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FILE NOTE

To: Hearing Panel

From: Stephen Daysh and Alexandra King

Date: 11/10/2019

Re: Questions for the s42A authors

**Scope of Response and Updated Conditions**

It is important to note that we have not considered any of the applicant’s evidence in formulating our responses. Furthermore, we have not used this opportunity to answer questions to amend our position or rebut any evidence put forward on behalf of the applicants. We have provided updated conditions tracked to show our recommended changes.

1. RP:WFO Policy 6.4.9 is to provide for supplementary allocations, in blocks of allocation where that is appropriate.

Can the authors please summarise why they think supplementary allocations are considered appropriate in this case when the RP:WFO Schedule 2A primary allocation will be exceeded even under the September 2019 revised proposals and Schedule 2B of the RP:WFO does not include any supplementary allocations?

The Schedule 2A primary allocation of the Luggate catchment set in the plan is 500 L/s. However, the existing primary allocation of the Luggate catchment (i.e. calculated in accordance with Policy 6.4.2(b)) equates to 1,024 L/s.

The proposed addition of supplementary allocation by the two applicants drops the primary allocation for the catchment while preserving instream values by ensuring that no less than 50% of the natural flow remains instream. As discussed in the report the proposed use of the supplementary blocks which requires reasonable flows to be maintained instream during these supplementary takes will have a no more than minor effect on the catchment values in our opinion. The proposal is not expected to result in prolonged periods of flat-lining (see Appendix 3 and 4), with flow variability largely mimicking that expected in the absence of abstraction, albeit with a lower baseflow than the natural flow regime. The main effect of the proposal is to reduce the amount of water taken at low flows (thereby resulting in higher flows than currently observed) but increasing the amount of water that is taken as flows recede from high flows. The addition of supplementary allocation is also consistent with policies 6.4.0A and 6.4.0C.

Schedule 2B sets blocks for supplementary allocation for some catchments. Policy 6.4.9 provides for the taking of water as supplementary allocation for those catchments not listed in Schedule 2B on a 50:50 flow-sharing basis between instream and out of stream use. The supplementary allocation blocks for any catchment area for the purposes of Policy 6.4.9(a) are allocated under Method 15.8.1A shown in the following table:

|  |  |
| --- | --- |
| **7 day mean annual low flow of catchment (litres per second)** | **Supplementary allocation block (litres per second)** |
| < 10 | 50 |
| 10 – 299 | 100 |
| 300 – 999 | 250 |
| > 1000 | 500 |

The size of the first and any subsequent supplementary allocation blocks are based on the 7-day mean annual low flow of the catchment and ensure flow variability is maintained. The Luggate catchment has a 7 day mean annual low flow between 300 – 999 therefore, has the supplementary allocation block of 250 L/s.

1. Can the authors confirm that the recommended irrigation rates and volumes are based on the spray irrigation of pasture at a 9 in 10 years reliability of supply (90 percentile annual demand) as determined in accordance with Aqualinc 2017?

Yes, the recommended Aqualinc numbers are using the 90th percentile annual demand. This is recommended as the applicants do not currently have storage to allow them to take and use the maximum volumes.

1. Page 19 of the s42A report refers to section 14 of the RMA for stock water and domestic supply. However, RMA s14(3)(b) refers to “individuals” or “a person’s” needs. In this case both applicants are schemes and are not “individuals” or “a person”.

* Can the authors please clarify whether s14(3)(b) applies to the taking of water by the applicants for animal drinking water and domestic needs?

The RMA defines person to include a corporation sole (i.e. a company). Criffel Water Limited is a company. Therefore the reasonable needs of the company’s animal for drinking water will be captured by section 14(3)(b), subject to the qualifiers within the section. While water taken for domestic needs is restricted to water taken by an “individual” provided the water will be used by individuals (i.e. individuals within a household) then the take will also be captured by section 14(3)(b). Criffel Water Limited has not applied for stock and domestic water and any further information on the effect of taking stock and domestic water under s14(3)(b) should be supplied by the applicant.

1. Page 21 of the s42A report addresses potable water for 250 households.

* If an allocation is granted for that water should it be contingent on the gaining of subdivision consent and/or appropriate zoning/rezoning for the proposed 82ha residential development?

As a first point, we note that it is not out of the ordinary for the application to take and use water for the water supply to be made in advance of the zoning and/or resource consents for the 82ha residential development being confirmed.  A similar situation arose when Meridian Energy Limited sought consents for the North Bank Tunnel hydroelectricity scheme.  In that case, certain water and discharge permits were obtained, in advance of other necessary land use consents being sought.

We consider that scope of the resource consent application made, would only enable the portion of the water sought for water supply to in fact be taken and used, if the residential development does proceed.  However, as set out below, we have recommended that the conditions be clarified to ensure that water allocated for water supply cannot be used for irrigation.  A condition requiring the surrender of this water if the residential development does not proceed within a specified period could also be provided for (this could be similar to condition 18).  Alternatively, the Council could undertake a review of the consent in accordance with condition 21(d)(vi) if the residential development did not proceed.

* The applicant in response to the further information request advises 12ha has been rezoned for residential development, but what is the status of the other 70ha?

The 70 ha is currently zoned rural. Murray Frost on behalf of Luggate Irrigation Company Limited in an email on 7th October 2019 advised that it is in the process of preparing a resource consent application for residential and lifestyle development for this land.  The applicant should be able to provide the Commissioners with a further update as to when this is likely to be made.

1. Can staff please confirm the Aqualinc numbers on pages 20 and 21 of the s42A report. The same numbers appear for Stage 1 (85ha) and the Umbers 22 ha block (this number appears wrong), and there may be a discrepancy within the Stage 3 and Home Block numbers. Given the Aqualinc monthly figures for Stage 3 and the Home Block are higher than the applicant’s it seems odd that the seasonal figures are lower. We do not know how these discrepancies affect the page 21 totals. We also note that the recommended seasonal cap of 4,728,242m3 in the first paragraph of page 21 bears no relation to the total Aqualinc volume per season in the table on page 21 or the yearly volume recommended on page 22. The recommended 4,502,162m3 volume on page 22 appears to be the Aqualinc total volume (4,305,372m3), together with the potable household supply (180,000m3) and the stock water take (46,250m3), but this may be affected by the discrepancies pointed out above.

There were discrepancies within the Aqualinc numbers and recommended volumes. Please see the amendments below:

**Summary of Applied for Water *vs* Aqualinc Recommendations**

|  |  |  |
| --- | --- | --- |
| Umbers | **Applied for by Applicant** | **As recommended by Aqualinc** |
| **Total volume per month** | 37,620 m3 / month | 33,440 m3 / month |
| **Irrigation period** | 8 months | 8 months |
| **Irrigated area** | 22 hectares | 22 hectares |
| **Total volume per season** | 192,500 m3 / season | 164,780 m3/season |

|  |  |  |
| --- | --- | --- |
| Big River | **Applied for by Applicant** | **As recommended by Aqualinc** |
| **Total volume per month** | 184,680 m3 / month | 158,652 m3 / month |
| **Irrigation period** | 8 months | 8 months |
| **Irrigated area** | 108 hectares | 108 hectares |
| **Total volume per season** | 1,137,500 m3 / season | 753,840 m3/season |

**Total volumes applied for by applicant vs Aqualinc Recommendations**

|  |  |  |
| --- | --- | --- |
| Total | **Applied for by Applicant** | **As recommended by Aqualinc** |
| **Total volume per month** | 931,279 m3 / month | 926,013 m3 / month |
| **Irrigation period** | 8 months | 8 months |
| **Irrigated area** | 576 hectares | 576 hectares |
| **Total volume per season** | 4,761,024 m3 / season | 4,222,573 m3/season |

Taking into consideration the uses of water proposed (irrigation, stock and domestic) and volumes applied for [and the historical access to water at this site], the following rate of take, monthly and seasonal limits are recommended to be imposed to ensure that the quantity of water granted to take is no more than that required for the purpose of use:

* 180 L/s (primary)
* 80 L/s (first block supplementary)
* 86 L/s (second supplementary)
* 422,000 m3/month (primary)
* 2,755,187 m3/year (primary)
* 926,013 m3/month (combined primary and supplementary)
* 4,222,573 m3/year (combined primary and supplementary)

This means that condition 3 of the recommended conditions for Luggate Lake McKay should read:

1. (a) The rate and quantity of abstraction for primary allocation must not exceed:
2. 180 litres per second;
3. 422,000 cubic metres per month and
4. 2,755,187 cubic metres between 1 July in a year and 30 June in the following year.

(b) The rate of abstraction as first block supplementary allocation must not exceed:

1. 80 litres per second.

(c) The rate of abstraction as second block supplementary allocation must not exceed:

1. 86 litres per second.

(d) The total rate of abstraction (primary and supplementary) must not exceed:

1. 926,013 cubic metres per month; and
2. 4,222,573 cubic metres per year.
3. Page 32 of the s42A report suggests that the provision of storage is necessary to enable the taking of supplementary allocation water. We note that the Scheme Management Plan (CWL condition 16(d)(ii)) requires a description of water storage infrastructure that has been established, without actually requiring that storage to be provided.

* If supplementary allocations are granted should they be contingent on the provision of storage?

Our understanding is that supplementary flows can be used without storage for a period of the irrigation season. For this reason, it is recommended that the supplementary takes are not contingent on the provision of storage.

* Are any further consents needed to provide storage?

There is a permitted rule for storage:

*12.3.2.1 Unless prohibited by Rules 12.3.1.1 to 12.3.1.4, the damming or diversion of water is a* ***permitted*** *activity, providing:*

*(a) The size of the catchment upstream of the dam, weir or diversion is no more than 50 hectares in area; and*

*(b) In the case of damming, the water immediately upstream of the dam is no more than 3 metres deep, and the volume of water stored by the dam is no more than 20,000 cubic metres; and*

*(c) In the case of diversion, the water is conveyed from one part of any lake or river, or its tributary, to another part of the same lake, river or tributary; and*

*(d) No lawful take of water is adversely affected as a result of the damming or diversion; and*

*(e) Any damming or diversion within a Regionally Significant Wetland was lawfully established prior to 2 July 2011; and*

*(f) There is no change to the water level range or hydrological function of any Regionally Significant Wetland; and*

*(g) There is no damage to fauna, or New Zealand native flora, in or on any Regionally Significant Wetland; and*

*(h) The damming or diversion does not cause flooding of any other person’s property, erosion, land instability, sedimentation or property damage; and*

*(i) The damming or diversion is not within the Waitaki catchment.*

As far as we are aware instream dams are not being considered by the applicants and most of the conditions of this rule relate to the dams within the bed of a river and therefore, are not applicable. Subclause (a) does specify limits on catchment size upstream of the dam, however the Council applies this only to a dam within a watercourse and therefore would not apply unless the applicants intend to dam a watercourse. Subclause (b) does specify a threshold for volume and a maximum depth (derived from the original definition for a ‘large dam’ under the Building Act). If the damming exceeds these parameters, a water permit is required. Further to this, if there is an associated take and use from the dam that exceeds permitted volumes this will also need to be incorporated into a water permit.

1. Section 10.4 of the s42A report discusses Objective B2 of the NPSFM and suggests that granting these applications at the same volume as currently authorised by the deemed permits ‘*would not avoid further over allocation*’. While granting the same volume as currently authorised clearly would not achieve the ‘phasing out of over allocation’ (the second part of Objective B2), doing so would not appear to create further over allocation as it would not result in any additional allocation over and above that which is already allocated.

* Can the authors please clarify their intended meaning?

The authors referred to the first part of Objective B2 as a decision on these applications would be determining what allocation the applicants would receive. Given the Schedule 2A allocation limit for the Luggate catchment is less than the currently consent allocation, a decision to grant the same consented allocation under the deemed permits could be interpreted as resulting in “further” over-allocation (i.e. granting water beyond the Schedule 2A allocated limit for a further period of time). However, the authors consider that the clearest application of Objective B2 is that the granting of an allocation less than the currently consented volume allocation would contribute to the phasing out of over-allocation.

1. The recommended conditions do not specify how much water (for either the primary or supplementary allocations) is to be used respectively for irrigation, stock water and domestic supply.

* Can the authors please specify the rates of take (L/s) and monthly and annual volumes (m3) for each of those intended uses for each of the recommended primary allocations, first supplementary allocations and second supplementary allocations for each applicant.

A break-down of water use as outlined in the tables below could be set as a consent condition, however, we note that the Council has no way of enforcing this split as it is not considered practical for the water metering arrangements to disaggregate the takes in these categories. However, it is appropriate if the subdivision does not go ahead to reduce the instantaneous rate of take if the water is not being used. We propose the following condition for consideration by the Commissioners:

Condition X: Except as provided for by Condition 3 the primary allocation must not exceed 172 litres per second if the subdivision has not been developed.

Luggate Irrigation Company and Lake McKay Station

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Irrigation | Stock | Domestic | Total |
| Instantaneous | | | | |
| **Primary** | 169 L/s | 3 L/s | 8 L/s | 180 L/s |
| **1St supplementary** | 80 L/s |  |  | 80 L/s |
| **2nd supplementary** | 86 L/s | - | - | 86 L/s |
| **Monthly** | | | | |
| **Primary** | 405,620 m3 | 1,380 m3 | 15,000 m3 | 422,000 m3 |
| **1st and 2nd supplementary** | 509,279 m3 | - | - | 504,013 m3 |
| **Combined Total: 926,013** **m3** | | | | |
| **Annual** | | | | |
| **Primary** | 2,720,397 m3 | 16,790 m3 | 180,000 m3 | 2,755,187 m3 |
| **1st and 2nd supplementary** | 1,719,256 m3 | - | - | 1,467,386 m3 |
| **Combined Total: 4,222,573 m3** | | | | |

Criffel Water Company

|  |  |  |
| --- | --- | --- |
|  | Irrigation | Total |
| **Instantaneous** | | |
| **Primary** | 358 L/s | 358 L/s |
| **1St supplementary** | 170 L/s | 170 L/s |
| **2nd supplementary** | 80 L/s | 80 L/s |
| **Monthly** | | |
| **Primary** | 769,417 m3 | 769,417 m3 |
| **1st and 2nd supplementary** | 503,600 m3 | 503,600 m3 |
| **Combined Total: 1,273,017 m3** | | |
| **Annual** | | |
| **Primary** | 3,879,273 m3 | 3,879,273 m3 |
| **1st and 2nd supplementary** | 2,530,400 m3 | 2,530,400 m3 |
| Combined Total: 6,409,673 m3 | | |

1. Section 7.5 of the s42A report (pages 23 and 24) addresses water management groups and notes that while these are voluntary, the applicants have come to an agreement in relation to low flows and have promoted a condition addressing the matter (GCA letter 4 September). CWL condition 12 has accordingly been recommended by the s42A report authors.

* Can the authors please explain how this condition would work as it seems to be contingent upon a water management group operating in the catchment but there does not seem to be any condition requiring a WMG to be formed or specifying who would be a part of it?
* Should any rationing regime be approved by the Council as opposed to a WMG, which may be implied by CWL condition 11 but the conditions don’t seem to set up a process to achieve this?
* In this context, do CWL conditions 11 and 13 serve a different purpose, and if so, what is it?

These conditions (apart from Condition 11) were proposed by the applicant. We acknowledge the Commissioner’s queries and concerns and do see merit in clarifying the conditions with a clear purpose / objective, an obligation for both applicants as consent holders to design a clear low flow / rationing protocol to ensure the catchments minimum flow is never breached, along with a suitable Council certification process to ensure the method is robust. We propose the following revised (tracked) conditions framework for consideration by the Commissioners and applicants:

~~This permit must be exercised or suspended in accordance with any Consent Authority approved rationing regime that applies to the Luggate Creek catchment.~~

1. Prior to the exercise of this permit, the consent holder must enter into a Low Flow Rationing Agreement for the Luggate Catchment with the holder of Consent No. RM18.345.01 . The objective of the agreement is to manage abstractions within the catchment at times of low flows to ensure that the Minimum Flows set for the Luggate Catchment are always met. The agreement must include (but not be limited to) the following;

(a) A communications protocol between the holder of this consent and the holder of Consent No. RM18.345.01 for reducing takes to meet minimum flow requirements as catchment flows drop;

(b) A specified flow level which triggers rationing action;

(c) An agreed rationing methodology (e.g. 1:1 flow sharing, pro-rata reductions, or stepped reductions) so as to ensure the Minimum Flows are not exceeded;

(c) A reporting process to the Manager Consents, Otago Regional Council to notify the Council when the rationing trigger flow set under (b) above has been met and covering regular reporting on rationing actions over periods of low flow below the set trigger level.

1. The Low Flow Rationing Agreement is to be provided to the Manager Consents, Otago Regional Council for certification that it appropriately meets the objective set out in Condition 10, and that the low flow trigger level set in Condition 10 (b) above is set at an appropriate flow level.
2. This permit must be exercised in accordance with the certified Low Flow Rationing Agreement.
3. The consent holder must review, and if appropriate, update the agreement prepared in accordance with Condition 12, at any intervals not exceeding 2 years from the date of commencement of this consent. If any amendments are made to the low flow agreement a copy of the updated agreement must be provided to the ORC following completion of the review.
4. The conditions as recommended provide no certainty that rationing will occur or what form it will take. There are generally three types of rationing regimes employed: 1:1 flow sharing, pro-rata reductions, or stepped reductions. It would be more certain to impose an actual rationing regime by way of conditions as occurs in other regions and we note that stepped reductions are commonly used elsewhere.

* Which of the three reduction (or rationing) regimes listed above do the authors favour and can some recommended condition wording for an actual enforceable rationing regime be provided please?

We agree that it would be preferable to agree an actual Low Flow Rationing Agreement by way of conditions, instead of through a process for agreement and certification subsequent to the issuing of any consents. One concern we have with the proposed revised Conditions 11 to 14 above is that the process does entail a form of “third party agreement” as between the two permit holders. It would therefore be preferable for the rationing regime to be set in the conditions if possible.

We do not have a particular view on the preferred management approach but note the Commissioner’s comment that stepped reductions are used elsewhere. We suggest that the applicants jointly consider this further and if possible, provide a Low Flow Rationing Agreement proposal (following the method proposed in updated conditions 11 to 14 above) for consideration by the Commissioners at the hearing.

1. The recommended conditions do not address residual flows below all points of take.

* Why is that, given that the Luggate / Lake McKay applicants appear to have offered[[1]](#footnote-1) such conditions?

We had considered this proposed condition, however, Dean Olsen in his recommendation (Appendix 4) questions the appropriateness of the proposed residual flow. Mr Olsen discusses that in practice the summer minimum flow downstream at the SH6 bridge would likely dictate the flows before the residual flow condition would come into effect. The recommended wording is shown below for consideration by the Commissioners if required:

Condition X: A visually connected flow must be maintained in Luggate Creek immediately downstream of the intakes to the confluence of the South and North branches of Luggate Creek (NZTM 2000 E1303056 N5037720)

1. CWL condition 16 requires a Scheme Management Plan to be prepared but does not state the objectives of the management plan (which we assume are around ensuring efficient use and conveyance); provide for a Council certification process to ensure that the SMP is fit for purpose; or set any timeframes for completion of work necessary to give effect to the objectives.

We agree that the Scheme Management Plan should include an Objective and that it be subject to a Council certification process. An updated condition for consideration by the Commissioner’s is set out below.

16. Within 3 years of the commencement of this consent, the Consent Holder must submit to the Consent Authority a Scheme Management Plan. The objective of the Scheme Management Plan is to ensure the efficiency of use and conveyance of water is improved over time and must include (but not be limited to) the following;

(a) A plan identifying the irrigation area at the commencement of this consent with the number of hectares specified.

(b) A plan identifying any expanded irrigation area since the commencement of this consent, with the number of hectares specified.

(c) A plan identifying further expanded areas of irrigation still to be developed with the number of hectares specified.

(d) A description of water use efficiency or conveyance upgrades that have taken place since the commencement of this consent including any;

(i) Upgrades to existing race network which may including piping;

(ii) Establishment of any water storage infrastructure;

(e) A description of water use efficiency or conveyance upgrades that are planned within the next 3 years and the timeframes proposed for their implementation.

16A. The Scheme Management Plan is to be provided to the Manager Consents, Otago Regional Council for certification that it appropriately meets the objective set out in Condition 16, and the content required under Condition (a) to (e).

1. The s42A report notes (page 22) that unlined water races are inefficient. CWL conditions 16(d) and (e) address this matter but do not impose any enforceable remediation obligations on the consent holder.

* Should the conditions require that existing open races be replaced by pipes by a specified date?

We had considered this requirement but are mindful that we are recommending a 10-year term for these consents. This 10 year term would provide the consent holder less certainty and security of access to the water to provide a payback for the cost of undertaking the efficiency upgrades, than a longer 15 or 20 year consent term would provide. On balance, we consider if a 10 year term is imposed it is not reasonable to also require these efficiency upgrades within this shorter consent term.

We do certainly consider that the efficiency upgrades from unlined water races (and border dyke systems) discussed below in question 14 are desirable. If the Commissioners were minded on the balance of the evidence and the various issues raised in that evidence to grant a longer term (15 or 20 years), then we would agree that enforceable efficiency upgrade conditions requiring moving away from unlined water races and border dykes and replacing these systems with piped conveyance and spray irrigation would be appropriate.

1. Border dyke and flood irrigation systems are inefficient. The s42A report (page 39) states that “*conditions of consent require land presently border-dyked or in flood irrigation to be converted to spray irrigation when using the primary allocation water*” however there do not appear to be any such conditions recommended. We note CWL condition 16(d) very obliquely addresses this issue but does not impose any enforceable remediation obligations on the consent holder.

* Should the conditions require that existing border dyke and flood irrigation systems are replaced by efficient spray irrigation systems by a specified date?

See answer to question 13 above.

1. Under which matters of discretion in Rule 12.1.4.8 do CWL General Conditions 20) b), c), d), e), (f) and (g) fall?

It falls under iv “take, delivery and application of water taken”, however we are recommending deleting (g) as it is covered by advice note 4.

1. Is it lawful to impose a condition requiring the surrender of part of a water permit allocation (CWL condition 18)?

Condition 18 was proposed by the applicant as part of their application amendment on the 4th September 2019. On this basis the condition can be lawfully imposed as an *Augier* condition.

Section 138 of the RMA provides that a holder of a resource consent may surrender the consent, either in whole or in part, by giving written notice to the consent authority. A consent authority may refuse to accept the surrender of part of a resource consent in certain circumstances, but the authors do not consider that these circumstances would apply in this situation.

Some minor amendments to condition 18 are set out as follows to improve the clarity of the condition. The applicant will need to agree to these amendments given the *Augier* nature of the condition.

18. On the 5th Anniversary of the commencement of this consent any expanded areas of irrigation identified within the Scheme Management Plan that have not been developed for irrigation will no longer be able to be developed and the water volume set aside for this future irrigation area must be surrendered by the consent holder and provide written notice to the Consent Authority within 2 months of the 5th Anniversary of the commencement of this consent.

1. What is the intended purpose of the water use efficiency report (CWL condition 19) given that actual crop water demand will inevitably vary from year to year and the enforceable obligations on the consent holder appear to be the maximum rates and volumes of take (CWL condition 3)?

The intended purpose was to ensure water is used efficiently for what has been applied for taking into consideration climatic variability. We agree that the efficiency report condition should include an Objective. A revised condition for consideration by the Commissioner’s is set out below. If the Commissioner’s were minded to prefer the wording below it does achieve a similar outcome.

19. A water use efficiency report must be provided to the Consent Authority in June each year. The objective of the efficiency report is to ensure the water taken is used efficiently for what has been applied for taking into consideration climatic variability. The report must assess the water use over the previous 12 months in respect of the efficient use of water for the purpose consented. This report must include, but not be limited to:

Area, crop type, number of harvests per year, and timing

Annual summary of water usage (month by month, and related to crops in the ground)

Reasons why use may have varied from the previous year

Information demonstrating irrigation equipment that has been used and decision-making regarding efficiency of use (e.g. soil moisture data, irrigation scheduling, meter accuracy checks, computer control of irrigation) and any changes planned for the coming year.

Water conservation steps taken.

1. In other parts of NZ water permits for irrigation commonly use words such as “*The volume taken for irrigation shall not exceed the following and the volume required to replace soil moisture depleted by evapotranspiration over the irrigated area* …..”.

* Would similar wording be appropriate here and be more certain than requiring an ex-post “water use efficiency report”?

See answer to question 17 above. In addition to this we consider Condition 20 to provide efficiency obligations.

1. A consent term of 10 years as opposed to the 35 years requested has been recommended.

* Is it relevant for us to consider the impact consent duration may have on a consent holder’s ability to raise the finance necessary to fund infrastructural upgrades (the s42A authors suggest 10 years will allow the applicant to upgrade existing infrastructure)?
* Were longer durations of say 15 or 20 years considered?
* How does the duration of consent affect the Section 12.1 Reasons for Recommendation listed on pages 41 and 42 of the s42A report?

No, it is not directly relevant for Council to consider the Consent Holder’s ability to raise finance. We have recognised the need for certainty by recommending a 10-year term and have recognised the value of the investment (s104(2A)).

We did consider a longer term (15-20 years). However, we have recommended a 10 year term because on 31 October 2018 ORC adopted the PIP (Progressive Implementation Plan), which seeks to ensure that the Water Plan is being reviewed to make sure it gives full effect to the NPSFM 2014 (amended 2017). The PIP commits ORC to undertaking a full NPSFM process for each FMU and notify the full Plan review process by 2025. In April 2019 ORC adopted the map with proposed FMUs for the Otago region. Luggate Creek catchment is situated within the Dunstan Rohe, which in turn forms part of the wider Clutha FMU. As part of the NPSFM process the Council will review existing minimum flows. However, the timeframes in the PIP may be changed depending on the proposed new NPSFM which has been released for consultation as part of the Action for Healthy Waterways package. This new proposed NPSFM requires that by 31 December 2025 regional councils would be required to publicly notify final decisions on plans that give effect to the new proposed NPSFM. This means that the timeframe for undertaking the plan review, including a review of any existing minimum flow and allocation limit for Luggate Creek may, in fact have to be brought forward.

Our recommendation reasons were made in the context of the recommended 10-year term and the proposed conditions being in place, and also in knowledge of the PIP proposal discussed above.  Ultimately, setting an appropriate consent term is a balance between recognising existing investment in infrastructure and providing appropriate security of water supply, while encouraging efficiency upgrades and ensuring the term is consistent with the above implementation programme for the review of the Regional Plan Water. It is considered that a 10-year term is the best balance considering all relevant factors and the direction from Policy 6.4.19 of the Regional Plan Water.

1. See for example page 2 of the 19 September 2019 letter from Galloway Cook Allan included in Appendix 8 of the S42A report that refers to “visually connected flows”. [↑](#footnote-ref-1)