

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

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

**AND**

**IN THE MATTER OF** Applications CRC011362 and  
CRC011363 by Dunstan Peaks  
Ltd for a Land Use Permit to  
undertake works in the bed of the  
river and a Discharge Permit to  
discharge water to water.

**Section 42A Officer's Report of Yvette Rodrigo**

**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) and the reports on cumulative water quality effects in the catchment (Reports 4(A) - (F)).

**INTRODUCTION**

2. Dunstan Peaks Ltd (the Applicant) has applied for resource consent to:
  - (a) Discharge surplus irrigation water from a diversion race at a maximum rate of 150 litres per second (l/s) and water used for hydro-generation at a maximum rate of 30 l/s into Twaddles Creek (CRC011362); and
  - (b) Undertake remedial works in the beds of the Little Omarama Stream, Twaddles Creek and Middle Gully for the purposes of maintaining a diversion structures intake structure (CRC011363).

See Attachment One for a map of the location of discharges and works in the river.

3. The application was lodged on 15 January 2001 and was prepared on behalf of the applicant by Mr Rod Patterson (Rod Patterson Consultancy Limited). Waitaki Aquaculture Services were commissioned in 2001 to provide a report on the fisheries aspects of the water abstractions. URS prepared a report providing supporting information to the application in 2002.
4. Further information was also provided by Ms Keri Johnston (RJ Hall Civil and Environmental Consulting Ltd) in 2006 and the applicant is now represented by Ms Cathy Begley (GHD Ltd).
5. The audit of this application and associated water permits also applied for the applicant (contained in the applications under CRC011361 and CRC011362) are based on a report by URS in July 2002 and more recently, information provided by Ms Cathy Begley of GHD Ltd.

6. A 35 year duration is sought for both permits.
7. Should the applications be granted, the discharge permit would authorise existing activities previously authorised by consent and the land-use permit would authorise activities that have been occurring at the site but have not been authorised by any previous consent.
8. A site visit was undertaken by ECan staff in December 2008.

## **Background**

9. The background to this application is included in Report 11A. This report (Report 11B) discusses the land use permit to maintain a series of existing diversion and intake structures in several water bodies, and the associated river works required to maintain flows into the structures. A total of six diversion / intake structures are included in the application. One structure is on Little Omarama Stream, two structures on Omarama Stream, two structures on Twaddle Creek, and one structure on the water body at Middle Gully.
10. This report also includes a discussion of the discharge permit (part of CRC011362) to discharge surplus irrigation water and water used for hydro-generation back into the Twaddles Creek.
11. The application for the water permit (included in CRC011361 and CRC011362) is discussed in a separate report (Report 11A). Both reports should be read together to get a full understanding of the proposal.
12. These applications were lodged on 22 December 2003 and considered to be notifiable on the same date.
13. The plan attached in Attachment One identifies the respective diversion point, area of works, irrigation area and discharge point associated with the take and use of water, land-use and discharges associated with this proposal.

## **Notification**

14. Details of the public notification and wording are contained in Appendix 4 of the introductory s42A report (Report 1). These consents were publicly notified in August 2007 with 200 other applications for similar activities in the Waitaki catchment.

## **Submissions**

15. For details of the submissions lodged on the overall proposal see Report 11A. None of those submissions made any reference to this discharge and land use application or the effects of the proposed discharge and works in the bed.

## **DESCRIPTION OF THE PROPOSED ACTIVITY**

16. The overall proposal is described in detail in Report 11A.
17. For the land use permit specifically, the applicant proposes the following:  
  
CRC011363
18. Remedial works to maintain diversion channels and intake structures will be carried out at the following locations (as shown in Attachment One). It is noted that the

applicant has not applied for or included the structures or channels associated with the upper Omarama Stream. The applicant may wish to confirm at the hearing whether works within this waterway will occur and these works were applied for or intended to be included as part of the land-use permit:

- (a) Little Omarama Stream, NZMS 260 H40:635-166.
  - (b) Twaddle Creek, NZMS 260 H40:603-198.
  - (c) Twaddle Creek, NZMS 260 H39:606-219.
  - (d) Middle Gully, NZMS 260 H40:614-192.
19. Water is currently diverted from the main river channels, at each of the above locations, via a man-made side channel which directs water towards a radial gate. Water travels through each radial gate along a water race to the irrigation areas.
20. The applicant has applied to maintain both the diversion side channel and the radial gate intake structure.
21. The applicant has stated that the bed and banks of the waterbodies where diversion / intake structures are located are generally stable, and therefore maintenance works are of a minor nature and are only required infrequently (perhaps once or twice a year).
22. Maintenance works are likely to include the following activities:
- (a) Minor instream works following flood events, to keep the bed of the stream trained towards the intake structures.
  - (b) The occasional removal of flood materials from the mouth of the intake structures.
  - (c) The repositioning of rock armouring, on the banks of the intake channel, particularly at the confluence with the main river channel, to mitigate bank erosion.
  - (d) The placement of rock armouring on the stream banks, adjacent to the intake structures, to prevent undermining of the intake structures.
23. For the discharge permit specifically, the applicant proposes the following:
- CRC011362
- (a) To discharge water into Twaddles Creek:
    - Used for irrigation, at a maximum rate of 150 l/s and a volume not exceeding 90,720 cubic metres per day (m<sup>3</sup>/day), at or about map reference NZMS 260 H39:607-201; and
    - Used for hydro-generation, at a maximum rate of 30 l/s, and a volume not exceeding 69,552 m<sup>3</sup>/day, at or about map reference NZMS 260 H40:613-197.

## LEGAL AND PLANNING MATTERS

### Consent Requirements

24. An overview of the consent requirements under the Resource Management Act (RMA), Transitional Regional Plan (TRP) and Proposed Natural Resources Regional Plan (PNRRP) for discharge permit applications is provided in the introductory s42A report (Report 1). These applications were lodged in 2003. The TRP is the regional plan which controls the activity type for both applications (pursuant to section 88A(1) of the RMA).

25. A summary of the requirements for this application is provided below:

#### TRP

*Discharge permit* - There is no GA for the discharge of water into water as described in the proposed activity. Resource consent is therefore required as a discretionary activity.

*Land use permit* - The TRP is silent on matters relating to works in the bed and banks of rivers and lakes in the Waitaki catchment. These activities require resource consent as a discretionary activity under section 77C(1)(b) of the RMA.

26. Overall, proposed discharge permit is a **discretionary** activity under the TRP and resource consent is required in accordance with section 15 of the RMA.

27. Overall, the land use permit is a **discretionary** activity under the TRP and resource consent is required in accordance with section 13 of the RMA.

### CONSULTATION

28. See Report 11A for details of consultation undertaken.

### DESCRIPTION OF THE AFFECTED ENVIRONMENT

29. A description of the values of the Waitaki Basin and Lake Benmore in general is provided in the introductory s42A report (Report 1).

30. See Report 11A for a description of the affected environment specific to this proposal. The Little Omarama, Middle Gully and Twaddles Creek are all upper catchment tributaries of the Omarama Stream. The mid and lower reaches of the Omarama Stream are subject to flow restrictions and discharge quality standards set out in the Ahuriri Water Conservation Order (AWCO) in recognition of their outstanding natural values.

### ASSESSMENT OF PROPOSED ACTIVITY

31. The proposed s.13 and s.15 permits are discretionary activities and must be considered in the context of s104 of the RMA.

32. Section 104(1) outlines matters that the consent authority must have regard to when considering an application for 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))

33. The effects that have been considered for this type of activity (discharge of water 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. Summary tables regarding the assessment of individual effects for these applications are provided below.

### Land-Use

Adverse Effects	Applicant's assessment	My assessment	My Conclusion
Flood-carrying capacity & erosion	The applicant proposes to undertake maintenance works from time to time to repair or re-build the intake structures and diversion channels, which have been in place since the system began operation and to date these works have not affected flood-carrying capacity of the waterways or resulted in erosion of the banks.	The streams flow into the Upper Omarama, which becomes ephemeral for part of the year, and the Omarama Swamp. I am unaware of any adverse effects relating to erosion or flood-carrying capacity occurring as a result of these works and I am satisfied that this effect should be no more than minor, provided that appropriate conditions are included in the consent, should it be granted. The streams flow into the Upper Omarama, which becomes ephemeral for part of the year, and the Omarama Swamp.	Effects minor.
Water quality & ecosystems	The applicant has not assessed the impacts of the works on water quality or ecosystem values.	The nature of the proposal necessitates that some works occur in flowing water. The applicant has stated that these works will only be required on an infrequent basis, perhaps once or twice a year, and that light machinery will be used to undertake the works. Given the scale and infrequent nature of the works, it is likely that any effects are likely to be temporary and minor. However, as it is a requirement for works to occur within flowing water, I consider that appropriate mitigation is necessary to ensure that effects on water quality are minimised, as far as possible. Conditions have been recommended to address this effect and are listed in the table at the end of this report.	Effects minor, provided conditions included and adhered to.
Man-made Structures	The applicant has not identified any downstream man-made structures	I do not consider that the works will lead to any effects on man-made structures. While there are structures potentially located downstream of the works, such as bridges, the scale of the works proposed are of a minor nature, the relatively infrequent requirement for works, and mitigation of any erosion or flood-carrying capacity effects, potential effects of the	Effects minor.

		works on man-made structures are likely to be minor.	
Downstream users and amenity values	The applicant has stated that works are only likely to be required on one or two occasions each year, and that works will be undertaken on private land only.	Given that the structures already exist, are small scale, are not visible to any public access ways, and are not in the vicinity of any dwellings not owned by the applicant, I consider that adverse effects on people and amenity values are likely to be minor.	Effects minor.
Tangata Whenua values	No assessment provided.	As effects on water quality considered minor, I am satisfied that effects on Tangata Whenua values minor.	Effects minor.

**Table 1: Summary assessment of effects for application CRC041330.**

### Discharge permit

Adverse Effects	Applicant's assessment	My assessment	My Conclusion
Flood-carrying capacity & erosion	The applicant has not assessed this effect.	Given that the diversion and discharge channel has been in place for a number of years and the amount of water diverted, I am satisfied that the discharge will not increase the risk of flooding or erosion downstream of the discharge point. As stated above the discharge will enter Twaddles Creek which then enters the Omarama Swamp, which contributes flow to the Omarama Stream.	Effects minor.
Water quality and ecosystems	The applicant has not assessed the impacts on water quality or ecosystems as a result of the discharges.	The applicant has only applied for discharges of border-dyke and wild flood irrigation bywash water associated with two of their water permits (authorising the diversion of water for irrigation). A number of other discharges (of bywash water from flood and border-dyke irrigation), not included in this application occur into waterways within the property and have the potential to adversely affect water quality. Given the sensitivity of the downstream environment such as the Omarama Swamp, which has been identified as an important nursery and habitat for fish, and the Omarama Stream, I am not satisfied that the applicant has provided information that confirms that the effects on these waterways resulting from the discharges of contaminants associated with the discharges from their irrigation system at the site are acceptable.	Effects may not be acceptable.

Amenity	The applicant has not assessed this effect.	The discharge from this race has been occurring for a number of years and the increase in flow of surplus irrigation water is unlikely to change the clarity or result in any visible change to the discharge.	Effects minor.
Tangata Whenua values	No assessment provided.	As effects on water quality considered minor, I am satisfied that effects on Tangata Whenua values minor.	Effects minor.

**Table 2: Summary assessment of effects for application CRC011362.**

## Conclusion

34. With regard to s104(1)(a), the actual and potential effects of the activities have been discussed above. For these consents, I consider that the actual and potential effects of the proposed activity may not be acceptable.
35. While the impacts on flood-carrying capacity and erosion, man-made structures, amenity values and Tangata Whenua values can be mitigated, if the recommended conditions are adopted, however, I am not satisfied that the effects on water quality as a result of discharges from the applicants site are acceptable.

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

### Regional Policy Statement (RPS)

36. 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.
37. Of significance to this application is Chapter 4, which relates to the management of the quality of the region's water resources and Chapter 10, which relates to the management of activities in the beds and margins of rivers. The PNRRP takes 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.

### Proposed Natural Resources Regional Plan (PNRRP)

38. Section 88(A)(2) of the RMA states that any plan or proposed plan which exists when the application is considered must be had regard to in accordance with section 104(1)(b). For this reason it is appropriate to consider the objectives and policies of the PNRRP that are relevant to the applications to discharges of water and works in the bed or margins of rivers. A discussion of the relevant objectives
39. 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.

## Chapter 4

### **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 discharges into the Twaddles Creek (as

included in this application) and the other discharges into surface water from the applicant's property may compromise 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 uses an existing system and will be within the same catchment it originates from. The discharge into Twaddles Creek and from the other discharges at the applicants site may not meet the water quality standards in the plan outside the zone of non-compliance.

**Chapter 6**

***Objective BLR1 – Activities within the beds and margins***

This objective aims to ensure that works in the beds and banks of rivers and streams can be undertaken while minimising effects, including flood-carrying capacity, natural character, ecosystems, other structures, erosion, Ngai Tahu values. Given the small scale of the works and recommended mitigation, the proposed works will be consistent with the outcomes required by this objective.

***Policy BLR1 – Effects of activities within the bed or margins***

This policy aims to control activities within the bed and within 7.5 metres of the banks or any flood control structure to ensure that objective BLR1 is achieved. This may include restricting activities so that do not affect flood-carrying capacity, erosion or create plant infestations. With the proposed conditions, the works will be consistent with this policy.

**Conclusion**

40. With regard to s104(1)(b), the relevant provisions of the RPS and PNRRP have been considered above. I consider the land use permit application is consistent with the relevant planning provisions of those documents, however, in my view, the application for the discharge permit may compromise the requirements of these documents.

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

41. With regard to s104(1)(c), the consent authority can consider any other matter relevant and reasonably necessary to determine the applications. I do not consider that there are any other matters which are relevant to this application.

**PART II PURPOSE AND PRINCIPLES**

**Purpose of the RMA (s5)**

42. 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.”*

43. 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 by “avoiding, remedying or mitigating” the adverse effects of activities.

44. The proposal as a whole, including the diversion and use application, will allow the development of land to occur, which may provide for the economic and social well-being of the community. For these applications specifically, the applicant has proposed measures and measures have been recommended to “avoid, remedy or mitigate” the potential impacts on flood-carrying capacity and erosion, as required in Section 5(2)(c). I cannot confirm however, that these measures will ensure that the proposed effects on water quality will be acceptable so that it will be consistent with Section 5(2)(a), which aims to provide for the needs of future generations.

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

45. Sub-sections (a) and (e) of Section 6 of the RMA are particularly relevant to these applications. The applicant has proposed some measures to minimise the effects on flood-carrying capacity, however other measure may be required in relation to mitigating the effects on ecosystems and water quality to protect the natural character of the environment. The applicant has not assessed the impacts on cultural values, and runanga have submitted in opposition on this application.

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

46. 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.
47. Sub-sections (c), (f) and (h) are specifically relevant to these applications and should be considered when deciding the acceptability of effects resulting from the proposed works in the bed and discharge of water. Section (c) refers to the maintenance and enhancement of amenity values. The discharge and works associated with maintaining the intake structure for the race are unlikely to have an effect on amenity values.
48. Section (f) refers to the maintenance and enhancement of the quality of the environment. The applicant has not assessed the impacts or proposed mitigation measures to ensure that this objective is achieved, particularly with regard to water quality and ecosystems.
49. Section (h) requires the protection of the habitat of trout and salmon. A condition has been recommended to ensure that the timing of works will not coincide fish-spawning or bird nesting.

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

50. 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 Moeraki Runanga. Runanga were informed separately when ECan received the application and later when the applications were notified. Submissions have been received from Ngai Tahu and runanga on these applications.

## RECOMMENDATION

### Grant or Decline

51. 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.
52. For the discharge and land use applications I consider that there are 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 not satisfied the effects of the proposed activity will be acceptable.
53. Under section 104B I can recommend that application CRC011363 for the land-use permit be granted, however I cannot recommend that the discharge permit application (CRC011362) be granted due to the outstanding issues relating to water quality. In addition, other discharges occur at the property have either not been notified or may not have been applied for. The following issues are outstanding in relation to the discharge permit:
- (a) *Confirmation of resource consenting requirements* - Clarification on whether all discharges into surface water occurring at the applicant's property requiring consent were applied for, and whether all applications were notified and if not, whether these discharge would result in re-notification of the discharge permit application;
  - (b) *An assessment of effects* - associated with all discharges from the applicant's property;
  - (c) *Mitigation measures* - to avoid, prevent or remediate impacts on the environment as a result of these discharges.

## RECOMMENDED CONDITIONS

54. Comments on the mitigation proposed by the applicant are provided earlier in this report.
55. If the Commissioners decide to grant the land-use application, a list of recommended conditions are provided below. Wording of the conditions coded below are in Appendix 6 of the introductory section 42A report (Report 1).

CRC011363 – To undertake works in the bed and banks of a watercourse

No.	Consent Code	Details
<b>Scope</b>		
1	LU01	The works shall be limited to the disturbance of the bed and banks of the Little Omarama Stream, Twaddles Creek and Middle Gully for the purpose of the placement, extension, removal or demolition associated with maintenance of intake structures and diversion channels for the diversion and abstraction of water under consent CRC011361 and CRC011362 <i>[These consent numbers may change depending on how the consent are split. For a discussion of this, refer to</i>

		<i>Report 11A].</i>
<b>Location</b>		
2	LU02	<p><i>Cross reference to Condition: 1</i></p> <p><i>Waterbody and grid reference.</i></p> <p>Little Omarama Stream, NZMS 260 H40:635-166.</p> <p>Twaddle Creek, NZMS 260 H40:603-198.</p> <p>Twaddle Creek, NZMS 260 H39:606-219.</p> <p>Middle Gully, NZMS 260 H40:614-192.</p>
<b>Limits of Works</b>		
3	LU07	
<b>Erosion Protection</b>		
4	LU12	
5	LU13 modified	Works shall not be undertaken in a manner likely to cause erosion of, or instability to, the banks or bed of the Little Omarama Stream, Twaddle Creek or Middle Gully; or reduce the flood-carrying capacity of these waterways.
<b>Prior to Construction</b>		
6	Non standard	The Canterbury Regional Council Compliance Monitoring Officer shall be notified at least 48 hours prior to the commencement of work.
7	LU08	
<b>During Construction</b>		
8	LU18	
9	LU21	
10	LU23 modified	All practicable measures shall be undertaken to minimise vehicles and machinery entering the Little Omarama Stream, Twaddle Creek or Middle Gully.
11	LU22	
12	LU26	
13	LU24	

14	LU25	
<b>Upon Completion</b>		
15	LU28	
16	Non standard	On completion of works, the area shall be restored to its original condition as far as practicable.
<b>Administrative Conditions</b>		
17	AD03	
18	AD04	



Signed:

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

*Yvette Rodrigo*  
*Consents Investigating Officer*

## REFERENCES

Canterbury Regional Council 2004. Proposed Natural Resources Regional Plan – Chapter 4: Water Quality.

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.

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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 – LOCATION MAP

