MATTERS

### Consent Requirements

20. An overview of the consent requirements under the Resource Management Act (RMA), Transitional Regional Plan (TRP) and Waitaki Catchment Water Allocation Regional Plan (WCWARP) for water permit applications is provided in the introductory s42A report (Report 1). A summary of the requirements for these applications is provided below:

#### TRP

*Water permit* - The TRP permits the abstraction of surface water from any surface waterway provided the annual volume abstracted is less than 10 cubic metres per day, and the rate of take is limited to 5 litres per second. Given that the proposed diversion (and thus removal/taking of water from the environment) exceeds these limits, consent is required as a discretionary activity.

*Discharge permit* - There are no provisions of the TRP which authorise the discharge of water into water as described in the proposed activity. Resource consent is therefore required as a discretionary activity.

#### WCWARP

- (a) Rule 1 – The applicant proposes to take more than 10 cubic metres per day, and the rate of take is greater than 5 litres per second.
- (b) Rule 2, clause (1) and (2) – The applicant does not propose a minimum flow as taking water for essential drinking and stock water is exempt from complying with the minimum flow under clause (2). However, unless it is a replacement activity, any diversion of water must fit within the allocation limit for the Wairepo Creek and tributaries in row (viii) of 200 litres per second. As it is a replacement consent, it does not have to comply with those allocation limits (clause (1)(b)).
- (c) Rule 6 – The activity is within the allocation limit of 275 million cubic metres for agricultural activities upstream of Waitaki Dam (see Report 3 for annual allocation and priority tables).
- (d) Rule 15 - Classifying rule – discretionary activity

#### PNRRP

- (a) Rule WQL1 - The discharges will not meet the conditions of this rule as the discharge will be longer than three days in any consecutive six month period.
- (b) Rule WQL56 – The discharge into Wairepo Creek is considered discretionary under this rule as it will comply with the conditions.

21. Overall, the proposed water permit is a **discretionary** activity under Rule 15 of the WCWARP and the TRP, and resource consent is required in accordance with section 14 of the RMA.
22. Overall, the proposed discharge permit is a **discretionary** activity under Rule WQL56 of the PNRRP, and the TRP, and resource consent is required in accordance with section 15 of the RMA.
23. A land use consent under section 13 of the RMA to undertake works in the bed and banks of Spring Creek has been applied for (see paragraph 14).

### **Priority**

24. In terms of instantaneous allocation under Rule 2 for Wairepo Creek, a detailed list of all applicants who fall within Table 3, row(viii)(c) can be found in Report 2A. There are three existing consent holders on Wairepo Creek, and the total existing allocation is 220 litres per second. However, under Policy 28, the policy position is that any application for a replacement consent retains their inclusion in the allocation limit, if granted.
25. For Rule 6, annual allocation, refer to Report 3 for a full list of all existing consent holders and all applicants in priority order.
26. For application CRC082211, the allocation limits are not exceeded and there are no priority issues.

### **Derogation Approval**

27. At the time of preparing this report, Meridian Energy Limited (MEL) had not provided approval for Birchwood Run Ltd to derogate from its consents.

### **CONSULTATION**

28. Prior to lodgement, the applicant provided a copy of the application to MEL, DoC, Fish & Game, Runanga and Mackenzie District Council.
29. I am unsure if any consultation has occurred since notification with any party.

### **DESCRIPTION OF THE AFFECTED ENVIRONMENT**

30. A description of the values of the Waitaki Basin in general is provided in the introductory s42A report (Report 1).
31. In addition to the above overall summary, the applicant notes the following:
  - (a) Spring Creek is a tributary of Wairepo Creek that flows into the Wairepo Arm of Lake Ruataniwha.
  - (b) Wairepo Creek, along with a number of other small tributaries, is recognised as providing approximately 5% of the annual inflows into Lake Benmore
  - (c) Lake Ruataniwha is recognised as having high habitat values for brown trout, medium habitat values for rainbow trout and presence of sockeye and Chinook salmon. While other small tributaries provide habitat for koaro, upland and common bullies, longfinned eels, common smelt, Canterbury galaxias, bignose galaxias and lowland longjawed galaxias.

(d) Many of these species above are likely to be present in the diversion channel, but have not been confirmed via any ecological survey.

32. Fish and Game in its December 2008 submissions, provide further description of the Wairepo Creek catchment. It states that Wairepo Creek contains a moderate brown and rainbow trout fishery and exhibits a healthy instream environment, but recently the flow has been substantially reduced. They consider that with other applications in this area, there may be adverse cumulative effects on the flows in this catchment.
33. In addition to the applicant's other existing consent to take water from tributaries of the Wairepo Creek, and application to take water from Spring Creek (Report 8A), there is one other user of water within the Wairepo Creek catchment. WH & AJ Sutherland hold consent CRC020364 to take up to 40 litres per second from a tributary of Wairepo Creek.

## ASSESSMENT OF PROPOSED ACTIVITY

34. The proposed water permit and discharge permit are discretionary activities and must be considered in the context of s104 of the RMA.
35. Section 104(1) outlines matters that the consent authority must have regard to when considering an application for a resource consent, including any actual and potential effects on the environment, any relevant statutory provisions, and any other matter the consent authority considers relevant.

### Assessment of actual and potential effects (s104(1)(a))

36. The effects considered for this type of activity (surface water diversion and works in the bed of a river) are presented in the introductory s42A report (Report 1). That report includes the presentation of the relevant planning provisions which direct us to consider these effects. A summary table regarding the assessment of individual effects for these applications is provided below and a detailed discussion of those outstanding matters or areas of concern is provided in the following sections.

#### Water permit

Adverse Effects	Applicant's assessment	My assessment	My Conclusion
Ecosystems	Consider that providing continuous flow down race ensures that habitat in race itself is protected and provides a connection with Wairepo Creek downstream.	<p>Minimum flow as set out in Table 3 does not need to be complied with as the purpose of diversion is for essential stock water and domestic supply.</p> <p>Not enough information has been provided by the applicant to determine if the aquatic habitat within the race system is of sufficient value to require protection via a continuous flow.</p> <p>(1) While, I do not currently have enough information about the values of the diversion race to be certain that there are values to be maintained as the applicant contends, if there are values to be protected, I would be satisfied that effects on ecosystems in terms of having no fish screen are</p>	Effects of fish screen minor provided applicant can satisfy either option (1) or (2). However details on the ecosystem requiring protection have not been provided to justify volumes

		<p>minor if the diversion provides a continuous flow and connection with the Wairepo Creek further downstream. As there is no specific take point from the race system and the rate proposed is significantly more than that required for stock, I consider it likely that a large volume would remain in the race and provided there is continuous connection with the Wairepo Creek at the discharge point, then I would be satisfied that no fish screen is required.</p> <p>(2) However, if a continuous flow cannot be maintained at the discharge point, and/or there are no significant values to protect, then a fish screen in accordance with the recommended conditions in Report 1 would be required, and a condition to restrict diversion volumes to only essential volumes when minimum flows are triggered. This would ensure flows and habitat are retained in Wairepo Creek.</p>	(refer inefficient use below)
Other water users	Other users are upstream so no effects on flow availability and diversion and discharge is all within applicants property. Applicant also considers that only water drunk by stock will be removed from race and any excess flows will be discharged back to the creek before the applicant's property boundary.	Consider water meter is required . Agree that no users downstream who might be affected, and no other users with minimum flow site at Wairepo lagoon as required in Table 3 of the plan. Agree with applicant that only water drunk by stock and for domestic use from the race, or lost through evaporation and leakage will not be discharged back into Wairepo Creek.	Effects minor.
People, communities & recreational values	A generic statement about what effects can occur as a result of water abstraction is provided, but no assessment of how that applies for this application.	I note that there is limited recreational use of the waterway as it is a relatively small tributary that runs predominantly through the applicant's property. There would be no effect on landscape values as no irrigation is proposed under this consent and the race network has been established for a long time.	Effects minor.
Inefficient take and use	Applicant proposes 473,040m <sup>3</sup> /yr for stock water and domestic purposes (continuous rate). Considers that approximately 10,950m <sup>3</sup> /yr is actual stock requirement and 1,460m <sup>3</sup> /yr is actual domestic requirement but additional water needed for conveyance and to protect habitat values in race network.	Diversion rate of between 10 and 15 l/s is typical of requirements in this area in order to ensure water is conveyed the length of the race network and allow for race losses. Applicant also states that consent only required when irrigation water not being taken under replacement application CRC012291. I note that under the irrigation consent the proposed annual volume would allow for 68 days continuous abstraction and therefore only 297 days would need to be provided for	Effects may be more than minor.

		under this consent. That volume equates to 384,912m <sup>3</sup> /yr. In addition, the applicant's existing consent CRC940428C.1 provides for stock water but I am not sure how much of the property is supplied by that existing consent. Further, this water may be in addition to that water which may be able to be taken in accordance with section 14(3)(b).	
Water quality	Effects of discharge covered below. No effects of diversion itself.	Agree that diversion not likely to have any adverse effects on water quality.	Effects minor.
Tangata Whenua values	No assessment provided.	No submissions of concern on this application specifically, but as no assessment has been provided I cannot determine the scale of effects on cultural values. The applicant may wish to address this at the hearing.	Effects uncertain.

### Adverse effects of inefficient take and use on other users

37. The taking of water in excess of that required for the intended use may contribute to water levels being unnecessarily reduced and less water available for other users. A number of submitters have identified this issue.

### Stockwater volumes

38. The proposed annual volume of 473,040 cubic metres for stock and domestic water is based on a continuous diversion of 15 litres per second for 365 days of the year. However, the applicant has outlined that consent for stock water cannot be granted by the CRC for the use of water for stock drinking as they are relying on their rights prescribed in the RMA under s14(3)(b) which allows for the taking of water for "*the reasonable needs of an individual's animals for drinking water*" as a permitted activity
39. The applicant has detailed their stockwater requirements as follows:
- (a) 200 cattle @ 45 litres per day = 3,285 cubic metres per year
  - (b) 7000 sheep @ 3 litres per day = 7,665 cubic metres per year
  - (c) Multiplied by 1.2 in accordance with Schedule WQN11 = 13,140 cubic metres per year
40. The applicant notes that this volume (13,140 cubic metres) is less than the proposed annual stockwater volume of 473,040 cubic metres. This is because the proposed volume is based on a continuous 15 litres per second to provide the required head for conveyance along the race network and a continuous flow in the race for protection of ecosystems in the race itself.
41. In addition, the applicant also states that consent is only required when irrigation water not being taken under replacement application CRC012291. I note that under the irrigation consent the proposed annual volume would allow for 68 days continuous abstraction and therefore only 297 days would need to be provided for under this consent. That volume equates to 384,912m<sup>3</sup>/yr.

42. I am also unsure how much of the property is supplied by existing consent CRC940428C.1, particularly as the applicant states that the above stock numbers are for the whole property.
43. I also note that the stock numbers identified in paragraph 38 are significantly different to those identified in CRC012291 of 25,000 ewes and 1000 cattle.
44. While the applicant does not consider that a consent is required for the use of stock water, I consider that the proposed rate and volume for stockwater of 473,040 cubic metres per year may be inefficient as it does not take into consideration water provided for under the irrigation consent, no details regarding the water available for stock water under their existing consent has been provided, and the water that may be taken under section 14(3)(b) as asserted by the applicant is not considered..

#### **Conveyance / distribution efficiency**

45. The rate of 15 litres per second requested by the applicant is proposed to ensure water is conveyed the length of the race network. The applicant has commented on this in relation to Policy 19 of the WCWARP. They note that the race system provides aquatic habitat and that this is provided for in this policy.
46. The applicant has not provided enough detail to confirm the aquatic values of the race system, however, I consider the proposed rate is not unreasonable in terms of conveyance systems in the area.

#### **Efficiency conclusions**

47. Given the above discussion, I cannot be satisfied that that the proposed diversion volume is reasonable for the required stock water when taking into consideration the applicant's existing permit and application in process.

#### **Discharge Permit**

<b>Adverse Effects</b>	<b>Applicant's assessment</b>	<b>My assessment</b>	<b>My Conclusion</b>
Flood-carrying capacity & erosion	The applicant considers the discharge has been occurring for a number of years and has not resulted in any decrease in flood-carrying capacity of the Wairepo Creek.	On inspection of the discharge during my site visit I did not observe any erosion of the bed or banks and the waterway appeared to have capacity for the discharge that was occurring. I also note that the rate of discharge would be limited to 15l/s and will not be greater than what could flow down the creek without the diversion occurring. I consider that with the recommended condition (3) the effects of the discharge of flood-carrying capacity and erosion would be minor.	Effects minor.
Water quality & ecosystems	The discharge is water that is not required stock water purposes. The applicant considers that the water quality of the discharge will not result in any adverse effects on Wairepo Creek as the water quality information that is available suggests	I agree with the applicant's conclusion that the water quality of the discharge is not likely to be significantly degraded as it is only excess stock water. I note that stock currently have access to the creek and race, therefore water quality is not likely to be any different than if it remained in the	Effects acceptable.

	while some parameters have increased, others have also decreased. They do not consider there is a clear connection between water quality change and the discharge.	creek. As there is available mixing in the creek prior to discharge into the Wairpeo Arm and dilution capacity within the Wairepo Arm itself, I am satisfied that effects on water quality from the discharge would be acceptable.	
Downstream users and amenity values	The applicant considers that as effects on water quality are no more than minor, that any downstream users will not be affected by the discharge.	The discharge has been occurring for a number of years without complaint from any users of the catchment waterbodies. The effects on water quality are considered to be acceptable, the discharge occurs on the applicant's property upstream, and the available mixing in the creek and Wairepo Arm will minimise any adverse visual effects of the discharge. I am satisfied that effects on downstream users and amenity values would be minor.	Effects minor.
Tangata Whenua values	No assessment provided.	As effects on water quality considered acceptable, I am satisfied that there would be no adverse effects on Tangata Whenua values.	Effects minor.

### Overall Conclusion

48. With regard to s104(1)(a), the actual and potential effects of the activities have been discussed above. In particular, there is uncertainty regarding the following effects relating to this application:
- (a) The localised and cumulative impacts on surface water quality;
  - (b) Whether the annual volume requested represents an inefficient use of water;
  - (c) Whether the aquatic habitat within the race system is of sufficient value to justify the significant annual volume of water over and above the actual requirements for stock and domestic purposes.
  - (d) The effects on cultural values in the area.
49. The impacts on ecosystems can be mitigated, if the values that require protection in the race are detailed by the applicant and if the recommended conditions requiring appropriate installation of a suitable fish screen or confirmation that continuous flows will be provided are adopted, should the Commissioners decide to grant consent for this activity. The impacts of inefficient use can be mitigated if conditions on efficient use for reasonable stock requirements are included, should the Commissioners decide to grant consent for this activity.
50. For the discharge permit, I am satisfied that under s104(1)(a), the actual and potential effects of the proposed activity are not significant.

## **Statutory Assessment (s104(1)(b))**

### **Regional Policy Statement (RPS)**

51. Under Section 104(1)(b)(iii) of the RMA, the consent authority shall have regard to any relevant regional policy statement. The Canterbury Regional Policy Statement has been operative since 26 June 1998.
52. Of significance to this application are Chapter 9, which relates to the management of the Region's water resources. The WCWARP and PNRRP take into account policies in the RPS and address the issues outlined in more detail. Any assessment of effects has been made using these documents and therefore I have had regard to the RPS throughout this assessment.

### **Waitaki Catchment Water Allocation Regional Plan (WCWARP)**

53. The objectives and policies of the WCWARP that are relevant to each potential adverse effect have been identified in the introductory s42A report. A table of all those objectives and policies considered to be relevant to the water permit application is appended in Attachment Four. A discussion of the objectives and policies which are particularly relevant to this application is provided in the following paragraphs.

#### ***Objectives***

54. Objective 1 is the key objective in relation to the proposed taking of water. Within Objective 1 there is specific recognition of an individual's reasonable domestic water and stock drinking- water needs. I have also considered whether Objective 1 can be met in terms of sustaining the quality of the river and surrounding environment. While the proposal may not entirely be consistent with Objective 1 and the associated policies (particularly policy 17 relating reasonable stock water requirements), it is difficult to determine if the inconsistencies are significant enough to make the proposal contrary to Objective 1.
55. The proposed activity may impact on the matters outlined in Objective 1. In particular, (a) relating to spiritual and cultural values, given that they have not yet been addressed by the applicant, and (b) life-supporting capacity of river and ecosystems, given that any significant values in the race have not been identified and volume of diversion may be more than that required for stock water and may subsequently reduce the flows in Wairepo Creek. Some submitters have submitted against the proposed activity due to concerns about impacts on these values. Given this, and that limited mitigation has been proposed by the applicant, I cannot determine whether the proposed activity is contrary to these values at the time of preparing this report.
56. Objective 4 aims to achieve a high level of technical efficiency in the use of water. The proposed diversion and use for stock water must be deemed technically efficient, which at present is not the case..
57. The proposed activity is within the allocation limits set by the WCWARP and will not affect the reliability of supply to other users taking water from Lake Waitaki, therefore, it may be considered to be consistent with Objectives 2 and 5 of the WCWARP.

#### ***Environmental flow and level regimes***

58. Policies 2 – 8 deal with minimum flows for the Wairepo Creek and tributaries.
59. Policies 3 and 4 outline the values that must be maintained in the water bodies, and a number of matters that must be considered when setting an environmental flow and

level regime, and are particularly relevant to this application. As the proposal is for stock water and domestic purposes, no minimum flow is required for essential use as set out in the WCWARP. However, the applicant needs to confirm that either a continuous discharge will be maintained from the race to provide fish passage or the rate of diversion will be restricted at times of low flow. Provided one of these options is agree to, I would be satisfied that the proposal is consistent with these policies.

#### ***Policies on efficient and effective use***

60. Policies 15 – 20 deal with efficient and effective use and all are applicable to this application.
61. Policy 15 ensures that the rate of abstraction and the annual volume is reasonable for the intended use. As discussed in the assessment of effects section of this report, I am not satisfied that the annual volume is reasonable for the intended use.
62. Policy 17 requires that consents for stock water meet the reasonable use test. As discussed above, I am not satisfied that the full volume of water requested is reasonable taking into consideration the other permits.

#### ***Replacement consents***

63. Policy 28 provides guidance as to matters which must be considered when deciding whether to grant or refuse an application for replacement of existing consents.
64. These include consideration of attempts to meet the efficiency expectations of the plan, recognition of the value of the investment by the consent holder and maintenance of the consent in any allocation limits and priority bands if granted.
65. I do not consider that the applicant has provided sufficient detail to show that they have made all reasonable attempts to meet the efficiency expectations of the plan.

#### ***Policies for other rivers and streams in the upper catchment***

66. Policy 40 deals with the environmental flow regime in the rivers and streams in the upper catchment (see Map 2 in the WCWARP). Policy 40 enables access to water for the activities identified in Objective 2, to the extent consistent with Objective 1.
67. The applicant is not required to comply with the minimum flow and level and flow sharing regimes. The application is within the allocation for agricultural and horticultural activities identified in Rule 6, Table 5. Provided appropriate mitigation is adopted, I would be satisfied that the proposal is consistent with this policy.

#### **Proposed Natural Resources Regional Plan (PNRRP)**

68. The objectives and policies of the PNRRP that are relevant to each potential adverse effect have been identified in the introductory s42A report. A discussion of the relevant objectives and policies is provided below.

##### ***Objective WQL1.1 – Water quality outcomes for rivers***

This objective aims to maintain and improve water quality, physical and chemical characteristics of the rivers. The proposed discharge into Wairepo Creek and subsequently the Wairepo Arm will be consistent with the outcomes required by this objective.

### **Policy WQL1 – Point source discharges into surface water**

This policy refers to consideration of whether the discharge is necessary, or whether other options are available. Consideration of the zone of non-compliance, the assimilative capacity of the receiving body, effects on cultural values and ecosystems are also referred to. The proposed discharge is in the most appropriate location for the system and will be within the same catchment it originates from. The discharge into Wairepo Creek will not alter the water quality of the Wairepo Creek in accordance with the water quality standards for “Class Natural State” rivers outside the zone of non-compliance.

### **Conclusion**

69. With regard to s104(1)(b), the relevant provisions of the RPS and WCWARP have been considered above. I do not consider the water permit application is consistent with Objective 1 and Policy 17 due to an unreasonable volume of water being requested and an absence of identification of any significant values to be protected within the race system.
70. For the discharge permit, I consider the application is consistent with the relevant planning provisions.

### **Other Matters (s104(1)(c))**

71. With regard to s104(1)(c), the consent authority can consider any other matter relevant and reasonably necessary to determine the applications. I consider that the high court decision *Aoraki Water Trust and Others v Meridian Energy Limited*<sup>1</sup> is relevant to the water permit application (see discussion in Report 1).

## **PART II PURPOSE AND PRINCIPALS**

### **Purpose of the RMA (s5)**

72. Under Section 104, the consent authority must consider applications “subject to part II” of the RMA. The purpose of the RMA (Section 5(1)) is to:  
  
*“promote the sustainable management of natural and physical resources.”*
73. Section 5(2) defines the meaning of “sustainable management”, which is to manage resources in a manner that provides for the social, economic and cultural wellbeing of communities while protecting the life-supporting capacity of the environment for the needs of future generations. This section also states that this should be achieved while “safeguarding the life-supporting capacity of water” and “avoiding, remedying or mitigating” the adverse effects of activities.
74. The proposal will allow for essential stock water and domestic water for the property, which may provide for the economic and social well-being of the community, and the health of people. The applicant however has not yet proposed measures to “safeguard the life-supporting capacity of water” (Section 5(2)(b)) and “avoid, remedy or mitigate” the potential impacts on ecosystems, as required in Section 5(2)(c). These considerations arise in relation to the desire to take significantly more water than required for the stated purpose, as a result of: the delivery system, existing and

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<sup>1</sup> [2004] NZMRA 251

proposed other resource consents, and water that may be able to be taken in accordance section 14(3)(b) of the Act as asserted by the applicant.

### **Matters of National Importance (s6)**

75. Sub-section (e) of Section 6 of the RMA may be relevant to this application. The applicant has not assessed the impacts on cultural values, however, runanga have not submitted on this application.

### **Other Matters (Section 7)**

76. In achieving the purpose of the RMA, the consent authority is directed to have particular regard to a number of matters as set out in (a) – (j) of Section 7.
77. Sub-sections (b) and (h) are specifically relevant to this application and should be considered when deciding the acceptability of effects resulting from the proposed diversion of water from Spring Creek. Section (b) relates to the efficient use of water and as discussed above there is insufficient evidence to confirm that the applicant's requested annual volume is reasonable. However, it also leads to considerations of the efficient use of water delivery via the race system, being an existing physical resource. These two matters need to be considered on the facts and circumstances of this application.
78. Section (h) refers to the protection of habitat of trout and salmon. The applicant needs to confirm what mitigation measures they will adopt to ensure that this objective is achieved for the water permit.

### **Principles of the Treaty of Waitangi (s8)**

79. Section 8 of the RMA requires the consent authority to take into account the principles of the Treaty of Waitangi. The site lies within the rohe of Waihao, Moeraki and Arowhenua Runanga. Runanga were informed separately when ECan received the application and later when the application was notified. Submissions have not been received from Ngai Tahu and runanga for these applications.

## **RECOMMENDATION**

### **Grant or Decline**

80. Section 104B applies to any application which is a discretionary or non-complying activity and states that the consent authority may grant or refuse the application and may impose conditions under s108.
81. There are a number of outstanding issues associated with the water permit as listed below:

CRC082211

- (a) *Ecosystems* – The applicant has not identified the values to be protected and the race and has not proposed a fish screen. They must therefore confirm that there will be a continuous discharge from the race to maintain habitat below minimum flows, alternatively they can propose to restrict their rate of diversion when minimum flows are triggered and install an appropriate fish screen;
- (b) *Reasonable Use* – The volume requested may be more than that required for the stock and domestic water requirements on the property;

82. Provided Having considered all relevant matters outlined in section 104(1), I am not satisfied that the actual and potential effects of the proposed water permit activity are acceptable due to concerns regarding whether there is any significant habitat in the race system to protect which is associated with the reasonable use of water (listed as (a) and (b) above). On this basis, I cannot recommend that the water permit application (CRC082211) be granted.
83. For the discharge application (CRC082212), I consider that there are no outstanding adverse effects of the proposed activity that have not been addressed through appropriate mitigation measures. When considering the matters outlined in section 104(1), I am satisfied the effects of the proposed activity are minor.

## RECOMMENDED CONDITIONS

84. Comments on the mitigation proposed by the applicant are provided earlier in this report.
85. If the Commissioners decide to grant this application, a list of conditions that are usually included in a water permit are provided in Appendix 6 of the introductory s42A report. A list of draft recommended conditions specific to this application is provided below.
86. It should be noted that the investigating officer is not satisfied that these conditions would adequately mitigate that adverse effects that are of key concern, as identified in paragraph 80 above.

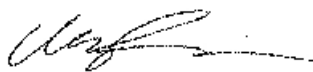
Table 3: Recommended draft conditions for water permit CRC082211		
No.	Condition Code <sup>2</sup>	Details
<b>Divert</b>		
1	WP01	<i>Name of waterbody:</i> Spring Creek <i>Map reference:</i> NZMS 260 H39:7534-4837 <i>Instantaneous rate:</i> 15 litres per second <i>Volume:</i> 1,296 cubic metres per day and 384,912 cubic metres between 1 <sup>st</sup> July and the following 30 <sup>th</sup> June
<b>Use</b>		
2	WP04 (modified)	<i>Activity:</i> stock water <i>Use:</i> stockwater <i>Plan No:</i> "CRC082211" (Attachment 1)
<b>Mitigation</b>		
3	WP09	Fish screen
4		The consent holder shall ensure water races used to convey water diverted in terms of this permit are well maintained to minimise losses.

<sup>2</sup> See Report 1, Appendix 6 for condition code and wording.

<b>Measuring &amp; Metering</b>		
5	ME03	Open channel
6	ME04	
7	ME05	
8	ME06	
9	ME07	Waterway: Spring Creek
<b>Administrative Conditions</b>		
10	AD01	
11	AD03	
12	AD04	Lapse date

<b>Table : Recommended draft conditions for discharge permit CRC082212</b>		
<b>No.</b>	<b>Consent Code</b>	<b>Details</b>
<b>Scope</b>		
1	DP01	<i>Waterbody from:</i> Stock water race <i>Waterbody to:</i> Wairepo Creek <i>Map reference:</i> NZMS 260 H39:7607-5079 <i>Discharge rate:</i> 15 litres per second <i>Plan:</i> "CRC082212" <i>Other:</i> The water shall be unused stock water and shall contain no contaminants.
<b>Operation and Maintenance</b>		
2	DP02	<i>Waterbody:</i> Wairepo Creek
3	LU13 modified	The discharge shall not occur in a manner likely to cause erosion of, or instability to, the banks or bed of Wairepo Creek; or reduce the flood-carrying capacity of the waterway
4	DP03	
5	DP04	
<b>Administrative Conditions</b>		
6	AD03	Review
7	AD04	Lapse date

Signed:



Date: 31<sup>st</sup> August 2009

Claire Penman  
 Consents Investigating Officer

## REFERENCES

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Gabites, S, & Horrell, G. 2005. Seven day mean annual low flow mapping of the tributaries of the Waitaki River. Canterbury Regional Council Report R05/16. ISBN: 1-86937-570-X.

Keller, J & Pfluger, Y. 2005. Working papers about the Natural and Physical Resources of the Waitaki catchment by locality. Report provided to the Waitaki Catchment Water Allocation Board.

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The Resource Management Act 1991. Consolidated version including the Resource Management Amendment Act 1995. August 2005.

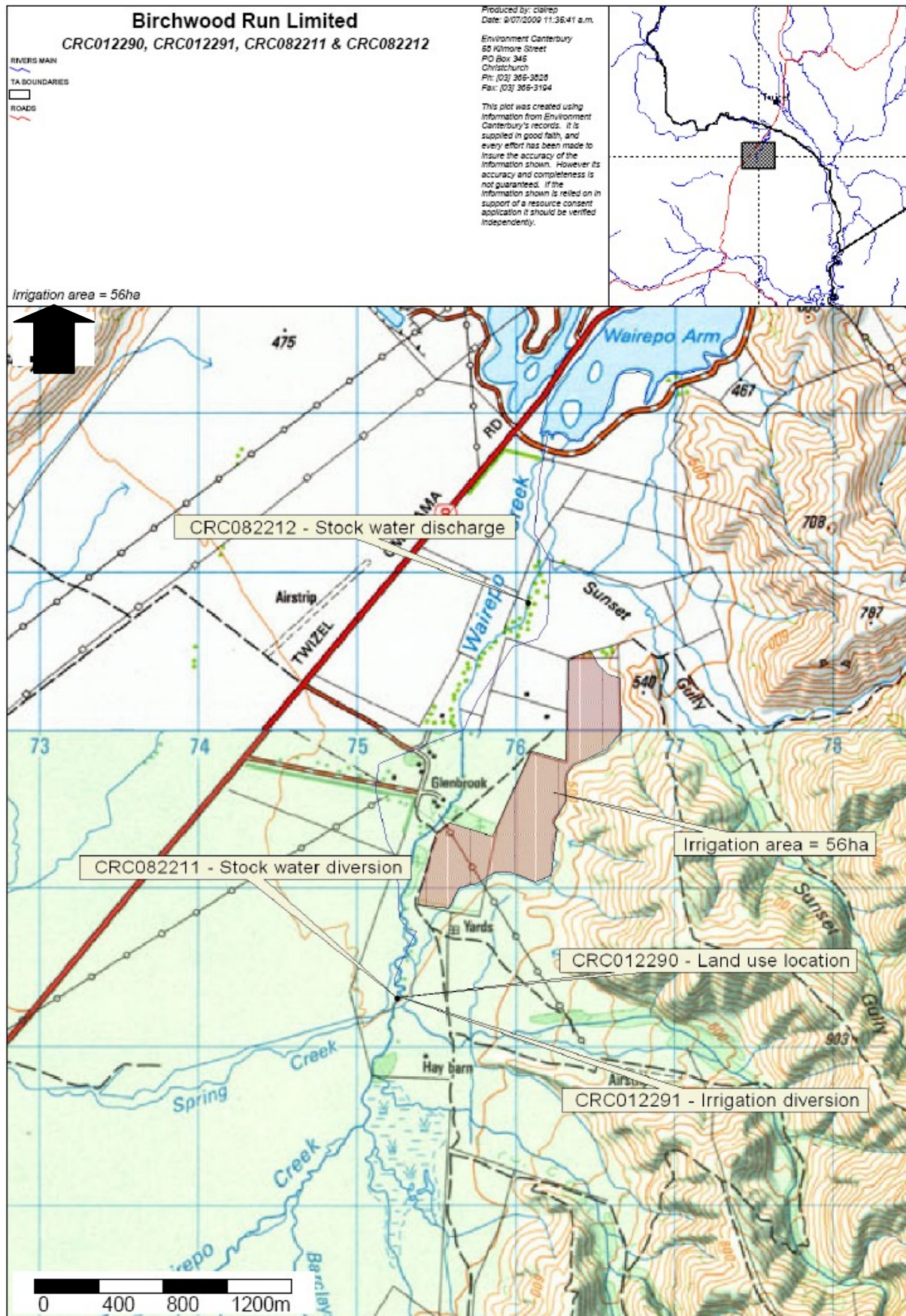
Waitaki Catchment Water Allocation Board 2006. Waitaki Catchment Water Allocation Regional Plan. ISBN: 0-9582620-7-1.

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Waitaki Catchment Water Allocation Board 2006. Waitaki Catchment Water Allocation Regional Plan, Annex 1 – Decision and principal reasons for adopting the Plan provisions. ISBN: 0-9582620-4-7.

Waitaki Catchment Water Allocation Board 2006. Waitaki Catchment Water Allocation Regional Plan, Section 32 Report. ISBN: 0-9582620-5-5.

# ATTACHMENT ONE – LOCATION MAP



## ATTACHMENT TWO – PREVIOUS CONSENTS

**RecordNo** WTK774871A.1

**Type** Consent  
**Souce** Full Transfer  
**PermitType** Water Permit  
**FileNo** CO6C/17995

**ClientID** 40006 **ClientName** Birchwood Run Limited

**To** To continue to divert water from Spring Creek at map reference S109:702-576 at a maximum rate of 15 litres per second for stockwater.

**Location** Omarama-Twizel Road, OMARAMA

**Status** Continuation until new application determined

**Events** 25/Apr/1990 Given Effect To  
26/Apr/1990 Lapse Date if not Given Effect To  
20/Oct/2004 < Consent Transferred  
23/May/2007 1st Status Query Letter  
04/Jul/2007 1st Expiry Reminder  
16/Oct/2007 2nd Expiry Reminder  
22/Jan/2008 Sec 124 continuation starts  
30/Jun/2008 Consent Expires

**Subject to the following conditions:**

- 1) Nil conditions

**Consent Summary**



**RecordNo** WTK774871B.1

**Type** Consent  
**Souce** Full Transfer  
**PermitType** Discharge Permit  
**FileNo** CO6C/17995

**ClientID** 40006 **ClientName** Birchwood Run Limited

**To** To continue to discharge water to an arm of Lake Ruataniwha at map reference S109:740-621 at a maximum rate of 15 litres per second.

**Location** Omarama-Twizel Road, OMARAMA

**Status** Continuation until new application determined

**Events** 25/Apr/1990 Given Effect To  
26/Apr/1990 Lapse Date if not Given Effect To  
20/Oct/2004 < Consent Transferred  
23/May/2007 1st Status Query Letter  
04/Jul/2007 1st Expiry Reminder  
16/Oct/2007 2nd Expiry Reminder  
22/Jan/2008 Sec 124 continuation starts  
30/Jun/2008 Consent Expires

**Subject to the following conditions:**

- 1) Nil conditions

**Consent Summary**



**ATTACHMENT THREE – PHOTOS OF RIVER, WATER RACE & INTAKE SITE TAKEN ON 10 DECEMBER 2008 BY CLAIRE PENMAN**



Diversion structure allowing flow to continue down Wairepo Creek



Diversion structure at intake, currently no water meter or flow gauge



Wairepo Creek downstream of discharge



Wairepo Creek downstream of discharge

## ATTACHMENT FOUR – OBJECTIVES & POLICIES

Objective / Policy	Description	Assessment
Objective 1	To sustain the qualities of the environment of the Waitaki River and associated beds, bars, margins, tributaries, islands, lakes, wetlands and aquifers.	The proposed activity may impact on the matters outlined in Objective 1. In particular, (a), and (b). Some submitters have submitted against the proposed activity due to concerns about impacts on these values. Therefore, I cannot determine whether the proposed activity is contrary to these values at the time of preparing this report.
Objective 2	Provide water for different activities.	The proposed activity is within the annual allocation limit for agricultural and horticultural activities outlined in Rule 6. Therefore, this application would not affect availability of water to other users.
Objective 3	Recognise that there are beneficial and adverse effects on the environment at a national and local scale.	These factors have been considered in the assessment of effects.
Objective 4	Achieve a high level of technical efficiency in the use of water.	The use of water for stock water is technically efficient but may not be allocatively efficient
Objective 5	Provide for practical and fair sharing of allocated water during times of low water availability.	The proposal would not affect the reliability of supply to other users to a less than acceptable level.
Policy 1	Recognising connectedness between all parts of the catchment	Providing a suitable volume of diversion is provided for, the taking for stock and domestic supply can be undertaken while ensuring that the connectedness with the catchment is recognised.
Policy 3	Setting of environment flow and level regimes for all activities in Objective 2 and consistent with Objective 1.	Applicant need to identify what the significant values in the race are so that habitat is retained in the race to enable access for the activities in Objective 2 and be consistent with Objective 1.
Policy 4	Outlines a number of matters that must be considered when setting an environmental flow and level regime	As above
Policy 10	Enabling small amounts of water to be taken or diverted where effects are minor.	The proposed volume exceeds what is considered to be a small amount
Policy 11	Consider effects on Tangata Whenua values, local and national effects when allocating water to activities	No submissions, but application falls within allocation limits for agricultural and horticultural activities
Policy 12	Outlines matters that must be considered when establishing allocation limits.	Application falls within allocation limit for activities in Objective 2
Policy 15	Ensuring take and use of water is reasonable for its intended use	Applicant is seeking what I consider to be an unreasonable volume of water
Policy 17	Requiring the volume of water for stock to meet a reasonable use test	Applicant is seeking what I consider to be an unreasonable volume of water
Policy 18	Requiring the volume of water on existing consents to reflect actual use.	Through the replacement of the existing consent an annual volume will be specified in the conditions
Policy 19	Encouraging piping or sealing of water distribution systems to minimise water loses and maintain	The proposed conveyance via open water race will mean there is some water loss via evaporation, but the applicant considers it to

	water quality.	provide a significant aquatic habitat.
Policy 21	Requiring the installation and use of water-measuring and recording devices.	A suitable water metering device is proposed to be installed
Policy 23	Restricting taking or diverting of water (surface and shallow and connected groundwater) upstream of Lake Benmore during times of low flow except for essential uses	No minimum flow for restrictions is required if a reasonable volume of water for the intended use is adopted.
Policy 28	Considerations for granting or refusing replacement consents	While there has been considerable investment by the consent holder, I do not consider that they have adequately addressed the efficiency expectations of the plan
Policy 41	Setting an environmental flow and level regime for these tributaries	No minimum flow is required provided a reasonable volume of water for the intended use is adopted.