

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

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

**AND**

**IN THE MATTER OF** Application CRC021750 by  
Rosehip Orchards NZ 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 (Reports 4(A) – (F)).

**INTRODUCTION**

2. Rosehip Orchards NZ Limited (the Applicant) has applied for resource consent to undertake works in the bed of Twizel River for the purposes of installing and maintaining an intake structure.

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

3. The applicant engaged Irrigation Resource Solutions Ltd to prepare the application and assessment of environmental effects respond to further information requests on their behalf.
4. This application is for a new activity.
5. The applicant requests a duration to 2025.
6. A site visit was undertaken by Environment Canterbury (ECan) staff in December 2008.

**Background**

7. Application CRC021750 is the land use permit associated with the water permit application, CRC021749 lodged by the applicant, which is assessed in Report 32C. 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 structure, area of works and irrigation area associated with the proposed activity.
9. Applications CRC021749 and CRC021750 were lodged on 16 April 2002 and considered to be notifiable on 21 August 2002.

## 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 2003 as part of the ministerial “call-in” of all applications associated with the abstraction of water within the Waitaki Catchment. The application was also publicly 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 32C. 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 32C.
13. The applicant proposes to undertake works within the bed and banks of Manuka Creek in the following manner:
  - (a) Works in the bed and banks of the Twizel River will be undertaken to install and maintain an intake structure for the abstraction of water, at a location between NZMS 260 H38:846-516.

### Intake Structure

- (b) The intake structure will be a buried infiltration gallery consisting of a submerged perforated pipe, as shown in Attachment Two.

### Installation of the intake

- (c) The applicant states that the construction of the gallery will occur by excavating an area for the intake pipe, placing the pipe into the excavated area and then backfilling the excavated area.
- (d) The pipe will be buried at least 200 millimetres below the bed of the stream.

### Diversion Channel

- (e) The applicant states that during construction a diversion channel will be required to divert water over the intake and by-wash back into the river.
- (f) The channel will be constructed to a depth of 1 metre and a width of 2 metres and will be constructed parallel to the flow of the river.
- (g) A channel gate may be required to control flows into the channel.
- (h) Gravel will be placed over the pipe, re-instating the stream bed.
- (i) Material excavated from the diversion channel will be levelled into the river bed.
- (j) Design and construction of the intake and diversion channel will be carried out under the guidance of a suitably qualified engineer.

## 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 (PNRRP) land-use applications is provided in the introductory s42A report (Report 1). These applications were lodged in 2002. The TRP is the regional plan which controls the activity type for both this application and the associated water permit (pursuant to section 88A(1) of the RMA). 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.

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

### CONSULTATION

16. See Report 32C 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 applicant states that the Twizel River is approximately 8 metres wide at the extraction point and less than 0.5 metres deep. During floods, this can increase substantially. The Twizel River is a popular fishing location and there is a public access track along the river, which provides access to the river for fishing and walking.

### ASSESSMENT OF PROPOSED ACTIVITY

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

21. 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 | <p>The applicant stated that:</p> <ul style="list-style-type: none"> <li>• The intake is proposed to be buried below the river bed, therefore flood flows will not be impeded by this structure.</li> <li>• Any stockpiling of excavated materials would only be during the construction period, and would only be minor. Therefore flood flows are not considered to be effected by the works in the river bed.</li> <li>• Design and construction of the diversion channel will be undertaken with guidance from a suitably qualified engineer. Flood carrying capacity of the river will be a consideration in the design of the diversion channel. Therefore, the channel should not create any more than minor effects on the flood carrying capacity of the river.</li> </ul> | <p>Mr Bruce Scarlett (River Engineer, ECan) audited the applicant's proposal and stated that he has no concerns regarding the works, provided that standard conditions relating to maintaining flood-carrying capacity are adhered to. In addition, no submissions have been received on this application. Based on Mr Scarlett's advice, the mitigation measures proposed by the applicant and the temporary nature of the works, I am satisfied that this effect should be minor.</p>   | Effects Minor. |
| Man-made structures               | <p>The applicant has not identified any downstream man-made structures</p>  | <p>I have checked ECan's GIS database and noted that no structures have been recorded downstream of the proposed abstraction from the Twizel River.</p>   | Effects minor. |
| Bank stability                    | <p>The applicant has stated the following regarding bank stability:<br/>The intake is proposed to be buried below the river bed and the materials levelled to the natural bed level on completion of the intake works.</p> <ul style="list-style-type: none"> <li>• Because the channel materials are proposed to be levelled back to the natural surroundings, flows will not be deflected into the river banks.</li> <li>• Any maintenance work carried out will also be levelled and shaped to the natural surroundings.</li> <li>• Given the levelling and re-</li> </ul>   | <p>Mr Bruce Scarlett (Senior Engineering Officer, Environment Canterbury) audited the application and he stated that he has no concerns with the proposed works, provided that the mitigation measures proposed by the applicant, as well as standard conditions relating to erosion protection are adhered to. No submissions relating to effects on bank stability were received. Based on the information provided by the applicant, and the response from Mr Scarlett, I recommend that standard conditions relating to bank erosion and stability should be attached to this consent and that the mitigation measures proposed</p> | Effects minor. |

|                             |   |  |  |
|-----------------------------|---|--|--|
|                             | shaping proposed, erosion of the river bed and banks should not occur from materials causing deflection of flood waters into the banks.   | by the applicant should also be included as conditions of this consent. Provided that these conditions are adhered to, I would consider that the effects of the proposed activity on bank stability would be minor.  |  |
| Water quality               | The applicant has not assessed the impacts on water quality as a result of the works.   | As the proposed works involve the excavation of bed material within flowing water, contaminants associated with the works, such as sediment, and those associated with machinery and construction vehicles could affect water quality. The applicant may wish to address this issue at the hearing and provide mitigation measures to mitigate the potential impacts on water quality resulting from the works at the site.  | Effects uncertain, given that the applicant has not proposed mitigation or provided an assessment to determine the significance of the impacts on water quality from the applicant's proposal. |
| Riparian plants and animals | The applicant has not assessed this effect.   | I note that the works are likely to require some disturbance of vegetation on the banks of Twizel River. The applicant may wish to provide an assessment of this impact at the hearing and/or propose mitigation measures to address any potential impacts.  | Effects uncertain. Standard conditions have been proposed, however, the applicant may wish to confirm that these will be adequate to mitigate this effect.                                     |
| Instream Ecosystems         | The applicant has stated that the works will not restrict the ability of fish to move upstream and downstream of the abstraction. No other information regarding the effects of the proposed works on ecosystems was provided in the applicant's Assessment of Environmental Effects. | Fish and Game have raised concerns regarding the timing of instream works. DoC has also raised concerns regarding the impacts of land-use activities on fish migration and survival. The applicant has stated that consultation with Fish and Game and DoC would occur to determine appropriate times for undertaking works to avoid impact on fishery values, however no exclusion periods have been proposed by the applicant to date. I recommend that conditions relating to the appropriate timing of works to avoid fish spawning are 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.  |
| Amenity                     | The applicant has stated that the Twizel River is an important fishing location, but because of low flows, no other recreational activities are likely to occur in the area.  | As the applicant will be working in an area where there is the potential for recreational users to be present, I recommend attaching a condition stating that no works will occur in the weekends or on public holidays,   | Effects should be minor provided that the recommended conditions are   |

|                       |  |  |                          |
|-----------------------|--|--|--------------------------|
|                       | The applicant states that the ability of people to fish in the area will be maintained, although no specific details about how this will be achieved were specified. | and limiting the timing of the works within specified hours during the day.<br>I also recommend a condition stating that the works will not restrict access to the river bed.  | included and 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. May result in impacts on cultural values if measures to mitigate effects on water quality and ecosystems are inadequate | Effects uncertain.       |

**Table 2: Summary assessment of effects for application CRC021749.**

### Conclusion

22. With regard to s104(1)(a), the actual and potential effects of the activities have been discussed above. For this consent, I consider that most of the actual and potential effects of the proposed activity are acceptable when taking account the proposed and recommended mitigation.
23. The impacts on flood-carrying capacity and erosion, bank stability, man-made structures, and amenity values can be mitigated, if the recommended conditions are adopted, should the Commissioners decide to grant consent for these activities. The applicant may wish to address the impacts on water quality and riparian plants and animals resulting from the works.

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

#### Regional Policy Statement (RPS)

24. 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.
25. Of significance to this application is Chapter 9, which relates to the management of the Region's water resources and Chapter 10, which relates to works in the bed and margins of waterways. 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)

26. Section 88(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 undertake works in the bed and banks of rivers and streams. 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, other structures, erosion, Ngai Tahu values. The proposal is likely to be consistent with this objective for most of the potential effects that could arise as a result of this activity, however, I cannot confirm that the impacts on water quality and ecosystems 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 they do not affect flood-carrying capacity, erosion or create plant infestations. With the proposed and recommended conditions, the works will be consistent with this policy.

### **Conclusion**

27. With regard to s104(1)(b), the relevant provisions of the RPS and PNRRP have been considered above. I consider the land use application may not be consistent with all the relevant planning provisions of those documents, in particular those relating to the maintenance and enhancement of water quality.

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

28. 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)**

29. 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.”*

30. 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.

31. 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 to “avoid, remedy or mitigate” the potential impacts on flood-carrying capacity, erosion and water quality, as required in Section 5(2)(c), however, mitigation measures have not been proposed to 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)**

32. 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 flood-carrying capacity and ecosystems which will protect the natural character of the environment. The applicant has not proposed measures to address the impacts on water quality. The applicant has not assessed the impacts on cultural values, and

runanga have submitted in opposition to all applications in the Waitaki Catchment. The impacts on cultural values may be compromised if measures to mitigate the impacts on water quality and ecosystems are inadequate.

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

33. 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.
34. 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. Some mitigation measures have been proposed and recommended however, the adequacy of these measures to mitigate impacts on water quality and ecosystems and ensure that this objective is achieved, requires confirmation.
35. Section (f) refers to the maintenance and enhancement of the quality of the environment. The applicant proposes mitigation measures to ensure that this objective is achieved, particularly with regards to water quality and ecosystems.
36. Section (h) requires protection of the habitat of trout and salmon. The proposal will not be consistent with this requirement.

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

37. 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 Arowhenua. 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**

38. 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.
39. For this application I consider that there are a few outstanding adverse effects of the proposed activity that have not been addressed adequately. When considering the matters outlined in section 104(1), I am not satisfied the effects of the proposed activity are acceptable.
40. Under section 104B I cannot recommend that application CRC021750 be granted.

### **RECOMMENDED CONDITIONS**

41. Comments on the mitigation proposed by the applicant are provided earlier in this report.
42. If the Commissioners decide to grant this application, a list of draft recommended conditions are provided below. Wording of these conditions are provided in Appendix 6 of the introductory report (Report 1). It should be noted that these conditions may not adequately mitigate all impacts resulting from the proposal, in particular impacts on water quality.

| No.                          | Consent Code <sup>1</sup> | Details  |
|------------------------------|---------------------------|--|
| <b>Scope</b>                 |                           |  |
| 1                            | LU01                      | The works shall be limited to the use, erection, placement and maintenance of an intake structure (piped infiltration gallery) in or on the bed and banks of Twizel River for abstracting water under consent CRC021749. |
| <b>Location</b>              |                           |  |
| 2                            | LU02                      | <i>Cross reference to Condition: 1</i><br><i>Name of watercourse: Twizel River</i><br><i>Map reference: H38:846-516</i>  |
| <b>Limits of Excavation</b>  |                           |  |
| 3                            | LU03                      | <i>Depth of excavation: unknown</i>  |
| 4                            | LU06                      |  |
| 5                            | LU07                      |  |
| <b>Erosion Protection</b>    |                           |  |
| 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 Twizel River; or reduce the flood-carrying capacity of the waterway.                                    |
| <b>Prior to Construction</b> |                           |  |
| 8                            | Non standard              | The Canterbury Regional Council Compliance Monitoring Officer shall be notified at least 48 hours prior to the commencement of work.   |
| 9                            | LU08                      |  |
| 10                           | LU19                      |  |
| 11                           | LU20                      |  |
| <b>During Construction</b>   |                           |  |
| 12                           | LU18                      |  |
| 13                           | LU21                      |  |
| 14                           | LU23 modified             | All practicable measures shall be undertaken to minimise   |

<sup>1</sup> See Report 1, Appendix 6 for condition code and wording.

|                                      |              |   |
|--------------------------------------|--------------|---|
|                                      |              | vehicles and machinery entering the Twizel River.   |
| 15                                   | Non standard | Re-fuelling or storage of machinery or vehicles used for carrying out the work shall not occur in or near the Twizel River. |
| 16                                   | LU26         |   |
| 17                                   | LU24         |   |
| 18                                   | LU25         |   |
| <b>Accidental Discovery Protocol</b> |              |   |
| 19                                   | LU09         |   |
| <b>Upon Completion</b>               |              |   |
| 20                                   | LU28         |   |
| 21                                   | Non standard | On completion of works, the area shall be restored to its original condition as far as practicable.                         |
| <b>Administrative Conditions</b>     |              |   |
| 22                                   | AD03         |   |
| 23                                   | 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.

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.

# ATTACHMENT ONE – LOCATION MAP

