

**IN THE MATTER OF
AND
IN THE MATTER OF**

The Resource Management Act 1991

A resource consent Application by Woodfield Partnership (BL, LH & DA Baggott and CE McKay Ltd)

To take and use groundwater for irrigation of pasture at the corner of Woodfield and Kennedy Roads. (CRC102890)

DECISION OF THE INDEPENDENT COMMISSIONER

Heard on 21 and 22 September 2010, and 26 and 28 October 2010 at the Offices of the Canterbury Regional Council; and on 12 August 2014 at Rosburn Receptions in Rangiora; by Alan Withy Independent Commissioner.

For the applicant: Ms E Harvie (Blair) in 2010 and
Mr J Talbot in 2014, groundwater specialists
Mr B Baggott and Ms C McKay, farmers
on behalf of the applicant company.

Reporting Officers: Mr G Deavoll and Ms P Lynch in 2010 and
Mr M Smith in 2014

Hearings Officers: Ms C Cerri and Ms S Dawson in 2010 and
Ms A Cooper in 2014

DECISION **Date of decision 23 August 2014**

On behalf of the Canterbury Regional Council, pursuant to section 127, Resource Management Act 1991, the Independent Commissioner has determined as follows:

1. That Resource consent **Application CRC102890** by Woodfield Partnership (BL, LH & DA Baggott & CE McKay) "to take groundwater and use it for pasture irrigation" **is granted** subject to conditions.
2. The duration of the consent is for 10 (ten) years from the date of this consent.
3. The Conditions to this consent are attached as Annexure I.

Glossary of Terms and Abbreviations:

Act:	means the RMA unless specified otherwise.
AEE:	means an Assessment of Environmental Effects.
Applicant:	means the Woodfield Partnership (Baggotts & McKay).
Bunnings:	means Bunnings Farm Ltd (B & A Stokes).
Council:	means the Canterbury Regional Council.
CRC & ECan:	means the Canterbury Regional Council.
GA:	means general authorisation.
LWRP:	means the Land and Water Regional Plan.
NRRP:	means the Natural Resources Regional Plan.
Proposal:	means the activities described in the Application.
RMA:	means the Resource Management Act 1991.
RO:	means the Reporting Officer in terms of s42A of the Act.
RPS:	means the Canterbury Regional Planning Statement.
TRP:	means the Transitional Regional Plan.
Trigger bore:	means Bore M35/0222 on Mr J Larsen's property.
Woodfield Partnership	means: BL, LH & DA Baggott and CE McKay Ltd

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1. Authority

Independent Commissioner Alan Withy was appointed by the Canterbury Regional Council (“CRC”) to hear and determine the Application by Woodfield Partnership (BL, LH & DA Baggott & CE McKay - CRC102890) to “take groundwater and use it for pasture irrigation” which was lodged in April 2010. Confirmation of authority was delegated by CRC Letter dated 20 August 2010 signed by Ms Ciana Cerri, Consents Hearings Officer.

2. Application

The Application is to “take groundwater and use it for pasture irrigation”. It was more fully described in its original form by the RO Mr Deavoll as follows:

Water may only be taken from

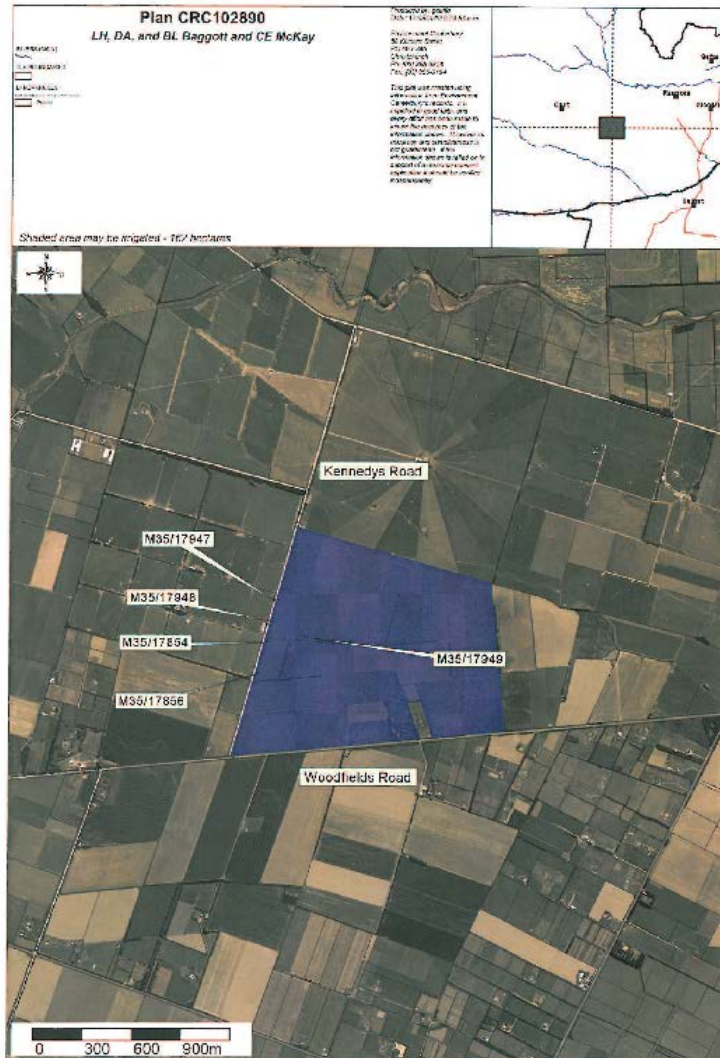
- (a) *Bore M35/17854, 300 millimetres diameter and 34.9 metres deep, at or about map reference NZMS 260 M35:6703-6288, at a rate not exceeding 25 litres per second.*
- (b) *Bore M35/17856, 300 millimetres diameter and 34.7 metres deep, at or about map reference NZMS 260 M35:6698-6266, at a rate not exceeding 11 litres per second.*
- (c) *Bore M35/17947, 300 millimetres diameter and 23.75 metres deep, at or about map reference NZMS 260 M35:6710-6309, at a rate not exceeding 24 litres per second.*
- (d) *Bore M35/17948, 300 millimetres diameter and 19.3 metres deep, at or about map reference NZMS 260 M35:6708-6298, at a rate not exceeding 15 litres per second.*
- (e) *Bore M35/17949, 300 millimetres diameter and 40.24 metres deep, at or about map reference NZMS 260 M35:6729-6289, at a rate not exceeding 18 litres per second.*

Water may be taken at a combined rate not exceeding 93 litres per second, with a combined volume not exceeding 48,211 cubic metres in any period of six consecutive days, and 838,968 cubic metres between 1 July and the following 30 June.

Water shall only be used for irrigation of crops and pasture for grazing stock on the area of land shown in attached plan CRC102890, which forms part of this consent. ¹

¹ Section 42A Report, Mr Deavoll, 19 August 2010, Para 12

The Application was amended during the course of the Hearing as described below.



3. Site:

The RO Mr Deavoll described the site as follows:

*The applicant owns 162 hectares of land adjacent to Woodfields Road and Kennedys Road, approximately five kilometres southwest of Fernside township. The land is currently used for dryland grazing and the applicant seeks consent to take and use water for the irrigation of dairy pasture.*²

² Ibid, Para 6

4. Notification:

The RO Mr Deavoll advised the ... “... *Application was limited notified as well-interference effects on neighbouring bores were assessed as being more than minor.*”³

5. Submissions:

Eleven submissions were received from ten submitters within the time frame specified in the Act. Most submitters requested that consent to the Application be declined, and some sought further testing and/or mitigation measures.

The RO Mr Deavoll advised that:

*The applicant has been in consultation with, and obtained written approvals from, the following (ten listed) parties who have been considered by the applicant to be potentially adversely affected by the proposal:*⁴ ... and that ... *Environment Canterbury advised Tuahiwi Runanga, Fish & Game Council North Canterbury, and Waimakariri District Council of the Application on 22 April 2010 and there has been no response from any of these parties to date.*⁵

Six submitters indicated they wished to be heard. Three were represented at the 2010 hearings, two at the 2014 hearing, and all addressed the Commissioner. By the time of the August 2014 hearing, all but one submitter (Bunnings Farm Ltd represented by Mr and Mrs Stokes) had become satisfied with the proposal.

Mr and Mrs Stokes attended the hearing on 12 August 2014 and maintained their opposition to the proposal until the hearing was closed. Their position is that extraction of groundwater as proposed will inevitably adversely affect their own existing right to take groundwater at Bunnings Farm at 105 Kennedys Road (CRC981183.2).

³ Ibid, Para 9

⁴ Ibid, Para 27

⁵ Ibid, Para 28

6. Hearings:

a) 2010 submissions and evidence:

Ms Harvie (Blair) of Bowden Environmental prepared the Application and AEE. She represented the Applicant at the 2010 hearings and her evidence covered the following topics: amendments to the Application; overview of legal and planning matters; description of the environment; assessment of the actual and potential effects, including bore tests, water levels, interference effects etc; review of submissions; policies and objectives; and Part 2 matters. She concluded by supporting the proposal and the conditions suggested by the RO.

The RO provided the Commissioner with information and advice related to: the background to the Application; details of the notification of the Application and submissions received; outline of the relevant legal and planning provisions; comments on the assessment of environmental effects provided; details of Council policy relevant to the Application; Part 2 matters; and comments on the decision to be made.

The RO's conclusion was that adequate mitigation measures were not offered and that the Application should be declined unless such measures were provided at the hearing. A statement of evidence from Mr M Smith was also tabled indicating his assessment of the aquifer structure and bore results in the area surrounding the applicant site. Mr Smith is a specialist groundwater hydro geologist who was subsequently the s42A RO at the August 2014 resumed hearing.

Several submitters made submissions and gave evidence in support of their written submissions. Dr Daveron, a groundwater expert, gave evidence and supported the submitters' reasons for opposition to the proposal. His opinion was that the proposal subject to the recommended conditions was likely to adversely affect existing groundwater extraction in the vicinity.

The Commissioner released an interim decision indicating that consent could not be granted unless further testing and assessment was able to convince him that the effects of groundwater extraction as proposed could be shown to be minor or less on bores on neighbouring properties.

b) Events between 2010 and August 2014:

Soon after the 2010 hearings there was a major earthquake in Canterbury and various extensions of time were requested and granted. In December 2013 Mr J Talbot, who had taken over from Ms Harvie (Blair), submitted results of further testing and requested a resumed hearing. Mr M Smith who had produced information for the original hearing, undertook a review of Mr Talbot's testing and analysis and assumed the role of RO.

Mr Talbot's information and Mr Smith's review were circulated to the parties who had attended the original hearing. The Applicant endeavoured to obtain support for its proposal and was successful except in the case of Bunnings which maintained its opposition to the proposal. That meant that the Commissioner was unable to finalise the decision on the papers, and the hearing had to be reconvened.

A resumed hearing was set for 12 August 2014 in Rangiora. By minute dated 27 May 2014 the Commissioner directed that:

... the Applicant and Submitters provide the following to the Commissioner (through the Canterbury Regional Council, and copied to the other parties), at least 10 working days before the hearing:

- a. the names, qualifications and expertise of those proposing to make submissions and give evidence at the hearing.*
- b. Copies of any expert evidence proposed to be adduced at the hearing.⁶*

c) 2014 submissions and evidence:

The resumed hearing in Rangiora was attended by:

Mr B Baggott and Ms C McKay of the Applicant Woodfield partnership
Mr J Talbot, groundwater specialist for the Applicant
Mr J Larsen, neighbour originally in opposition but now in support
Mr B and Mrs A Stokes, Bunnings farmers, neighbours in opposition
Mr M Smith, groundwater specialist and s42A RO of CRC
Ms A Cooper, Hearings Officer of CRC

⁶ Minute and Directions of the Hearing Commissioner dated 27 May 2014, Page 2

At the beginning of the resumed hearing the Commissioner summarised the position as follows (and there was no dissent):

- i. Hearing of the Application was adjourned in 2010 on the basis that the Commissioner determined that the evidence did not adequately support granting of the Application given the uncertainties highlighted by expert evidence from Dr Davoren and the then s42A RO, Mr G Deavoll.
- ii. The evidence indicated the groundwater resource was less than half utilised and allocated, and more than adequate to allow further extraction.
- iii. The issue now to be determined is whether the further evidence supports the proposal as sustainable and without significant effects on other groundwater extraction in the vicinity.

Mr Talbot spoke to his pre-circulated report and answered questions relating to it. He explained why further aquifer testing had not been done and was unnecessary in his opinion. He conceded that some bores on neighbouring properties could be affected by the proposal. However, he believes that the monitoring proposed by way of a trigger bore on Mr J Larsen's property, will ensure pumping ceases when significant and unacceptable effects become likely. In his opinion, this method of monitoring groundwater extraction by trigger bores is likely to be increasingly utilised in Canterbury.

He disagreed with Dr Davoren's criticism of the measurements taken by his firm (Bowden Environmental) and concluded that the work done prior and since the hearings in 2010 provided adequate information to support granting consent to the Application.

Mr Talbot opined that the additional affects of pumping at 93 litres per second as compared to 80 litres per second would be negligible. However, he indicated that the Applicant would accept the condition proposed by Mr Smith that pumping be limited to a maximum of 80 litres per second. He pointed out that the conditions he proposed on behalf of the Applicant were more rigorous in some respects than those recommended by Mr Smith.

Mr Larsen explained that he had changed from opposition to the proposal at the original hearing, and now supported the proposal subject to the recommended conditions including monitoring and mitigation. The consultation carried out by the Applicant and its representatives had

convinced him that his bores and others in the vicinity would be adequately protected by the conditions proposed in Mr Smith's report.

Mr Larsen explained on the basis of 40 years experience in the area, that only twice in that period had there been a serious shortage of irrigation water. He said that in his opinion the conditions requiring trigger bore monitoring and mitigation responses would adequately protect not only his operations, but also other groundwater users in the vicinity at times of water shortages.

A statement of evidence by Dr Davoren dated 30 July 2014 had been pre-circulated to the parties. It commented on:

- a. the report by Mr Talbot dated 12 December 2013
- b. the review of the report by Mr Smith dated 24 April 2014
- c. the Commissioner's Minute and Directions dated 27 May 2014
- d. discussions between the parties
- e. aquifer testing
- f. use of M35\0222 as a trigger bore

Dr Davoren was unable to be present at the hearing because of a prior engagement in Palmerston North, and claimed he should have been advised of the resumed hearing earlier. However, the Hearings Officer advised that Dr Davoren had not been notified directly, because even although he had represented the Larsen and Stokes family interests and gave evidence at the hearings in 2010, he was not a submitter.

The Commissioner therefore rules that there was no obligation on the CRC to notify Dr Davoren and that responsibility lay with such submitters as chose to utilise his services as a witness or representative.

The Commissioner was unable to question Dr Davoren and fully assess his criticisms of the work done by Bowden Environmental and the review by Mr Smith. However he concludes that those criticisms have been adequately addressed and answered by the expert witnesses he was able to question, namely Messrs Talbot and Smith.

Mr and Mrs Stokes attended the hearing and presented a statement of evidence dated 12 August 2014, which covered the following topics:

- a. farming history particularly relating to Bunnings Farm
- b. experience with consent CRC 981183.2 (galleries M35/7894 and 7999)

- c. events since the hearings in 2010
- d. comments on Mr Talbot's report dated 12 December 2013
- e. comments on Mr Smith's report dated 24 April 2014
- f. effects of the proposal
- g. conclusions

Although neither Mr and Ms Stokes are groundwater extraction experts, the Commissioner accepts their considerable experience in farming and irrigation, particularly in this area. They operate a 400-cow fifth-generation family dairy farm about 15 km distant, and converted Bunnings Farm to dairying 14 years ago.⁷

Bunnings Farm at 105 Kennedys Road adjoins the applicants' property, and Mr Stokes produced a copy of CRC981183.2 relating to Bunnings Farm. That consent authorises extraction of groundwater from galleries 7 – 8 metres deep “... at a rate not exceeding 90 litres per second with a combined volume not exceeding 7452 cubic metres per day.”⁸

The Stokes are understandably concerned about the effects on their own shallow galleries, of groundwater extraction on the Applicant's property. Mr Stokes indicated that they have been unable at times to obtain the water they desire, in spite of their right to do so in terms of CRC981183.2.

Mr Stokes suggested a direct linkage between where the Applicant's bores would draw from and the Bunnings galleries. On the other hand, he suggested the proposed trigger bore on Mr Larsen's property would not enable adequate monitoring of the effects of the applicants' proposal on his galleries.

This issue was not able to be completely resolved at the hearing. However the Commissioner finds on the basis of the expert evidence, that the trigger bore will enable adequate monitoring and mitigation of the effects of the proposal on other bore performance in the vicinity.

Mr Smith explained why he recommended the proposal be granted consent in spite of Mr Deavoll's more cautious approach at the original hearing. His pre-circulated report recommended a suite of conditions for the consent.

⁷ Mr B Stokes evidence dated 12 August 2014, Para 1, Page 1

⁸ Ibid, Para 1.h, Page 2,

He indicated that CRC had historic records in relation to the proposed trigger bore on Mr Larsen's property, which were more extensive than for other bores in the vicinity. In his opinion the trigger bore was more likely to be interconnected with the galleries on Bunnings Farm than the Applicant's proposed deeper bores. It would therefore provide a very appropriate trigger mechanism in relation to the effects of the proposal on other bores in the vicinity and particularly the Bunnings galleries.

The Commissioner asked Mr Smith to comment on paragraphs 15 and 16 in Dr Davoren's Report. He responded that in spite of the contents of those paragraphs, he was satisfied that the proposed trigger bore provided the most appropriate means of monitoring and mitigating the effects of the proposal. He concluded that consent could and should be granted the proposal subject to his recommended suite of conditions.

Mr Talbot exercised a right of reply on behalf of the Applicant, and reiterated that consultation with neighbours had been carried out both before and after the 2010 hearings, but found to be difficult in respect of Bunnings Farm. He conceded that the difficulties in predicting the effects of the proposal on existing bores in the vicinity, meant a conservative approach was appropriate. However he submitted that limiting the maximum pumping rate to 80 litres per second, complying with the proposed conditions, monitoring the trigger bore on the Larsen property and responding when necessary, gave sufficient confidence to justify granting consent to the proposal.

The Commissioner closed the hearing on 12 August and indicated a written decision would be issued in accordance with the Act.

7. Issues to be determined:

Hearing of the Application was adjourned in 2010 on the basis that the evidence did not adequately support granting of the Application given the uncertainties highlighted by expert evidence from Dr Davoren and the s42A RO, Mr G Deavoll.

It was common ground between the experts that the groundwater resources in the vicinity are probably less than half utilised and allocated, and more than adequate to allow further extraction.

The issue that remains and is contentious between the parties is, are the applicant's proposals sustainable and able to be mitigated so as to avoid

significant or unreasonable effects on other groundwater extraction in the vicinity.

Mr and Mrs Stokes eloquently described their concerns and Dr Davoren's evidence supported those concerns. The Larsen family interests expressed concerns at the 2010 hearings, but by August 2014 they had accepted the proposal subject to conditions requiring monitoring groundwater at the trigger bore on Mr J Larsen's property and consequential mitigation measures.

Therefore it remains for the Commissioner to assess the likely effects of the proposal and particularly on the Bunnings Farm, as it is arguably the most likely affected groundwater user in the vicinity or elsewhere.

8. Statutory framework:

The RO Mr Deavoll advised that the proposed take is "*... not permitted by section 14 ...*"⁹ and therefore must be considered by reference to s104 of the Act (consideration of Applications). The Commissioner accepts the RO's statutory and relevant plans analysis. The proposal is thus a non-complying activity overall and must be considered in terms of the relevant provisions of Sections 104 and 104D (particular restrictions for non-complying activities).

Section 104(1) of the Act requires that, subject to Part 2 (purpose and principles), the Commissioner must have regard to:

- (a) *any actual or potential effects on the environment of allowing the activity; and*
- (b) *any relevant provisions of*
 - (i) *a national policy statement*
 - (ii) *a New Zealand Coastal Policy Statement;*
 - (iii) *a regional policy statement or proposed regional policy statement;*
 - (iv) *a plan or proposed plan; and*

⁹ Section 42A Report, Mr Deavoll, 19 August 2010, Para 12

(c) *any other matter the consent authority considers relevant or reasonably necessary to determine the Application.*¹⁰

Section 104D specifies particular restrictions for non-complying activities that are commonly referred to as the 'gateway tests'.

... a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either –

(a) the adverse effects of the activity on the environment ... will be minor; or

*(b) the Application is for an activity that will not be contrary to the objectives and policies of ... the relevant plans.*¹¹

For reasons discussed elsewhere in this decision, the Commissioner is satisfied that, subject to suitable conditions, the likely effects of the proposal will be minor in terms of s104(1)(a), and thus the first gateway test is fulfilled.

Section 104(1)(b) requires analysis against relevant national and regional policy statements, and regional and district plans. The Commissioner is satisfied, for reasons discussed elsewhere in this decision that although the proposal fails to comply with one rule, it will not be contrary to any relevant provision of the objectives and policies of a plan or policy. It thus meets the second gateway test.

Section 104(3)(c) requires consideration of any other matter the consent authority considers relevant and reasonably necessary to determine the Application. No such matters have been identified and the Commissioner is unaware of any other matters that should be taken into account.

The gateway tests of s104D(1) require only one limb to be satisfied. Therefore even if the environmental effects of the proposal are greater than minor, the proposal is determined to meet the test of the second limb and qualifies for further analysis.

Decision-making in terms of Section 104 is required to be within the context of Part 2 of the Act (ss5-8), which sets out the purpose and principles of the RMA.

¹⁰ RMA, s104(1)

¹¹ RMA: s104D

The purpose of the Act is to *promote the sustainable management of natural and physical resources.*¹²

Sustainable management means:

... managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while -

- (a) sustaining the potential of natural and physical resources ... to meet the reasonably foreseeable needs of future generations; and*
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.*¹³

The Commissioner considers there are no matters in Sections 6 and 7 that will be compromised by granting the consents sought.

Section 8 requires taking into account the principles of the Treaty of Waitangi. No matters relevant to s8 were raised at the hearing but the Commissioner has had regard to those principles.

Therefore, in terms of Sections 104 and 104D and Part 2 of the Act, the Commissioner concludes that consent can and should be granted subject to appropriate conditions requiring monitoring and mitigation where necessary.

9. Plans and Policies:

The original RO Mr Deavoll, analysed the proposal by reference to the relevant plans and policies as follows:

Transitional Regional Plan (TRP)

The proposed volume is greater than the volume specified in the GA, therefore the proposed take is not permitted by the TRP. The TRP does not address use of water, therefore the taking and use of water require resource consent under section 14 of the RMA for what are considered to be discretionary activities in accordance with Section 77C(1)(a) of the RMA.

¹² RMA s5

¹³ Ibid

Proposed Natural Resources Regional Plan (PNRRP)

Rule WQN19 of Chapter 5 of the PNRRP defines the taking of water within an allocation block for a groundwater allocation zone as a restricted discretionary activity, provided certain conditions are met. The proposed take does not meet condition 7 of the rule, therefore it must be considered as a non-complying activity under Rule WQN23.

Rule WQN25 of Chapter 5 of the PNRRP describes the use of water for irrigation as a permitted activity under certain conditions. The applicant's proposed use meets all the conditions of this rule.

Waimakariri River Regional Plan (WRRP)

The WRRP was made operative in October 2004, and part of the Plans function is to regulate the taking of water from the Waimakariri River or its tributaries or from hydraulically connected groundwater.

Rule 5.1 of Chapter 5 of the WRRP defines the taking of water from surface water or hydraulically connected groundwater as a restricted discretionary activity, but the Rule does not apply if it is demonstrated that surface water depletion is no more than 5 litres per second after a 30 day pumping period.

The proposed take is not affected by this Rule as there is no significant hydraulic connection to surface water resources.

Activity Status

The proposed taking and use of water is a non-complying activity under the PNRRP and a discretionary activity under the TRP.¹⁴

Because the decisions on the NRRP submissions were notified a few days before the end of the 2010 hearings, the RO said in an Addendum to his Report dated 27 October 2010, that the Commissioner is required to consider "... the proposed NRRP as amended by decisions, when assessing the Application under section 104(1)(b) of the RMA (in accordance with s88A(2) of the RMA).¹⁵ That Addendum Report concluded by saying "... there are no changes to Policies of the NRRP that significantly affect this Application."¹⁶

There are no relevant operative national policy statements, and the New Zealand Coastal Policy Statement does not apply. The RO referred to several relevant Council decisions, but considered no Environment Court decisions were particularly relevant to consideration of the proposal.

Mr Deavoll's analysis of the proposal in terms of the relevant plans concluded that it complied with all rules except one in the PNRRP meaning the proposal

¹⁴ Section 42A Report, Mr Deavoll, 19 August 2010, Para 18-26

¹⁵ Section 42 Addendum Report, 27 October 2010, Page 1

¹⁶ Ibid, Page 2

must be considered non-complying overall. That rule defines the taking of water within an allocation block for a groundwater allocation zone as a restricted discretionary activity provided certain conditions are met.¹⁷ It should be noted that the NRRP became operative between the 2010 and 2014 hearings and the LWRP is not yet operative.

Mr Smith did not disagree at the resumed hearings in August 2014 with Mr Deavoll's analysis of the proposal in respect of the relevant provisions of plans and policies. The Commissioner therefore accepts and adopts Mr Deavoll's analysis and overall conclusion that the proposal must be considered as non-complying with one rule, and that it is not contrary to the relevant provisions of the plans and policies.

Mr Smith attached to his report for the 2014 hearing a copy of the current NRRP objectives and policies regarding managing the effects of interference effects between bores, and the LWRP objectives and policies regarding new groundwater takes. He indicated they were relevant to the proposal, and that it was consistent with them.

10. Other consents:

Operations on various properties in the vicinity rely upon groundwater extracted for irrigation and their rights should be protected as far as reasonably possible. Mr and Mrs Stokes represented Bunnings Farm and Mr Stokes gave evidence. Their representations were supported by a written report by Dr Davoren who is expert in groundwater extraction but unable to attend the hearing in August 2014. They ably advocated for the interests of their own property and other parties in the vicinity and their representations and evidence were helpful to the Commissioner.

However in the final analysis the expert evidence of Ms Harvie (Blair) and Messrs Talbot, Deavoll and Smith provided a compelling evidential basis upon which to grant consent to the proposal subject to conditions. This is in spite of the critical

¹⁷ PNRRP: Chapter 5, Rule WQN19, Condition 7

evidence of Dr Davoren and Mr Stokes which the Commissioner has carefully considered and weighed.

11. Environmental effects:

The RO challenged the Applicant in his report circulated before the 2010 hearings, as follows:

*In relation to well interference effects ... effects may be more than minor. ... To date the applicant has not proposed any mitigation measures to protect the existing water rights of neighbouring bore owners ... I believe that effects on all neighbouring bore owners must be addressed before consent can be granted.*¹⁸

He placed the proposal in the context of the groundwater resource as follows:

*For water allocation management purposes, the Cust zone has an allocation limit set at 56.3 million cubic metres. This Application, and those with a higher priority but not yet decided, put the current allocation on 17 August 2010 at 16.1 million cubic metres or 28.5% allocated.*¹⁹

The submitters' greatest concerns related to the effects the proposal could have on their bores, their properties, their operations and themselves. The RO noted:

*Ms Blair provided a well interference assessment that demonstrates that 43 bores will be adversely affected by the proposed activity, and the owners of 13 of these wells have provided written approval for any adverse effect on their bore. To date no mitigation measures have been proposed by the applicant to avoid, remedy, or mitigate the potential well interference effects on the remaining bore owners. The proposal is not consistent with Policy 6 of Chapter 9 of the RPS and Policy WQN20 of the PNRRP. I consider that well interference is the most significant issue for this Application. Given the above, I consider that the well interference effect on other groundwater users is likely to be more than minor.*²⁰

¹⁸ Section 42A Report, Mr Deavoll, 19 August 2010, Para

¹⁹ Ibid, Para 38

²⁰ Ibid, Para 56

In all other respects Mr Deavoll assessed the effects of the proposal as being minor or less than minor. The likely effects of the proposal have been assessed by the RO and Applicant's Consultant. The only significant matter in contention in this regard is the likely effects of the proposal on nearby bores.

Mr Smith as RO indicated at the 2014 hearing regarding the use of a trigger bore:

A trigger condition has been proposed using the water level in well M35/0222 of 10 mbgl. This water level is approximately equal to the low water level used for well inference under both the NRRP and proposed LWRP, that is the water level that is exceeded 80% of the time.

The adoption of a trigger level will provide some level of protection to neighbouring wells as pumping of the subject wells will cease at times of low water. Further, the adoption of the 10 m trigger level should provide protection to existing wells that meets both the NRRP and proposed LWRP plan policies.²¹

In his concluding comments Mr Smith said:

I have been out to the site and visited Mr Stokes' waterholes. The interference modelling indicates that a maximum of 0.6 m of interference may occur on the closest of Mr Stokes' waterholes. In my opinion this interference should not significantly alter the performance of Mr Stokes' waterholes or his ability to take water under most circumstance. The inclusion of the trigger cut-off will ensure that Mr Stokes ability to take water is not compromised by this proposal, during times of low water levels.

It is my opinion that if a trigger condition is included on this water permit, that the adverse effects of well interference is likely to be mitigated, and that this Application could be granted as the Application is for an activity that will not be contrary to the objectives and policies of both the NRRP and the proposed LWRP.

It is my opinion that the trigger level proposed will provide an acceptable level of protection. However, as a safeguard, I recommend the inclusion of a condition allowing the review of the trigger level, or granting with a short consent duration to allow the review of that trigger.²²

²¹ Section 42A Report, Mr Smith, 24 April 2014, Paras 7-8, Page 1

²² Ibid, Paras 4-6, Page 2

He also said in his concluding comments:

*The aquifer testing indicates that the well interference modelling undertaken to date is appropriate for this proposal in this area, and some confidence can be placed on this modelling. Testing also shows that the well yields are appropriate for the rates being sought.*²³

*The inclusion of a condition that limits the take from the subject wells, to only times when groundwater levels are sufficiently high, will mitigate adverse effects during times of aquifer stress i.e. low groundwater levels, and is in accordance with NRRP policy WQN19.*²⁴

The Commissioner finds on the basis of the evidence that the environmental effects of the proposal are likely to be minor, and can be adequately regulated by conditions requiring monitoring the trigger bore on Mr J Larsen's property and mitigation when necessary.

12. Conclusion:

The Commissioner has carefully considered the proposal in terms of ss104 and 104D within the context of Part 2 of the Act, having regard to Sections 5, 6 7 and 8, and concludes that consent to this proposal would be consistent with sustainable management of resources. He considers consent should be granted subject to suitable conditions in terms of s108 of the Act.

The Applicant requested a ten year duration and the Commissioner considers that to be an appropriate duration. The conditions provide for review of the trigger mechanism as recommended by Mr Smith, and ss128 and 9 of the Act give statutory authority for that.

²³ Ibid, Para 9, Page 1

²⁴ Ibid, Para 1, Page 2

13. Consent and conditions:

For the reasons discussed above, consent is granted to Application CRC102890, subject to the conditions and map below, for a duration of ten years.

DATED the 23rd day of August 2014



Alan Withy, Independent Hearing Commissioner

Conditions:

- 1) Water may only be taken from
 - (a) Bore M35/17854, 300 millimetres diameter and 34.9 metres deep, at or about map reference NZMS 260 M35:6703-6288 at a rate not exceeding 25 litres per second.
 - (b) Bore M35/17947, 300 millimetres diameter and 23.75 metres deep, at or about map reference NZMS 260 M35: 6710-6309 at a rate not exceeding 25 litres per second.
 - (c) Bore M35/17948, 300 millimetres diameter and 19.3 metres deep, at or about map reference NZMS 260 M35:6708-6298 at a rate not exceeding 18 litres per second.
 - (d) Bore M35/17949, 300 millimetres diameter and 40.24 metres deep, at or about map reference NZMS 260 M35:6729-6289 at a rate not exceeding 25 litres per second.
- 2) Water may only be taken at a combined rate not exceeding 80 litres per second, with a combined volume not exceeding 41,472 cubic metres in any period of six consecutive days and 838,968 cubic metres between 1 July and the following 30 June.
- 3) The abstraction of water from bores M35/17854, M35/17947, M35/17948, and M35/17949 shall cease whenever the water level in bore M35/0222 (at or about map reference NZMS 260 M35:68022-61918) is more than 10 metres below ground level.
- 4) Between September and April daily water levels shall be measured and recorded with an accuracy of +/- 0.01 m from well M35/0222. These records shall be submitted annually to the Canterbury Regional Council, attention: RMA Compliance and Enforcement Manager by 31 May.

- 5) Within 5 years of the granting of this consent a report shall be prepared, and submitted to the Canterbury Regional Council, attention: RMA Compliance and Enforcement Manager, by a suitably qualified person that analyses the efficacy of the trigger level and any recommended adjustments to that trigger level.
- 6) Water shall only be used for irrigation of crops and pasture, on the area of land shown in attached plan CRC102890 which forms part of this consent.
- 7) The consent holder shall, before the first exercise of this consent, install an easily accessible straight pipe(s), with no fittings or obstructions that may create turbulent flow conditions, of a length at least 15 times the diameter of the pipe, as part of the pump outlet plumbing or within the mainline distribution system.
- 8) The consent holder shall, before the first exercise of this consent:
- (a) install:
 - (i) a water meter(s) that has an international accreditation or equivalent New Zealand calibration endorsement suitable for use with an electronic recording device, which will measure the rate and the volume of water taken to within an accuracy of plus or minus five percent as part of the pump outlet plumbing, or within the mainline distribution system, at a location(s) that will ensure the total take of water is measured; and
 - (ii) a tamper-proof electronic recording device such as a data logger(s) that shall record and time stamp data pulse from the flow meter at least once every 60 seconds, and have the capacity to hold at least one season's data of water taken as specified in clauses (b) (i) and (b) (ii), or which is telemetered,.
 - (b) The recording device(s) shall –
 - (i) be set to wrap the data from the measuring device(s) such that the oldest data will be automatically overwritten by the newest data (i.e. cyclic recording); or
 - (ii) store the entire season's data in each 12 month period from 1 July to 30 June in the following year, which the consent holder shall then download and store in a commonly used format and provide to the Canterbury Regional Council upon request in a form and to a standard specified in writing by the Canterbury Regional Council; or
 - (iii) shall be connected to a telemetry system which collects and stores all of the data continuously with an independent network provider who will make that data available in a commonly used format at all times to the Canterbury Regional Council and the consent holder. No data in the recording device(s) shall be deliberately changed or deleted.
 - (c) The water meter and recording device(s) shall be accessible to the Canterbury Regional Council at all times for inspection and/or data retrieval.
 - (d) The water meter and recording device(s) shall be installed and maintained throughout the duration of the consent in accordance with the manufacturer's instructions.

9) Within one month of the installation of the measuring or recording device(s), or any subsequent replacement measuring or recording device(s), and at five-yearly intervals thereafter, and at any time when requested by the Canterbury Regional Council, the consent holder shall provide a certificate to the Canterbury Regional Council, attention: RMA Compliance and Enforcement Manager, signed by a suitably qualified person certifying, and demonstrating by means of a clear diagram, that –

- (a) The measuring and recording device(s) has been installed in accordance with the manufacturers specifications; and
- (b) Data from the recording device(s) can be readily accessed and/or retrieved in accordance with clauses (b) and (c)

10) The Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager shall be informed immediately on first exercise of this consent by the consent holder.

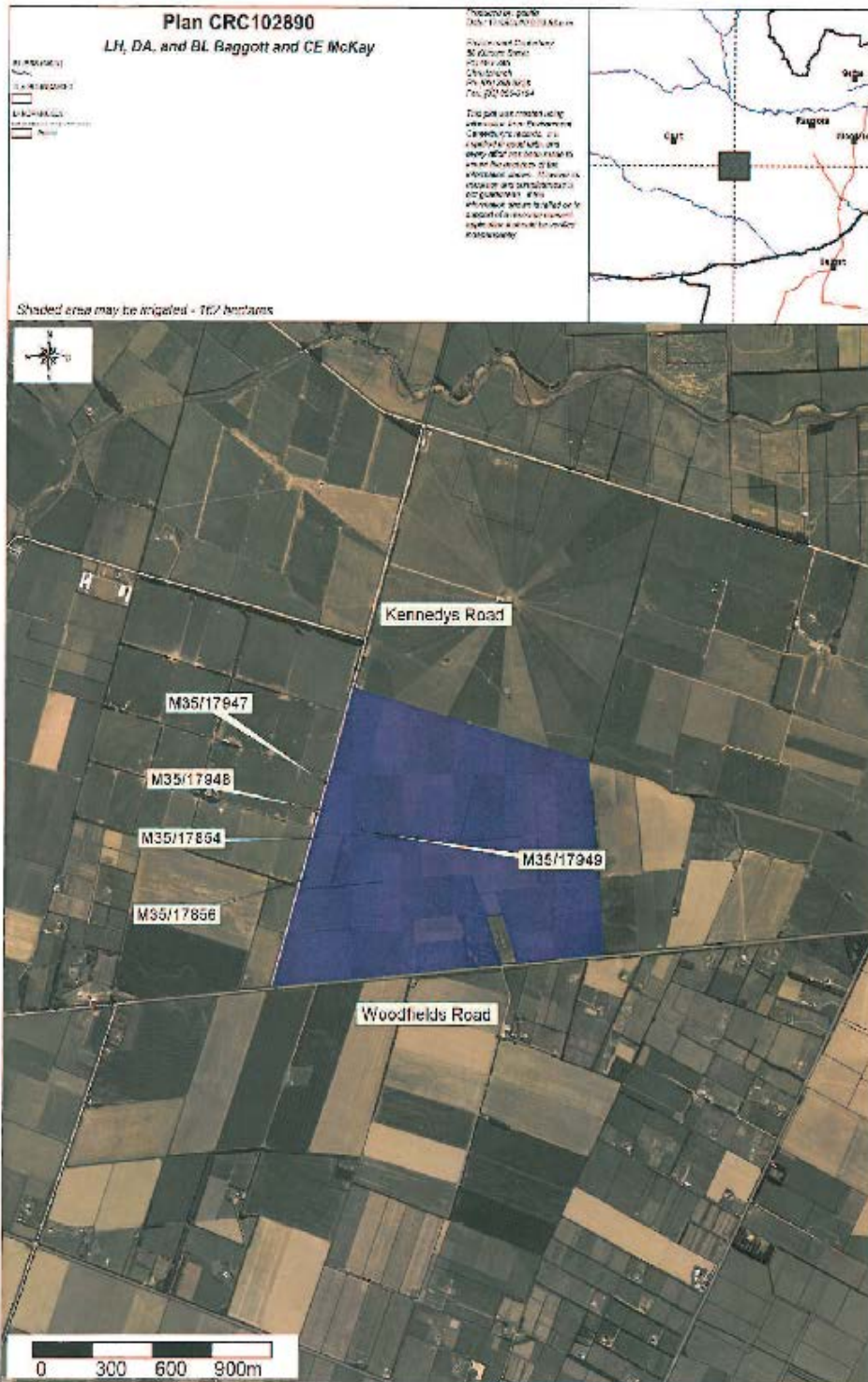
11) The irrigation system used in association with taking water in terms of this permit shall not be used to distribute effluent, fertiliser or any other added contaminant, unless a backflow preventer is installed within the pump outlet plumbing or within the mainline to prevent the backflow of water into the bore.

The backflow preventer shall be tested within one month of its installation and annually thereafter by a suitably qualified person. A test report shall be provided to the Canterbury Regional Council within one month of each inspection.

Advisory note: This condition does not authorise the distribution of effluent or fertiliser as this is subject to separate consent requirements pursuant to s15 of the RMA.

12) The Canterbury Regional Council may, once per year, on any of the last 5 working days of May or November, serve notice of its intention to review the conditions of this consent for the purposes of:

- a) dealing with any adverse effect on the environment which may arise from the exercise of this consent; or
- b) adjusting the trigger level and/or trigger level location described in condition 3.



Plan CRC102890: