

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

IN THE MATTER OF The Resource Management Act
1991

AND

IN THE MATTER OF Application CRC072117 by
Rosehip Orchards for a Land
Use Permit to undertake works in
the bed of a 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. Rosehip Orchards (the applicant) has applied for resource consent to undertake works in the bed of the Ohau River for the purposes of installing and maintaining an irrigation pipeline.
3. The applicant proposes to take water from an intake structure in the Ohau C canal. Resource consent is not required for this activity as section 13 of the Resource Management Act (RMA) 1991, excludes artificial watercourses.

See Attachment One for a map of the location of the pipeline and works in the river.
4. The applicant engaged Ms Haidee McCabe of Irrigation Resource Solutions Ltd to prepare the application and assessment of environmental effects. Since lodgement of the application, Aqualinc and more recently Mr Peter Glasson have responded to further information requests on behalf of the applicant.
5. This application is for a new activity and the applicant requests a duration to 2025.
6. A site visit was undertaken by Environment Canterbury (ECan) staff in February 2009.

Background

7. Application CRC072117 is the land use permit associated with the water permit, CRC072118 lodged by the applicant, which is assessed in Report 32A. Both reports should be read together to get a full understanding of the proposal.
8. The plan attached in Attachment One identifies the location of the intake and pipeline, and the area of works associated with the proposed activity.

9. Applications CRC072117 and CRC072 were lodged on 22 January 2007 and considered to be notifiable on that date.

Notification

10. 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

11. For details of the submissions lodged on the overall proposal see Report 32A. None of those submissions made any reference to this land use application or the effects of the proposed works in the bed.

DESCRIPTION OF THE PROPOSED ACTIVITY

12. The overall proposal is described in detail in Report 32A.
13. The applicant proposes to undertake works within the bed and banks of the Ohau River in the following manner:

Location of Works

- (a) Works in the bed and banks of the Ohau River will be undertaken to install and maintain an irrigation pipeline for the conveyance of water, at a location between NZMS 260 H38:842-492 and H39:852-481.
- (b) The works shall include repair or replacement of the pipeline should it be washed out or damaged following a flood or fresh in the river.

Installation of the pipeline

- (c) The pipe will be buried at least 1 metre below the bed of the river and at least 0.6 metres below ground on either side of the Ohau River.
- (d) Gravel will be placed over the pipe, re-instating the stream bed.
- (e) The works to install the pipeline are expected to take up to three days to complete.
- (f) The width of disturbance during construction will be approximately 5 metres.
- (g) Works shall not occur in the period March to August inclusive, except in the case that:
- The riverbed is dry;
 - A suitably qualified person has inspected the area of the proposed work and has provided a written report stating that any adverse effects of the works on the river's ecology (such as fish passage and spawning for sockeye salmon and brown and rainbow trout) shall be minor to the satisfaction of the Fish and Game Council.
- (h) Works shall not occur during the period August to January inclusive, except in the case that:

- The applicant has undertaken on-site consultation prior to works with the Department of Conservation to determine whether the effects of works on bird nesting in the vicinity shall be minor, and identify and wherever possible provide for avoidance of any bird nesting sensitive areas of the river.

Mitigation measures

- (i) All equipment used in the riverbed shall be completely cleansed of materials and dirt, to ensure equipment is free from weeds.
- (j) Re-shaping of the riverbed to its natural state on completion of construction and any maintenance works.

LEGAL AND PLANNING MATTERS

Consent Requirements

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

RMA

Section 13 of the RMA describes restrictions on certain uses of beds of lakes and rivers. Activities are prohibited unless expressly allowed by a rule in a regional plan and in any relevant proposed regional plan, or by a resource consent.

Section 2(1) of the RMA states that the definition of river includes streams and modified watercourses, but does not include any canal for the supply of water for electricity power generation. Therefore, according to the RMA, the activity to install the intake in the Ohau B canal does not require consent, however the installation of the irrigation pipeline beneath the bed of the Ohau River does require consent.

15. A summary of the requirements in the relevant plans is provided below for this application:

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.

PNRRP

Rule BLR3 of the PNRRP classifies activities involving excavating, drilling, tunnelling or disturbance within the bed as a permitted activity, provided certain conditions are met. These conditions include restrictions on the volume of material excavated, and the activity not having an effect on flooding risk, bank stability, and the integrity of existing lawfully established structures. Also, the activity cannot be undertaken within surface water or at or below the water table.

Should any of the conditions of the permitted activity not be met then Rule BLR8 classifies the activity as discretionary. There is potential for the activity to affect bank

stability, therefore the activity is a **discretionary** under the PNRRP and requires resource consent pursuant to section 13 of the RMA.

CONSULTATION

16. See Report 32A for details of consultation undertaken.

DESCRIPTION OF THE AFFECTED ENVIRONMENT

17. 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 32A for a description of the affected environment specific to this proposal.
18. The Lower Ohau River is located downstream of Lake Ruataniwha dam. The flow in this part of the river is largely controlled by Meridian Energy Limited (MEL). Splash flows are released monthly and occasionally water from the Ohau C canal is allowed to spill into the river via the labyrinth weir.
19. The Lower Ohau River bed is generally dry with some ponded areas between Ruataniwha Dam and the confluence with the Twizel River. These ponded areas however, are part of a recognised conservation area, used by DoC as a captive breeding centre for black stilt. This area also provides habitat and breeding areas for other birds, such as the banded dotterel, black fronted terns and wrybills.
20. The lower reach of the Ohau River (extending 2 km upstream of the Benmore Dam) provides opportunities for fishing and other recreational pursuits (such as jet boating, swimming, etc).
21. There are no consented users of water in the Ohau River bed in the vicinity of the proposed works.
22. Telstra Clear have consent CRC071228 to lay fibre optic cables beneath the Twizel and Tekapo river beds. The Twizel river bed location (NZMS 260 H39:8559-4926 and H39:8588-4922) is in close proximity to the proposed pipeline location.
23. There is one mudfish habitat site recorded in the vicinity of the proposed works within the Ohau River (NZMS 260 H39:8579-4870).
24. There are two marked wetland areas, one approximately 1 kilometre north-west of the proposed pipeline crossing, one approximately 500 metres south of this crossing.

ASSESSMENT OF PROPOSED ACTIVITY

25. The proposed s.13 permit is a discretionary activity and must be considered in the context of s104 of the RMA.
26. 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))

27. The effects that have been considered for this type of activity (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 stated that there should be no effects on flood-carrying capacity, as construction of the pipeline will occur under the guidance of a suitably qualified engineer.	While there are standard conditions relating to maintaining flood-carrying capacity and erosion that can be included in the consent should it be granted, I am uncertain that these conditions would adequately mitigate impacts, given the extent of works to install the pipeline across the river bed. While the river is generally dry, MEL occasionally release flows into the Lower Ohau River via the labyrinth weir and therefore, it is unclear whether effects could occur if the release coincided with works to install the pipeline. The applicant may wish to address this issue at the hearing.	Effects may be more than minor.
Man-made structures	The applicant has not identified any downstream man-made structures or any other structures that could be affected by the works.	I have checked ECan's GIS and confirm that no structures have been recorded in the vicinity of the works. Mr Bruce Scarlett, (Senior River Engineer, ECan) has audited the applicant's proposal and has raised concerns regarding the works and the effects on these works in relation to the river terraces and roadways. It is unclear whether any of these terraces are located within the riparian bank margins of the Ohau River or whether the works will result in any effects on these terraces or roadways. The applicant may wish to comment on this issue at the hearing.	Effects uncertain.
Bank stability	The applicant has not assessed the impacts of the works on bank stability.	The applicant may wish to provide an assessment of this effect and describe how this effect will be mitigated both during and after construction.	Effects uncertain.
Water quality	Applicant states that works within the river will occur in flowing water that will need to be diverted.	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 on water quality could be minor. It should be noted however, that any diversion under the WCWARP requires authorisation, even for minor re-alignments of the watercourse, and if it is considered necessary to divert water, consent	Effects minor, however, diversion required to mitigate effects of works in flowing water may require consent.

		from ECan may be required.	
Riparian plants and animals	The applicant has stated that they have consulted with DoC and proposed exclusions when works will not occur to ensure the effects on bird nesting are minor.	I note that the works are likely to require some disturbance of vegetation on the banks of the Lower Ohau 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.	Effects uncertain.
Instream Ecosystems	The applicant states that mitigation measures have been proposed to ensure the disturbance of the bed of the creek is minimised during the installation of the pipeline and any maintenance works undertaken after installation. Consultation with Fish and Game has been undertaken. Based on this consultation, a condition excluding works during fish spawning has been proposed by the applicant. In addition, the applicant has proposed a condition to ensure that all machinery is thoroughly cleaned before entering the river bed.	In submissions, 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. The applicant has consulted with both Fish and Game and DoC and has proposed exclusion periods to mitigate effects on nesting birds and fish spawning. ECan River Engineers have reviewed this application and have raised concerns regarding the spread of weeds into the river. It is noted that the applicant has proposed to ensure that all equipment and machinery used to install and maintain the pipeline is clean and free of weeds. I recommend that this be included as a condition of consent.	Effects should be minor, provided conditions regarding timing of works are included and adhered to.
Effects on People and Amenity Values	The applicant has predicted that the effects on amenity are unlikely to be more than minor for the following reasons: <ul style="list-style-type: none"> • Most of the Ohau River is limited in terms of recreational opportunities given that flows are generally non-existent. • Recreational anglers will only be affected for a short period of time during the construction of the pipeline through the flowing section of the Ohau river. • During construction of the irrigation pipeline, there will be a section around 1 kilometre long and approximately 5 metres wide through the Ohau Riverbed that will be disturbed. The disturbed area will mostly only be visible during the construction phase. • After construction, the disturbed materials will be 	In general, I agree with the applicant's assessment. Given that the works will be of short duration, and that the surrounding area is already modified (with man-made structures such as power pylons and electricity canals), and that the pipeline will be buried beneath the Ohau River, I consider that the potential effects of the activity on people and amenity values are likely to be minor. However, in the last 2 kilometres of the Ohau River, where it is joined by flows from the Twizel River, recreational opportunities exist for activities such as fishing, swimming, jetboating, and four-wheel driving. As the applicant will be working in an area where there is the potential for some recreational users to be present, I recommend including a condition stating that no works will occur in the weekends or on public holidays, and limiting the timing of the works within specified hours during the day, should the Commissioners decide to grant this	Effects minor, provided condition regarding hours of work is included and adhered to.

	<p>reshaped to the natural riverbed surroundings and will blend back into the environment and disappear over time.</p> <ul style="list-style-type: none"> • Directly through the centre of the property run major transmission lines, with approximately 10 pylons. Consequently, the visual values of this area are already highly modified. 	consent.	
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 this consent. 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 CRC072232.

Conclusion

28. 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.
29. The outstanding issues associated with this application include:
- (a) *Impacts on flood-carrying capacity* – Given the extent of the works across the river bed;
 - (b) *Man-made structures* – Whether the works within the bed and banks of the Ohau River would result in impacts and instability of the access roads on the river terraces.
 - (c) *Riparian Vegetation* – The extent and significance of the effects on riparian vegetation has not been assessed.

Statutory Assessment (s104(1)(b))

Regional Policy Statement (RPS)

30. 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.
31. Of significance to this application is Chapter 10, which relates to beds and margins 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)

32. 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 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 these effects 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

33. 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))

34. 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)

35. 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."

36. 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.

37. 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)

38. 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 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)

39. 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.
40. 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.
41. 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.
42. 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)

43. 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 Refuse

44. 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.
45. 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 minor.

46. Under section 104B I cannot recommend that application CRC072117 be granted.

RECOMMENDED CONDITIONS

47. Comments on the mitigation proposed by the applicant are provided earlier in this report.

48. 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 excavation and disturbance of the bed and banks of the Ohau River for the purpose of the placement, extension, removal or demolition of a pipeline in or on the bed and banks of the Ohau B canal for abstracting water under consent CRC072233.
Location		
2	LU02	<i>Cross reference to Condition: 1</i> <i>Name of watercourse: Ohau River</i> <i>Map reference: H38:842-492 and H38:852-481</i>
Limits of Excavation		
3	LU03	<i>Depth of excavation: [x] metres below bed level. [Applicant may need to clarify]</i>
4	LU06	
5	LU07	
Erosion Protection		
6	LU12	
7	LU13 modified	Works shall not be undertaken in a manner likely to cause erosion of, or instability to, the banks or bed of the Ohau River; or reduce the flood-carrying capacity of the waterway.
Prior to Construction		
8	Non standard	The Canterbury Regional Council Compliance Monitoring Officer shall be notified at least 48 hours prior to the commencement of work.

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

9	LU08	
10	LU19	
11	LU20	
During Construction		
12	LU18	
13	LU21	
14	LU23 modified	All practicable measures shall be undertaken to minimise vehicles and machinery entering the Ohau 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

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.

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

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

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.

