

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

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

**AND**

**IN THE MATTER OF** Application CRC063565 by Twin  
Peaks Station Ltd 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. Twin Peaks Station Limited (the applicant) has applied for a resource consent to undertake works in the bed of Manuka Creek 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 Ms Haidee McCabe of 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 and the applicant requests a duration to 2025.
5. A site visit was undertaken by Environment Canterbury (ECan) staff in December 2008.

**Background**

6. Application CRC063565 is the land use permit associated with the water permit application, CRC063564 lodged by the applicant, which is assessed in Report 37A. Both reports should be read together to get a full understanding of the proposal.
7. The plan attached in Attachment One identifies the location of the intake structure, area of works and irrigation area associated with the proposed activity.
8. Applications CRC063564 and CRC063565 were lodged on 7 April 2006 and considered to be notifiable on that date.

## Notification

9. 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

10. For details of the submissions lodged on the overall proposal see Report 37A. 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

11. The overall proposal is described in detail in Report 37A.
12. 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 Manuka Creek will be undertaken to install and maintain an intake structure for the abstraction of water, at a location between NZMS 260 H39:540-225 and H39:542-226.
  - (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 stream.

### Intake Structure

- (c) The intake structure will consist of a piped infiltration gallery. The pipe will be approximately 5 – 10 metres long and 300 millimetres (mm) in diameter, with slots not exceeding 8 mm.
- (d) The pipe will be orientated 45 degrees upstream and a delivery pipe will convey water from the infiltration gallery to the irrigation area.

### Installation of the intake

- (e) The pipe will be buried at least 2 metres below the bed of the stream and the depth of works will not exceed 2.5 metres below bed level.
- (f) Gravel will be placed over the pipe, re-instating the stream bed.
- (g) The works to install the infiltration gallery intake are expected to take up to two days to complete.
- (h) During the installation of the infiltration gallery, the stream will be temporarily diverted around the area where the pipe is being installed. On completion of installation, the stream will be re-instated over the infiltration gallery.
- (i) 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.
- (j) The banks of the stream will be stabilised with plantings or rip rap if required.

## Mitigation measures

- (k) All practicable measures will be undertaken to ensure that the flood-carrying capacity is maintained, the effects on ecological and amenity values are minimised and any sediment created during construction works will be minimised.
- (l) The works will not result in erosion of the banks and beds of Manuka Creek.
- (m) Re-fuelling or storage of machinery will not occur in or near the stream.
- (n) Machinery operators will ensure machinery is free of plants and plant seeds before use in the stream.
- (o) Didymo Hygiene Protocols will be adhered to.

## Notification of parties

- (p) The Canterbury Regional Council will be notified at least 48 hours prior to the commencement of works.

## Accidental Discovery

- (q) In the event of any disturbance of Koiwi Tangata (human bones) or taonga (treasured artefacts), the consent holder shall immediately:
  - Advise the Canterbury Regional Council of the disturbance;
  - Advise the Upoko Runanga of Te Runanga o Arowhenua, or their representative, of the disturbance; and
  - Cease earthmoving operations in the affected area until an area has been marked off around the site, and approval given for the earthmoving to recommence.

## LEGAL AND PLANNING MATTERS

### Consent Requirements

13. 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). 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.

#### PNRRP

- (a) Rule BLR2 – The activity may not be able to comply with Condition 8c (bank erosion), 9 (discharge of sediment) and/or 12 (fish passage) of this rule.
14. Overall, the land use permit is a **discretionary** activity under Rule BLR2 and resource consent is required in accordance with section 13 of the RMA.

## CONSULTATION

15. See Report 37A for details of consultation undertaken.

## DESCRIPTION OF THE AFFECTED ENVIRONMENT

16. 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 37A for a description of the affected environment specific to this proposal.
17. Manuka Creek flows in an easterly direction and drains the Weather Range. The creek flows through the Twin Peaks Station through the upper reaches of the gorge, then through Killermont Station before flowing through the lower sloping farmland on Twin Peaks Station.

## ASSESSMENT OF PROPOSED ACTIVITY

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

20. 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 did not provide an assessment of this effect but has proposed a condition of consent to ensure that any works carried out to install or maintain the intake structure will not reduce the flood-carrying capacity of Manuka Creek or result in erosion.	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. It should be noted that any diversion requires consent under the WCWARP, therefore a water permit to divert water may be required.	Effects Minor.

Man-made structures	The applicant has not identified any downstream man-made structures	Manuka Creek flows within two stations before becoming dry approximately 200 metres downstream of the Killermont intake. The only structure downstream of works would be the intake structure for the Killermont intake. Killermont did submit on this application but their concerns related to the water permit.	Effects minor.
Bank stability	The applicant has not assessed the impacts of the works on bank stability however, they have stated that some rip rap and plantings may be necessary to protect and sustain the bank during flood / fresh events.	Mr Bruce Scarlett (Senior Engineering Officer, Environment Canterbury) audit the application and he stated that he has no concerns with the effects of the proposed works on bank stability, 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 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.	Effects minor.
Water quality	Recognises that during construction there is likely to be some increased sedimentation in the stream. Considers that the works to construct the intake, will generally take less than 1 day and measures will be undertaken to minimise sediment In addition, the applicant proposes to divert water around the works site to minimise the works in flow water and subsequent effects on water quality.	I agree with the applicant that whilst the works carried out to construct the intake is likely to increase the sediment in the stream, 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. As noted above, the diversion of water around the works area requires consent under the WCWARP unless, the applicant can demonstrate that the effects of the diversion would be negligible or <i>de minimis</i> and ECan agrees with this assessment.	Effects minor.
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 Manuka Creek. Given that the works will not affect riparian vegetation, and the	Effects minor.

		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.	
Instream Ecosystems	The applicant states that mitigation measures have been proposed to ensure the disturbance of the bed of the creek is minimised during construction of the intake structure and any maintenance works undertaken after installation.	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 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.
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 CRC063565.**

## Conclusion

21. With regard to s104(1)(a), the actual and potential effects of the activities have been discussed above. For this consent, I consider that under s104(1)(a), the actual and potential effects of the proposed activity are acceptable when taking account the proposed mitigation.
22. The impacts on flood-carrying capacity and erosion, bank stability, 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))

### 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 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)**

25. The objectives and policies of the PNRRP that are relevant to each potential adverse effect have been identified in the introductory s42A report (Report 1). 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. 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**

26. With regard to s104(1)(b), the relevant provisions of the RPS and PNRRP have been considered above. I consider the land use application is consistent with the relevant planning provisions of those documents.

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

27. 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)**

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 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), 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)**

31. 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 to all applications in the Waitaki Catchment, however, the scale of the proposed works in the bed, with the proposed mitigation, will provide for protection of water quality and ecosystems and subsequently cultural values.

### **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-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.
34. 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.
35. 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)**

36. 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 Decline**

37. 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.
38. For this application I consider that there are no outstanding adverse effects of the proposed activity 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 activity are minor.

39. Under section 104B I recommend that application CRC063565 be granted, subject to the attached recommended conditions.

## RECOMMENDED CONDITIONS

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

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 Manuka Creek for abstracting water under consent CRC063564.
<b>Location</b>		
2	LU02	<i>Cross reference to Condition: 1</i> <i>Name of watercourse: Manuka Creek</i> <i>Map reference: H39:540-225 and H39:542-226</i>
<b>Limits of Excavation</b>		
3	LU03	<i>Depth of excavation: 2.5 metres below bed level</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 Manuka Creek; 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.

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

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 vehicles and machinery entering Manuka Creek.
15	Non standard	Re-fuelling or storage of machinery or vehicles used for carrying out the work shall not occur in or near Manuka Creek.
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

