

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

IN THE MATTER OF The Resource Management Act
1991

AND

IN THE MATTER OF Application CRC031315 by
Totara Farming Company
Limited for a discharge permit to
discharge unused irrigation water
into Camp Creek.

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. Totara Farming Company Ltd (the applicant) have applied for a resource consent to discharge unused water diverted under CRC020584 for irrigation purposes into Camp Creek at a maximum rate not exceeding 50 litres per second, and a volume not exceeding 4,320 cubic metres per day.
3. See Attachment One for a map of the location of the proposed activity.
4. Mr Bruce Spiers of Land Services Group Limited lodged the initial application. Mrs Keri Johnston took over working on this application from December 2006 while employed by RJ Hall Civil and Environmental Consulting Ltd. Ms Cathy Begley of GHD Limited responded to my request for further information in December 2008. Ms Begley has remained as the contact for this application to date.
5. The applicant seeks a duration until 30 April 2025 which is consistent with the duration sought for their water permit application CRC020584.
6. This application was lodged as a replacement consent, however it was not lodged within the timeframes specified under section 124 of the RMA and as such is being considered as a new application.

Background

7. The applicant has also applied for water permit CRC020584 which is addressed separately in Report 36A.
8. Report 36A includes background information describing the affected environment and the applicant's proposal as a whole. Report 36A also provides an explanation about the history of this application and as to why it is being considered as a new activity.

9. I have not conducted a site visit for this application.

Notification and Submissions

10. Please refer to these sections of Report 36A 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

11. Refer to Report 36A for the description of the overall proposal and a description of the affected environment.
12. The applicant has not proposed any conditions specifically relating to the proposed discharges.
13. In her response to a further information request, Mrs Johnston advises the water sought under application CRC020584 will be diverted all year round. Given this, I consider the discharge is also sought for all year around.

LEGAL AND PLANNING MATTERS

Consent Requirements

14. 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).
15. As this application was lodged prior to the notification of Chapters four and five of the Proposed Natural Resources Regional Plan (PNRRP), it is the TRP which controls the activity status of this application pursuant to s88A of the RMA.
16. 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.

ASSESSMENT OF PROPOSED ACTIVITY

17. The proposed discharge is a discretionary activity and must be considered in the context of s104 of the RMA.
18. 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))

19. 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. Table 1 below provides a summary regarding the assessment of individual effects for this application.

20. Where I am satisfied that subject to mitigation, effects will be minor and there are no outstanding matters of contention I have not discussed the particular effect further.
21. 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 to ensure they are certain and enforceable.

Adverse Effects	Applicant's assessment	IO audit	Conclusion
Flood-carrying capacity	Activity has been occurring since 1972 with no noticeable effects on the environment. Discharge leaves the "race" and flows over the paddock before reaching Camp Creek. This dissipates any erosive aspects of the discharge along with ensuring that the discharge does not reduce the flood-carrying-capacity of the stream.	Photos on file supplied by the applicant show Camp Creek to be an open channel with no obvious obstructions. Note discharge is historical and applicant advises no noticeable effects in the past.	Effects acceptable
Erosion of bed and banks	Activity has been occurring since 1972 with no noticeable effects on the environment. Given the above, unlikely allowing the discharge to continue will result in a significant increase in the rate of erosion from that which is currently occurring and has formed part of the existing environment of the creek.	Photos on file suggest Camp Creek has a range of substrate, including many rocks and boulders which will likely protect the banks from any erosion. Note discharge is a historical activity, however technically discharge has not been consented since expiry of WTK864513.2. No change in rate of discharge sought. Recommend conditions ensuring measures taken to avoid erosion of bed or banks of Camp Creek and should any occur, the consent holder will rectify as soon as possible. (condition 2)	Effects acceptable
Water quality and ecosystems	Activity has been occurring since 1972 with no noticeable effects on the environment. Will maintain fish passage between the two Creeks.	Water from race flows through settling pond to allow sediment to settle. Note the discharge is likely to increase flow in Camp Creek which may be beneficial for ecosystems. I note the irrigation proposal allows for fish passage through the diversion and discharge, as there is a fish screen on the intake structure. Recommend condition stating the discharge, after reasonable mixing, shall not cause a change in the colour or a reduction of the clarity of Camp Creek. (condition 3).	Effects acceptable
Downstream users and amenity values	Activity has been occurring since 1972 with no noticeable effects community or amenity values.	Camp Creek does not appear to hold many recreational values. Given the historical activity that	Effects acceptable

		had been occurring, agree likely no effects on community or amenity values.	
Tangata Whenua values	No assessment provided.	Proposed discharge into another sub-catchment so will result in mixing of waters. Te Runanga o Ngai Tahu has raised concerns in submission relating to the mixing of water between catchments in general. Cannot be satisfied effects minor until heard submissions.	Effects uncertain.

Conclusion

22. 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 under s104(1)(a), the actual and potential effects of the proposed activity are acceptable when taking account the proposed mitigation. In particular, there is uncertainty regarding the aspects of the application on cultural values in the area.

Statutory Assessment (s104(1)(b))

Regional Policy Statement (RPS)

23. 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.
24. 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.

Proposed Natural Resources Regional Plan (PNRRP)

25. Section 88A(2) RMA states that notwithstanding subsection (1) which relates to the type of activity, any proposed plan which exists when the application is considered must be had regard to in accordance with section 104(1)(b).
26. 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 Camp Creek 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, however is into the adjacent catchment. Given the submission from the Te Runanga o Ngai Tahu, I cannot be certain the proposed discharge will not have adverse effects on Ngai Tahu cultural values.

Conclusion

27. With regard to s104(1)(b), the relevant provisions of the RPS and PNRRP have been considered above. I am unable to determine if the discharge permit application is consistent with Policy WQL1 until I have heard the submission from Te Runanga o Ngai Tahu.

Part II Purpose and Principals

Purpose of the RMA (s5)

28. 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.”

29. 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.
30. The proposal will allow the development of land to occur, which may provide for the economic and social well-being of the community.

Matters of National Importance (s6)

31. Sub-section (e) of Section 6 of the RMA is particularly relevant to this application. The proposal involves the mixing of waters from two sub-catchments. The applicant has not addressed this effect. Te Runanga o Ngai Tahu have submitted in opposition on this application.

Other Matters (Section 7)

32. 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.
33. Sub-section (a) and (aa) is specifically relevant to this application. It refers to kaitiakitanga and the ethic of stewardship. As mentioned above, until I hear the submission from Te Runanga o Ngai Tahu, I am unable to determine if this is a concern for this application.

Principles of the Treaty of Waitangi (s8)

34. 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

35. 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.
36. Having considered all relevant matters outlined in section 104(1), I am not satisfied that the actual and potential effects of the proposed activities are acceptable.
37. Please note that I have raised concerns in Report 36A in regards to the efficiency of the diversion of 50 litres per second all year around. Should the Commissioners be of a mind of restricting the period of time the applicant may divert water, then the rate of discharge on this application should be adjusted accordingly.
38. The applicant has requested a duration until 31 April 2025 which is consistent with their MIC share agreement. Given there are outstanding potential adverse effects, I am unable to provide comment in relation to duration as I cannot determine the potential degree of effects.

RECOMMENDED CONDITIONS

39. Comments on the mitigation proposed by the applicant for each application are provided earlier in this report.
40. If the Commissioners decide to grant this application, I have included recommended draft conditions which are specific for this application below in Table 2. It is subject to these conditions that I consider potential adverse effects of the proposed activity to be minor.
41. I emphasize that these conditions should provide sufficient mitigation for those potential adverse effects which I consider will be minor. To date, I do not consider that these conditions adequately mitigate adverse effects on cultural values.
42. 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 draft conditions for discharge permit CRC031315		
No.	Consent Code	Details
Scope		
1	DP01	<i>Waterbody from:</i> Scrubby Creek <i>Waterbody to:</i> Camp Creek <i>Map reference:</i> NZMS 260 H39:855-433 <i>Discharge rate:</i> 50 litres per second <i>Plan:</i> "CRC020584 and CRC031315" <i>Other:</i> The water shall be unused irrigation water and shall contain no contaminants.
Operation and Maintenance		
2	DP02	<i>Waterbody:</i> Camp Creek
3	DP03	

4	DP04	
Administrative Conditions		
5	AD03	Review
6	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.

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



ATTACHMENT TWO – COPY OF EXISTING RESOURCE CONSENT

RecordNo WTK864513.2

Type Consent
Source Full Transfer

PermitType Discharge Permit

FileNo CO6T/01519

ClientID 14812

ClientName Totara Farming Co Limited

To to continue to discharge water to Camp Creek at Map Reference S109:851-521 at a maximum rate of 50 litres per second.

Location , TOTARA PEAK STATION

Status Expired

Events 25/Aug/2000 < Consent Transferred
11/Sep/2000 1st Expiry Reminder
01/Apr/2001 Not to be replaced
30/Jun/2001 Consent Expires

Consent Summary

