

**BEFORE THE CANTERBURY REGIONAL COUNCIL**

**UNDER** The Resource Management Act 1991 (**Act**)

**AND**

**IN THE MATTER OF** Application CRC190984 & CRC190985 by Harris & Harakeke Nominees Limited for a retrospective resource consent for the diversion of water in the Hurunui Waiau River. Construction of a diversion channel and associated earthworks, riverbed disturbance and discharge of sediment.

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**DECISION OF HEARING COMMISSIONER HOANI LANGSBURY**

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## REPRESENTATIONS AND CORRESPONDENCE

Applicant

**Ms Amy Callaghan** – GHD Limited

Consultation by Applicant

**Mr David Holliday, Ms Amy Beran** – Mahaanui Kurataiao Report

Submitters

**Mr Matthew Ross** – Te Rūnanga o Ngāi Tahu

**Ms Lisa Mackenzie** – Te Rūnanga o Ngāi Tahu – Senior Environmental Advisor

Evidence

**Ms Amy Callaghan** – for Applicant, Harris & Harakeke Nominees Limited

**Mr Nicholas Harris** – Applicant

Canterbury Regional Council

**Mr Rhett Klopper** – Section 42A Officer's Report

**Mr Shaun Mooney** – Original Section 42A Officer's Report

**Mr David Just** – Principal Consents Planner

## BACKGROUND AND PROCEDURAL MATTERS

- 1 This is the decision of independent hearing commissioner Mr. Hoani Langsbury.
- 2 I was appointed by the Canterbury Regional Council (**CRC**) to hear and determine the application by Mr. N J & Mrs. L M Harris & Harakeke Nominees Limited (**applicant**) Resource consent under Rule 5.141B (Discretionary Activity) of the Canterbury Land and Water Regional Plan for the temporary diversion and discharge of contaminants (sediment) from excavations within a riverbed and the associated riverbed disturbance. Resource consent under Rule 5.141B (Discretionary Activity) of the Canterbury Land and Water Regional Plan for the diversion from the Hurunui River. Resource consent under Rule 2.1 (Restricted Discretionary Activity) of the Hurunui Waiou River Regional Plan for the diversion of surface water for a non-consumptive activity. (**Application**).
- 3 The activity was considered to require **Limited Notification** due to the Statutory Acknowledgement for the Hurunui River. As per Schedule 21 of the Ngai Tahu Claim Settlement Act 1998
- 4 The Application has a somewhat complex history and requires a retrospective consent for activities already undertaken. The previous landowner constructed a diversion channel and pond in the bed of the Hurunui River to supply existing Water Abstraction Point (WAP) N33/0432. A resource consent application has been lodged with CRC and accepted for processing for the take and use of water for irrigation using this structure, and for a farming land use consent (reference; CRC181649 and CRC181686). The diversion channel and pond were constructed sometime between 2010 and 2015 based on historical aerial images, prior to the current owner taking possession of the property. To address the historical work by the previous owner and to provide certainty to the applicant, the application seeks retrospective consent for works in the riverbed to facilitate the diversion or water to the intake pond, and for ongoing maintenance works.
- 5 Ongoing works are likely to involve small scale earthworks in the riverbed to open and close the diversion channel and maintain flow, the clearance of debris and sediment, maintenance of the pond, and vegetation removal.
- 6 A hearing was originally scheduled for Tuesday 19<sup>th</sup> November 2019. On the 11<sup>th</sup> of November, the only submitter requested an extension of time to file their evidence at 3pm on the 18<sup>th</sup> November 2019.
- 7 On the 18<sup>th</sup> November 2019 the applicant indicated their expectation that the hearing on the 19<sup>th</sup> November would not be needed with a view to the applicant and submitter concluding an agreement within the next week.
- 8 On the 4<sup>th</sup> December 2019 Te Rūnanga o Ngāi Tahu (TRoNT) advised CRC that it no longer wished to be heard. They also distributed a new draft condition for consideration.
- 9 On the 10<sup>th</sup> December 2019, following discussions with CRC Consent Planners, amendments to the new proposed condition provided by TRoNT were undertaken to ensure certainty and enforceability of the condition. These amendments, were then circulated to applicant and submitter.

- 10 One submission was received within the submission period, also requesting to be heard.
- 11 The impact on Tangata Whenua Values and the submission by TRoNT are predominantly dealt with in the CRC's S42A Report at paragraphs 109 – 120.
- 12 The submission from TRoNT was provided to me and I gave it due consideration for the purposes of this decision.

### **SITE VISITS**

- 13 A site visit was not deemed necessary as descriptions and images of the area where the activity was undertaken are sufficient to allow the decision to be made.

### **THE PROPOSAL**

- 14 A description of the proposal appears in section 2 of the initial Application CRC190984 at pages 7 to 9.
- 15 The proposal is summarised in the S42A Report at paragraphs 15-23. I consider that is an accurate summary of the proposal and adopt it for the purposes of this decision.
- 16 The application is retrospective for the construction of a diversion channel and pond. The continued use and maintenance of the diversion channel and pond.

### **THE ENVIRONMENT**

- 17 In terms of the environment the activity is to be undertaken in, the application provided a description in section 2 of the Application at pages 7- 8.
- 18 The S42A Report provides a summary on pages 13 and 14. I am satisfied that this accurately portrays the location of the activity.

### **THE EXISTING ENVIRONMENT**

- 19 As this is a retrospective consent for an activity already undertaken. I have considered the existing environment to be as it was if the activity had not been undertaken.
- 20 I am concerned for the precedent of granting a consent retrospectively, and have considered the environment for the purposes of this consideration as if the channel and pond did not exist. I then considered the activity with the activity already having been undertaken.
- 21 On an application such as this, it is critical to determine the relevant environment against which the effects of the proposal are to be assessed. This was an issue that the submitter had their most significant concern, considering the retrospective nature of the application.
- 22 Assessing the application as if the non-consented diversion channel and pond do not exist and are not part of the environment, allowed a more thorough assessment of effects.

## **EVALUATION**

- 23 The applicant currently has a corresponding water take and use resource consent (CRC169648) for the property transferred into their name of the current owner at the time of purchase in 2016.
- 24 In 2017 the applicant applied to renew the water take and farming land use consent, and at the same time applied for a change of conditions to increase the area of irrigation associated, these resource consents are CRC181649 (to renew CRC169648) - to take and use water. CRC181686 (to change condition in CRC181649) - to take & use water and CRC181650 (to renew CRC169646) - to use land for farming activity.
- 25 These applications are being processed separately to this application, however during the processing of these applications it was established that a previous landowner of the property had constructed a diversion channel and pond in the bed of the Hurunui River to supply the existing Water Abstraction Point (WAP).
- 26 The WAP associated with this application is located at NZTM2000: 5252591E 1615955N.

## **SUMMARY OF EVIDENCE AND SUBMISSIONS**

- 27 I have briefly summarised the evidence provided for the hearing that was subsequently not required, submissions and the S42A Report. I have taken all of the information into account.

## **ASSESSMENT**

- 28 In assessing this application, I have considered the applications documentation and the assessment of the effects on the environment, the S42A Report, the additional condition negotiated between the submitter and applicant. I have also considered the evidence prepared and circulated by the applicant.
- 29 I have considered all matters raised, and have done so carefully, in reaching my decision.

## **STATUTORY CONSIDERATIONS**

### **Activity Status**

- 30 I agree that the application is for a discretionary activity.
- 31 In consideration of the Proposed Plan Change 7 to the Canterbury Land and Water Regional Plan (pPC7 LWRP) as notified on the 20<sup>th</sup> July 2019. This application was received prior to the notification of pPC7 on 21 December 2018. Under s88A (1A) of the RMA the application continues to be processed, considered, and decided as an application for the type of activity that it was for, or was treated as being for, at the time the application was first lodged, being in this case the operative Canterbury Land and Water Regional Plan (CLWRP).

- 32 I agree with the consent planner in that the proposed changes (if they become operative as notified) would change the final status of the proposal (a discretionary activity) if it were lodged today.

#### **S104 and S104B**

- 33 S104(1) of the Act sets out the matters we must have regard to in consideration of the application. The relevant matters are as follows:
- (b) any relevant provisions of –  
(vi) a plan or proposed plan
- 34 The issue of whether an effect will be, or will not be, minor is one which is to be made considering the adverse effects as a whole. “Minor” means less or comparatively small in overall size or importance.
- 35 In relation to the second aspect of the threshold test, the word “contrary” means opposed to in nature, different to or opposite.
- 36 Pursuant to s104B, if one limb of the gateway test is met, we may grant or refuse consent. S104B does not draw any distinction between an application for a discretionary activity and an application for a non-complying activity. The decision whether to exercise discretion and grant or refuse consent entails a judgment that is informed having regard to the matters under s104.

#### **Part 2 RMA**

- 37 The application of the words “*subject to Part 2*” in an s104 context has recently been addressed by the Court of Appeal in its decision of 25 August 2018. Guided by the Court of Appeal, in our view we are required to assess the objectives and policies in the planning documents against Part 2. If we consider the relevant plan documents have been prepared having regard to Part 2, and provide a coherent set of policies which are designed to achieve clear environmental outcomes, we do not need to expressly refer to Part 2 further, other than applying the policies and objectives of the plan. In undertaking that analysis, I will be referring to Part 2 as required by s104. Conversely, if planning documents do not appear to have been prepared in a manner that appropriately reflects the provisions of Part 2, then I must refer to it when determining the application.

#### **PRINCIPAL ISSUES IN CONTENTION**

- 38 Agreement has been reached between the applicant and TRoNT in relation to the conditions of consent. Of course such agreement does not determine those issues: that is a matter for this decision.
- 39 In my view, the principal issues requiring determination are as follows:
- a. effects on tangata whenua values;
  - b. consistency or otherwise with the relevant objectives and policies.
- 40 I acknowledge that there could be some uncertainty to the methodology used in the creation of the channel and pond. However I agree that they would likely have been minor and of a short duration.



## **EFFECTS ON THE ENVIRONMENT**

- 41 The key effects are associated with the construction and maintenance of the channel and pond. The approach I have taken is to consider that if these works had not yet been undertaken, the methodology adopted for their construction would have been similar to if they were undertaken now.

## **EFFECTS ON AQUATIC ECOLOGY**

- 42 No fish or inanga spawning areas are considered to be effected by this activity.

## **EFFECTS DURING CONSTRUCTION**

- 43 The site is located within a braided river and there is potential for native birds to nest within the area during the nesting season of September to February inclusive, during this period this may have impacted nesting birds.
- 44 For any maintenance and works associated with this application, I recommend conditions which require that the applicant engage a suitably qualified and independent person to inspect the work area for signs of nesting birds prior to the commencement of any works. If nesting birds are found within the area of works, the applicant must engage a suitably qualified and independent person to prepare a management plan to ensure effects on breeding birds are avoided or mitigated.
- 45 To address the potential for the introduction of pest species (both aquatic and terrestrial) via machinery used to undertake the works, and to minimise potential effects on the ecological values of the Hurunui River, I have included consent conditions requiring:
- 46 The applicant to assess the discharge of sediment against Rule 5.152 for the maintenance and 5.141B for the initial construction of the channel. Rule 5.141B relates to sediment discharges associated with the installation of structures being undertaken in accordance with Rules 5.135 to 5.140, as in this case, the disturbance of the bed is being assessed under Rule 5.148, this rule does not relate to the activity, as such the temporary discharges to water for both the construction and maintenance of the channel is permitted under Rule 5.141B.

## **CULTURAL VALUES**

### **Summary of Submission and Reports**

- 47 Te Rūnanga o Ngāi Tahu submit on the proposal being considered. I note that that Te Ngāi Tūāhuriri Rūnanga and Te Rūnanga o Kaikōura were consulted in preparation of the report from Mahaanui Kurataiao.
- 48 Te Rūnanga Ō Ngāi Tahu and Papatipu Rūnanga primary concern was with regard to the consent being considered retrospectively. This is primarily with regard to precedent and concern that other activities would be undertaken unlawfully, with consents being applied for retrospectively. Providing for no opportunity to mitigate or avoid impacts.

### Evaluation

- 49 To address the Tangata Whenua values and specifically the retrospective nature of the application. I have consider the activity both as if the activity had not already been undertaken and as if it had.
- 50 I have considered the status of the environment as if it did not already have the channel and pond present.
- 51 The engagement process and the additional agreed conditions made reflect the agreement between the applicant and the respective Papatipu Rūnanga. We consider the arrangement and the engagement provided an appropriate mechanism to mitigate the effects on cultural values over a timeframe that is acceptable to Mana Whenua.
- 52 While this agreement does not necessarily deal with all the issues that Papatipu Rūnanga and Te Runanga o Ngai Tahu, including concerns around the retrospective nature of the application. To this end, it is important to note that Te Rūnanga o Ngāi Tahu or Papatipu Rūnanga withdrew their request to be heard.
- 53 I consider the agreement mitigates a number of key matters raised in the Mahaanui report and the submission of TRoNT.

### RECREATIONAL AND AMENITY EFFECTS

- 54 The proposed diversion has the potential to impact upon people and communities in the area.
- 55 Hurunui River is identified as having moderate recreational value, the most common activities (Jet-boating and fishing) will occur within the mainstream river channel to the south of the site rather than the braid in front of the bund.
- 56 The channel will be construction and visual amenity will be consistent with other diversions on the Hurunui River. Some vegetation is required to be removed for the channel, however, this is largely scrubby species and are able to be removed as a permitted activity.
- 57 Given the above, and subject to the conditions recommended, I consider that the effects of this proposal on amenity values, people and communities and values will be less than minor.

### S104(1)(B)

- 58 S104(1)(b) of the RMA requires, subject to Part 2 of the RMA, to have regard to any relevant provisions of:
- 59 *(vi) a plan or proposed plan:*
- 60 Mr. Klopper provided a comprehensive analysis of the relevant statutory documents at paragraphs 152-167 of his S42A Report. GHD, for the applicant, again provided an assessment in section 6.2 of their Statutory Assessment.
- 61 There appeared to be little, if any, disagreement as to the relevant statutory requirements.
- 62 For convenience, I record the relevant provisions as identified:
- a. the National Policy Statement of Freshwater Management 2014 (NPS-FM);

- b. the Canterbury Regional Policy Statement 2013 (**CRPS**);
- c. Hurunui Waiau River Regional Plan.(**HWRRP**)
- d. Hurunui Waiau River Regional Plan – Plan Change 1 (**PC1 HWRRP**)
- e. Canterbury Land and Water Regional Plan (**CLWRP**)
- f. Canterbury Land and Water Regional Plan - Plan Change 7 (**PC7 CLWRP**)

63 I confirm that I have had regard to the relevant provisions of the National Policy Statement for Fresh Water Management

### **NES-FM**

64 I consider the following Objectives of the NES-FM are relevant:

- a. **Objective AA1:** To consider and recognise Te Mana o te Wai in the management of fresh water.
- b. **Objective D1:** To provide for the involvement of iwi and hapū, and to ensure that tangata whenua values and interests are identified and reflected in the management of fresh water including associated ecosystems, and decision-making regarding freshwater planning, including on how all other objectives of this national policy statement are given effect to.

65 In regard to the above objectives, I consider that while the works have been undertaken without the involvement of iwi and hapū, the applicant has consulted with them as part of this application process, therefore, I do consider that the proposal is in accordance with those objectives.

- a. **Objective A4:** To enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing freshwater quality, within limits.
- b. **Objective B1:** To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the taking, using, damming, or diverting of fresh water.

66 I consider for the reasons stated above, the proposal will ensure any potential effects on freshwater and their associated ecosystems of freshwater are considered less than minor (Objective B1).

### **CRPS**

67 Outcomes desired by Ngāi Tahu in regard to these issues are:

- a. Avoid adverse effects on values of importance to Ngāi Tahu as a result of inappropriate land-use, subdivision and development.
- b. Protect existing riparian areas and enhance those areas that are degraded.
- c. Provide for Ngāi Tahu access to areas and sites associated with mahinga kai, wāhi tapu and wāhi taonga.

- d. General public access to culturally important sites occurs only in consultation with Ngāi Tahu.
- 68 I consider that these issues have been clearly identified in the Maahanui report and submission of TRoNT.
- 69 I consider the following objectives and policies of the RPS central to this proposal:
- a. **Objective 7.2.3:** Protection of intrinsic value of waterbodies and their riparian zones.
- 70 It is noted that the potential effects of water quantity have not been assessed as part of this proposal.
- a. **Policy 7.3.1:** Adverse effects of activities on the natural character of fresh water.
- 71 I agree with the CRC in that the potential effects on Natural Character as minor.
- a. **Objective 10.2.1:** Provision for activities in beds and riparian zones and protection and enhancement of bed and riparian zone values.
- b. **Policy 10.3.2:** Protection and enhancement of areas of river and lake beds and their riparian zones.
- 72 I note that the potential effects of ecological values and natural character has been assessed as minor.
- a. **Objective 10.2.2:** Maintenance of flood-carrying capacity of rivers
- 73 The works in the river and diversion channel should not affect the flood carrying capacity of the river.

### CLWRP

- 74 I consider the following objectives and policies of the CLWRP relevant to this proposal:
- a. **Objective 3.1:** Land and water are managed as integrated natural resources to recognise and enable Ngāi Tahu culture, traditions, customary uses and relationships with land and water.
- 75 The Hurunui River is a statutory acknowledgement area, Ngai Tahu, Te Ngāi Tūāhuriri Rūnanga and Te Rūnanga o Kaikōura have been consulted in regard to the application, they have also been given the opportunity to voice their views on the application and how it affects their customary uses and relationship with the river. Their views have been included within the consultation and the submission received.
- a. **Objective 3.19:** Natural character values of freshwater bodies, including braided rivers and their margins, wetlands, hāpua and coastal lagoons, are protected.
- 76 The potential effects on the natural character have been assessed as minor:

- a. **Objective 3.21:** *The diversion of water, erection, placement or failure of structures, the removal of gravel or other alteration of the bed of a lake or river or the removal of vegetation or natural defences against water does not exacerbate the risk of flooding or erosion of land or damage to structures.*
- 77 Given the nature of the works, excavation within the bed to create a channel and no structures are proposed to be installed, the proposal will not increase the risk of flooding or erosion on land within the area.
- a. **Policy 4.14B:** *Have regard to Ngāi Tahu values, and in particular those expressed within an iwi management plan, when considering applications for discharges which may adversely affect statutory acknowledgement areas, Nohoanga sites, surface waterbodies, silent file areas, culturally significant sites, Heritage New Zealand sites, any listed archaeological sites, and cultural landscapes, identified in this Plan, any relevant district plan, or in any iwi management plan*
- 78 The Mahaanui Iwi Management Plan has been included within the discussion for this application.
- a. **Policy 4.85A:** *Indigenous biodiversity, habitats of indigenous fauna and flora, and the natural character of Canterbury's braided river systems is preserved through:*
- i. preventing further encroachment of activities onto the beds, banks and margins of lakes, braided rivers and associated wetlands and coastal lagoons; and
  - ii. limiting vegetation clearance and cultivation within the bed, banks and margins of lakes, braided rivers and associated wetlands and coastal lagoons, unless the vegetation clearance or cultivation is for the purpose of pest management, habitat restoration, flood control purposes, the operation, maintenance, upgrade or repair of structures or infrastructure, or maintenance of public access.
- 79 In general, the activity is consistent with this policy, however, as the Hurunui River is a river of cultural significance to Ngāi Tahu, they have been consulted as part of the proposal to express their views on the activity, their views have been expressed within the received correspondence and submission received on the application.
- a. **Policy 4.88:** *Earthworks, structures, or the planting or removal of vegetation (other than by spraying) in the beds of lakes, rivers, hāpua, coastal lakes and lagoons, or within a wetland boundary do not occur in flowing or standing water unless any effects on water quality, ecosystems, or the amenity, recreational or cultural values will be minor or the effects of diverting water are more significant than the effects of the activity occurring in flowing or standing water.*

80 As there are no permanent structures being installed, the proposal will not restrict flood flows within the Hurunui River, nor should it exacerbate erosion of the bed or banks of the river.

81 I consider that the proposal is generally consistent with the objectives and policies of the relevant planning provisions.

### PC7 CLWRP

82 Proposed Plan Change 7 has not yet had further submissions, and as such is still in the early stages of the planning process. Irrespective of this, I do not consider the proposed plan changes are of any significance to this proposal as the change relate to habitat of indigenous freshwater species, and the proposal is not located within this area in the proposed plan change.

### HWRRP

83 The Hurunui Waiau River Regional Plan became operative December 2013. Under Section 104(1)(b)(vi) of the RMA, the consent authority shall have regard to the relevant provisions of a plan or proposed plan.

84 I consider the following objectives and policies of the HWRRP relevant to this proposal:

85 **Objective 2:** Water levels and flows in the Hurunui, Waiau or Jed rivers and their tributaries are sustainably managed.

86 The diversion on water is considered a non-consumptive diversion, therefore the proposal does not affect those matters defined in Objective 2. Any effects of the water take are assessed under a separate application.

87 **Policy 2.5:** To ensure that any take, dam or diversion of water provides for flow variability above the minimum flow, including flows that are between 1.5 and 3 times the median flow, to scour and flush periphyton and cyanobacteria accumulations, mobilise and transport bed material, trigger flow dependent aquatic life-cycle processes such as fish migration, and provide for recreational values and activities in the main stem of the Hurunui and Waiau rivers

88 As the diversion is considered non-consumptive, the proposal should not affect minimum flows.

89 **Policy 2.6:** To ensure that any new take, dam, diversion or discharge of water protects the mauri of the Hurunui and Waiau rivers and their tributaries.

90 Ngai Tahu have been consulted as part of the proposal and submitted on the application.

91 I consider that the proposal is consistent with the objectives and policies of the relevant planning provisions.

### PC1 HWRRP

92 Proposed Plan Change 1 (pPC1) of the Hurunui Waiau River Regional Plan was notified on 4th May 2019.

93 As noted above, a proposed plan is required to be considered in the context of s104(1)(b)(vi). The HWRRP pPC1 has not yet had a plan hearing, and

furthermore as the proposed plan change is focused on changes to the Nutrient Management rules relating to nutrient losses from farming activities, the proposed changes are not of relevance to the application.

## OTHER RELEVANT MATTERS

### Overview

- 94 With regards to Section 104(1)(c), the consent authority can consider any other matter relevant and reasonably necessary to determine the application. I consider that other matters that the decision maker(s) may wish to consider include:
- a. Iwi Management Plans;
  - b. Te Rūnanga O Ngai Tahu Freshwater Policy Statement;
  - c. Previous decisions of the Council.
  - d. Iwi Management Plans
- 95 The Te Rūnanga o Kaikōura Environmental Management Plan and Mahaanui Iwi Management Plan are both relevant to the proposed activity as Te Rūnanga o Kaikōura shares kaitiaki rights and responsibilities associated with the Hurunui with Te Ngāi Tūāhuriri Rūnanga.

### Te Rūnanga O Ngai Tahu Freshwater Policy Statement

- 96 The Te Rūnanga O Ngai Tahu Freshwater Policy Statement is the first Freshwater Policy Statement that has been produced by Te Rūnanga o Ngai Tahu. The focus of the statement is the management of freshwater resources within the Rohe of Ngai Tahu and outlines the environmental outcomes sought by Ngai Tahu and the means by which Ngai Tahu is seeking to work with resource management agencies to achieve those outcomes.
- 97 I consider the following objectives and policies of the statement relevant to this proposal:
- a. **Objective 6.1:** To afford total protection to waters that are of particular spiritual significance to Ngai Tahu
  - b. **Policy 6.1.1:** Agree with resource management agencies objectives, polices and methods that protect the sites identified by Papatipu Rūnanga.
  - c. **Objective 6.2:** Restore, maintain and protect the mauri of freshwater resources
  - e. **Policy 6.2.4:** Protect the opportunities for Ngai Tahu's uses of freshwater resources in the future.
  - f. **Objective 6.3:** To maintain vital, healthy mahinga kai populations and habitats capable of sustaining harvesting activity.

### PREVIOUS DECISIONS OF THE COUNCIL.

- 98 I note that CRC has granted similar resource consents for works within the bed of a river for the purpose of a diversion channel, albeit not for retrospective activities, nor recently within a Statutory Acknowledgment Area.

## PART 2 RMA AND OVERALL EVALUATION

- 99 Overall, the diversion channel and its ongoing maintenance is considered to be consistent with Part 2 of the RMA, and the relevant planning documents, including the Mahaanui Iwi Management Plan and the Te Rūnanga o Kaikōura Environmental Management Plan. The initial effects from construction, and the ongoing effects from its operation and maintenance on water quality and quantity on the receiving environment are assessed as being less than minor.

### TERM OF THE CONSENT S123 – CONSENT DURATION

- 100 Te Rūnanga is opposed to the 35 year consent period sought and have concerns that the duration requested encapsulates potentially two 10 year cycles of RMA plan change. It diminishes the ability for Ngāi Tahu whānui to fulfil their role as kaitiaki. It results in long term and intergenerational effects on the environment and Ngāi Tahu values.
- 101 The application is inconsistent with the Hurunui and Waiau River Regional Plan.
- 102 **Policy 9.1 of the HWRRP** states
- 103 To generally limit the duration of any new resource consent (including the replacement of expired resource consents) to take, use or divert surface water or stream-depleting groundwater from within the Hurunui, Waiau and Jed river catchments to ten years and to an initial common catchment expiry date of 1 January 2025; with subsequent common catchment expiry dates occurring at ten yearly intervals thereafter. Consents granted within three years prior to the next common catchment expiry date may be granted with a duration to align with the subsequent common catchment expiry date (that is the number of years to the next common catchment expiry date plus ten years).
- 104 **This consent will expire on the 1<sup>st</sup> January 2025**

### CONDITIONS

- 105 I have had the opportunity to consider the proposed conditions with the addition of the amended additional condition on the 10<sup>th</sup> December 2019. Mr Klopper and Mr Just sort agreement on the revision requested on the 10<sup>th</sup> December 2019 from the applicant and submitter.
- 106 Adequate opportunity for the applicant and submitters to comment on the initial proposed conditions and I have considered those submissions and comments carefully.
- 107 I note that considerable effort appears to have gone into the proposed conditions.
- 108 In general terms, I consider the agreed conditions are appropriate. I have sort some minor wording changes to ensure clarity and enforceability, which were accepted.



## CONCLUSION

109 This has been a relatively straight forward activity to consider, noting the retrospective nature of the application. Made easier by the direct engagement and negotiations undertaken between the submitter and the applicant. I express my thanks to the willingness of the submitter to work with the applicant negating the need for a hearing. I express my thanks to all of those who have participated.

## OVERALL DECISION

110 Having considered all the above matters and carefully considered the evidence, submissions, application documents and relevant statutory documents, for all of the reasons set out above I consider the granting of consent is appropriate. Consent is therefore granted pursuant to s104 and s104B of the Resource Management Act 1991, subject to the attached conditions.



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Hoani Langsbury

Dated 20/12/2019

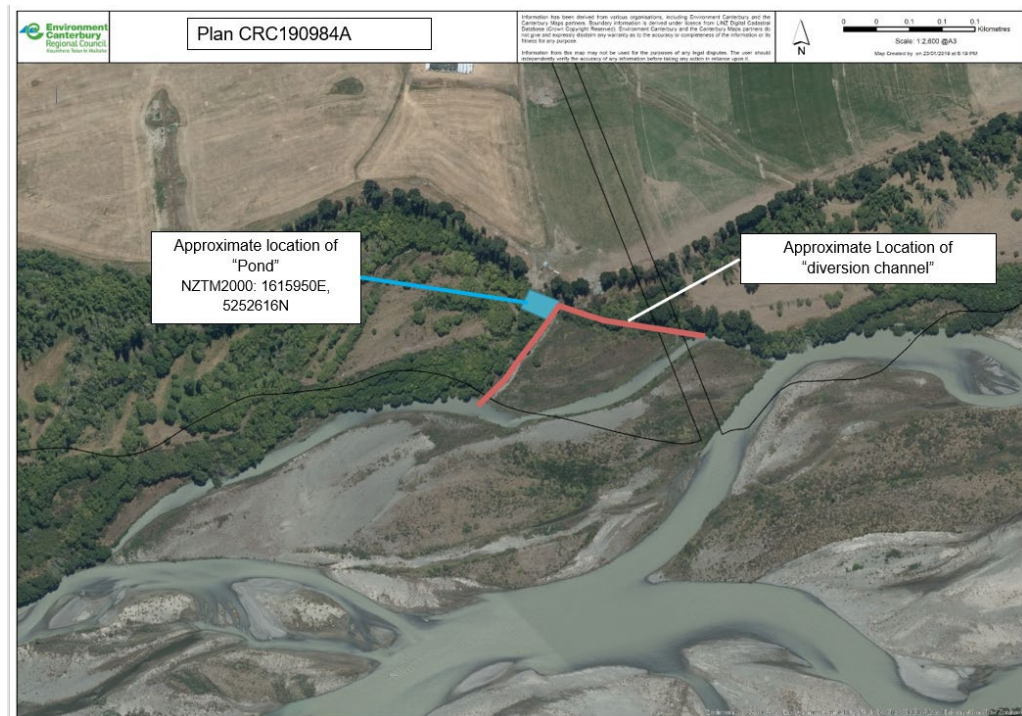
## APPENDIX 1 - CONSENT CONDITIONS

Applicants Name: **Harris & Harakeke Nominees Limited**

### CRC190984

A land use (s13) consent for activities within the bed of the Hurunui River;  
Limitations

- 1 The works shall be limited to the disturbance, excavation and deposition of river bed material associated with the construction and maintenance of a diversion channel and pond within the Hurunui River as shown on Plan CRC190984A, attached to, and forming part of this consent.



- 2 The diversion channel identified in condition 1, shall:
  - a. Not exceed 3 metres in width; and
  - b. Not exceed 1.0 metres in depth below the surrounding river bed level; and
  - c. Be located between the following approximate NZTM2000 co-ordinates:
    - i. 1615895E, 5252512N;
    - ii. 1615972E, 5252605N;
    - iii. 1616116E, 5252579N.
- 3 The pond identified in Condition (1), shall:
  - a. Not exceed dimensions of 25 metres by 35 metres; and
  - b. Not exceed 1.5 metres in depth below the surrounding river bed level; and
  - c. Be located at or about co-ordinates NZTM2000: 1615950E, 5252616N
- 4 The works authorised by this consent shall not result in the:

- a. Deflection of flows into the Hurunui River banks; or
  - b. Erosion of the bed and banks of the Hurunui River; or
  - c. A reduction in the flood carrying capacity of Hurunui River.
- 5 Within 12 months of the commencement of the consent, the consent holder shall develop an on-farm environmental enhancement project in collaboration with representatives from Te Rūnanga o Kaikōura and Te Ngāi Tūāhuriri Rūnanga which shall be provided to the Canterbury Regional Council, Attention: Regional Leader – Monitoring and Compliance. The on-farm environmental enhancement project shall:
- a. Be incorporated into the consent holders farm management plan but is in addition to activities considered good management practices;
  - b. Include a 6-week period where the finalised project is presented to each Rūnanga for input and comment. If no comments are received within 6 weeks of providing the finalised project, the consent holder may proceed as though this condition of the consent has been met; and
  - c. Be deemed complied with provided the environmental enhancement project is given effect to within 12 months of the environmental enhancement project being finalised in accordance with clause (b) above.

**Advice note:** The collaboration component of the condition will be considered complied with if Te Rūnanga o Kaikōura and Te Ngāi Tūāhuriri Rūnanga, advise the consent holder they are willing for the consent holder to proceed without their involvement.

**Prior to works**

- 6 The Canterbury Regional Council, Attention: Regional Leader - Monitoring and Compliance shall be notified at least seven working days prior to the commencement of any works authorised by this consent.
- 7 If the construction of the diversion channel and pond authorised by this consent is being carried out in the period 1 September to 1 February, the consent holder shall ensure that:
  - a. suitably qualified and independent person inspects the proposed area of works, no earlier than eight days prior to any works being carried out, and locates any bird breeding sites of birds listed in Appendix A, which forms part of this consent;
  - b. 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, attention Regional Leader - Monitoring and Compliance;
  - c. if the person carrying out the inspection deems that any part of this extraction activity may be undertaken at a distance other than 100m to any nesting birds, this must be clearly detailed on the report;
  - d. the name and qualifications of the person carrying out the inspection are provided to the Canterbury Regional Council with the report;
  - e. any person carrying out works authorised by this consent are informed of any bird breeding or nesting sites located; and where

work ceases for more than eight days, the site will be re-inspected for bird breeding and nesting sites in accordance with parts (a) to (d) of this condition.

- 8 If any bird breeding sites of birds listed in Appendix A are identified within 100 metres of the works areas, as per condition 6(c), the consent holder shall ensure that:
  - a. The Department of Conservation is informed; and
  - b. a suitably qualified and independent person prepares a management plan to ensure effects on breeding birds are avoided or mitigated and provides copies of that plan to the consent holder and the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager; and the strategies outlined in the management plan are implemented.

#### **During works**

- 9 All practicable measures shall be undertaken to minimise:
  - a. erosion or cause instability of the bed and banks of the river beds; and
  - b. the discharge of sediment to water as a result of any works authorised under this consent.
- 10 The deposition of gravel, sand and other natural material from within the riverbed shall be shaped and formed to a state consistent with the surrounding natural riverbed.
- 11 All practicable measures shall be undertaken to minimise vehicles and machinery entering flowing water.
- 12 The works shall not prevent the passage of fish or cause the stranding of fish in pools and channels.
- 13 All practicable measures shall be undertaken to minimise adverse effects on property, amenity values, wildlife, vegetation, and ecological values
- 14 Vehicles and/or machinery shall not operate within 100 metres of birds which are nesting or rearing their young in the bed of the river, except as identified by the inspection undertaken in accordance with condition (6) and detailed in the report.

**Advice Note:** For the purposes of this condition, birds are defined as those bird species listed in Appendix 1A, which forms part of these consent conditions.

- 15 All practicable measures shall be undertaken to prevent oil and fuel leaks from vehicles and machinery including but not limited to:
  - a. There shall be no storage of fuel or refuelling of vehicles and machinery within 20 metres of the bed of a river.
  - b. Fuel shall be stored securely or removed from site overnight

**Advice Note:** In addition to this consent, the consent holder will also need to ensure that the activity complies with LWRP Rule 5.145 (Refuelling in Lake and Riverbeds). If the activity does not comply with Rule 5.145 of the LWRP, an additional consent will be required pursuant to section 15 of the Resource Management Act 1991.

- 16 All practicable measures shall be taken to avoid spills of fuel or any other hazardous substances within the site.

- a. In the event of a spill of fuel or any other hazardous substance, the spill shall be cleaned up as soon as practicable, and measures taken to prevent a recurrence;
  - b. The Canterbury Regional Council, Attention: Regional Leader - Monitoring and Compliance, shall be informed within 24 hours of a spill event exceeding five litres and the following information provided:
    - i. The date, time, location and estimated volume of the spill;
    - ii. The cause of the spill;
    - iii. The type of hazardous substance(s) spilled;
    - iv. Clean up procedures undertaken;
    - v. Details of the steps taken to control and remediate the effects of the spill on the receiving environment;
    - vi. An assessment of any potential effects of the spill; and
    - vii. Measures to be undertaken to prevent a recurrence.
    - viii. The consent holder shall ensure a spill kit, that is capable of absorbing the quantity of oil and petroleum products that may be spilt on site at any one time, remains on site at all times
- 17 To prevent the spread of pest species, including but not limited to Didymo, the consent holder shall ensure that activities authorised by this consent are undertaken in accordance with the Biosecurity New Zealand's hygiene procedures and that machinery shall be free of plants and plant seeds prior to use in the riverbed. Advice Note: You can access the most current version of these procedures from the Biosecurity New Zealand website <http://www.biosecurity.govt.nz>

#### **Completion of works**

- 18 Following the completion of the works:
- a. The works site shall be remediated, as far as practicable, to a state consistent with that prior to any works occurring;
  - b. All disturbed areas shall be stabilised as soon as possible after completion of works; and
  - c. All accumulated debris and other waste material not used shall be removed from the site.
- 19 The Canterbury Regional Council, Attention: Regional Leader - Monitoring and Compliance shall be notified within seven working days after the completion of any works authorised by this consent.

#### **Tangata Whenua**

- 20 In the event of any discovery of archaeological material
- a. the consent holder shall immediately:
    - i. Cease earthmoving operations in the affected area and mark off the affected area; and
    - ii. Advise the Canterbury Regional Council of the disturbance; and

- iii. Advise Heritage New Zealand Pouhere Taonga of the disturbance.
- b. If the archaeological material is determined to be Koiwi Tangata (human bones) or taonga (treasured artefacts) by Heritage New Zealand Pouhere Taonga, the consent holder shall immediately advise the office of the appropriate runanga (office contact information can be obtained from the Canterbury Regional Council) of the discovery.
- c. If the archaeological material is determined to be Koiwi Tangata (human bones) by Heritage New Zealand Pouhere Taonga, the consent holder shall immediately advise the New Zealand Police of the disturbance.
- d. Work may recommence if Heritage New Zealand Pouhere Taonga Trust (following consultation with runanga if the site is of Maori origin) provides a statement in writing to the Canterbury Regional Council, Attention: RMA Monitoring and Compliance Manager that appropriate action has been undertaken in relation to the archaeological material discovered. The Canterbury Regional Council shall advise the consent holder on written receipt from Heritage New Zealand Pouhere Taonga that work can recommence.

**Advice Note:** This may be in addition to any agreements that are in place between the consent holder and the Papatipu Runanga. (Cultural Site Accidental Discovery Protocol). Advice Note: Under the Heritage New Zealand Pouhere Taonga Act 2014 an archaeological site is defined as any place associated with pre-1900 human activity, where there is material evidence relating to the history of New Zealand. For sites solely of Maori origin, this evidence may be in the form of accumulations of shell, bone, charcoal, burnt stones, etc. In later sites, artefacts such as bottles or broken glass, ceramics, metals, etc., may be found or evidence of old foundations, wells, drains, tailings, races or other structures. Human remains/koiwi may date to any historic period. It is unlawful for any person to destroy, damage, or modify the whole or any part of an archaeological site without the prior authority of Heritage New Zealand Pouhere Taonga. This is the case regardless of the legal status of the land on which the site is located, whether the activity is permitted under the District or Regional Plan or whether a resource or building consent has been granted. The Heritage New Zealand Pouhere Taonga Act 2014 provides for substantial penalties for unauthorised damage or destruction.

### **Administration**

- 21 The Canterbury Regional Council may, once per year, on any of the last five working days of May or November, serve notice of its intention to review the conditions of this consent for the purposes of dealing with any adverse effect on the environment that may arise from the exercise of the consent.

**Appendix 1A** - list of bird species referred to in bird nesting conditions (8) & (13)

South Island Pied oystercatcher  
Black stilt  
Pied stilt  
Wrybill  
Banded dotterel  
Black-fronted dotterel  
Blue duck  
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  
Royal spoonbill  
Crested grebe

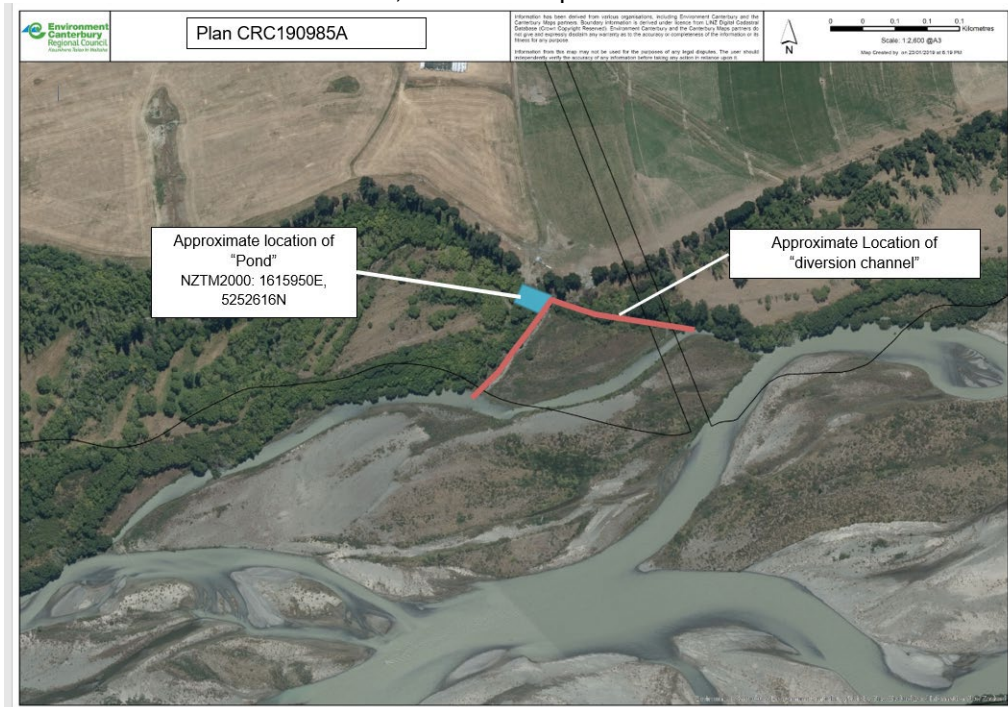
Applicants Name: **Harris & Harakeke Nominees Limited**

## CRC190985

A water permit (s14) to divert the Hurunui River;;  
LIMITS

- 1 The diversion of water shall only be for the purposes of undertaking works associated with resource consent CRC190984 or any variation thereof, and located between the following approximate NZTM2000 co-ordinates:
  - a. 1615895E, 5252512N;
  - b. 1615972E, 5252605N;
  - c. 1616116E, 5252579N.

as shown on Plan CRC190985A , which forms part of this consent.



### Prior to Diversion

- 2 The Canterbury Regional Council, Attention: Regional Leader - Monitoring and Compliance shall be notified at least seven working days prior to the commencement of this consent.

### During Works

- 3 The diversion of water shall not prevent the passage of, or result in the stranding of fish.
- 4 In the event that fish are stranded in pools or channels caused by the diversion, the consent holder shall arrange for the fish to be salvaged and relocated into the main channel. The fish salvage shall include the following measures:
  - a. Be conducted by a certified, suitably qualified and experienced freshwater ecologist;



- b. Be in general accordance with Canterbury Regional Council and Christchurch City Council's "Fish Salvage Guidance for Works in Waterways" (12 October 2017);
  - c. In the event that fish are stranded in pools or channels, these fish shall be relocated to a habitat deemed suitable by the certified, suitably qualified and experienced freshwater ecologist; and
  - d. The certified, suitably qualified and experienced freshwater ecologist shall hold any necessary permits and approvals required by the Ministry for Primary Industries, Department of Conservation and Fish and Game to conduct fish salvage; and
  - e. A summary of the results of any fish salvage activities undertaken shall be forwarded to the Canterbury Regional Council, Attention: Regional Leader - Monitoring and Compliance, with 48 hours of the completion of the salvage.
- 5 All practicable measures should be undertaken to minimise:
- a. erosion of the bed and banks of the Hurunui River; and
  - b. the discharge of sediment to the Hurunui River;
- as a result of the diversion.
- 6 The consent holder shall ensure that the diversion of water does not deflect floodwaters into the berm of the Hurunui River.

**Administration**

- 7 The Canterbury Regional Council may, once per year, on any of the last five 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 that may arise from the exercise of the consent or
  - b. Requiring the adoption of the best practicable option to remove or reduce any adverse effect on the environment.