

BEFORE THE CANTERBURY REGIONAL COUNCIL

UNDER The Resource Management Act 1991

AND

IN THE MATTER OF Application CRC040067 by Torlesse Wines Limited and eight others for a water permit to replace CRC900760B, to take and use groundwater for irrigation.

DECISION OF HEARING COMMISSIONER

BIANCA SULLIVAN

Dated 21 November 2023

BACKGROUND AND PROCEDURAL MATTERS

1. This is the decision of independent hearing commissioner Bianca Sullivan. I was appointed by the Canterbury Regional Council (CRC) to hear and decide this resource consent application by Torlesse Wines Limited and eight others (the applicants) pursuant to the Resource Management Act 1991 (RMA or 'the Act'). The application seeks to take groundwater and use it to irrigate a vineyard in Waipara, as a replacement for consent CRC900760B.
2. The application was lodged on 8 July 2003 by Pollard and 14 other applicants, who had jointly held CRC900760B. The applicants have since changed, primarily due to changing land ownership, as outlined in paragraphs 18 to 20 of the s42A report.
3. The application was publicly notified in 2004. The s42A report states that this was "*due to more than minor cumulative effects on the allocation of water resources within the Waipara catchment and the uncertainty of such effects going forward as there was no specific Catchment Regional Plan in place at that time (Transitional Regional Plan was in effect but didn't cover allocations within the Waipara region)*"¹. This application was one of a large number of applications notified in the Waipara catchment at that time and, in response, the applications were placed on hold while the Waipara Catchment Environmental Flow and Water Allocation Regional Plan (the WCP) was prepared. The WCP was made operative in 2012.
4. Ten submissions were received on application CRC040067, with eight opposing the application and two supporting. The seven submitters who wished to be heard have all since withdrawn that right.
5. The section 42A report was prepared by Mr Dylan Marriott and dated 17 October 2023. Email advice from several CRC scientists is contained in the appendices, along with a cultural advice report from Mahaanui Kurataio Limited on behalf of Ngāi Tūāhuriri Rūnanga.
6. Given that there were no parties to be heard, this decision is prepared based on the papers only. I have not visited the site but am familiar with both the area and the operation of this type of activity.

THE APPLICATION

7. The application is described in detail in paragraphs 21 to 25 of Mr Marriott's s.42A report. I consider this summary to be an accurate description of the application and adopt it for the purposes of this decision. Figure 1 of Mr Marriott's s.42A report provides the properties and landowners who comprise the applicant group. Mr Marriott's Table 1 shows which landowners have changed in the 20 years since the application was lodged.
8. As a very brief summary, the applicants seek to take water from bore N34/0097 at a rate not exceeding 3 litres per second (L/s), a daily volume not exceeding 130 cubic metres per day, and an annual volume not exceeding 17,000 cubic metres between 1 July and 30 June. Water will be used to irrigate 149 hectares of grapes, nuts and horticultural crops, with the take

¹ S42A report of Dylan Marriott, paragraph 8

ceasing when the flow in the Omihi Stream at the Waipara River confluence is at or below 120 L/s. The applicants propose standard water metering and water efficiency conditions.

9. While this application is to replace resource consent CRC900760B, it is for a smaller rate and volume, and from one bore instead of two. I agree with Mr Marriott that the application is within the scope of the original consent and that it is appropriate for section 124 of the RMA to apply. However, I consider it less than ideal for an activity to remain unconsented and under section 124 continuation for 20 years.
10. The applicant seeks a consent duration until 31 December 2033.

SUBMISSIONS

11. Paragraph 4 above outlined the notification and submissions. Mr Marriott summarises the submissions as follows: *“Many of the issues raised by the submitters have since been addressed by the development and implementation of the WCP, such as the over allocation of water from the groundwater zone and abstraction of water during low flow events. Submitters also raised concerns regarding the inefficiency of water used for frost protection purposes, which is no longer part of this application”*².
12. Mr Marriott lists the submitters in paragraph 52 and goes on to state that all submitters have withdrawn their right to be heard.

CONSIDERING THE APPLICATION

13. I have considered all relevant documentation that applies to these applications for the purposes of my assessment in the following sections, and for my final decision. This includes the consent application, the submissions and the section 42A report. I have also considered the relevant sections of the RMA at the time when the application was lodged – that is, July 2003.
14. Mr Marriott’s s.42A report states that section 124B of the RMA applies, however I note that sections 124A to 124C were inserted on 9 August 2008, by section 67 of the Resource Management Amendment Act 2005. As the version of the RMA applies at the time of lodgement in 2003, I do not agree that sections 124A to 124C apply to this application. Whether or not they apply is not, in my view, material to this application. This is because the abstraction is considered to have a direct connection to surface water and has no volume counted against the groundwater zone; and there is sufficient surface water available in the allocation under the WCP, especially considering the reduction in rate and volume proposed through this replacement application.

Status of the application

15. The status of the application is determined by the applicable rule(s) at the time of lodgement. The s.42A report states that the Transitional Regional Plan was the operative plan at the time and that the application is a non-complying activity under 7(i). I agree with this determination.

² S42A report of Dylan Marriott, paragraph 51

16. The WCP was made operative on 16 June 2012, and this plan deals specifically with water allocation in the Waipara catchment. As the proposed abstraction is within the WCP allocation limits, it complies with rule 6.1 and would be classified as a restricted discretionary activity under this plan.
17. The s.42A report notes that the activity complies with rule 5.44 of the Land and Water Regional Plan (LWRP), which permits the use of land to farm. Similarly, the activity does not require any consents under the National Environmental Standards for Freshwater (NES-F).

Statutory considerations

18. Sections 104 and 105 of the RMA dictate the matters which I must consider in making this decision. These sections as at the time of lodgement, 8 July 2003, are included below. Note that s.104D, which has restrictions for non-complying activities, was introduced on 1 August 2003 by section 44 of the Resource Management Amendment Act 2003. Therefore, it does not apply to my consideration of this application.
19. Section 104(1) lists the matters that I must have regard to in considering the application, stating that:

Subject to Part II, when considering an application for a resource consent and any submissions received, the consent authority shall have regard to—

- (a) Any actual and potential effects on the environment of allowing the activity; and*
- (b) Any relevant regulations; and*
- (c) Any relevant national policy statement, New Zealand coastal policy statement, regional policy statement and proposed regional policy statement; and*
- (d) Any relevant objectives, policies, rules, or other provisions of a plan or proposed plan, and*
- (e) Any relevant district plan or proposed district plan, where the application is made in accordance with a regional plan; and*
- (f) Any relevant regional plan or proposed regional plan, where the application is made in accordance with a district plan; and*
- (g) Any relevant water conservation order or draft water conservation order; and*
- (h) Any relevant designations or heritage orders or relevant requirements for designations or heritage orders; and*
- (i) Any other matters the consent authority considers relevant and reasonably necessary to determine the application.*

20. Section 105(2)(b) applies to non-complying activities, stating that a consent authority cannot grant a resource consent:

Notwithstanding any decision made under section 94(2)(a), for a non-complying activity unless it is satisfied that-

- (i) The adverse effects on the environment (other than any effect to which section 104(6) applies) will be minor; or*
- (ii) Granting the consent will not be contrary to the objectives and policies of the plan or proposed plan; or...*

21. These sections of the RMA are considered in turn below.

SECTION 104(1)(a) – ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

The existing environment

22. Before addressing the actual and potential effects of the proposed activity, I must consider the environment against which the effects are assessed. This includes lawful existing activities, consented activities and permitted activities.
23. The affected environment is audited and summarised in paragraphs 65 to 83 of the s.42A report. There is no information to suggest any disagreement in the sensitivity of the receiving environment and I adopt the s.42A description for the purpose of this decision. The following are of note:
 - a. The property is within the Waipara Nutrient Allocation Zone, which is classified as 'red' meaning that water quality outcomes are not being met;
 - b. The abstraction has a direct hydraulic connection to the spring-fed Omihi Stream, and there are wetlands along the riparian margins. Mr Mark Parker (CRC Senior Land Ecologist) considers that the site of the bore may meet the definition of a natural inland wetland under the National Policy Statement for Freshwater Management.
 - c. Mr Ben Wilkins (CRC Hydrogeologist) considers that the abstraction is likely not hydraulically connected to the wetland, so no additional consent is required under the NES-F.
 - d. The WCP specifies a maximum rate limit of 127 L/s for Omihi Stream and a minimum flow of 120 L/s as measured at the Omihi Stream confluence with the Waipara Stream. The applicants' previous consent is included in the allocation, which is currently exceed by 1 L/s. If application CRC040067 is granted, the allocation will be within that of the WCP given proposal to reduce the rate of abstraction.

Considering the effects

24. The s.42A report considers the application to be non-complying and therefore considers all effects potentially associated with the activity. I agree with Mr Marriott that the following effects, listed at paragraph 85 of the s.42A report, are of low significance for this application:
 - a. The availability and practicality of using alternative supplies of water;
 - b. Whether salt-water intrusion into the aquifer or landward movement of the salt water/freshwater interface is prevented; and
 - c. The protection of groundwater sources, including the prevention of backflow of water or contaminants.
25. The s.42A report comprehensively discusses the more material effects of the proposed activity at paragraphs 86 to 166 and I adopt this for the purposes of this decision. The key effects are discussed in the following paragraphs.
26. The application rate of 2-3 mm/day is considered to be technically efficient and water metering and recording is proposed that is consistent with the Measurement and Reporting of

Water Takes Regulations 2010. I therefore agree with the s.42A report conclusion (at paragraph 99) that the application is an efficient and reasonable use of water.

27. The bore is adjacent to the Omihi Stream at a depth of 9 m below ground level, and Mr Wilkins considers it to have a direct hydraulic connection to Omihi Stream. The applicants have proposed to cease abstracting when the flow in the Omihi Stream, as measured at the confluence with the Waipara River, is at or below 120 L/s. This is consistent with the minimum flow specified in the WCP and, in addition, the applicants have agreed to a pro rata reduction from 123 L/s. As stated above, the current allocation of water to consent holders is within the WCP allocation limit for surface water. For these reasons, I agree with the s.42A report conclusions (at paragraph 111) that *“the proposed abstraction will have an acceptable effect on surface water flows and aquatic ecology within Omihi Stream”*.
28. As the abstraction is a direct take, no portion is accounted for against the groundwater zone. This, along with the reduction in rate and volume from the previous consent, means that I support the s.42A report’s conclusion that the proposed abstraction is unlikely to affect other authorised groundwater takes.
29. Turning to any effects on authorised surface water abstractions, the applicants’ abstraction was considered as an ‘A’ block permit under the WCP. There is one authorised abstraction between the location of bore N34/0097 and the downstream minimum flow site. I agree with the s.42A report conclusion that the effects on surrounding users will be acceptable, given the small scale of this proposal and the 1,500 m distance between the two abstractions.
30. There is no proposed change to type or intensity of operation, or the water use, and the applicants consider that there will be no change to the effects on water quality when compared to the previously consented activity. This appears to be a reasonable conclusion, especially considering that the rate of take is reducing from 9 L/s to 3 L/s and the proposed abstraction is from one bore instead of two.
31. The potential effects on tangata whenua values are discussed from paragraph 144. Te Rūnanga O Ngāi Tahu and Te Ngāi Tūāhuriri Rūnanga submitted on the application, opposing the granting of consent until allocation and minimum flow regimes were established through an operative plan. These submissions were withdrawn following the WCP becoming operative.
32. Mr Marriott sought additional input from Mahaanui Kurataiao Limited, who provided comment on the application’s consistency with the provisions of the Mahaanui Iwi Management Plan and suggested mitigation. The requested mitigation focused on establishing a 10 m riparian buffer around any waterbody on or bordering the property that is planted with indigenous plant species. Mr Marriott considers that the current riparian exclusion areas comply with the request. I agree with his comment that such mitigation measures are outside of the scope for an application to take and use water, and note that this is especially the case for an application of this scale where the level of effects on water quality and quantity are so small.

SECTION 104(1)(b)-(i)

33. The relevant documents to be considered under s.104(1) are addressed by Mr Marriott in his s.42A report although with reference to the current provisions of the RMA, rather than those as of July 2003. I have had regard to the following under s.104(1)(b)-(i).

- a. The NES-F is relevant under s.104(1)(b) and has been discussed earlier in this decision. The National Environmental Standard for Sources of Human Drinking Water is also considered in the s.42A report at paragraphs 211 to 212 and I agree with Mr Marriott that this NES is not relevant to the application;
- b. The NPS-FM and Canterbury Regional Policy Statement (RPS) are relevant under s.104(1)(c). I adopt the s.42A report discussions and conclusions for the NPS-FM at paragraphs 174 to 209, and for the RPS at paragraphs 213 to 215;
- c. The “relevant objectives, policies, rules, or other provisions of a plan or proposed plan” under s.104(1)(d) are those of the WCP. I adopt the s.42A report discussion and conclusion at paragraphs 216 to 237, where the relevant objectives and policies are identified. The relevant rules of the WCP are addressed at paragraph 16 above.
- d. The district plan is not relevant to this application under s.104(1)(e);
- e. The relevant regional plan or proposed regional plan under s.104(1)(f) is the WCP, to which I have had regard;
- f. There is no relevant water conservation order or draft water conservation order for the Waipara catchment, so s.104(1)(g) is not relevant to this application;
- g. Similarly, there are no “relevant designations or heritage orders or relevant requirements for designations or heritage orders”, as per s.104(1)(h);
- h. I have had regard to the Mahaanui Iwi Management Plan as a relevant “other matter” under s.104(1)(i), and have been guided by the input from Mahaanui Kurataiao Limited and their identification of the relevant provisions.

SECTIONS 105

34. Section 105(2)(b) of the RMA applies to this application as a non-complying activity, and states that I cannot grant a consent for a non-complying activity unless I am satisfied that:
 - (i) *The adverse effects on the environment (other than any effect to which section 104 (6) applies) will be minor; or*
 - (ii) *Granting the consent will not be contrary to the objectives and policies of the plan or proposed plan...*
35. This is a similar test to the current s.104D, which Mr Marriott has considered at paragraphs 241 to 244. I agree with Mr Marriott that the effects of the proposed abstraction will be minor and that the activity will not be contrary to the objectives and policies of the WCP. Section 105(2)(b) therefore does not preclude the granting of this application.

PART 2 OF THE RMA

36. Section 104(1) of the RMA states that the matters to be considered must be done so subject to Part 2.
37. I have accepted that the proposal meets the objectives and policies of the RPS and WCP, and that it is consistent with the NPS-FM and, in particular, Te Mana o Te Wai. I have not analysed

whether the Court of Appeal's decision in *RJ Davidson v Marlborough District Council*³, which is commonly used in determining whether an evaluation against Part 2 is appropriate, would apply to the earlier version of section 104 that applies to this application. That said, the above-mentioned documents have been prepared to give effect to Part 2. I consider that there is no conflict with Part 2 given the minor nature of the application and its consistency with the relevant planning provisions.

DURATION AND CONDITIONS

38. Section 123 of the RMA addresses the duration of resource consent. The applicant has proposed a duration of 31 December 2033.
39. As there is no policy guidance on consent duration in the WCP, I have considered Policies 4.11 and 4.74 of the LWRP. The applicants' proposed 10-year duration accords with the LWRP direction, being 5-years from the date of notification of the next regional plan. Given the minor nature of the proposed activity, the reduction in rate and volume from the previous consented activity, and the existing investment in irrigation infrastructure, I consider that an expiry of 31 December 2033 is appropriate for this application.
40. I have considered the conditions attached as Appendix 1 to Mr Marriott's s42A report which were agreed to by the applicant. These conditions appear to be appropriate for the proposed activity.

DECISION

41. Under the powers delegated to me by the Canterbury Regional Council, for the reasons given above, pursuant to sections 104 and 105, and subject to Part 2 of the Resource Management Act 1991, I GRANT the application by Torlesse Wines Limited and Others for water permit CRC040067 to abstract groundwater from a bore for use to irrigate a vineyard.

Dated at Christchurch this 21st day of November 2023



Bianca Sullivan
Independent Hearing Commissioner

³ [2018] NZCA 316

Conditions for consent CRC040067

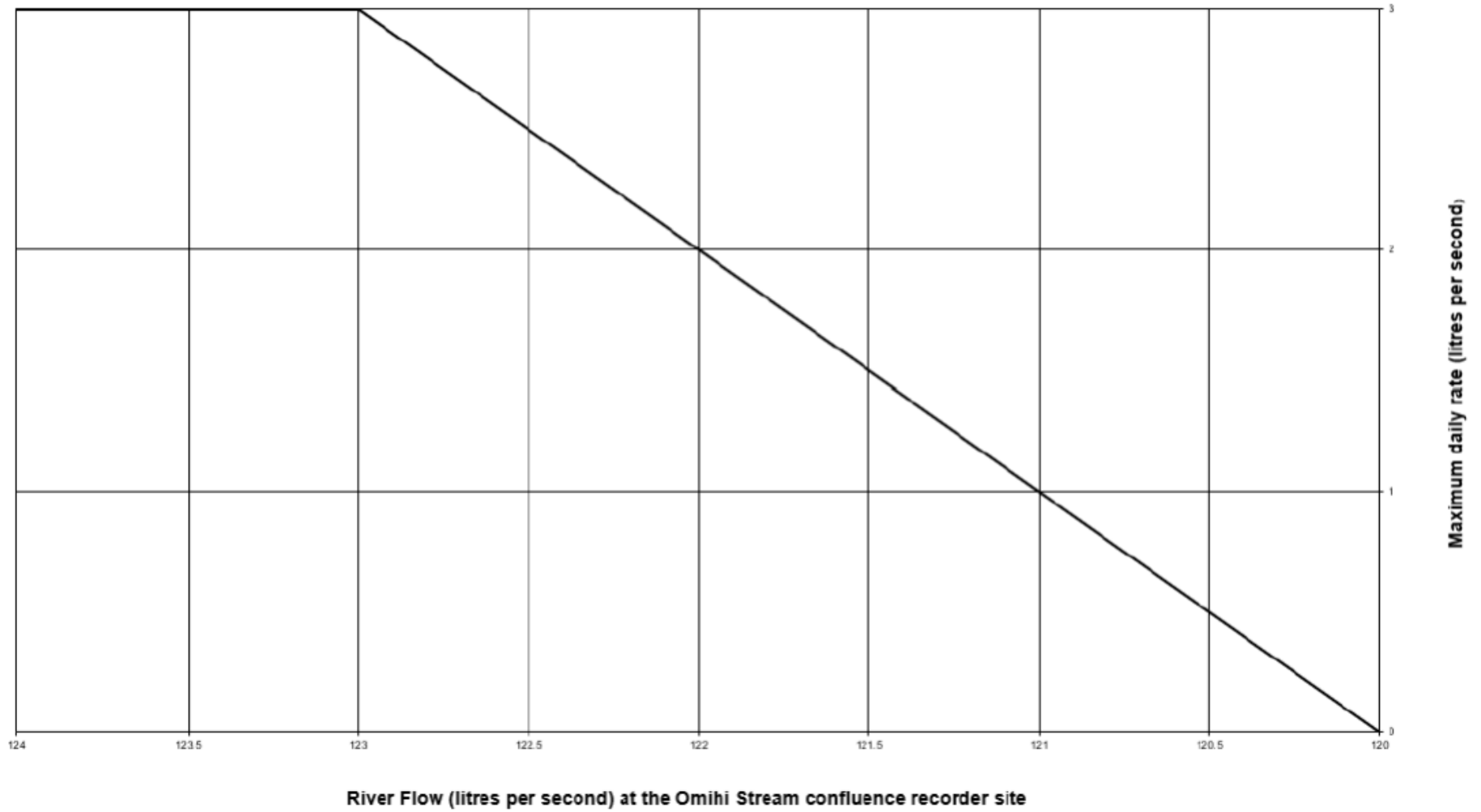
1	Water shall only be taken from bore N34/0097 located at NZTM 2000: 1581630 mN 5232975 mE; and
2	<p>Water may be taken from bore N34/0097:</p> <ul style="list-style-type: none"> a. at a rate not exceeding 3 litres per second; b. With a combined volume not exceeding 130 cubic metres per day; and c. a volume not exceeding 17,000 cubic metres from 1 July to 30 June.
3	Water shall only be used for the irrigation of 49 hectares of grapes, nuts and horticultural crops within the area of land shown on attached Plan CRC040067, which forms part of this consent.
4	<p>Whenever the:</p> <ul style="list-style-type: none"> a. Mean flow in the Omihi Stream for the 24 hour period ending at noon on any one day falls below 120 litres per second, the taking of water in terms of this permit shall cease; b. Mean flow in the Omihi Stream for the 24 hour period ending at noon on any one day falls below 123 litres per second then the rate at which water is taken shall reduce to that shown on the attached graph CRC040067; c. Canterbury Regional Council, in consultation with a Water User Committee representing water users who are subject to the same restrictions, has determined a water sharing regime that restricts the taking of water to that available to those consent holders who are members of the same Water User Committee above the minimum flow in clause a., then the taking of water in accordance with that determination shall be deemed to be in compliance with clause b.
5	The flow referred to in Condition (4) shall be the flow estimated by the Canterbury Regional Council in the Omihi Stream at the confluence with the Waipara River at map reference NZTM 2000: 1582246 mE 5069197 mN.
6	The consent holder shall, before the first exercise of this consent, install an easily accessible straight pipe(s), with no fittings or obstructions that may create turbulent flow conditions, of a length at least 15 times the diameter of the pipe, as part of the pump outlet plumbing or within the mainline distribution system.

7	<p>The permit holder must keep records that provide a continuous measurement of the water taken under this permit, including any water taken in excess of what this permit allows.</p> <ul style="list-style-type: none"> a. The records must: <ul style="list-style-type: none"> i. comprise measurements in cubic metres of the volume of water taken in each 15-minute period. ii. if no water is taken, specify the volume of water taken as zero cubic metres. iii. be kept in a format that, in the opinion of the Canterbury Regional Council, is suitable for auditing. iv. be kept using a <i>device(s) or system</i> that measures the volume of water taken to within 5 percent of the actual volume taken, and is: <ul style="list-style-type: none"> a. able to provide data in a form suitable for electronic storage; and b. suited to the qualities of the water it is measuring; and c. sealed and is as tamper-proof as practicable; and d. installed at each location from which water may be taken under this permit; and e. verified as accurate. b. The permit holder must provide the records kept in (a), electronically, to the Canterbury Regional Council, Attention: Regional Leader Compliance Monitoring, that cover: <ul style="list-style-type: none"> i. each day, no later than the end of the next day; and ii. each water year (1 July - 30 June), no later than one month after the end of that water year. <p>Advice Note: For a.iii. above see www.ecan.govt.nz for the latest version of 'Data Management Guidelines - Water Use'.</p> <p>Advice Note: All flow and water level measurement and recording, including equipment, systems and procedures must be installed, operated and maintained at all times in accordance with any operative National Environmental Monitoring Standards.</p>
8	<p>Within one month of the installation of each <i>device or system</i> (and any subsequent replacement) and at five-yearly intervals thereafter, and at any time when requested by the Canterbury Regional Council, the consent holder shall provide to the Canterbury Regional Council, Attention: Regional Leader Compliance Monitoring, evidence showing that:</p> <ul style="list-style-type: none"> a. The <i>device or system</i> that is keeping records of water taken is verified as accurate; and b. The verification has been performed by a person who is suitably qualified.

9	<p>If the irrigation system is used to distribute diluted effluent, fertiliser or added contaminants the consent holder shall ensure:</p> <ul style="list-style-type: none"> a. An effective backflow prevention device is installed and operated within the pump outlet plumbing or within the mainline to prevent the backflow of contaminants into the water source; and b. The backflow prevention device is tested at the time of installation and annually thereafter by a suitably qualified or certified person in accordance with Canterbury Regional Council approved test methods for the device used; and c. The test report is provided to the Canterbury Regional Council Attention: Regional Manager, RMA Monitoring and Compliance, within two weeks of each inspection.
10	<p>The consent holder shall take all practicable steps to:</p> <ul style="list-style-type: none"> a. Ensure that the volume of water used for irrigation does not exceed that required for the soil to reach field capacity; and b. Avoid leakage from pipes and structures; and c. Avoid the use of water onto non-productive land such as impermeable surfaces and river or stream riparian strips.
11	<p>The taking of water in terms of this permit shall cease for a period of up to 48 hours, on notice from the Canterbury Regional Council, to allow measurement of water levels in the Omihi Stream.</p>
12	<p>The Canterbury Regional Council, Attention: Regional Manager, RMA Monitoring and Compliance, shall be informed immediately on first exercise of this consent by the consent holder.</p>
13	<p>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:</p> <ul style="list-style-type: none"> 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.
14	<p>If this consent is not exercised before 31 December 2026 then it shall lapse in accordance with section 125 of the Resource Management Act.</p> <p>Advice Note: 'Exercised' is defined as implementing any requirements to operate this consent and undertaking the activity as described in these conditions and/or application documents.</p>

Graph CRC040067

Maximum allowable abstraction rates when Omihi Stream is on restriction as per condition 4



Plan CRC040067

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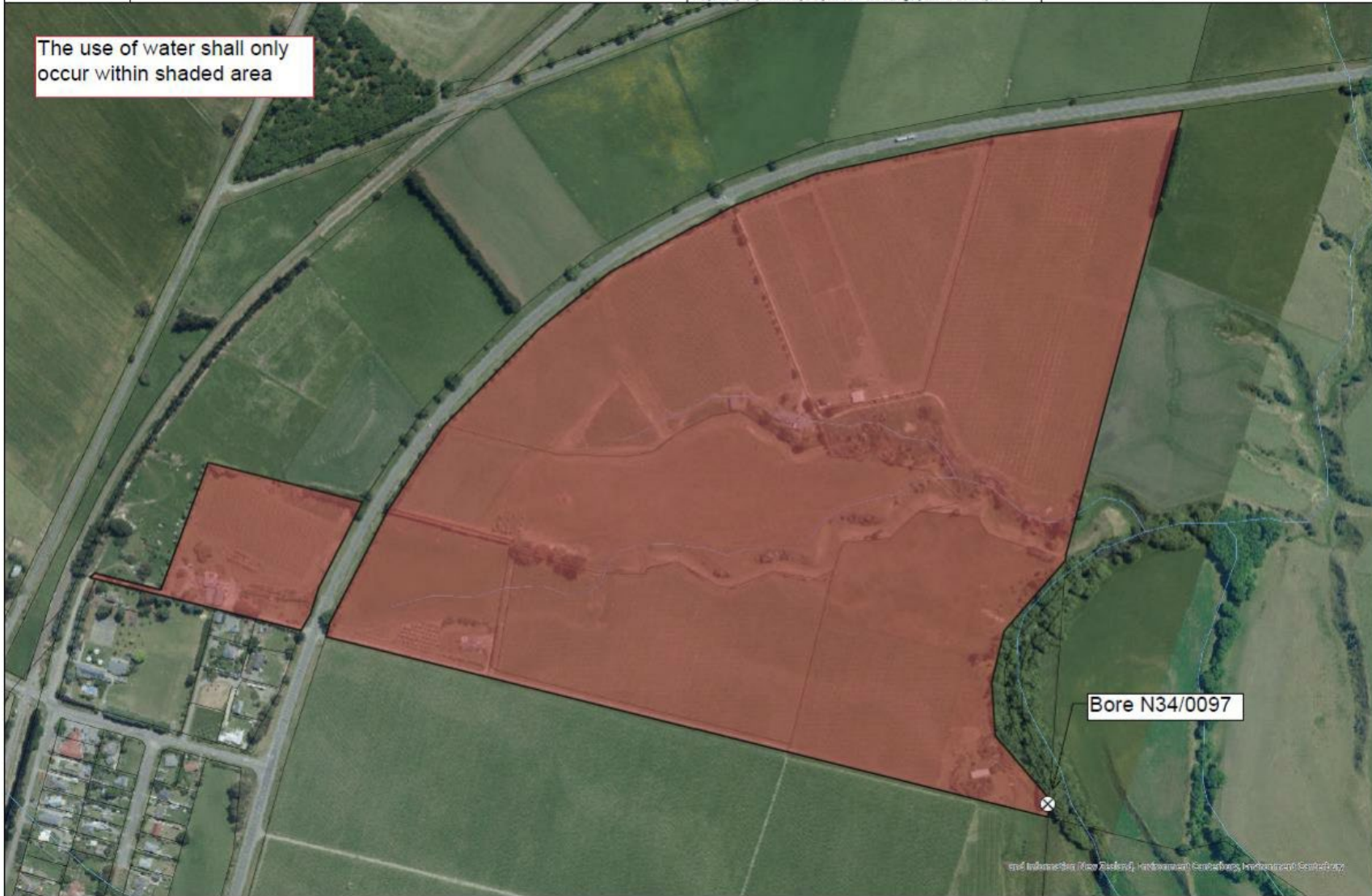
0 0.06 0.11 0.17 0.22

Kilometres

Scale: 1:3,600 @A3

Map Created by Environment Canterbury on 15/06/2023 at 11:53 AM

The use of water shall only occur within shaded area



Bore N34/0097

Environment Canterbury (Crown Asset), Information Services, Information Services