

**Before the Hearing Panel appointed by Canterbury
Regional Council**

IN THE MATTER OF The Resource Management Act
1991

AND

IN THE MATTER OF Application CRC073114 by
Southdown Holdings Limited for
a discharge permit to discharge
water into the Ahuriri River.

Section 42A Officer's Report of Susannah Vesey

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), the planning and technical reports on hydrology and minimum flows (Report 2A and 2B), the planning report outlining annual allocations (Report 3) and the reports on cumulative landscape and water quality effects in the catchment (Reports 4(A-F) and 5).

INTRODUCTION

2. Southdown Holdings Limited (the applicant) has applied for a resource consent to discharge water to the Ahuriri River from a fish bypass and during emergency situations from a storage pond at a maximum rate not exceeding 950 litres per second, at or about map reference H39:547-283.
3. See Attachment One for a map of the location of the proposed activity.
4. The applicant engaged Mr Ian McIndoe of Aqualinc Research Limited to prepare the application and assessment of environmental effects on their behalf. Subsequently, Mr Craig McKibbon of Mitchell Partnerships and Mr Christian Whata of Russell McVeagh have been engaged to jointly respond to further information requests and to represent the applicant at this hearing.
5. A duration to 2025 is sought.
6. This is an application for a new activity.

Background

7. Refer to Report 35B for a description of the applicant's proposal as a whole.
8. Water permit application CRC073115 (Report 35B) seeks to divert 950 litres per second from the Ahuriri River and to take 750 litres per second for irrigation. The additional 200 litres per second has been sought to operate the proposed fish screen. This application is the associated discharge application.
9. As explained in Report 35B, the applicant sought to withdraw this application on 13 August 2009 advising a change to intake structure meant that a discharge permit was

no longer required. On 20 August the applicant advised they wished to revert back to the application as was sought prior to 13 August.

10. This application was lodged on 23 March 2007 and considered to be notifiable on that date. Requests for further information have been made
11. I have not conducted a site visit for this application; however site visits were carried out by other Investigating Officers in December 2008.

Notification and Submissions

12. Please refer to these sections of Report 35B for notification information of the proposal. No submissions made on the proposal made specific reference to the proposed discharge.

DESCRIPTION OF THE PROPOSED ACTIVITY AND THE AFFECTED ENVIRONMENT

13. Refer to Report 35B for the description of the overall proposal and a description of the affected environment.
14. The applicant advises if for any reason their irrigation intake stops working; water will be discharged into the Ahuriri River. The flow into the Ahuriri River under emergency conditions such as an electricity supply failure could be equal to the supply race capacity (950 litres per second). Given the intake structure is at the end of the race, the maximum time that high flows would be discharged is the time taken to de-water the race, which the applicant advises is not expected to be long given the short distances needed to be covered.
15. Attachment Two shows a schematic provided by the applicant of the proposed discharge.
16. The applicant advises an open race on an even grade will convey the water from the holding pond to the discharge point on the Ahuriri River. The approximate size of the race will be 1-2 metres wide by 0.5 metres deep.
17. The applicant proposes the following mitigation measures to reduce the risk of erosion :
 - (a) Lining the open race near the discharge point
 - (b) Rip rap protection at the discharge point
 - (c) Where any disturbance occurs to the banks of the river the applicant will undertake remedial work to restore the bank stability required
18. The applicant advises they intend to abide by the minimum flows of the Ahuriri River Conservation Order 1990 (WCO) which was introduced to protect the River's fish (native and introduced), birds, plants and landscape values.

LEGAL AND PLANNING MATTERS

Consent Requirements

19. An overview of the consent requirements under the Resource Management Act (RMA), Transitional Regional Plan (TRP) for discharge permit applications is provided in the introductory s42A report (Report 1).

TRP

20. There are no provisions of the TRP which authorise the discharge of water into water as described in the proposed activity. As such the proposed activity is to be treated as a **discretionary** activity in accordance with section 77C(1)(a) of the RMA.

PNRRP

21. Rule WQL1 – It is not clear whether or not the proposed discharge would comply with conditions (1) to (9) of this rule and as such cannot consider this to be a permitted activity.
22. Rule WQL56 – classifies the discharge of water into a river as a discretionary activity. The discharge of water is into a river that is identified as “Natural” water quality. Schedule WQN1 indicates the natural quality of the water and bed substrate shall not be altered in rivers and lakes identified as “natural”. It is unlikely the proposed discharge will change the water quality.
23. Overall, proposed discharge permit CRC073114 is a **discretionary** activity under Rule WQL56 of the PNRRP and resource consent is required in accordance with section 15 of the RMA.

ASSESSMENT OF PROPOSED ACTIVITY

24. The proposed discharge is a discretionary activity and must be considered in the context of s104 of the RMA.
25. 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))

26. The effects that have been considered for this type of activity (discharge of water to water) are presented in the introductory s42A report. That report includes the presentation of the relevant planning provisions which direct us to consider these effects. A detailed discussion regarding the assessment of individual effects for this application is provided in the following sections of this report.
27. Where mitigation is referred to in this table, I am referring to the recommended conditions listed at the end of this report. The recommended conditions take into consideration those proposed by the applicant, however may have been re-worded or replaced by conditions commonly used by Environment Canterbury.

Table 1: Potential effects from this activity.

Adverse Effects	Applicant's assessment	IO audit	Conclusion
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Flood-carrying capacity and erosion of bed and banks	Response to request for further information dated 24 August 2007 advises the applicant intends to abide by the minimum flows of the WCO thus mitigating effects on the receiving environment. Mitigation proposed at the discharge point to reduce the risk of erosion in the form of energy dissipation and rip rap protection. Applicant will undertake any remedial works where necessary.	I note the associated water permit is to be managed on minimum flows consistent with the WCO and as such do not understand the applicants comments that abiding by the minimum flows of the WCO will mitigate potential effects of the proposed discharge. Environment Canterbury Senior River Engineer Mr Bruce Scarlett has reviewed the application and does not have any concerns from an engineering perspective in regards to potential effects on flood carrying capacity and erosion of the bed and banks of the Ahuriri River. Recommend conditions (2), (3) and (5)	Effects minor
Water quality and ecosystems	Response to request for further information dated 24 August 2007 advises the proposed discharge is needed for the proposed fish screen on water permit application CRC073115 work. The maximum discharge is small in comparison to the total flow of the Ahuriri River (approximately 6% of the low flow exceeded 50% of the time) and it is considered effects of the discharge on ecosystems will be minor. Water discharged will be the same quality as the river itself as will only be diverted from the river a short distance upstream of the discharge point.	See comment in above box in relation to applicant's comments about minimum flows. Mr Scarlett does however note that fish within the diversion will be adversely affected if the braid moves away from the discharge point and the discharge is no longer connected to the water. As such I recommend a condition requiring the proposed discharge to discharge directly into flowing water only. I note the WCO sets clear expectations in relation to water quality of discharges. I recommend that these be incorporated as conditions of consent should the commissioners wish to grant this application (condition 4). This will be provided in full detail in the WCO section below. Additionally I note the proposed discharge is of diverted water from the Ahuriri River. I recommend a condition restricting the discharge to just this, and additionally stipulating the discharge water shall be of the same quality or better of that diverted.	Effects minor
Downstream users and amenity values	Response to request for further information dated 24 August 2007 advises the applicant intends to abide by the minimum flows, thus mitigating effects on downstream users. The applicant notes Killermont Station Limited are seeking	See comment in above box in relation to applicant's comments about minimum flows. I note the applicant has not provided any discussion as to whether they consider Killermont Station Limited to be potentially adversely affected. Mitigation to ensure water quality	Effects minor

	applications at this hearing to take water and associated works in the Ahuriri just downstream of this proposal.	not changed so amenity concerns with sedimentation addressed.	
Tangata Whenua values	No assessment provided	Mitigation proposed and recommended to ensure effects on water quality and ecosystems minor. Note submission from Ngai Tahu appears to address concerns in relation to applicant's water permit proposal.	Effects minor and acceptable

Conclusion

28. With regard to s104(1)(a), the actual and potential effects of the activities have been discussed above. For this consent, I am satisfied that the actual and potential effects of the proposed activity are acceptable when taking account the proposed mitigation.

Statutory Assessment (s104(1)(b))

Regional Policy Statement (RPS)

29. 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.
30. Of significance to these applications is Chapter 9, which relates to the management of the regions water. The WCWARP and PNRRP take 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.

National Water Conservation (Ahuriri River) Order 1990 (WCO)

31. This order declares that the Ahuriri River and its tributaries include and provide for outstanding wildlife habitat, outstanding fisheries, and outstanding angling features. The order includes provisions to preserve and protect those characteristics and features.
32. The proposed works are located within the area identified as "protected waters" in the Ahuriri River.
33. Clause 3 of the Order addresses the outstanding characteristics and features of the Ahuriri River and its tributaries.

"It is hereby declared that the Ahuriri River and its tributaries include and provide for outstanding wildlife habitat, outstanding fisheries, and outstanding angling features."

34. Clause 8(2) of the Order addresses the discharge of water.

"A water right shall not be so granted and a general authorisation shall not be so made for any discharge into the protected waters if the effect of the discharge on the protected waters would be to breach the following provisions and standards:

- (a) *Any discharge is to be substantially free from suspended solids, grease, and oil;*
- (b) *After allowing for reasonable mixing of the discharge with the receiving water -*

- i. *The waters shall not be tainted so as to make them unpalatable, nor shall they contain toxic substances to the extent that they are unsafe for consumption by humans or farm animals, nor shall they emit objectionable odours:*
- ii. *There shall not be any destruction of natural aquatic life by reason of the concentration of toxic substances:*
- iii. *The natural colour and clarity of the water shall not be changed to a conspicuous extent”*

35. I recommend mitigation be proposed to include the restrictions for discharges above. This will ensure that the proposed discharge of water into the Ahuriri River will not contravene the WCO.

Proposed Natural Resources Regional Plan (PNRRP)

36. 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.

(a) Objective WQL1.1 – Water quality outcomes for rivers

This objective aims to maintain and improve water quality, physical and chemical characteristics of the rivers. Subject to the recommended mitigation it is likely that the proposed discharge into the Ahuriri River will be consistent with the outcomes required by this objective.

(b) 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 is located a short distance from the location the water was diverted from the river. Additionally I note proposed and recommended mitigation should ensure effects on water quality and ecosystems are minor.

Conclusion

37. With regard to s104(1)(b), the relevant provisions of the RPS and PNRRP have been considered above. I am consider the proposed discharge permit is consistent with the relevant objectives and policies of the RPS and the PNRRP.

Part II Purpose and Principals

Purpose of the RMA (s5)

38. 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.”

39. 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.

40. The proposal will allow the development of land to occur, which may provide for the economic and social well-being of the community.

Sections 6-8

41. Section six lists matters of national importance. I consider that subject to the proposed and recommended mitigation, the proposed discharge will not affect any of these matters.
42. 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.
43. Sub-section (d) and (f) is specifically relevant to this application. I consider sufficient mitigation has been proposed to ensure effects on ecosystems and the quality of the water in the Ahuriri River is minor.
44. 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 application was notified. Submissions have been received from Ngai Tahu on this application.

RECOMMENDATION

Grant or Refuse

45. Section 104B applies to any application which is a discretionary activity and states that the consent authority may grant or refuse the application and may impose conditions under s108.
46. Having considered all relevant matters outlined in section 104(1), I am satisfied that the actual and potential effects of the proposed activities are acceptable. Therefore I recommend the consent be granted.
47. A discussion of duration sought for applications to be heard is included in Report 1. I consider it is reasonable that this application be granted with an expiry date of 31 April 2025 which is consistent with the duration sought for application CRC073115 – the water permit associated with this application.

RECOMMENDED CONDITIONS

48. Comments on the mitigation proposed by the applicant for each application are provided earlier in this report.
49. If the Commissioners decide to grant this application, I have included recommended conditions which are specific for this application below in Table 2. It is subject to these conditions that I make my recommendation that this application may be granted.
50. A number of the conditions below have ‘codes’ located next to them. Please refer to Appendix 6 of the introductory report (Report 1) to view the conditions in full. Any proposal specific details or conditions are included below.

Table 2: Recommended conditions for discharge permit CRC073114		
No.	Consent Code	Details
Scope		
1	DP01	<i>Waterbody from:</i> Ahuriri River <i>Waterbody to:</i> Ahuriri River <i>Map reference:</i> NZMS 260 H39:547-283 <i>Discharge rate:</i> 950 litres per second <i>Plan:</i> "Southdown Holdings Limited" (Attachment 2) <i>Other:</i> The water shall be water diverted under CRC073115 and shall contain no contaminants and shall only be discharged during the irrigation season.
2	Non-standard	Water shall only be discharged in accordance with condition (1) into a flowing channel, with connection to the main stem of the Ahuriri River.
Operation and Maintenance		
2	DP02	<i>Waterbody:</i> Ahuriri River
3	LU13 modified	The discharge shall not occur in a manner likely to cause erosion of, or instability to, the banks or bed of Ahuriri River; or reduce the flood-carrying capacity of the waterway.
4	Non-standard	After allowing for reasonable mixing of the discharge with the receiving water: <ol style="list-style-type: none"> a. The waters shall not be tainted so as to make them unpalatable, nor shall they contain toxic substances to the extent that they are unsafe for consumption by humans of farm animals, nor shall they emit objectionable odours; b. There shall not be any destruction of natural aquatic life by reason of the concentration of toxic substances; c. The natural colour and clarity of the water shall not be changed to a conspicuous extent.
5	DP04	
Administrative Conditions		
6	AD03	Review
7	AD04	Lapse date

Signed:



Date: 26 August 2009__

Susannah Vesey
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.

Ministry for the Environment, 2006. Waitaki Catchment Water Allocation Regional Plan.

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

Waitaki Catchment Water Allocation Board 2006. Waitaki Catchment Water Allocation Regional Plan. ISBN: 0-9582620-7-1.

ATTACHMENT ONE – MAP SHOWING LOCATION OF DISCHARGE

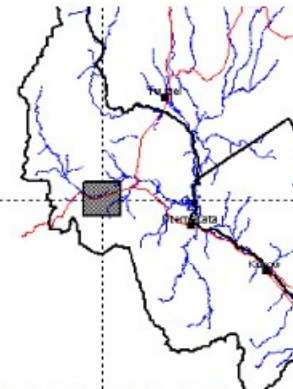
Southdown Holdings Limited
CRC041788, CRC073115 and CRC073114

CONSULTING ENGINEERS
 14-15 PARADE
 DUNEDIN 9016

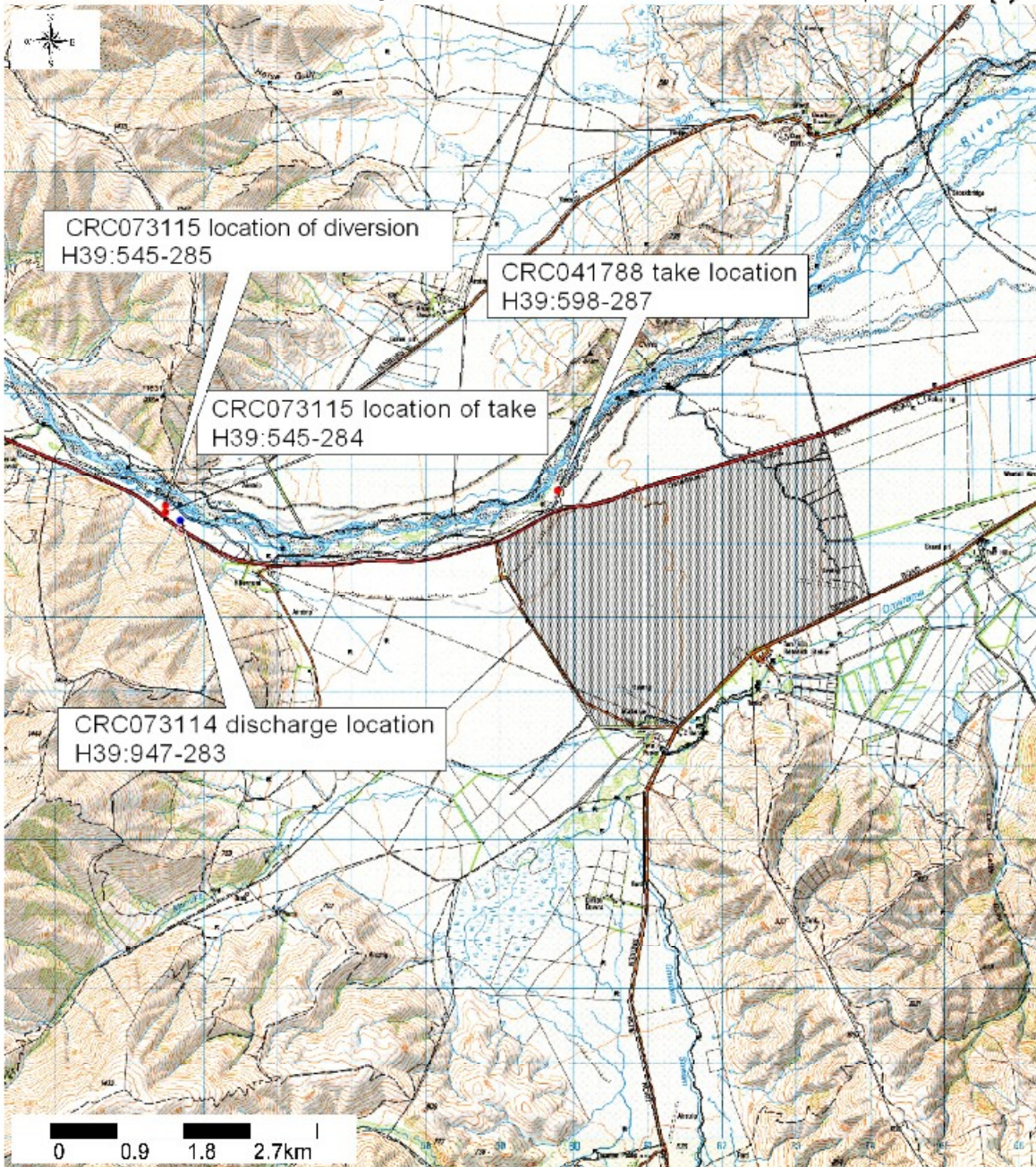
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The wet was created using
 information from the
 topographic map. It is
 not intended to be used
 as a legal boundary. It
 is intended to show the
 location of the wet and
 the location of the
 discharge. It is not
 intended to be used as
 a legal boundary. It
 is intended to show the
 location of the wet and
 the location of the
 discharge.



Shaded area indicates 1,100 of 1,300 hectares to be irrigated



ATTACHMENT TWO – SCHEMATIC OF DISCHARGE

Provided by applicant in response for further information letter dated 24 August 2007

Appendix A: Conceptual plan - discharge structure

