

Before the Hearing Panel appointed by Canterbury Regional Council

IN THE MATTER OF The Resource Management Act 1991

AND

IN THE MATTER OF Application CRC032178 by Haka Valley Irrigation Limited for a land use permit to install an intake structure in the bed of the Waitaki River.

Section 42A Officer's Report

Date of Hearing: August 11th 2008

Report of Tim Ensor

1. I have been employed by Canterbury Regional Council as a Consents Investigating Officer since July 2006. I hold a Bachelor of Science and a Bachelor of Arts (with Honours) in Geography from the University of Canterbury.
2. This report is prepared under the provisions of Section 42A of the Resource Management Act 1991 (RMA). This section allows a Council officer to provide a report to the decision-maker on a resource consent made to the Council, and allows the decision-maker to consider the report at the hearing. Section 41(4) of the RMA allows the decision-maker to request and receive from any person who makes a report under Section 42A "*any information or advice that is relevant and reasonably necessary to determine the application*". This report will provide the decision-maker with information and advice related to:
 - (a) The background to the application;
 - (b) Details of the notification of the application and any submissions received;
 - (c) An outline of the relevant legal and planning provisions;
 - (d) Comments on the assessment of environmental effects provided;
 - (e) Details of Council policy relevant to the application;
 - (f) Comments in relation to the matters specified in Part II of the RMA; and
 - (g) Comments on the decision to be made by the decision-maker including comments on whether the application can be granted or should be declined; if the application is to be granted what measures are required to avoid, remedy or mitigate any adverse effects; what monitoring should be undertaken and the duration of consent.
3. It should be emphasised that any conclusions reached or recommendations made in this report are not binding on the decision-maker. It should not be assumed that the decision-maker will reach the same conclusion or decision having considered all the evidence to be brought before it by the applicant and submitters.

4. This report should be read together with the introductory s42A report which gives an overview of all applications presented at this hearing. The introductory s42A report covers issues that are common to all applications, and will provide the decision-maker with information and advice related to the notification of all applications and any submissions received, and an outline of the relevant legal and planning provisions;

INTRODUCTION

Background

5. Hakataramea Valley Irrigation Inc. (the applicant) has applied for resource consent to install an intake structure in the bed of the Waitaki River for the purposes of taking water for irrigation in the Hakataramea Valley (see Attachment One for map of location of take).
6. The applicant is proposing to take water from the Waitaki River for a community irrigation scheme so in addition to this consent application, the applicant is seeking a water permit, CRC032177, to take and use water for the irrigation of crops and pasture in the Hakataramea Valley. This is the subject of a separate s42A report.
7. The applicant has contracted David Hamilton of David Hamilton and Associates to prepare the application, the assessment of environmental effects and respond to s92 requests for further information. Ms Keri Johnston (Irricon Resource Solutions) has been employed to represent the applicant at this hearing.
8. The duration requested is 35 years.
9. This is an application for a new activity.
10. The application was lodged on 13 June 2003. A request for further information in accordance with s92 of the RMA was sent on 12 October 2006 to Mr David Hamilton with a response received on 14 December 2006 which included a revised assessment of environmental effects.

Notification

11. Details of the notification and wording are contained in Appendix 4 of the introductory s42A report (Report 1).

Submissions

12. Details of the submissions received for this application are contained in Table 1. A summary of key issues/effects that are common to all applications is provided in Appendix 5 of the introductory s42A report.

| Submitter | Issues | Support/ Neutral/ Oppose | To be heard |
|-----------------------|------------------------|--------------------------------|----------------|
| RW Sutton | Benefits of irrigation | Support | No |
| GM M ^c Caw | Increased reliability | Support | No |
| AJ and JM Kelly | | Support | Yes |
| RJ Irving | | Support | No |
| RE Haugh | | Support | No |

| | | | |
|--|--|---------|-----|
| J Benny | | Support | No |
| RJ Collett and GR Strong | Values of the river, equitable allocation | Oppose | No |
| NG, AG and HG Hayes | | Support | Yes |
| GS Hay | Community benefit | Support | Yes |
| AG Bell | Economic and Hakataramea River benefits | Support | No |
| BE and JD Cooney | Economic benefit | Support | No |
| HG Bell | Improved production | Support | No |
| AA Bell | Economic and Hakataramea River benefits | Support | No |
| TB Petrie | Economic and Hakataramea River benefits | Support | Yes |
| GK and JL Taylor | Economic and Hakataramea River benefits | Support | No |
| HD and MC Kay | Economic benefits | Support | No |
| Canterbury-Aoraki Conservation Board | Water quality, duration | Oppose | Yes |
| CRC Grigg | Local development not power generation | Support | Yes |
| DA Saunders | Takes from Waitaki River not tributaries | Support | Yes |
| IA M ^c Caw | | Support | Yes |
| LR and TL Scott | Sustainable farming and consistent flow in the Hakataramea. | Support | No |
| John Abelen | | Support | Yes |
| Clover Bank Partnership | Wind erosion, landscape, habitat, river flows | Support | Yes |
| Tararua | Wind erosion, landscape, habitat, river flows | Support | Yes |
| RG Pringle | Wind erosion, landscape, habitat, river flows | Support | Yes |
| ZL Pringle | Wind erosion, landscape, habitat, river flows | Support | Yes |
| Mr G F Keeling | Allocation limits | Support | Yes |
| Royal Forest & Bird Protection Society | Minimum flows, allocation limits, effects on ecological values | Neutral | |
| Meridian Energy Limited | Flow regimes, metering, water quality | Support | Yes |
| Waitaki Valley Irrigators | Allocation limits | Support | Yes |
| Waimate District Council | Economic well being | Support | |
| Simon Taylor | Supply in Hakataramea Valley | Support | No |
| Mr C J Marshall | Allocation, catchment health | Oppose | Yes |

Table 1: Summary of submissions on CRC032178

DESCRIPTION OF THE PROPOSED ACTIVITY

13. The applicant proposes the following activities:
 - (a) To place a pump shed, suction line and fish screen on the north bank of the Waitaki River at or about map reference NZMS 260 I40:0827-0865 near Normanvale Estates intake, Kurow.
 - (b) The pump shed is to be 18 metres long and 5 metres high and clad in brown or green. There are to be four intake pipes of 1.5 metres diameter each. Design drawings are shown in Attachment Two.
 - (c) A 35 year duration for the consent is sought.
14. Where the applicant has proposed additional mitigation it has been discussed within the assessment of effects section of this report.

LEGAL AND PLANNING MATTERS

Consent Requirements

15. The consent requirements under the RMA, Transitional Regional Plan (TRP) and proposed Natural Resources Regional Plan (PNRRP) for land use permit applications are outlined in the introductory s42A report. A summary of the requirements for this application are provided in Table 2 below, with a detailed discussion of the PNRRP rules in the following paragraphs.

| Use | RMA | TRP | PNRRP | WCWARP |
|------------|-----|-------------------------------------|------------------------|--------|
| Earthworks | S13 | South Canterbury by-law 415 and 416 | Rule BLR7 or Rule BLR8 | n/a |

Table 2: summary of consent requirements for application CRC032178

16. Rule BLR7 of the PNRRP classifies land use activities within 7.5 metres of the bed or flood protection structures as a permitted activity provided certain conditions are met. These conditions include the activity not having an effect on flooding risk or potential, bank stability, the integrity of existing lawfully established structures or a discharge above a certain threshold.
17. Should any of the conditions of the permitted activity not be met then Rule BLR8 classifies the activity as discretionary.
18. The applicant has not provided enough information to determine the status of the application under the PNRRP however resource consent is required under the operative TRP which classifies the activity as **discretionary**.

DESCRIPTION OF THE AFFECTED ENVIRONMENT

19. A description of the values of the Waitaki Valley in general is provided in the introductory s42A report.
20. The applicant's consultant has stated that the pumping shed and intake will be located on competent rock located next to deep water. The river bank is steep and stable and of single channel, with the top of the bank being covered with long grass and gorse.

ASSESSMENT OF ACTUAL AND POTENTIAL EFFECTS

21. The effects that have been considered for this type of activity are presented in the introductory s42A report. That report includes the presentation of the relevant planning provisions which direct us to consider these effects. A detailed discussion regarding the assessment of individual effects for this application is provided.
22. The applicant has provided limited information regarding the potential adverse effects of the proposed activity on persons and the environment. As such it is not possible to define the status of the activity under the PNRRP. From the limited information provided it is likely that the activity may be permitted as outlined in Rule BLR7 but due to its status under the operative TRP will still require consent.

Adverse effects on bank stability

23. The applicant's consultant has stated, and shown in photographs, that the proposed site of the intake is located on rock adjacent to deep water. The rock has been deemed competent (greywacke and argillite) by the consultant, and they have also stated that the site is stable with no bank erosion observed.
24. Environment Canterbury Senior Engineering Officer Bruce Scarlett has reviewed the application and has raised no concerns with regard to bank stability.
25. Taking into account the river bed material at the site and Mr Scarlett's expert opinion, I conclude that the adverse effects on bank stability will be acceptable.

Adverse effects on water quality

26. The applicant has not assessed the potential effects on water quality. They have stated in their application that the intake structure will be bolted to the rock and that the bank above the river where the pumping shed will be located is vegetated with long grass and gorse.
27. The applicant has not stated that there will need to be any vegetation clearance or site levelling to enable the pumping shed to be constructed. Should the applicant wish to clear vegetation or level the site I recommend that the applicant provide an erosion and sediment control plan to demonstrate that any potential discharge of sediment will be minor.
28. The applicant is not proposing to undertake works in flowing water.
29. If the applicant can manage any discharge to within the thresholds outlined in Rule BLR7 of the PNRRP, and due to the scope of the activity this is likely, then I would be satisfied that the adverse effects on water quality will be acceptable.

Adverse effects on flood carrying capacity and flood risk

30. The applicant has indicated that the pumping shed will be located on a track which appears to be approximately 5-6 metres above the river level. The portion of the intake that intercepts the river is made up of four pipes that are 1.5 metres in diameter each that are located along the bank presenting a small profile to flood flow.
31. Mr Scarlett has reviewed the applicant's proposal and has raised no concerns provided the design is adhered to.
32. Due to the location of the pumping shed above flood levels, the size of the inlet in relation to the river channel and taking into account Mr Scarlett's expert opinion, I conclude that any adverse effects on flood carrying capacity and flood risk will be acceptable.

Adverse effects on amenity values

33. The applicant has provided details of the dimensions of the pumping shed and intake structure. The shed is proposed to be 18 metres long and 5 metres high and will be clad in green or brown tones to blend with the surrounding landscape. Design details are provided in Attachment Two.
34. The applicant has provided photographs of the site. The only other structure visible on the river is the Waitaki Dam which is some distance upstream.
35. The pump shed location is approximately 600 metres from State Highway 83 and a search of the Canterbury Regional Council GIS shows that there is a Department of Conservation reserve approximately 700 metres away.
36. Since the time this application was lodged the applicant has reduced the rate of take in the associated water permit. The size of the pumping shed and intake structure therefore may change as a result of this but at the time this report was written there had been no correspondence to suggest this is the case.
37. If the application were to be granted adverse effects on amenity values would most likely be able to be addressed through mitigation relating to planting and naturalisation of the structure. Although there is not a great level of detail relating to the potential affects on amity values, with the appropriate mitigation I conclude that any adverse effects on amenity values will most likely be acceptable.

Adverse effect on Tangata Whenua values

38. The site of the proposed abstraction is within the rohe of Te Runaka O Arowhenua and Te Runaka O Waihao and is also in a statutory acknowledgement area. Te Runaka O Arowhenua, Te Runaka O Waihao and Te Runanga O Ngai Tahu were served notice of the application in August 2007. Submissions were received in opposition to this application from Te Runanga O Ngai Tahu.
39. Given that there are a number of submissions to be heard which identify cultural values, I will not comment on the actual and potential effects on the cultural values of the area.

STATUTORY ASSESSMENT

Part II Purpose and Principals

40. Part 2 of the RMA contains sections 5 to 8 which define the purpose and principals of the RMA. These are discussed in the main report.
41. Due to the limited potential for significant adverse effects on the environment or to people to occur as a result of the proposed activity, I can conclude that the activity is consistent with sections 5 through 8 of the RMA.

Regional Policy Statement (RPS)

42. 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.
43. Of significance to these applications are Chapters 9 and 10, which relate to the management the regions water resources and of the beds of rivers and lakes and their margins. The WCWARP and PNRRP take into account 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.

Decisions on consents

44. The application for a land use permit is a discretionary activity and must be discussed in the context of s104 of the RMA.
45. Section 104 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.
46. The actual and potential effects of the activity have been discussed in the assessment of effects section of this report.
47. In summary, after taking into account the relevant policies in the TRP and the PNRRP and assessing the actual and potential effects of the proposed activity against the thresholds outlined in these documents, with the appropriate mitigation I consider that the actual or potential adverse effects will be acceptable.

RECOMMENDATION

Grant or Decline


48. Section 104B applies to any application which is a discretionary activity and states that the consent authority may grant or refuse an application for a discretionary activity, and may impose conditions under s108.
49. Having taken into account the scale and significance of the activity, I conclude that with appropriate mitigation this consent could be granted.


Duration

50. The applicant has requested a duration of 35 years.
51. Section 1.3.5 of Chapter 1 of the PNRRP relates to the duration of resource consents. Resource consents (other than for land use or subdivision) can be granted for a maximum duration of 35 years. This section outlines a number of factors that must be taken into account when considering the duration of any resource consent to be granted. Of particular relevance to this application is clause (b)(iii), the significance of the activity relative to the existing situation and the capacity of the affected environment, with regard to the effects on amenity values.

RECOMMENDED CONDITIONS

52. Comments on the mitigation proposed by the applicant are provided earlier in this report.
53. If the Commissioners decide to grant the land use permit application, a list of conditions that are usually included on a land use permit are provided in Appendix 6. As stated above I feel it would be appropriate to include mitigation relating to effects on amenity values. A list of conditions for this application can be provided to the Commissioners upon request.

Signed:  _____ Date: 18 July 2008
Tim Ensor
Consents Investigating Officer

Signed:  _____ Date: 18 July 2008
Reviewed by Bianca Sullivan
Principal Consents Advisor

REFERENCES

Canterbury Regional Council 2004. Proposed Natural Resources Regional Plan – Chapter 4, Water Quality. Report No R04/15/4. ISBN: 1-86937-530-0

Canterbury Regional Council 2004. Proposed Natural Resources Regional Plan – Chapter 6, Beds and margins of lakes and rivers. Report No R04/15/6. ISBN: 1-86937-532-7.

Canterbury Regional Council 1998. Regional Policy Statement. Report No R98/4. ISBN 1-86937-337-5.

Canterbury Regional Council 1991. Transitional Regional Plan. October 1991.

Te Maire Tau, Anake Goodall et al., 1990. Te Whakatau Kaupapa: Ngai Tahu Resource Management Strategy for the Canterbury Region. ISBN: 0-908925-06-9.

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

ATTACHMENT ONE – MAP SHOWING LOCATION OF ABSTRACTION



ATTACHMENT TWO – DESIGN DRAWINGS

