IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER **of an Application to ENVIRONMENT CANTERBURY by G. and R. WILSON**

(CRC 193934, CRC193935, CRC195104)

DECISION OF COMMISSIONER ROBERT NIXON APPOINTED BY ENVIRONMENT CANTERBURY

The Hearing and Appearances

Hearing Date:	Friday 7 February 2020 at the Hotel Ashburton, Ashburton
Appearances for the Applicant:	Mr Hans van der Wal, Barrister, Legal Counsel Mr Gary Wilson, Applicant Mr David Hendrikz, Water Consent Consultant, DRH Consulting Dr Vaughan Keesing, Senior Ecologist
Appearances for Environment Canterbury	Ms Susan Aitken, Senior Consents Planner Dr. Duncan Gray, Senior Water Quality and Ecology Scientist
Submitters	Mr Peter Lowe**,** Taylors Drain Water Users Group Save the Rivers Mid- Canterbury Inc

Abbreviations

The following abbreviations are used in this decision:

G. and R. Wilson	"the Applicant"
Environment Canterbury	"the Council"
The Canterbury Land and Water Regional Plan	"LWRP"
The Resource Management Act 1991	"the RMA"

The land subject to this application is referred to as "the application site".

THE APPLICATION

1. As described in the officer's report, the applicant sought consent for the following:

   (1) a water permit to permanently divert surface water of an unnamed watercourse (CRC 193934)[1]; and
   (2) a discharge permit to discharge water of an unnamed watercourse into water within an existing storage/seepage pond; (CRC 193935)[2] and;
   (3) a land use consent to excavate and disturb the bed of the unnamed watercourse (CRC 195104)[3].

2. The specific consents required with respect to the relevant rules of the LWRP were the subject of dispute between the applicant and the Council, and I refer to this matter later in the decision.

3. This application arose as a result of the applicant diverting an existing drain flowing through the centre of the application site.

4. The application site is described as 21 Swamp Road, Hinds, having a legal description of Part Lot 7 DP 1479 and Lots 5 and 6 DP 1479.

5. No additional resource consents are required to undertake the activity.

6. A 35 year duration is sought for the consents.

7. It is noted that in addition to the drain/watercourse subject to this application, another feature known as the 'Swamp Road Drain No 1' flows along the eastern boundary of the applicant's property. This is not affected by this application.

8. For completeness, I note that the applicant has a lease agreement with the Canterbury Regional Council Assets Department to graze 3.75 ha of land between his property and the Hinds River[4].

9. I undertook a site visit on the afternoon of 7 February, which included viewing part of the old channel including the now filled section, the new channel from where it enters the applicant's property through to the seepage pond, and the point where the old channel joined with the Windermere cut-off. Following receipt of the applicant's right of reply in writing on 2 March 2020, the hearing was closed as of that date.

[1] Section 14(2)(a) RMA
[2] Section 15(1)(a) RMA
[3] Section 13(1)(b) RMA
[4] S 42A report, paragraph 9

BACKGROUND

10. I am aware that the 'drain' which is the subject of this application is described in a number of ways. These include 'drain', the 'Glenfawin Channel', and 'Swamp Road Drain No. 2'[5], while the Council describes it as a 'modified natural watercourse'. This feature has been subject to realignment over time into a 'geometric' pattern, presumably to accommodate changing farming requirements. For the purposes of this decision I will refer to the drain/watercourse existing prior to the applicant's recent diversion as the "old channel" and the drain/watercourse for which consent is now being sought as the "new channel".

11. These features are shown on the following map which was originally identified in the applicant's AEE[6]. The light blue line is the old channel prior to 2005; the light green line is the old channel from 2005 – 2018; and the dark blue line is the new channel excavated in 2018.

Map 3B: Local Drains.

[5] Ibid, paragraph 23
[6] AEE, Maps 3A and 3B page 16

12. Both the old and new channels have as their source a drain which enters the applicant's property from the north. This neighbouring property is owned by Mr Ian Lowe. Part of the land beyond this point may have been a wetland which has been drained by a herringbone pattern of tile drains[7]. Whether or not it was a wetland, this area contains four intermittently flowing springs as recorded by the Council[8].

13. The old channel (2005 – 2018) had a length of approximately 1879 metres[9], measured from the boundary of the applicant's property with that of Mr Lowe, to where it leaves the applicant's property adjacent to the railway and Main South Road. It then discharged under the railway and highway into the 'Windermere Cut-off' which in turn drains into the Hinds River. Approximately 224m of the old channel has since been filled in by the applicant and groundcover established, while at the time of the hearing the remainder of the old channel still exists with pipe culverts in places to enable movement across it by a pivot irrigator.

14. The applicant's property is used for growing irrigated seed and field crops.

15. In August 2018 the applicant diverted the flow from the old channel[10], by excavating the new channel westwards from the point where it enters from the Lowe property to a point where it discharges into a disused irrigation intake pond. This is also described as a 'seepage pond', which is the description adopted in the rest of this decision. From this point the water would enter the Hinds River by way of seepage. The land between here and the Hinds riverbed is overgrown with rank vegetation and trees. This much shorter new channel is approximately 470m long and required the removal of approximately 531m³ of material. The coordinates of the point of diversion are given as 1485416 – 5128931 and the point of discharge as 1485306 – 5128595[11].

16. The purpose of this channel is to convey stormwater. All of the property's irrigation needs are met from groundwater bores under CRC 042712.3, CRC 160364, and CRC 160365[12]. The applicant has indicated that the flow entering the application site generally ceases in the late summer.

17. I understand the construction of the new channel within the applicant's property came to the attention of the Council late in 2018. Following meetings between the applicant and Council staff, an application was lodged with the Council to divert and discharge water. This was subsequently rejected and appealed pursuant to section 357 RMA. Following this, an amended application was resubmitted and accepted on 8 May 2019.

18. By way of further background, an abatement notice was issued in November 2018, but as a result of apparent issues with timing of this notice, a further abatement notice was issued on 14 December 2018. The Environment Court has currently granted an application for a stay on the abatement notice under section 325(3E) of the RMA[13].

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[7] AEE, Map 4A, p18
[8] K37/2020,K37/2021, K37/2022, and K37/2023
[9] AEE, paragraph 9
[10] Background to Assessment of Environmental Effects, paragraph 7
[11] S42A Report, paragraph 42
[12] Background to Assessment of Environmental Effects. p2(3)
[13] S42A Report, paragraph 17

19. While the applicant did not concede that the old channel was a modified natural watercourse, on a 'without prejudice' basis, the applicant's position with respect to this matter is summarised as follows:

"The agreed way forward, includes assessment of modification of the newly formed drain under Section 13 of the RMA, as if it meets the definition of "river". To that end this document will also address the effects of creating this new drain and filling in a section of the old one under that Section of the Act. This is without prejudice to the applicant's position that neither the old or nor new drains meet the definition of "river". However, for the purposes of the application and to avoid further cost that would be incurred through resolving that matter, he is content for ECan to process the application as if it is a river and comply with its conditions on that basis"[14].

20. The applicant's AEE takes the position that it is impractical to reinstate the old channel, and that from an environmental and practical (farm management) viewpoint, the alignment of the new channel is preferable. It was made very clear in Mr Wilson's evidence that the decision to seek consent for the new channel (as opposed to reinstating the old channel) rested on the professional advice of his witnesses.

THE PROPOSED WORKS

21. The new channel extends in a westerly direction from the diversion point on the northern boundary of the property, before abruptly changing direction at a corner by approximately 90°, to run in a south-easterly direction to a discharge point in the seepage pond, located to the north of, but not immediately adjoining, the bed of the Hinds River.

22. The applicant proposed to modify the new channel as follows[15]:

(a) Undertaking works so that the banks are no steeper than 60° in the first section to the corner;

(b) Undertaking works so that the banks are no steeper than 45° from the corner to the discharge point where it passes through more stony soils;

(c) Planting the banks where practicable and draining the margins to stabilise the soil, prevent silt and run-off and provide shade, using native plantings where possible.

23. These works will require the removal of up to 66m³ of material and it is proposed to undertake the initial works within 12 months of consent (if granted) and complete planting within a further six months.

[14] Background to Assessment of Environmental Effects, page 9
[15] Application as lodged, 'Proposed Consent Conditions' p4

24. The new channel will have greater capacity than the old channel and will have a completed depth ranging between 0.4m and 1.5m, and a battered top width ranging between 1.94 and 4m, as set out in detail as part of the application[16].

25. The application was accompanied by a report prepared by Dr Vaughan Keesing addressing the ecological impacts of the proposed works. The AEE and background material were prepared by Mr David Hendrikz of DRH Consulting Limited.

NOTIFICATION AND SUBMISSIONS

26. The application was publicly notified on 28 September 2019 (Ashburton Guardian) and 3 October 2019 (Ashburton Courier).

27. Submissions were received from the following parties:

- Taylor's Drain Water Users Group – support
- Save the Rivers Mid – Canterbury Incorporated – oppose

28. Affected party written consent has been provided by Mr Ian Lowe, owner of the neighbouring property to the north of the application site.

STATUTORY PROVISIONS

29. The Land and Water Regional Plan ("the LWRP") became operative on 1 February 2017 and is the regulatory instrument relevant to the consideration of this application.

30. The Council's case was that the diversion had been undertaken without resource consent and were accordingly unlawful. There was disagreement between the applicant's counsel and the Ms Aitken for the Council as to the range of rules under which consent was required. These are set out under paragraphs 33 and 34 below.

31. The applicant's position is that while consent would have been required under some of these rules, retrospective consent was not necessary on the basis that they were one-off activities which are now established, and there was no ongoing contravention of section 9(2) or section 13 of the RMA. Ms Aitken made reference to a letter from Mr Van der Wal to this effect which stated that:

"Rather, he only seeks consent for activities that continue now and that without resource consent would contravene provisions of the Act or Regional Rule" ".[17]

[16] AEE, Tables 1B and 1C, page 11
[17] Letter from Mr van der Wal, Duncan Cotterill dated 4 September 2019 (S42A report, paragraph 28)

32. Ms Aitken concluded that given the unlawful nature of the diversion undertaken by the applicant, it had to be assessed as if it had not been undertaken, and there are a number of other consents which are required. However, she also concluded that:

"Though the applicant has not made formal applications for the other (retrospective) works, the applicant has applied for authorisations under s 13, s 14, and s15 of the RMA. I consider there is sufficient information available within the background document provided to consider the effects of the full suite of s 13, s 14, and s15 authorisations required under the RMA (but not formally applied for)" [18].

33. The applicant maintains that consent is only required with respect to the following rules in the LWRP:

- A diversion of water requires consent as a **discretionary activity** under Rule 5.6 of the LWRP;
- A discharge of water requires consent as a **discretionary activity** under Rule 5.78 of the LWRP, as the water is being discharged at a different location and cannot meet the terms of Rule 5.77, Condition 1;
- Disturbance on the bed of the river requires land use consent as a **discretionary activity** under Rule 5.141A of the LWRP, as the proposed activity cannot fully comply with Rule 5.136, Condition 4.

34. In addition to these, Ms Aitken contended that consent was also required under the following rules:

- Retrospective consent for excavation works already undertaken is required as a **discretionary activity** under Rule 5.176 as the volume of excavated material would not meet permitted condition 2 (b) (ii) of Rule 5.175;
- Retrospective consent for the proposed use and maintenance of the concrete diversion structure is required as a **discretionary activity** under Rule 5.6, as the activity does not meet condition 1 of Permitted Activity Rule 5.139;
- Retrospective consent for the infilling works (of part of the old channel) is required as a **discretionary activity** under Rule 5.6;
- Retrospective consent as a **discretionary activity** under Rule 5.100 is required as the discharge of water into the seepage pond is unable to meet condition 5 of Rule 5.99, as the constant discharge of water would most likely result in more than a 20% change in the rate of flow of the receiving surface water body.

[18] S42A report, paragraph 30

35. Accompanying the application was a summary of relevant statutory matters prepared by Mr Hendrikz which noted that s105 RMA applied, which requires that with respect to discharge permits, consideration must be given to the nature of the discharge, the sensitivity of the receiving environment, the applicant's reason for the proposed choice, and alternative methods of discharge.

36. Returning to the matter of retrospective consents, Mr van der Wal submitted:

"A retrospective application does not cure the fact that at the time the works were done consent had not been granted. It cannot be raised as a defence if at the time the works occurred there was no consent. It is accepted therefore that there is an enforcement determination to be made as to the activities that occurred without consent"[19].

37. He also submitted that:

"…… under s 91 the Council could have compelled the applicants to seek the additional land use consent, had it considered that it was necessary to better understand the effects of the activities proposed. The fact that it notified the applications and has prepared the s42A report all without exercising that power provides confirmation that it did not require the additional application in order to better understand the effects of the activities for which consent is required and sought"[20].

38. On a separate matter, Ms Aitken's report also queried whether sufficient information was available to ensure that the use of herbicides to spray the watercourse as part of the maintenance regime under Rules 5.22 and 13.5.7. The applicant maintains that the discharge of pesticides as a separate activity authorised by Rule 7.77 of the Canterbury Air Regional Plan, subject to compliance with the applicable conditions[21].

39. Overall, it was agreed that the application requires consent as a **discretionary activity.**

40. The applicant contends that with respect to works involving the removal of vegetation from the channel and riparian margin for maintenance purposes and prior to the planting of vegetation around the seepage pond, and to cover planting of vegetation around the seepage pond, no consent would be required under the rules of the LWRP. This contention has been addressed in detail in Ms Aitken's report[22], and my understanding is that this was accepted by the Council.

[19] Applicant's legal submissions paragraph 38
[20] Ibid, paragraph 42
[21] Applicant's legal submissions in reply, paragraph 4
[22] S42A Report, paragraphs 33 – 35

THE EVIDENCE

The Evidence for the Council

41. Given that the S42A report predates the circulation of the applicant's evidence, and the content of the applicant's evidence largely responds to the content of the S42A report, I have set out the key points of the Council's evidence first.

42. **Ms Susan Aitken** presented comprehensive and detailed planning evidence relevant to the application. As noted above, first major point of her evidence concerned the Council's contention that the old channel through the applicant's property (and above it from Mr Lowe's property) was modified natural watercourse, not an artificial watercourse. This was one of the two key points of contention between the witnesses for the Council and those for the applicant. This distinction also assumed major significance in terms of the evidence with respect to ecological values. It is also relevant to whether s13 RMA applies.

43. **Dr Duncan Gray**, also attended the hearing and spoke to issues raised during the hearing with particular reference to ecological matters. He strongly maintained that the old channel was a modified natural watercourse[23]. The basis of the Council's conclusions with respect to this matter were described at some length in Ms Aitken's report.

44. She drew attention to an excerpt in the findings of the Hearings Commissioners recommendation to the Council on Plan Change 2, now operative and incorporated as section 13 of the LWRP. This excerpt was also referred to in the applicant's evidence.

45. As part of their decision, the Commissioners turned their minds to the classification of drains within the Hinds area and set out seven criteria[24] to be considered in determining whether a watercourse is modified or artificial.

(I note at this stage that while these criteria are helpful in terms of evidence, I did not receive any information to suggest they had any status as part of a statutory plan).

46. Given the significance that this assumed at the hearing, quoted below is the paragraph in the Commissioners decision explaining the seven 'criteria' [25]:

"In the section 42A report the authors, citing case law, advised that the factors to be considered in determining if a particular watercourse is a modified watercourse or an artificial watercourse (though individually not determinative) are:

(a) Whether the water is freshwater, and not water in the pipe, tank or cistern. (If not, it is not a river, and neither a modified or artificial watercourse.)

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[23] Ibid, paragraphs 71 – 81

[24] Ibid, paragraph 76.The Commissioners decision referred to is as follows – 'In the Matter of the Resource Management Act 1991 and In the Matter of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 And in the Matter of proposed Plan Change 2 to the Canterbury Land and Water Regional Plan, Report and Recommendations of the Hearings Commissioners, Chapter 4 Legal Issues raised by submitters, Section 4.11, page 50'.

[25] Commissioners Decision, paragraph 310

(b) Whether the water is continually or intermittently flowing. (This protects the riverbed and the existence of river values, including habitat of plants and animals).
(c) If a modified watercourse, whether a natural water body existed prior to the modification (a pre-existing natural watercourse may have been extensively modified but may still be considered in intermittently flowing body of fresh water within the meaning to be given to river).
(d) whether there is an artificial bed (for example piping or channelling), or whether natural bed materials are present. (An artificial channel of a river may not be an artificial watercourse, and a diversion through an artificial channel may remain part of the river)".
(*e) The source of a flow may indicate that a watercourse is artificial (e.g. where a flow originates from stormwater run-off from a residential system).*
(f) the path of a watercourse may provide an indication.
(g) the size of a watercourse may provide an indication (though this is less influential because the meaning to be given to a river does not expressly refer to size).

47. Ms Aitken's opinion was that there was clear evidence that the source of the channel was the presence of springs on the Lowe property. In arriving at this conclusion, she relied upon an appended Technical Memorandum dated 11 September 2019 from Dr Duncan Gray (Senior Water Quality and Senior Ecology Scientist) which included accompanying photographs. Also appended was an earlier technical memorandum from Dr Gray and Dr Meredith (the Council Principal Scientist, Surface Water Quality and Ecology) dated 5 June 2019.

48. Based on this advice she concluded that:

"The original watercourse began as a small meandering natural stream on the neighbouring property, was altered over time and finally diverted by the neighbour to flow via the channel (former stock water race) on the applicant's land. While the stock race may not have originally been sited within a natural riverbed, it connected to the modified natural watercourse and has, over time, become part of it. While the channel in itself may be an artificial construct, it forms part of the (extensive) modifications to the natural watercourse, including the complete diversion of flow to a new channel"[26].

49. She said that the area originally contained extensive wetlands which had been modified by the formation of drains (e.g. Swamp Road No 1 and Swamp Road No. 2) which were a modification of an original natural waterbody. She also contended that having regard to the EIANZ guidelines[27] for describing the magnitude of effects, the works to divert the formal watercourse would have a 'High' or 'Very High' Impact in terms of ecological values, and not a 'Moderate Impact' as claimed by Dr Keesing.

50. The Technical Memorandum dated 5 June 2019 makes reference to a site visit undertaken by Dr Gray on 28 May 2019. This memorandum made the following points:

[26] S 42A Report, paragraph 78d
[27] Ecological Impact Assessment EIANZ guidelines for use in New Zealand: terrestrial and freshwater ecosystems 2nd edition May 2018

- Both Swamp Road Drains Nos. 1 and 2 differed from others in the district in that they were sourced primarily from water loss from the adjacent Hinds River by either surface or subsurface flows;

- A 'kick net' sample was undertaken on the new channel in which it was observed that there were abundant mayflies, caddisflies and snails plus a bully (fish), indicative of good water quality;

- The severance of the old channel had reduced flows significantly in the Windermere Cut-off, although another kick net sample from this location found abundant mayflies, caddisflies and snails;

- A kick net sample from the discharge point of a tile drain above revealed the presence of abundant groundwater stygofauna, and another sample from the channel itself revealed the presence of bully species, abundant snails, and caddisfly larvae.

51. Dr Gray was critical that Dr Keesing's assessment had not undertaken a survey of the waterway directly upstream of the diversion point (i.e., on the Lowe property). He also questioned Dr Keesing's application of the SEV method (described later in this evidence) to assess the habitat value of the old channel, on the basis that it was an intermittent stream and since the diversion, was no longer a flowing watercourse. Dr Gray's observations with respect to the old channel also included the following comment:

"As such while I agree that the ecological value of the watercourse prior to diversion was unlikely to have been high, that situation was due principally to the management of the watercourse and adjacent land rather than any intrinsic characteristic of hydrology or background water quality"[28].

52. On the basis of her colleagues advice, Ms Aitken concluded that these adverse effects arose because the applicant's diversion had removed the life supporting flow to support the ecological community in the old channel, and removed any potential fish passage to or from the Hinds River. There was a direct surface connection between the old channel, the Windermere cut-off, and the Hinds River, whereas the new channel did not have a surface discharge to the Hinds River (and Dr Gray commented that any such discharge could compromise the stopbank along the river). Ms Aitken also concluded that notwithstanding the Taylors Drain Water User's Group submission in support of the application, the lack of a direct surface discharge to the Hinds River meant there would be no demonstrated improvement to the flow of the river.

53. Taking account of these criteria referred to above, the Council's witnesses contended that the presence of springs on the Lowe property to the north, and the indications of a remnant historic wetland on Council's GIS database, constituted strong evidence that this area was the source of a meandering natural watercourse which would have flowed through the applicant's property, albeit subsequently modified into an 'engineered' geometrical pattern by subsequent drainage works.

[28] S 42A report, Appendix 2 (Dr Duncan Gray) paragraph 13

54. It was agreed between the parties that the watercourse had at least an intermittent flow, and the Council considered this was more persistent in the two Swamp Road 'drains' as they were fed by subsurface losses from the nearby Hinds River. Relying on the opinion of Dr Gray, Ms Aitken also noted that the quality of groundwater was such that a healthy macroinvertebrate and fish community would have existed in the old channel, further supported by the fact that a healthy community had already established in the new channel. The quality and significance of aquatic life in the old channel was the second major point of contention between the witnesses for the Council and those of the applicant.

55. Turning to other matters, Ms Aitken was of the view that granting the application would not have any significant adverse effects on groundwater quality or on drinking water supplies.

56. While noting that retrospective consents could not be assessed and decided in a punitive fashion, she also noted that there was no advantage to be conferred on an existing activity on the basis of expenditure already incurred.

57. Her overall conclusions were that the works already undertaken by the applicant and for which consent is now being sought had resulted in a detrimental effect on instream values within the old channel, and severed fish passage between the waterway and the Hinds River. She recommended that consent be declined.

The Submissions and Evidence for the Applicant

58. **Mr Hans van der Wal** presented legal submissions on behalf of the applicant.

59. He said the key reason for the application was that the applicants accepted that the diversion and discharges were in contravention of the RMA, and would continue to be, unless they were authorised by resource consent or ceased. He emphasised was that reinstatement of the old channel as sought by the Council would also require consent, and as it was not authorised either. It too constituted an ongoing unlawful diversion and discharge of water. (In response to questioning, it was confirmed to me that the realignment of the old channel undertaken by the previous owner of the property in 2005 would have required consent at that time). Mr van der Wal reiterated Mr Wilson's belief, which assumed that given the previous diversion had been undertaken without resource consent, then his diversion of the old channel would similarly be permissible.

60. Mr van der Wal was critical of the Council officer's approach on the basis that their investigations and analysis were far less detailed than those of Dr Keesing. He also asserted that there was an apparent element of predetermination from an early stage since Mr Wilson's diversion of the old channel had come to the attention of Council officers.

61. He submitted that whether the drain met the definition of "river" under s2 of the RMA was not determinative of whether consent should be granted, because the conclusions of Dr Keesing as to the nature of the old channel stand irrespective of the definition.

62. Mr van der Wal then turned to the matter of the necessary evidentiary burden in this case. While it was established law for applicants to discharge the evidentiary burden to

demonstrate that a statutory basis for granting consent had been established, he submitted that *"the standard of evidence that applies is on balance of probabilities. It is simply "more likely than not"*[29].

63. He then went on to submit that the Council had incorrectly applied the 'Precautionary Approach' under Policy 7.3.12 of the RPS, as it had taken a "no risk" approach and there was no evidence of serious or irreversible harm to the environment resulting from the diversion.

64. He said there was no single Environment Court decision setting out all relevant considerations for determining whether a water body was artificial or not. He submitted that the criteria quoted earlier in this decision from the Commissioners decision on Plan Change 2 to the LWRP had been misapplied by the Council. He said there was too much emphasis placed on the source of the water, rather than on a need to show there had been a natural waterway that had been modified. He submitted that while there was evidence of a wetland upstream of the applicant's property, a wetland was not a watercourse and:

"The fact drains that contain water that drains reclaimed wetlands cannot make those drains modified natural watercourses to which s13 would apply. If a wetland which was "land" to which s 9 (2) applies and not a "river" or "lake" to which s13 applies, then it is wrong at law to say that drains containing water from a drained wetland are modified natural watercourses"[30].

65. This was a point he returned to at some length in his right of reply. On this basis, he submitted that no consent pursuant to s 13 RMA was required.

66. He also argued that the application should not have been publicly notified. I note at this point that it is not within my jurisdiction to determine whether or not the application should have been publicly notified. Rather, I understood his key point rather appeared to be that because the applications *were* publicly notified, this did not oblige me to find that the overall effects would be more than minor[31].

67. **Mr Gary Wilson** explained that his farming operation was spread over two properties of 303 ha, one of which was the property subject to this application and which comprised 145 ha.

68. He explained that the old channel required cleaning with a digger twice a year to avoid weed growth and avoid blockages at the numerous culverts, and that the old channel had to be sprayed up to 3 times a year to avoid contamination of his crops. He said that the old channel was a private drain and all clearance work had to be undertaken at his expense. He stated that:

"The diversion works were done to mitigate physical and financial losses that had and would continue to occur from flooding and seed contamination. There was no financial benefit other than that"[32].

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[29] Applicant's legal submissions, paragraph 20
[30] Applicant's legal submissions, paragraph 32
[31] Ibid, paragraph 46
[32] Evidence G Wilson, paragraph 14

69. He contested claims of Council officers that there was any historic evidence of a watercourse through the centre of his property. Appended to his evidence was a statement from Mr John Farrell, dated 19 January 2020, whose grandfather had then owned the applicant's farm. This stated that while the area was 'swampy' there were no streams or watercourses through the centre of the farm. The excavation of a stock water race in the 1920s took place because there was not enough natural water available from shallow wells or any naturally occurring streams to provide water for horses and sheep.

70. He said he was not aware of any consenting issues involving previous works to realign the old channel and said he had not observed the presence of fish in the old channel.

71. Citing email correspondence that he had obtained through his legal counsel, he complained that there was an element of predetermination of his application, and a number of factual errors in the Council's S42A report. He stated that he was relying on advice from his consultants that it would be preferable in environmental terms to persist with the new channel rather than to reinstate the old one – and that if the advice of been to the contrary, he would have been prepared to reinstate the old channel.

72. **Dr Vaughan Keesing** was the key technical witness called in support of the application. He explained that the basis of his evidence were three reports , the first being an initial report dated 5 March 2019 assessing the ecological effects of the activities for which consent was sought and the second an addendum dated 23 May 2019 in which he provided additional comment with respect to the matter of whether the old channel should be treated as a 'river'. The third was a report dated 3 September 2019 addressing the matter of whether the old channel was a modified natural watercourse or artificial watercourse; what if any ecological impacts occurred as a result of the applicants diversion works; and whether the conclusions of Environment Canterbury ecologists justified public notification.

73. He argued that re-establishing the old channel would result in the loss of already established ecological benefits derived from the new channel. It would take time for the old channel to be re-established and stabilise (subject to consent) and would introduce spray contaminants to the flow, which would not occur with the new channel.

74. In response to Dr Gray's evidence, he said the presence of aquatic species cited in Dr Gray's kick net evidence was only indicative of common robust species which were typical of drains generally in Canterbury[33]. In his conclusion he stated that:

"While no party has certainty over the condition and values present prior to the diversion, only the applicant has data of the actual drains habitat condition. I consider the evidence best supports the applicant's position (my own assessment) which is that the aquatic values present were limited to common simple robust fauna able to manage intermittent flows, high summer temperatures, uniform poor substrate and a high level of disturbance (sprays, regular mechanical clearance, high sediment habitat, limited cover and limited macrophyte). The most probable condition and value was of a poor condition and of low aquatic ecological value".[34]

[33] Evidence Dr Keesing, paragraph 29
[34] Ibid paragraph 37

75. He was critical of the lack of any laboratory analysis with respect to the samples taken by Dr Gray and said that the contrast between the nature of the channel on the Lowe property upstream and that on the applicant's property downstream ignored differences in land use and intensity. He proposed that the Council's concerns about loss of fish passage could be addressed by providing a direct surface connection between the seepage pond and the Hinds River, although he entertained doubts as to whether this was necessary or worthwhile.

76. In support of his conclusions that the old channel had little real habitat or ecological value, and that the effects of the diversion were 'less than minor'[35], he made reference to his application of the 'Stream Ecological Evaluation' (SEV) method. His report, which was attached to the application, explained that this was a method widely used in the North Island and was developed by NIWA and a panel of experts to assess the functional condition of a watercourse using a scale from 0 to 1. He said his analysis was undertaken at a central location on the old channel which he considered was representative of the old channel as a whole and of the portion of the channel that had been diverted. Based on this model, he assessed the old channel as having a hydraulic function mean score of 0.24, a biogeochemical function mean score of 0.15, and a habitat provision function mean score of 0.12. In his assessment, these represented very low scores[36].

77. In response to Dr Gray's criticism of the application of the SEV model to the old channel, he countered that the 'score' was calculable without the presence of water, and it was commonplace not to include the biological components (fish and macroinvertebrates). In his view the application of the model in the context of the old channel was appropriate and had had produced 'incredibly low' scores that were 'highly indicative of a poor quality habitat'[37].

78. He strongly adhered to his view that the old channel did not form part of what would historically have been natural watercourse. In commenting on Ms Aitken's evidence, he stated:

"She acknowledges that the stock race (on the applicant's property) may not have been sited within a natural riverbed. But this is the point, the evidence of old channel shows two probable natural stream paths: the short small stream draining to the Hinds River west and south (no longer present) and the Swamp drain. I still see no historical evidence of a landform, or channel sign (going back 70 years) of the third central natural watercourse in or about the position of the Central property drainage channel".[38]

79. With respect to Dr Gray's evidence he stated that:

In the same vein Dr Gray disagrees with my conclusion as to the classification of the Wilsons drain 2, the drain) because the drain contained spring water and the draining of wetlands. This is not evidence of a historic – pre-drain – presence of a river/watercourse, merely that the

[35] Dr Keesing's Report, 'Glenfawin Water Diversion', paragraph 8.0
[36] Dr Keesing's Report, 'Glenfawin Water Diversion', paragraph 6.7
[37] Evidence Dr Keesing, paragraph 34
[38] Ibid, paragraph 19

'drain' was doing its job in collecting and draining surface floodwater (from the wetland). Again no evidence of an old channel is presented or, I contend, exists"[39].

80. He was critical of Ms Aitken's assessment using the EIANZ guidance, noting she was not an ecologist, and said that determining level of effect requires a combination of ecological value and magnitude of effect, with a site only scale rarely being appropriate. He maintained that any loss of aquatic habitat would represent only a moderate proportion of the known population or range of the aquatic values in question[40].

81. Mr Hendrikz emphasised the land use practices necessary for the property and the consequently poor ecological qualities of the old channel. He noted that no downstream users or abstractors would be adversely affected and that the new channel would be maintained to a high standard. He noted that Aoraki Environmental Consultancy Ltd on behalf of Te Runanga o Arowhenua had visited the application site on 5 February 2019.

(From reading their letter dated 11 February 2019, I noted that the applicants proposal was acceptable to them subject to the establishment of suitable native plants around the periphery of the seepage pond, the permanent fencing of the pond from stock and machinery, and the replacement of any dead or diseased plants).

82. Mr Hendrikz noted that the springs on the Lowe property were defined by Environment Canterbury as intermittent and gravitational, resulting in wet ground patches. He said that the tile drains did not intercept the springs as such, but rather drained excess soil water to allow cropping[41].

83. With respect to Ms Aitken's conclusions, he relied on Dr Keesing's evidence and stated that:

"I find that I have to agree with Ms Aitken that aquatic life and ecosystem was highly likely to be present, as that is the case in all surface water, however it is the value of that ecosystem that is the critical issue here. Given Dr Keesing's assessment of that value I do not consider that value leads to the conclusion reached by Ms Aitken"[42].

Submission

84. A brief statement was presented by Mr Peter Lowe, of the Taylors Drain Water Users Group. He stated that the group had no issue with the application. He provided some background to the location of a mahinga kai site in the area, noting it was not on the applicant's property. (I note that the presence of this site was quoted as a concern in the Technical Memorandum of Dr Gray and Dr Meredith and referred to in the report of Ms Aitken)[43]. He also provided brief background relating to work being undertaken in the area for recharge to improve flows in the Hinds River. He also considered that the applicant's diversion of the old channel would not have an adverse effect on flows in the Windermere Cut-off, which he and the applicant both stated had been augmented by additional flows from an Ashburton District Council drain.

[39] Ibid, paragraph 21
[40] Ibid, paragraph 36
[41] Evidence D Hendrikz, paragraph 21
[42] Ibid, paragraph 25.3.5
[43] Technical memorandum dated 5 June 2019, p10

The Applicants Right of Reply

85. The applicant's right of reply included not only closing legal submissions from Mr van der Wal, but also statements from Mr Wilson and his two expert witnesses. I was somewhat concerned at this, as some of the material appeared to be new evidence, or matters that should have been raised at the hearing itself. However, except for Mr van der Wal's closing submissions, I had sufficient information available to me at the close of the formal hearing to reach the conclusions I have on this application.

ASSESSMENT

Retrospective Consents

86. I am aware that the issue of whether or not retrospective consents should be granted arose through a submission on the application. Case law on this matter is well-established, and is illustrated in *Colonial Homes Ltd*[44] where the Planning Tribunal held that:

"There is nothing inherently wrong with retrospective consents and we make clear that the consent parts of the Act are not to be used as a punitive arm. If the Council in any particular instance considers there has been a breach of the RMA or of the terms of its plan, it should use the prosecution or enforcement sections not punish the applicant by refusal of resource consent".

87. On the other hand, as pointed out by Ms Aitken, an applicant cannot expect consent to be granted on the basis that they have already carried out the work and incurred expenditure in the process of doing so. Rather, this application has to be assessed on its merits.

Should the application have been publicly notified?

88. This was a matter raised on behalf of the applicant to the effect that public notification was not justified in this case. However, the application was publicly notified and heard on that basis. My clear understanding is that issues relating to whether or not an application should have been notified are a matter for challenge to the High Court. Although this matter was raised, I did not understand the applicant was seeking that I come to a finding on this matter.

The need for additional consents

89. While disputes between a consent authority and an applicant over whether additional noncompliances need to be identified are not unusual, the circumstances in this case are rather different. My initial thoughts are that if an activity has been undertaken without resource consent (e.g. the erection of a building) then unless it is removed, retrospective consent is required. In the case of this application, there are some distinct complicating factors.

[44] Colonial Homes Ltd v Queenstown Lakes District Council, Decision W 101/95

90. I note Mr van der Wal's observation that the previous (2005) re-alignment also needed consent at that time, and such consent was not obtained. Accordingly, the reinstatement of the old channel would require a resource consent, and it cannot be regarded as a permitted or consented feature. From questioning at the hearing, it was my understanding that the Council agreed that in 2005 a consent to realign the old channel would have in fact been required.

91. That said, it was common ground that the old channel dated back to at least 1920, and its construction at that stage must surely have been a 'permitted activity' in the absence of any planning regime at that time that I am aware of.

92. It also appeared to be agreed between the parties that whether the additional consents identified by Ms Aitken in her report were required or not, this did not change the status of the application (i.e. discretionary) and hence the legal tests which apply. Like Mr van der Wal, Ms Aitken was of the view that the consent could be considered with these additional non-compliances, and there was sufficient information available to consider the effects of the application as a whole. She expressed the view that the matter is an issue of 'form over substance'[45].

93. Before taking this any further, with respect to the legal status of the old channel in terms of its 2005 alignment, I am uncertain as to the potential implications of this in the event of reinstatement. Although not explicitly raised by the Council at the hearing, it may be that if it were accepted that the old channel was in fact a modified natural watercourse, this would have implications for activities such as excavation and spraying in or near the channel (leaving aside possible existing use rights). I make this comment noting that Dr Gray was particularly critical of the applicant's management of the old channel and its margins. This possible 'line of argument' was not developed any further during the hearing, and I have treated it as a matter which is outside the scope of this hearing.

94. Returning to the matter of additional retrospective consents, I note Mr van der Wal's observation with respect to the exercise of the Council's powers under section 91 RMA. Section 91(1) provides that:

"(1) A consent authority may determine not to proceed with the notification or hearing of an application for a resource consent if it considers on reasonable grounds that –
(a) other resource consents under this Act will also be required in respect of the proposal to which the application relates; and
(b) it is appropriate, for the purpose of better understanding the nature of the proposal, that applications for any one or more of those other resource consents be made before proceeding further".

95. In this case, the Council elected to proceed with the notification and hearing of the application notwithstanding that the additional retrospective to non– compliances identified did not form part of the application.

[45] S42A Report, paragraph 31

96. Mr van der Wal submitted that there was a distinction between District Council bulk and location type land uses and the kind of retrospective consents raised in Ms Aitken's s42A report. He said:

"In contrast, the relevant land use rule in this case concerns the one-off activity of digging or disturbing. As soon as the machinery used to do it stops, the land use stops. It may well have altered the receiving environment by then, but that resulting change is an effect, not the activity itself"[46].

97. He then went on to submit that whether the effects of concern to the Council needed to be addressed was a matter for the consent authority in terms of its powers under Part 12 of the RMA.

98. I have identified the additional non– compliances derived from Ms Aitken's report earlier in paragraphs 33 and 34. Notwithstanding some reservations, I have elected to decide the application on the basis of the non– compliances identified in the application as notified. To some extent I agree with Ms Aitken's observation that this is largely a matter of form over substance, and it was not suggested to me that this was a matter which would undermine the validity of any decision made on the application. I also note that enforcement matters remain to be resolved separately.

Is this a modified natural watercourse or an artificial watercourse?

99. As noted earlier in paragraph 19 of this decision, the application has been lodged on the basis that consent is required under section 13(1)(b) RMA with respect to works 'in the bed of a river'. As reiterated in the submissions of Mr van der Wal, this was done "…….. *without prejudice to the Applicant's position that the drain is an artificial watercourse and not a modified natural watercourse"*[47].

100. A "river" is defined under section 2 of the RMA as follows:

"River means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal)".

101. The Council has proceeded on the basis that the old channel was a modified watercourse (or 'river'), for the reasons set out earlier in the summary of Ms Aitken's evidence. If the Council is right on that matter, this has significant implications. Section 13 (relevantly) states:

13 Restriction on certain uses of beds of lakes and rivers
(1) no person may, in relation to the bed of any lake or river, –
(a) use, erect, reconstruct, place, alter, extend, remove, or demolish any structure or part of any structure in, on, under, or over the bed; or
(b) excavate, drill, tunnel, or otherwise disturb the bed; or

[46] Applicants closing submissions, paragraph 41
[47] Applicant's legal submissions, paragraph 4

(c) introduce or plant any plant or any part of any plant (whether exotic or indigenous) in, on, or under the bed; or
(d deposit any substance in, on, or under the bed; or
(e) reclaim or drain the bed –
unless expressly allowed by a national environmental standard, a rule in a regional plan as well is a rule in the proposed regional plan for the same region (if there is one), or a resource consent".

102. Mr van der Wal went on to state that if I were to disagree with his submission that no section 13 consent was required, *"…… then there is an application for s13 consent before you and the Applicants have provided sufficient evidence to allow you to determine and grant that application as well. Whether the drain was an artificial drain or a modified natural watercourse is therefore not something that is determinative of whether consent can be granted or not"*[48].

103. Certainly, the applicant – and to at least some extent the Council – were inviting me to come to a view on whether or not the old channel was in fact a modified natural watercourse.

104. At a time prior to European settlement, or even early in the period of European settlement, there were undoubtedly areas of wetland and a network of small natural watercourses in the wider Hinds area, as described by Dr Gray. There is no dispute that within the Lowe property there are springs, albeit largely obscured by ongoing farming operations. It also would be reasonable to assume this may have been a natural wetland of some sort.

105. The issue in dispute is whether there was a watercourse draining this wetland in the form of a natural watercourse, or if there was, whether it followed a path approximately through the centre of the applicant's property, which was subsequently 'formalised' as a stock water race, and subsequently realigned, most recently in 2005. This is the Council's position. The evidence for the applicant is that the presence of a wetland is itself uncertain, and if the wetland did have an outlet, it probably extended across the south-eastern corner of the Lowe property and thence discharged into the Hinds River.

106. One 'school of thought' is that the presence of the tile drains and the central drain entering the application site from the Lowe property is evidence that this is a former natural watercourse draining a wetland, as evidenced by the presence of springs on the Lowe property. An alternative school of thought is that the tile drains in turn necessitated the creation of an artificial drain to remove that water. This is further clouded by an apparent early need to provide for stock water.

107. Attached to the evidence of Dr Keesing was an aerial photograph dating from 1954[49]. This clearly shows the unmistakable meandering line of a natural watercourse parallel to the southern side of Swamp Road, which I understand has since been largely converted to a regular drain. This is now known as Swamp Road No. 1 Drain.

[48] Applicant's legal submissions, paragraph 33
[49] Assessment of ecological effects related to the version of water – 'Glenfawin' Water Diversion, prepared by Vaughan Keesing, dated 3 September 2019, page 4

108. Also apparent from this photograph is another shorter meandering watercourse upstream of the applicant's property, the faint but distinct outline of which is also apparent on more recent colour aerial photographs accompanying evidence presented to the hearing[50]. It is plausible that if there were a wetland, and this wetland had an outlet, that it may have discharged to the Hinds River by this route. Such a scenario looks at least possible having regard to an aerial photograph showing part of the Lowe property, including springs, the tile drain system, and the underlying traces of meandering watercourses[51].

109. Ms Aitken's report noted that on the Council's GIS the applicant's property and the neighbouring property were identified as being part of the historic wetland and that there were signs of historic flow paths visible in aerial photographs[52]. However, there was no persuasive evidence presented to the hearing establishing that there was a natural watercourse that predated the old channel (drain) through the middle of the *applicant's* property.

110. Possibly an archival investigation relating to the construction of the road and rail bridges downstream over the old channel might reveal some information about the nature of the watercourse that existed at that time. Another source may be general heritage records or information from early settler accounts – an example of which was the document from Mr Farrell, presented to the hearing by Mr Wilson. This was cited in support of the applicant's position. In some cases, Maori history may be of assistance in circumstances such as this. However, in this case the evidence appears to be inconclusive.

111. Similarly, there was a quite a spirited evidential debate between Dr Keesing and Dr Gray with respect to the ecological evidence which might support the presence of a historic natural watercourse through the property. This is addressed further below.

112. I accept that it is *possible* that a natural watercourse did exist through the centre of the applicant's property at one stage, and this later became the stock water race. However, the evidence available fell well short of establishing beyond reasonable doubt that a natural watercourse was present through the centre of the applicant's property in historic times.

113. Apart from defending their conclusions at the hearing, there was no additional evidence from the Council to support their view that the old channel was a modified natural watercourse. I have taken account of the case law cited by Mr van der Wal with respect to what might constitute a modified natural watercourse, and the distinction between what is meant by a water body and a watercourse[53]. But even in the absence of this I would have concluded that on a balance of probabilities the old channel was an artificial drain. I certainly accept that there is an extensive pattern of drains in the vicinity of the Hinds River, some of which will undoubtedly be modified natural watercourses, and others which are not. I have concluded that the old channel falls into the latter category.

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[50] For example, Map 1 (page 5) in the evidence of David Hendrikz.
[51] AEE, Map 4A, page 18
[52] S42A Report, paragraphs62d
[53] *Carruthers v Otago RC [2013]NZHC 632 and CRC v Dewhirst [2019] NZCA 846*

Habitat and ecological values

114. There can be no certainty with respect to the ecological values that existed in the old channel, for the simple reason that there is no known record of an assessment having been undertaken of this watercourse prior to the initiation of enforcement action in late 2018. There was a survey undertaken by the Department of Conservation in 2015 of drainage systems and watercourses in the Hinds area, but no evidence was produced to the hearing that provided any indication of what the habitat values may have been present in this specific waterway (the old channel) prior to that time [54].

115. There was no dispute that the old channel (and the new channel) exhibited the presence of taxa that might be expected in artificial watercourses in this part of the Canterbury Plains, or even over the plains as a whole. However there was vigorous dispute as to the significance of the habitat values of the old channel. The issue became one based on site visits and assessments undertaken on behalf of the applicant by Dr Keesing, and a site visit undertaken by Dr Gray and his response to the material provided by Dr Keesing.

116. Earlier in paragraph 46 of this decision, reference was made to the seven criteria referred to in the Commissioners decision on Plan Change 2, and paragraph 310 of that decision, and to the conclusions reached by Ms Aitken in her report.

117. Dr Keesing contended there was no physical evidence to support the contention that the old channel was originally a meandering natural watercourse, citing as an example the 1954 aerial photograph. He said the source of the flow (on the Lowe property) were a series of drains, and there was no natural headwater to support a conclusion that this was the source of a historic natural watercourse. He said that the old channel had been repeatedly realigned in a geometric pattern to follow the boundaries of paddocks within the property.

118. With respect to the habitat and ecological values of the old channel, Dr Gray concluded[55]:

"My observations suggest that the quality of groundwater flowing into the Swamp Road Drain No. 2 is such that given suitable habitat a healthy macroinvertebrate and fish community would have existed in the dewatered channel on Mr Wilson's land. Habitat and ecological communities in the dewatered length of stream may well have been impacted by the maintenance regime, but given the opportunity would have recovered rapidly".

119. In contrast, Dr Keesing concluded (as noted above in paragraph 74) that any evidence of ecological values was confined to common fauna typical of artificial drainage systems generally and which were subject to disturbance and degradation by farming operations.

120. The applicant's position (based on his expert's advice) is that it is preferable in ecological terms to retain the diversion, rather than to reinstate the old channel. The basis for this argument is that the new channel can be protected by an appropriate setback (e.g. from spraying), and that riparian planting can be established to provide shade. However, there is no

[54] Referred to in the evidence of Dr Keesing (Glenfawin Water Diversion dated 3 September 2019) pp 17 – 20
[55] Dr Gray, Appendix 1: Technical Memorandum 5 June 2019, page 10

'protection' for the watercourse above where it enters the applicant's property from the Lowe property.

121. The Council's view on this matter is that it would be preferable to reinstate the old channel because it is much longer than the diversion, and hence physically provides a greater lineal extent of potential habitat. It also contends that it would have provided fish passage via the Windermere Cut-off. I note that the old channel does not itself have a lawfully established status, its reinstatement would require a resource consent, and the outcome of such a process is uncertain. In the absence of potentially severe restrictions on adjoining farming activities (given that it bisects the farm) there would be an ongoing likelihood of regular disturbance as a result of farming practices with consequent adverse effects on its value as an aquatic habitat. This is in addition to its intermittent flow.

122. I accept that the lineal extent of habitat in the old channel is significantly greater than in the new channel. Balanced against this is the reasonable confidence that the habitat in the new channel, albeit much shorter, should in qualitative terms be significantly better than in the old channel. My conclusions on this matter are also influenced by likelihood that the old channel was not a modified natural watercourse and its ecological values are compromised as a result of farming operations. The old channel also has a much longer interface with adjoining farming operations. In my opinion, these factors do not support reinstatement as the preferable option.

123. In fairness to the Council witnesses, they accepted that the habitat quality and ecological values of the old channel were not high but argued that this was a consequence of the applicant's management practices within and adjoining the channel.

124. As noted previously there was strong criticism of the applicant's farming practices in terms of their impacts on the old channel. This requires regular disturbance of the bed for the purpose of clearance and spraying, the latter which I understand is a fundamental operational necessity for the applicant's business. There can be little doubt the nature and regularity of these works would be detrimental to any ecological values present in the old channel. I did not hear any conclusive evidence on behalf of the Council that these practices were not permitted, or as pointed out by Mr van der Wal, that these practices had been subject to enforcement action by the Council. Given that, should the old channel be reinstated there is a real prospect of only perpetuating the poor quality habitat that existed prior to the diversion works.

125. I have concluded that on balance, I prefer the evidence of Dr Keesing. I have come to this conclusion on the basis that the work undertaken by Dr Keesing on behalf of the applicant is more comprehensive and detailed than that of the Council. I want to make it clear at this point that I acknowledge that Dr Keesing and Dr Gray are both qualified and experienced experts in ecology. It is a matter of the weight of evidence.

126. My conclusions are also influenced by my earlier finding that there is insufficient physical evidence to support a conclusion that the old channel (Glenfawin Water Diversion, Swamp Road Drain No.2) is a modified natural watercourse. I believe this can be contrasted for example, with the quite clear evidence that Swamp Road Drain No 1 was originally a natural watercourse and can now be fairly described as a modified natural watercourse.

127. A matter raised on a number of occasions through the evidence was a potential loss of fish passage between the Windermere Cut-off and the watercourse entering the applicant's property from Mr Lowe's property beyond. This was raised as a potential mitigation measure by the Council.

128. During my site visit (late summer) I observed that while water was flowing freely where it entered the applicant's property, and along most of the new channel, it did not reach the seepage pond. It appeared that this may have been the result of the substrate of much of the channel having a clay content, compared to a more stony substrate closer to the seepage pond and the Hinds River. In any event, it appears likely that even the new channel would have intermittent flow throughout the year. In my opinion it must at least be doubt that a channel constructed to connect the seepage pond to the Hinds River would be able to maintain a regular flow.

129. Furthermore, there did not appear to be any certainty with respect to the future management of the drain and its margins on the Lowe property upstream. Insofar as the new channel is concerned, given its limited lineal extent as a habitat, and for that matter the extent and management of the drain extending into the Lowe property to the north, there is no compelling argument that there would be benefit in creating direct fish passage to the Hinds River. In saying that, I understand that there is no stopbank that would prevent such a connection.

130. There is a final comment I need to make in conclusion. The applicant and his Counsel expressed the view that Council officers had taken a predetermined position on the application, and further they have had an agenda of seeking to 'naturalise' the old channel. There was also an implied suggestion (at least from the Council correspondence) that the applicant had undertaken diversion works in the knowledge that these were not permitted or in unjustified ignorance of the applicable rules. I have disregarded these matters in coming to my conclusions in this decision. If they are to be raised at all, I consider they are a matter for resolution through any separate enforcement action still before the Court.

Other Matters

131. As is common practice in applications of this nature, the following matters were addressed briefly in evidence:

(1) Potential effects on surface water quantity and existing water users.

132. It was accepted by all parties that there would be no effects on other water users should the application be granted. There is an (unquantified) potential for augmentation of the flow of the Hinds River as a result of the discharge from the seepage pond being located further upstream than the Windermere Cut-off, but I expect this would be very modest in scale. Any potential effects on the Windermere Cut-off were not further developed in evidence. There did not appear to be any conclusive evidence that severance of the old channel would have any significant adverse effects on the Windermere Cut-off, given other sources of water.

Although not determinative, I noted during my site visit that there was a reasonably strong flow of water in the Windermere Cut-off.

(2) Potential adverse effects on bed and bank stability, erosion and flood carrying capacity.

133. Works are proposed by the applicant to improve the capacity of the new channel, although in extreme rainfall events it is possible that flooding may occur on the applicant's property. The evidence was that there were no concerns held by the Council's River Engineering staff with respect to bed and bank stability, erosion and flood carrying capacity.

(3) Potential adverse effects on groundwater quality.

134. There was no evidence presented to suggest that there would any significant adverse effects from the excavation of the new channel on groundwater quality.

(4) Potential adverse effects on Tangata Whenua Values

135. The applicant had consulted with Aoraki Environmental Consultancy Ltd (AEC) on behalf of the Arowhenua Runanga. As a result of this, AEC had visited the site and had requested that the periphery of the seepage pond be planted with suitable native plants, that they be permanently fence from stock and machinery and that the plants to be established be maintained or replaced as required. This can be addressed by way of an appropriate condition.

Positive Effects

136. There would be a modest positive effect from retaining an albeit short (but better protected) section of artificial watercourse, instead of reinstatement of the old channel, and the potential for (very small) recharge of the Hinds River upstream of the present point of discharge from the Windermere Cut-off. There is obviously a benefit to the applicant with respect to the efficiency of their farm operations and the security of their crops from contamination. I have taken these matters into account, although none of them are determinative.

137. Towards the conclusion of the hearing I expressed the view – and reiterate – that I have some concern as to the extent to which the farming community, and indeed the wider community as a whole, have an appreciation of what a 'modified natural watercourse' actually means. While it may be well understood by qualified persons in the scientific community, I fear that people associate a 'natural watercourse' with what they perceive as a natural river or stream, without realising it may also include what many might otherwise regard as a 'drain'. This is an issue which may well require a greater level of public education and awareness.

138. The background circumstances to this application are both rather unusual and unfortunate, and I doubt whether there can be any 'winners' from this process. If it were to lead to a better community understanding of what is meant by natural and artificial watercourses, there may be some future benefit resulting from this application.

OBJECTIVES AND POLICIES

139. The relevant regional plan is the Land and Water Regional Plan (LWRP) which became fully operative on 1 February 2017.

140. The officer's report drew attention to Objective 3.8 which calls for the quality and quantity of water in freshwater bodies to be managed to safeguard the life supporting capacity of ecosystem is an ecosystem processes, including maintaining sufficient flow and quality of water.

141. Section 2.9 of the LWRP defines 'water body' as including freshwater in a river lake or stream. Surface water bodies are defined to include an artificial watercourse. It is not clear whether the objective and policy framework of the LWRP addresses effects on artificial watercourses. Neither Ms Aitken's report nor Mr Hendrikz' evidence draws attention to any other potentially relevant policies in the LWRP, other than Policy 4.47 as set out below.

142. Policy 4.47 states as follows:

"Small – scale diversions of water within the beds of lakes, rivers or adjoining wetlands are provided for as part of:
a. Establishing, maintaining or repairing infrastructure;
b. Removing gravel or other earthworks;
c. Undertaking a minor flood or erosion control or repair works and the diversion is occurring within the boundaries of a site or an individual's property and there are no potential adverse effects that are more than minimal on any other person, their property, or any ecological, cultural, recreational or amenity values of the fresh waterbody;.
d. Emergency rural fire fighting purposes; or
e. Maintaining intakes for animal drinking water.

143. As part of my consideration of the application, I have come to the view that the old channel was not a 'river'. Leaving that aside, in terms of this policy and having regard to the lineal extent of the old channel it is arguable whether the diversion can be described as 'small scale'. A number of the other criteria are not particularly relevant. The diversion is occurring entirely within the applicant's property, and has already indicated, while the old channel was relatively long I do not consider there is sufficient evidence to show that it had significant ecological or cultural value, and it is readily apparent that it had little recreational or amenity value.

144. The Canterbury Regional Policy Statement (RPS) does not have any provisions which appear to have direct relevance to the kind of situation arising through this application. Ms Aitken drew attention to Policy 5.3.12 which seeks that land use intensification does not contribute to significant cumulative effects on water quality and quantity. She also drew attention to a number of factors, including the applicant's wish to prevent flooding on his property and the risk to crops grown on the land, potential adverse effects on the Windermere Cut-off, the Hinds River and fish passage. I consider this Policy is at best of indirect relevance because it relates to proposals for rural land use intensification which does not seem to be the focus of the applicant's activity.

145. She also made reference to Policy 7.3.12 which relates to taking a precautionary approach with respect to the allocation of water for abstraction, damning or diversion in circumstances where effects, including cumulative effects are unknown or uncertain. On the weight of

evidence before me, I consider that the effects of the applicant's diversion are reasonably well understood, and the adverse effects of it are minor.

146. Reference is also made to Policy 9.3.3 which calls for an integrated and coordinated approach to halting the decline in Canterbury's indigenous biodiversity, and Policy 9.3.4 which promotes ecological enhancement and restoration. As noted previously, the situation here is that a relatively long section of artificial watercourse has been replaced by a much shorter section of artificial watercourse, which because it can be protected from spraying activities, and with a wider riparian margin, will be of better 'quality'. The retention of the diversion and the new channel would be more consistent with Objective 10.2.1 and 10.3.1 as it would enhance riparian protection.

147. It is difficult to readily weigh up the relative benefits of reinstating a long section of poor habitat with a shorter section of watercourse offering better habitat, but on balance I am satisfied that the overall outcome from granting this application would not be contrary to the policy framework in the RPS.

148. With respect to tangata whenua values, I note that the affected rūnanga have given conditional approval to the application.

149. Section 104 RMA sets out those matters relevant to the consideration of this application, as follows:

104 Consideration of applications
(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to –
(a) any actual or potential effects on the environment of allowing the activity; and
(ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate any adverse effects on the environment that will or may result from allowing the activity; and
(b) any relevant provisions of –
(i) a national environmental standard
(ii) other regulations;
(iii) a national policy statement;
(iv) a New Zealand coastal policy statement;
(v) a regional policy statement or proposed regional policy statement;
(vi) a plan or proposed plan; and
(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
(2) when forming an opinion for the purposes of subsection (1) (a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.
……
(3) a consent authority must not, –
(a) when considering an application, have regard to –
(i) trade competition or the effects of trade competition; or
(ii) any effect on a person who has given written approval to the application.
……..

150. The application of Part 2 of the RMA has been the subject of proceedings before the Courts, including most recently in the findings of the Court of Appeal in *RJ Davidson Family Trust versus Marlborough District Council*[56]. Our understanding of the Appeal Court's findings is that if a plan has been competently prepared the consent authority may in many cases consider an evaluation under Part 2 RMA was unnecessary.

151. Ms Aitken, in assessing the objectives and policies in the relevant documents identified in section 104(1)(b) (notably the RPS and the LWRP) considers they were appropriately prepared to give effect to Part 2 of the RMA[57]. I agree with this assessment, noting that the LWRP has become operative in relatively recent times and takes account of the provisions of the NPSFM 2014. Plan Change 7 was notified on 20 July 2019, but Ms Aitken advised that it was still subject to receipt of further submissions and was not of significance to this application[58]. I agree that no further assessment under Part 2 is necessary with respect to this application.

152. However, in my overall judgement I have come to a different conclusion with respect to my findings as to whether the application should be granted and are of the opinion that such a grant of consent would not be contrary to Part 2.

153. With regard to the application of section 104(1)(a), I consider the effects of granting the application will be no more than minor. In terms of subclause (ab), the only compensating or offsetting measures put forward by the applicant are conditions to protect the new channel from disturbance, which in the context of the removal of the old channel, amounts to a small beneficial effect.

154. I am satisfied that the proposed activity is not contrary to the NPSFM, the RPS, or the LWRP.

155. Finally, I do not consider there are any other relevant matters requiring consideration with respect to this application.

CONDITIONS

156. As is common practice with hearings of this nature, the Council provided a set of proposed conditions should consent be granted, and these were discussed further between the parties at my request following the close of the formal hearing. An amended set of conditions prepared by Ms Aitken, and a brief response to these prepared by Mr Hendrikz were received by me on 24 February.

157. The issue again arose through these discussions as to whether certain retrospective consents were necessary as part of any decision on the application. These are identified in Ms Aitken's draft land use conditions (CRC 195104) and relate to the infilling of a 224 m section of the former watercourse, and the installation of a diversion structure.

[56] RJ Davidson Family Trust versus Marlborough District Council[2018] NZCA 316
[57] S42A Report, paragraph 243
[58] Ibid, paragraphs 219 – 222.

158. As discussed in paragraphs 86 – 98 above, I am satisfied that no major issues of concern turn on whether the additional non-compliances identified by the Council are included as part of the consent. For the reasons set out earlier, my inclination is to only determine the application on the basis of those noncompliances identified with the application as notified.

159. However, a further matter of contention also arose. As notified, the application contained a description of physical works to stabilise the banks of the new channel, as summarised in paragraphs 22 and 23 of this decision. In his comments on the draft conditions prepared by Ms Aitken, Mr Hendrikz said that after discussion with Dr Keesing, it was considered that it was no longer necessary for the batter angles of the new channel (45° to 60°) to be defined.

160. The reason given for this was that allowing batter angles to erode naturally would result in more environmental gains than engineering works requiring that they be formed at a defined angle. This suggested amendment was opposed by Dr Gray and Ms Aitken, on the basis that the condition regarding batter slopes followed consultation between Mr Hendrix and the Council's River Engineering Department, would provide greater certainty, and would avoid sedimentation. Dr Keesing was of the view that a more naturalised process of erosion would not result in excessive sedimentation, would provide some flow heterogeneity, and have the advantage of not requiring the riparian vegetation to be set back further from the channel.

161. This was not a matter that arose during the course of the hearing itself or which was subject to any evidence at that time. I was also rather surprised that there is disagreement between the two experts on a matter of this nature. Given the scale and significance of both the new channel and its modest value as habitat, I do not feel a great deal turns on this point. I am not convinced that given the width (maximum 4m) and depth of the channel, requiring the batter slopes originally applied would have any significant effect on inhibiting riparian planting and shelter.

162. In addition, the application was put forward on the specific basis of modifications to the channel including those relating to the angle of the batter slopes. Accordingly, I propose to retain the conditions as originally applied for and as set out by the Council.

163. I note that a condition is proposed requiring a plan to be prepared showing the riparian planting adjacent to the seepage pond and the new channel. I am uncertain as to the normal practice by the Council in situations such as this. My experience with land use applications is that a planting plan should be prepared to accompany any conditions at the time of the approval of an application, so there is greater certainty. Given the professional differences of opinion to date between Dr Gray and Dr Keesing with respect to this application, this gives me some cause for concern. I am also conscious of the expectations of Te Runanga o Arowhenua who gave conditional written consent to the application. Regrettably, this is not a matter I raised at the close of the formal hearing.

164. A final point relates to fish passage. A condition to this effect was suggested by Mr van der Wal, but was considered inadequate by the Council as any decision reached through this hearing would not bind a future decision maker. There was also no guarantee that any future application would be granted. Furthermore, there would also be the issue of whether such a decision would be within my delegated authority. The Council pointed out that a channel to provide fish passage would not be located on land owned by the applicant. The Council suggested that one

possibility was to defer a decision on the current application by extending timeframes under section 37 RMA for a new application to be lodged.

165. It might be that there are procedural alternatives available that could address the separate provision of fish passage. However, as already discussed earlier in this decision, on balance I have reached a conclusion that the provision of fish passage is not necessary or appropriate in this case.

166. I have taken into account the provisions of section 105 of the RMA, and in this instance I am satisfied that the effects of the discharge, and the alternatives available, have been addressed through this assessment of the application.

DECISION

Pursuant to sections 104, 104B, 105 and 108 of the RMA, consent is hereby granted to the application subject to the conditions specified below.

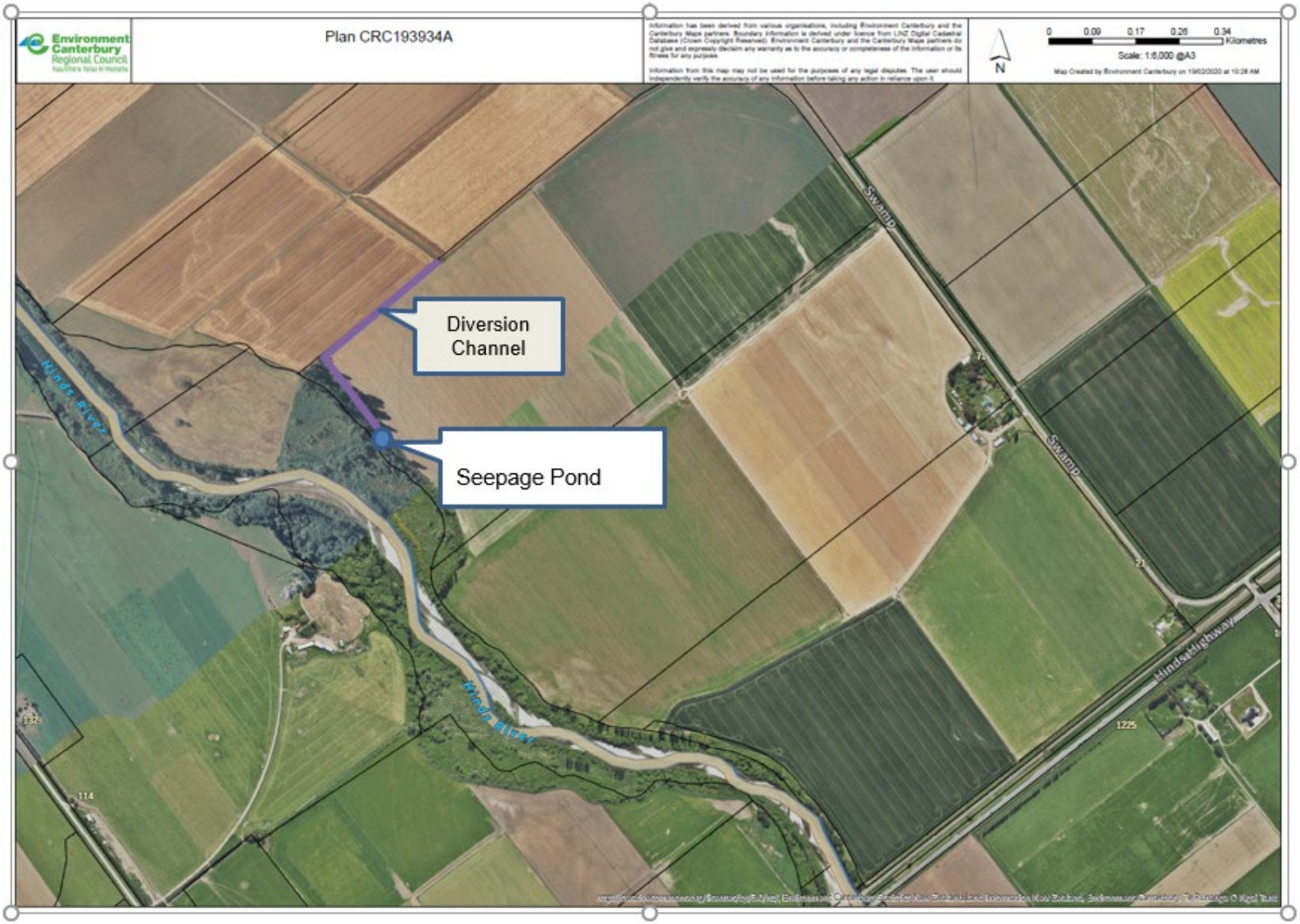
Hearings Commissioner
10 March 2020

CONDITIONS OF CONSENT

CRC193934: A water permit (s14) to permanently divert surface water of an unnamed watercourse.

Duration: 35 Years

1	The diversion of water shall only be within the bed of the watercourse within the area labelled "diversion channel" as shown on Plan CRC193934A, attached to and forming part of this consent, located at 71 Swamp Road, Hinds, Ashburton, on land with a legal description of Part Lot 7 DP1479, at or about map references NZTM 2000:1485416mE.5128931mN to NZTM 2000: 1485306 mE 5128595mN.
2	The diversion structure located at or about map reference NZTM 2000:1485416mE.5128931mN, shall be installed in accordance with the attached design plan CRC193934B, attached to and forming part of this consent.
	DIVERSION
3	The diversion authorised by this consent shall not result in the: a. Deflection of flows into the banks; or b. Diversion of flood waters onto any neighbouring properties; or c. Erosion of the bed and banks of the watercourse; or d. A reduction in the flood carrying capacity of the watercourse; or e. Damming of the flow of the watercourse.
4	All practicable measures should be undertaken to avoid: a. erosion of the bed and banks of watercourse; b. the discharge of sediment to the watercourse; c. the restriction of fish passage. as a result of the diversion.
5	The watercourse and seepage pond and any planting shall be fenced to prevent stock access.
	ADMINISTRATION
6	The Canterbury Regional Council may annually on the last five working days of May or November each year, serve notice of its intention to review the conditions of this resource consent for the purposes of: a. Dealing with any adverse effect on the environment which may arise from the exercise of this consent and which it is appropriate to deal with at a later stage; or b. Requiring the consent holder to carry out monitoring and reporting instead of, or in addition to, that required by the consent.


Environment Canterbury
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Plan CRC193934A
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Diversion Channel
Seepage Pond
Hinds River
Hinds River
Swamp
Swamp
Hinderaki Highway
1225
132
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Plan CRC193934B

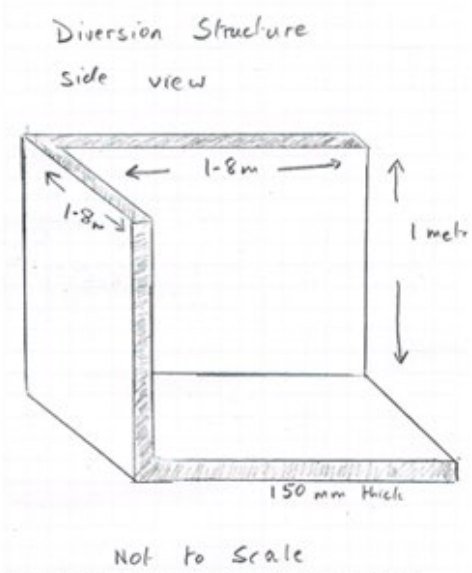


Figure 1A: Concrete diversion structure

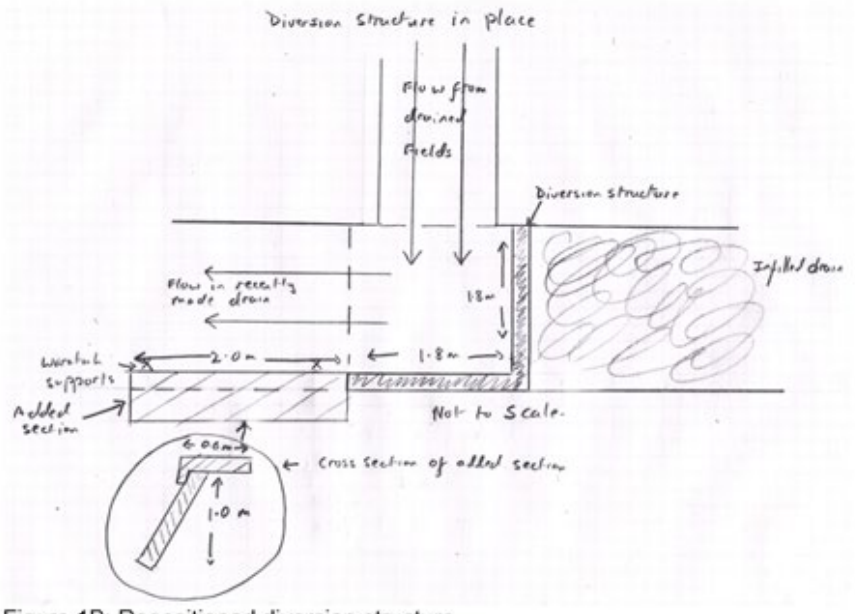
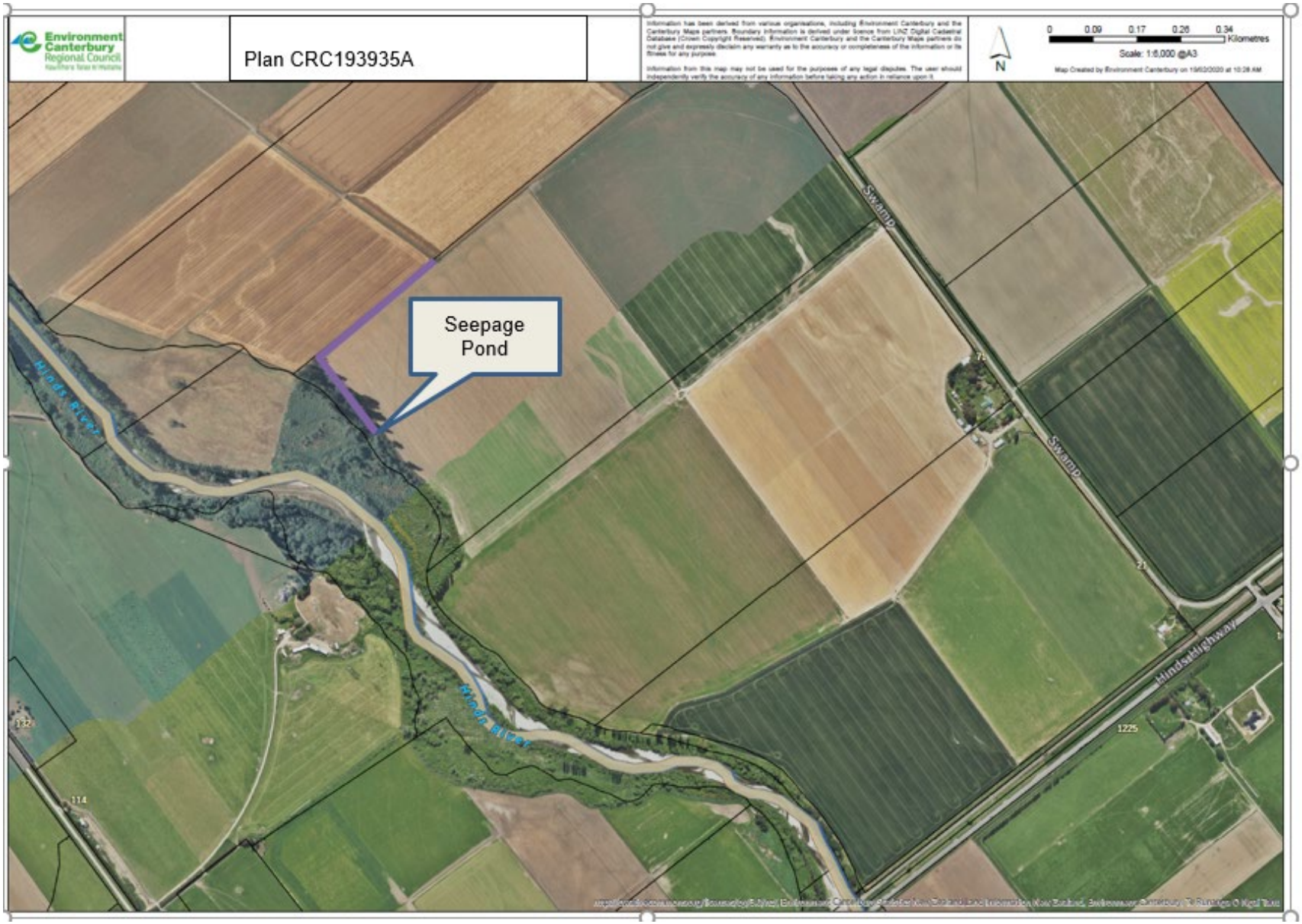


Figure 1B: Repositioned diversion structure

CRC193935: A discharge permit (s15) to discharge water into water.

Duration: 35 Years

	GENERAL
1	The discharge shall only be water into a seepage pond within the area labelled "seepage pond" as shown on Plan CRC193935A, attached to and forming part of this consent, located on land located at 71 Swamp Road, Hinds, with a legal description of Part Lot 7 DP1479, at or about map reference NZTM 2000:1485306 mE 5128595mN.
2	The discharge authorised by this consent shall not produce: a. Conspicuous oil or grease films, scums, foams, floatable or suspended material; and b. A change in visual clarity or colour as set out in Schedule 5 of the Canterbury Land and Water Regional Plan.
3	All practicable measures shall be undertaken to minimise any discharges of sediment-laden run-off into surface water.
	SPILLS
4	All practicable measures shall be taken to avoid spills of fuel or any other hazardous substances within the application site. These measures shall include: a. Refuelling of machinery and vehicles shall not occur within 20 metres of i. Open excavations; ii. Exposed groundwater; and iii. Surface water bodies; b. A spill kit shall be kept on site 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. c. In the event of a spill of fuel or any other hazardous substance, the spill shall be cleaned up as soon as practicable, the stormwater system shall be inspected and cleaned, and measures taken to prevent a recurrence; d. 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.
	ADMINISTRATION
5	The Canterbury Regional Council may annually on the last five working days of May or November each year, serve notice of its intention to review the conditions of this resource consent for the purposes of: a. Dealing with any adverse effect on the environment which may arise from the exercise of this consent and which it is appropriate to deal with at a later stage; or b. Requiring the consent holder to carry out monitoring and reporting instead of, or in addition to, that required by the consent.


Environment Canterbury
Regional Council
Plan CRC193935A
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0 0.09 0.17 0.26 0.34 Kilometres
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Map Created by Environment Canterbury on 19/03/2020 at 10:28 AM
Seepage Pond
Hinds River
Swamp
Swamp
Hinds Highway
Hinds River
1225
132
114

CRC195104: A land use consent (s13) to excavate and disturb the bed of the unnamed watercourse and seepage pond.

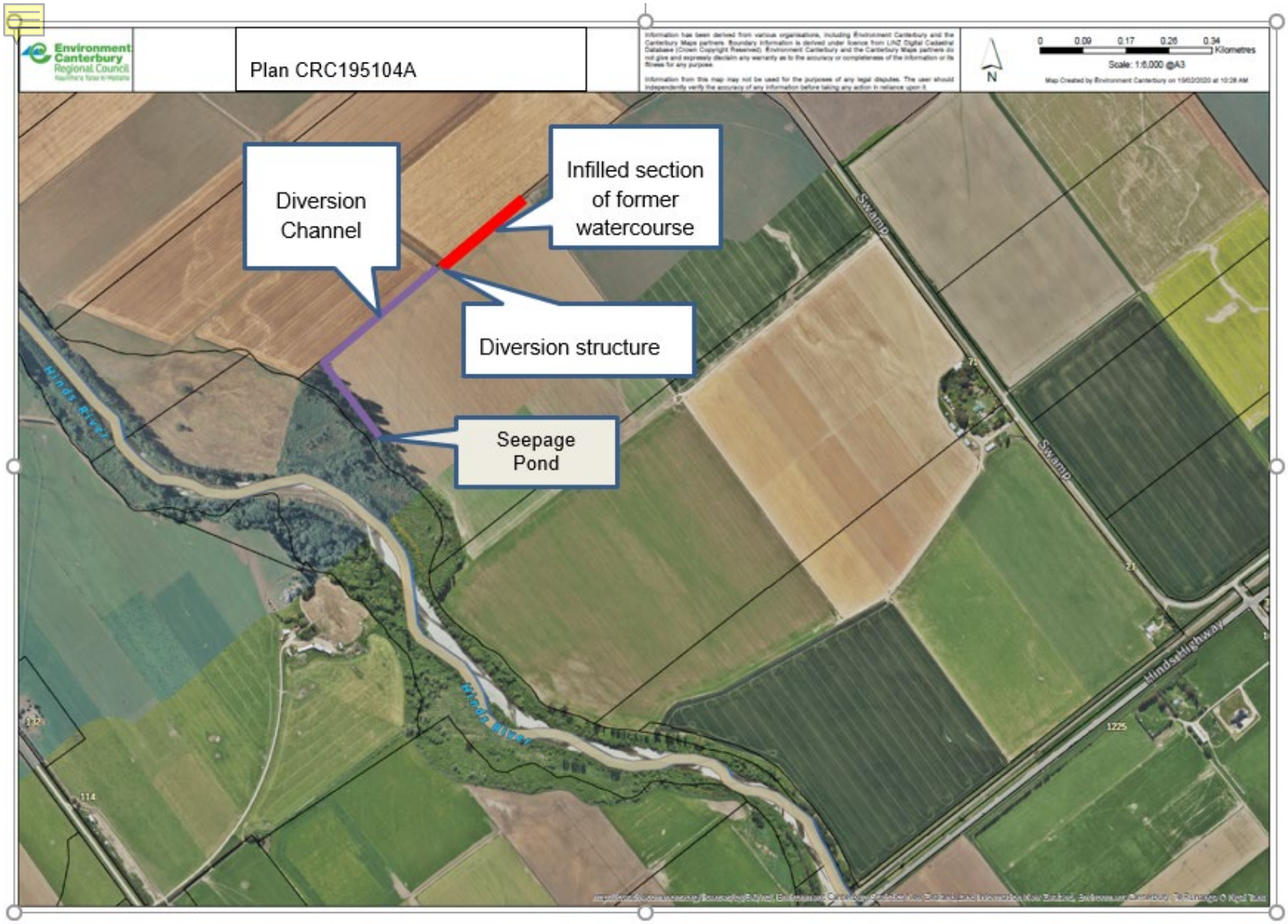
Duration 35 years

	LIMITS
1	The activities authorised by this consent shall be limited to works relating to the excavation and disturbance of the bed of a watercourse for the purposes of maintaining the channel of the watercourse and seepage pond.
2	The works carried out in accordance with condition (1) shall be located at a watercourse identified on Plan CRC194105A between map reference(s) NZTM 2000:1485416mE. 5128931mN and NZTM 2000: 1485306mE.5128595mN, and seepage pond at NZTM 2000: 1485306mE.5128595mN, located at 71 Swamp Road, Hinds, Ashburton, on land with a legal description of Part Lot 7 DP 1479.
3	The banks of the watercourse shall be maintained so they are: a. no steeper than 60 degrees from the point of diversion located at map reference NZTM2000: 1485416mE.5128931mN and the curve at map reference NZTM2000: 1485202mE.5128746mN; and b. no steeper than 45 degrees from the curve of the watercourse located at map reference NZTM2000: 1485202mE.5128746mN to the point of discharge to a seepage pond located at map reference NZTM2000: 1485306mE. 5128595mN.
4	The diversion structure located at or about map reference NZTM 2000:1485416mE.5128931mN, shall be installed in accordance with the attached design plan CRC195104B, attached to and forming part of this consent.
5	The maintenance works shall include the removal of weeds and any excessive sedimentation of the bed of the watercourse and seepage pond. *Advice notes:* *Where possible, use low impact maintenance methods, such as hand clearance which should be adopted ahead of more invasive techniques like excavators.* *Do not scrape the bed or banks with the digger bucket, bare banks are more prone to erosion and slumping and removing all bank vegetation removes habitat and refuges for fish and insects.*
	PRIOR TO WORKS
6	The consent holder shall ensure that prior to commencing any works as authorised by this consent, the Canterbury Regional Council, Attention: Regional Leader - Monitoring and Compliance, shall be notified at least five working days prior to the commencement of works.
7	Prior to commencing works, the consent holder shall provide a copy of: a. This consent document; b. Consent documents CRC193934 and CRC193935, or any variations thereof; and c. The Erosion and Sediment Control Plan (ESCP) as per condition (8)

	to all persons undertaking activities authorised by this consent and explain to those persons how to comply with the consent conditions.
8	Prior to the first exercise of this consent, the applicant shall establish and maintain an Erosion and Sediment Control Plan in accordance with the Canterbury Regional Council Erosion & Sediment Control Toolbox for Canterbury, which shall: a. detail the erosion and sediment control measures that will be taken to ensure compliance with the conditions of this consent and CRC193935; and b. be submitted to the Canterbury Region Council; Attention: Regional Leader - Monitoring and Compliance at least ten working days before works commence. All works shall be carried out in accordance with the Erosion and Sediment Control Plan. ***Advice note:*** *The Canterbury Regional Council Erosion & Sediment Control Toolbox For Canterbury can be found at http://esccanterbury.co.nz/*
	DURING WORKS
9	The consent holder shall not undertake works within flowing water. Maintenance works in the bed shall only be undertaken when the watercourse is dry and without flow. *Advice note: Where possible, use low impact cleaning methods, such as hand clearance ahead of more invasive techniques like excavators.*
10	*The seepage pond shall only have silt removed when dry, as far as is practicable.*
11	All practicable measures shall be undertaken to prevent sediment from entering surface water including, but not limited to: a. Sediment controls to be established prior to the onset of works and to remain in place until disturbed areas are stabilised; b. Stabilisation of disturbed areas as soon as practicable following works; c. Avoid placing any cut or cleared vegetation or debris in a position such that it may enter the waterway, and the removal of any cut vegetation from the waterway; and *d.* Removal of spoil and other waste material from works site upon completion of works.
12	The works authorised by this consent shall not result in the: a. Deflection of flows into the banks; or b. Diversion of flood waters onto any neighbouring properties; or c. Erosion of the bed and banks of the watercourse; or d. A reduction in the flood carrying capacity of the watercourse; or e. Damming of the flow of the watercourse.
13	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.*
14	All practicable measures shall be undertaken to minimise: a. erosion of the bed and banks; and

	b. the discharge of sediment. as a result of the works.
15	The channel shall be designed and constructed to have a flood carrying capacity that is equal to or greater than the existing capacity of the drain.
16	The watercourse banks and margins shall be planted to provide shade and stabilise the banks.
17	Within six months of the commencement of the consent, the consent holder, in consultation with the Canterbury Regional Council, Land Ecology Scientist, - Environmental Science and Hazards, at Canterbury Regional Council, shall provide the Canterbury Regional Council, Regional Leader – Monitoring and Compliance at Canterbury Regional Council, with a planting plan for the seepage pond. This plan shall include: a) Details of plants to be removed and planted around the periphery of the seepage pond; b) The planting plan shall be implemented within 12 months of the plan being submitted to the Canterbury Regional Council.
18	The watercourse and seepage pond and any planting shall be fenced to prevent stock access.
	HAZARDOUS SUBSTANCE SPILLS
19	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.*
20	All practicable measures shall be taken to avoid spills of fuel or any other hazardous substances within the application site. These measures shall include: a. Refuelling of machinery and vehicles shall not occur within 20 metres of i. Open excavations; ii. Exposed groundwater; and iii. Surface water bodies; b. A spill kit shall be kept on site 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. c. In the event of a spill of fuel or any other hazardous substance, the spill shall be cleaned up as soon as practicable, the stormwater system shall be inspected and cleaned, and measures taken to prevent a recurrence; d. 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
21	On the completion of works: a. All disturbed areas shall be stabilised and/or revegetated; and b. All spoil and other waste materials from the works shall be removed at least 20 metres from any waterway on the application site.
	ADMINISTRATION
22	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 which 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.
23	The lapsing date for the purposes of section 125 of the Resource Management Act 1991 shall be 31 March 2025.


Environment Canterbury
Regional Council
Plan CRC195104A
Scale: 1:6,000 @A3
Diversion Channel
Infilled section of former watercourse
Diversion structure
Seepage Pond
Hinds River
Hinds River
Swamp
Swamp
Hinds Highway
1225
114

Plan CRC195104B

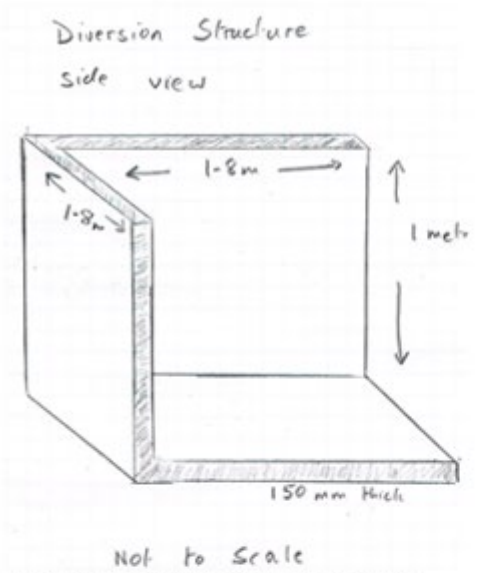


Figure 1A: Concrete diversion structure

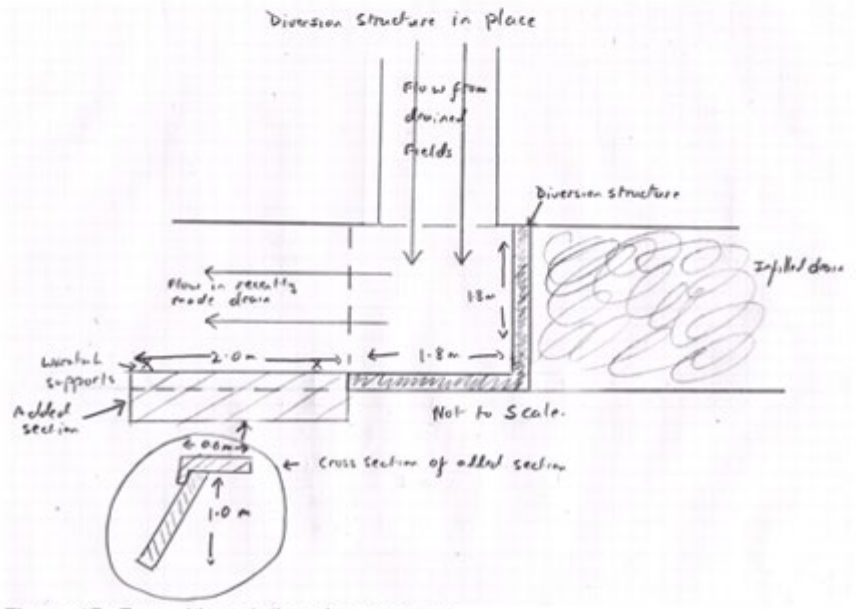


Figure 1B: Repositioned diversion structure