

**IN THE MATTER OF THE**

Resource Management Act 1991

**AND**

**IN THE MATTER OF**

Resource consent application **CRC041892** by  
Pegasus Bay Vineyards and Winery Limited for a  
Water Permit to take and use water for irrigation  
from the Waipara River

**BETWEEN**

**PEGASUS BAY VINEYARDS AND WINERY  
LIMITED**  
**Applicant**

**AND**

**CANTERBURY REGIONAL COUNCIL**  
**Respondent**

**DECISION OF HEARINGS COMMISSIONERS**

**S. A. MCGARRY AND J. KANE**

**1<sup>st</sup> April 2010**

Heard on the 17<sup>th</sup> February 2010, in the Council Chambers of the Hurunui District  
Council, Amberley.

## **Representations and Appearances**

### **Applicant:**

**Mr P.M. James**, Counsel (Saunders & Co.)

**Mr I. Lloyd**, Senior Water Resource Engineer (Golder Associates (NZ) Limited)

**Dr I. Donaldson**, owner of Pegasus Bay Vineyard and Winery Limited

**Mr P. Donaldson**, Business Manager (Pegasus Bay Vineyard and Winery Limited)

### **Submitters:**

**Mr R. Forbes** (Maungatahi Farm Limited)

**Mr B. Arnold**, for the Department of Conservation

**Mr T. Hawker**, for the North Canterbury Fish and Game Council

### **Section 42A reporting officer:**

**Dr D. Vattala**, Senior Consents Investigating Officer (Canterbury Regional Council)

**It is the decision of the Canterbury Regional Council, pursuant to Sections 104 and 104B, and subject to Part 2 of the Resource Management Act 1991, to refuse Pegasus Bay Vineyard and Winery Limited Water Permit CRC041892 to take and use water for irrigation from the Waipara River.**

## BACKGROUND AND PROCEDURAL MATTERS

1. This is the decision of Hearings Commissioners Ms Sharon McGarry (Chair) and Councillor Jo Kane, appointed by the Canterbury Regional Council (herein referred to as "ECan") to hear and decide an application by Pegasus Bay Vineyards and Winery Limited (herein referred to as "the applicant") to take and use water for the irrigation of 40 hectares (ha) of grape vines on Georges Road, Waipara. The application is for a new activity and the grape vines are yet to be planted.
2. The original application to take and use water was lodged on 15<sup>th</sup> March 2004 by Mr E.C. and Mrs M. Orr, and was prepared by Mr Jens Rekker of Aquafirma Limited. Following public notification, Mr and Mrs Orr were advised by Council officers to consider requesting that the application be 'placed on hold', as it would be best considered in the context of a soon to be developed planning framework for the Waipara River. Mr and Mrs Orr subsequently requested that the application be placed on hold.
3. In November 2007, Mr and Mrs Orr were granted **Water Permit CRC070903** to take and use groundwater for the irrigation of 160 ha of land to the south of Georges Road (across Georges Road from the 40 ha application site). This consent is yet to be exercised and grape vines have not been planted.
4. The applicant (Pegasus Bay) subsequently purchased 200 ha of land (40 ha application site and 160 ha block to the south) from Mr and Mrs Orr, and this resource consent application and Water Permit CRC070903 were transferred in full in July 2008.
5. On 24<sup>th</sup> November 2009, the applicants requested that the application be taken off hold and instructed that a hearing be scheduled as soon as possible.
6. The hearing commenced at 9.30am on Wednesday 17<sup>th</sup> February 2010 and evidence was heard over one day. We determined it was not necessary to undertake a site visit.

7. The hearing was closed on 19<sup>th</sup> March 2010, following receipt of the applicant's written right of reply and on completion of our deliberations.
8. The application was lodged prior to notification of the proposed Natural Resources Regional Plan (PNRRP) and is therefore not subject to its provisions. The application was also lodged prior to 1<sup>st</sup> October 2009, and is therefore not subject to the Resource Management (Simplifying and Streamlining) Amendment Act 2009.
9. Prior to the hearing, a report was produced pursuant to Section 42A of the Resource Management Act 1991 (herein referred to as "the Act" or "RMA") by ECan's reporting officer, Dr Don Vattala. The Section 42A Report provided an analysis of the matters requiring consideration and recommended the consent sought be granted subject to a minimum flow (300 litres per second (L/s)) higher than that imposed on existing water permits, for a duration of 10 years. Included with the Section 42A Report was technical comment on the application by: Mr Matthew McCallum-Clark (Resource Management Consultant for Incite) on the development process for a minimum flow and allocation plan for the Waipara River catchment; and Mr Matt Smith (Hydrogeologist for ECan) regarding groundwater assessments of stream depletion, spring and well interference, and aquifer definition and testing.
10. It is recorded that at the opening of proceedings Councillor Kane disclosed her previous involvement in community planning regarding water management in the Waipara area. No objections were made regarding her disclosure. Commissioner McGarry informed the parties present of her recent appointment to the Hearings Panel for the up coming review of minimum flows for the Waipara River.

## **THE APPLICATION**

11. The 40 ha application site is described as a 'dryland block' to the north of Georges Road, which borders the Waipara River. The intention when lodging the application was to provide sufficient water, in conjunction with Water Permit CRC070903, to allow for the development of a 200 ha vineyard. It was

envisaged that groundwater would predominantly be used to irrigate the 160 ha south of Georges Road, and that surface water (this application) would be utilised on the 40 ha north of Georges Road. Although it is the applicant's intention to develop a common mainline to irrigate the total 200 ha in the future, the proposed surface water take is to be used to irrigate the 40 ha block.

## NOTIFICATION AND SUBMISSIONS

12. The application was publicly notified in the Christchurch Press on Saturday 10<sup>th</sup> April 2004, as follows:

***Applicant: Mr E C & Mrs M Orr***

***Address: c/- Aqua Firma limited, PO BOX 1087, Dunedin - Attn: Jens Rekker***

***CRC041892 – To take up to 9.6 litres per second of water from a gallery adjacent to the Waipara River at or about map reference NZMS 260 M34:8554-9317, for drip irrigation of 40 hectares of grapes at Georges Road, Waipara. This application is for a new activity. A consent duration of 35 years has been sought.***

13. The application received a total of eleven submissions; six submissions were in support of the application, with two submitters indicating they wished to be heard, and five submissions were in opposition, with all submitters indicating they wished to be heard at a hearing.
14. The main issues and concerns raised by submitters to the application were accurately summarised in the Section 42A Report.
15. In summary, submissions in support requested the imposition of a minimum flow level that is higher than the existing water permits and water storage facilities. Submissions in opposition primarily related to existing "heavy" allocation, cumulative effects on instream values, the protection of reliability of supply for existing abstractors, protection of waahi taonga and mahinga kai, and insufficient information.

## THE HEARING

### Applicant's case

16. **Mr Philip James**, Counsel for the applicant, conducted the applicant's case and called three witnesses. Mr James presented legal submissions outlining background to the application and the relevant statutory framework. In summary, Mr James made the following main points:
- It is decided in law that it is not legally possible for a Council or consent authority to impose a condition more stringent than that contained in its Rules;
  - The draft "Waipara Catchment Water Allocation Plan" (WCWAP) is without legal foundation and cannot be considered under Section 104 of the Act;
  - The reporting officer's recommended minimum flow is substantially higher than the present accepted minimum standard and ignores the ECan's Council resolution;
  - A draft report which has not been the subject of public debate and has not been accepted, does not come within Section 104(1)(c);
  - Any suggestion of a "B" permit allocation is considered to be imposing conditions more stringent than contained in ECan's own rules;
  - The proposed "Natural Resources Regional Plan" (PNRRP) does not apply to the Waipara River;
  - There is no evidence to show the abstraction will affect the reliability of supply for downstream users; and
  - There is no statutory justification for the conclusion reached in the Section 42A Report and the viewpoint is untenable.
17. In support of his legal submissions, Mr James provided us with copies of the case law referenced, and called three witnesses, Dr Donaldson, Mr Donaldson and Mr Lloyd.
18. **Dr Ivan Donaldson** owns and operates Pegasus Bay Vineyards and Winery Limited with his wife and family. Dr Donaldson outlined his involvement in the wine industry, development of the company, background to the purchase of the

application site and original lodgement of the consent application, characteristics of the application site, plan development and minimum flow provisions, and issues raised by submitters. Dr Donaldson explained he had lodged a submission in opposition to the application (as lodged by Mr and Mr Orr) and confirmed his request for the imposition of higher minimum flow levels (60 L/s at Stringers Bridge) is consistent with the minimum flow level proposed now.

19. **Mr Paul Donaldson** is the business manager for Pegasus Bay Vineyards and Winery Limited. Mr Donaldson has a Bachelor of Science degree in Zoology and noted a special interest in aquatic zoology. Mr Donaldson highlighted his family's affiliation with Ngai Tahu and concern for the mauri and mahinga kai of the river, and commented on the current state of the river and available scientific information.
20. **Mr Ian Lloyd** is a Senior Water Resources Engineer (Golder Associates (NZ) Limited), with Bachelor of Science (Geology), Bachelor of Engineering (Civil) and Master of Science (Environmental Science) degrees, and 15 years professional experience. Mr Lloyd's evidence outlined background and history to the application, hydrology of the Waipara River, the effect of the proposed take on downstream flows, the water use efficiency of the proposed take, the water supply reliability for the proposed take, and commented on the Section 42A Report.

### **Submissions in Support**

21. None of the submitters in support of the application appeared at the hearing.

### **Submissions in Opposition**

22. **Mr Richard Forbes** and his family own Maungatahi Farm Limited beside the Waipara River and has farmed sheep, cattle and crop for over 63 years. Mr Forbes outlined the farms irrigation history (since 1981) and abstraction restrictions imposed over the last 11 years. Mr Forbes stated he agrees with ECan that the application should be in the "B" permit allocation block and seeks a higher minimum flow than all other existing water permits (i.e. 75 L/s at White Gorge), but does not support restrictions on a *pro rata* system as suggested in the Section 42A Report.

23. **Mr Bruce Arnold** gave verbal evidence in opposition to the application for the Department of Conservation. Mr Arnold highlighted the importance of taking into account all the available information (including the draft plan and the PNRRP), the cumulative effect of the application in the context of a “highly allocated” river, the strong concerns of tangata whenua, the amount of good scientific data, high recreational values, and duration of consent. Mr Arnold submitted the application should be declined, but in the event consent is granted seeks the minimum flow recommended in the Section 42A Report and that the abstraction be considered to be a “B” allocation block.
24. **Mr Tony Hawker** gave evidence in opposition to the application for the North Canterbury Fish and Game Council. Mr Hawker described the fishery value of the Waipara River, concerns with the application, flow requirements, duration of consent, and recommended conditions of consent. He submitted the application should be declined in its current state, but outlined the concerns raised can be abated by considering the abstraction as part of a “B” permit allocation block; and by imposing an appropriate and effective minimum flow (300 L/s at White Gorge), metering, and consent duration of 10 years or less.

### **Section 42A Report**

25. **Dr Don Vattala**, is a senior consents investigating officer for ECan with Bachelor of Science (Biological Science), Master of Agricultural in Natural Resources Management degrees, Doctor of Philosophy (Ecology) degrees, and over three years experience with ECan. Dr Vattala tabled his Section 42A Report and addressed the main issues. In summary, he made the following main points:
- The activity should be considered as a discretionary activity;
  - Although the provisions of the WCWAP and the PNRRP have no statutory weight, they are relevant considerations under Section 104(1)(c);
  - The Regional Policy Statement (RPS) is operative and the objectives of the PNRRP are consistent with these provisions;
  - The application must be considered in the context of the purpose of the Act and the environmental effects of the proposed activity;
  - This application must be considered on its own merits;



- The application must be considered as a new activity and the Council resolution regarding minimum flows was made with regard to existing water permits and the potential social and economic effect of any change on existing land use activities;
- The applicant has not provided enough evidence to demonstrate that downstream abstractors will not be adversely affected and has not addressed the cumulative effect;
- The recommended 300 L/s minimum flow (at White Gorge) has been calculated by adding the existing allocation (230.7 L/s) to the highest existing minimum flow (65 L/s) and rounding up;
- Recommended “partial restrictions” are valid under the provisions of the RPS and are the only way to allocate further surface water while protecting instream values and reliability of supply;
- The 9.6 L/s abstraction rate is relatively large in the context the hydrology of the Waipara River;
- Consent should only be granted if a higher minimum flow (300 L/s) imposed; and
- The appropriate consent duration is 10 years given the development of the Waipara River plan.

### **Applicant’s Right of Reply**

26. Mr James requested the opportunity to provide a written right of reply and this was provided on 2<sup>nd</sup> March 2010. In summary, Mr James made the following main points:

- It is now agreed the proposal should be considered as a discretionary activity;
- The Full Council passed a motion that the minimum flow for the upper Waipara River catchment should remain at 50 L/s (at White Gorge);
- The reporting officer is recommending a condition that is more stringent than that contained in the rules and this is not legally possible;
- There is nothing in the RPS or PNRRP which prevents the application being granted;
- The WCWAP is not relevant to this consideration, as it has no legal effect and has not been open to public scrutiny;

- If the PNRRP is considered, Appendix WQN2 states the existing minimum flow of 50 L/s;
- None of the consent holders downstream have objected or put in a submission in opposition;
- If granted, the consent can be reviewed when a water policy is eventually in place;
- The applicant's development fits the criteria for a 35 year duration;
- Of the total authorised extraction from the upper Waipara River, over 80% is allocated to Mr Forbes (CRC012177, CRC022206 and CRC022207), two are to vineyards that are no longer in use (CRC940238.2 and CRC010463.1), and one is unlikely to have a strong connection to the river (CRC040244);
- The proposed take represents only 6.6% of those authorised takes which have a stream depleting effect;
- The evidence presented shows gains and losses in surface flow that are due to the substantial buffering effect of the large underflow in the river gravels, and this demonstrates this proposal will not automatically result in a decrease in the surface flow of the same amount below the point of take;
- If granted, this consent and all existing consents would fall within an "A" permit allocation block;
- Granting consent for 9.6 L/s with a minimum flow of 65 L/s, but allowing for 3 L/s below this point would not be inconsistent with ECan practice;
- It would be unreasonable to restrict the concurrent use of this abstraction and Water Permit CRC070903;
- Mr Forbes' point of abstraction is upstream from the proposed take and therefore the reliability of supply can not be directly affected;
- Increasing the minimum flow to 75 L/s would have a very significant effect on the reliability of supply for the proposed take and would increase the possible longest period of consecutive days of restriction by 24%;
- Trout and salmonid populations are intolerant of high water temperatures which occur naturally in the Waipara River;
- The evidence of Paul Donaldson shows that imposing a higher minimum flow would not be likely to result in a significant increase in trout numbers;

- The applicant is unable to apply for more groundwater as the area is deemed to be a 'red zone';
- Water storage is not a simple option nor is it economically viable; and
- Although the Department of Conservation and Fish and Game want higher flows in the upper Waipara River over the summer months, no evidence has been provided of any way to increase flows when the river naturally drops below 50 L/s.

## **ASSESSMENT**

27. In assessing this application, we have considered the original application and assessment of environmental effects (AEE), further information provided prior to the hearing, the Section 42A Report, all submissions received, and the requested evidence provided during and after the hearing.

### **Description of the Affected Environment**

28. The following is summarised from the evidence presented and reports provided. There is a high level of agreement regarding the hydrology of the Waipara River catchment. It is accepted that the surface water resources are strongly related to precipitation and this is generally reflected in an annual flow regime cycle of high winter flows and low summer flows. Although there is considerable year to year variation, many of the tributaries of the Waipara River are ephemeral and parts of the main stem are known to go dry. There can be long periods of low flow and large, infrequent short duration flood events.
29. The Waipara River is currently managed as an Upper catchment (above the confluence with the Omihi Stream) and a Lower catchment (below the confluence with the Omihi Stream). Existing water permits to abstract surface water have minimum flows that are measured at White Gorge (for the Upper Waipara River) and Teviotdale (for the Lower Waipara River). There are no abstractions above White Gorge, except for three consents for water storage (dams) upstream that are yet to be completed.

30. Bobby Stream enters the mid-reach of the Waipara River just below White Gorge and contributes an estimated mean annual 7 day low flow (7DMALF) of 20 L/s when the flow at White Gorge is 110 L/s. Bobby Stream is the only significant tributary below White Gorge that currently has no abstraction. It is considered that Weka Creek does not contribute any surface flow during 7DMALF periods. The flow between White Gorge and the confluence of the Omihi Stream is considered to be reasonably constant.
31. The hydrological record for the White Gorge recording site dates back to 1988, while the Teviotdale recording site was established in 2000. There is general agreement regarding the current White Gorge site for recording minimum flow levels and it is recognised the establishment of further sites is problematic.
32. It is generally accepted that the surface water of the Upper Waipara River is highly allocated and that the flow regime below White Gorge is highly modified by existing abstractions. The Section 42A Report noted that at White Gorge the mean annual or average flow is 2,750 L/s, the median flow is 890 L/s, the 7DMALF is 110 L/s, and that during the irrigation season (October – April) the flow is below 165 L/s 25% of the time.

### **Status of the Application**

33. The starting point for our assessment of the application is to determine the status of the activity. It was accepted by the applicant and the reporting officer during the hearing that the application was lodged prior to notification of the PNRRP (July 2004). Accordingly, there was agreement that the application should be considered as a **discretionary activity** under section 77 of the Act. We agree.

### **Statutory Considerations**

34. In terms of our responsibilities for giving consideration to the application, we are required to have regard to the matters listed in sections 104 and 104B of the Act. Section 104(1) states -

*"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 and potential effects on the environment of allowing the activity; and*

- (b) *any relevant provisions of—*
  - (i) *a national policy statement;*
  - (ii) *a New Zealand coastal policy statement;*
  - (iii) *a regional policy statement or proposed regional policy statement;*
  - (iv) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.”*

Section 104B states –

- “After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—*
- (a) may grant or refuse the application; and*
  - (b) if it grants the application, may impose conditions under section 108.”*

35. While we agree with Mr James that a section 104(1)(c) “relevant matter” must be related to the issues contemplated by the purpose of the Act, we do accept that the WCWAP is irrelevant to our considerations. We consider any recent reports on the Waipara River are relevant to our determination, and represent the best and most up to date knowledge. We also accept the opinions of Dr Vattala and Mr Lloyd that the recent reports and the draft WCWAP give good scientific direction and incorporate significant amounts of community input. In this regard, while we give the provisions of the draft WCWAP no statutory weight, we have considered them under section 104(c).

### **Section 104(1)(a) - Actual and Potential Effects on the Environment**

36. The potential effects on the environment were assessed in the Section 42A Report using the following categories:
- Effects of taking water on surface water flows;
  - Effects of taking water on other surface water users;
  - Effects of taking water on aquatic life;
  - Effects of use on surface and groundwater quality;
  - Effects of inefficient use of water on the environment; and
  - Effects on Tangata Whenua Values.
37. In considering the evidence presented, we accept that any adverse effect of the proposed take and use on surface water and groundwater quality is likely to be minor. We also accept that the proposed take and use is consistent with efficient use of water for the irrigation of grape vines.

38. Our assessment will focus on the remaining categories of potential environmental effects.

### **Effects of taking water on surface water flows**

39. The proposed activity has the potential to adversely affect surface water flows by reducing surface flow, and extending the frequency and/or duration of time flows in the river are at or below minimum flow levels.
40. It was agreed by Mr Lloyd and noted in various reports that given the length of continuous flow record at White Gorge (20 years) there is a reasonable level of certainty regarding the 7DMALF for the Upper Waipara River. There is general agreement that the 7DMALF is 110 L/s at White Gorge and 129 L/s just above the Omihi Stream confluence.
41. There are twelve existing water permits to abstract water from the Upper Waipara River. Surface water from the river is allocated to consents using an average or instantaneous rate of take, and while some consents are yet to be exercised, or are not currently fully utilised, the effective allocation (or consented allocation) is considered to be the sum of all the instantaneous rates of take that could be lawfully be taken. For the Upper Waipara River, the total consented (allocated) instantaneous rate of take is calculated to be between 230.7 L/s (as calculated by Mr Matt Smith) and 153.7 L/s (as calculated by Mr Ian Lloyd).
42. ECan Report No.R09/3 states that as at 1 April 2008, the summer instantaneous rate of abstractions of surface water and hydraulically connected groundwater for the Upper Waipara River catchment is calculated to be 204 L/s.
43. We have spent some time trying to reconcile the difference between the calculations provided and we are satisfied the difference can be explained by use of varying monthly allocations, calculated stream depletion rates for groundwater takes, and the inclusion or exclusion of the take associated with the three upstream dams.
44. While we consider the difference in the calculation to be significant, we are of the view it is irrelevant which number we utilise, as they are **all** significantly over the accepted 7DMALF for the Upper Waipara River. We see little point, for the

purpose of assessing this application, in determining how much over the consent allocation is, but rather accept the existing consented surface water allocation is significantly more than the 7DMALF.

45. In our view, the critical fact is that the total amount of water that could be abstracted from the river significantly exceeds the flow that would occur if there were no abstractions (naturalised 7DMALF). The fact that the allocation is significantly more than 100% of the 7DMALF, confirms that surface water flows in the Upper Waipara River are (or can be) significantly altered by current water abstraction and that this application can only worsen or exacerbate any adverse effect.
46. In having regard to the evidence presented, we are of the opinion that this application would have an adverse cumulative effect on surface water flow in the Waipara River.

#### **Effects of taking water on other surface water users**

47. The proposal has the potential to adversely affect other surface water users, including recreational users and other surface water abstractors.
48. The evidence presented supports the view that the Waipara River has significant recreational value and we are satisfied that further surface water abstraction would be likely to adversely effect recreational values by increasing the frequency and duration of low flows.
49. The reliability of supply (security of supply) of existing surface water abstractors can be adversely affected by additional abstraction by increasing the frequency and duration of minimum flows, and thus restricting the opportunity for abstraction.
50. We note some abstractors are seeking to protect their reliability of supply by the imposition a higher minimum flow level and a requirement for storage.
51. The applicant presented evidence to support the premise that this application will not directly affect downstream users, but we find the evidence unconvincing. We consider the application will increase the recession of flows and therefore can affect both upstream and downstream flows. We accept underflow and gravel bars

effect surface flow, but do not accept this will adequately buffer additional surface water abstraction.

52. We are mindful of the evidence presented by the applicant that indicates the potential effect on their reliability of supply of imposing a higher minimum flow (75 L/s), and consider this indicates a significant impact on from a relatively small change (10 L/s) in flow. This give us cause for concern and indicates the relative size of the take in the context of low summer flows.
53. Given the evidence presented indicates the Upper Waipara River is currently highly allocated, and that the consented instantaneous rate of take significantly exceeds the 7DMALF, we are of the view that existing abstractors currently have a very poor reliability of supply during the summer months. We consider this application can only further reduce this reliability of supply and would adversely affect existing abstractors.

#### **Effects of taking water on aquatic life**

54. The proposal has the potential to adversely affect aquatic life by reducing surface water flows. Reduced surface flows can adversely affect river morphology, periphyton (aquatic algae and bacteria) growth, water quality and water temperature. Adverse effects on these factors limit the life supporting capacity of the river, and hence the mahinga kai and mauri of the river.
55. In having regard to the evidence presented, we are of the view that the life supporting capacity of the Waipara River is already significantly limited by current water abstraction. We consider that any additional abstraction would increase the recession flow (causing the river to reach minimum flow faster) and will increase the frequency and duration of surface flows insufficient that are insufficient to support aquatic life.

#### **Effects on Tangata Whenua Values**

56. We note the Waipara River is identified as a Statutory Acknowledgement in the Ngai Tahu Claims Settlement Act 1998. We consider this status requires us to give significant weight to the submissions received from Te Ngai Tahiriri Resource Management Committee and Te Runanga o Ngai Tahu, and emphasises the significance of the Waipara River to Tangata whenua.



57. While we note the applicants stated affiliation with Ngai Tahu, we must consider tangata whenua to be opposed to the application and accept the concerns raised. In having regard to the evidence presented and the conclusions reached above regarding adverse cumulative effects, we are of the view the application would adversely affect the significant cultural values of the Waipara river.

#### **Section 104(1)(b) - Relevant Planning Provisions**

58. An analysis of the relevant objectives and policies of the RPS and PNRRP was provided in the Section 42A Report by Dr Vattala. We confirm we have not taken into account the provisions of the PNRRP in making our assessment.
59. Chapter 9 of the RPS is relevant to our consideration, and in particular we note Objective 1 and Policies 1, 2, 4 and 6.
60. In having regard to the evidence presented, we consider the proposal is inconsistent with the provisions of the RPS because it will not protect (nor enhance) instream values, existing surface water users or cultural values.

#### **Section 104(1)(c) - Other Matters**

61. We have considered the matters raised by the applicant regarding the length of time it has taken to progress the Waipara River catchment planning framework and the effect this has had on this application. While we agree the progress has been very slow, we are of the opinion that the outcome would likely have been the same given that the surface water in the Upper Waipara River was known to be highly allocated when the application was lodged, and there have been no significant changes in the consented allocation during this time.
62. We are mindful the application was placed on hold at the request of the applicant and that it could have been progressed at anytime at the request of the applicant. In considering the application in the absence of any specific planning framework, we can only surmise that Council officers advised the applicant to wait, in the belief that it could only be granted if more surface water may become available as part of a "B" permit allocation block. Given the planning approach and timeline outlined in the ECan information sheet appended to Mr Lloyd's evidence, we consider Council officers would have given the applicant advice in good faith and in the belief that a plan for the Waipara River would be notified in 2005.

## **Part 2 of the Act**

63. All the considerations we have described above are subject to Part 2 of the Act. In accordance with Part 2, we consider that overall the proposal will not promote with the purpose of the Act and the principles of the sustainable management of natural and physical resources, as defined in s.5.
64. In considering the application, we are mindful of the importance sustaining water for future generations, safeguarding the life-supporting capacity of water, and avoiding remedying or mitigating adverse environmental effects. In having regard to the evidence presented, we consider the application would have a adverse cumulative effect on surface flows, other abstractors, recreational values, the life supporting capacity, and cultural values of the Waipara River.
65. In recognising and providing for the matters of national importance, set out in section 6, we consider that overall the proposal is inconsistent with s.6(a), (c), (e) and (g).
66. In having particular regard to section 7 matters, we consider that overall the proposal is inconsistent with s.7(a), (c), (d), (f), (g) and (h).
67. In forming our opinion, s.8 requires us to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). We note the submission in opposition to the application from Te Ngai Tahuriri Resource Management Committee and Te Runanga o Ngai Tahu, and accept the Waipara River is of cultural, spiritual, historic and traditional significance to tangata whenua. In considering these values we satisfied that any further abstractions from the Upper Waipara River will have an adverse cumulative effect.

## **Summary**

68. In making our determination, we are required to make an overall assessment of the application on the basis of the evidence presented. On the balance of the evidence presented we are of the view that the cumulative adverse effect of allowing further abstraction of surface water will reduce surface water flows, adversely affecting recreational and cultural values, and the life supporting capacity of the Waipara River. While we have considered the minimum flow

conditions put forward by the applicant to avoid, remedy and mitigate adverse effects on the environment, we are of the view that these are inadequate to protect these values.

### **Decision**

69. It is the decision of the Canterbury Regional Council, pursuant to Sections 104 and 104B, and subject to Part 2 of the Resource Management Act 1991, to refuse Pegasus Bay Vineyards and Winery Limited Water Permit CRC041892 to take and use water from the Waipara River.

### **Right of Appeal (Section 120)**

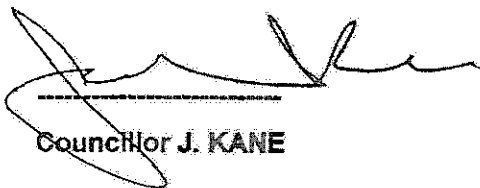
70. The parties are advised there is a right of appeal to the Environment Court, which must be lodged within 15 working days of this decision.

Dated at Christchurch this 1<sup>st</sup> day of April 2010



**S.A. McGARRY**

**Hearings Commissioner (Chair)**



**Councillor J. KANE**

