

BEFORE THE CANTERBURY REGIONAL COUNCIL

IN THE MATTER OF

The Resource Management Act 1991

AND

IN THE MATTER OF

an application by **High Country Rosehip Orchards Limited** filed under **CRC072232** to undertake works in the bed of the Ohau River for the purpose of installing an irrigation pipeline, State Highway 8, Twizel.

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REPORT AND DECISION OF HEARING COMMISSIONERS PAUL ROGERS,  
MICHAEL BOWDEN, DR JAMES COOKE AND EDWARD ELLISON

PART B - SITE SPECIFIC DECISION

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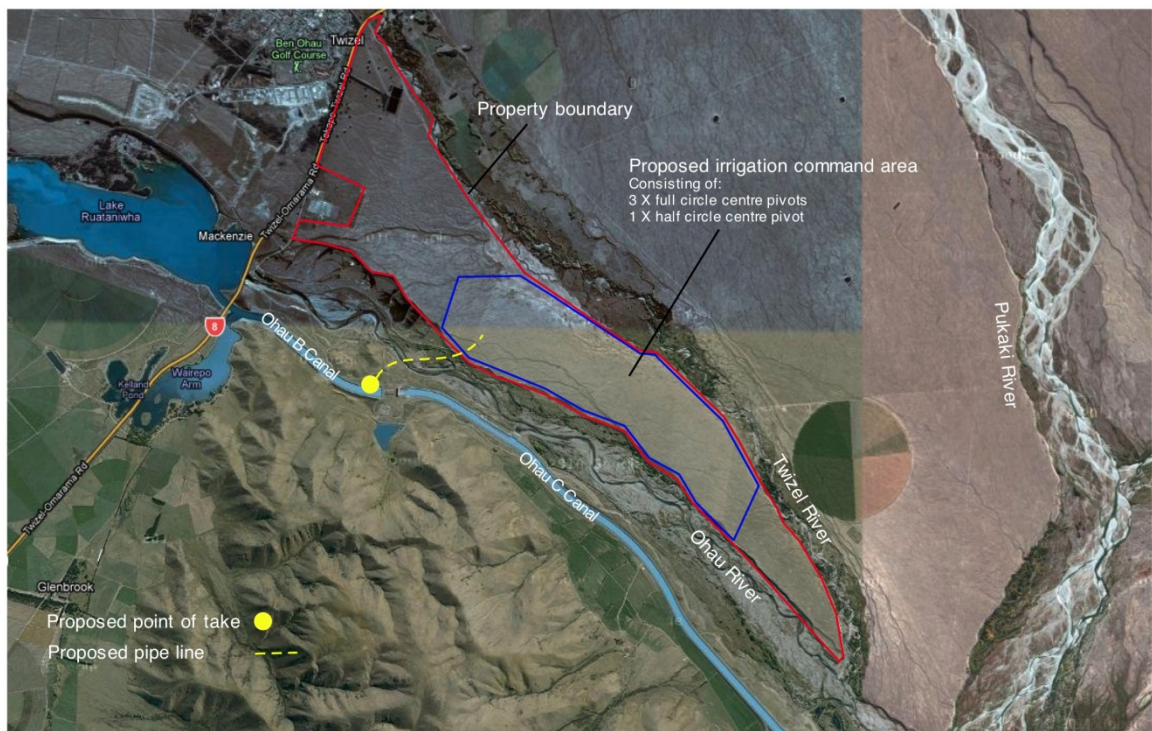
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## 1 INTRODUCTION

- 1.1 This is a decision on an application by **High Country Rosehip Orchards Limited** (the applicant). It is one of many decisions we have made on 104 applications by various applicants for water permits and associated consents in the Upper Waitaki Catchment.
- 1.2 The decision should be read in combination with our Part A decision, which sets out our findings and approach to various catchment wide issues that are common to multiple applications. References to our Part A decision are made throughout this decision as appropriate.

## 2 THE PROPOSAL

- 2.1 The applicant proposes to undertake works in the bed of the Ohau River for the purposes of installing and maintaining an irrigation pipeline. The proposed pipeline will deliver water from the Ohau B Canal to the applicant's property for the irrigation of up to 500 ha. A description of the proposed water take and use, including a description of the applicant's property, has been included in our decision on the related take and use application (CRC072233).
- 2.2 The location of the proposed pipeline relative to the Ohau canal and the irrigation area is illustrated in Figure 1 below.



**Figure 1:** Location of proposed pipeline (shown by dotted yellow line)

- 2.3 The proposed pipeline will be buried at least 1 metre below the bed of the Ohau River and at least 0.6 metres below ground on either side of the river. The width of disturbance of the river bed will be limited to approximately 5 metres during construction. The works to install the pipeline are expected to take up to one week to complete and once in place gravel will be placed over the pipe, re-instating the stream bed to its original level.
- 2.4 The applicant is proposing to not undertake works during the period August to January inclusive, unless onsite consultation with DoC has been undertaken and their approval given. The applicant proposes to clean all equipment used in the riverbed to ensure equipment is free from weeds.
- 2.5 The applicant intends the proposed works to also cover the repair or replacement of the pipeline should it be washed out or damaged following a flood or fresh in the river.
- 2.6 The proposal also involves a temporary diversion of water during construction of the intake structure to minimise the work required in flowing water. Although a consent for this diversion

has not specifically been sought, we have considered this activity as part of the proposal for the reasons outlined in our Part A decision.

### **The application**

- 2.7 The application is for consent to undertake works in the bed of a river pursuant to section 13 of the RMA. Consent is required under the Natural Resources Regional Plan (NRRP), as discussed below.
- 2.8 Works in the bed and banks of Ohau River will be undertaken to install and maintain an irrigation pipeline to convey water, at a location between NZMS 260 H38:794-525 and H39:790-526.
- 2.9 The application (CRC072233) was lodged with the Canterbury Regional Council (the Council) on 29 January 2007. This application was publicly notified and there were a number of submissions that are referred to later in this decision.

### **Additional consent applications**

- 2.10 In association to this application, the applicant has also applied for Water Permit CRC072232 to take and use water from the Ohau B canal, for the purpose of spray irrigating 500 hectares. The decision on this application is provided separately.
- 2.11 It is noted that as the Ohau Canal is an artificial watercourse, consent is not required under Section 13 of the RMA, for the installation of the intake structure.

## **3 DESCRIPTION OF THE ENVIRONMENT**

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- 3.1 The Lower Ohau River is located downstream of Lake Ruataniwha dam. Meridian Energy Limited (MEL) largely controls the flow in this part of the river. Splash flows are released monthly by MEL and occasionally water from the Ohau C canal is allowed to spill into the river via the labyrinth weir which is located downstream of the proposed pipeline crossing. Below the confluence with the Twizel River, the Ohau River is sustained primarily by flows from the Twizel River.
- 3.2 According to the applicant the Lower Ohau River bed contains some ponded areas between Ruataniwha Dam and the confluence with the Twizel River. These ponded areas are part of a recognised conservation area, used by DoC as a captive breeding centre for black stilt. This area also provides habitat and breeding areas for other birds, such as the banded dotterel, black fronted terns and wrybills. An area to the northwest of the applicant's property (known as Ruataniwha Wetlands) also provides important habitat for native fish including the 'nationally critical' Lowland Longjaw Galaxiid.
- 3.3 The lower reach of the Ohau River (extending 2 km upstream of Lake Benmore) provides opportunities for fishing and other recreational pursuits such as jet boating and swimming.
- 3.4 In relation to a site visit, we detailed our site visits in Part A and we do not repeat this information here.

## **4 PLANNING INSTRUMENTS**

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- 4.1 The planning instruments relevant to this application are:
  - (a) Transitional Regional Plan (TRP);
  - (b) Proposed Natural Resources Regional Plan (PNRRP); and
  - (c) Natural Resources Regional Plan (NRRP);
  - (d) Proposed and Operative Canterbury Regional Policy Statement (PCRPS); and
  - (e) Mackenzie District Plan (MDP).
- 4.2 The provisions of these planning instruments critically inform our overall assessment of the application under s104(1)(b) of the RMA, as discussed in Section 14 of this decision. In addition, the rules within the relevant planning instruments determine the status of the activity, as set out below.

## Status of the activity

- 4.3 In our Part A decision we provide a detailed discussion of our approach to determining the status of activities. We now apply that approach to the current application.
- 4.4 In accordance with section 88A of the RMA, the relevant plans for determining the status of the activity are those that existed at the date the application was lodged (29 January 2007). In relation to this application, that was the TRP and the PNRRP.
- 4.5 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 the TRP.
- 4.6 The relevant provisions of PNRRP (as notified) are as follows:
- (a) Rule BLR3 of the PNRRP permits activities involving excavating, drilling, tunnelling or disturbance within the bed, provided certain conditions are met.
  - (b) Should any of the conditions of the permitted activity not be met then Rule BLR8 classifies the activity as discretionary.
- 4.7 At the time of receiving the application the Council determined that the activity could have potential effects on bank stability, therefore the activity was determined to be a **discretionary** activity under the PNRRP.
- 4.8 In relation to the minor diversion of water associated with construction activities, the relevant plan for determining the status of the activity is the WCWARP. The diversion fails to qualify as a permitted activity under Rule 1 of the WCWARP due to the quantity and rate of water being diverted. However it complies with all other relevant rules in the WCWARP and therefore requires consent as a **discretionary** activity.
- 4.9 Overall, the proposal is a **discretionary activity** and resource consent is required in accordance with sections 13 and 14 of the RMA.

## 5 NOTIFICATION AND SUBMISSIONS

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- 5.1 The application was publicly notified on 4 August 2007, along with other applications for the applicant's proposal. For details of the submissions received on the applicant's proposal, refer to our decision on the take and use application (CRC072232). None of those submissions made direct reference to this land use consent application or the effects of the proposed works in the bed of the Ohau River.

## 6 THE PLANNING OFFICER'S REPORT

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- 6.1 A comprehensive officer report on the application and submissions was prepared by the Regional Council's planner (Ms Yvette Rodrigo). The report was pre-circulated in advance of the hearing. Specific points noted from the s42A report are summarised below.

### Effects on People and amenity values

- 6.2 Ms Rodrigo noted that the works will be of short duration, and that the surrounding area is already modified with man-made structures such as power pylons and electricity canals. She added that the pipeline would be buried beneath the Ohau River. Consequently, she considered that the potential effects of the activity on people and amenity values are likely to be de-minimis and acceptable.

### Effects on Flood-Carrying Capacity and Erosion

- 6.3 Ms Rodrigo noted that there are standard Council conditions relating to maintaining flood carrying capacity and erosion that can be included in the consent should it be granted. However at the time of writing her S42A report she was uncertain that these conditions would adequately mitigate impacts, given the extent of works to install the pipeline across the river bed.

- 6.4 In addition to this Ms Rodrigo added that Meridian occasionally release flows into the Lower Ohau River via the labyrinth weir and therefore, it is unclear to Ms Rodrigo whether effects could occur if the release coincided with works to install the pipeline.

#### **Man Made Structures and Bank Stability**

- 6.5 In her S42A report MS Rodrigo noted that the applicant may wish to provide an assessment of the effects on bank stability and the adjoining roads which the pipeline will cross through/under. In conjunction she suggested that the applicant might wish to describe how this effect will be mitigated both during and after construction. Her comments follow that of Mr Bruce Scarlett, (Senior River Engineer, Council) who had audited the applicant's proposal and raised concerns regarding the works and the effects in relation to the river terraces and roadways.

#### **Water Quality**

- 6.6 Ms Rodrigo agreed with the applicant that whilst the works to construct the pipeline are likely to increase the sediment in the wetland outlet; given the short duration, timing of works, and with appropriate conditions, adverse effects of the works on water quality would be minor.

#### **Riparian Plants and Animals**

- 6.7 In her Section 42A report Ms Rodrigo noted that works are likely to require some disturbance of vegetation on the banks of the Lower Ohau River. She added that the degree of this disturbance or the significance of this effect is uncertain.

#### **Instream Ecosystems**

- 6.8 In her Section 42A report Ms Rodrigo noted that Fish and Game had raised concerns regarding the timing of instream works and DoC has also raised concerns regarding the impacts of land-use activities on fish migration and survival. The applicant had consulted with both Fish and Game and DoC and has proposed exclusion periods to mitigate effects on nesting birds. Ms Rodrigo recommended that conditions relating to the appropriate timing of works to avoid fish spawning are also included, if consent for this activity is to be granted.

#### **Tangata Whenua values**

- 6.9 No sites of historical or cultural significance were identified on the Council's GIS System, and the site of the proposed works is not within a Statutory Acknowledgement Area according to Ms Rodrigo. The applicant has proposed standard conditions relating to the accidental discovery of wahi tapu and wahi taonga. As effects on water quality considered minor, Ms Rodrigo was satisfied that effects on Tangata Whenua values are also minor.

#### **Relevant statutory considerations**

- 6.10 With regard to S104(1)(b), Ms Rodrigo considered the relevant provisions of the RPS and PNRRP in her S42A Report. In her opinion the application was consistent with the relevant planning provisions of those documents.
- 6.11 Ms Rodrigo also provided an assessment of the application in reference to Part 2 (Purpose and Principals of the RMA). In conclusion she noted that the application is consistent with Section 7. In regards to Section 5 and 6 she was unsure if the application meets all of these section's provisions given the absence of a full assessment of the effects and proposed mitigation methods.

## **7 THE APPLICANT'S CASE**

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- 7.1 Legal counsel for the applicant, Mr Kelvin Reid, presented opening submissions and called two witnesses, as follows;
- (a) Mr Ian McIndoe, Groundwater Consultant, report on pipeline proposal
  - (b) Dr Gregory Ryder, Water Quality Scientist & Aquatic Ecologist, report on water quality and aquatic ecology

- 7.2 Most of the evidence presented related to the take and use application and is summarised in that decision (CRC072232). Evidence relevant to this application to install the pipeline is summarised below.

### **Pipeline Construction Methodology**

- 7.3 Mr McIndoe (Principal Engineer, Aqualinc Research Ltd) stated that the applicant would transfer water from the Ohau B canal, to their property, using a ~500 mm diameter rigid pipe. From the intake, the pipe will pass under the existing canal road and will either traverse the escarpment to the base (some benching required) or will be buried for the full length (subject to MEL's agreement). From the base of the escarpment, water will be piped under gravity to the irrigated areas. It is anticipated that the pipeline will be completely buried for most of the distance. Mr McIndoe noted that the proposed crossing would be below a DoC conservation area (Ruataniwha Wetlands) but will cross the wetlands outflow which discharges into the Ohau River bed.
- 7.4 According to Mr McIndoe the works will only be undertaken during periods of no flow in the river (excluding the small outflow from the Ruataniwha Wetlands). The pipeline will be installed by digging a trench, laying the pipe, and back filling. As there is likely to be a small outflow from the Ruataniwha wetlands during construction, Mr McIndoe explained that this waterway would be temporarily diverted. Once construction is completed, this waterway will be restored to its previous state.
- 7.5 The areas of excavation will be approximately 3 m wide, 3-4 m deep and will extend for approximately 700 m across the width of the Ohau River. Mr McIndoe explained that it is intended to have a minimum 2 m cover over the pipeline in the riverbed as protection against potential erosion during flood flows or spillage. Excess spoil from the works will be minimal and spread out over the riverbed to represent the current state. Mr McIndoe added that the duration of the proposed works associated with the installation of the pipeline beneath the river will be in the order of 1 week and will be carried out during daylight hours.

### **Sediment Transport**

- 7.6 The applicant proposes to undertake the works when there is no flow in the river. Therefore, in Mr McIndoe's opinion, the effects of sediment release will be minor. However, the diversion of the outflow channel from the wetland area may result in the release of some sediment into the flowing water. According to Mr McIndoe the duration of the proposed works means sediment release in this outflow channel will only occur over a short period of time and no long term or ongoing adverse effects should arise.

### **Effects on Ecosystems**

#### Birds

- 7.7 Mr McIndoe acknowledged that consultation with DoC had identified potential effects on flying birds if the pipeline is set above ground level. Further effects on birds could occur if the timing of works coincided with bird breeding season (August to the end of January). Mr McIndoe noted that because of this concern, the pipelines will be buried beneath the riverbed and will be located upstream of the DOC black stilt conservation area and downstream of the Ruataniwha Wetlands. Mr McIndoe proposed a condition so that works cannot be undertaken within 100 m of nesting birds.

#### Introduced Weed Species

- 7.8 To control the potential for the introduction of weeds to waterways during construction, machinery will be washed before moving to a new site to minimise the risk of any weed introduction. The applicant intends to follow recommended Council and DoC guidelines for this washing.
- 7.9 The invasive algae didymo has been found in the Ohau River, and Dr Ryder noted that this could potentially be transferred to the springs on the river's banks. He suggested where possible, construction machinery should avoid wetted areas to reduce the potential spread of didymo. Furthermore he added that machinery working in wetted areas should be cleaned and inspected prior to entering the water, or re-entering other water bodies.

#### Instream Ecology

- 7.10 According to Dr Ryder the installation of the pipeline below the bed of the Ohau River will result in the direct removal of macroinvertebrates and less mobile fish (e.g. common and upland bully eggs and larvae). However, more mobile fish (e.g. adult bully) will be able to quickly move to avoid the area during construction. He noted that some macroinvertebrate taxa (e.g. mayflies) would also drift downstream to avoid areas of increased sediment deposition.
- 7.11 Dr Ryder noted that macroinvertebrates will begin recolonisation almost immediately and the community will resemble the pre-construction community typically within about four to six weeks following the completion of construction. He added that fish will also move back into the area almost immediately depending on seasonal effects and abundance of local populations.
- 7.12 Dr Ryder stated that there is likely to be a short-term increase in fine sediments downstream of the excavation area, but this will decrease over time through higher flows dispersing this material. He recommended that the applicants follow the Council's Erosion and Sediment Control Guidelines to reduce sediment inputs to watercourses during construction.
- 7.13 Brown and rainbow trout and sockeye salmon have spawning runs in the lower Ohau River, with spawning observed in the river adjacent to the applicant's property. According to Dr Ryder the installation of the pipeline in the bed of the Ohau River has the potential to disturb spawning salmonids, and sediments released could smother spawning gravels downstream. He recommended the avoidance of construction activities in the river during the spawning and rearing seasons, which are between late February and late March for sockeye salmon and between approximately June–October for trout.
- 7.14 The native bignose and lowland longjaw galaxias have been found in small springs and backwaters on the terraces of the Ohau River, including the Ruataniwha wetland. The proposed path of the pipeline is downstream of the Ruataniwha wetland, however according to Dr Ryder it is possible there are other areas of suitable habitat on adjacent river terraces.
- 7.15 Construction activity and the laying of the irrigation pipeline have the potential to damage or destroy this [native fish] habitat. Dr Ryder recommended that, where possible, construction machinery avoid wetted areas of the Ohau River channel. Where wetted areas are unavoidable, he recommended surveys be undertaken for the presence of galaxiids prior to disturbance and that any fish likely to be affected are translocated to suitable habitat nearby. Dr Ryder recommended that any such survey and relocation should be undertaken in conjunction with DoC.
- 7.16 The outflow channel from the DoC maintained black stilt wetland flows adjacent to the Ohau River for several kilometres before it enters the Ohau River. The channel contains trout that access the wetland ponds adjacent to the threatened galaxiid habitat. Dr Ryder noted that the installation of the proposed irrigation pipeline would result in the temporary disturbance of this channel.
- 7.17 Dr Ryder suggested that construction of the pipeline across the stream provided the opportunity to create a barrier to trout, preventing access to the wetland. Approximately 3km of habitat suitable for trout spawning would be retained downstream of the trout barrier, while habitat upstream of the barrier could be enhanced for native fish by restricting the presence of this predatory species.
- 7.18 Dr Ryder told us the adverse effects associated with construction are short term and can be mitigated by way of comprehensive construction management plan and minimising the amount of disturbed river bed and land, particularly in areas likely to contain non-migratory galaxiids, and by timing construction activity to avoid spawning periods.

#### Fish Screening

Dr Ryder advised that fish screening will be put in at the intake in an agreed arrangement with Fish & Game and consistent with the Fish Screening Good Practice Guideline for Canterbury. Dr Ryder told us that considering the canal is restricted by the presence of power stations at both upstream and downstream ends, it is unlikely the fish population in the canal is self sustaining.

#### **Erosion, Flood Carrying Capacity and Essential Structures**

- 7.19 Mr McIndoe stated that in order to minimise erosion of the riverbed, construction of the intake will occur during periods of no flow. He added that if any disturbance occurs to the banks of the river, the applicant would undertake remedial work to restore the bank stability. Additionally, Mr



McIndoe noted that the pipeline will be buried beneath the riverbed and any excess materials levelled to the natural bed level. As such the flow of water will not be impeded and therefore will not be deflected into the banks of the river. Thus the erosion potential of the activity will be minor according to Mr McIndoe.

### Effects on Other Users

- 7.20 According to Mr McIndoe the potential effects on other users from the proposed works relate to effects on water quality from sediment released into the river, and the timing of works. He noted that the applicant proposes to undertake all practical measures to minimise the discharge of sediment into flowing water. Additionally, works will be carried out during daylight hours and will not be carried out on weekends or public holidays.

### Effects on Amenity Values

- 7.21 The small localised scale, and the reshaping and levelling of the proposed work site to resemble the natural riverbed will ensure the proposed works will result in minor, if any, changes to the amenity values according to Mr McIndoe. He added that the proposed locations of the pipelines are at least 2.5 km from the main road (SH8) and therefore the works will not be able to be easily seen by the community or tourists.

## 8 SUBMITTERS

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- 8.1 No submission presented at the hearing made specific reference to this application.

## 9 UPDATES TO THE SECTION 42A REPORTS

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### Effects on flood carrying capacity and erosion

- 9.1 Ms Rodrigo's S42A addendum (post-hearing) noted that Mr McIndoe had clarified that the works to install the pipeline beneath the Ohau River bed will be situated upstream of the labyrinth weir. Given that the location of the works is unlikely to impede the flow of water, released by MEL, Ms Rodrigo was satisfied that the works to install the pipeline should not result in an impact on the flood-carrying capacity of the river.

### Man-made structures and bank stability

- 9.2 In her S42A addendum Ms Rodrigo acknowledged that Mr McIndoe suggested that mitigation of effects on the stability of the road included obtaining permission from MEL to undertake works and to stabilise any river banks disturbed during construction of the pipeline.
- 9.3 Ms Rodrigo added that these issues might be addressed by conditions of consent. She recommended avoiding any *ultra-vires* conditions that required the approval of a third party (i.e. MEL's approval). Instead she suggested that a condition could require that the applicant notifies MEL prior to undertaking works to allow MEL the opportunity to raise any concerns.
- 9.4 Ms Rodrigo also checked the Councils GIS database and noted that no manmade structures are currently recorded as being in the vicinity of the proposed works.

### Riparian Plants and Animals

- 9.5 In her S42A addendum, Ms Rodrigo noted that the applicant had not addressed the issue of riparian plant disturbance. Consequently, in her view the extent of the effects on riparian vegetation as a result of the works remained uncertain.

### Instream Ecosystems

- 9.6 In her Section 42A addendum, Ms Rodrigo noted that Dr Ryder's evidence proposed additional mitigation methods with the objective of avoiding effects on in-stream ecology. Ms Rodrigo stated that it was not clear whether the applicant proposed to adopt these mitigation methods.
- 9.7 Ms Rodrigo told us that Council's River Engineers had reviewed this application and have raised concerns regarding the spread of weeds into the river. She noted that the applicant had proposed to ensure that all equipment and machinery used to install and maintain the pipeline is clean and free of weeds and recommended that these provisions be included as a condition of consent.

## 10 APPLICANT'S RIGHT OF REPLY

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- 10.1 Mr Reid commented on Ms Rodrigo's assertion that the applicants had not dealt with the issue of the effects on the vegetation on the banks of the lower Ohau River during installation of the pipeline. He said that the applicant had discussed the effects of the initial installation with DoC and agreed not to undertake works at times of the year when birds nesting could be disturbed. Beyond this he submitted that the issue of potential adverse effects to vegetation on the banks of the river can be addressed by the conditions proposed by the applicant.
- 10.2 Mr Reid did not accept Ms Rodrigo's suggestion that the temporary diversion of water from the Ruataniwha Wetland would require a separate consent. He contended that the diversion is only very minor for a distance of no more than 50m and involves returning water back to the same watercourse. He referred to Mr McIndoe's evidence (pg 59, # 371) that states the diversion is only temporary in nature for the purposes of installing and maintain a pipeline, over a minimal bed width of a small stream and will not impede fish passage or cause stranding of fish in pools or channels.
- 10.3 Mr Reid also commented on Ms Rodrigo's assertion in her addendum that the applicant had not assessed whether there were any made-made structures that might be affected by the installation of the pipeline including effects on bank stability. Mr Reid told us that Mr McIndoe had addressed this point in his evidence when he stated that the pipeline would need to cross over the canal road. He said the works cannot proceed without Meridian Energy consent which will involve detailed engineering design to be approved by Meridian. Mr Reid agreed to a suggestion in Ms Rodrigo addendum that a condition requiring the applicants to notify Meridian would be appropriate if the panel deemed this necessary.

## 11 STATUTORY CONTEXT

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- 11.1 The relevant statutory context for a **discretionary** activity is set out in detail in our Part A decision. In accordance with those requirements, we have structured this evaluation section of our report as follows:
- (a) Evaluation of effects
  - (b) Evaluation of relevant planning instruments
  - (c) Evaluation of other relevant s104 matters
  - (d) Part 2 RMA
  - (e) Overall evaluation

## 12 EVALUATION OF EFFECTS

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- 12.1 Drawing on our review of the application documents, the submissions, the Officers' Reports, the evidence presented at the hearing and our site inspection, we have concluded that the effects we should have regard to are:
- (a) Effects on Ecosystem
  - (b) Effects on Riparian Vegetation
  - (c) Effects on Bank Stability
  - (d) Effects of diversion

### Effects on Ecosystems

- 12.2 The proposal to lay a pipeline across the bed of the generally dry bed of the Ohau River will involve a short period (1 week) of construction; the applicant proposes to undertake this activity when the Ohau River is dry.
- 12.3 The activity will however require diversion of the Ruataniwha wetland out flow channel for the duration of the construction works. The outflow channel from the Ruataniwha wetlands maintains the DOC 'black stilt wetlands' adjacent to the Ohau River and flows for several

kilometres before the channel enters the Ohau River. The installation of the proposed irrigation pipeline will result in the temporary disturbance of this channel. The channel contains trout that access the wetland ponds adjacent to threatened galaxiid habitat.

- 12.4 Ms Rodrigo in her s42A addendum remained uncertain whether the applicant proposed to adopt the mitigation measures suggested by Dr Ryder by way of a comprehensive Construction Management Plan. This matter was not confirmed by the applicant in their right of reply. We believe that a CMP is a necessary requirement for the proposed activity to ensure appropriate procedures are identified and confirmed by the Canterbury Regional Council prior to comment of works.
- 12.5 We note that the construction of the pipeline across the stream provides the opportunity to create a barrier to trout, preventing access to the wetland. Approximately 3km of habitat suitable for trout spawning would be retained downstream of the trout barrier, while habitat upstream of the barrier could be enhanced for native fish by restricting the presence of this predatory species.

#### **Effects on Riparian Vegetation**

- 12.6 Ms Rodrigo, (s42A) reporter remained uncertain as to the applicant's proposals to mitigate the effects of pipeline construction on vegetation. Mr Reid responded that this matter can be addressed through the conditions of consent, we agree.

#### **Effects on Bank Stability**

- 12.7 The effects of the proposed pipeline construction on the Ohau River bank and across the watercourse will be minor, however the detail provided by the applicant on the proposed route of the pipeline and engineering drawings associated with its construction were not adequate. We believe that this deficiency can be remedied by the completion of the various management plans and mitigation measures including route and engineering design of the construction to be approved by Canterbury Regional Council prior to construction.

#### **Effects of diversion**

- 12.8 In respect of the diversion associated with construction of the intake, it is over a short length, will be temporary in nature and returns to the same watercourse it is originally part of. Given the nature of the activity, we are satisfied that the effects will be no more than minor. However we consider that it is necessary to impose some brief conditions of consent to ensure that the extent of the diversion is clearly defined and the activity is managed appropriately.

#### **Conclusion on effects**

- 12.9 The proposed activity will have minor effects subject to appropriate design, construction and mitigation measures being prepared and implemented. This includes a compliant Construction Management Plan, adhering to Canterbury Regional Council Erosion and Sediment Control Guidelines and preparing technically compliant plans for the cut and burial of the pipeline in the river bank and watercourse.

### **13 EVALUATION OF RELEVANT PLANNING INSTRUMENTS**

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- 13.1 Under s 104(1)(b) of the Act, we are required to have regard to the relevant provisions of a range of different planning instruments. Our Part A decision provides a broad assessment of those planning instruments and sets out the approach we have applied to identification and consideration of the relevant provisions. The following part of our decision should be read in combination with that Part A discussion.
- 13.2 The key objectives and policies that are relevant to this application can be found in Chapter 6 of the NRRP, which relates to activities in the beds of lakes and rivers. The chapter contains one objective and two related policies.
- 13.3 Objective BLR1 aims to ensure that works in the beds and banks of lake, rivers and streams can be undertaken while minimising effects, including flood-carrying capacity, natural character, ecosystems, other structures, erosion, Ngai Tahu values. Given the conclusions we have reached on these matters above, we consider that, subject to appropriate conditions, the proposed activity is consistent with this objective.

- 13.4 Policies BLR1 and BLR2 aim to control activities associated with the erection, placement, use and maintenance of structures within the bed of rivers to ensure that Objective BLR1 is achieved. This may include restricting activities so that they do not affect flood carrying capacity, erosion or create plant infestations. For the reasons discussed above, with the imposition of appropriate conditions, we consider the proposed activity is consistent with these policies.
- 13.5 In respect of the proposed diversion, given its minor nature and our conclusions on effects outlined above, we consider that the activity is consistent with the relevant objectives and policies in the WCWARP seeking to sustain the quality of the environment.

## **14 EVALUATION OF OTHER RELEVANT S104 MATTERS**

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- 14.1 Under s104(1)(c), we are required to have regard to any other matter that we consider to be relevant and reasonably necessary to determine the application. After hearing all the relevant evidence, we consider that no such matters exist in relation to this application.

## **15 PART 2 RMA**

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- 15.1 Section 104(1) states that the matters which we have discussed above are subject to Part 2, which covers section 5 through section 8 inclusive. These sections are set out in full in our Part A decision and are discussed below in the context of the current application.

### **Section 6 – Matters of National Importance**

- 15.2 Section 6 identifies matters of national importance that we must “recognise and provide for” when making our decision.
- 15.3 We consider the short term duration (1 week) of the proposed activity and mitigation measures to protect ecosystems and infrastructure in the location of the pipeline will avoid, remedy or mitigate adverse effects.
- 15.4 Public access to the area will be affected during the construction phase, the short duration of the work and avoidance of work at night or public holidays will mitigate this issue.

### **Section 7 – Other Matters**

- 15.5 Section 7 lists other matters that we shall “have particular regard to”.
- 15.6 The applicant through Mr Glasson entered into consultation with Ngai Tahu, there were no specific cultural issues identified by Ngai Tahu in respect of the land use consent.
- 15.7 The ethic of stewardship has been followed with respect to the applicants proposed mitigation measures to minimise the effects on the bed, banks and associated ecosystems.
- 15.8 The impact on the natural and physical resources of the local environment will be less than minor due to the short term duration of the proposed activity, confined corridor for works on ephemeral land, burial of the pipeline and remediation of the work area.
- 15.9 The timing of the construction to avoid periods important for fish migration and avifaunal nesting periods values opening season, spawning, incubation and the mitigation measures of a temporary bund coupled with the short duration of the construction activity will result in a less than minor effect on the habitat of trout and salmon.

### **Section 8 – Treaty of Waitangi**

- 15.10 Finally, section 8 requires that we shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). The proposed activity is not contrary to Section 8 of the RMA due to the minor effects and short duration of the activity.

### **Section 5 – Purpose of the RMA**

- 15.11 Turning now to the overall purpose of the RMA, that is, “to promote the sustainable management of natural and physical resources”. For all of the above reasons, we consider that the proposed activity with the proposed mitigation measures is consistent with the overall objective of s5 of the RMA.

## 16 OVERALL EVALUATION

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- 16.1 Under s104B of the RMA, we have a discretion as to whether or not to grant consent. This requires an overall judgment to achieve the purpose of the Act and is arrived at by:
- (a) Taking into account all the relevant matters identified under s 104;
  - (b) Avoiding consideration of any irrelevant matters;
  - (c) Giving different weight to the matters identified under s 104 — depending on our opinion as to how they are affected by the application of s 5(2)(a), (b), and (c) and ss 6-8 — to the particular facts of the case; and then in light of the above; and
  - (d) Allowing for comparison of conflicting considerations, the scale or degree of conflict, and their relative significance or proportion in the final outcome.
- 16.2 We note Dr Ryder's suggestion of additional mitigation measures to protect aquatic life. We agree with his suggestions and are of the view that they should be included in consent conditions, along with measure to mitigate effects on riparian vegetation.
- 16.3 We conclude that the activity proposed by the applicant will have only minor effects provided the mitigation measures discussed above are followed.
- 16.4 Having reviewed the application documents, all the submissions, taking into account the evidence to the hearing and taking into account all relevant provisions of the RMA and other relevant statutory instruments we have concluded that the outcome which best achieves the purpose of the Act is to grant consent.

## 17 DECISION

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- 17.1 Pursuant to the powers delegated to us by the Canterbury Regional Council:
- 17.2 For all of the above reasons and pursuant to sections 104, 104B and 108 of the Resource Management Act 1991, we **GRANT** application CRC072232 to High Country Rosehip Orchards Limited for the following activity:
- To disturb the bed of the Ohau River to lay a pipeline for the supply of water for irrigation, between approximate map references NZMS 260 H38:797-528 and H38: 802-530, and associated maintenance works to sustain the pipeline and abstraction approximately 2 kilometres south-east of State Highway 8, Twizel. The works will involve a temporary diversion of water within the bed of the Ohau River at the location of the pipeline.
- 17.3 Pursuant to section 108 RMA, the grant of consent is subject to the conditions specified at **Appendix A**, which conditions form part of this decision and consent.
- 17.4 The duration of this consent shall be until the 30<sup>th</sup> April 2025.

DECISION DATED AT CHRISTCHURCH THIS 22 DAY OF NOVEMBER 2011

Signed by:

Paul Rogers

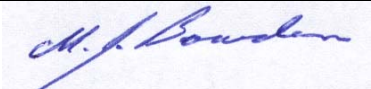


Dr James Cooke



Michael Bowden

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Edward Ellison



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## APPENDIX A: CONDITIONS OF CONSENT (CRC072232)

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1. The works shall be limited to the excavation and disturbance of the bed and banks of the Ohau River for the purpose of the placement, extension, removal or demolition of a pipeline in or on the bed and banks of the Ohau B canal for abstracting water under consent CRC072233.
2. Works shall only be carried out within the bed and banks of the Ohau River between map reference NZMS 260 H38:794-525 and H39:790-526.
3. Excavation shall not exceed a depth of 5metres below the level of the river bed prior to excavation, nor a surface area of 20 metres by 50 metres.
4. If further excavation at the site in the river bed is not to occur within seven days following the last working at the site, then the following shall occur:
  - a. All deposits of gravel, sand and other natural material shall be levelled to the natural bed level;
  - b. The excavation area shall be reshaped and formed to a state consistent with the surrounding natural river bed.
5. Prior to commencing excavation, a copy of this resource consent shall be given to all persons undertaking activities authorised by this consent.
6. Excavation shall not occur within 100 metres of birds, which are nesting or rearing their young in the bed of the river.
  - a. Prior to any construction works being carried out in the period 1 September to 1 February, the consent holder shall ensure that:
    - i. a suitably qualified and independent person inspects the proposed area of works, no earlier than eight working days prior to any works being carried out, and locates any bird breeding sites of birds listed in Schedule A;
    - ii. the person carrying out the inspection prepares a written report that identifies all the located bird breeding or nesting sites and provides copies of that report to the consent holder and the Canterbury Regional Council;
    - iii. the name and qualifications of the person carrying out the inspection are provided to the Canterbury Regional Council with the report;
    - iv. any person carrying out works authorised by this consent are informed of any bird breeding or nesting sites located; and
    - v. where work ceases for more than 10 days, the site will be re-inspected for bird breeding and nesting sites in accordance with parts (a) to (d) of this condition.
7. The Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager, shall be notified not less than 3 working days prior to the commencement of works described in condition (1)
8. Prior to the commencement of construction, the consent holder shall prepare a Construction Management Plan (CMP) and be submitted to the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager. The CMP shall cover (but not be limited to) the following matters:
  - a. Construction hours and days of the week when construction activity may occur.
  - b. Protocols for the handling and management of hazardous substances.
  - c. Protocols associated with the accidental discovery of archaeological matter.

- d. Measures to be taken to prevent the erosion of excavated areas, including the prevention of sediment discharge.
  - e. Post construction measures to ensure that the construction area is rehabilitated as closely as practicable to its natural state (as it was pre construction).
  - f. Safety measures to ensure that the general public is not at risk of harm when accessing Crown land in close proximity to the construction area.
9. The consent holder shall ensure that any construction activities in the wetted bed of the river associated with the construction of the pipeline described in condition 1 are avoided during Feb to March (salmon spawning), and June to October (trout spawning).
10. Erosion controls shall be installed on all earthworks to prevent sediment from flowing into any surface water body.
11. Works shall not be undertaken in any manner likely to cause erosion of or instability to the bed or banks of the Ohau River; nor reduce the flood-carrying capacity of the Ohau River.
12. At least 20 working days prior to the commencement of the works, the consent holder shall submit to the Canterbury Regional Council, Attention: RMA Enforcement and Compliance Manager, an Erosion and Sediment Control Plan (ESCP) that includes, but is not limited to the following:
  - a. A locality map; and
  - b. Detailed drawings showing the type and location of erosion and sediment control measures, on-site catchment boundaries, and off-site sources of run-off; and
  - c. Drawings and specifications of all designated erosion and sediment control measures with supporting calculations; and
  - d. A programme of works, which includes but is not limited to a proposed timeframe for the works;
  - e. A schedule of inspections and maintenance of erosion and sediment control measures; and
  - f. Details of when the erosion and sediment control measures are to be established and decommissioned; and
  - g. Measures to ensure that there is no tracking of mud or earth onto the surrounding road network, including the provision of shaker ramps and/or wheel washes where appropriate; and
  - h. Measures to be undertaken should erosion and sediment control measures fail and result in contamination of any watercourse or water body.
13. The ESCP shall be prepared in general accordance with the Environment Canterbury Erosion and Sediment Control Guidelines 2007 (ECAN ESC Guidelines).
14. The ESCP shall be communicated to all persons undertaking activities authorised by this consent and a copy of the ESCP shall be kept on site at all times.
15. The Erosion and Sediment Control Plan and any revisions of that document shall be submitted to the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager, for certification that the Erosion and Sediment Control Plan meets all the requirements of the conditions of this consent.
16. No activities authorised by this consent shall commence or be undertaken other than in full compliance with the Erosion and Sediment Control Plan that has been certified by or on behalf of the Canterbury Regional Council RMA Compliance and Enforcement Manager in terms of condition 12.
17. The consent holder shall adopt the best practicable options to:



- a. Minimise soil disturbance and prevent soil erosion;
  - b. Prevent sediment from flowing into any surface water; and
  - c. Avoid placing cut or cleared vegetation, debris, or excavated material in a position such that it may enter surface water.
18. To prevent the spread of *Didymo* or any other aquatic pest, the consent holder shall ensure that activities authorised by this consent are undertaken in accordance with the Biosecurity New Zealand's hygiene procedures.

Note: You can access the most current version of these procedures from the Biosecurity New Zealand website <http://www.biosecurity.govt.nz> or Environment Canterbury Customer Services.

19. The consent holder shall ensure that during construction:
- a. All practicable measures shall be undertaken to prevent oil and fuel leaks from vehicles and machinery.
  - b. As far as is practicable, machinery avoids the wetted area of the Ohau River; or where this is not possible the consent holder, in consultation with Department of Conservation, undertake surveys to confirm the presence of galaxiids prior to disturbance, and that any fish likely to be affected are to be translocated to suitable habitat nearby.
  - c. There shall be no storage of fuel or refuelling of vehicles and machinery within 20 metres of the bed of a river.
  - d. Fuel shall be stored securely or removed from site overnight.
20. The consent holder shall ensure that works do not prevent the passage of fish, or cause the stranding of fish in pools or channels.
21. The consent holder shall ensure that machinery used in the construction of the pipeline is:
- a. Free of plants and plant seeds prior to use in the waterbody; and
  - b. That the machinery is thoroughly washed after use in the Ohau River.
22. The consent holder shall ensure that the following procedure is adopted in the event that koiwi (human remains) or taonga (cultural artefacts) are unearthed or are reasonably suspected to have been unearthed during the course of construction and other activities.
- a. Immediately as it becomes apparent, or is suspected by workers at the site that koiwi or taonga have been uncovered, all activity at the site will cease.
  - b. The plant operator will shut down all machinery or activity immediately, and leave the area and advise his or her supervisor of the occurrence.
  - c. The supervisor shall take steps to immediately secure the area in a way that ensures that koiwi or taonga remain untouched as far as possible in the circumstances and shall notify the consent holder.
  - d. The Consent Holder will notify the New Zealand Police (in the case of koiwi) and the relevant runanga representatives that it is suspected that koiwi and/or taonga have been uncovered at the site.
  - e. The runanga representatives will contact the appropriate kaumatua to act on their behalf in this matter in order to guide and advise the consent holder as to the appropriate course and the consent holder will immediately advise the consent holder of the identity of such kaumatua.
  - f. The consent holder shall ensure that representatives on its behalf are available to meet and guide kaumatua and police (as appropriate) to the site, assisting with any requests they may make.

- g. If the kaumatua are satisfied that the koiwi or taonga are of Maori origin the kaumatua will decide how they are to be dealt with and will communicate its decision to the consent holder, New Zealand Police and such other parties as are considered appropriate.
  - h. Activity on site shall remain halted until the New Zealand Police and the kaumatua have given approval for operations to recommence.
  - i. The consent holder shall ensure that kaumatua are given the opportunity to undertake karakia and such other religious or cultural ceremonies and activities at the site as may be considered appropriate in accordance with tikanga Maori (Maori custom and protocol).
- 23. Upon completion all disturbed areas shall be stabilised and revegetated with similar species to those found in the intermediate vicinity of the particular site following completion of the works.
- 24. Upon completion all spoil and other waste material from the works shall be removed from site on completion of works.
- 25.
  - a. The consent holder shall ensure that if water is abstracted the gallery and, or, intake shall be designed to prevent native and exotic fish species from entering the system.
  - b. The fish screen shall be designed by a person with experience in freshwater ecology and fish screening techniques, and constructed in a manner that ensures the principals of the NIWA fish screening guidelines (Fish Screening: Good Practice Guidelines for Canterbury, NIWA Client Report 2007-092, October 2007, or other revision of these guidelines. (Copy available on [www.ecan.govt.nz](http://www.ecan.govt.nz))) are achieved.
  - c. No water may be taken in terms of this permit until, upon completion of the intake structure a report is provided to the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager. The report shall be prepared by the consent holder for certification and shall demonstrate compliance with the following:
    - i. Design plan for the gallery specifying gallery dimensions;
    - ii. Detail of depths and sizes of layers of gravel over the gallery;
    - iii. Photographic evidence of key stages of construction of the gallery, including demonstrating compliance with gravel specifications in sub clause (c)(ii) above;
    - iv. Any ongoing maintenance required by the manufacturer is carried out in accordance with their specifications.
  - d. The intake structure shall be maintained in good working order. Records shall be kept of all inspections and maintenance. And those records shall be provided to the Canterbury Regional Council upon request.
- 26. Water shall only be temporarily diverted within the bed of the Ohau River for the purpose of installation and maintenance of an irrigation supply pipeline, installed and maintained in accordance with this consent (CRC072232).
- 27. The diversion of water referred to in Condition 26 shall only occur over a maximum reach of 50 metres between map references NZMS 260 H38:794-525 and H39:790-526.
- 28. The diversion of water shall not impede fish passage or cause the stranding of fish in pools or channels.
- 29. For the period of diversion, all water diverted shall remain within the bed.
- 30. When diversion ceases, water shall be returned to its original course.
- 31. The Canterbury Regional Council may, once per year, on any of the last five working days of February or July, serve notice of its intention to review the conditions of this consent pursuant to Section 128 of the RMA, for the purposes of dealing with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage.

32. If any approvals are required from Meridian Energy Limited, the applicant shall obtain them before commencing work authorised under this consent.
33. Lapsing date for the purposes of section 125 of the Resource Management Act 1991 shall be 31 December 2016.

**Advice note:**

Nothing in this consent authorised the taking and use of water for irrigation purposes. A separate consent is required from the Canterbury Regional Council for this activity.



Schedule A – list of bird species

South Island Pied Oystercatcher

Black Stilt

Pied Stilt

Wrybill

Banded Dotterel

Black-fronted Dotterel

Grey warbler

Fantail

Bellbird

Silvereye

Spur-winged Plover

Paradise Shelduck

Grey Duck

NZ Shoveler

Grey Teal

NZ Scaup

Black-billed Gull

Red-billed Gull

Caspian Tern

White-fronted Tern

Black-fronted Tern

White-winged Black Tern

Australasian Bittern

Marsh Crake

Spotless Crake

Cormorant/shag colonies

Or any other bird species deemed by a suitably qualified person to require protection.