

**BEFORE THE COMMISSIONERS ON BEHALF OF
THE OTAGO REGIONAL COUNCIL**

Consent No. RM16.093.01
Consent No. RM18.345.01

BETWEEN

CRIFFEL WATER LIMITED

Applicant

AND

OTAGO REGIONAL COUNCIL

Consent Authority

EVIDENCE OF KATE LOUISE SCOTT

**GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN**

Solicitor to contact: Bridget Irving
P O Box 143, Dunedin 9054
Ph: (03) 477 7312
Fax: (03) 477 5564
Email: bridget.irving@gallawaycookallan.co.nz

TABLE OF CONTENTS

EXECUTIVE SUMMARY	2
INTRODUCTION.....	4
Scope of Evidence.....	6
Summary of Criffel Water Limited Proposal	6
Summary of Lake McKay Station & Luggate Irrigation Proposal	6
STATUTORY PLANNING ASSESSMENT	7
National Policy Statement for Freshwater Management.....	8
<i>Te Mana o te Wai</i>	9
<i>Water Quantity</i>	10
<i>Regional Policy Statements (RPS, pRPS & PORPS)</i>	18
<i>Regional Policy Statement</i>	19
<i>Partially Operative Regional Policy Statement</i>	22
Regional Plan Water - Otago	27
Section 4 RPWO	28
Section 5 RPWO	31
Section 6 RPWO	36
Section 104 RMA.....	45
PART II MATTERS.....	50
PROPOSED CONSENT CONDITIONS	50
<i>Consent Term</i>	50
Otago Regional Plan: Water.....	50
Kai Tahu ki Otago Natural Resource Management Plan 2005.....	54
CONCLUSION	56

EXECUTIVE SUMMARY

- A. I have read the section 42A report and generally agree in principle with the findings of the report, except in relation to the finding on the duration of consent.
- B. The section 42A report concludes that a 10-year term is appropriate for this consent. It does not however link that conclusion to policy 6.4.19 of the Otago Regional Plan: Water (RPWO) other than to restate the policy in the text of Section 13. After considering policy 6.4.19 and its accompanying explanation, I consider that the consent is consistent with that policy and therefore supports a longer term.
- C. The focus of Policy 6.4.19 is based on the certainty of effects on the environment and what steps the Applicants have taken to reduce uncertainty and to accommodate changes in the environment which might arise throughout the duration of the consent.
- D. The Applicants have demonstrated that the effects of the water take will be no more than minor. The applicants have promoted conditions which will ensure any actual or potential effects are avoided, remedied or mitigated. Specifically, the applicants have proposed an abstraction regime which enables the minimum flow to be routinely met, the inclusion of residual flow conditions, agreed flow rationing, as well as promoting review conditions on the consent if granted.
- E. The explanation to Policy 6.4.19 is explicit that *“there needs to be good reason for Council to reduce the duration of consents from that required for the purpose of use”*. The reasons listed at Section 13 of the Section 42A report provide very little justification to why a reduction in the maximum term is appropriate in terms of Policy 6.4.19. The starting point in this instance appears to have been from the point at which the Council is considering notifying a plan change to bring the RPWO in line with the NPSFM. Consideration was given to recommending 8 years which would (if the consent is granted in 2019) require a fresh consent to be required in 2026.

- F. Policy 6.4.19(f) recognises that the value of investment is a relevant factor to be considered also, and as outlined in the various briefs of evidence the parties have made a significant financial investment in irrigation infrastructure to date, with further investment planned to provide for distribution efficiency upgrades and in time storage to enable the full utilisation of the supplementary blocks.
- G. The proposal represents an efficient use of water, whilst avoiding, remedying or mitigating any adverse effects of the proposed activity on the values of the Luggate Creek. The proposal is consistent with the higher order planning documents, including the National Policy Statement Freshwater Management (NPSFM), and the suite of Regional Policy Statement Documents (including the Regional Policy Statement, Proposed Regional Policy Statement, and the Partially Operative Regional Policy Statement).
- H. The overall status of the application is for a restricted discretionary activity in accordance with Rules 12.1.4.4 and 12.1.4.7 RPWO. The proposal is also wholly consistent with the objectives and policies of the RPWO, including Rule 12.1.4.8 which sets out the restricted discretionary activity matters for consideration.
- I. I am of the view that the effects of the proposed activity will be no more than minor, and that the proposal is consistent with all relevant objectives and policies, therefore I support the recommendation that consent should be granted to Criffel Water, Luggate Irrigation Company, and Lake McKay Station Limited in accordance with the draft conditions attached as Appendix 1, for a term of not more than 35 years, but not less than 25 years.

INTRODUCTION

1. My full name is Kate Louise Scott and I am the founder and an Executive Director of Landpro Limited, a firm of consulting planners, surveyors and environmental scientists. I hold the qualification of BA (Geography) and BA (Political Science) from Victoria University, Wellington. I have been a planning consultant for sixteen years providing consultancy services for a wide range of clients throughout New Zealand. I also hold the qualification of 'approved provisional auditor' for ISO140001.
2. I have over 12 years resource management experience specifically related to irrigation projects, including preparing resource consent applications associated with the replacement of deemed permits in Otago. I also spent 5 years as project manager for the Manuherikia Catchment Water Strategy Group, which was tasked with looking at a variety of options for water management with the Manuherikia Catchment, including the replacement of deemed permits.
3. I hold professional membership with the Resource Management Law Association (RMLA), New Zealand Institute of Management (NZIM), New Zealand Institute of Primary Industry Management (NZIPIM) and the New Zealand Institute of Directors (NZIOD). I am also a Nuffield Scholar, having completed my scholarship in April 2019 which was entitled 'Enabling Better Environmental Outcomes in Agriculture'.
4. During my time as a planner, I have undertaken a wide variety of resource management related work for various clients, including preparing resource consent applications in both a district and regional planning context, preparing assessment of effects, resource consent compliance and general consent strategy related work. I am also experienced in facilitating stakeholder and community engagement on behalf of my clients.
5. I confirm that I have read and agree to comply with the Environment Court Code of Conduct for Expert Witnesses (Consolidated Practice Note 2014). This evidence is within my area of expertise, except where I state that I am relying on what I have been told by another person. I

have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

6. I have been engaged by Criffel Water Limited (Criffel), Luggate Irrigation Company Limited and Lake McKay Station Limited (collectively termed Luggate Irrigation) to provide planning evidence in relation to the request by the parties to replace their current deemed permits with water permits in accordance with the Resource Management Act (1991) (RMA).
7. I am familiar with the proposed schemes, and revised applications for consent, and have visited the site on two occasions. I note however I was not the author of either application for consent.
8. I have been involved with Criffel in an advisory capacity since late 2016 and have been involved with the Luggate Irrigation applications since August 2019 when the parties agreed to consider water sharing opportunities for the catchment.
9. In preparing this statement I have:
 - Read the applications for consent and associated variations;
 - Reviewed submissions from Aukaha, Fish Game Otago and the Department of Conservation;
 - Visited the site and surrounds;
 - Read the Section 42A report;
 - Read the technical reports and associated evidence being called by the applicants, including;
 - Dr Jowett; Fish Habitat
 - Mr Hickey; Hydrology & Aquatic Ecology
 - Dr Allibone; Native Fish Values
 - Dr Bell; CWL Overview
 - Mr Harvey; LMS and LIC scheme overview and application history
 - Mr Kelly; LM and LIC Overview
 - Mr Simpson; Water Use Efficiency and upgrade cost estimates.
 - Mr Collier; Economic Farm Impacts
 - Mr Trotter; On Farm Impacts

Scope of Evidence

10. I have read the Section 42A report and generally agree in principle with the findings of the report, except in relation to the finding on the duration of consent. I agree with the determination that the adverse effects of the proposed activities will be no more than minor¹. I also largely agree with the statutory planning analysis set out in the report, except where I have noted in this evidence that I hold a different opinion, or where I believe further evaluation is warranted.
11. My evidence is structured as follows:
- Statutory Planning Assessment;
 - Proposed Conditions of Consent;

Summary of Criffel Water Limited Proposal

12. A detailed overview of the proposal by Criffel Water Limited is set out in the evidence in chief of Dr Amanda Bell, including an outline of the history of the scheme and consent process to date.
13. Criffel Water Limited has applied to take water from the Luggate Creek as follows;
- Primary allocation - 358 L/sec;
 - First supplementary block - 170 L/sec;
 - Second supplementary block - 80 L/sec;
 - Maximum Monthly Abstraction – 1,357,724m³/month
 - Maximum Seasonal Abstraction – 7,301,624m³/year²

Summary of Lake McKay Station & Luggate Irrigation Proposal

14. The proposal by Lake McKay Station and Luggate Irrigation is detailed in the evidence in chief of Mr Kelly and Mr Harvey. Mr Harvey outlines the history of water abstraction by Lake McKay Station and Luggate Irrigation and documents the current and proposed abstraction.

¹ Section 42A Report, Otago Regional Council, 27 September 2019, Page 41

² Matt Hickey Evidence - Table 6

15. The proposal by Lake McKay Station and Luggate Irrigation is to abstract the following from Luggate Creek;
- Primary allocation - 180 L/sec
 - First supplementary block - 80 L/sec;
 - Second supplementary block - 86 L/sec;
 - Maximum Monthly Abstraction – 909,250m³/month
 - Maximum Seasonal Abstraction – 4,718,245m³/year³
16. As detailed by Dr Bell, Criffel Water and Luggate Irrigation have worked together for a number of years in terms of flow sharing within the Luggate Creek. More recently the parties have agreed to enter into a water sharing agreement to provide greater certainty around the ongoing management of the Luggate Catchment. The two applicants are the only consented water users within the catchment.

STATUTORY PLANNING ASSESSMENT

17. I consider the following statutory planning documents to be of relevance to this application;
- National Policy Statement for Freshwater Management 2014 (NPSFW)
 - Regional Policy Statement (RPS)
 - Proposed Regional Policy Statement (pRPS)
 - Partially Operative Otago Regional Policy Statement (PORPS)
 - Regional Plan Water – Otago (RPWOO)
18. I have not considered the National Policy Statement on Renewable Electricity Generation, the National Environmental Standard for Sources of Human Drinking Water and the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 as they are not significant issues for these consents.

³ Matt Hickey Evidence Table 7 & 8 plus 182,500m³/year domestic to seasonal total.

19. Due to the large number of relevant policies and objectives detailed within these documents and having considered the matters raised in the Section 42A Report I have decided to examine each plan only in relation to the specific matters relating to the proposal that in my view warrant more detailed analysis.

National Policy Statement for Freshwater Management

20. The National Policy Statement for Freshwater Management 2014 (NPSFM) aims to establish and recognise the national significance of fresh water by promoting the sustainable use of water, through the setting of limits in respect to both water quality and water quantity and provides objectives which emphasise the need for integrated management of water resources.
21. The objectives of the NPSFM that are relevant to the application are:

Objectives B1, B2, B3, B4 and B5

22. For completeness I have also provided comment on the following objectives and policies of the NPSFM, despite in my view the obligation to consider these matters falling to the regional council through their requirement to give effect to the NPSFM via appropriate plan change processes.

Objective AA1, and C1

Policies B1, B2, B3, B4, B5, B6 and B7

23. I have not directly considered the Water Quality Objectives of the NPSFM in relation to the proposal on the basis of Mr Hickey's evidence in chief that the Luggate Creek has been classed as having excellent water quality by the Otago Regional Council, and that the Creek is classified in the A Band for nitrate, and ammonia toxicity and swim-ability.
24. The quality of the Luggate Creek in respect to measured water quality parameters has been achieved under the status quo environment (including status quo irrigation) and with the overall reduction of

allocation as proposed by the applicant; water quality is I understand expected to continue to improve under the proposed flow regime.

Te Mana o te Wai

Objective AA1 - To consider and recognise Te Mana o te Wai in the management of fresh water.

25. This objective and the corresponding policy were introduced in the 2017 amendments to the NPSFM. While Te Mana o te Wai is not defined in the interpretation section of the NPSM, the section preceding the interpretation section states: *“Te Mana o te Wai is the integrated and holistic well-being of a freshwater body.”*
26. This concept is to be given effect to by acknowledging that:

“te Mana o te Wai recognises the connection between water and the broader environment – Te Hauora o te Taiao (the health of the environment), Te Hauora o te Wai (the health of the waterbody) and Te Hauora o te Tangata (the health of the people); (Policy AA1).
27. In my opinion the joint approach promoted by Criffel Water and Luggate Irrigation represents a clear integrated approach to water management within the Luggate Catchment. This is achieved through the proposed primary and secondary allocation within the catchment which will be jointly managed by the applicants.
28. This approach is designed to provide sufficient flows to the Luggate Creek enabling the minimum flow to be achieved, as well as providing for a series of residual flows beyond the various points of abstraction, which gives rise to an outcome which achieves a healthy environment, and a healthy waterbody whilst ensuring the health of people. This approach is also consistent with Objective C1, and generally consistent with Policy C1 and Policy C2 NPSFM.
29. The concept of Te Mana o Te Wai is also embodied in the approach to water management by Criffel as outlined by Dr Bell at paragraphs 5 to 8 of her evidence.

Water Quantity

30. Objectives B1, B2, B3 and B5 of the NPSFM are particularly relevant to this application. I have also considered policies B5, B6 and B7.

Objective B1: To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the taking, using, damming, or diverting of fresh water.

31. Luggate Irrigation and Criffel Water will provide for life-supporting capacity, and the healthy functioning of the ecosystem, through the reduction of abstraction and the implementation of minimum and residual flows.

32. The evidence of Mr Hickey details how the proposal will result in continuous flows throughout the river and will reduce the extent and duration of low flows in the reaches of the river affected by abstraction as compared to the current regime of abstraction. This approach will safeguard the life supporting capacity of the river and ecosystem as detailed in the report by Dr Jowett, and the evidence of Mr Hickey.

Objective B2: To avoid any further over-allocation of fresh water and phase out existing over-allocation.

33. "Over-allocation" as defined in the NPSFM *"is the situation where the resource:*

- a. has been allocated to users beyond a limit; or*
- b. is being used to a point where a freshwater objective is no longer being met"*

34. Objective B2 is technically not relevant at this point because the term "freshwater objective" is defined in the NPS to mean:

“Freshwater objective” describes an intended environmental outcome in a freshwater management unit.

35. At the present time Luggate Creek has not been defined as a Freshwater Management Unit (FMU). Therefore, there are no freshwater objectives. For the same reason, there is no relevant “limit”, as defined. Because there are no freshwater objectives or limits then there is no “over allocation” as the NPSFM defined that term. I note that the proposed 2019 change to the NPSFM promotes a change to that definition but that is not yet a relevant consideration.
36. In terms of the allocation of water, in Otago primary and supplementary allocation is one approach adopted. Water takes with primary allocation status essentially have a higher priority, as water can be taken at lower flows than takes with supplementary allocation status. The Luggate Creek is already subject to a minimum flow and has set primary allocation as detailed in Schedule 2A RPWO.
37. Water taken within supplementary allocation is not considered to be over-allocation (even ignoring the NPS definition), as under the RPWO this water is available for abstraction on the basis that it can only be taken when flows are higher and sufficient water is available.
38. Under the RPWO, it is not possible to seek additional primary allocation water in the Luggate Catchment (beyond the maximum of the currently consented takes or the Schedule 2A limit, whichever is the higher). Therefore, further over-allocation of freshwater is avoided.
39. As outlined in the revised proposal, the applications by Criffel Water and Luggate Irrigation represent a reduction in the total primary allocation within the catchment, both in terms of instantaneous rates of abstraction and annual volume. As noted by Mr Hickey “*The Luggate Creek water users proposal will reduce actual water taken as primary allocation from the catchment by ~ 30% and consented abstraction by ~50%*”⁴.
40. The replacement of all the existing permits in the Luggate Catchment at the same time and the water sharing agreement between Luggate

⁴ Evidence of Matt Hickey, Paragraph 63.

Irrigation and Criffel will further ensure that over-allocation does not occur. In my opinion the proposal will result in the catchment not being over-allocated. On this basis I consider the application by Criffel Water and Luggate Irrigation to be consistent with Objective B2.

Objective B3: To improve and maximise the efficient allocation and efficient use of water.

41. The NPSFM defines efficient allocation as including economic, technical and dynamic efficiency.
42. As outlined in the evidence of Mr Simpson and Mr Hickey, the applications will result in the maximum efficient allocation of the water resource, being the allocation sought as primary and supplementary allocation operated in accordance with the existing minimum flow of 180 L/sec.
43. In terms of overall efficiency of use, the instantaneous rates of take and seasonal volumes are based on Aqualinc rates of application for spray methods on the irrigable areas of land. The applicants' commitments to upgrade the delivery network and irrigations methods represent an efficient use of water, although as noted *"the downside to this approach is that the total command area reduces, reducing production and more significantly there is a cost component of upgrading conveyance infrastructure to irrigate the same area. There are not productions gains with expanded irrigation area to offset the cost."*⁵ Mr Collier goes on to state that *"the reason that deriving a payback period has not been possible is that the scheme efficiency upgrades relate to areas that are already irrigated. So there is no production gain (in dry matter yield) to be achieved by improving the water use efficiency of the water delivery network"*.⁶
44. The proposal by Criffel Water and Luggate Irrigation, including agreed water sharing between the users will enable full efficient utilisation of the water resource for irrigation. However, the proposed term of consent as set out in the Section 42A report will compromise the ability for the water

⁵ Evidence of Matt Hickey, Paragraph 57.

⁶ Evidence of George Collier, Paragraph 36.

to be utilised efficiently. I discuss this further in my evidence in regard to conditions of consent, but note that Mr Collier outlines that a “10 year irrigation consent will provide no financial return for any new irrigation development to proceed”⁷, while Mr Trotter sets out that a term of ten years is likely to risk business viability from his perspective. He also notes that “LIC shareholders would be unable to commit to efficiency upgrades in return for less water if that has to be done in 5 years, and access to water is only secured for another 5 years”⁸

45. Overall, the applicant’s proposal will result in a reliable supply of water to enable improvements to existing infrastructure and to maximise effective allocation and use of water, provided that there is a sufficient term of consent (i.e. 25 years to 35 years) to enable surety of supply in a way that enables efficiency upgrades to be undertaken.
46. The NPSFM anticipates and allows for a period of transition by which to meet targets, including efficiency targets, therefore it would not be contrary to the NPSFM for a consent to be granted for a term longer than 10 years (as proposed by Section 42A report).
47. There is a further element of efficiency that is relevant to consider in relation to consent term. Dynamic efficiency concerns maximising productive efficiency over time. Based on the evidence of Mr Collier and Mr Trotter I conclude that a 10-year consent is inefficient compared with a longer term because the transaction cost of reapplying for consent in 10 years will diminish the surplus that can be achieved from exercising the consents during that time. That is because the consenting cost has to be spread across a shorter production period and will discourage capital investment in technical efficiency.

Objective B5: To enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing freshwater quantity, within limits.

48. Criffel Water and Luggate Irrigation have put forward a range of measures, including residual flows beyond the point of abstraction, a

⁷ Evidence of George Collier, Paragraph 38.

⁸ Evidence of Ben Trotter, Paragraph 12.

significant reduction in allocation, water sharing, and proposed infrastructure upgrades. These measures are couched in the holistic approach or concept of Te Mana o Te Wai as outlined in the evidence of Dr Bell, and are intended to maximise the potential for positive effects on the values recognised as being in the Luggate Creek, while also balancing the need to provide for productive opportunities (continued farming of the land), which will in turn allow for the continued economic well-being of the applicants.

49. The proposal is considered to be consistent with this objective.
50. The Section 42A report directs that Policies B5 and B7 are relevant to the applications. I have therefore considered these matters below;

Policy B5: By every regional council ensuring that no decision will likely result in future over-allocation including managing freshwater so that the aggregate of all amounts of freshwater in a freshwater management unit that are authorised to be taken, used, dammed, or diverted does not over allocate the water in the freshwater management unit.

51. The RPWO has not been amended to give effect to Policy B5, albeit FMU's have recently been identified for Otago as part of a process of continued review of the plan. However, the intent of the policy is to address the issue of over-allocation. The RPWO in my view already seeks to control the issue of over-allocation, and in this case any issue of over-allocation of resources will be addressed through the granting of consent to Criffel Water and Luggate Irrigation in accordance with Objective B2.
52. Additionally, implementing the sinking lid policy suite⁹ means that an applicant can not be allocated more water than they have historically used (based on the last five years of records), and nor can any reduction by one party be taken up by another, thus also effectively controlling the potential for further over allocation within the catchment.

⁹ Evidence of Matt Hickey, Paragraph 51.

Policy B6: By every regional council setting a defined timeframe and methods in regional plans by which over allocation must be phased out, including by reviewing water permits and consents to help ensure the total amount of water allocated in the freshwater management unit is reduced to the level set to give effect to Policy B1.

53. Policy B6 clearly directs that councils may review water permits to address the issue (phase out) of over-allocation. Therefore, in my view, it is appropriate and consistent with Policy B6 that any resource consent granted should make provision for a review clause in accordance with Section 128 RMA to specifically allow for a review of water allocation. This in my opinion, gives clear direction that a review clause is a suitable approach to addressing uncertainty that may arise from future, unknown plan change processes, and would in my view be more appropriate than taking the conservative approach of limiting the duration of consent.
54. The proposed conditions of consent promoted by the applicants made provision for a review clause, which would be consistent with Policy B6 NPSFM.

Policy B7: By every regional council amending regional plans (without using the process in Schedule 1) to the extent needed to ensure the plans include the following policy to apply until any changes under Schedule 1 to give effect to Policy B1 (allocation limits), Policy B2 (allocation, and Policy B6 (overallocation) have become operative.

55. The policy goes on to state;
1. *When considering any application, the consent authority must have regard to the following matters;*
 - a. *The extent to which the change would adversely affect safeguarding the life-supporting capacity of freshwater and of any associated ecosystems and*
 - b. *The extent to which it is feasible and dependable that any adverse effect on the life supporting capacity of freshwater and*

any associated ecosystem resulting from the change would be avoided.

2. *This policy applies to:*

a. *Any new activity; and*

b. *Change in the character, intensity or scale of any established activity that involve any taking, using, damming or diverting of freshwater or draining of any wetland which is likely to result in any more than minor adverse change in the natural variability of flows or level of any fresh water, compare tot that which immediately preceded the commencement of the new activity or the change in the established activity (or in the case of a change in an intermittent or seasonal activity, compared to that on the last occasion on which the activity was carried out).*

3. *This policy does not apply to any application for consent first lodged before the National Policy Statement for Freshwater Management 2011 to effect on 1 July 2011.*

56. The view of the Section 42A officer that Policy B7 is relevant to the applications differs to that set out by Legal Counsel for the Otago Regional Council in closing submissions before the Environment Court for the Lindis Catchment Group Inc, where Mr Logan notes¹⁰;

209. The policy has no effect if not included in the regional plan.

212. The policy applies to new activities and to changes in character, intensity or scale of an established activity.

214. It does not apply to a rollover of an existing activity through the granting of a new consent.

215. Nor does the policy apply where there will be no increase in adverse effect.

216. In summary, the policy is not material because:

¹⁰ Closing Submissions for the ORC, 3 May 2019, Para 206 – 218.

216.1 It is not part of the Regional Plan; and

216.2 It applies to prevent a worsening of the existing situation. It cannot apply to an improvement of that situation; of which would be the outcome if the consents sought by LCG were granted.

218. The Court might nonetheless note that the policy is intended to prevent any deterioration of the present position.

57. Having considered the discussion in the Section 42A report about the relevance of this policy, including the view that “*despite there being a numeric threshold in place for Luggate Creek, this has not been set in the context of the NPSFM these policies require a precautionary approach to be taken in relation to any consents granted*”¹¹ and contrasting that to the view that the ORC promoted some 5 months ago in the case of the Lindis Catchment Group applications, I consider that the precautionary approach is not necessary because Policy B7 is not relevant to these applications because;
- a. The proposals are seeking to rollover an existing activity through the granting of new consents;
 - b. The proposals do not result in an increase in adverse effect; and
 - c. The proposals do not create a worsening of the existing situation, they in fact improve the current situation with respect to allocation and overallocation of water.
58. Furthermore, this analysis highlights that the starting point for assessing the effects of a proposed activity shall be against the status quo environment, rather than a notional environment that excludes the permits that are being replaced. Policy B7 directs that we shall assess the matters in B7(1) as compared to the environment that immediately precedes the commencement of the new activity. In this case, that shall include the exercise of the current deemed permits. I explore this point further in my Section 104 Analysis.

¹¹ ORC, Section 42A Report, 27 September 2019, Para 10.4, Page 36.

Regional Policy Statements (RPS, pRPS & PORPS)

59. The Regional Policy Statement (RPS), the proposed Regional Policy Statement (pRPS) and the partially operative Regional Policy Statement (PORPS) are all relevant to the consideration of the applications.
60. The RPS became operative on 1 October 1998. The pRPS was notified on 23 May 2015, and a decision was released 1 October 2016. The pRPS was appealed, and subsequently most matters have been resolved through appeal, resulting in the release of the PORPS on 14 January 2019.
61. The explanatory note to the PORPS sets out that the PORPS applies in conjunction with the Partially Operative Regional Policy Statement for Otago 1998¹².
62. On this basis I have chosen to only assess the relevant provisions of the RPS 1998 and the PORPS January 2019. I note however that the differences between the pRPS and PORPS do not lead to a material difference in the policy framework and will not in the case of these applications lead to a different outcome.
63. Both the RPS and the PORPS include objectives which focus on enabling sustainable and efficient use while also maintaining, enhancing and protecting values associated with waterways, and include policies to achieve these.
64. In terms of the relevant policies and objectives in the RPS, I consider Chapter 5 (Land) and Chapter 6 (water) to be of particular relevance to the applications. I have provided a brief summary of the key provisions of these two chapters below.
65. I have adopted the same approach as the Section 42A officer by giving full consideration to the operative provisions of the PORPS in the first instance.

¹² Otago Regional Council, Partially Operative Regional Policy Statement, 14 January 2019, Page 1

Regional Policy Statement

Chapter 5 (Land)

66. Chapter 5 outlines that maintaining the productive capacity of the land is essential for the continued prosperity of Otago's communities.

5.4.1 To promote the sustainable management of Otago's land resources in order:

(a) To maintain and enhance the primary productive capacity and life supporting capacity of land resources; and

(b) To meet the present and reasonably foreseeable needs of Otago's peoples and communities.

67. The Luggate Irrigation and Criffel Water applications for continued use of the water resource is consistent with this objective, as irrigation will continue to enable the water users to farm their land in a productive manner, and will enhance the overall productive capacity of the land through providing for more efficient use of the water resource. It is also intended that the use of water for irrigation will continue to occur for the foreseeable future.

Chapter 6 (Water)

68. Chapter 6 specifies that water is an integral part of Otago's natural environment. Relevant objectives include; 6.4.3, 6.4.4, while the most relevant policies are considered to be 6.5.2, 6.5.3, 6.5.4.

6.4.3 To safeguard the life-supporting capacity of Otago's water resources through protecting the quantity and quality of those water resources.

69. The application by Criffel and Luggate Irrigation is consistent with this objective as the proposed approach to allocation and management of water will provide for more efficient use of the currently allocated water and result in a significant reduction in the volume of water allocation compared to the status quo. This will enable additional quantity of water to be provided to the Luggate Creek, as well as contributing to already

high-water quality in the Creek, both of which will enable the life supporting capacity of the water resource to be maintained, and in this case enhanced.

6.4.4 To maintain and enhance the ecological, intrinsic, amenity and cultural values of Otago's water resources.

70. The proposed activities are expected to enhance instream values through increased flow, which will in the case of Criffel Water take provide for more than 90% habitat at MALF for trout, as set out by Mr Hickey which is based on the work of Dr Jowett.¹³ This is expected to enhance the overall values compared to the status quo arrangement.

6.5.2 To allocate water in areas of Otago where there is or potentially will be insufficient water supplies through;

(a) Considering the need to protect instream amenity and habitat values; and

(b) Considering the needs of primary and secondary industry; and

(c) Considering Kai Tahu cultural and spiritual values; and

(d) Considering the extent to which adverse effects can be avoided, remedied or mitigated.

71. The policy outlines that in some areas it will be necessary to allocate water on the basis of considering the importance of competing needs. In the case of the proposal by Luggate Irrigation and Criffel Water they seek to jointly manage the water resource through primary and secondary allocation, and through agreed water management provisions. The proposed approach will provide greater protection of instream values, while continuing to provide for the primary industry (agriculture).

72. It is also worth considering the issue of competing interests in terms of the water being used for irrigation purposes rather than being retained wholly as environmental flow. In this regard, the RPS, pRPS, PORPS

¹³ Evidence of Matt Hickey, Paragraph 67.

and the RPWO all direct that water shall be used for a variety of uses, including irrigation. The proposal by the applicants does however represent the best 'balance' in terms of providing for enhanced flows through appropriate management of the water resource (via minimum and residual flows), whilst also providing for the reasonable economic and needs of the applicants.

6.5.3 To promote efficient consumptive water use through;

(a) Promoting water use practices which minimise losses of water before, during and after application; and

(b) Promoting water use practices which require less water; and

(c) Promoting incentives for water users to use less water.

73. In regards these applications, both parties have undertaken steps to improve overall efficiency of irrigation both at a farm scale and at a scheme scale. There has been some shift to more efficient spray irrigation of the past few years, and provided that there is sufficient certainty around ability to access the water for a longer term, both parties propose to undertake further upgrade of their schemes to enable greater scheme efficiency. The proposed activity is consistent with Policy 6.5.3.

6.5.4 To investigate and, where appropriate set minimum flow levels and flow regimes for Otago water bodies and maximum and minimum lake levels to protect any of the following;

(a) The needs of Otago's communities;

(b) Kai Tahu cultural and spiritual values;

(c) Lake margin stability;

(d) The natural character of the water body;

(e) Habitats of indigenous fauna and flora;

(f) Amenity values;

(g) Intrinsic values of ecosystems;

(h) Salmon or trout habitat;

(i) Outstanding natural features or landscapes.

74. The Luggate Creek is already subject to minimum flow. The proposed replacement of the existing deemed permits will provide greater certainty around meeting the minimum flow obligations in the future, as any replacement consents will be subject to meeting the minimum flow in the future, which is not the case under the status quo deemed permits.
75. The proposal by Criffel and Luggate Irrigation is consistent with the objectives and policies of the Regional Policy Statement 1998.

Partially Operative Regional Policy Statement

76. I generally adopt the provisions set out in Section 10.2 of Section 42A report as being the most relevant to the applications and provide commentary below on the consistency or otherwise of the applications with these provisions.
77. The relevant policies under the PORPS to the applications include, Policy 1.1.1, 1.1.2, 1.2.1, 2.1.2, 2.2.1, 2.2.2, 2.2.3, 3.1.3, 3.1.4, and 5.4.2.
78. Policy 3.1.1, 3.2.13, 3.2.14 are also of relevance to the applications yet remain under appeal, so are not considered to be operative, and have not therefore been assessed.

1.1.1 Economic Wellbeing - Provide for the economic wellbeing of Otago's people and communities by enabling the resilient and sustainable use and development of natural and physical resources.

79. The proposal by Criffel and Luggate Irrigation will directly provide for economic wellbeing through enabling the continued use of water for irrigation (amongst other uses) which enables farming to occur within the command area. The proposal represents sustainable use of the water resources and will result in an increase in flows as a result of the reduced status quo abstraction.

1.1.2 Social and Cultural Wellbeing and Health and Safety - Provide for the social and cultural wellbeing and health and safety of Otago's people and communities when undertaking the subdivision, use, development and protection of natural and physical resources by all of the following;

- (a) Recognising and providing for Kai Tahu Values;*
- (b) Taking into account the values of other cultures;*
- (c) Taking into account the diverse needs of Otago's people and communities;*
- (d) Avoiding significant adverse effects of activities on human health;*
- (e) Promoting community resilience and the need to secure resources for the reasonable needs for human wellbeing.*
- (f) Promoting good quality and accessible infrastructure and public services.*

80. The social and cultural wellbeing of Criffel and Luggate Irrigation is provided for in the allocation of water to the parties. The applicants have recognised the importance of Luggate Creek and corresponding values to Kai Tahu and consider that the proposed flow regime will enhance existing values. The applicants are also proposing an upgrade of infrastructure consistent with 1.1.2 (f). The proposal is consistent with this policy direction.

1.2.1 Integrated Resource Management - Achieve integrated management of Otago's natural and physical resources, by all of the following:

- a) Coordinating the management of interconnected natural and physical resources;*
- b) Taking into account the impacts of management of one natural or physical resource on the values of another, or on the environment;*

c) Recognising that the value and function of a natural or physical resource may extend beyond the immediate, or directly adjacent, area of interest;

d) Ensuring that resource management approaches across administrative boundaries are consistent and complementary;

e) Ensuring that effects of activities on the whole of a natural or physical resource are considered when that resource is managed as subunits.

f) Managing adverse effects of activities to give effect to the objectives and policies of the Regional Policy Statement.

g) Promoting healthy ecosystems and ecosystem services;

h) Promoting methods that reduce or negate the risk of exceeding sustainable resource limits.

81. The approach taken by Criffel Water and Luggate Irrigation is directly reflective of an integrated resource management approach. As the only two parties currently operating within the catchment, the proposed water sharing agreement and joint management of the water resource will give effect to ensuring that continue used of the resource is sustainable while providing for healthy ecosystems through enhanced flows in the Luggate Creek.

2.1.2 Treaty Principles - Ensure that local authorities exercise their functions and powers ...

82. The Otago Regional Council notified Aukaha in respect to both applications, and the applicants have sought to engage with Aukaha in respect to the proposal. The applications are therefore considered to be consistent with the direction given in Policy 2.1.2.

2.2.1 Kai Tahu Wellbeing - Manage the natural environment to support Kāi Tahu wellbeing by all of the following:

a) Recognising and providing for their customary uses and cultural values in Schedules 1A and B; and,

(b) Safe-guarding the life-supporting capacity of natural resources.

2.2.2 Recognising sites of cultural significance – Recognise and provide for the protection of wāhi tupuna by all of the following;

a) Avoiding significant adverse effects on those values that contribute to the identified wāhi tūpuna being significant;

b) Avoiding, remedying, or mitigating other adverse effects on the identified wāhi tūpuna;

c) Managing the identified wāhi tūpuna sites in a culturally appropriate manner.

2.2.3 wāhi tupuna and associated sites - Enable Kāi Tahu relationships with wāhi tūpuna by all of the following:

a) Recognising that relationships between sites of cultural significance are an important element of wāhi tūpuna;

b) Recognising and using traditional place names.

83. I do not consider myself to be appropriately qualified to comment on behalf of Kai Tahu in respect to customary use of the Luggate Creek or in respect to sites of cultural significance. However based on the evidence of Dr Allibone and Mr Hickey I am of the view that the life supporting capacity of the Luggate Creek will be enhanced as a result of the proposed flow regime promoted by the applicants, and as outlined in the evidence of Dr Bell, there has been extensive engagement between Aukaha and the applicant.

3.1.3 Water allocation and use - Manage the allocation and use of fresh water by undertaking all of the following:

a) Recognising and providing for the social and economic benefits of sustainable water use;

b) Avoiding over-allocation, and phasing out existing over-allocation, resulting from takes and discharges;

c) Ensuring the efficient allocation and use of water by;

- i) Requiring that the water allocated does not exceed what is necessary for its efficient use;*
- ii) Encouraging the development or upgrade of infrastructure that increases efficiency;*
- iii) Providing for temporary dewatering activities necessary for construction or maintenance.*

84. The allocation and use of water in the Luggate Creek is addressed in detail by Mr Hickey, and as outlined elsewhere within this evidence. The proposal will result in a significant reduction in the abstraction of water which will phase out over-allocation and ultimately ensure an efficient allocation and use of the water in the future. The applicants have outlined their intent to update infrastructure where necessary to take advantage of efficiency gains. This has already occurred within some properties, with a shift to spray irrigation. The proposal is for an overall efficient use of water in accordance with Policy 3.1.3.

3.1.4 Water Shortage - Manage for water shortage by undertaking all of the following:

- a) Encouraging land management that improves moisture capture, infiltration, and soil moisture holding capacity.*
- b) Encouraging collective coordination and rationing of the take and use of water when river flows or aquifer levels are lowering, to avoid breaching any minimum flow or aquifer level restriction to optimise use of water available for taking;*
- c) Providing for water harvesting and storage, subject to allocation limits and flow management, to reduce demand on water bodies during periods of low flows.*

85. The applicants have promoted an approach which provides for both primary and supplementary allocation of water. To fully utilise the supplementary allocation, the applicants will be required to utilise storage infrastructure. Storage will provide for greater flexibility and reliability of use in the future. The proposal is in accordance with this approach.

5.4.2 Adaptive management approach - Apply an adaptive management approach, to avoid, remedy or mitigate actual and potential adverse effects that might arise and that can be remedied before they become irreversible, by both:

- a) Setting appropriate indicators for effective monitoring of those adverse effects; and*
- b) Setting thresholds to trigger remedial action before the effects result in irreversible damage.*

86. The applicants have promoted an adaptive approach to the management of water through a number of approaches, including the agreement to jointly manage water resources, which enables the flexibility to adjust water use to suit demand while meeting the obligations to the river. The applicant is also supportive of a review condition attaching to the consent to enable the review of conditions, including for the purpose of assessing any effects of the proposed activity.
87. In my view the proposal is consistent with the Regional Policy Statement, the Proposed Regional Policy Statement and the Partially Operative Policy Statement.

Regional Plan Water - Otago

88. The Regional Plan: Water for Otago (RPWO) is the key ORC plan focusing on the management of activities associated with freshwater. The RPWO became fully operative on 1 January 2004. Since this time a series of plan changes have been undertaken which have sought to update the plan to account for changes in regional management of water and to address national changes in the direction of water management, including updates to provide for minimum flows in 2010 (Plan Change 1B), and water allocation and use in 2012 (Plan Change 1C).
89. Chapters 1 to 4 provide an introduction to the plan and set out the legislative framework relating to water, as well as detailing the issues of concern to Kāi Tahu.

90. There are no objectives and policies in relation to the Kāi Tahu perspective expressed in Chapter 4, but objectives and policies in both Chapter 5 and Chapter 6 cross reference the issues expressed in this Chapter.
91. Chapters 5 to 10 contain the issues, objectives and policies relating to water management in Otago. Chapters 5 and 6 are of key relevance to this application as they address Natural and Human Use Values of Lakes and Rivers (Chapter 5) and Water Quantity (Chapter 6).
92. The RPWO sets out a consistent view of the continued consumptive use of water, whilst ensuring that environmental values are maintained and enhanced. This is reflected in the objectives and policies of the plan, including Chapter 5 (Natural and Human Use Values of Lakes and Rivers).
93. An analysis of the relevant provisions of Chapters 4 – 6 is set out in Paragraphs 83 to 141.

Section 4 RPWO

94. Section 4.5 RPWO notes *“the outcomes sought by Kai Tahu are the continued health and wellbeing of the water resources of the region, and cultural usage of these resources”*¹⁴.
95. The proposed flow regime which would come about as a result of the granting of consent would be consistent with this outcome. The Luggate Creek is already recognised as being of ‘good health’ in terms of overall water quality and quantity.
96. Additionally, Kai Tahu ki Otago (the predecessor to Aukaha) identified a range of objectives in the Natural Resource Management Plan (December 1995) which identified that regard should be had to the following matters;

¹⁴ Otago Regional Water Plan, Section 4.5, Page 4-3.

- Recognition of the spiritual and cultural significance of water to Kai Tahu, a value that binds the identity of the iwi to water, and protects the mauri of all water bodies;
- Recognition of wetland systems as an important source of mahika kai, habitat for native flora and fauna, and as a tool for the maintenance of watery quality;
- Elimination of the discharge of human waste and other contaminants to water;
- Use of surveys and data collection systems to provide a comprehensive information base on water resources and threats to the life sustaining capacity of water; and
- Establishment of a management regime that identifies water quality and quantity standards consistent with kai Tahu Cultural and spiritual values.

97. In having regard to these matters I note;

- (a) The applicants are aware of the spiritual and cultural significance of water to Kai Tahu, and have openly engaged with Aukaha with the purpose of seeking to understand these values as outlined by Dr Bell at paragraphs 16 – 20.
- (b) There are no wetland systems related to the proposed abstraction from Luggate Creek.
- (c) There is no discharge of human waste or other contaminants to Luggate Creek as a result of this proposal.
- (d) Substantial information is available on the state of the Luggate Creek in terms of both quality and quantity. The applicants have previously signaled their interest in continuing to work with Aukaha to understand the impacts of the continued abstraction of water on Luggate Creek post the granting of consent.
- (e) The management regime proposed by the applicants will provide for enhanced flows in the Luggate Creek which is consistent with

the matters set out in the RPWO, including *“the principle that all waters and water bodies should be managed to achieve enhancement of Otago’s water resource is essential”*¹⁵. In respect to water quality, the applicants are obligated to undertake their activities in a way which achieves compliance with the water quality standards set for the region in accordance with Schedule 15/16 RPWO.

98. The issue of the loss of traditional mahika kai resources is outlined in Section 4.13.2 RPWO. This issue identifies a number of challenges, including the matter of predation by, or competition for food or habitat from, introduced species as being a contributor to the loss of the mahika kai resource. In this regard, the Luggate is known to be an abundant trout fishery, with the resource being ranked in the top three sites for number of brown trout caught¹⁶.
99. Because of the high number of trout in the Luggate Creek it is anticipated that trout predation is the limiting factor to the establishment of traditional mahika kai resources such as Koaro and Tuna (longfin eel). Mr Hickey notes at Paragraph 19 that *“historically Koaro have been recorded in low densities at different locations in the catchment, however their lack of abundance has been attributed to the high densities of trout in Luggate Creek, with the expectation that increased flows will result in high levels of predation by trout on Koaro.”* Further, eels are likely limited by the presence of both Roxburgh and Clyde dams.
100. The applicant accepts that there is a direction that should seek to enhance native fish values and where possible provide for mahika kai as a result of proposed activities, the limiting factor in the ability of the applicant to provide for these values in this case is the abundance of trout. Dr Allibone also expresses concern that *“deliberately attempting to increase adult Koaro habitat and increase their abundance in streams increases the potential for the loss of Clutha flathead populations”*¹⁷ I have also considered Schedule 1D RPWO, which does not recognise

¹⁵ Otago Regional Water Plan, Section 4.12, Page 4-5.

¹⁶ Evidence of Matt Hickey, Paragraph 19.

¹⁷ Evidence of Richard Allibone, Paragraph 33.

the Luggate Creek as being one of the scheduled water bodies in terms of providing for specific Kai Tahu Values, including Mahika Kai, which I can only assume is due to the predation of trout. I acknowledge however that this list is not intended to be exhaustive, and that I have limited knowledge of Mahika Kai.

101. Overall however, in my view it is very difficult to require an applicant to have to provide for values which are not currently present in the catchment when it comes to assessing the effects of a proposed activity, especially in light of the concerns of Dr Allibone who *“would not support any actions that increase Koaro abundance in Luggate Creek, or in any streams that drain to Lake Dunstan due to possible impacts on Clutha flathead populations. Furthermore, I would keep Luggate Creek free of Koaro and longfin eels until such time that it is known that Clutha flathead do not exist in the stream and the stream is not required for a Clutha flathead translocation”*.¹⁸
102. This raises an interesting challenge as to the priority that should be given to native fish values, where there are competing native fish values.

Section 5 RPWO

103. Chapter 5 provides for the natural and human use values supported by Otago’s lakes and rivers and their margins, and sets out the issues, objectives and policies that will enable the continued use and development of water resources in a way where adverse effects on the existing natural and human use values supported by lakes and rivers and their margins are avoided, remedied or mitigated.¹⁹
104. For the purposes of simplicity, I have grouped the various objective and policy matters of Chapters 5 and 6 into key themes and have assessed these on this basis.

Schedule 1 Values

¹⁸ Evidence of Richard Allibone, Paragraph 37.

¹⁹ Otago Regional Water Plan, Section 5.1, Page 5-2.

Objective 5.3.1 To maintain or enhance the natural and human use values, identified in Schedules 1A, 1B and 1C, that are supported by Otago's lakes and rivers.

105. Schedule 1 identifies values that are related to Part 2 RMA in terms of the attributes of the aquatic ecosystem that support indigenous flora and fauna, trout and salmon, and the regionally significant presence of gamebirds. I accept that Schedule 1 is not intended to be an exhaustive list of the natural or human use values, but a strong guide as to the relevant values.
106. Natural values for the Luggate Creek as listed in Schedule 1A include;
- Weed free catchment
 - Significant habitat for Koaro.
107. Dr Allibone observed the presence of brown trout, rainbow trout and Koaro in the Luggate Catchment, and noted the possible (not verified) presence of Clutha flathead galaxias and longfin eel²⁰.
108. Despite Schedule 1 identifying that the Luggate Creek provides significant habitat for Koaro, two of the four Koaro records report that that Koaro were rare and the other two only collected a single fish on each occasion.²¹ It is clear that the Luggate Creek is also a substantial trout fishery, specifically providing for trout spawning. This situation creates a potential management conflict whereby the values identified are significant habitat for Koaro, yet the proposed increased flows that will ensue as a result of the proposed applications has the potential to create greater opportunity for predation of Koaro by trout.
109. In respect to the Luggate Creek being free from aquatic pests, I am not aware of any pests being present within the catchment.
110. The Luggate Creek is not recognised as having community water supply values (Schedule 1B).

²⁰ Evidence of Richard Allibone, Paragraph 10 -18.

²¹ Evidence of Richard Allibone, Paragraph 13.

111. Luggate Creek is recognised in Schedule 1C as having historic places being the Luggate Flourmill at Luggate. This feature is located downstream of the proposed points of abstraction and will not be affected by the replacement of the deemed permits.

Objective 5.3.2 To maintain or enhance the spiritual and cultural beliefs, values and uses of significance to Kai Tahu, identified in Schedule 1D, as these relate to Otago's lakes and rivers.

112. As outlined in Paragraphs 83-85 the Luggate Creek is not identified in Schedule 1D.

Natural Character

Objective 5.3.3 To protect the natural character of Otago's lakes and rivers and their margins from inappropriate subdivision, use or development.

Policy 5.4.8 To have particular regard to the following features of lakes and rivers, and their margins, when considering adverse effects on their natural character:

(a) The topography, including the setting and bed form of the lake or river; (b) The natural flow characteristics of the river;

(c) The natural water level of the lake and its fluctuation; (d) The natural water colour and clarity in the lake or river; (e) The ecology of the lake or river and its margins; and

(f) The extent of use or development within the catchment, including the extent to which that use and development has influenced matters (a) to (e) above.

113. Policy 5.4.8 clearly directs that use, and associated developments are to be taken into account and acknowledged when assessing the natural character of waterways within the catchment. Objective 5.3.3 directs us to *protect* natural character, rather than enhancing it.

114. There is a long history of abstractive use of water from the Luggate Catchment, and much of the pastoral farming areas within the respective irrigation command areas are dependent on this irrigation. It is clear that the historic use of water has impacted upon the ecology and flow characteristics of the catchment, however the quality of water within the Creek is recognised as being excellent, whilst also providing very good habitat for trout, with the site frequently in the top 3 sites for trout spawning based on ORC surveys.²²
115. I am not aware of issues with water quality within the catchment, with the Luggate Creek having been classed as excellent by the ORC.²³ I note however that there is an underlying obligation on landowners to meet water quality objectives as set out in the regional water plan from April 2020.²⁴ I am of the understanding however, that the various landowners will be able to meet the permitted activity standards specified in 12.C1.1A, 12.C.1.2, and 12.C.1.3 RPWO. Where this is not the case the obligation to obtain any necessary consents will fall with the individual landowner and is outside of the scope of this application.
116. Taking all of these factors into account and based on the evidence of Mr Hickey and Mr Allibone, the proposal will protect the existing natural character of the catchment and will enhance it in comparison to the status quo arrangement. Irrigation efficiency upgrades are also anticipated to contribute to protection of the natural character of the catchment, as spray irrigation reduces the ability for the generation of run-off from border dyke irrigation practices.

Amenity Values

Objective 5.3.4 To maintain or enhance the amenity values associated with Otago's lakes and rivers and their margins.

Policy 5.4.9 To have particular regard to the following qualities or characteristics of lakes and rivers, and their margins, when considering adverse effects on amenity values:

²² Evidence Matt Hickey, Paragraph 19.

²³ Evidence Matt Hickey, Paragraph 15.

²⁴ ORC Plan Change 6A implemented water quality limits – Schedule 15.

(a) Aesthetic values associated with the lake or river; and

(b) Recreational opportunities provided by the lake or river, or its margins.

117. Amenity values associated with the Luggate Creek are influenced by the history of abstraction and the resultant productive land uses which surround it. The banks and margins of the Creek remain largely unaltered due to the steep topography of the catchment, with the only likely impact on amenity values being that related to current flow in the Luggate Creek. These values will be enhanced by the improvement to flows that will result from this application. Recreational trout fishing opportunities may also be enhanced by improvements to flows.
118. In terms of recreational swimming, the original Plan Change 1B, Section 32 report referred to swimming values in Luggate Creek being a factor in setting the minimum flow. I have therefore assumed that these values were accounted for in the setting of the minimum flow, although note that the proposed flow regime will enable the minimum flow to be met more readily compared to the status quo.
119. I considered the application by Luggate Irrigation and Criffel Water to be consistent with this objective and policy.

Sustainable Use

Policy 5.3.6 To provide for the sustainable use and development of Otago's water bodies, and the beds and margins of Otago's lakes and rivers.

120. The detailed explanation to the policy notes "that traditionally people have made extensive use of Otago's water resources and the ability to continue to sustainably use these resources is important."
121. The distinguishing point of this policy to be able to continue to use it in the future is that the use must be sustainable.
122. Based on the technical evidence of Mr Hickey and Dr Allibone I conclude that the continued use of water by Luggate Irrigation and Criffel Water will be sustainable into the future.

123. In my view the only limitation to the sustainability of the use of the water is the proposed term of consent. As outlined in the evidence of Mr Collier, Dr Bell and Mr Trotter, the financial impacts of a short duration consent (10 years or less) are significant and may well result in the continued use of water to become unsustainable from a financial perspective. In turn this would limit the ability of the applicants to provide for their social and economic wellbeing.

Shared Management

Policy 5.4.12 To promote the establishment of, and support, appropriate water user groups to assist in the management of water resources.

Objective 6.3.3 To minimise conflict amongst those taking water.

Policy 6.4.0B To promote and support shared use and management of water that:

- (a) *Allows water users the flexibility to work together, with their own supply arrangements; or*
- (b) *Utilises shared water infrastructure which is fit for its purpose.*

124. Criffel Water and Luggate Irrigation are the only two authorised users of Luggate Creek. The two parties have jointly managed flows in the Luggate Creek for a number of years and have recently agreed to working together to manage allocation.

125. The approach adopted by the applicants is therefore providing a catchment wide approach to water management in accordance with the policies and objectives set out above.

Section 6 RPWO

126. Chapter 6 is focused on managing water quantity. The introduction to Chapter 6 outlines that the water allocation, and minimum flow provisions are intended to provide for the maintenance of aquatic ecosystems and natural character values of water bodies, while providing for the sustainable taking of water for use. Chapter 6 also specifically acknowledges the legacy of deemed permits and states in the introduction to the Chapter that “*The transition to resource consents*

*under the Resource Management Act will recognise current access to water, but will also consider the purpose of use for the water, and the protection of aquatic ecosystems and natural character of the affected water bodies*²⁵.

Life Supporting Capacity

Objective 6.3.1 To retain flows in rivers sufficient to maintain their life-supporting capacity for aquatic ecosystems, and their natural character.

127. The life-supporting capacity of the Luggate Creek is documented in the evidence of Mr Hickey and Dr Allibone, as well as in the report by Dr Jowett. It is also recognised by Schedule 1A of the RPWO. Dr Olsen also provides commentary on the existing state of the Luggate Creek.
128. In the case of the Luggate Creek, the life supporting capacity has been constrained by the historical flow regime in the creek, albeit this hasn't appeared to have limited the life supporting capacity for introduced trout species. However, the proposed reduction in over allocation and the shift to primary and secondary allocation, alongside residual flows and meeting of the existing minimum flow will provide greater opportunity to enhance the life supporting capacity of the Luggate Creek. Although I note Dr Allibone's reservations that an increase in flows may be detrimental to the life supporting capacity of native fish species.
129. The application is considered to be consistent with this objective.

Required Volumes

Policy 6.4.0A - To ensure that the quantity of water granted to take is no more than that required for the purpose of use taking into account:

- (a) *How local climate, soil, crop or pasture type and water availability affect the quantity of water required; and*
- (b) *The efficiency of the proposed water transport, storage and application system.*

²⁵ Otago Regional Water Plan, Chapter 6, Page 6-2

130. The local climate, soils, crops and pastures have been taken into account to calculate the volume of water required to efficiently irrigate the areas specified for each farm, by utilising the approach of Aqualinc Research Ltd, as contained in a 2006 report entitled: *“Water requirements for irrigation throughout the Otago Region”* and updated in its 2017 report: *“Irrigation Report - Guidelines for Reasonable Irrigation Water Requirements in the Otago Region”*.
131. Aqualinc Research Ltd was commissioned by the ORC to develop this approach so that the council, irrigators and stakeholders had a starting point for assessing efficiency of use. The Aqualinc guidelines were developed as that – desktop guidelines only.
132. Mr Simpson and Mr Hickey have both outlined their respective approaches to ensuring that the quantity of water taken for irrigation represents an efficient use of the water resource and doesn't result in excess abstraction of water.
133. Mr Hickey has outlined at paragraphs 45 – 63 of his evidence the methodology that is utilised for determining primary allocation and efficient use of water, and in Paragraph 68 - 71 he has assessed the proposed volumes of take based on Aqualinc, utilising the maximum Aqualinc volumes, as shown in Tables 6, 7 and 8.
134. Overall, I consider the volumes of water sought by both Criffel Water and Luggate Irrigation to represent an efficient use of water, thus the proposal is considered consistent with this policy.

Source of Water

Policy 6.4.0C To promote and give preference, as between alternative sources, to the take and use of water from the nearest practicable source.

135. The Luggate Creek is the closest source of water for all of the land within the Criffel Water Command Area and is the closest source of water for most of the land within the Luggate Irrigation Command Area.

136. Whilst the Umbers Block and the Trotter property in part adjoin the Clutha River the abstraction of water from this source is considered to be cost prohibitive given the existing infrastructure which is already in place. An assessment of alternatives was provided in the application by Luggate Irrigation.
137. The extent of didymo infestation of the Clutha River makes a surface water take technically challenging because of the need to filter didymo out of the water to prevent it spreading and also clogging up the pumping and irrigation infrastructure. Typically, this problem is overcome by using hydraulically connected ground water takes adjacent to the river but geological conditions are not suitable.²⁶
138. Overall, the Luggate Creek is the most practicable source of water for Luggate Irrigation and Criffel Water.

Primary & Supplementary Allocation

Policy 6.4.1: To enable the taking of surface water, by:

(a) Defined allocation quantities; and

(b) Provision for water body levels and flows, except when:

- (i) The taking is from Lakes Dunstan, Hawea, Roxburgh, Wanaka or Wakatipu, or the main stem of the Clutha River/Mata-Au or Kawarau Rivers.*
- (ii) All of the surface water or connected groundwater taken is immediately returned to the source water body.*
- (iii) Water is being taken which has been delivered to the source water body for the purpose of that subsequent take.*

Policy 6.4.2 To define the primary allocation for each catchment from which surface water takes and connected groundwater takes may be granted, as the greater of the sum of the consented maximum.

²⁶ Evidence of Colin Harvey para 6.

139. Schedule 2A of the RPWO sets out a primary allocation block of 500 L/sec. In accordance with Policy 6.4.2 the primary allocation for the catchment shall be the greater of the sum of the consented maximum of 1024 L/sec as per the existing deemed permits²⁷. Mr Hickey also notes that “*where the consented sum exceeds the Schedule 2A or default amount then Policy 6.4.2 identifies the catchment as fully allocated*”.
140. Schedule 2D.2 of the RPWO directs that consideration is to be given to the following matters when setting a primary allocation limit:
- a. Amount of water currently allocated as primary allocation.
 - b. Amount of water currently taken as primary allocation;
 - c. Any other existing taking and using of water;
 - d. The 7-day mean annual low flow;
 - e. Proposed minimum flow regime;
 - f. Possible sources of water
 - g. Acceptable duration and frequency of rationing among consented water users; and
 - h. Social and economic benefits of taking and using water.
141. The matters listed in Schedule 2D.2 make it clear that the primary allocation limit is very user focused – it is determined based on consented and actual use in light of low flows and the proposed (or existing) minimum flow regime, and should be set at a level that will result in an acceptable reliability of supply (see (g) and (h) above).
142. In fully-allocated catchments which have had a primary allocation (and usually a minimum flow set), there can be two different primary allocation limits – one is the Schedule 2A limit, and the other is the ‘sum of consented maximum instantaneous takes’ for all takes as at 28 February 1998 and connected groundwater as at 10 April 2010.

²⁷ Evidence of Matt Hickey, Paragraph 49.

143. These two primary allocation limits can and often do exist at the same time. Under Policy 6.4.2 it is the greater of these two limits which is the 'working' primary allocation limit. In many catchments the sum of the consented maximum instantaneous takes is greater than the Schedule 2A limit, and so it has effect as the 'working' allocation limit.
144. This means that the Schedule 2A limit becomes an aspirational limit or a target – this is the limit to which the ORC aims to reduce allocation to overtime, by reducing the amount of allocation granted on replacement permits (under Policy 6.4.2A – only replace allocation which can be shown to have been taken in the last 5 years, Policy 6.4.2AA – consider granting primary allocation water as supplementary allocation, and Policy 6.4.18 – cancellation of consents not used for two years).
145. Often in catchments the replacement of deemed permits will not result in the aspirational Schedule 2A limit being achieved, even though the replacement process may result in a large reduction in the consented maximum instantaneous takes.
146. However, in the case of the Luggate Creek, and the applications by Criffel Water and Luggate Irrigation the alignment between the two primary allocation limits is very high. The Schedule 2A limit is 500 L/sec, while the consented maximum (as agreed by the applicant's) is 538 L/sec.
147. The primary allocation proposed by the applicants represents a significant reduction in allocation and has the effect of creating very close alignment with the Schedule 2A limit. The impact of this is that the primary allocation limit will be achieved immediately, including mitigating the effects of over allocation on aquatic ecosystems and natural character, compared to the more common approach of working down toward the aspirational limit over time.
148. The proposal is consistent with Policy 6.4.1 and 6.4.2.

Supplementary Take

6.4.9 To provide for supplementary allocation for the taking of water, in blocks of allocation where that is appropriate:

(a) such that up to 50% of flow at the catchment main stem, minus the assessed actual take, is available for allocation subject to a minimum flow set to ensure that no less than 50% of the natural flow remains instream; or

(b) On an alternative basis, provided:

(i) The take has no measurable effect on the flow at any Schedule 2 monitoring site, or any site established in terms of Policy 6.4.4, at flows at or below any minimum flow applying to primary allocation; and

(ii) Any adverse effect on any aquatic ecosystem value or natural character of the source water body is no more than minor; and

(iii) There is no adverse effect on any lawful existing take of water.

(c) Supplementary allocations and associated minimum flows for some catchments are set in Schedule 2B.

149. Supplementary allocation for the Luggate Creek is not set in Schedule 2B of the RPWO. Therefore, supplementary flow shall be set in accordance with 6.4.9 (a), and as outlined by Mr Hickey “Based on a total primary allocation water take of 538 L/sec with a minimum flow of 180 L/sec, a supplementary take for 250 L/sec from the 1st Supplementary Block with a supplementary minimum flow of 788 L/sec, and a supplementary take of 166 L/sec from the 2nd supplementary block with a supplementary minimum flow of 1038 L/sec²⁸ shall apply.

150. The determination of available supplementary flow has been made in accordance with Policy 6.4.9.

²⁸ Evidence of Matt Hickey, Paragraph 12.

Minimum Flow

6.4.3 For catchments identified in Schedule 2A, except as provided for by Policy 6.4.8, minimum flows are set for the purpose of restricting primary allocation takes of water.

Policy 6.4.5 The minimum flows established by Policies 6.4.3, 6.4.4, 6.4.6, 6.4.9 and 6.4.10 will apply to resource consents for the taking of water, as follows: ...

(c) In the case of any existing resource consent to take water from the Luggate catchment area, Manuherikia catchment area (upstream of Ophir) and the Taieri catchment areas Paerau to Waipiata, Waipiata to Tiroiti and Tiroiti to Sutton, as defined in Schedule 2A, upon collective review of consent conditions within those catchments under Sections 128 to 132 of the Resource Management Act.

6.4.11 To provide for the suspension of the taking of water at the minimum flows and aquifer restriction levels set under this plan.

151. The Luggate Catchment is subject to a minimum flow restriction as set out in Schedule 2A. The granting of consent will enable the catchment to be managed in accordance with the minimum flow provisions, which is not currently the case given minimum flows do not apply to deemed permits. Therefore, the applications are consistent with these policies.
152. Some of the submitters have raised concerns with respect to minimum flow. The setting of the minimum flow was achieved through Council's Plan Change 1B. That Plan Change was publicly notified in December 2008 and was made operative in March 2010. Being a plan change process, it required consultation with a wide range of stakeholder groups and full public notification. Consideration of the implications of the minimum flow had to be assessed under section 32 of the Act. That is a completely different process to the consideration of the present applications, which are much more limited in their scope. In my opinion these applications are an inappropriate forum for revisiting the minimum flow. The parties are different, and the statutory requirements are different.

153. If submitters were able to re-litigate minimum flow decisions in every resource consent application, it would make schedule 2A worthless and the application process unwieldy and uncertain. Schedule 2A minimum flows provide the basic foundations of the applications that enable water reliability to be calculated and efficient irrigation to be assessed.

Residual Flows

Policy 6.4.7 - The need to maintain a residual flow at the point of take will be considered with respect to any take of water, in order to provide for the aquatic ecosystem and natural character of the source water body.

154. The applicants have proposed residual flows as follows;

- Criffel Water – Residual Flow of 90 L/sec.
- Luggate Irrigation – Residual Flow of 100l/s on the north branch below the LIC intake; and a visible flow connection below the Alice Burn race intake to the confluence.

Duration of Consents

Policy 6.4.19 When setting the duration of a resource consent to take and use water, to consider:

- (a) The duration of the purpose of use;*
- (b) The presence of a catchment minimum flow or aquifer restriction level;*
- (c) Climatic variability and consequent changes in local demand for water;*
- (d) The extent to which the risk of potentially significant, adverse effects arising from the activity may be adequately managed through review conditions;*
- (e) Conditions that allow for adaptive management of the take and use of water;*
- (f) The value of the investment in infrastructure; and*
- (g) Use of industry best practice.*

155. The applicants have applied for a 35-year term of consent, and still seek that full term. The absolute minimum acceptable term is 25 years. A term shorter than 35 years, but more than 25 years would be appropriate for the following reasons.

- a. All of the permits for the taking and use of water as sought by this application have a purpose of use with a long duration, i.e. irrigation is expected to occur for greater than 35 years. There is no reason to think that improvements in technology will reduce the demand for water for efficient irrigation.
- b. All proposed abstractions points are subject to an existing minimum flow. No adverse effects have been identified that would warrant a shorter term to enable better mitigation.
- c. Any actual or potential adverse effects are addressed through conditions including the residual flow provisions, and the overall reduction in over-allocation.
- d. The inclusion of review conditions and powers to review when new limits become operative under section 128.
- e. Adaptive management will occur through the low-flow rationing that will be carried out by this group.
- f. The applicants have made significant investments in infrastructure, and the proposal contained in this application will necessitate further significant investments.

156. The proposal will require the continued shift towards industry best practice in terms of irrigation systems and application methods.

Section 104 RMA

157. Section 104 of the RMA outlines how resource consents are to be considered.

- (1) *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*
 - (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
 - (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; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*
- (2A) *When considering an application affected by section 124 or 165ZH(1)(c), the consent authority must have regard to the value of the investment of the existing consent holder.*

158. Section 104 (1)(a) requires the actual and potential effects of a proposed activity to be considered. The effects of the proposed activities are outlined in the respective applications for consent and in the expert evidence. As summarised in the Section 42A Report *“the effects on instream values have been assessed as no more than minor due to the mitigation measures proposed by the applicant”*²⁹.
159. The Section 42A report directs that the starting point for assessing the actual and potential effects is the ‘environment’. Which as set out in *Ngati Rangī* shall assume that the deemed permits subject to the applications shall not have been granted.
160. Whilst I agree that this approach perhaps has some merit in determining the receiving environment, and that an assessment of effects should be considered the ‘naturalised environment’ it should not in my view be the only defining approach, as the status quo environment is of equal importance for the reasons I detail below.
161. The NPSFM is clear in its direction in (Policy B7) that the application for resource consent shall be assessed against the status quo environment, rather than a notional environment that excludes the permits that are being replaced.
162. The preamble to the NPSFM also describes the importance of improving freshwater quality and quantity compared to the state it was in at the time of the commencement of the NPSFM.
163. To this end, the NPSFM does not provide direction or intent such that objectives and policies require outcomes to be achieved by reference to a “natural state”, or to utilise this when considering applications for resource consent.
164. I have reached this position from the perspective of firstly considering a situation where no abstraction except for minor takes as authorised under Section 14 RMA occurs. This approach would firstly lead to inconsistency with the NPSFM, specifically Objective B5 which seeks to enable communities to provide for their social and economic wellbeing.

²⁹ ORC Section 42A Report, Para 9.2.1 and 9.2.2.

Secondly, it would also be inconsistent with Objective 6.2.3 RPWO which outlines that the RPWO shall provide for the water needs of the primary industries.

165. Starting at a point of no abstraction therefore creates a situation which is difficult to consider and not consistent with the NPSFM or the RPWO. The approach requires that we assess the effects of the application based on the natural values that are present under the existing water use scenario but do so as if the existing regime isn't present.
166. Section 104(1) (ab) is not relevant to this application as no offsetting or compensation is proposed.
167. Section 104(2A) is a relevant matter, as the applications by both Luggate Irrigation and Criffel Water were filed at least 6 months prior to their expiry, therefore Section 124 of the RMA applies, and as directed by Section 104(2A) regard must be had to the value of the investment (sunk costs) of the existing consent holders.
168. Mr Simpson has provided an estimate of the costs for infrastructure upgrades for Criffel Water, while Dr Bell and Mr Trotter for Criffel Water and Luggate Irrigation respectively have outlined the respective financial implications for their schemes. The overarching themes of these statements is that the parties have made considerable investment in the schemes to date and that considerable future investment is required to achieve the necessary efficiency upgrades. Mr Collier concludes³⁰;
- (a) *A 10-year irrigation consent will provide no financial return for any new irrigation development to proceed.*
 - (b) *It is also marginal to consider upgrades to irrigation delivery infrastructure with a 10-year consent as this would add a further 2.5 cents to the cost of dry matter consumed.*
 - (c) *A 25 – 35-year consent provides a positive return and therefore a positive economic case to be made for the investment.*

³⁰ Evidence of George Collier, Paragraph 38 - 39 & 44.

(d) *The length of the irrigation consent can also have a material effect on the ability to access borrowed capital to fund development.*

169. The Commissioners must have regard to the value of investment by existing consent holders as outlined in the various technical briefs of evidence.
170. The effects on the environment have been outlined by the technical experts. Having considered the various information, I am of the opinion that the effects of the proposed abstraction are no more than minor and can be adequately mitigated.
171. Subject to conditions of consent I am of the opinion that the actual and potential effects of the project have been addressed appropriately and that overall proposal will result in an enhancement of the status quo scenario.
172. Section 104(1)(b) of the RMA requires regard to be had to the relevant provisions of any national environmental standard, other regulations, a national policy statement, the New Zealand Coastal Policy Statement, a regional policy statement or proposed regional policy statement, plan or proposed plan.
173. I have considered the relevant provisions of National Policy Statement for Freshwater Management 2014 (NPSFM); the Otago Regional Policy Statement (RPS); and the Regional Plan Water – Otago (RPWO). It is my opinion that the proposal by Criffel Water and Luggate Irrigation is generally consistent with the relevant provisions as discussed previously.
174. There are no “other” matters that I consider relevant for consideration under s104 (1)(c), which have not been addressed elsewhere within this evidence.
175. The Section 42A Report has assessed Section 104 matters and has come to a recommendation to grant consent Criffel Water and Luggate Irrigation. I agree with the recommendation to grant consent, however,

seek amendment to proposed conditions as below, specifically with regard to the proposed term of consent.

PART II MATTERS

176. Having considered the relevant provisions of the RPWO, RPS and pRPS, and the NPS FM, I do not consider that there are any material omissions or incompleteness that requires recourse to Part 2 of the Act.

PROPOSED CONSENT CONDITIONS

177. Appendix A contains draft consent conditions utilising track changes to highlight areas of proposed changes.

178. Generally, I agree with the draft conditions of consent with the exception of the proposed term of consent, which I discuss further below. Changes are also sought to the condition about use of water for expanded irrigation areas. All other changes sought are largely administrative changes.

Consent Term

Otago Regional Plan: Water

179. The section 42A report concludes that a 10-year term is appropriate for this consent. It does not however link that conclusion to policy 6.4.19 of the Otago Regional Plan: Water (RPWO) other than to restate the policy in the text of Section 13. After considering policy 6.4.19 and its accompanying explanation I consider that the consent is consistent with that policy and therefore supports a longer term. I set out my reasoning below.

180. Decisions on the term of resource consents are addressed under Policy 6.4.19 RPWO which reads:

When setting the duration of a resource consent to take and use water, to consider:

(a) *The duration of the purpose of use;*

- (b) *The presence of a catchment minimum flow or aquifer restriction level;*
- (c) *Climate variability and consequent changes in local demand for water;*
- (d) *The extent to which the risk of potentially significant, adverse effects arising from the activity may be adequately managed through review conditions;*
- (e) *Conditions that allow for adaptive management of the take and use of water;*
- (f) *The value of the investment in infrastructure; and*
- (g) *Use of industry best practice.*

181. The consent gives effect to the considerations contained in Policy 6.4.19 in the following ways:

- (a) The purpose of the water take is to irrigate land to provide for farming operations. This activity is intended to continue beyond 35 years but is limited by the provisions of the RMA (Policy 6.4.19(a))
- (b) Both Applicants have agreed to a low flow agreement or rationing agreement approved by a water management group to operate within the Luggate catchment (Policy 6.4.19(b)).
- (c) The adverse effects from the proposal have been assessed to be no more than minor. There is no risk of potentially significant adverse effects arising from the granting of this consent that cannot be effectively managed through conditions of consent and/or review conditions (Policy 6.4.19(d)).
- (d) The Applicants have prepared conditions to support an adaptive management approach to the take and use of water (Policy 6.4.19(e)).
- (e) The value of the investment is a relevant factor for the Commissioners to consider and in this case is significant. The

investment in infrastructure will enable considerable efficiencies for water use which gives effect to a number of other policies in the RPWO and the Kai Tahu ki Otago Natural Resource Management Plan 2005 (NRMP) (Policy 6.4.19(f)).

- (f) The combination of infrastructure and consent conditions are in line with industry best practice (Policy 6.4.19(g)).

182. The explanation to Policy 6.4.19 provides a useful guide to interpreting and applying this policy. The focus of this policy is based on the certainty of effects on the environment and what steps the Applicants have taken to reduce uncertainty and to accommodate changes in the environment which might arise throughout the duration of the consent.

183. Policy 6.4.19 is focussed on the certainty of information at the time of consent, and whether conditions of consent provide mechanisms for reducing uncertainty throughout the term of the consent. The Applicants have demonstrated that the effects on the water take will be no more than minor and have entered into arrangement such as an approved rationing regime which is consistent with this policy.

184. The RPWO does not set a starting point for considering terms of consent which suggests any deviation from the maximum term set in Section 123 of the RMA. Rather, the RPWO provides guidance on when it is appropriate to reduce the maximum term and what countervailing factors might support a longer term. The explanation to Policy 6.4.19 is explicit that *“there needs to be good reason for Council to reduce the duration of consents from that required for the purpose of use”*. The reasons listed at Section 13 of the Section 42A report provide very little justification to why a reduction in the maximum term is appropriate in terms of Policy 6.4.19. The starting point in this instance appears to have been from the point at which the Council is considering notifying a plan change to bring the RPWO in line with the NPSFM. Consideration was given to recommending 8 years which would (if the consent is granted in 2019) require a fresh consent to be required in 2026.

185. Policy 6.4.19(f) recognises that the value of investment is a relevant factor to be considered. The investment in new infrastructure anticipated

for this consent is considerable. The section 42A report recommends a further 2 years as sufficient to reflect the Applicants investment. No explanation is provided to substantiate this figure. Without a method or explanation justifying the 2 year extension it is unclear what value can be derived from this assessment.

186. Policy 6.4.19(d) is relevant to the Commissioners decision as review conditions have been offered to avoid the risk of potentially significant adverse effects arising throughout the duration of the consent. The Section 42A Report suggests that any conditions are unlikely to anticipate or control the effects for 35 years. Furthermore, the author suggests a “using or losing” approach to water is not appropriate as it involves a high degree of risk. No explanation has been provided to substantiate these reasons.
187. The consent has been prepared to support a 35-year consent term. The Applicants have offered conditions on the consent, including review conditions and adaptive management provisions, to reduce uncertainty in relation to environmental effects which might arise throughout the duration of a 35-year consent. The effects from this activity have been assessed to be no more than minor and there is no risk of significant adverse effects arising in the future. It would be inappropriate for the Commissioners to consider that a shorter term is required without evidence to substantiate that.
188. To this end however, the applicants would be prepared to accept a lesser term than 35 years, but not less than 25 years.
189. Conditions which seek to adjust the flow management regime may be appropriate where they have the capacity to respond to changes in the environment. For example, a condition which anticipates adjustments where certain levels of adverse environmental effects are experienced then a commensurate ‘losing’ of water may be appropriate. The same argument can be applied to the counter-factual scenario. There is very little risk in this approach as it is weighted against the effects on the environment, which necessarily include the concerns raised by the Submitters.

190. Aukaha have raised concerns as to how this consent contemplates future plan changes. That is not a matter covered by Policy 6.4.19. The explanation to this policy elaborates that consent review provisions may enable longer consent durations while ensuring the requirements of “this Plan” are met over time. In my opinion that phrasing suggests that any future adverse effects must be assessed against the provisions of the current iteration of this plan, rather than a future iteration of this plan which is unknown at this time.

Kai Tahu ki Otago Natural Resource Management Plan 2005

191. The NRMP contains overall objectives relevant to the duration of water take consents. These are:

Water extraction:

25. To oppose the granting of water take consents for 35 years. Consistent with a precautionary approach, either a review clause or a reduced term may be sought.

Irrigation:

27. To require that a consent term for water extractions for irrigation be of 5-10 years where Kā Papatipu Rūnaka considers the method of irrigation to be inefficient to allow for an upgrade to a more efficient method.

192. Objective 25 sets a blanket requirement to oppose water take consents for 35 years. The objective provides an option for a review clause or a reduced term (consistent with the precautionary approach) to be sought presumably to address any concerns associated with the 35-year consent term.

193. The Section 42A Report states that the NRMP is clear that consents should not be granted for any longer than a single generation.

194. In terms of industry best practice, the proposal will enable the continued adoption of industry best practice in terms of irrigation systems and efficient application methods.

195. In giving due consideration of all of the matters detailed above, it is my view that an appropriate term of consent would be at least 25 years, as this balances the need for certainty of supply to ensure that the necessary efficiency and infrastructure upgrades can be given effect to while also considering the improved outcomes in terms of reduction of over-allocation in the catchment.
196. My consideration of a term of 25 years is also supported by the provisions of Section 104(2) RMA which require decision makers to recognise the existing investment. The applicants have made significant investment in on farm infrastructure and the proposal to further upgrade ageing scheme infrastructure will be significant, at approximately \$1,948,000³¹ for Criffel Water with a similar level of expenditure expected for Luggate Irrigation. This includes on farm infrastructure upgrades but excludes the cost of storage to give effect to the full supplementary allocation.
197. As outlined by Mr Collier, a consent term of less than 25 years will make investment difficult to justify, especially where debt funding will be required to undertake the further upgrades proposed.³²
198. Policy 27 which seeks that consents be 5-10 years where Kā Papatipu Rūnaka considers that the method of irrigation to be inefficient is a subject policy and I cannot comment on what that view is. However, the proposed upgrades to the infrastructure will ensure that the method of irrigation is efficient in terms of the RPWO requirements. Therefore I consider that the applications will likely be consistent with this policy.
199. One of the key concerns raised by submitters to both the Luggate Irrigation and Criffel applications is the issue of the term of the consent, and the underlying concerns with respect to the ability of the ORC to review the consents in light of any future minimum flow or other plan changes.
200. I do not share the concerns of the parties about the ability of the ORC to review the consents in the event of a change to the RPWO. Currently

³¹ Evidence in Chief Roger Simpson, Page 5

³² Evidence of George Collier, Paragraph 44.

because the water takes are deemed permits the permit holders are not required to meet the minimum flow as they do not apply to the historic privileges. The proposal for the Luggate Catchment is clear that upon the granting of the consent the minimum flow set for the Luggate will apply to all abstractions in the catchment.

201. Additionally, in my experience the ORC remain one of the few regional councils under whose jurisdiction I have operated that have in fact proactively gone through the process of renewing all permits in a catchment following the implementation of a minimum flow plan change, as was the case with the Pomohaka Catchment as set out in Plan Change 3B, which became operative 1 June 2015. Following this process, the ORC systematically reviewed all of the water abstraction permits in the catchment such that they were obligated to comply with the new minimum flow. I understand that this process was undertaken under the review provisions set out in consent conditions for these permits.

CONCLUSION

202. I am of the view that the effects of the proposed activity will be no more than minor, and that the proposal is consistent with all relevant objectives and policies, therefore I support the recommendation that consent should be granted to Criffel Water, Luggate Irrigation Company, and Lake McKay Station Limited in accordance with the draft conditions attached as Appendix 1, for a term of not more than 35 years, but not less than 25 years.

Date: 8 October 2019



Kate Scott