

Resource Management Act 1991
Canterbury Regional Council
Decision of Dr Philip Burge (CRC Principal Consents Advisor)

Application by Team Blueberry Limited and Trevor James Bunting (“the applicants”) to:

Canterbury Regional Council for:

**a partial site-to-site transfer pursuant to s136(2) of the Resource Management Act of
Water Permit CRC221526**

The Application

1. The application to the Canterbury Regional Council is for a:
 - a. a partial site-to-site transfer of Water Permit CRC221526;
 - b. if granted, the transfer will result in two water permits as follows:
 - i. CRC223392 – Team Blueberry Ltd (retained portion)
 - ii. CRC223393 – Trevor James Bunting
2. As a site-to-site transfer of an existing water permit the duration sought aligns with that of CRC221526, being 16 July 2025.
3. This application seeks to transfer 20,000 m³/yr of allocation from water permit CRC221526 (held by Team Blueberry Ltd) to Trevor Bunting for irrigation of a vineyard. The transferred portion is proposed to be taken at a maximum rate of 3L/s from bore N34/0124, with a daily volume of 96 m³/day.
4. The application was limited notified to two parties being:
 - a. Te Ngāi Tūāhuriri Rūnanga; and
 - b. Home Creek Investments Limitedon the 31 March 2023.
5. Home Creek Investments Ltd made a submission on the application in opposition to the application and asked to be heard. The submitter subsequently withdrew their submission on 17 July 2023.
6. No submission was received from Ngāi Tūāhuriri Rūnanga. I note however, that while no submission was received, this does not mean that adverse effects on the rūnanga have been addressed.
7. The Canterbury Regional Council (CRC) has delegated to me (in my role as a Principal Consents Advisor and a member of the council's Resource Managers Officers Group (RMOG)), the authority to decide whether an application should be granted if that application has been limited notified but where there are no submitters to be heard.
8. To assist in making this decision, a Section 42A Officer's report has been prepared by Mr Thomas Sturman. His report describes the details associated with the application, an assessment of the effects associated with the proposal and makes recommendations regarding

whether the application should be granted or refused. The report also recommends conditions to be included on the consent(s), should the application for a partial transfer be granted.

9. Where appropriate, I have adopted Mr Sturman's report as per s113(3)(b) of the RMA rather than repeating information, and this decision should therefore be read in conjunction with the recommendations in that report (CRC Content Manager records document C23C/153563).

Summary of Application and Description of the Receiving Environment

10. Mr Sturman has provided a summary of the proposal (paragraphs 38 - 46) and a description of the environment (paragraphs 47 - 48), in his s42A officer's report. Rather than repeat those matters, I adopt them as part of this decision.

Legal and Planning Matters

11. Mr Sturman has provided an assessment of the legal status of the application (paragraphs 55 - 83). I adopt that discussion for this decision.
12. I note from paragraph 22 of Mr Sturman's report that the application was originally considered under rule 8.3 of the Waipara Catchment Environmental Flow and Water Allocation Regional Plan (Waipara Plan) as a discretionary activity and notified on that basis. Subsequently it was identified that an error had been made in the audit of the well interference assessment and that, once that was corrected, the activity is able to comply with the conditions or rule 8.2 of the Waipara Plan (refer paragraphs 22 – 36 and Appendix 8 of the s42A report).
13. I have reviewed the corrected well interference assessment undertaken by Mr Sturman (CRC file reference C23C/157411) and agree with his assessment that the notified application was mis-classified under rule 8.3 of the Waipara Plan, and that the transfer should be classified as a "controlled" activity under Rule 8.2 of the Waipara Plan.
14. I am therefore limited in my control to the following matters:
 - a. The reasonable need for the quantities of water sought, the intended use of the water and the ability of the applicant to abstract and apply those quantities;
 - b. The technical efficiency of the exercise of the consent;
 - c. The collection, recording, monitoring and provision of information concerning the exercising of the consent;
 - d. For hydraulically connected groundwater takes, the effect on surface flows.
 - e. Compliance with any water quality standards in the NRRP.

Submissions

15. As noted above, and in paragraphs 84 – 90 the proposal was limited notified to two parties (Te Ngāi Tūāhuriri Rūnanga and Home Creek Investments Ltd). While a submission was received from Home Creek Investments Ltd, that submission was subsequently withdrawn.
16. As such, there are no submitters to be heard and this application can be decided 'on the papers'.

Substantive Decision

17. I note that Mr Sturman has provided a recommendation in his s42A report regarding the substantive decision. This recommendation includes discussion of Part 2 of the RMA, and those matters in s104 and s104A which must be considered in making this decision.
18. I note that as a controlled activity, I must grant consent (pursuant to s104A(a) RMA), but I can impose conditions related to those matters within my control (s104A(b) RMA).
19. For clarity, I have outlined my consideration of these matters below.

Consideration of the Application (s104 RMA)

20. Section 104(1) of the Resource Management Act 1991 (RMA) requires, subject to Part 2, decision makers to have regard to several matters.

Assessment of Actual and Potential Effects (s104(1)(a) and s104(1)(ab) RMA)

21. Section 104(1)(a) of the Resource Management Act 1991 requires decision makers to have regard to any actual and potential effects on the environment of allowing an activity. I note that consideration is limited to effects within the scope of the matters of control.
22. For completeness, I note Ngāi Tūāhuriri Rūnanga have raised concerns regarding this proposal (refer to Appendix 1 of the s42A report and the notification recommendation (CRC electronic record reference C23C/103237), and the associated adverse effects on Ngāi Tūāhuriri. These concerns primarily relate to the over allocation of the catchment (and the wider region), and the need for enhancement of indigenous biodiversity and the protection of water resources throughout the takiwā.
23. While recognising the significance of these effects on Ngāi Tūāhuriri Rūnanga, the scope of my control does not extend to those matters and I unable to refuse consent for a controlled activity. I am therefore unable to address the issue of over-allocation as part of this decision. These concerns remain valid however and should be addressed as part of a future consenting and/or planning process.
24. Mr Sturman helpfully provides a discussion of the actual and potential effects that could arise from the activity, and which are within the limits of my control. This discussion is provided in paragraphs 97 – 127 of his s42A report. Mr Sturman has summarised these effects under the following headings, with the relevant matters of control beneath the heading:
 - a. The potential adverse effects of an inefficient take and use of water (reasonable use); and
 - b. The potential adverse effects on surface water (stream depletion)
25. I agree with Mr Sturman’s assessment of these matters and adopt his discussion.
26. Mr Sturman has commented on the applicant’s assessment of the adverse effects on water quality under the heading “*Compliance with any water quality standards in the NRRP*” (paragraph 128 – 129 of his report) and adopted the applicant’s conclusion.
27. The applicant has correctly identified that the Natural Resources Regional Plan (NRRP) is no longer operative and has been replaced by the Canterbury Land and Water Regional Plan (LWRP). The applicant notes that while the vineyard is within a “red” nutrient allocation zone (where water quality standards are not met), the activity is permitted as the property is less than 10 ha.

28. Mr Sturman also notes that the scale and intensity of the farming activity is low. I agree with that assessment and consider it is appropriate, in this instance, to apply a 'permitted baseline' approach given the farming activity is permitted. I consider any potential adverse effects on water quality are acceptable.
29. I am also required (per s104(1)(ab) RMA) to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive adverse effects on the environment or offset or compensate for any adverse effects on the environment of allowing the activity. I note that none are identified.
30. I am satisfied that Mr Sturman has identified the relevant effects within my matters of control. I adopt Mr Sturman's consideration of these effects and conclude that the adverse effects of the proposal that are within my control are acceptable, subject to the mitigation measures recommended.

Provisions of relevant documents (s104(1)(b))

31. Mr Sturman has also provided a view on the relevant objectives and policies of those documents specified in s104(1)(b) in paragraphs 131 - 214 of his s42A report.
32. I thank Mr Sturman for this discussion and adopt it as part of this decision.
33. I agree with his conclusion that the proposal is inconsistent with the first priority in the Hierarchy of Obligations in the Objective and several of the policies (including Policy 1, Policy 3 and Policy 11) of the National Policy Statement for Freshwater Management 2020 (NPSFM 2020).
34. The application is mostly consistent with the direction of the Canterbury Regional Policy Statement CRPS and the Waipara Plan. Both of those planning documents pre-date the NPSFM 2020 and both the CRPS and the Waipara Plan will need to be updated in the future to give effect to the NPSFM 2020.

Other Relevant Matters (s104(1)(c))

35. Mr Sturman considered the Mahaanui Iwi Management Plan and Canterbury Water Management Strategy as other matters that are relevant to the consideration of this application. He has discussed the Mahaanui Iwi Management Plan in paragraphs 216 – 233 and the Canterbury Water Management Strategy in paragraphs 234 - 238.
36. I largely agree with Mr Sturman's conclusions regarding these matters and adopt his discussion as part of this decision. My one point of disagreement is his conclusion that effects on Tangata Whenua values are acceptable (paragraph 233). Ngāi Tūāhuriri Rūnanga and the Mahaanui Iwi Management Plan clearly raise the significant issues with the transferring of unused water and I do not consider it is appropriate to conclude that the effects on their values are "acceptable".
37. In saying that, I do agree with Mr Sturman that the Waipara plan specifically provides for unused water to be transferred and I note that, as this is a controlled activity, I cannot refuse consent or otherwise place conditions on this consent to address the effects on Tangata Whenua values raised by Ngāi Tūāhuriri Rūnanga.

Part 2 Assessment

38. In having regard to the matters specified in s104(1) I recognise that that consideration is "subject to Part 2". I note that the Court of Appeal considered what "subject to Part 2" means

in *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, [2018] 3 NZLR 283.

39. Mr Sturman has provided a discussion of that case in paragraphs 93 – 96, and I note that I must consider whether it is necessary to resort to “part 2” to determine this application. Having considered the relevant planning documents, I consider that at the time it was prepared the Waipara Plan was prepared consistent with the understanding of Part 2 of the RMA. This was prior to the NPSFM 2020 however, which is the most recent articulation of Part 2 regarding the management of freshwater.
40. Given the NPSFM 2020 direction however, I do not consider it is necessary to directly resort to Part 2 to decide this application.

Determination of the application (section 104A RMA)

41. Section 104A of the RMA states that, after considering an application for a controlled activity, the consent authority must grant consent and may impose conditions under s108 related to the matters of control.

Conditions (s108 RMA)

42. Section 108 allows conditions to be imposed on a consent. Mr Sturman has recommended a suite of conditions that should be included as part of the consents that will result from this transfer. I agree that those conditions are appropriate.

Duration (123 RMA)

43. As noted earlier, as a partial transfer of an existing consent, the duration of the subsequent ‘child’ consents is that same as that of the existing consent, and both CRC223392 and CRC223393 will expire on 16 July 2025.

Decision

44. In summary, I have, subject to Part 2, had regard to the matters in sections 104 of the RMA. I also note that, pursuant to s104A of the RMA, I must grant consent and may only impose conditions related to those matters specified in the relevant rule.
45. It is therefore my decision, under delegated authority on behalf of the Canterbury Regional Council, to **GRANT** the partial site-to-site transfer of Water Permit CRC221526, resulting in:
- I. Water permit CRC223392 – to take and use water – for Team Blueberry Limited; and
 - II. Water permit CRC223393 – to take and use water – for Trevor James Bunting
- subject to conditions and duration set out in Mr Sturman’s s42A report.

Dated at Christchurch this 1st of August 2023



Dr Philip Burge

Principal Consents Advisor

(Resource Managers Officers Group)

