

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

IN THE MATTER OF The Resource Management Act
1991

AND

IN THE MATTER OF Application CRC041776 by
Killermont Station Limited for a
Land Use Permit to undertake
works in the bed of the river.

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 (Report 4(F)).

INTRODUCTION

2. Killermont Station Limited (the applicant) has applied for resource consent to undertake works in the bed of the Ahuriri River for the purposes of installing and maintaining an irrigation intake structure. The applicant proposes to take water from an intake structure in the Ahuriri River.

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

3. The application was prepared on behalf of the applicant by Grant Richards of Water Resources Otago Limited. Further information on the application was provided by Jenna Donaggio of Aqualinc Research Limited.
4. This application is for a new activity and the applicant requests a 35 year duration.
5. A site visit was undertaken by Environment Canterbury (ECan) staff in December 2008.

Background

6. Application CRC041776 is the land use permit associated with the water permit, CRC041777 lodged by the applicant, which is assessed in Report 23D. Both reports should be read together to get a full understanding of the proposal.
7. The plan attached in Appendix One identifies the location of the intake and pipeline, the area of works and the irrigation area associated with the proposed activity.
8. Applications CRC041776 and CRC041777 were lodged on 27 February 2004 and considered to be notifiable on that date.

Notification

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

Submissions

10. For details of the submissions lodged on the overall proposal see Report 23A. The submission by Transit made reference to this land use application and expressed concern that the works could affect the road and traffic movements.

DESCRIPTION OF THE PROPOSED ACTIVITY

11. The overall proposal is described in detail in Report 23E.
12. The applicant proposes to undertake works within the bed and banks of the Ahuriri River in the following manner:

Location of Works

- (a) Works in the bed and banks of the Ahuriri River will be undertaken to install and maintain an irrigation intake structure for the abstraction of water, at a location between NZMS 260 H39:552-283.

Installation of the intake

- (b) Initial construction will involve the creation of a track, approximately 4 metres wide, leading to the waters edge. A working platform will be created at the waters edge, from which a pond will be excavated within the riverbed. A pump housing (approximately 4 metres wide, 5 metres long and 7 metres deep) and a steel intake pipe (5 metres long, 1 metre diameter) would be placed in the pond.
- (c) The intake pipe would be buried 1.5 to 2 metres below the reformed river bed level.
- (d) The excavation for the pump station and intake pipe would be backfilled with river gravel to form a hump of coarse gravel around the intake site.
- (e) The pump housing would most likely contain a submersible pump operated on a variable speed controller. A single intake pipe would exit the pump station and cross under State Highway 8 before entering Run 201B.
- (f) A water depth of approximately 2.0 to 2.5 metres would need to be maintained around the intake. This would require seasonal clearing of built up gravel and fines from the diversion channel.
- (g) The river bank at the proposed intake site would be stabilised with a rock and concrete deflector or gabion basket placed on the upstream and downstream side of the intake, to protect the intake from erosion.
- (h) The pump station and intake would be backfilled with coarse gravel.
- (i) The pump station would have low visible impact and should not protrude more than 3 to 4 metres from the general line of the true right bank.

- (j) Any works undertaken in flowing water will be kept to a minimum.
- (k) Electrical components may be housed further up the bank, depending on electrical engineering requirements.

Maintenance works

- (l) Seasonal clearing of accumulated gravel may be required around the intake to ensure that flow velocities do not increase as a result of channelling.

LEGAL AND PLANNING MATTERS

Consent Requirements

- 13. An overview of the consent requirements under the Resource Management Act (RMA), Transitional Regional Plan (TRP) and Proposed Natural Resources Regional Plan provision 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).
- 14. A summary of the requirements for this application is provided below:

TRP

The TRP is silent on matters relating to works in the bed and banks of rivers and lakes in the Waitaki catchment. This activity therefore requires consent as a discretionary activity under section 77C(1)(b) of the RMA.

CONSULTATION

- 15. See Report 23E for details of consultation undertaken.

DESCRIPTION OF THE AFFECTED ENVIRONMENT

- 16. A description of the values of the Waitaki Basin and Lake Benmore in general is provided in the introductory s42A report (Report 1). See Report 23E for a description of the affected environment specific to this proposal.
- 17. The Ahuriri is a braided river. At the proposed point of abstraction, a sub-channel of the river flows adjacent to State Highway 8. This sub-channel leaves the main braid about 1 kilometre upstream of the proposed intake location. The applicant has observed the sub-channel to carry water year-round.
- 18. During flood events, the channel poses a risk of erosion to the true right bank of the river, hence river protection works have been undertaken and include the installation of two rock walls at right angles from the river bank. The proposed intake structure will be located between these rock walls.
- 19. Trout habitat exists at the applicant's proposed intake site.

ASSESSMENT OF PROPOSED ACTIVITY

- 20. The proposed s.13 permit is a discretionary activity and must be considered in the context of s104 of the RMA.

21. 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))

22. 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.

Adverse Effects	Applicant's assessment	My assessment	My Conclusion
Flood-carrying capacity & erosion	The applicant has not assessed the effects on flood-carrying capacity.	<p>Mr Bruce Scarlett (Senior Engineering Officer, Environment Canterbury) assessed the application and stated that there were no concerns regarding adverse effects on flood carrying capacity and flooding patterns arising from the proposed works, as long as spoil was kept to a maximum height of 0.5 metres above bed level, and standard conditions relating to flooding were attached.</p> <p>No submissions on effects on flood carrying capacity and flooding patterns were received.</p> <p>Based on the advice provided from Mr Scarlett, I consider that if the proposed mitigation measures are adhered to the effects of the activity on flood carrying capacity and flooding patterns are likely to be minor.</p>	Effects minor.
Man-made structures	The applicant has not assessed the impacts on any man-made structures.	<p>Works are proposed to occur within a Transit New Zealand state highway reserve, north of State Highway 8. Transit New Zealand placed a submission in opposition to the proposed landuse activity. Concerns were raised relating to the effects of the installation of the intake structure on the erosion protection works maintained by Transit New Zealand in the vicinity of the proposed works.</p> <p>Concerns were also raised relating to the effects of the installation of the irrigation pipeline underneath State Highway 8, with regard to physical effects on the infrastructure, as well as effects relating to delays on the network, caused by the installation of the pipeline.</p>	Effects uncertain.

		<p>This application can only consider the impacts of the works as it relates to the bed of the Ahuriri River and up to 7.5 m on either side of its banks. It is unclear therefore whether it is within the scope of this application to consider the impacts on SH8, if it is located outside of this area.</p> <p>Given the uncertainty regarding the impact of the works on the rockwalls in the vicinity of the intake, I cannot confirm that the effects will be acceptable.</p> <p>The applicant may wish to address this issue at the hearing.</p>	
Bank stability	<p>The applicant has not assessed this impact but has proposed to protect the river banks at the intake site by installing a rock and concrete deflector or a gabion basket on both the upstream and downstream side of the proposed intake.</p>	<p>Mr Bruce Scarlett (Senior Engineering Officer, Environment Canterbury) assessed the application and stated that there were no concerns regarding adverse effects on bank stability arising from the proposed works, as long as spoil was kept to a maximum height of 0.5 metres above bed level, and standard conditions relating to erosion were attached.</p> <p>No submissions regarding effects on bank stability were received.</p> <p>In view of the comments made by the applicant and Mr Bruce Scarlett; and considering that there were no submissions regarding adverse effects on bank stability, I consider that the effects of the works on bank stability are likely to be minor, and therefore acceptable.</p>	Effects minor.
Water quality	<p>The applicant predicts that water quality impacts will be mitigated as follows:</p> <ul style="list-style-type: none"> • Any requirement to work in the river during construction would be kept to a minimum. • Maintaining a flow of 3 to 4 cumecs into the head of the channel will effectively keep the channel clean, allowing natural flushing of fines. • The applicant would expect that any instream maintenance works would occur during periods of natural turbidity, in early spring prior to irrigation commencing. 	<p>I agree with the applicant that whilst the works carried out to construct the intake are likely to increase the sediment in the stream, given the short duration, timing of works, and with appropriate conditions, adverse effects of the works on water quality would be minor.</p>	Effects minor.

	<ul style="list-style-type: none"> There are no significant adverse effects likely to result from construction of the proposed intake or diversion channel, or the maintenance of these structures, beyond minor turbidity 50 to 100 metres downstream of the site. 		
Riparian plants and animals	The applicant has not assessed this effect.	The works are likely to require some disturbance of vegetation on the banks of the Ahuriri River. The degree of this disturbance or the significance of this effect is uncertain. The applicant may wish to provide further information on this effect at the hearing. Alternatively, a condition has been recommended to ensure that the timing of works does not coincide with bird nesting.	Effects minor provided exclusion period for bird nesting is included as a condition of consent.
Instream Ecosystems	The applicant has not assessed this effect.	Fish and Game have raised concerns regarding the timing of instream works. DoC have also raised concerns regarding the impacts of land-use activities on fish migration and survival. I recommend that conditions relating to the appropriate timing of works to avoid fish spawning are also included, if consent for this activity is to be granted.	Effects should be minor, provided conditions regarding timing of works are included and adhered to.
Effects on People and Amenity Values	<p>The applicant has provided the following information regarding adverse effects on people and amenity values:</p> <ul style="list-style-type: none"> The applicant stated that fishing was the only recreational activity undertaken within the area of the proposed works, and that no other water users would be affected by the proposed works. The applicant estimated that works to establish the pump system would be complete within 2-4 days. 	Amenity values could be affected by the proposal, if mitigation measures are not adequate to ensure that sediment discharges are not controlled or minimised from the works and if these discharges coincide with times when people will be using the river for recreational pursuits. I therefore, recommend that in addition to appropriate measures to control the amount of sediment discharged into the river as a result of works, the timing of works during weekends and public holidays is limited.	Effects minor, provided conditions regarding timing of works adhered to.
Tangata Whenua values	No assessment provided.	No sites of historical or cultural significance were identified on Environment Canterbury's GIS System, and the site of the proposed works is not within a Statutory Acknowledgement Area. The applicant has proposed standard conditions relating to the accidental discovery of wahi tapu and wahi taonga are attached to	Effects minor.

		this consent. As effects on water quality considered minor, I am satisfied that effects on Tangata Whenua values minor.	
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Table 2: Summary assessment of effects for application CRC041776

Conclusion

23. With regard to s104(1)(a), the actual and potential effects of the activities have been discussed above. For this consent, I cannot confirm that the actual and potential effects of the proposed activity are acceptable.
24. The outstanding issues associated with this application include:
 - (a) *Man-made structures* – Whether the works within the bed and banks of the Ahuriri River would result in impacts on the river protection works, including the rock walls installed upstream and downstream of the proposed intake.

Statutory Assessment (s104(1)(b))

Regional Policy Statement (RPS)

25. 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.
26. Of significance to this application is Chapter 10, which relates to the works in the bed of rivers and their margins. 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)

27. 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 and policies is provided below.

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. Based on the applicant's assessment of effects, I cannot be sure that the effects on structures will be adequately mitigated.

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. I have recommended conditions that may mitigate these effects however the applicant may wish to provide further information on these effects at the hearing to confirm that these measures are adequate.

Conclusion

28. With regard to s104(1)(b), the relevant provisions of the RPS and PNRRP have been considered above. I cannot confirm that the land use application is consistent with the relevant planning provisions of those documents.

Other Matters (s104(1)(c))

29. 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)

30. 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.”

31. 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.

32. The proposal as a whole, including the take and use application, will allow the development of land to occur, which may provide for the economic and social wellbeing of the community. For these applications specifically, the applicant has proposed some measures to “avoid, remedy or mitigate” the potential impacts on flood-carrying capacity, erosion and water quality, as required in Section 5(2)(c). While these mitigation measures should ensure that the proposed effects on water quality will be minor so that it will be consistent with Section 5(2)(a), which aims to provide for the needs of future generations, I am not certain that the mitigation measures proposed by the applicant and those recommended in this report are sufficient to mitigate all effects.

Matters of National Importance (s6)

33. Sub-sections (a) and (e) of Section 6 of the RMA are particularly relevant to these applications. The applicant has proposed measures to minimise the effects on water quality and ecosystems which will to some degree 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, however, the scale of the proposed works in the bed and discharge, with the proposed mitigation, will provide for protection of water quality and ecosystems and subsequently cultural values.

Other Matters (Section 7)

34. 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.
35. 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. Section (c) refers to the maintenance and enhancement of amenity

values. The applicant has proposed mitigation measures to ensure that this objective is achieved.

- 36. Section (f) refers to the maintenance and enhancement of the quality of the environment. The applicant has proposed mitigation measures to ensure that this objective is achieved, particularly with regards to water quality and ecosystems.
- 37. Section (h) requires protection of the habitat of trout and salmon. Through the water quality mitigation recommended, the applications will be consistent with this objective.

Principles of the Treaty of Waitangi (s8)

- 38. 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 Te Runaka o Moeraki. 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

- 39. 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.
- 40. For the land use applications I consider that there are some outstanding adverse effects of the proposed activity that may not have been addressed through appropriate mitigation measures. When considering the matters outlined in section 104(1), I cannot conclude that the effects of the proposed activity are acceptable.
- 41. Under section 104B I cannot recommend that application CRC041776 be granted.

RECOMMENDED CONDITIONS

- 42. Comments on the mitigation proposed by the applicant are provided earlier in this report.
- 43. If the Commissioners consider that they have sufficient information to confirm that all relevant effects are acceptable and decide to grant this application, a list of draft recommended conditions are provided below.

No.	Consent Code ¹	Details
Scope		
1	LU01	The works shall be limited to the disturbance of the bed and banks of the Ahuriri River for the purpose of the placement, extension, removal or demolition associated with the installation and maintenance of an intake structure in or on the bed and banks of the Ahuriri River for the diversion of water under consent CRC041777.

¹ See Report 1, Appendix 6 for condition code and wording.

Location		
2	LU02	<i>Cross reference to Condition: 1</i> <i>Name of watercourse: Ahuriri River</i> <i>Map reference: H39:552-283</i>
Limits of Works		
3	LU07	
Erosion Protection		
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 Ahuriri River; or reduce the flood-carrying capacity of the waterway.
Prior to Construction		
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	
During Construction		
8	LU18	
9	LU21	
10	LU23 modified	All practicable measures shall be undertaken to minimise vehicles and machinery entering the Ahuriri River.
11	LU22	
12	LU26	
13	LU24	
14	LU25	
Upon Completion		
15	LU28	
16	Non standard	On completion of works, the area shall be restored to its original condition as far as practicable.
Administrative Conditions		
17	AD03	

18	AD04	
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Signed:

Date: 31st 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.

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ATTACHMENT ONE – LOCATION MAP

