

BEFORE THE OTAGO REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act
1991

AND
IN THE MATTER of RM16.093 by Criffel Water
Limited

and

RM 18.345 by Luggate Irrigation
Company Limited and Lake
McKay Station Limited

**STATEMENT OF EVIDENCE OF PAUL WHYTE
FOR TE RŪNANGA O ŌTĀKOU, KĀTI HUIRAPA KI PUKETERAKI AND TE
RŪNANGA O MOERAKI**

Dated 15 OCTOBER 2019

Barrister: Stephen Christensen
(stephen@projectbarrister.nz)

PO Box 1251
DUNEDIN 9054
027-448-2325

Introduction

1. My full name is Paul Stuart Whyte. I hold the qualification of a Bachelor of Town Planning from Auckland University. I am a Full Member of the New Zealand Planning Institute. I have practised in the field of town planning/resource management planning since 1984, primarily working for both local government and planning consultants in Dunedin and Christchurch. Currently I am a Senior Planner (Senior Associate) in the Christchurch office of Beca Ltd.
2. I am appearing in support of the submissions by Aukaha in respect of Resource Consent Applications RM 16.093 by Criffel Water Limited and RM 18.345 by Luggate Irrigation Company Limited and Lake McKay Station Limited.
3. I confirm that I have read the 'Code of Conduct' for expert witnesses contained in the Environment Court Practice Note. My evidence has been prepared in compliance with that Code. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.
4. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
5. I have read the Section 42A report of Stephen Daysh and Alexandra King. I have also had regard to the evidence of the other Aukaha witness's Dr Stevens and Dr Clucas and Ms Bartlett including descriptions of Kāi Tahu historical and cultural associations with the area and Te Tiriti O Waitangi relationships. I have also viewed the evidence of the applicants and the questions posed by the Hearings Panel and the responses to those questions in respect of the Section 42A report.
6. I have also read the recent decision *Lindis Catchment Group Inc v ORC* [2019] NZEnvC166 (the *Lindis* decision) and where I think it is relevant have referred to it, although I note that the

decision related to a Plan Change rather than a resource consent application.

7. My evidence covers the following matters;
 - The Proposal
 - Iwi Framework
 - Duration of consent
 - Alternative Water Sources/Residential Development.

EXECUTIVE SUMMARY

8. There is a comprehensive framework in place at a national and regional level requiring Iwi interests to be more fully considered and reflected in decisions on the way freshwater is managed and which requires more careful attention to ensuring the intrinsic, cultural, and ecological values of freshwater bodies are respected and provided for. This framework has developed significantly in recent years. As a result, in many instances regional councils are being required to reconsider the way freshwater is managed in order to properly respond to these new developments.
9. The existing regional water plan for Otago (RPW) does not reflect this new national direction. A shorter term of consent appears appropriate for the proposed applications as it will enable long term water management of the Luggate catchment to be considered under a more robust planning framework, rather than locking in a flow regime for an extended period of time.
10. The proposed applications represent an improvement in terms of existing water allocation relating to the deemed permits, but there are some outstanding matters that require clarification relating to such matters as minimum flow and alternative water sources/residential development.

THE PROPOSAL

11. The applications are described in detail in the Section 42A report and I do not propose to repeat these descriptions. I understand that Kā Rūnaka generally view the current (amended) proposals for water use within the Luggate Creek catchment as a step along the path towards freshwater management that appropriately incorporates Kāi Tahu rights, interests and values. I support this view particularly as water allocation is reduced and some provision made for residual flow. Generally, I concur with the recommendation and suggested conditions set out in the Section 42A report except for a number of matters which I identify below.

IWI FRAMEWORK

12. The Section 42A report highlights some of the relevant provisions from the Resource Management Act (RMA), NPS FM (National Policy for Freshwater Management 2014), Otago Regional Policy Statement-Partially Operative (RPS), Regional Plan: Water for Otago (RWP) and Iwi Management Plans in respect of managing the water resource. In relation to the Iwi framework, I am of the opinion the following provisions are of particular relevance.
13. In Part 2 of the RMA, section (6)(e) identifies the relationship of Maori and their culture with their ancestral land and water as a matter of national importance. Section 7(a) kaitiakitanga is a matter to have particular regard to; and section 8 requires the principles of the Treaty of Waitangi to be taken into account.
14. The underlying premise of the NPS FM is to improve water quality and sustainably manage water quantity. Specifically, the NPS FM includes a direction for Councils to provide for the involvement of Iwi and to ensure that tangata whenua values and interests are identified and reflected in the management of fresh water (Objective D1 and Policy D1). The concept of Te Mana o te Wai is a primary objective (Objective AA1) and the 2017 amendments clarify the concept in a way which, in my view, aligns with Maori understanding and management of the resource in a holistic manner.

15. Objective CA1 requires the establishment of freshwater objectives in which regional councils must identify “Compulsory Values” for each freshwater management unit and may consider “Other National Values” in consultation with communities including “tangata whenua”. Compulsory Values are “Ecosystem health” and “Human health for recreation”. There are a number of “Other National Values” that directly relate to iwi including Mahinga Kai and Wai Tapu.
16. The NPS FM requires the ORC to set environmental flows and/or levels for all fresh water management units which is likely to be a complex task given the diversity in the natural and human use values supported by rivers, lakes and wetlands and the variation in the flow/level required to maintain those values. The ORC has notified a Progressive Implementation Plan (PIP) to implement these changes.
17. The RPS and the RWP must give effect to the NPS FM. The Section 42A report acknowledges that the RPW is not a NPS FM compliant plan (page 36). The Environment Court in the *Lindis* decision also expressed doubts that the RPW gives full effect to the NPS FM (para 504).
18. The RPS requires Kāi Tahu values to be taken into account and requires Kāi Tahu’s relationship with their sites and resources to be recognised and provided for (Objectives 2.1 and 2.2 and associated policies-see below). Kāi Tahu values and interests are set out in Schedule 1 of the RPS.

Objective 2.1 The principles of Te Tiriti o Waitangi are taken into account in resource management processes and decisions.

Issue:

The principles of Te Tiriti o Waitangi are broad concepts that need further exploration when applied to specific circumstances.

Effective planning tools and processes are required to give effect to the Treaty relationship between Kāi Tahu and local authorities in accordance with Part 2 of the RMA.

Policy 2.1.1 Treaty obligations

Promote awareness and understanding of the obligations of local authorities in regard to the principles of Te Tiriti o Waitangi, tikaka Māori and kaupapa Māori.

Policy 2.1.2 Treaty principles

Ensure that local authorities exercise their functions and powers, by :

- a) Recognising Kāi Tahu's status as a Treaty partner; and*
- b) Involving Kāi Tahu in resource management processes implementation;*
- c) Taking into account Kāi Tahu values in resource management decision-making processes and implementation;*
- d) Recognising and providing for the relationship of Kāi Tahu's culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taoka;*
- e) Ensuring Kāi Tahu have the ability to:*
 - i. Identify their relationship with their ancestral lands, water, sites, wāhi tapu, and other taoka;*
 - ii. Determine how best to express that relationship;*
- f) Having particular regard to the exercise of kaitiakitaka;*
- g) Ensuring that district and regional plans:*
 - i. Give effect to the Ngāi Tahu Claims Settlement Act 1998;*
 - ii. Recognise and provide for statutory acknowledgement areas in Schedule 2;*
 - iii. Provide for other areas in Otago that are recognised as significant to Kāi Tahu;*
- h) Taking into account iwi management plans.*

Objective 2.2 Kāi Tahu values, interests and customary resources are recognised and provided for

Issue:

The mauri and wairua of some places, sites, resources and the values of cultural, spiritual or historic significance to Kāi Tahu have often been destroyed or degraded.

In some instances it has been difficult for Kāi Tahu to use and develop Māori land for the purposes for which it was originally granted.

Policy 2.2.1 Kāi 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.

Policy 2.2.2 Recognising sites of cultural significance

Recognise and provide for the protection of wāhi tūpuna, as described in Schedule 1C by all of the following:

a) Avoiding significant adverse effects on those values which 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.

19. Chapter 4 of the RPW sets out the issues of concern to Kāi Tahu (4.13). These includes a lack of recognition for traditional management systems and values; significant loss of traditional mahika kai; development of water bodies adversely affecting waahi taoka and waahi tapu; impact of land use on adjacent water; the requirement of restoration and enhancement programmes; and the overlooking of traditional Kāi Tahu values in the monitoring of water resources. The Issues cross reference to objectives and policies in other sections of the RPW with the note that there are no objectives and policies in Section 4.
20. These objectives and policies include in Section 5 Objective 5.3.2 (refer below), which is 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; and Policy 5.4.2 (refer below) which requires that in the management of any activity involving surface water, groundwater or the bed or margin of any lake or river, priority be given to avoiding (in preference to remedying or mitigating) adverse effects on spiritual and cultural beliefs, values and uses of significance to Kai Tahu identified in Schedule 1D. This Schedule includes the Clutha River/Mata-Au which has nine out of ten of the specified values relating to Mana Interests and Access/Customary Use Interests. My understanding is that the Clutha River/Mata-Au reference in the Schedule includes tributaries such as Luggate Creek.

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.*

5.4.2 *In the management of any activity involving surface water, groundwater or the bed or margin of any lake or river, to give priority to avoiding, in preference to remedying or mitigating:*

(1) *Adverse effects on:*

...

(d) *Spiritual and cultural beliefs, values and uses of significance to Kai Tahu identified in Schedule 1D;*

21. The respective Iwi Management Plans give expression as to how Iwi wishes to see water resources managed in the region and, in my view, are able to be considered as another relevant matter (Section 104(1)(c)). I have attached what I consider to be relevant provisions from the Kāi Tahu Ki Otago Natural Resource Management Plan (2005)¹ In **Appendix 1**.
22. I note the Issues include “*Lack of adequate minimum flows that provide for Kāi Tahu ki Otago cultural values; Setting of minimum flows may not appropriately consider social, biological and cultural needs*”, and “*Volume of some extractions being more than is required*”.
23. Objective and policies include “*Flow regimes and water quality standards are consistent with the cultural values of Kāi Tahu ki Otago and are implemented throughout the Otago Region; To protect and restore the mauri of all water; To oppose the granting of water take consents for 35 years*” and “*Consistent with a precautionary approach, either a review clause or a reduced term may be sought.*”
24. While the RPW and the Iwi Management Plan were both prepared in the early 2000's and well before the NPS FM, the provisions I have identified in the documents appear to be still highly relevant and applicable today. However, it appears many

¹ Referred to hereon as the Iwi Management Plan

of the objectives and policies have not been met in the management of Otago's fresh water.

25. Accordingly, in my view, it is clear that decision making in relation to the Luggate Creek must recognise and provide for the Kāi Tahu relationship with the catchment, its lands, water, sites, wāhi tapu and other taoka, and associated culture and traditions. There is a comprehensive framework in place at a national and regional level requiring Iwi interests to be considered and implemented.
26. I note that in the *Lindis* decision little weight was placed on Kāi Tahu values primarily because Kāi Tahu withdrew as a section 274 party (para 471-472).

TERM OF CONSENT

27. The Section 42A report recommends a term of consent of 10 years. I support this term as it provides the applicant with some certainty while allowing alignment with the PIP and giving effect to the NPS FM. As indicated above, the NPS FM requires a new approach to be taken in setting freshwater objectives, not the least of which is consideration of tangata whenua values. A consent for a period of thirty-five years, or even twenty years, would allow this catchment to remain as an outlier, detract from integrated management and set the allocation regime for the long term in the absence of a delineated robust framework (which may be subject to further change at a national level). Consideration of such matters as minimum flow referred to above would not be able to be debated and would be "locked in", particularly as I understand its original setting was rather arbitrary without involvement of Kāi Tahu.
28. Policy 6.4.19 sets out the matters to be considered when determining the duration of the consent flows as follows:
 - (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.

29. In terms of these matters, the duration of the purpose of use (a) I expect that the applicants anticipate at least 35-years use. In respect of (b), while there is the presence of a catchment minimum flow it is my understanding that the limit is out of date and not arrived at in accordance with current legislation. In terms of (c), there appears to be a consensus that there is significant climate change/variability occurring which is likely to result in changes to water demand. In terms of review conditions (d), I do not believe the use of a review condition is the best option to address what is a catchment wide review process, particularly in the present circumstance when it is clear that a comprehensive review of the RPW is to be undertaken, and the allocation and flow regimes throughout Otago's freshwater management units, including the Luggate catchment, are going to be reconsidered in light of a new freshwater management framework. In terms of (e), I understand that the applicants have indicated that they propose adaptive management conditions, but I am not sure what these conditions are. In respect of (f), it is acknowledged that the schemes represent a reasonable investment with plans to upgrade with pipes and storage ponds, although I understand that section 104 (2A) of the RMA only applies to existing investment and not future investment. Some of these improvements may be best industry practice (g).

30. The Explanation to the policy notes that "*There can be tension between granting sufficiently long consent durations to enable continued business viability and managing the greater environmental risk associated with long duration consents*". Based on evidence this clearly is the case here. In my view, the shorter term is more appropriate for the reasons stated above,

particularly as Kāi Tahu values, which clearly were not a relevant consideration when the original deemed permits were granted, will again not have full consideration for a significant number of years.

31. If a longer term was granted and to preserve Kā Rūnaka's position one possible option could be to impose a condition that requires the applicant to adopt the flow regime that arises from the review of the RPW. However, in my view, a shorter term is likely to be preferable as it is clearer from a process viewpoint.

MINIMUM FLOW

32. Ms Bartlett, in her evidence, expresses concern about the minimum flow of 180l/s (summertime) given it does not mimic natural flows, does not prioritise the needs of the waterbody and the spiritual and cultural needs of Kāi Tahu are not recognised (para 56). In relation to this topic, the Section 42A report on page 32 states:

The Luggate catchment is subject to the minimum flow restrictions listed in Schedule 2A of the RPW, and as these applications to take water are located within this catchment, it is recommended that any consent granted be subject to these minimum flows, in accordance with Policies 6.4.3 and 6.4.5. Therefore, the applications are consistent with this policy. There are still concerns around the minimum flow for the Creek, which has been raised by Submitters, but we cannot change the minimum flow as part of this consent process. Therefore, the concern from Submitters about this point is only partially addressed.

33. However, I note that the take of water for the primary and supplementary takes are subject to Rules 12.1.4.4 and 12.1.4.7 as restricted discretionary activities. Rule 12.1.4.8 states that the matters of discretion includes:

(viii) the minimum flow to be applied to the take of water, if consent is granted:

(ix) Where the minimum flow is to be measured, if consent is granted;

On the face of it therefore, even where the RPW specifies a minimum flow, that minimum flow² can be changed given it is a matter of discretion and is not necessarily constrained by the above policies. I note the matters of discretion distinguish between “minimum flows” and “residual flows” with the latter a separate discretion matter (xi).

34. This view that the minimum flow can be considered is supported by the decision *Infinity Investment Group Holdings Limited v Canterbury Regional Council* (ENV-2015-CHC-92). This decision related to a proposal to take water for irrigation from the Hakataramea River, Waitaki Valley, Canterbury Region. The application was a discretionary activity and the take was within the Environmental Flow Regime and annual volume limits of the Waitaki Allocation Plan. At first sight, the Court noted that proposal implemented the policies and achieved most of the objectives of the Waitaki Allocation Plan.
35. However, the Court found that the water quality and the state of the aquatic ecosystem of the river were continuing to deteriorate (without any effects from the Infinity proposal), which meant the Hakataramea River was already qualitatively over-allocated.
36. The Court found that the proposal, if granted, would in a small way add to this deterioration with the result being that important policies in the NPS FM, the Canterbury RPS and Canterbury Land and Water Regional Plan would not be achieved. Weighing those matters and all the relevant considerations with all the other evidence in the light of the relevant objectives and policies in the statutory instruments the Court found that it was more appropriate to decline consent under the Waitaki Allocation Plan. This decision was subsequently upheld in the High Court.
37. I note that the matter of discretionary consents in the RPW was also touched upon by the Environment Court in the *Lindis* decision (paras 110-112).

² The definition of “Minimum Flow” in the RPW is as follows: *The flow below which the holder of any resource consent to take water must cease taking water.*

38. It therefore appears the minimum flow can be taken into consideration having regard to adverse effects and policies, other than Policies 6.4.3 and 6.4.4 (which in any event are more explanatory type policies). The submission and evidence of Aukaka refers to restoring former habitat in the Luggate catchment. In this respect, the evidence from Dr Clucas states that the 180l/s minimum flow is less than desirable for restoring tuna habitat with a preference for 300l/s and a more natural ratio of flow between the branches of Luggate Creek.
39. Clearly the restoration of tuna habitat is one method of restoring the mauri of the creek and an increase in minimum flow will be in accordance with Objective AA1 Te Mana o te Wai of the NPS FM; a number of Kāi Tahu plan provisions including Objective 2.2 and Policy 2.2.1 of the RPS which seek to provide for and recognise Kāi Tahu values; Objectives 5.3.1 and 5.3.2 and Policy 5.4.2 of the RPW which is to recognise and enhance Kāi Tahu values and avoid, remedy or mitigate effects on them; and a number of the provisions in the Iwi Management Plan including Policy 5.3.4.4 which is to protect and restore the mauri of all water.
40. Such a proposal would be consistent with other provisions including Objective B1 of the NPS FM relating to the safeguarding of freshwater's life-supporting capacity of indigenous species; Objective 3.1 and Policy 3.1.1 and 3.1.2 of the RPS (see below – provisions shown are proposed mediation changes that have not yet been approved by the Environment Court) which includes “enhancement” as an option for the range and extent of freshwater species ecosystem health and indigenous biological diversity (Policy 3.1.1 (b)(ii) and (iii)).

Objective 3.1 The function and values (including intrinsic values) of Otago's ecosystems and natural resources are recognised, and maintained, and or enhanced where degraded

Issue:

Degradation of natural values and natural systems compromises the life-supporting capacity of the environment, the intrinsic values of ecosystems and the ecosystem services they provide.

Knowledge of these systems and their interdependencies is often imperfect.

Cumulative effects of human activities on the natural environment may be difficult to pinpoint initially but over time can result in serious damage.

Policy 3.1.1 Fresh water

Safeguard the life-supporting capacity of fresh water and manage fresh water to:

a) Maintain good quality water and enhance water quality where it is degraded, including for:

i. Important recreation values, including contact recreation; and,

ii. Existing drinking and stock water supplies;

b) Maintain or enhance aquatic:

i. Ecosystem health;

ii. Indigenous habitats; and,

iii. Indigenous species and their migratory patterns.

c) Avoid aquifer compaction and seawater intrusion;

d) Maintain or enhance, as far as practicable:

i. Natural functioning of rivers, lakes, and wetlands, their riparian margins, and aquifers;

ii. Coastal values supported by fresh water;

iii. The habitat of trout and salmon unless detrimental to indigenous biological diversity;

and

iv. Amenity and landscape values of rivers, lakes, and wetlands;

e) Control the adverse effects of pest species, prevent their introduction and reduce their spread;

f) Avoid, remedy or mitigate the adverse effects of natural hazards, including flooding and erosion; and,

g) Avoid, remedy or mitigate adverse effects on existing infrastructure that is reliant on fresh water.

~~*Manage fresh water to achieve all of the following:*~~

~~*a) Maintain or enhance ecosystem health in all Otago aquifers, and rivers, lakes, wetlands, and their margins;*~~

~~*b) Maintain or enhance the range and extent of habitats provided by fresh water, including the habitat of trout and salmon;*~~

- ~~c) Recognise and provide for the migratory patterns of freshwater species, unless detrimental to indigenous biological diversity;~~
- ~~d) Avoid aquifer compaction and seawater intrusion in aquifers~~
- ~~e) Maintain good water quality, including in the coastal marine area, or enhance it where it has been degraded;~~
- ~~f) Maintain or enhance coastal values;~~
- ~~g) Maintain or enhance the natural functioning of rivers, lakes, and wetlands, their riparian margins, and aquifers;~~
- ~~h) Maintain or enhance the quality and reliability of existing drinking and stock water supplies;~~
- ~~i) Recognise and provide for important recreation values;~~
- ~~j) Maintain or enhance the amenity and landscape values of rivers, lakes, and wetlands;~~
- ~~k) Control the adverse effects of pest species, prevent their introduction and reduce their spread;~~
- ~~l) Avoid, remedy or mitigate the adverse effects of natural hazards, including flooding and erosion;~~
- ~~m) Avoid, remedy, or mitigate adverse effects on existing infrastructure that is reliant on fresh water.~~

Policy 3.1.2 Beds of rivers, lakes, wetlands, and their margins

Manage the beds of rivers, lakes, wetlands, their margins, and riparian vegetation to:

- a) Safeguard the life supporting capacity of fresh water;
- b) Maintain good quality water, or enhance it where it has been degraded;
- c) Maintain or enhance bank stability;
- d) Maintain or enhance ecosystem health and indigenous biological diversity;
- e) Maintain or enhance, as far as practicable:
 - i. Their natural functioning and character; and
 - ii. Amenity values;
- f) Control the adverse effects of pest species, prevent their introduction and reduce their spread; and,
- g) Avoid, remedy or mitigate the adverse effects of natural hazards, including flooding and erosion.

~~Manage the beds of rivers, lakes, wetlands, their margins, and riparian vegetation to achieve all of the following:~~

~~a) Maintain or enhance their natural functioning;~~

~~b) Maintain good water quality, or enhance it where it has been degraded;~~

~~c) Maintain or enhance ecosystem health and indigenous biological diversity;~~

~~d) Maintain or enhance natural character;~~

~~e) Maintain or enhance amenity values;~~

Policy 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) Ensure~~ Ensuring the efficient allocation and use of water by undertaking all of the following:

~~ai) Requiring that the volume of water allocated does not exceed what is necessary for its efficient use;~~

~~bii) Encouraging the development or upgrade of infrastructure that increases use efficiency;~~

iii. Providing for temporary dewatering activities necessary for construction or maintenance.

41. The proposal to restore tuna to the catchment is also consistent with Objective 5.3.3 of the RPW (see below) which is to protect the natural character of Otago's lakes and rivers from inappropriate subdivision, use or development and in which the explanation states that "ecology" is part of the natural character and also consistent with Policy 5.4.2 of the RPW (see above) which is to give priority to avoiding on natural character.

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

42. I note Objective 6.3.1 of the RPW (see below) refers to the "retention" of flows, rather than an "increase" in flow sufficient to maintain life supporting capacity for aquatic ecosystems and the

natural character of the water bodies. The *Lindis* decision in relation to this policy seems to indicate it may not have force because it is inconsistent with the NPS FM (para 468).

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

43. Overall, Dr Clucas identifies that an increase in the minimum flow will have benefits for the tuna habitat. While it may be possible to achieve this increase by the resource consent process, the regulatory situation is not clear given the stipulated minimum flow in Schedule 2A. As a consequence, I believe any change to the minimum flow is best dealt with as part of a comprehensive review under the PIP.

ALTERNATIVE WATER SOURCES/RESIDENTIAL DEVELOPMENT

44. The Section 42A report on Alternative Water Sources (page 23) notes that having regard to Policy 6.4.0C there are no alternatives for water sources given that the only option of pumping from the Clutha River is cost prohibitive. I understand that a portion of the Lake McKay Station Ltd water will be used to service 250 houses although currently none of the land is zoned Residential. Accordingly, the use of this water is not certain at present and there may be alternative sources of water such as the Council supply for Luggate Township, which I understand is sourced from groundwater.

CONCLUSION

45. Having regard to the matters in section 104 of the RMA, it is my opinion that resource consent can be granted to the application provided that the term of consent is no more than ten years.
46. There is a comprehensive framework in place at a national and regional level requiring Iwi interests to be considered and implemented. This framework has not been given to effect in

many instances and many of water related issues identified earlier this century have not been resolved.

47. The existing regional water plan is deficient particularly in respect of the national direction. A shorter period of consent appears appropriate for the proposed applications as it will enable long term water management of the Luggate catchment to be considered under a more robust planning framework, rather than locking in a flow and allocation regime for an extended period of time.

DATED this 15th day of October 2019



Paul Whyte

Appendix One

Kāi Tahu Ki Otago Natural Resource Management Plan (2005)

The **Overall Objectives Ka Whaika Matua** for the region in Section 5.2 are:

These overall objectives apply to the whole of the Otago Region.

- i The rakātirataka and kaitiakitaka of Kāi Tahu ki Otago is recognised and supported*
- ii Ki Uta Ki Tai management of natural resources is adopted within the Otago region.*
- ii The mana of Kāi Tahu ki Otago is upheld through the management of natural, physical and historic resources in the Otago Region.*
- iv Kāi Tahu ki Otago have effective participation in all resource management activities within the Otago Region.*
- V The respective roles and responsibilities of Manawhenua within the Otago Region are recognised and provided for through the other objectives and policies of the Plan.*

General water issues include:

5.3.2 Wai Māori General Issues• *Current water management does not adequately address Kāi Tahu ki Otago cultural values.*

5.3.4 Wai Māori General Policies

- 1. To require an assessment of instream values for all activities affecting water.*
- 2. To promote the cultural importance of water to Kāi Tahu ki Otago in all water management within the Otago Region and Lower Waitaki Catchment.*
- 3. To promote co-ordinated research into water-related issues that provides for Kāi Tahu ki Otago input.*
- 4. To protect and restore the mauri of all water.*
- 5. To encourage the use of the Cultural Health Index as a tool for monitoring waterways.*
- 6. To oppose any further cross mixing of waters.*
- 7. To promote to the Otago Regional Council and Environment Canterbury minimum flow levels, flow regimes, lake levels and lake operating levels for lakes and rivers that recognise and provide for Kāi Tahu ki Otago cultural values and the healthy functioning of associated ecosystems.*

Water Extractions:

- 21. To require that resource consent applicants seek only the amount of water actually required for the purpose specified in the application.*

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:

26. To encourage those that extract water for irrigation to use the most efficient method of application. Flood irrigation, border dyke and contour techniques are less likely to be supported than spray irrigation techniques.

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.

28. To discourage over-watering.