

Application CRC192153

By Cloud Ocean Water Limited

To change the conditions of CRC182813 to take and use groundwater

Section 42A Officer's Report – Jason Eden

Date: 3 December 2018

INTRODUCTION

1. Cloud Ocean Water Limited, 'the applicant', has applied to change conditions of their existing resource consent, CRC182813, to add new bore BX24/1577 as a point of take.
2. The subject site is located at 20 Station Road, Belfast (Legal Description: Part Lot 2 DP 35966) and is approximately 2.3ha.
3. The existing resource consent CRC182813 (Appendix One) authorises taking of groundwater from bore M35/1294, installed to 33.1 metres deep, at a rate not exceeding 50 litres per second with volumes not exceeding 4,320 cubic metres per day and 1,576,800 cubic metres per year. Consent CRC182813 expires on 30 April 2032.
4. The applicant has installed a new deep bore, BX24/1577, under consent CRC180265 installed to 186 metres deep and proposes to change the conditions of CRC182813 to allow water to also be taken from this new bore. I note that the applicant is not proposing to increase the overall rate of take or volumes authorised under CRC182813.
5. The site, the existing shallow bore (M35/1294), and the deep bore from which abstraction is proposed (BX24/1577), are shown in Figure 1 below.
6. Dave Clemence, from Clemence Drilling Contractors Limited, 'the Consultant', has prepared and submitted the application on behalf of the applicant.
7. CRC182813, the consent sought to be changed, is currently the subject a judicial review proceeding in the High Court. I understand that legally the decision of the Council on CRC182813 is valid unless the Court determines otherwise
8. I have not undertaken a site visit during the processing of this consent application.

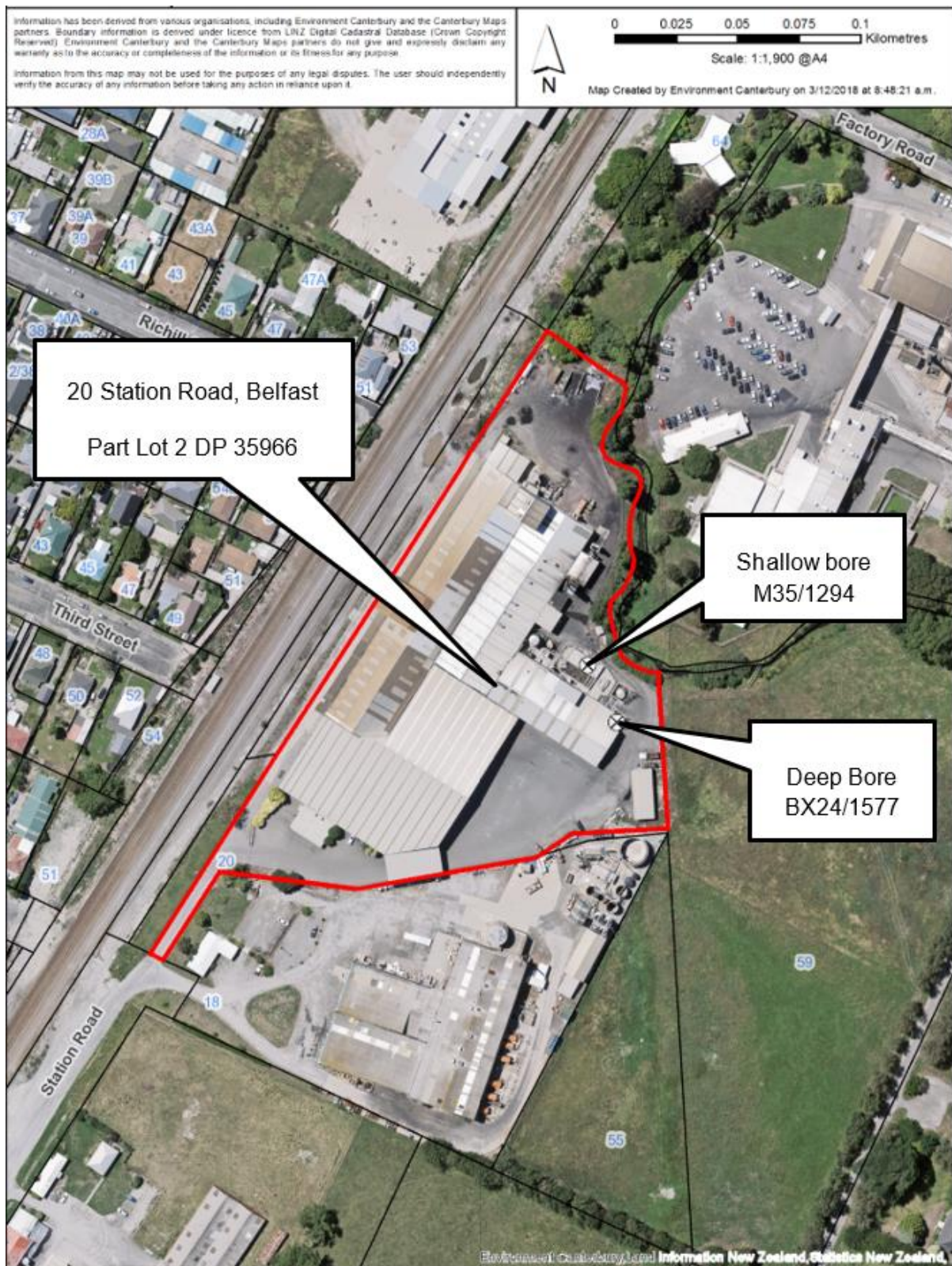


Figure 1. Applicant's property showing bore locations

DESCRIPTION OF THE PROPOSED ACTIVITY

9. The applicant proposes to add bore BX24/1577 as an abstraction bore, to enable the entire combined rate and volume to be taken from either bore. Refer to page 1 of the

AEE attached to the application (HPCM C18C/153273-4) for a more detailed description of the changes sought, and the conditions proposed.

10. In summary, the applicant wishes to make the following changes to their conditions (additions in **bold**, deletions ~~struck out~~):

Condition (1):

Water may be taken only from bore M35/1294, 203 millimetres diameter and 33.1 metres deep, at or about map reference NZTM2000: 1570828E-5189405N, **and bore BX24/1577, 460 millimetres diameter and 186 metres deep (screened 178.4 – 184.4 metres), at or about map reference NZTM2000: 1570842E-5189382N.**

Condition (2)

Water may be taken at a **combined** rate not exceeding 50 litres per second, with a **combined** volume not exceeding 4,320 cubic metres per day, and **combined** 1,576,800 cubic metres between 1 July and the following 30 June.

LEGAL AND PLANNING MATTERS

11. The application has been made as a change of conditions affected by section 127 of the Resource Management Act 1991 (RMA). As specified in s127:
- (3) *Sections 88 to 121 apply, with all necessary modifications, as if—*
- (a) *the application 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 change or cancellation of a condition and the effects of the change or cancellation respectively.*
12. The status of the activity is therefore a **discretionary activity** for the purposes of the Act.
13. I note that preapplication advice provided to the applicant by Environment Canterbury considered that this application should be made as an application for a new activity. The applicant has applied for this as a change of conditions, however in the application addresses the effects of the proposed change of conditions and concludes that, particularly in the context of both cumulative effects, and the policy thresholds for well interference, the effects are not materially different to those arising from the exercise of the existing consent.
14. Further to this, I note that this application seeks to solely to amend the conditions pertaining to the bore from which water is abstracted, rather than changing the rates or volumes from those currently consented under CRC182163.
15. It is my view that the proposed changes to the conditions are within the scope of the existing consent. I understand that it is only where proposed changes would result in a fundamentally different activity, or one having materially different adverse effects, or one that seeks to expand or extend the original activity, the application would then fall to be treated as a new application. I consider that the proposed changes do not fall within any of these categories, particularly as the activity of taking water is to be continued at the same rate and volumes, and from the same allocation, as is currently consented
16. For this reason, I consider this application can therefore be considered as an application to change the conditions of CRC182813, and does not need to be assessed as an application for a new activity.
17. No other consents are considered necessary as a result of this application.

ASSESSMENT OF POTENTIALLY AFFECTED PARTIES

18. The applicant did not carry out any consultation as they did not identify any potentially adversely affected parties.
19. Section 127(4) specifies:
“For the purposes of determining who is adversely affected by the change or cancellation, the consent authority must consider, in particular, every person who—
(a) made a submission on the original application; and
(b) may be affected by the change or cancellation.”
20. The original application was granted on a non-notified basis, and as such there were no parties who submitted on the original application that must be considered for the purposes of s127(4).
21. I agree with the applicant’s assessment that no parties are to be considered affected by this proposal. I have for completeness, discussed the concerns raised by interested parties who have made contact during the processing of this application, below.
22. Environment Canterbury informed the following parties about the consent application:
 - a. Christchurch City Council (CCC)
 - b. Nga Rūnanga o Tūāhuriri
 - c. Canterbury District Health Board (CDHB)
 - d. Estuary Groups (Christchurch Ihutai)
 - e. Flood Bylaw (Canterbury Regional Engineer)
 - f. Fish & Game North Canterbury Inc
 - g. Forest & Bird
 - h. Department of Conservation
23. Responses have been received from CCC, Mahaanui Kurataiao Ltd (on behalf of Tūāhuriri Rūnanga), and CDHB. The responses are on file, and a summary and discussion on each response received follows.

CCC

24. CCC outlined the following concerns in their response:
 - a. Impact on Christchurch City public water supply;
 - b. Whether the application should be treated as a new consent or a change of conditions;
 - c. The need for integrated management between land and water;
 - d. Environmental Impacts

Impact on Christchurch public water supply and the need for integrated management between land and water

25. CCC state that they consider the flow rate and take for BX24/1577 is significant, and that given the nature of the commercial intent of the applicant – to bottle and sell water – they consider that it is reasonable to assume that the applicant intends to take at or near their current consented daily volume of 4,320 cubic metres for most days of the

year. They have summarised historic water use information from the existing bore provided to them by Environment Canterbury which shows the historic abstraction has been less than what is currently authorised.

26. While the activity status for this application is discretionary, as per s127(3)(a) RMA, the scope of the assessment is limited to the effects of the change of conditions. I note that the applicant is not proposing to increase their rate of take or volume extracted, and they are already entitled to abstract the volumes currently authorised to them under their existing water permit.
27. The CCC has a programme in place to replace current shallow groundwater wells for the public water supply in the North West supply zone. They have concerns that future City Council water supply takes in the North West water supply zone coming about by way of CCC's shallow well replacement programme and the need to service additional demand due to growth may be adversely affected by the proposed take from bore BX24/1577. CCC consider that the public supply needs should be considered when assessing the takes from this bore.
28. I will discuss the effects of the proposed take on surrounding bores under my assessment of the actual and potential effects (Assessment of Actual and Potential Effects), however I have limited my consideration of these effects to the protection of existing abstractions, including current bores belonging to the CCC.
29. An assessment of well interference effects is detailed in the Assessment of Actual and Potential Effects section of this report.
30. I note that under the Land and Water Regional Plan (LWRP) framework, no further applications for additional groundwater allocation may be made within the Christchurch-West Melton Groundwater Allocation Zone, other than those made under Rule 5.115 which expressly allows applications for community water supply purposes only. This effectively limits the potential for any additional abstraction from the zone to Community Water Supply operators only.

Whether the application should be treated as a new consent or a change of conditions

31. In their response, CCC advised they held concerns regarding whether it was appropriate to accept and process this application as a change of conditions and considered that processing as a 'new' activity would be more appropriate. This has been discussed in more detail in the Legal and Planning Section above, and it is my view that it is appropriate to consider the application as a change of conditions.

Environmental Impacts

32. Three main points were raised by CCC regarding environmental effects:
 - a. stream depletion;
 - b. errors in Environment Canterbury online well interference tool; and
 - c. water quality effects

Stream Depletion

33. CCC consider that the effects of hydraulic connection and the potential for stream depletion from pumping the existing shallow bore should have been assessed for this application.

34. This effect is discussed further in in the Assessment of Actual and Potential Effects section of this report.

Errors in CRC well interference tool

35. The CCC have raised concerns regarding the well interference tool not fully taking account of the effect of existing abstractions on bores within the area.
36. The CCC have undertaken their own assessment and corrected the surrounding pumping to address this issue.
37. Well interference effects are discussed in detail in the Assessment of Actual and Potential Effects section of this report.

Water quality effects

38. Effects of contamination of the aquifer was raised by CCC. The concerns raised are in respect of two potential contaminant sources:
- a. Well construction and whether the bore has adequate well head protection; and
 - b. Backflow or mixing of water by way of infrastructure and headworks cross-connecting the proposed deep and existing shallow bore.
39. These effects are discussed in more detail further in the report, however, I note that backflow prevention has been proposed by the applicant.

Meeting with the CCC and applicant to address technical concerns

40. On Wednesday 21 November 2018 a meeting was held between Environment Canterbury, the applicant's consultant, and the CCC to discuss the technical aspects (see HPCM C18C/165514 for attendees and minutes of this meeting).
41. During the meeting, there was agreement between attendees that after reviewing the technical aspects of the application:

a. Well Interference

The applicant, Environment Canterbury, and CCC experts agreed that the policy thresholds for well interference are not breached in any surrounding wells as a result of the proposed abstraction from BX24/1577. The common conclusion is that the calculated well interference is within the range allowed by Schedule 12 of the LWRP.

b. Stream Depletion

From a technical standpoint, the CCC, Environment Canterbury, and applicant agree that the new bore BX24/1577 is not hydraulically connected to surface water as considered against the plan criteria for stream depletion

CDHB

42. CDHB's concerns raised centre around the protection of current and future drinking water resources, making reference to CCC's initial concerns around well interference effects and future water demand.
43. Well interference and the potential to affect the CCC bores are discussed further in the Assessment of Actual and Potential Effects section of this report.

Tūāhuriri Rūnanga

44. The Rūnanga provided a response on 28 November 2019. To summarise their response: Nga Rūnanga are opposed to this application and the existing activity and recommend that it be declined. They consider that no mitigation would be appropriate to provide for their concerns. They consider themselves an affected party by the application.
45. I note that a further response by Dr Te Maire Tau was received (HPCM C18C/169725), which outlined further Nga Rūnanga's concerns with the activity of Water Bottling. However, I do not consider this is able to be assessed through this consent application, as the effects to be assessed are restricted to those arising from the proposed change.
46. This is discussed in further detail in the Assessment of Actual and Potential Effects section of this report.

Aotearoa Water Action

47. Aotearoa Water Action are currently undertaking a judicial review over CRC's granting of Cloud Ocean Water's existing consent CRC182813, which this application proposes to change.
48. However, as Aotearoa Water Action do not own bores or land within the vicinity of the proposed take, I do not consider them an affected party in respect of this application.

DESCRIPTION OF THE AFFECTED ENVIRONMENT

49. The applicant has provided a description of the affected environment on Page 1 of the AEE which accompanied the application. The applicant has also provided an aquifer test which was performed on new bore BX24/1577.
50. Of particular relevance is:
 - a. The subject site is located within the Christchurch/West Melton Groundwater Allocation Zone as defined by the planning maps of the LWRP. This zone is currently fully allocated, as while the LWRP specifies no numeric allocation limit for this zone it states:

"In general, no additional water is to be allocated from the Christchurch West-Melton Groundwater Allocation Zone shown on the Planning Maps except for group or community water supply as set out in Rule 5.115 or for non-consumptive taking and use as set out in Rules 5.131 and 5.132."
 - b. The northern half of the site is located within the Christchurch Groundwater Protection Zone – this zone provides for restrictions on land uses and discharges in order to protect Christchurch's groundwater supply.
 - c. The subject site is located over a confined gravel aquifer system.
 - d. The nearest natural waterbody is Kaputone Creek which adjoins the subject site along its north-eastern boundary and is located approximately 14 metres from bore M35/1294 and 24 metres from new bore BX24/1577.
 - e. The site is located approximately 6.2km west from the coast.
 - f. The surrounding land uses are predominantly industrial and residential.
 - g. The closest community drinking water supply groundwater protection zone is located approximately 524m to the north-west of the site.

- h. The site is located within a Silent File area but is not located within a Statutory Acknowledgement Area or Rūnanga Sensitive Area.
- i. The existing take is from bore M35/1294, which is 33.1m deep and screened (intercepts water) from 25.3m below ground level.
- j. The proposed take is from BX24/1577, which is 186m deep and screened from 178.4m below ground level.
- k. Hydraulic parameters for the aquifer were obtained from a constant rate discharge aquifer test which was undertaken by the applicant on BX24/1577.
- l. The constant rate discharge test has been reviewed by Environment Canterbury Groundwater Scientists Mr Matt Dodson and Mr Fouad Alkhaier and the following parameters agreed upon:
 - i. Transmissivity (T) = 2,000 m²/d
 - ii. Storativity (S) = 0.0001
 - iii. Leakage (L) = 1,414 m
 - iv. $K'/B' = 0.001d^{-1}$
 - v. Sigma = 0.01
 - vi. $T_0 = 1,000 \text{ m}^2/d$
 - vii. Separation between pumped and overlying aquifer(s) at 160 metres below ground level
 - viii. Separation between pumped and underlying aquifer(s) at 200 metres below ground level
 - ix. Cut-off for shallow bores at 60 metres below ground level
 - x. Hunt-Scott two-layer model for drawdown interference assessments
- m. There are 544 wells recorded on Environment Canterbury's Wells Database within a 2,000m radius of BX24/1577. Of these, 199 bores are listed as active and 7 bores are listed as proposed. The remainder are recorded as not used, capped, filled or sealed. The majority of the active bores are used for a range of purposes including community supply, domestic supply, commercial and industrial purposes, water level observation, geotechnical observation, stockwater supply, and irrigation.

ASSESSMENT OF ACTUAL AND POTENTIAL EFFECTS

- 51. Refer to pages 3-4 of the AEE, which accompanied the application for the applicant's assessment of effects that may arise from this proposal.
- 52. I note the activity is classified as discretionary, therefore the decision maker has full discretion when considering the effects of the activities on the environment. However, in accordance with s127(3)(b), the application has only been assessed against actual and potential effects that arise from the change in conditions proposed.
- 53. I agree with the applicant's assessment and their conclusions in regard to the following potential effects:
 - a. Potential adverse effects of an inefficient take and use on other groundwater users

The applicant states that the current consented take and use is not proposed to change, and therefore there is no change to the efficiency.

As the application does not propose to change the rates, volumes, or the use for which water is abstracted, I do not consider that efficiency is an effect that arises from the change of conditions proposed.

b. Effect on other users from salt water intrusion

The applicant states that the volumes and rates authorised by CRC182813 are not proposed to change, and that this effect is not considered relevant as the change of abstraction point does not occur within two kilometres from the coast.

I agree with the applicant's assessment, noting that the proposed change is unlikely to contribute to any landward migration of the salt water interface.

c. Effect on aquifer stability

When reviewing the borelogs of wells within the area, the aquifers in the vicinity of this take are predominantly gravel based and are therefore unlikely to consolidate as a result of abstraction – as such aquifer subsidence as a result of the proposed change of conditions is unlikely to occur.

54. Further discussion is provided below for effects where I consider expansion on the assessment provided by the applicant, and my conclusions on those effects, is warranted.

Potential adverse effects on surrounding groundwater users

55. The abstraction of groundwater creates a drawdown cone that extends laterally from the pumping bore, which may result in a lowering of groundwater levels in neighbouring bores.
56. Policy 4.59 of the LWRP states:
- 4.59 The direct cumulative interference effect from new groundwater takes on existing groundwater takes shall not exceed the acceptable threshold criteria described in Schedule 12, unless it can be demonstrated that there will be no more than minimal adverse effects on the yield of existing adequately penetrating bores.
57. Schedule 12 of the LWRP manages the cumulative effects of well interference on neighbouring bores by establishing an acceptable effect, and provides for:
- a. establishment of the available drawdown in a bore based on the bore construction, configuration, and water levels;
 - b. the protection of 80% of the available drawdown in a bore to allow for abstraction from that bore to occur; and
 - c. allowing up to 20% of the available drawdown to be interfered with by surrounding pumping (within 2,000m), which consists of:
 - i. the effect of existing pumping of surrounding bores; plus
 - ii. the direct effect of any abstraction proposed as part of a resource consent application.
58. It is my view that the key effect that is likely to arise from the change of conditions proposed is that of well interference. This is because the abstraction from the deeper

bore has the potential to result in drawdown on neighbouring deep bores that is greater than those that would arise from the currently authorised pumping from the shallow bore.

59. Well interference assessments were provided by the applicant as part of the AEE. These assessments show that while there will be additional drawdown in neighbouring deep bores, they conclude that there will be no affected parties as the drawdown effects are less than minor as they are within the acceptable threshold as considered against Schedule 12 of the LWRP.
60. Mr Dodson reviewed the well interference modelling provided by the applicant and agreed with the conclusions provided. I note that Mr Dodson also audited the assessments by running additional, more conservative modelling scenarios, and concluded that these scenarios also resulted in no affected parties (HPCM Reference C18C/165090).
61. I note that the CCC also engaged Ms Hilary Lough of PDP to review the applicant's assessments independently to address potential concerns held by the CCC (HPCM reference C18C/164936).
62. Ms Lough's review identified some anomalies in Environment Canterbury's database which is used to determine cumulative well interference effects in a Schedule 12 assessment – this was primarily due to an instance of incorrect entry of data against other consents within the vicinity of the take. Ms Lough also independently undertook more conservative modelling assessments than those provided by the applicant, and reached the same overall conclusions as those of both the applicant's consultant, and Mr Dodson.
63. Despite the differences in approach and quantification of surrounding cumulative pumping from existing bores (the anomalies identified by the CCC), I note that the technical conclusions drawn are still that the effects on surrounding groundwater bores will be less than the thresholds for an acceptable effect specified in Schedule 12 of the LWRP.
64. Using the guidance in Schedule 12 of the LWRP which prescribes acceptable effect criteria, I consider that the effect of the proposed abstraction from bore BX24/1577 will be less than minor on surrounding bore owners.
65. The CCC has raised concerns raised in respect of future water supply requirements within the local area. The interference assessments undertaken indicate there is additional capacity for future additional pumping from the CCC bores.
66. I have only considered the existing environment, which does not include future possible abstraction from neighbouring bore owners, as that would require separate resource consent applications in order to occur. Bores which may be installed at a future point in time are ineligible to be considered as affected as Policy 4.59 only protects "the yield of existing adequately penetrating bores."
67. In conclusion, I consider that the effect of the change on surrounding groundwater users will be less than minor.

Potential adverse effects on surface water resources

68. The abstraction of groundwater near a surface water body can deplete surface flow as effectively as a direct take from the surface waterbody itself, depending on the extent of hydraulic connection. This can affect the flows in the surfacewater body and therefore also any instream values and values to other users of the water by reducing their reliability of supply.

69. Policy 4.61 of the LWRP specifies particular restrictions for “stream depleting groundwater”, the criteria for which are determined by applying Schedule 9 of the LWRP.
70. The nearest surface water body is the Kaputone Creek, located approximately 14 metres from bore M35/1294 and 24 metres from new bore BX24/1577.
71. The applicant states that the new deep bore does not cause any stream depletion, and that as rates and volumes attributed to the currently authorised existing bore M35/1294 are not proposed to change, there will be no change to any potential stream depletion.
72. The new deep bore (BX24/1577) is screened from deeper than over 180 metres below ground level, and aquifer testing provided by the applicant concludes that abstraction from this bore will not affect surface water flows in the vicinity of the proposed take.
73. As the proposed abstraction is to take water from the deeper bore, I consider that the effect of the change proposed will not result in any increase in depletion on surface water features, noting that if water is abstracted preferentially from the deep bore rather than the shallow bore, any effects on surface water bodies will be reduced compared with any effects of pumping from the shallower bore. This is because any abstraction from the deep bore will require a correspondent reduction in abstraction from the existing shallow bore.
74. Any need to address hydraulic connection as a result of abstraction from the existing bore does not arise from the change of conditions proposed, and any potential effects in that regard are more appropriately dealt with by way of a review under s128 of the RMA, if this is determined by Environment Canterbury as necessary.
75. I therefore consider the potential for stream depletion effects to result from the change of conditions proposed to be less than minor.

Potential cumulative effects on other groundwater users

76. The cumulative effects of taking groundwater may over time result in a permanent decline in groundwater levels. This could affect the availability of the groundwater resource for existing users, movement of the saltwater/freshwater interface at the coast and reduce surface water discharges via springs and streams if not appropriately managed. This also has the potential to impact on groundwater users through reduced access to water and compromised suitability of groundwater for abstractive purposes, and furthermore could impact on the environmental flow limits of surface water bodies
77. Policy 4.4 of the LWRP pertains to the management of groundwater and states:

4.4 Groundwater is managed so that:

(a) groundwater abstractions do not cause a continuing long-term decline in mean annual groundwater levels or artesian pressures;

(b) the individual and cumulative rate, duration and volume of water pumped from bores is controlled so as to prevent seawater contamination;

(c) the rate and duration of individual abstractions is controlled to ensure that individually or cumulatively, localised pressure reversal does not result in the downward movement of contaminants;

(d) in any location where an overall upwards pressure gradient exists, restrict the taking of groundwater so that at all times the overall upward pressure difference is maintained between any one aquifer and the next overlying aquifer;

(e) overall water quality in aquifers does not decline; and

(f) the exercise of customary uses and values is supported.

78. I note that with regard to points (c) and (d) of Policy 4.4, I consider that the change of pressure gradient in the aquifer is unlikely, given the lack of response shown in the overlying system over the relatively long aquifer test. I also note that condition 7 of CRC183812 provides for access to the bore for the purposes of water level monitoring. The applicant has not proposed that this condition be removed, and this would therefore provide for CRC to monitor water levels in both bores. This would enable any long term changes in water level that could result in pressure reversal to be monitored.
79. I have discussed the appropriate mechanism in which to address the potential for gradient reversal with CRC Groundwater Science Team Leader Mr Matt Dodson. While this effect is not expected to be observed, considering the community supply reliance on the deeper aquifer, I consider a precautionary approach requiring the applicant to undertake ongoing monitoring of water level, temperature, and conductivity in new bore BX24/1577 is not overly onerous. This monitoring would provide CRC with sufficient information to determine whether the abstraction from the deeper aquifer will result in an altered gradient, and the existing review clause provides for review of the consent in the event of an unanticipated effect occurring.
80. The monitoring is recommended out of an abundance of caution, as even if gradient reversal were to occur, this would in itself not necessarily result in an effect on other users of the resource. For this reason it should be clear that my recommendation, and conclusions in respect of the adverse effects of the proposed change, is not contingent on this condition being attached. I do however note that the applicant has agreed to, and adopted this as a condition of consent proposed.
81. Policy 4.7 of the LWRP manages the cumulative effects of abstraction and states:
- 4.7 Resource consents for new or existing activities will not be granted if the granting would cause a water quality or quantity limit set in Sections 6 to 15 to be breached or further over allocation (water quality and/or water quantity) to occur or in the absence of any water quality standards in Sections 6 to 15, the limits set in Schedule 8 to be breached.
- Replacement consents, or new consents for existing activities may be granted to:
- (a) allow the continuation of existing activities at the same or lesser rate or scale, provided the consent contains conditions that contribute to the phasing out of the over allocation (water quality and/or water quantity) within a specified timeframe; or
 - (b) exceed the allocation limit (water quality and/or water quantity) to a minor extent and in the short-term if that exceedance is part of a proposal to phase out the overallocation within a specified timeframe included in Sections 6 to 15 of this Plan.
82. The proposed variations to CRC182813 relate solely to adding an additional bore. No increase to the rate of take or the volumes abstracted under CRC182813 are proposed. For clarity, where the policy refers to replacement, or new consents for existing activities, this applies to new applications affected by s124 RMA as outlined in 1.2.6 of the LWRP, not applications affected by s127 as is the case for this application.
83. I note that new bore BX24/1577 will be abstracting from a deeper aquifer than existing bore M35/1294, however, under the LWRP framework cumulative effects are managed by way of single large blocks that form the Groundwater Allocation Zones specified in the planning maps, and these do not take into account the depth of abstraction.
84. The change of conditions proposed will not cause a water quality limit to be breached, as it will not result in additional abstraction from the Groundwater Allocation Zone, which is considered fully allocated.

85. To an extent the potential for cumulative effects to arise is also controlled through the assessment of localised well interference effects, as additional localised abstraction that would result in drawdown effects is also restricted by the limits set out in Schedule 12 of the LWRP.
86. I note that in CCC's interested parties response letter, CCC communicated their concerns about future growth of water demand in this area not being able to be met as a result of the addition of deeper bore BX24/1577 to CRC182813.
87. However, I note that as discussed earlier in this report, modelling undertaken for CCC showed "that there will be adequate available drawdown for existing and future CCC bores", and I have not taken into account effects on neighbouring groundwater abstractions that would be unable to occur unless they obtain the necessary resource consents in future, as they do not form part of the existing environment at this time.
88. I consider any cumulative effects of the change of conditions proposed on other groundwater users to be less than minor.

Potential effects on water quality as a result of cross connection

89. The main effect to consider as a result of the proposed addition of BX24/1577 to CRC182813 is the potential for water from shallow bore M35/1294 entering the deeper aquifer by way of common connection to BX24/1577 pumping infrastructure.
90. Policy 4.57 of the LWRP addresses the potential for cross connection, and states:
- 4.57 Any abstraction of groundwater does not result in cross-contamination between aquifers or water-bearing layers that results in, or may result in, adverse effects on water quality.
91. The requirement for effective backflow prevention is not present on the current consent CRC182813, and I consider this is a potential effect that arises from the change proposed.
92. The applicant proposes to install a backflow prevention device, however has not articulated this in their proposed conditions.
93. It is my recommendation to include a condition requiring a backflow prevention device to be installed on the bores before any water is abstracted BX24/1577.
94. This will serve to mitigate against the potential for water abstracted from one aquifer to backflow into a different aquifer via the headworks and infrastructure connected to the bores.
95. The CCC, in their earlier referred to correspondence, outlined concerns regarding the well head security of BX24/1577.
96. The installation of BX24/1577 is authorised under resource consent CRC180265 which provides for conditions addressing the security of the well head and protection of the groundwater source. While well head security is a relevant consideration in the context of effects on water quality and cross connection, I consider that this appropriately dealt with by compliance with the existing resource consent to install the bore, and is not an effect that is directly relevant to the change of conditions proposed.
97. In summary, I consider that subject to the conditions recommended in respect of the backflow prevention as proposed by the applicant in its application, any effects of cross connection on water quality as a result of the proposed change of conditions will be less than minor.

Potential adverse effects on Tangata Whenua values

98. The application is located within the rohe of Nga Rūnanga o Tūāhuriri.
99. There is a Silent File encompassing the property in which the bore resides, although I note that the Rūnanga had no concerns with application CRC180265 to install bore BX24/1577, provided that an accidental discovery protocol was included in the conditions of the consent.
100. Tūāhuriri Rūnanga was informed of the application upon receipt by Environment Canterbury, and additionally a request was sent to Mahaanui Kurataio Ltd to ask if Nga Rūnanga had any concerns.
101. A response was received (see HPCM C18C/169028), which is summarised below:
 - a. The Rūnanga are opposed to this application and the existing activity and recommend that it be declined. They consider that no mitigation would be appropriate to provide for their concerns.
 - b. They consider themselves an affected party.
 - c. Nga Rūnanga assessed the proposed activity against the policies of the Mahaanui Iwi Management Plan and consider that the activity is not consistent with the appropriate policies (WM1.4, WM2.1, WM2.3, WM2.4, WM3.1, WM4.1, WM8.8 and WM8.6).
 - d. Nga Rūnanga stated that this application would allow commercial exploitation of a wāhi taonga resource and would entrench the notion of freshwater as an unlimited utility. Further to this, they state that the proposed activity would increase pressure on a vital drinking water resource which is already subject to pressures such as land use intensification and projected population growth. A decision to allow commercial extraction is in direct conflict with the protection of intergenerational interests.
102. It is my view that the concerns held by Nga Rūnanga relate more to effects that were required to be considered for the grant of the original consent, as the concerns raise relate primarily the allocation and the use of the water. Those matters are not in my view effects which arise from the change of conditions proposed.
103. Acknowledging the concerns raised by Mahaanui Kurataio Ltd and Dr Te Maire Tau, as the application is for a change of conditions, the scope of effects able to be considered are those that arise directly from the change sought.
104. I have concluded that there will be no change in cumulative effects, stream depletion and the wider environment outside that currently authorised by CRC182813 due to the abstraction rate and volumes remaining the same. Effects on surrounding groundwater users have furthermore been considered as less than minor.
105. I consider that effect of the change of conditions proposed will be less than minor on Nga Rūnanga and Tangata Whenua values.

COMPLIANCE HISTORY

106. I note that there has been some non-compliance documented against the existing consent, namely Environment Canterbury were:
 - a. not notified of the first exercise of the consent;
 - b. the water meter verification was not supplied within the specified timeframe
 - c. water metering data received was of insufficient quality.

107. The above matters resulted in an abatement notice being issued on 24 August 2018 and after non-compliance was rectified, the abatement notice was lifted on 07 September 2018.
108. There have been no subsequent incidences of non-compliance with the conditions of the existing consent and:
- a. abstraction from the existing consented shallow bore (M35/1294) is being received by CRC; and
 - b. the deeper bore BX24/1577 has a meter, which demonstrates that no abstraction has occurred from this well.
109. The compliance history of the applicant as a current consent holder does not affect my recommendation or the conditions attached to it.

OBJECTIVES AND POLICIES

National Policy Statement for Freshwater Management 2017 (NPS-FM 2017)

110. The NPS-FM 2017 directs regional councils, in consultation with their communities, to set objectives for the state of fresh water bodies in their regions and to set limits on resource use to meet these objectives.
111. As this application is only to add a bore to existing consent CRC183812 there will be no change in the rate of take and volumes authorised, I consider this proposal to be consistent with the objectives and policies of the NPS-FM.

National Environmental Standard for Sources of Human Drinking Water (NES)

112. Regulation 7(1) of the NES states that:
- “A regional council must not grant a water permit or discharge permit for an activity that will occur upstream of an abstraction point where the drinking water concerned meets the health quality criteria if the activity is likely to— (a) introduce or increase the concentration of any determinands in the drinking water, so that, after existing treatment, it no longer meets the health quality criteria; or (b) introduce or increase the concentration of any aesthetic determinands in the drinking water so that, after existing treatment, it contains aesthetic determinands at values exceeding the guideline values.”*
113. Regulation 8(1) of the NES states:
- “A regional council must not grant a water permit or discharge permit for an activity that will occur upstream of an abstraction point where the drinking water concerned is not tested in accordance with the compliance monitoring procedures in the Drinking-water Standard if the activity is likely to— (a) increase the concentration of any determinands in the water at the abstraction point by more than a minor amount; or (b) introduce or increase the concentration of any aesthetic determinands in the drinking water so that, after existing treatment, it contains aesthetic determinands at values exceeding the guideline values.”*
114. The nearest NES registered community supply wells, M35/1336 and M35/10632 owned by the CCC, are located approximately 915 metres to the north west of the applicant's property.
115. The key effects which could arise from the proposed activity in relation to the CCC's community supply bores are:
- a. Well interference
- This has been discussed earlier in this report and has been demonstrated to be within the requirements of Schedule 12 of the LWRP. Further to this, as

discussed above, PDP's report outlines that sufficient drawdown remains for the community supply wells to be deepened with no unacceptable interference effects arising.

b. Cumulative effects:

The proposal does not seek to change the rates or volumes of abstraction and as such cumulative effects are unlikely to arise on an NES registered bore;

c. Water quality:

Subject to backflow mitigation any effect on water quality on an NES bore that could otherwise arise from cross connection is adequately mitigated against.

116. For this reason I conclude that the requirements of the NES will be not be breached by the consent application.

Regional Policy Statement (RPS)

117. The Canterbury Regional Policy Statement 2013 provides an overview of the significant resource management issues facing the Canterbury Region. Its purpose is to set out objectives, policies and methods to resolve those resource management issues and to achieve integrated management of the natural and physical resources of Canterbury. I considered the relevant RPS objectives and policies below:

Objective 7.2.1: Sustainable management of fresh water.

Objective 7.2.4: Integrated management of fresh water resources.

Policy 7.3.4: Water quantity.

Policy 7.3.6: Fresh water quality.

Policy 7.3.8: Efficient allocation and use of freshwater.

118. For the reasons that:

- a. this application is solely to add an additional bore to an existing consent (CRC182813);
- b. there is no proposed change in the overall rates or volumes of take; and
- c. the water resource from which abstraction is proposed is managed on a zonal (not aquifer) basis;

I consider this proposal to be consistent with the above objectives and policies of the RPS.

Land and Water Regional Plan (LWRP)

119. The purpose of the LWRP is to identify the resource management outcomes or goals for managing land and water resources in Canterbury to achieve the purpose of the Resource Management Act 1991.
120. In addition to the relevant LWRP policies identified above under the Assessment of Actual and Potential Effects, and noting there being no specific policies in the LWRP that relate to the change of abstraction point, I have considered the following objectives and policies of the LWRP:

Objectives

Objective 3.6: Water is recognised as essential to all life and is respected for its intrinsic values.

Objective 3.8A: High Quality freshwater is available to meet actual and reasonably foreseeable needs for community drinking water supplies.

Objective 3.9: Abstracted water is shown to be necessary and reasonable for its intended use and any water that is abstracted is used efficiently.

Objective 3.10: Water is available for sustainable abstraction or use to support social and economic activities and social and economic benefits are maximised by the efficient storage, distribution and use of the water made available within the allocation limits or management regimes which are set in this Plan.

Objective 3.11: Water is recognised as an enabler of the economic and social wellbeing of the region.

Objective 3.12: When setting and managing within limits, regard is had to community outcomes for water quality and quantity.

Objective 3.13: Groundwater resources remain a sustainable source of high quality water.

121. I consider that the proposal to change the conditions of CRC182813 to authorise abstraction from bore BX24/1577 is broadly consistent with the LWRP objectives listed above.

Policies

Policy 4.1: Water bodies (lakes, rivers, wetlands and aquifers) will meet the fresh water outcomes set in the Plan.

Policy 4.2: Water bodies (lakes, rivers, wetlands and aquifers) will meet sub-regional freshwater limits.

Policy 4.5: Prioritisation of life-supporting capacity of water.

Policy 4.54: Metering requirements (telemetry for takes 30L/s and above)

Policy 4.69: Systems to convey or apply water.

Policy 9.4.1: Protect Sources of Drinking Water

122. Subject to a condition requiring backflow prevention is installed to mitigate against the potential for cross contamination between the shallow and deep bores, I consider that the proposal to authorise abstraction from bore BX24/1577 is broadly consistent with the LWRP policies listed above.

RECOMMENDATION

Notification – (Section 95A and 95B)

Section 95A

123. Section 95A of the RMA 1991 specifies the steps the Council is to follow to determine whether an application is to be publicly notified. These steps are addressed in the statutory order below in accordance with s95A RMA 1991.

Step 1: Mandatory public notification in certain circumstances;

124. Mandatory public notification of this application is not required, as none of the criteria in s95A(3) are met.

Step 2: if not required by step 1, public notification precluded in certain circumstances

125. Public notification is not precluded, as none of the criteria for this set out in s95A(5) are met.

Step 3: Public notification required in certain circumstances

126. Public notification is not required, as none of the criteria in s95A(8) are met, specifically:

- (a) the application is not for a consent subject to a rule or NES that requires public notification; and
- (b) the activity will not have or is not likely to have adverse effects on the environment that are more than minor, noting the necessary contextual modifier to both 'activity' and 'effects' pursuant to s127(3)(b).

Step 4: public notification in special circumstances

127. If, under s95A(9), the consent authority determines that special circumstances exist in relation to the application that warrant the application being publicly notified, then the application must be publicly notified
128. I note that there has been public interest on this application, and for this reason I have given careful consideration as to whether special circumstances exist in relation to this application that warrant the application being publicly notified.
129. I have received a copy of legal advice regarding special circumstances (Appendix Two).
130. From this, I understand that special circumstances are those which are exceptional, abnormal or unusual, but not necessarily extraordinary or unique. Public interest alone does not generally amount to special circumstances, however public interest could be a contributing factor that could be considered in combination with other factors supporting the existence of special circumstances.
131. A decision on whether special circumstances exist requires the exercise of a discretion based on the Council's assessment of the factual position and use of its expertise and judgment.
132. Where no adverse effects are likely to arise from an activity, it is unlikely that special circumstances requiring notification can be justified.

133. The fact that public opinion is against a proposal does not determine whether special circumstances exist, but may be a contributing factor.
134. I note that this application has received particular public interest, and that the existing consent which is proposed to be changed, CRC182183, is currently undergoing judicial review proceedings.
135. However, I note that one of the purposes for which notification as a special circumstance could be considered is: whether it would be likely to result in the Council receiving further information relevant to the issues for determination on the substantive application.
136. In this case, given that the application is for a change in conditions and the only relevant effects that can be assessed are those that arise from the change, and I consider that these effects can be assessed sufficiently without requiring notification.
137. I have considered the circumstances relating to this application – considering the scope of the assessment of effects as being limited to those directly resulting from the proposed change, I do not consider that further information relevant to the issues for deciding the application (the substantive decision) would be received via a public notification process.
138. Taking into account the above, I do not consider that special circumstances exist that warrant publicly notifying the application under step 4 of s95A.
139. In summary, I have assessed the public notification requirements in the order given in s95A and consider that public notification of this application is not required.

Section 95B

140. If the application is not publicly notified under section 95A RMA 1991, the Council must follow the steps set out in section 95B to determine whether to limited notify the application. These steps are addressed below in statutory order in accordance with s95B RMA 1991.

Step 1: certain affected groups and affected persons must be notified

141. There are no protected customary rights groups or customary marine title groups affected by the proposed activity for the purposes of s95B(2). The proposed activity is not on or adjacent to, or may affect, land that is subject of a statutory acknowledgement under Schedule 11 for the purposes of s95B(3).

Step 2: limited notification precluded in certain circumstances

142. Limited notification is not precluded for the purposes of s95B(5).

Step 3: certain other affected persons must be notified

143. As discussed in the Assessment of Actual and Potential Effects and Assessment of Potentially Affected Parties section of this report, there are no affected persons in accordance with s95B(7) and (8). In reaching this conclusion, I have also considered whether any party discussed above that has contacted the CRC outlining their interest in the application is considered an affected party, and concluded that no persons are affected by the application.

Step 4: further notification in special circumstances

144. Special circumstances do not exist which require the application to be limited notified for the purposes of s95B(10).
145. Section 95B(10) provides:
“Determine whether special circumstances exist in relation to the application that warrant notification of the application to any other persons not already determined to be eligible for limited notification under this section (excluding persons assessed under section 95E as not being affected persons)”
146. I have received legal advice that limited notification for special circumstances only applies where notification is otherwise precluded under Step 2 in s95B. In other words persons assessed under section 95E as not being affected persons may not be limited notified an application on the grounds of special circumstances. In this case, neither s95B(6)(a) or (b) apply to the application, so there are no persons to whom limited notification is otherwise precluded.
147. I therefore consider that there are no other potential parties that could be limited notified the application on the basis of special circumstances as the Council has not been precluded from assessing any person from being an affected person.
148. I have therefore assessed the limited notification requirements in the order given and consider that limited notification of this application is not required.
149. In conclusion, I recommend that this application be decided on a non-notified basis.
150. The purpose of this recommendation is to inform a decision maker, however it is in no way binding upon a decision maker. The recommendation from this point forward in my report is contingent on, and in my view logically connected from, the recommendation arrived at in regard to notification. For the abundance of clarity, it should be noted that if a different viewpoint around the need for notification is reached by the decision maker, then the recommendation in respect of the substantive decision on this application (grant or refuse) is not able to be formed until such time as any submissions that may then be made, have been considered.

Part 2 Matters (Purpose and Principles of the RMA)

151. Under section 104(1) of the RMA, the consent authority must consider applications "subject to Part 2" of the Resource Management Act 1991 (RMA), specifically sections 5, 6, 7 and 8.
152. The Purpose of the RMA (Section 5) is to:
“promote the sustainable management of natural and physical resources.”
153. The Court of Appeal has recently considered the application of Part 2 under section 104 in *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, [2018] 3 NZLR 283. This decision found that decision-makers are required to consider Part 2 in making decisions on consent applications, where it is appropriate to do so. Whether it is “appropriate” to refer to Part 2 depends on the planning documents in question.
154. The Court of Appeal stated that consent authorities should continue to undertake a meaningful assessment of the objectives and policies of the relevant plan. Where the planning documents have been prepared having regard to Part 2 of the RMA, and with policies designed to achieve clear environmental outcomes, consideration of Part 2 is not likely to be necessary.

155. Where this is the case, the Court of Appeal found that the consent authority should implement the policies of the plan. In this case, “genuine consideration and application of relevant plan considerations may leave little room for Part 2 to influence the outcome.” The consideration of Part 2 is not prevented, but it cannot be used to justify an application that is otherwise not supported by objectives and policies.
156. Consideration under Part 2 is appropriate where the consent authority has doubt as to whether the planning documents have been prepared in a manner that appropriately reflects Part 2.
157. In light of the Court of Appeal judgment, Part 2 is required to be considered when determining an application for resource consent, but the objectives and policies still hold significant weight, and in most cases (unless the plan has not been prepared in accordance with Part 2), will largely be determinative.
158. Given the direction of the Court of Appeal judgement, I have still considered this application against Part 2 of the RMA 1991, and I am of the view that this activity will achieve the purpose of the RMA. A detailed discussion against these matters has not been provided.

Consideration of Application (Section 104(1)(a) –(c))

159. Section 104 of the RMA specifies Consideration of applications and sets out the matters considerations as follows:

“When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—...”

Any actual and potential effects on the environment of allowing the activity (s104(1)(a))

160. The assessment of adverse effects undertaken for the purpose of the notification recommendation concluded that adverse effects were no more than minor. I consider that this assessment is also relevant to the assessment required under s104(1)(a).
161. No positive effects were identified by the applicant in the application, however I consider that the proposed change provides access to a more secure and reliable deeper well.
162. Overall, I consider that any adverse effects will be acceptable and are able to be avoided, remedied or mitigated subject to appropriate conditions.

Relevant provisions of the statutory framework (s104(1)(b))

163. Section 104(1)(b) requires that the consent authority to have regard to the following:

“(b) any relevant provisions of—

(i) a national environmental standard:

(ii) other regulations:

(iii) a national policy statement:

(iv) a New Zealand coastal policy statement:

(v) a regional policy statement or proposed regional policy statement:

(vi) a plan or proposed plan...”

164. In accordance with section 104(1)(b) of the RMA, I have had regard to the relevant provisions the Drinking Water NES, NPS-FM(2017), Canterbury RPS and LWRP, the relevant provisions of which are discussed above in the Objectives and Policies section

of this report. Overall, I consider this application is consistent with the objectives and policies of the relevant planning provisions.

Any other matters (s104(1)(c))

165. Section 104(1)(c) requires that the consent authority have regard to:

“any other matter the consent authority considers relevant and reasonably necessary to determine the application”

166. In accordance with section 104(1)(c) I have had regard to any other matters relevant to this application including:

a. Canterbury Water Management Strategy

The proposal is located within the area managed by the Christchurch-West Melton-Banks Peninsula Zone Committee. The committee have generated a Zone Implementation Programme (ZIP) for this zone. ZIPs are non-statutory documents that are being completed by each of the Zone Committees within the Canterbury region. ZIPs contain zone-specific recommendations for water management to achieve the CWMS targets. I consider that this application is consistent with the ZIP for this zone.

b. Mahaanui Iwi Management Plan

The Mahaanui Iwi Management Plan was collectively developed by six Papatipu Rūnanga who hold manawhenua rights over lands and waters within the takiwā from the Hurunui River to the Hakatere River and inland to Kā Tiritiri o Te Moana. The Mahaanui Iwi Management Plan sets out issues of significance, objectives and policies relating to the protection and enhancement of Ngai Tahu values and natural resources.

c. Public Interest and Judicial Review

I acknowledge that there is a high level of public interest in this application. However, material considered under section 104(1)(c) must still relate to the purpose of the Act and I therefore consider that community perceptions of risk or effects are not a relevant matter for consideration, rather it is the actual evidence of the risk that should be considered in relation to the effects. Given that the adverse effects of the activity are no more than minor, and that the application is consistent with the relevant planning provisions, I do not consider the public interest, when considered as an other matter under s104(1)(c), warrants significant weight for the purposes of a decision on this application. Additionally, as noted previously, the consent which this application proposes to change, CRC182813, is currently subject to judicial review proceedings. However, given the consent must be treated as valid unless the Court determines otherwise, I do not consider that the judicial review proceeding is a relevant matter for the purposes of section 104(1)(c).

Determination of applications for discretionary or non-complying activities (Section 104B)

167. Section 104B specifies that after considering an application for a resource consent for a discretionary activity, a consent authority:

“ a. May grant or refuse the application; and

b. If it grants the application, may impose conditions under section 108.”

168. As provided for under s104B of the RMA, I have made a recommendation on the application, and this recommendation is subject to conditions that can be imposed under s108 of the RMA.

Duration

169. This application seeks a change of conditions to water permit CRC182813.
170. Section 127 of the RMA relates to applications for change or cancellation of consent conditions and s127(1)(b) specifies:
"no holder of any consent may apply for a change or cancellation of a condition on the duration of the consent."
171. As no application can be made to change the duration of the consent, the consent authority also has no scope to alter the duration for any application affected by s127.
172. As such there is no scope to change the duration of the existing consent, which expires on 30 April 2032.

Grant or refuse

173. Having considered all the relevant matters under sections 104-104C, I recommend granting resource consent CRC192153 subject to the conditions outlined below which have been adopted by the applicant (HPCM C18C/170601).

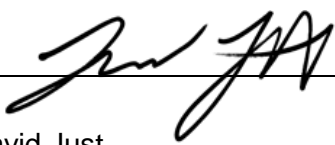
Signed:



Name: Jason Eden
Consents Planner

Date: 3 December 2018

Signed:



Name: David Just
Team Leader Consents Planning

Date: 3 December 2018

RECOMMENDED CONDITIONS

Please note: changes necessary from the existing consent are marked in **bold** below.

1	<p>Water may be taken only from:</p> <ul style="list-style-type: none"> a. bore M35/1294, 203 millimetres diameter and 33.1 metres deep, at map reference NZTM 2000 1570829 mE - 5189404 mN; and b. bore BX24/1577, 460 millimetres diameter and 186 metres deep, at map reference NZTM 2000 1570842 mE - 5189382 mN.
2	<p>Water may be taken from the bores specified in condition 1 at a combined rate not exceeding 50 litres per second, with a combined volume not exceeding:</p> <ul style="list-style-type: none"> a. 4,320 cubic metres per day; and b. 1,576,800 cubic metres between 01 July and the following 30 June.
3	<p>The depth at which water is drawn into bore BX24/1577 shall not be less than 178 metres below ground level.</p>
4	<p>Water shall only be used for commercial water bottling operations.</p>
5	<p>Prior to the first exercise of this consent, for bore BX24/1577, 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 Leader - Monitoring and Compliance, within two weeks of each inspection.
6	<p>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.</p>
7	<p>The consent holder shall before the first exercise of this consent:</p> <ul style="list-style-type: none"> a. <ul style="list-style-type: none"> i. install a water meter(s) that has an international accreditation or equivalent New Zealand calibration endorsement, and has pulse output, suitable for use with an electronic recording device, which will measure the rate and the volume of water taken to within an accuracy of plus or

	<p>minus five percent as part of the pump outlet plumbing, or within the mainline distribution system, at a location(s) that will ensure the total take of water is measured; and</p> <p>ii. install a tamper-proof electronic recording device such as a data logger(s) that shall time stamp a pulse from the flow meter at least once every 60minutes, and have the capacity to hold at least one season's data of water taken as specified in clauses (b)(i) and (b)(ii), or which is telemetered, as specified in clause (b)(iii).</p> <p>b. The recording device(s) shall:</p> <p>i. be set to wrap the data from the measuring device(s) such that the oldest data will be automatically overwritten by the newest data (i.e. cyclic recording); and</p> <p>ii. store the entire season's data in each 12 month period from 1 July to 30 June in the following year, which the consent holder shall then download and store in a commonly used format and provide to the Canterbury Regional Council upon request in a form and to a standard specified in writing by the Canterbury Regional Council; and</p> <p>iii. shall be connected to a telemetry system which collects and stores all of the data continuously with an independent network provider who will make that data available in a commonly used format at all times to the Canterbury Regional Council and the consent holder. No data in the recording device(s) shall be deliberately changed or deleted.</p> <p>c. The water meter and recording device(s) shall be accessible to the Canterbury Regional Council at all times for inspection and/or data retrieval.</p> <p>d. The water meter and recording device(s) shall be installed and maintained throughout the duration of the consent in accordance with the manufacturer's instructions.</p> <p>All practicable measures shall be taken to ensure that the water meter and recording device(s) are fully functional at all times.</p>
8	<p>Within one month of the installation of the measuring or recording device(s), or any subsequent replacement measuring or recording device(s), and at five-yearly intervals thereafter, and at any time when requested by the Canterbury Regional Council, the consent holder shall provide a certificate to the Canterbury Regional Council, Attention Regional Leader - Monitoring and Compliance, signed by a suitably qualified person certifying, and demonstrating by means of a clear diagram, that:</p> <p>a. The measuring and recording device(s) has been installed in accordance with the manufacturer's specifications; and</p> <p>b. Data from the recording device(s) can be readily accessed and/or retrieved in accordance with these conditions</p>
9	<p>Access to allow water level measurements to be taken in the bore(s) shall be established, and maintained, via a bung and socket with a minimum diameter of 20 millimetres installed in the bore casing or headworks.</p>

10	<p>Prior to the taking of water from bore BX24/1577 in terms of this permit, the consent holder shall:</p> <ul style="list-style-type: none"> a. measure the following: <ul style="list-style-type: none"> i. the water level in the bore; ii. the temperature of water within, or abstracted from the bore to the nearest 0.1 degrees Celcius; iii. the conductivity of water within, or abstracted from the bore; b. take measurements of the specified parameters at an interval not greater than 15 minutes; c. have the capacity to store the logged data for a minimum period of 12 months; d. inspect the measuring equipment at least once per month to ensure that the water level, temperature, and conductivity is being measured and recorded. <p>All measurements shall be provided to the Canterbury Regional Council: Attn: Regional Manager, RMA Monitoring and Compliance, annually during the month of June, or when requested.</p>
11	<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 dealing with any adverse effect on the environment which may arise from the exercise of this consent.</p>

APPENDIX ONE: EXISTING RESOURCE CONSENT CRC182813

RESOURCE CONSENT CRC182813

Pursuant to Section 104 of the Resource Management Act 1991

The Canterbury Regional Council (known as Environment Canterbury)

GRANTS TO:	Cloud Ocean Water Limited
A WATER PERMIT (S14):	To take & use groundwater.
COMMENCEMENT DATE:	21 Dec 2017
EXPIRY DATE:	30 Apr 2032
LOCATION:	20 Station Road, Belfast

SUBJECT TO THE FOLLOWING CONDITIONS:

- 1 Water may be taken only from bore M35/1294, 203 millimetres diameter and 33.1 metres deep, at or about map reference NZTM2000:1570828.70E-5189405.30N.
- 2 Water may be taken at a rate not exceeding 50 litres per second, with a volume not exceeding 4,320 cubic metres per day, and 1,576,800 cubic metres between 1st July and the following 30th June.
- 3 Water shall only be used for commercial water bottling operations.
- 4 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.
- 5 The consent holder shall before the first exercise of this consent:
 - a.
 - i. install a water meter(s) that has an international accreditation or equivalent New Zealand calibration endorsement, and has pulse output, suitable for use with an electronic recording device, which will measure the rate and the volume of water taken to within an accuracy of plus or minus five percent as part of the pump outlet plumbing, or within the mainline distribution system, at a location(s) that will ensure the total take of water is measured; and
 - ii. install a tamper-proof electronic recording device such as a data logger(s) that shall time stamp a pulse from the flow meter at least once every 60minutes, and have the capacity to hold at least one season's data of water taken as specified in clauses (b)(i) and (b)(ii), or which is telemetered, as specified in clause (b)(iii).

- b. The recording device(s) shall:
 - i. be set to wrap the data from the measuring device(s) such that the oldest data will be automatically overwritten by the newest data (i.e. cyclic recording); and
 - ii. store the entire season's data in each 12 month period from 1 July to 30 June in the following year, which the consent holder shall then download and store in a commonly used format and provide to the Canterbury Regional Council upon request in a form and to a standard specified in writing by the Canterbury Regional Council; or [and]
 - iii. shall be connected to a telemetry system which collects and stores all of the data continuously with an independent network provider who will make that data available in a commonly used format at all times to the Canterbury Regional Council and the consent holder. No data in the recording device(s) shall be deliberately changed or deleted.
- c. The water meter and recording device(s) shall be accessible to the Canterbury Regional Council at all times for inspection and/or data retrieval.
- d. The water meter and recording device(s) shall be installed and maintained throughout the duration of the consent in accordance with the manufacturer's instructions.

All practicable measures shall be taken to ensure that the water meter and recording device(s) are fully functional at all times.

- 6 Within one month of the installation of the measuring or recording device(s), or any subsequent replacement measuring or recording device(s), and at five-yearly intervals thereafter, and at any time when requested by the Canterbury Regional Council, the consent holder shall provide a certificate to the Canterbury Regional Council, Attention Regional Leader - Monitoring and Compliance, signed by a suitably qualified person certifying, and demonstrating by means of a clear diagram, that:
 - a. The measuring and recording device(s) has been installed in accordance with the manufacturer's specifications; and
 - b. Data from the recording device(s) can be readily accessed and/or retrieved in accordance with these conditions
- 7 Access to allow water level measurements to be taken in the bore(s) shall be established, and maintained, via a bung and socket with a minimum diameter of 20 millimetres installed in the bore casing or headworks.
- 8 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 dealing with any adverse effect on the environment which may arise from the exercise of this consent.

Issued at Christchurch on 21 December 2017

Canterbury Regional Council



APPENDIX TWO – LEGAL ADVICE



MEMORANDUM

Date: 25 November 2018
To: Catherine Schache, Virginia Loughnan
From: Lucy de Latour

CLOUD OCEAN WATER LIMITED - SPECIAL CIRCUMSTANCES REQUIRING NOTIFICATION

1. Cloud Ocean Water Limited (**Cloud Ocean**) has lodged an application with Canterbury Regional Council (**Council**) under section 127 of the Resource Management Act 1991 (**RMA**) to change the conditions of consent CRC182813, in order to allow the current allocation of water to be taken either from the existing shallow bore, or a recently drilled deeper bore.
2. This application has been allocated the consent number CRC192153. The conditions the applicant proposes be amended are set out as follows:¹
 1. Water may be taken only from bore M35/1294, 203 millimetres diameter and 33.1 metres deep, at or about map reference NZTM2000: 1570828E-5189405N, **and bore BX24/1577, 460 millimetres diameter and 186 metres deep (screened 178.4 – 184.4 metres), at or about map reference NZTM2000: 1570842E-5189382N.**
 2. Water may be taken at a **combined** rate not exceeding 50 litres per second, with a **combined** volume not exceeding 4,320 cubic metres per day, and **combined** 1,576,800 cubic metres between 1 July and the following 30 June.
3. The consent that the applicant seeks to amend as part of this application is one of the three water permits subject to judicial review proceedings filed by Aotearoa Water Action Incorporated. There has also been considerable public interest in the application.
4. You have asked us to outline the legal tests for special circumstances that will apply when undertaking the notification assessment for CRC192153, both in relation to public notification under section 95A(9) of the RMA, and also in relation to limited notification under section 95B(10).

Summary of advice

Statutory context

5. Processing CRC192153 requires the Council² to determine whether public notification of the change application is required in accordance with the steps set out in section 95A of the RMA. If the criteria for step 2 are met, or if public notification is not required under step 3, the Council must consider whether special circumstances that warrant notification of the application exist and if it finds that they do, the application must be publicly notified.³

¹ The changes to CRC 182813 that the applicant has sought are shown in bold.

² Noting that the Council's notification decision has been delegated to an independent hearing commissioner.

³ RMA, s 95A(9).

6. If it considers that special circumstances requiring public notification do not exist, the application will not be publicly notified, but the consent authority must determine whether to give limited notification of the application under section 95B.
7. Following the 2017 amendments to the RMA, it is also necessary to consider how special circumstances apply in relation to the limited notification tests.
8. Section 95B(10) of the RMA requires the Council to determine whether special circumstances exist in relation to the application that warrant notification of the application to any other persons not already determined to be eligible for limited notification (excluding persons assessed under section 95E as not being affected persons).
9. Based on the wording of section 95B(10), in our opinion an application cannot be limited notified (under special circumstances) on persons assessed under section 95E as not being affected persons. This step in the limited notification test was intended to capture only those situations where limited notification was otherwise precluded under step 2, such as where a rule in a regional plan precludes notification, or the activity is controlled under a district plan (and therefore limited notification is precluded). In respect of the application CRC192153, if the Council decides that there are no affected persons under section 95E, then we do not consider that the Council can limited notify the application on the grounds of special circumstances.
10. It is ultimately up to the Council to decide whether special circumstances exist, and whether they warrant public notification. We have examined the case law regarding what has previously been sufficient to establish special circumstances below. We note that there have been no cases addressing this since the 2017 RMA amendments, although we consider the case law regarding the threshold for special circumstances is still valid as that aspect of the test remains unchanged.

What are special circumstances?

11. A special circumstance "is one outside the common run of things, one which ... is exceptional, abnormal, or unusual, but something less than extraordinary or unique."⁴
12. With regard to what may constitute an unusual or exceptional circumstance, Salmon J commented in *Bayley v Manukau City Council* that if the district plan specifically envisages what is proposed, it cannot be described as being out of the ordinary and giving rise to special circumstances.⁵ Where no adverse effects are likely to arise from an activity, it is unlikely that special circumstances requiring notification can be justified.⁶
13. As the High Court has confirmed, a decision on whether special circumstances exist requires:⁷

the exercise of a discretion based on the Council's assessment of the factual position and use of its expertise and judgment.

⁴ *Peninsula Watchdog Group (Inc) v Minister of Energy* [1996] 2 NZLR 529 (CA), at 8.

⁵ *Bayley v Manukau City Council* [1998] NZRMA 396.

⁶ *Fullers Group Limited v Auckland Regional Council* [1999] NZRMA 439 (CA), at [33].

⁷ *Urban Auckland v Auckland Council* [2015] NZHC 1382, at [137].

14. Circumstances which are special are those which make notification desirable, notwithstanding the general provisions excluding the need for notification.⁸ In *Murray v Whakatane District Council*, Elias J stated (although in respect of an earlier version of the RMA which included a presumption of notification):

Section 94(5) is an important safeguard to ensure that the streamlining of consents which are routine or uncontentious or minor in their effects, yields to special circumstances. It is true that no explicit indication is given in s 94(5) of what circumstances may be "special". There is nothing unusual in that. Discretionary powers which do not in their terms of conferment expressly refer to the purpose for which they may be used, must still be exercised in conformity with the legislation and the purpose to be discerned from it. In the context of the notification provisions of an Act dependent upon participation for informed decision-making, in the wider public interest, it seems to me that circumstances which are "special" will be circumstances which make notification desirable, notwithstanding the general provisions in subsections (1) to (3). The policy evident in those subsections seems to be based upon an assumption that the consent authority does not require the additional information which notification may provide because the principles to be applied in the decision are clear and non-contentious (as they will generally be if settled by District Plan) or the adverse effects are minor. Where a consent does not fit within that general policy, it may be seen to be unusual. While no doubt it is not necessary for the consent authority to turn its mind to the desirability of notification in every case covered by s 94(1) to (3), where there are indications that the case is out of the ordinary because not falling within the general policy, it will be necessary to consider the discretion under s 94(5).

15. Several cases have considered the applicability of public interest concerns to special circumstances. Earlier cases have suggested that public opinion being against a proposal does not determine whether special circumstances exist, but may be a contributing factor. In *Murray v Whakatane District Council*, Elias J stated:⁹

In an Act concerned with balancing competing factors to arrive at resource use which is in the overall public interest, where the public interest is not able to be sufficiently informed by the District Plan or by the applicant and such inquiries as the Council can reasonably make there would seem to be "special circumstances" which prompt notification.

16. This was further considered more recently in *Urban Auckland v Auckland Council*, where the Court agreed with Elias J's assessment of public interest being a contributing factor, but noted that concern "on the part of an interested party could not of itself be said to give rise to special circumstances", as every application would have to be notified where persons claimed to be affected.¹⁰
17. Despite this, the Court stated that the public interest generated in the Ports of Auckland's plans as well as the proposed wharf extensions in general, could be "categorised as outside the common run of interest shown in applications for commercial development", and thus contributed to a finding of special circumstances.¹¹

⁸ *Murray v Whakatane District Council* [1997] NZRMA 433 (HC).

⁹ *Murray v Whakatane District Council* [1997] NZRMA 433 (HC), at 49.

¹⁰ *Urban Auckland v Auckland Council* [2015] NZHC 1382, at [137].

¹¹ *Urban Auckland v Auckland Council* [2015] NZHC 1382, at [146].

18. When considering whether special circumstances apply the Council should also consider the purpose for which notification is undertaken. When making a decision whether to publicly notify an application, the essential question for the Council is "whether notification would be likely to result in the Council receiving further information relevant to the issues for determination on the substantive application."¹²

Is the existing judicial review relevant to determining special circumstances?

19. There is no direct case law that we are aware of which has considered whether a section 127 variation to a consent the subject of live judicial review proceedings amounts to special circumstances.
20. In *Protect Pauanui v Thames Coromandel District Council* the Court noted that the Council in that case had notified a subdivision application on the grounds of special circumstances where a judicial review proceeding regarding the zoning of the land was currently before the Court, however the Council's decision to notify the application (on the grounds of special circumstances) was not judicially considered.¹³
21. The recent High Court decision in *Speargrass Holdings Ltd v Queenstown Lakes District Council* is also of some assistance.¹⁴ This decision was an appeal against an Environment Court decision. In this case, the Court was required to consider whether the Environment Court was wrong to take into account its view that the situation was "unfair" to Flax Trust as they had not had an opportunity to participate in the decision to amend the Speargrass subdivision consent conditions as part of its section 104 assessment.
22. The High Court stated:¹⁵

[112] I am satisfied that the Environment Court was not authorised to look behind the Speargrass consents when their validity was not in issue in the appeal proceedings. As was said in *McGuire v Hastings District Council*, "the exercise ... of a statutory power of the council must be accepted as lawful unless and until set aside". Any qualms the Environment Court had about the fairness of the process by which those consents were granted were clearly irrelevant to its assessment of the effects of Flax Trust's proposed earthworks on the environment under s 104.

[113] Similarly, I accept that this section does not mandate a comparison between the adverse effects of a third party's existing activity and the effects of a proposed application, to minimise, or to justify, the effects the proposed activity would have. Unless the activities on the Speargrass site were not authorised (and I have held that they were), they formed part of the existing environment and the effects of the proposed activity on that environment needed to be assessed in an objective way.

[114] Thus, to the extent that the decision took into account the Judge's view of the fairness of the process by which Speargrass obtained amendments to its subdivision consent, and its comparative assessment of the adverse effects of the proposed activity with the existing activity on Speargrass land, the Environment Court decision was in error as these were irrelevant considerations.

¹² *Associated Churches of Christ Church Extension and Property Trust Board v Auckland Council* [2014] NZHC 3405, at [70].

¹³ *Protect Pauanui v Thames Coromandel District Council* [2013] NZHC 1944, [2014] NZRMA 91, [2013] NZAR 1269 at [31].

¹⁴ *Speargrass Holdings Ltd v Queenstown Lakes District Council* [2018] NZHC 1009.

¹⁵ *Speargrass Holdings Ltd v Queenstown Lakes District Council* [2018] NZHC 1009, at [112]-[114].

23. The case of *Speargrass* makes it clear that, in line with Court of Appeal authority,¹⁶ the previous decisions of a Council are valid until set aside, and as such any challenges to them are not relevant to the determination of a resource consent under section 104(1)(c). While this case was not directly concerned with a notification decision, and whether a live judicial review proceeding amounts to special circumstances, it does emphasise that the existing consent CRC182813 must, until a Court determines otherwise, be treated as valid.
24. Ultimately it will be for the Hearing Commissioner delegated with making the notification decision to determine whether, taking into account all relevant considerations, that there are special circumstances warranting notification in this case.

Conclusion

25. Special circumstances are those which are exceptional, abnormal or unusual, but not necessarily extraordinary or unique. Public interest alone will generally not amount to special circumstances, but public interest could be a contributing factor where there are other factors also pointing towards the existence of special circumstances.
26. Whether special circumstances exist is a discretionary assessment for the Council, based on the relevant information. Whether special circumstances exist is a highly fact-specific question, and one that must be determined based on the Council's experience in the area and judgment. One factor that the Council will need to consider is whether notification would lead to it likely receiving further information relevant to the issues for determination.
27. Any decision in relation to notification (including whether special circumstances exist) should be well-reasoned and have those reasons set out clearly in the decision.¹⁷

Wynn Williams

¹⁶ *McGuire v Hastings District Council* (2000) 6 ELRNZ 102, [2000] 1 NZLR 679, [2000] NZRMA 337, at [56]; see also *A J Burr Ltd v Blenheim Borough Council* [1980] 2 NZLR 1 (CA), where the Court stated "Except perhaps in comparatively rare cases of flagrant invalidity, the decision in question is recognised as operative unless set aside" (at 4).

¹⁷ In *Royal Forest and Bird Protection Society v Kapiti District Council*, Simon France J noted: "A report which simply says, without more ... that having considered the application and its predecessor there are no special circumstances leaves itself open [to criticism]."