

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

IN THE MATTER OF The Resource Management Act
1991

AND

IN THE MATTER OF Applications CRC012049 and
CRC012727 by Otamatapaio
Station (1993) Ltd for a
Discharge Permit to discharge
water to water and a Land Use
Permit to undertake works in the
bed of the river.

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

INTRODUCTION

2. Otamatapaio Station (1993) Ltd (the applicant) has applied for resource consent to:
 - (a) Discharge excess irrigation and stock water from a diversion race at a maximum rate of 200 litres per second into Clarks Creek;
 - (b) Undertake works in the bed of Otamatapaio River for the purposes of maintaining an intake structure.

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

3. The applicant engaged Ms Haidee McCabe of Irrigation Resource Solutions Ltd (formerly of Attewell Irrigation Consultants Ltd) to prepare the application and assessment of environmental effects and to respond to further information requests on their behalf.
4. A 35 year duration is sought for both permits.
5. The discharge permit is an application for replacement consent, while the land use permit is a new activity.
6. A site visit was undertaken during the audit of these applications on 8 December 2008.

Background

7. Application CRC012049 is the discharge permit associated with the diversion permit CRC012047 lodged by the applicant which is assessed in Report 29A. The land use

permit has also been lodged in association with the diversion permit for works to maintain the intake structure and ensure water continues to flow past the intake. Both reports should be read together to get a full understanding of the proposal.

8. The plan attached in Appendix One identifies the respective diversion point, area of works, irrigation area and discharge point for all applications.
9. The consent that the discharge application is replacing, WTK690251D.1, expired on 1 October 2001 (A copy can be found in Attachment Two). As this application was lodged 6 months prior to the expiry of the above consent, the applicant is currently operating under s124 continuation.
10. Applications CRC012727 and CRC012049 were lodged, in association with the respective diversion application on 30 March 2001 and formally received on 8 May 2001 and considered to be notifiable on 4 March 2003. Requests for further information were sent in 2006 requesting a further detailed assessment of effects from that lodged with the applications in 2001 and in particular effects on flood-carrying capacity, bank erosion and stability and man-made structures.
11. There has been a reduction in the rate of discharge associated with the reduction in rate of diversion from 370 litres per second (as lodged) to 250 litres per second (as notified) to the currently proposed 200 litres per second.
12. No changes in the scope of the land use application have been proposed by the applicant since the application was notified.

Notification

13. Details of the public notification and wording are contained in Appendix 4 of the introductory s42A report (Report 1). These consents were notified as part of the December 2003 "ministerial call-in" and in August 2007 with 200 other applications for similar activities in the Waitaki catchment.

Submissions

14. For details of the submissions lodged on the overall proposal see Report 29A. None of the 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

15. The overall proposal is described in detail in Report 29A.
16. For the discharge permit specifically, the applicant proposes the following:

CRC012049

- (a) To discharge water into Clarks Creek at a maximum rate of 200 litres per second and 120,960 cubic metres per week, at or about map reference NZMS 260 H40:783-233.
- (b) The discharge shall only be unused irrigation water and stockwater, diverted in accordance with CRC012047.
- (c) The discharge shall not cause erosion to the bed or banks of Clarks Creek.

17. For the land use permit specifically, the applicant proposes the following:
- (a) To disturb the bed of the Otamatapaio River to maintain an intake structure and sustain the abstraction for the diversion of water under consent CRC012047 at or about map reference NZMS 260 H40:774-195.
 - (b) The works shall include repair or replacement of the intake structure should it be washed out or damaged following a flood or fresh in the river and works to divert water upstream of the intake to enable flow past the intake structure.
 - (c) The intake structure consists of a twin pipe intake structure as per the photos in Attachment Three of Report 29A.
 - (d) The works are expected to take up to one day to complete each time and will be periodic.
 - (e) If complete replacement of the intake is required, the stream may need to be diverted around the works site so as to minimise the work required in flowing water.
 - (f) Where I agree with the proposed mitigation measures, they have been included in the recommended conditions section at the end of this report.

LEGAL AND PLANNING MATTERS

Consent Requirements

18. 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 discharge permit applications is provided in the introductory s42A report (Report 1). These applications were lodged in 2001. The TRP is the regional plan which controls the activity type for both applications (pursuant to section 88A(1) of the RMA).
19. A summary of the requirements for this application is provided below:
- TRP
- Discharge permit* - There is authorisation for the discharge of water into water as described in the proposed activity. Resource consent is therefore required as a discretionary activity pursuant to section 77C of the RMA
- 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.
- (a)
20. The proposed discharge permit is a **discretionary** activity under the TRP and resource consent is required in accordance with section 15 of the RMA.
21. the proposed land use permit is a **discretionary** activity under the TRP and resource consent is required in accordance with section 13 of the RMA.

CONSULTATION

22. See Report 29A for details of consultation undertaken.

DESCRIPTION OF THE AFFECTED ENVIRONMENT

23. A description of the values of the Waitaki Basin and Lake Benmore in general is provided in the introductory s42A report (Report 1).
24. See Report 29A for a description of the affected environment specific to this proposal and photos of the diversion, river works and discharge points. The diagrammatic sketch in Attachment Five of Report 29A shows where all the applicants' activities are located relative to each other.
25. Clarks Creek is a small tributary which collects runoff from the range between Mt Horrible and Lake Benmore along the western side of the proposed irrigation area. It flows directly into Lake Benmore near Sailors Cutting and the camping ground.

ASSESSMENT OF PROPOSED ACTIVITY

26. The proposed s.13 and s.15 permits are discretionary activities and must be considered in the context of s104 of the RMA.
27. 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))

28. 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. Where I am satisfied that effects are minor I have not discussed further.

Discharge Permit

Adverse Effects	Applicant's assessment	My assessment	My Conclusion
Flood-carrying capacity & erosion	No assessment provided, however, a condition is proposed to ensure that discharge does not affect flood-carrying capacity of the river or cause erosion to the bed or banks of the Otamatapaio River.	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 note that the maximum proposed rate will not likely be discharged for much of the time as the water will be used as efficiently as possible on the border strips, minimising runoff and the discharge will reduce from the full rate to just excess stock and domestic water when irrigation is not occurring, I consider that with the recommended condition (3) the	Effects minor.

		effects of the discharge of flood-carrying capacity and erosion would be minor.	
Water quality & ecosystems	The discharge is water that is not required for irrigation or stock water purposes and runoff water from the border-dyke system. The applicant considers that the water quality of the discharge will not result in any adverse effects on Clarks Creek or Lake Benmore as there are two moderate wetland areas that the discharge and creek runs through which will assist filtering the water and removing nutrients prior to the discharge entering the lake. In addition, the proposed Farm Management Plan (FMP) will assist with management and minimisation of nutrient runoff and leaching from the property.	The applicant noted in their s92 response dated 15 th December 2006, that water quality tests would be carried out on the discharge into Clarks Creek to determine if there were any effects from the current system on water quality. To date, any results obtained have not been provided to CRC. Without being provided a copy of the FMP, I cannot determine if the mitigation that will form part of that plan will reduce the amount of contaminants in the discharge from any runoff from the border system. However I agree that there will be some removal and filtering of contaminants through the natural wetland function and available mixing in Clarks Creek prior to its discharge into Lake Benmore and the discharge will be reduced to only excess stock and domestic water when the irrigation is not occurring. In addition, once it has reached Lake Benmore, there will likely be significant mixing available in the lake from the small discharge volume.	Effects minor.
Downstream users and amenity values	No assessment provided.	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 minor, the discharge occurs on the applicant's property upstream of SH83, and the presence of the wetland 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 minor, I am satisfied that effects on Tangata Whenua values minor.	Effects minor.

Table 1: Summary assessment of effects for application CRC012049.

Land use permit

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 structure which has been in place since	I agree with the applicant's conclusion and note that the intake structure is already established and is located on the side of a braid in the river and the bed at this point is	Effects minor.

	the system began operation and to date has not affected flood-carrying capacity of the river or resulted in erosion of the banks. A condition is proposed to ensure that works do not adversely affect flood-carrying capacity or erosion.	relatively wide with very low banks. In terms of the works required to ensure flow past the intake which will involve moving of gravel within the riverbed, provided the works do not deflect flow into the banks and are limited in extent (i.e. less than 50 metres), I would be satisfied effects on flood-carrying capacity and erosion are minor (condition (10) & (11)). Should diversion of more than 50 metres in length be required then a water permit to divert water will be required. This consent only permits the earthworks associated with any required diversions.	
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. Using CRC's GIS system only SH83 bridge is located almost 5 km downstream of the proposed works. Given the distance to the nearest structure, relatively infrequent requirement for works, and mitigation of any erosion or flood-carrying capacity effects, potential effects of the maintenance and reconstruction on man-made structures would likely be minor (condition (11)).	Effects minor.
Water quality	Considers that the works to reconstruct the intake, after a fresh or flood damages it, will generally take less than 1 day. They conclude that as the works to re-instate the structure would be of short duration, the effects on water quality are minimal. They also state that the works will normally be carried out after rainfall or flood events when the stream is naturally high in sediment, and therefore, the effects of works are minor in terms of the context of the water quality at the time. In addition, the applicant proposes a condition which allows for the diversion of water around the works site to minimise the works in flow water and subsequent effects on water quality.	Under the PNRRP, the proposed activity would be permitted, provided that any discharge of sediment into water does not change the colour or decrease the clarity for more than 60 minutes. I consider that this would be an appropriate condition for the consent (condition (13)). I agree with the applicant that whilst the works will be carried out in flowing water, given the short duration, timing of works, diversion of water around the works site, and with appropriate conditions, adverse effects of the works on water quality would be minor	Effects minor.
Riparian plants and animals	The applicant has not assessed this effect.	I note that the works would not require any disturbance of vegetation on the banks of the Otamatapaio River. Given that the works will not affect riparian	Effects minor.

		vegetation, and the effects on water quality are considered to be minor, I am satisfied that the effects of the works on riparian plants and animals would be 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 CRC012727.

Overall Conclusion

29. With regard to s104(1)(a), the actual and potential effects of the activities have been discussed above. For these consents, I consider that under s104(1)(a), the actual and potential effects of the proposed activities are acceptable when taking account the proposed mitigation
30. The impacts on flood-carrying capacity and erosion, man-made structures, water quality and ecosystems, amenity values and Tangata Whenua values can be mitigated, if the recommended conditions are adopted, should the Commissioners decide to grant consent for these activities.

Statutory Assessment (s104(1)(b))

31. Section 88A(2) of the RMA states that any plan or proposed plan which exists when an 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 both applications. A discussion of the relevant objectives and policies is provided below.

Regional Policy Statement (RPS)

32. 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.
33. Of significance to this application is Chapter 9, which relates to the management of the Region's water resources. 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)

34. 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 Clarks Creek and subsequently Lake Benmore 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 Clarks Creek will likely meet the water quality standards for “Class HILL” rivers outside the zone of non-compliance.

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

35. With regard to s104(1)(b), the relevant provisions of the RPS and PNRRP have been considered above. I consider the discharge permit and land use applications are consistent with the relevant planning provisions of those documents.

Other Matters (s104(1)(c))

36. 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)

37. 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.”

38. 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.
39. 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 wellbeing of the community. For these applications specifically, the applicant has

proposed measures to “safeguard the life-supporting capacity of water” and “avoid, remedy or mitigate” the potential impacts on flood-carrying capacity, erosion and water quality, as required in Section 5(2)(c), and mitigation measures will 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.

Matters of National Importance (s6)

40. 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, flood-carrying capacity and ecosystems which will protect the natural character of the environment. The applicant has not yet proposed measures to address these effects. 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)

41. 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.
42. 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 applicant has proposed mitigation measures to ensure that this objective is achieved.
43. 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.
44. Section (h) requires protection of the habitat of trout and salmon. Through the water quality mitigation proposed, the applications will be consistent with this objective.

Principles of the Treaty of Waitangi (s8)

45. 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 Refuse

46. 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.
47. For the discharge and land use applications I consider that there are no outstanding adverse effects of the proposed activities 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 activities are minor.

48. Under section 104B I recommend that applications CRC012049 and CRC012727 be granted, subject to the attached recommended conditions.

RECOMMENDED CONDITIONS

49. Comments on the mitigation proposed by the applicant are provided earlier in this report.
50. If the Commissioners decide to grant this application, a list of recommended conditions are provided below.

Table : Recommended draft conditions for discharge permit CRC012049		
No.	Consent Code¹	Details
Scope		
1	DP01	<i>Waterbody from:</i> Irrigation race <i>Waterbody to:</i> Clarks Creek <i>Map reference:</i> NZMS 260 H40:783-233 <i>Discharge rate:</i> 200 litres per second <i>Plan:</i> "CRC012049" <i>Other:</i> The water shall be irrigation bywash water.
Operation and Maintenance		
2	DP02	<i>Waterbody:</i> Clarks 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 the Clarks Creek; or reduce the flood-carrying capacity of the waterway
4	DP03	
5	DP04	
Administrative Conditions		
6	AD03	Review
7	AD04	Lapse date


Table 2: Recommended draft conditions for CRC012727		
No.	Consent Code	Details
Scope		
1	LU01	(a) Maintain a twin pipe intake structure in the bed of Otamatapaio River, including excavation of gravel and sediments, (b) Only be necessary to maintain adequate flow of water to irrigation intake.
Location		

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

2	LU02	<p><i>Cross reference to Condition: 1</i></p> <p><i>Name of watercourse: Otamatapaio River</i></p> <p><i>Map reference: NZMS 260 H40:774-195</i></p> <p><i>Plan: "CRC012727" (Attachment 1)</i></p>
Limits of Works		
3	Non-standard	Any gravel, sand and other natural material excavated as part of the works authorised by this consent during the disturbance of the bed of Otamatapaio River, must be deposited on, or near to, the excavation site, and shall be reshaped and formed to a state consistent with the surrounding natural riverbed.
4	Non-standard	Maintenance works shall be carried out as soon as practicable after a flood or fresh event when sediment levels in the Otamatapaio River are naturally high and shall take no more than one day to complete
5	Non-standard	If complete replacement of the intake is required, the stream shall be diverted around the works site for a period of up to 3 days to minimise the work required in flowing water.
6	Non-standard	Any works to divert water shall not result in a diversion of more than 50 metres in length.
Erosion Protection		
7	LU10	
8	LU11	<i>Waterbody: Otamatapaio River</i>
9	LU12	
10	LU13	<i>Waterbody: Otamatapaio River</i>
Prior to Construction		
8	LU08	
9	Non standard	The Canterbury Regional Council Compliance Monitoring Officer shall be notified of the intention to carry out works and their intended type and scope at least 48 hours prior to the commencement of work.
10	LU31	Bird survey
During Construction		
11	LU14	<i>Waterbody: Otamatapaio River</i>
12	LU18	
13	LU21	
14	LU23 modified	All practicable measures shall be undertaken to minimise vehicles and machinery entering Otamatapaio River.

15	LU22	
16	LU26	
17	LU24	
18	LU25	
Accidental Discovery Protocol		
19	LU09	
Upon Completion		
20	LU28	
21	Non standard	On completion of works, the area shall be restored to its original condition as far as practicable.
Administrative Conditions		
22	AD03	
23	AD04	

Signed:



Date: 31st August 2009

Claire Penman
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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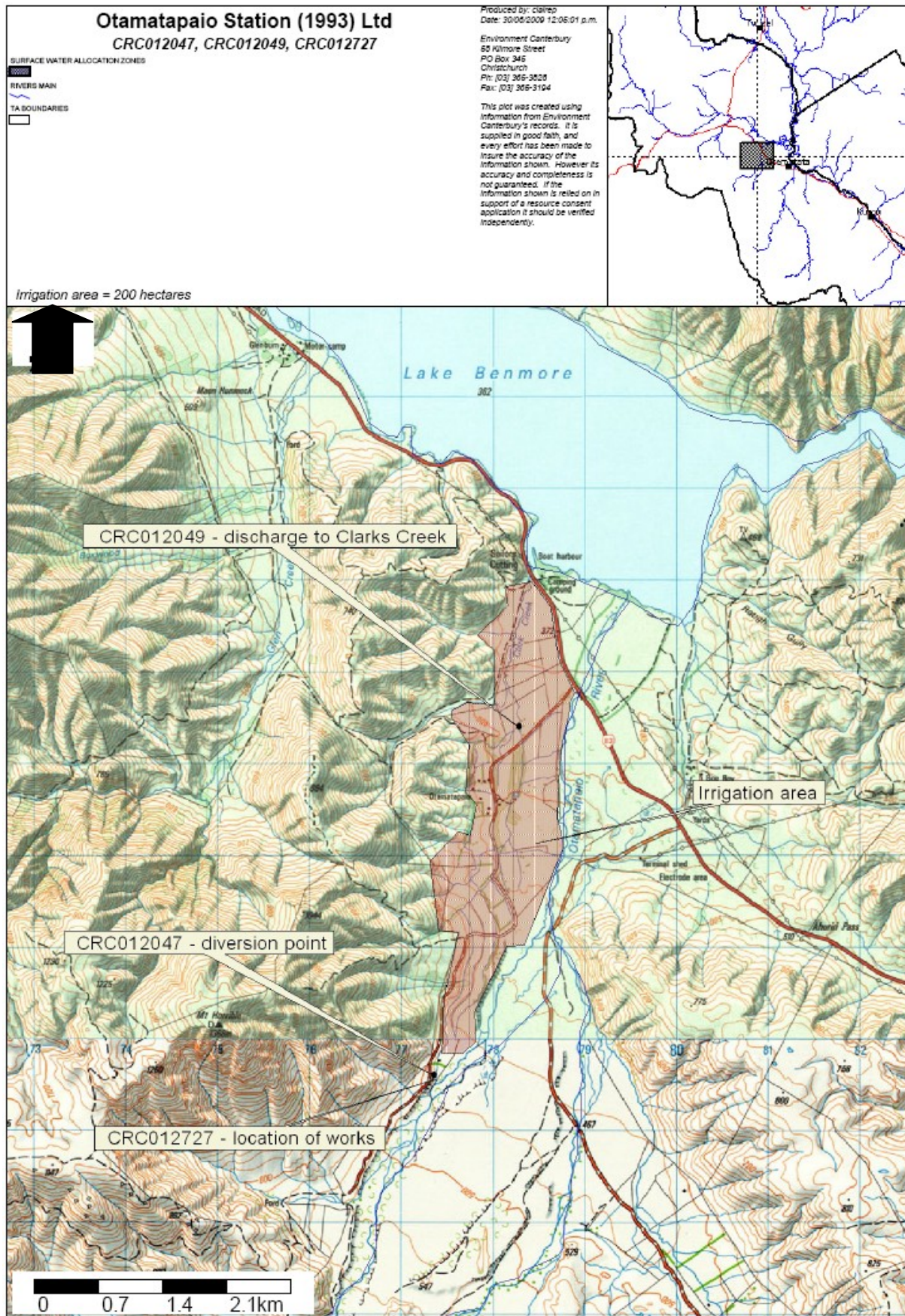
Department of Conservation 2003. Bog Roy Station Tenure Review - Conservation Resources Report.

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

ATTACHMENT ONE – LOCATION MAP



ATTACHMENT TWO – PREVIOUS CONSENTS

RecordNo WTK690251D.1

Type Consent

Source Full Transfer

PermitType Discharge Permit

FileNo CO6T/01165

ClientID 7064

ClientName Otamatapio (1993) Limited

To to discharge water to Clark's Creek at map reference S117:769-305 (H39:783-233) at a maximum rate of 370 litres per second, but usually at the rate of 140 litres per second.

Location State Highway 83, OTEMATATA

Status Continuation until new application determined

Events

- 17/Dec/1993 < Consent Transferred
- 23/Mar/2001 1st Expiry Reminder
- 01/Oct/2001 Consent Expires
- 01/Oct/2001 Sec 124 continuation starts

Consent Summary

