

IN THE MATTER OF

The Resource Management Act 1991

AND

IN THE MATTER OF

Consent review of Water Permit CRC030336.1 and
CRC203381 under section 128(1)(b).

BETWEEN

VALETTA HOLDINGS LIMITED
Consent Holder

AND

CANTERBURY REGIONAL COUNCIL
Consent Authority

REPORT AND DECISION OF HEARING COMMISSIONERS

Sharon McGarry and Hoani Langsbury

2 March 2023

Heard on the 23 November 2022

At the Hotel Ashburton, Racecourse Road, Ashburton.

Representations and Appearances

Consent Holder:

Mr Ben Williams, Counsel (Chapman Tripp)

Mr David and Mrs Jane Clark

Dr Helen Rutter, Senior Hydrologist (Aqualinc Research Limited)

Submitters

Forest & Bird – Ms Nicky Snoyink

Section 42A Reporting Officers:

Ms Gillian Ensor, Environmental Consultant (Enviser Limited)

- Mr Brydon Hughes, Hydrogeological Consultant (LWP Limited)

It is the decision of the Canterbury Regional Council, pursuant to section 131 and 104, and subject to Part 2 of the Resource Management Act 1991, to:

- REFUSE consent review CRC200194 of Water Permit CRC030336.1 authorising the taking of water from bore K36/0631 and not impose the minimum flow conditions; and
- REFUSE consent review CRC200204 of Water Permit CRC203381 authorising the taking of water from K36/0387 and Water Permit CRC203381 authorising the taking of water from K36/0225; and not impose minimum flow conditions.

BACKGROUND AND PROCEDURAL MATTERS

1. This is the report and decision of independent Hearing Commissioners Ms Sharon McGarry (Chair) and Mr Hoani Langsbury. We were delegated powers and functions¹ by the Canterbury Regional Council (**CRC** or 'the Council') to hear and decide consent reviews of Water Permit CRC030336.1 and Water Permit CRC203381 held by Valetta Holdings Limited ('the Consent Holder') pursuant to section 128(1)(b) of the Resource Management Act 1991 (**RMA** or 'the Act').
2. Notice of the consent review was served on the Consent Holders on 18 July 2019. The consent reviews proposed to insert new minimum flow conditions based on the Canterbury Land and Water Regional Plan (**LWRP**) from 1 July 2023, for the take and use of water for

¹ Under section 34A of the Resource Management Act 1991

irrigation from three groundwater bores (K36/361, K36/0387 and K36/0225) deemed to have a high degree of hydraulic connection to the river. It also proposed to insert new conditions relating to water metering requirements.

3. The Consent Holder was invited to propose alternative new conditions.² The Consent Holder disagreed that the takes from groundwater bores (K36/361, K36/0387 and K36/0225) have a high degree of hydraulic connection to the river and proposed the three takes should not be restricted by LWRP minimum flow levels for the South Branch of the Hakatere/Ashburton River.
4. The Consent Holder's alternative minimum flow conditions ('alternative minimum flow proposal') were publicly notified on 9 July 2022. Eight submissions were received within the submission period; with six submissions opposed and two in support. Six submissions indicated that they wished to be heard.
5. Prior to the hearing, a report was produced pursuant to section 42A of the Act by CRC's Reporting Officer Ms Gillian Ensor, an Environmental Consultant for Enviser Ltd. This 's42A Report' included technical review of the application and written report by Mr Brydon Hughes, Hydrogeological Consultant for LWP Ltd (Appendix 5), a set of new recommended conditions (Appendix 6) and letter from Chapman Tripp dated 26 November 2021.
6. The s42A Report provided an analysis of the matters requiring consideration and recommended the resource consent reviews should be granted subject to the minimum flow conditions proposed to implement the LWRP. The s42A Report, the Consent Holder's expert evidence and submitters' expert evidence was pre-circulated prior to the hearing³. This evidence was pre-read by us and was 'taken as read' at the hearing.
7. Prior to the hearing, the Consent Holder provided further information regarding bore K36/0225 based on recent aquifer testing. It was agreed between the Consent Holder and the CRC that no minimum flow conditions would be imposed on bore K36/0225 through the consent review.
8. The hearing commenced at 9.00 am on 23 November 2022 and was adjourned at 2.15 pm the same day to enable the provision of the Consent Holder's written right of reply.
9. We undertook a site visit on 25 November 2022.
10. At the adjournment of the hearing, Mr Williams sought additional time to undertake further conferencing of expert witnesses before providing a written right of reply on behalf of the Consent Holder.
11. On 20 February 2023, Mr Williams provided a memorandum of counsel (dated 17 February 2023) outlining resolution between the CRC and the Consent Holder in relation to the degree of hydraulic connection between the subject bores and the river. Attached were copies of two memorandums from Aqualinc to Mr Hughes (dated 24 January 2023 and 9

² In accordance with section 129(1)(d).

³ In accordance with section 103B of the Act

February 2023) and a letter from Mr Hughes (dated 15 February 2023) to Aqualinc. Mr Williams advised that, assuming the Commissioners accept and agree with the position reached between the parties, the consent review must be declined given there is no express ability under the RMA to withdraw the notice of review.

12. In response to our request for comment from the CRC Reporting Officer, we received an Addendum to the s42A report (dated 21 February 2023) on 23 February 2023 confirming the advice of Mr Hughes and a revised recommendation to decline consent reviews CRC200194 and CRC200204.
13. We closed the hearing on 24 February 2023.

WATER PERMIT CRC030336.1 AND WATER PERMIT CRC203381

14. Water Permit CRC030336.1 and Water Permit CRC203381 authorise the taking and use of water for irrigation at a property located near the South Branch Ashburton River at Mayfield Valetta Road, Ashburton. Water Permit CRC030336.1 was granted in 2003 and expires in 2038. Water Permit CRC203381 was originally granted in 2011 as consent CRC132046, with the conditions changing in 2020, and expires in 2038.
15. Water Permit CRC030336.1 authorises the taking of up to 24 litres per second (**l/s**) from bore K36/0361, which is 10 metres deep, at or about map reference NZMS 260 K36:9127-1686.
16. Water Permit CRC203381 authorises the taking of water from six bores. Water can be taken from four bores at a depth of greater than 40 metres below ground level (**bgl**) and two bores at a depth of less than 40 metres bgl. The two 'shallow' bores were the subject of this consent review, but it is now agreed bore K36/0225 is not deemed to have a 'high' degree of hydraulic connection with the river and no minimum flows are recommended to be imposed. Prior to the hearing, the water take from bore K36/0387 at a rate not exceeding 18 l/s was deemed to have a 'high' degree of hydraulic connection to the river and the imposition of minimum flow conditions was recommended by the CRC consent review.

HAKATERE/ASHBURTON RIVER CATCHMENT RESOURCE CONSENT REVIEW 2019

17. The CRC has undertaken reviews of 90 resource consents in the Hakatere/Ashburton River catchment to implement the LWRP minimum flow regime set out in Table 13(b), to be met from 1 July 2023, and the water metering and telemetry provisions.
18. Background to the review process and the work undertaken by the CRC in the 18 months prior to the review is set out in the s42A Report. Copies of the notice of review letters and information for consent holders were appended to the s42A Report.
19. Policy 13.4.9 of the LWRP provides for the consent review process prior to 1 July 2023 as the best method to ensure equity in the catchment in achieving the outcomes of the

Ashburton Water Zone Committee's Zone Implementation Programme 2011 (ZIP)⁴ and the objectives in the LWRP. It is acknowledged that the benefits to the environment envisaged by the LWRP will only be realised when all resource consents for all surface water takes and hydraulically connected groundwater takes are subject to the LWRP minimum flows.

20. The CRC has been working on the consent review process with the Ashburton Water Zone Committee to ensure the review meets the outcomes of the LWRP and to engage with consent holders and the community throughout the review process. Consent holders affected by the consent review were served formal written notice and received an information booklet⁵ summarising CRC's assessment of the impact of the minimum flow changes for each of the eight surface water abstraction zones in the Hakatere/Ashburton River catchment.
21. To date 70 consent reviews have been decided, with 63 consents issued with the LWRP minimum flows and seven issued without. Three consents have been surrendered and fifteen reviews are yet to be decided (including this consent review).
22. In the South Branch sub-catchment, 20 consents have been reviewed and 15 have been decided, with the LWRP minimum flows added to 13 of the consents. Four consents, including this consent, are yet to be decided and one consent has been surrendered.
23. In 2018, the CRC completed a desktop stream depletion assessment of all bores screened at less than 35 m bgl to determine which consents authorising the taking of groundwater should be included in the consent reviews. Using methodology of Schedule 9 of the LWRP the CRC estimated the degree of stream depletion to be high for the takes from groundwater bores K36/361 and K36/0387 because the effect was greater than 5 l/s.
24. The minimum flow condition proposed by the CRC for CRC030336.1 was new Condition 11 as follows:

From 1 July 2023:

- a. Whenever the flow in the South Branch of the Ashburton River, is at or below 4,650 litres per second, there shall be no taking of water in terms of this permit during the next succeeding day.*
- b. Whenever the flow in the mainstem of the Ashburton River is:*
 - i. at or below 7,275 litres per second, the taking of water shall be subject to a reduction of take during the next succeeding day as set in Table 1 below.*
 - ii. at or below 6,000 litres per second, there shall be no taking of water in terms of this permit during the next succeeding day.*
- c. For the purposes of this condition:*
 - i. the flow in the South Branch of the Ashburton River shall be the mean flow as estimated by the Canterbury Regional Council at the North Branch confluence located at approximately map reference Topo50 BY21:976-399, for the 24 hour period ending at noon on any one day.*

⁴ Under the Canterbury Water Management Strategy.

⁵ 'Hakatere/Ashburton River catchment resource consent review 2019: Information for consent holders: Impacts of the consent reviews on water availability.'

ii. the flow in the mainstem of the Ashburton River shall be the mean flow as estimated by the Canterbury Regional Council in the Ashburton River at the State Highway 1 Bridge recorder site located at map reference Topo50 BY21:999-351, for the 24 hour period ending at noon on any one day.

Table 1	
Flow in River (litres per second)	Reduction in rate of take
At or below 7,275	25 %
At or below 6,850	50 %
At or below 6,425	75 %

Advice Note: The minimum flow restrictions in clause (a) and (b) of this condition both apply. The consent holder must not take water when either of the minimum flow restrictions are triggered.

25. The minimum flow condition proposed by the CRC for CRC203381 was new Condition 11 as follows:

In regards to K36/0387, from 1 July 2023:

- a. Whenever the flow in the South Branch of the Ashburton River, is at or below 4,650 litres per second, there shall be no taking of water in terms of this permit during the next succeeding day.
- b. Whenever the flow in the mainstem of the Ashburton River is:
 - i. at or below 7,275 litres per second, the taking of water shall be subject to a reduction of take during the next succeeding day as set in Table 1 below.
 - ii. at or below 6,000 litres per second, there shall be no taking of water in terms of this permit during the next succeeding day.
- c. For the purposes of this condition:
 - i. the flow in the South Branch of the Ashburton River shall be the mean flow as estimated by the Canterbury Regional Council at the North Branch confluence located at approximately map reference Topo50 BY21:976-399, for the 24 hour period ending at noon on any one day.
 - ii. the flow in the mainstem of the Ashburton River shall be the mean flow as estimated by the Canterbury Regional Council in the Ashburton River at the State Highway 1 Bridge recorder site located at map reference Topo50 BY21:999-351, for the 24 hour period ending at noon on any one day.

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At or below 6,425	75 %

Advice Note: The minimum flow restrictions in clause (a) and (b) of this condition both apply. The consent holder must not take water when either of the minimum flow restrictions are triggered.

26. The CRC recommended consent conditions will mean that from 1 July 2023, the taking of water from bores K36/0631 and K36/0387 will change from not being subject to minimum flow restrictions, to being subject to:
 - a) full restrictions when the flow in the South Branch Ashburton River is at or below 4,650 l/s;
 - b) full restrictions when the flow in the Ashburton River mainstem at SH1 is at or below 6,000 l/s; and
 - c) partial restrictions when the flow in the Ashburton River mainstem at SH1 is at or below 7,275 l/s.
27. The CRC also propose two new conditions relating to water metering and reporting requirements. These conditions were accepted by the Consent Holder.

ALTERNATIVE NEW MINIMUM FLOW CONDITIONS PROPOSED BY CONSENT HOLDERS

28. The Consent Holder’s concerns regarding the consent reviews were set out in a letter from Chapman Tripp dated 26 November 2021. The letter raised concern the CRC was seeking to relitigate aquifer parameters and the original grant of consent; the consent review cannot render the consents ineffective; there is no legal requirement for the Consent Holder to provide a fresh assessment of effects; the CRC had not proven the effects were not assessed or contained errors to justify the review; and the desktop model had underestimated the distance between the bores and the stream.
29. The Consent Holder has provided further technical information from Aqualinc Research Limited in memorandums dated 19 May 2022 and 17 June 2022 based on further aquifer testing. On the basis of this information, the Consent Holder considers the hydraulic connection between the subject bores and the river is not high.
30. In June 2022, the Consent Holder formally proposed that the taking of water from each bore is not subject to any minimum flow restrictions.
31. The Consent Holder considers stream depletion effects were considered when the consents were originally granted and it was determined that the taking of water did not need a minimum flow. The Consent Holder considers the original consent decision should stand and must not be changed.

DESCRIPTION OF THE AFFECTED ENVIRONMENT

32. We adopt⁶ the description of the affected environment set out in the s42A Report. This should be read in conjunction with this decision.
33. The consent site is within the Ashburton Water Zone under the LWRP. Section 13 of the LWRP includes an overview of the natural and physical resources and the communities within the catchment. The LWRP acknowledges surface water and groundwater quality in the catchment is degraded. The lower reaches of the Hakatere/Ashburton River and its mouth/hāpua are adversely affected by water quality and quantity stressors.
34. Surface water and groundwater is deemed to be overallocated under the limits of the LWRP. The LWRP provides for the imposition of minimum flow conditions on surface water and hydraulically connected groundwater takes through consent reviews. The consent review does not address the overallocation of water resources in the catchment. The LWRP provisions anticipate that many consent holders would seek to 'swap' surface water takes and groundwater takes with a high level of hydraulic connection to deep groundwater takes to reduce overallocation and provides for this.
35. We accept the hydrology of the Hakatere/Ashburton River is complex, driven by a combination of rainfed rivers and streams, spring fed stream and connected groundwater bodies.
36. The Hakatere/Ashburton River supports high indigenous ecological values, a sports fishery and recreational values. It has a high abundance of rare and threatened river nesting birds, threatened fish species, diverse native fish species and important mahinga kai species, such as tuna/eels and kanakana/lamprey.
37. The Hakatere/Ashburton River is a Statutory Acknowledgement Area under the Ngāi Tahu Claims Settlement Act 1998. Three Rūnanga consider the Ashburton Water Zone part of their takiwā – Arowhenua, Taumutu and Ngāi Tūāhuriri.
38. The catchment is in the Department of Conservation (**DOC**) conservancy area of Ruapakupa and the Hakatere/Ashburton River is a DOC site of special wildlife significance, land of national significance and a recommended area of protection. The surface waterbodies in the catchment provide habitat for rare birds, fish, plants and other species, as well as supporting a wide range of recreation values.

SUBMISSIONS

39. The eight submissions received were accurately summarised in paragraph 93 of the s42A Report and should be read in conjunction with this decision.

⁶ In accordance with section 113(3).

40. All six submissions opposed to the Consent Holder’s proposal to not include minimum flow conditions, seek imposition of the LWRP minimum flows, as proposed through the CRC consent review process.
41. The two submissions support the Consent Holder’s proposal to not include minimum flow conditions proposed alternative minimum flow conditions based on the original consent granted and a low hydraulic connection to the river.

THE HEARING

Consent Holders’ Case

42. **Mr Ben Williams**, Counsel for Valetta Holdings Limited, provided written legal submissions addressing the justification for the review and the inability to re-litigate the grant of consent through a consent review. He submitted the CRC ‘asserts’ the two subject bores have a direct or high level of stream depletion by relying on a desktop assessment and the Theis stream depletion solution method, which were a good first estimate because of the conservative assumptions used. He stated the original grant considered stream depletion in ‘considerable detail’ and that testing showed (and the CRC agreed) there was not a direct or high level of stream depletion. He considered these assessments had been ignored by the CRC and the Consent Holder had been forced into doing further bore testing to prove again the bores do not have a direct or high level of stream depletion. He noted this further testing had recently been the subject of peer review⁷ and there remained disagreement with the CRC regarding the extent of any stream depletion. He considered the CRC desktop assessment should not ‘trump’ the Aqualinc aquifer test, which has now been peer reviewed. He submitted the burden of proof was on the CRC (and submitters in opposition) to produce evidence that the subject bores have a direct or high stream depletion effect and that a desktop assessment and ‘mere suspicion of an effect’ did not satisfy this evidential burden. He considered the evidence from the Consent Holder (including the peer review) was comprehensive and proved the bores do not have a high stream depletion effect. He noted the consent review sought to challenge the ‘categorisation of the consents as groundwater’, which was an aspect of the consent that would normally be associated with a s128(1)(c) review to correct inaccuracies. He concluded amending the consents to include minimum flow restrictions was not appropriate and in light of the Consent Holder’s evidence would be inconsistent with the LWRP.
43. **Mr David Clark**, provided a written statement of evidence in support of himself and his wife and their family and the Consent Holder’s no minimum flow proposal. He described his farming experience, the development of irrigation on the property, their farming system, water use, the consenting of the subject bores, the importance of the bores, the broader effect on their consents and classification of the consents. He stated that the effect of minimum flow restrictions at critical periods would mean a portion of the farm would likely revert to a dryland farming system and the loss of gross farm income would drop from \$644,800 to \$131,000 for the affected 104 ha portion of the property. He noted an income drop of this degree would require significant entrenchment of their business activity and

⁷ Tabled at the hearing ‘Review of David Clark Pump Test’ by Nick Dudley Ward dated 18 November 2022.

have a marked effect on the viability of their business. He highlighted the existing consents were granted on the basis they had a low hydraulic connection to the river and the groundwater volume was allocated over two Groundwater Allocation Zones – the Valetta Groundwater Zone and the Ashburton River Groundwater Zone. He was concerned that if a portion of their groundwater takes were now deemed to be surface water takes, they were fearful of the ability to explore the possibility of drilling for deep water and ‘converting’ deemed surface water to groundwater. He considered the level of evidence required would be that expected for a new consent for a new activity rather than what had been expected to respond to the CRC initiated consent review. He highlighted the consent review process had come at significant cost and stress to his family and felt like they had to prove their case twice within the lifetime of the consent. He stated they felt bullied into accepting the CRC’s desktop assessment over the actual aquifer tests undertaken and accept by the Council.

44. **Dr Helen Rutter**, a Senior Groundwater Hydrologist with Aqualinc Research Limited, provided a written statement of evidence reviewing available data and commenting on the evidence of Mr Hughes. She noted that to assess the degree of hydraulic connection Aqualinc had compared river stage data with groundwater level measures in the Valetta bores, provided a conceptual hydrological setting and completed an aquifer test. She considered the information pointed to the conclusion the Valetta bores do not have a direct or high degree of hydraulic connection to the South Branch but may have a low to moderate connection. She noted that if there was a high degree of connection, we would expect to see changes in groundwater levels relatively quickly in response to the change in the Ashburton River stage height. She considered her Figures 2 and 3 showed this did not occur. She acknowledged it was possible that there was a delayed response to the groundwater levels as a result of the change in the Ashburton River stage, but that if this was to occur it would be more likely to be a low or moderate connection with the river. She highlighted the groundwater level monitoring in bores K36/0387 and K36/0225 (over the period 8 March 2022 to 12 April 2022) and the comparison with river flows suggested there was no immediate connection between groundwater and surface water, but noted there was some delayed response in bore K36/0387. She noted a review of shallow bore logs in the immediate area showed the presence of material with low permeability that may provide some degree of confinement which could account for a reduced hydraulic connection between groundwater and the river in this location. She considered Aqualinc’s information provided a significantly more robust assessment of the potential hydraulic connection than the standard desktop assessment. She highlighted Mr Hughes’ evidence was written before a recent constant-discharge aquifer test on bore K36/0387 was undertaken in August 2022. She noted this bore (and not bore K36/0387) had been pumped because it was the middle bore of the three subject bores and would likely provide the best representation of the effects of exercising the consents. She noted the drawdown curve for the pumped bore K37/0387 shows a Thesis (confined) response, with no evidence of river recharge that would have caused a levelling out of drawdown. She highlighted the aquifer test plan had been provided to the CRC for review and comment, and had been changed following the feedback. She considered it was inconsistent with the principles of natural justice to now find fault with the aquifer test and she questioned use of synthesised data for the Mt Somers stage data.

Submitters

45. **Forest & Bird** was represented at the hearing via internet connection by Ms Nicky Snoyink. Ms Snoyink outlined Forest & Bird's involvement with the LWRP process, its support for implementation of the minimum flows agreed to by the community, and the important ecological values in the catchment. She considered no minimum flow conditions would be contrary to the LWRP and would undermine the collaborative planning process undertaken.

Section 42A Report

46. **Ms Gillian Ensor**, an Environmental Consultant with Enviser Limited prepared the s42A Report and attended the hearing with the CRC expert reviewers. The s42A Report concluded the proposed alternative minimum flow was inconsistent with the relevant provisions of the NPSFM, the RPS and LWRP; would result in adverse effects on the ecological environment, other water users and cultural values; and would not achieve the purpose of the RMA, as defined in section 5. The Report recommended that the consent review be granted with the imposition of the LWRP minimum flows.
47. **Mr Brydon Hughes**, a Hydrogeological Consultant (LWP Limited), provided a report addressing the CRC desktop assessment, the hydrogeological environment of the Hakatere/Ashburton River catchment, information provided by the Consent Holder and submissions relating to effects on groundwater. He noted limited data was available to characterise the hydraulic properties of shallow water bearing layers in the Valetta area, but that CRC shallow monitoring wells (K36/0061 and K36/0282) located close to the western boundary of the Valetta property indicated groundwater levels were significantly influenced by hydraulic connection to the river (his Figures 5 and 6). He noted the information and data provided from the aquifer test on K36/0631 undertaken for the grant of consent had not been located on the consent file, and the Consent Holder and consultant who undertook the work also could not locate a copy. He highlighted comments recorded on the CRC groundwater database, which reported transmissivity of 875 m²/day and a specific yield of 0.235; and concerns raised by CRC staff in reviews of the pump test in 2002 and 2008 regarding interpretation of the aquifer test data and the presence of a boundary response that was incorrectly assessed in the test documentation as aquifer leakage. He noted the CRC aquifer test summary (his Figure 7) records these concerns regarding the reliability and accuracy of the aquifer test. He highlighted the March/April 2022 period of groundwater level monitoring in K36/0387 appeared to respond to variation in the river stage but also coincided with only minor variations in the river stage. He considered the bore logs of K36/0631 and K36/0387 did not indicate the presence of low permeability material between the screened interval and the water table that could limit hydraulic connection to the river. He highlighted groundwater quality samples in nearby bores screened at similar depths to the Valetta bores exhibit water quality consistent with a significant contribution from river recharge. He concluded the information outlined by Aqualinc did not justify altering the hydraulic connectivity classification assigned to bores K36/0631 and K36/0387. He expressed surprise the aquifer testing was not undertaken on bore K36/0631 given it is closest to the river and a potential recharge boundary effect has previously been identified. He considered extrapolation of the aquifer test results from bore K36/0387 to bore K36/0631 remained problematic.

48. At the hearing, Mr Hughes provided an addendum report (dated 21 November 2022). He noted that flow gaugings indicated significant loss from the South Branch upstream of the Bowyers/Taylor's Stream confluence and piezometric contours indicated groundwater flow in a south-easterly direction, which was consistent with recharge to the unconfined aquifer across this reach. He highlighted flows in the South Branch were in recession during the recent aquifer testing period and that antecedent conditions were not ideal testing conditions without consideration of barometric conditions. However, he considered the results in bore K36/0631 clearly show a drawdown. He concluded the results could not be used to infer much about the hydraulic connection to the river due to the location of the testing and the duration of pumping. He noted that if the results were extrapolated out over 150 days the effect was quite high. He considered the aquifer testing had derived the hydraulic properties but did not provide much information about hydraulic connection to the river without pumping the closest bore and pumping at a higher rate. He stated that using the aquifer parameters from the testing for the Schedule 9 assessment still resulted in a 'high' degree of hydraulic connection. He noted there was a high level of uncertainty for the value assumed for stream bed conductivity and that this remained because the bore was not pumped at a higher enough rate for long enough.

Additional Information

49. The memorandum from Aqualinc (dated 24 January 2023) outlined the results from a constant rate discharge test for bore K36/0387 which had recently completed with monitoring in observation bores K36/0255 and K36/0631, and three piezometers. Using the results from this further aquifer testing and detailed interpretation of geological logs, Aqualinc provided a conceptualisation of the groundwater system using the Hantush (1965) method and a revised stream depletion assessment. On the basis of this further assessment, Aqualinc concluded that K36/0387 had a 'low' connection to the river under Schedule 9 of the LWRP.
50. The memorandum from Aqualinc (dated 9 February 2023) outlined recently rediscovered data from a constant discharge test completed in October 2002 on bore K36/0631. On the basis of further analysis of the data and use of a conceptual model, Aqualinc concluded there was no evidence for a 'high' or direct degree of connection with the river due to the presence of an effective clogging or low permeability layer.
51. Mr Hughes' letter (dated 15 February 2023) noted that the additional information provided by Aqualinc had gone some way towards addressing his concerns by developing a conceptual model to justify some form of hydraulic boundary intermediate between the subject wells and the river. He considered that this additional information in conjunction with the further analysis of the rediscovered data for K36/0631 was sufficient, on balance, to support the Consent Holder's interpretation that all three Valetta bores (K36/0387, K36/0631 and K36/0225) could be reasonably classified as having a 'moderate' or lower degree of connection with the river; and under Schedule 9 of the LWRP would not be subject to minimum flow cut-offs.

ASSESSMENT

52. In assessing the review, we have considered the s42A Report and technical reviews, the pre-circulated evidence, and the evidence provided during and after the hearing adjournment. We have summarised this evidence above.
53. Our assessment is of the alternative proposal of not imposing a minimum flow condition under section 104 of the Act and the effect of this proposal on the environment.
54. Mr Williams submitted the Panel needs to be satisfied that the implementation of minimum flows is justified and appropriate. We find the CRC was justified in undertaking the consent reviews to implement the provisions of the LWRP. We disagree with Mr Williams that the consent review seeks to 're-litigate the grant of consent'. We consider the consents under review were granted in on the basis of the information and assessment of effects available at that time. Section 128(1)(b) provides for consent reviews to implement operative regional rules. We accept the CRC consent reviews are an appropriate process to implement the LWRP minimum flow levels where there is a 'high' degree of hydraulic connection.
55. Mr Williams submitted nothing had changed since the original assessment of stream depletion effects (which had been accepted by the CRC for the grant of consent), except that the CRC had lost the actual aquifer test information. He considered the Consent Holder should be able to rely on the original assessments regardless of whether the information is available or not.
56. We consider it is unfortunate that none of the parties had copies of the aquifer test data available at the hearing and consider it is also the responsibility of the consultants and the Consent Holder to keep copies of the assessment undertaken not just the CRC. It is fortunate that some of the data from the 2002 aquifer testing was only rediscovered after the adjournment of the hearing, however, we note Mr Hughes advised the test data were of relatively low quality and would be unlikely to satisfy current CRC aquifer test guidelines. Overall, we consider it is reasonable for CRC to require provision of information relating to the consent reviews to the current standard or to provide multiple lines of evidence where there is uncertainty, regardless of what was required at the time consent was granted.

Statutory Considerations

57. Sections 129 and 130 of the Act set out the notice of review, public notification, submission and hearing process.
58. Section 130 sets out matters relating to public and limited notification and states that sections 96 to 102 and 95 to 95G shall, with all necessary modifications, apply in respect of a review of any resource consent.
59. Section 130(1) establishes that the notification provisions apply as if the notice of review were an application for a resource consent, and the consent holder were the applicant.

60. Section 130(3) states that sections 95 to 95G of the RMA (notification requirements) apply, with all necessary modifications, as if:
- (a) *the review of consent conditions were an application for a resource consent for a discretionary activity; and*
 - (b) *the references to a resource consent and to the activity were references only to the review of the consent conditions and to the effects of the change of conditions respectively.*
61. Section 131 states when reviewing the conditions of a resource consent, the consent authority -
- (a) *shall have regard to the matters in section 104 and to whether the activity allowed by consent will continue to be viable after the change; and [...]*
 - (b) *may have regard to the manner in which the consent has been used.*
62. Section 132(2) states that sections 106 to 116 and sections 120 and 121 apply, with all the modifications to a review under section 128 as if the review is an application for a resource consent and the consent holder were an applicant for a resource consent.
63. In terms of section 104(1), and subject to Part 2 of the Act, which contains the Act’s purpose and principles, the consent authority must have regard to-
- (a) *Any actual and potential effects on the environment of allowing the activity;*
 - (ab) *Any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment offset or compensate for any adverse effects on the environment that will or may result from allowing the activity;*
 - (b) *Any relevant provisions of a national environmental standard, other regulations, a national policy statement, a New Zealand coastal policy statement, a regional policy statement or a proposed regional policy statement, a plan or proposed plan; and*
 - (c) *Any other matters the consent authority considers relevant and reasonably necessary to determine the application.*
64. We consider each of these sections of the RMA below.

Section 104(1)(a) Actual and potential effects on the environment

65. We accept the agreement between the parties that the additional data and analyses provided by the Consent Holder are sufficient to conclude the subject bores (K36/0387 and K36/0631) can be classified as having a ‘moderate’ degree of hydraulic connection with the river.

Section 104(1)(ab) Any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment offset or compensate for any adverse effects on the environment that will or may result from allowing the activity

66. No relevant measures were identified by any party for our consideration under s104(1)(ab).

Section 104(1)(b) Relevant objectives and policies

67. An analysis of the relevant provisions of the Resource Management (National Standards for Freshwater) Regulations 2020 (**NESF**), National Policy Statement for Freshwater Management 2020 (**NPSFM**), the National Standards for Sources of Human Drinking Water (**NZSDW**), the Canterbury Regional Policy Statement (**RPS**), and the Canterbury Land and Water Regional Plan (**LWRP**) was provided in the s42A Report.
68. As outlined above, we accept that the LWRP provisions give effect to the NPSFM-2017, but are yet to be reviewed to give effect to the NPSFM-2020. We acknowledge that is up to the Consent Authority to *give effect* to the NPSFM-2020, by way of a notified plan change by the end of 2024. We are obliged to *have regard* to the objectives and policies of the NPSFM-2020. In doing so, we have focused our assessment on the direction of the NPSFM-2020 and the concept of Te Mana o te Wai.
69. We have had regard to the requirement to manage the resource in a way that prioritises the health and well-being of waterbodies and freshwater ecosystems as a first priority, the health needs of people (drinking water) as a second priority, and the ability of people and communities to provide for their social, economic and cultural well-being as a third order priority.
70. We have had regard to the need to prevent any further degradation of freshwater, to make intermediate improvements to existing environmental degradation within the next five years, and to reverse past damage to bring waterways and ecosystems into a healthy state within a generation.
71. We find that the under Schedule 9 of the LWRP the water takes from the subject bores are not required to be subject to minimum flow restrictions set out in Table 13(b).

Section 104(1)(c) Other matters

72. We note the relevance of the CWMS, Te Rūnanga o Te Ngāi Tahu Freshwater Policy Statement (**FPS**), Te Whakatau Kaupapa Resource Management Strategy, Mahaanui Iwi Management Plan 2013 and the Iwi Management Plan of Kāti Huirapa for the area Rakaia to Waitaki 1992.
73. On the basis of the agreement reached since the adjournment of the hearing, we are satisfied that no minimum flow conditions are required to be imposed to be consistent with the outcomes sought by these other relevant documents.

Part 2 of the Act

74. The s42A Report noted that consideration of Part 2 of the Act is not prevented, but that it cannot be used to justify an application that is otherwise not supported by objectives and policies. It noted that the objectives and policies of the LWRP hold significant weight and will be largely determinative.

75. We agree that the provisions of the LWRP should be given significant weight. However, we consider that these should be read with regard of the clear priorities of the NPSFM-2020. We accept that the NPSFM-2020 gives effect to Part 2 of the Act.
76. We do not consider that reference to Part 2 would add anything to the evaluative assessment we have undertaken under sections 104.

Overall Conclusion

77. We conclude that given the agreement reached between the parties and the revised recommendation of the s42A Reporting Officer, the consent reviews are refused.

Decision

78. **For the above reasons, it is the decision of the Canterbury Regional Council, pursuant to sections 131 and 104, and subject to Part 2 of the Resource Management Act 1991, to:**
- a) **REFUSE consent review CRC200194 of Water Permit CRC030336.1 authorising the taking of water from bore K36/0631 and not impose the proposed new consent conditions; and**
 - b) **REFUSE consent review CRC200204 of Water Permit CRC203381 authorising the taking of water from K36/0387 and Water Permit CRC203381 authorising the taking of water from K36/0025; and not impose the proposed new consent conditions.**

Dated at Christchurch this 2nd day of March 2023



Sharon McGarry
Hearing Commissioner (Chair)



Hoani Langsbury
Hearing Commissioner