



Otago Regional Council

Section 42A Staff Recommending Report

Water Permit Application RM17.176
Long Gully Race Society Incorporated

The recommendation in the staff report represents the opinion of the writers and it is not binding on the Hearing Commissioners. The report is evidence and will be considered along with any other evidence that the Hearing Commissioners will hear.

Ethan Glover
Consultant Consents Officer

30 June 2020

Executive Summary

Long Gully Race Society Incorporated have applied for a water permit (RM17.176) to take and use water from an unnamed tributary of the Kawarau Arm of Lake Dunstan, known locally as Long Gully, to replace existing Deemed Permit 2000.173.V1. The Applicant initially sought a term of 35 years but has since amended their application to seek a term of 25 years.

The key issues for this application are the rate of take (allocation), the need for a residual flow, fish screening and the consent duration.

After assessing the actual and potential effects of the proposed activity and the provisions of the relevant planning documents and submissions, the activity is considered to have minor adverse effects that can be appropriately mitigated. Therefore, the recommendation of this report is to **approve** the application subject to the recommended conditions of consent.

The recommendation of the reporting officer is that the application for primary allocation is granted for a duration of **15 years**.

OTAGO REGIONAL COUNCIL DEEMED PERMIT REPLACEMENT SECTION 42A REPORT

ID Ref: A1361183
Application No(s): RM17.176.01
Prepared For: Hearing Commissioner
Prepared By: Ethan Glover – Consultant Consents Officer
Date: 30 June 2020
Subject: Section 42A Recommending Report – Deemed Permit replacement by Long Gully Race Society Incorporated for a water permit to take and use water Long Gully, Bannockburn

Summary of Recommendation

Long Gully Race Society Incorporated has applied for resource consent to replace a deemed permit to take and use surface water from an unnamed tributary of the Kawarau Arm of Lake Dunstan, locally known as Long Gully. After assessing the actual and potential effects of the application, considering submissions, and considering all of the matters in section 104 of the Resource Management Act 1991, the recommendation of this report is to grant consent for a duration of 15 years subject to the recommended conditions of consent.

1. Purpose

This report has been prepared under Section 42A of the Resource Management Act 1991 (“RMA”) to assist in the hearing of the application for resource consent made by Long Gully Race Society Incorporated. Section 42A enables local authorities to require the preparation of a report on an application for resource consent and allows the Consent Authority to consider the report at any hearing. The purpose of the report is to assist the Hearing Commissioner in making a decision on the applications.

The report assesses the application in accordance with Sections 104 and 104B of the Resource Management Act 1991 and makes a recommendation as to whether the application should be granted, and a recommendation on the duration of the consent and appropriate conditions.

This report contains the recommendations of the Consent Officer and is not a decision on the application. The recommendations of the report are not binding on the Hearing Commissioner. The report is evidence and will be considered along with any other evidence that the Hearing Commissioner will hear.

2. Report Author

My name is Ethan Glover. I am a Consultant Consents Officer for the Otago Regional Council.

I hold the qualifications of a Bachelor of Science with First Class Honours from the University of Otago. I am an employee of Mitchell Daysh Limited and an Associate Member of the New Zealand Planning Institute. I have been engaged in the field of planning and resource management for 18 months. I have experience preparing and processing resource consent applications relating to freshwater, port operations, land uses and subdivision.

I have read and understand my obligations in terms of the Environment Court's Code of Conduct for Expert Witnesses contained in the Practice Note 2014. I confirm that the issues addressed in this report are within my area of expertise. I confirm that I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

I have been involved with the Long Gully Race Society Incorporated application since October 2019. Prior to this, the application was being processed by Charles Horrell who moved on from the Council's Consents Team.

3. Summary of the Application

3.1 Overview

Applicant: Long Gully Race Society Incorporated ("LGRSI")

Applicant's agent: Sally Dicey (McKeague Consultancy Limited)

Site address or location: Long Gully, approximately 3.85 kilometres west of the intersection of Felton Road and Gibson Road, Bannockburn

Legal descriptions:

Point of take: Section 6 Survey Office Plan 485617

Use: Lot 7 DP 27311, Lot 8 DP 27311, Lot 1 DP 513604, Lot 1 DP 21102, Lot 1 DP 377436, Lot 1 DP 429036, Lot 3 DP 466236, Lot 1 DP 466236, Lot 2 DP 320845, Lot 1 DP 320845, Lot 3 DP 25990, Lot 1 DP 23478, Lot 4 DP 377436, Lot 2 DP 300780, Lot 2 DP 466236, Lot 2 DP 377936, Lot 4 DP 379936, Lot 1 DP 398105, Lot 4 DP 398105, Lot 5 DP 379936, Lot 1 DP 379936, Lot 2 and 3 DP 398105, Lot 2 DP 330243, Lot 1 DP 330243, Lot 1 DP 24757, Lot 6 DP 26776, Secs 1-3 SO 300354, Lot 3 DP 379936.

Map reference(s): NZTM 2000: E1293446 N5001173

Consent sought: Water Permit

Purpose of take: Irrigation, Industrial Use, Storage, Frost Fighting, Domestic Use and Stock Drinking.

Deemed permits: 2000.173.V1

Information requested: No further information was requested under s92 of the Act.

Notification decision: The application was approved, under delegated authority, to be processed on a limited-notified basis on 24 January 2020.

Site visit: I undertook a site visit on 25 June 2020.

3.2 Key Issues

I believe that the key issues with this application are:

- The rate of take;
- The need for a residual flow;
- Fish screening; and
- Consent duration.

3.2 Description of Application

This application seeks to replace a single deemed permit for the abstraction of surface water from an unnamed tributary of the Kawarau River, known locally and referred to hereafter as Long Gully. The application¹ seeks to abstract up to 520,000 m³ per year at the following rates:

- 15 L/s from 1 May to 15 October
- 30 L/s from 16 October to 15 November
- 56 L/s from 16 November to 30 April

The application does not seek a monthly maximum volume.

Water is currently abstracted via a small section of pipe and a manual control gate that controls the flow of water into the open race. A further control gate provides for finer control of flows into the water race with excess water bypassed back to Long Gully. Abstracted water is then conveyed to 7 small holding dams via a water race which is mainly open with some sections of pipeline. Most shareholders take water from two of the holding dams, known as Sam's Dam (750 m³) and Target Gully Dam (3,000 m³). The other dams are owned and utilised by individual shareholders:

- Clyde Orchards: 1,000 m³
- Felton Road: 3,000 m³
- Crosbie: 1,000 m³
- Wanaka Road Wines: 750 m³
- Gate 20 Two: 1,400 m³

Sam's Dam is the last dam in the system and is kept full to ensure sufficient water is available for the shareholders. The spillway for this dam is linked to a small dam (Calvert's Dam) adjacent to Bailey's Gully and Felton Road. Calvert's dam has a spillway which releases water into Bailey's Gully. The intake site, race and pipeline route, and area of land irrigated by this water are shown in Figure 1 and in the schematic in Figure 2. The Applicant holds a Section 417 Certificate that authorises easement rights over land that the water race occupies. This provides for the ongoing use and maintenance of the water race.

¹ As formally amended by the Applicant on 14 February 2020

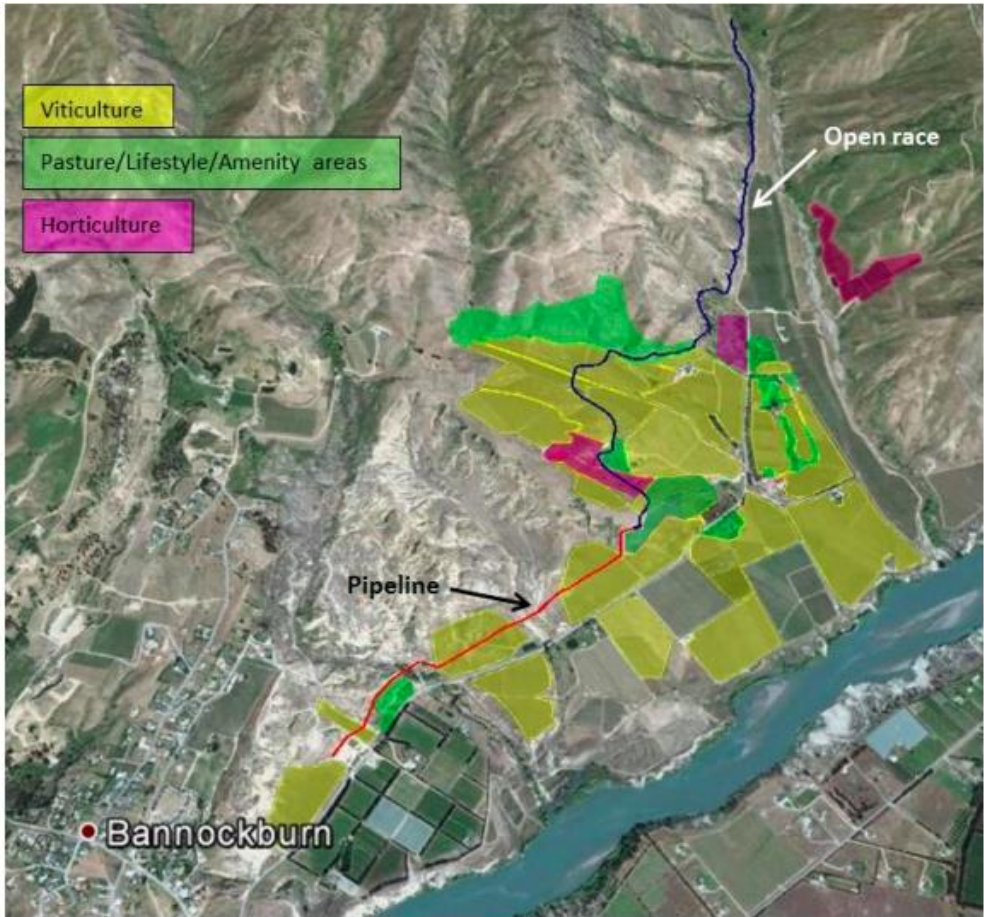


Figure 1: Annotated aerial photograph showing water race and irrigated command area (Source: Application)



Figure 2: Schematic of the water conveyance infrastructure (Source: Application)

The majority of the area to be irrigated with water taken under this permit is viticulture (130 hectares). The density of the vineyards varies depending largely on the soils. Vineyards are irrigated using drippers or trickle irrigation. The remaining land irrigated is horticulture (19 hectares) and pasture/gardens (32 hectares). Horticulture includes 6 Ha of commercial horticulture (cherries), amenity areas (including trees) around Terra Sancta vineyard and winery as well as a small amount of horticulture connected to a lifestyle block. Pasture includes an area adjacent to Felton Road's winery or vineyards, and irrigation around a number of lifestyle blocks. The cherries are irrigated via sprinkler irrigation, as are the pasture and larger amenity areas around vineyards and wineries (which are by k-line or sprinkler irrigation), while smaller amenity/lifestyle areas utilise garden sprinklers.

In addition to irrigation, water is also used for domestic supply and stock water supply. The domestic supply is for three households and the stock water is for 50 goats, 4 cows and 6 sheep. Water is also used for frost-fighting on the cherry orchard, however, details of the frost fighting use have not been provided.

The take is managed under LGRSI's constitution and each shareholder is responsible for taking the appropriate amount of water proportional to the shares held. The capacity of each shareholder's off-take infrastructure generally reduces any potential for any shareholder taking more than their share.

3.4 Details of Deemed Permits Being Replaced

The application is seeking to replace Deemed Permit 2000.173.V1, which expires on 1 October 2021. Deemed Permit 2000.173.V1 authorises the Applicant to take up to 4,800 m³/day of water from Long Gully, at a maximum rate of 56 L/s. This application was lodged with the Council at least six months before the expiry date. In accordance with Section 124 of the Act, the Applicant may continue to operate under Deemed Permit 2000.173.V1 until a decision on this application is made and all appeals are determined.

3.5 Application Documents

The Applicant has provided the following documentation with the application:

- Long Gully Race Society Replacement of Permit to Take and Use Surface Water Resource Consent Application and Supporting Information Prepared by Sally Dicey of McKeague Consultancy, June 2017.
- Assessment of Effects on Instream Ecology due to a Water Take from Long Gully prepared by Matt Hickey of Water Resource Management Limited, April 2017.

4. Notification and Submissions

4.1 Notification Decision

Council made the decision to process the application on a limited-notified basis under Section 95B of the RMA on the 24 January 2020 (report reference A1318010). Notice of the decision was

served on the Applicant and affected parties on the 4 February 2020 and the submission period closed on the 19 March 2020.

The following persons were determined to be adversely affected and were notified:

Person	Reasons why they are adversely affected
Department of Conservation (DoC)	The Clutha River/Mata Au and Kawarau River (Lake Dunstan), including many tributaries, are identified as supporting significant habitat for koaro (Schedule 1A). DoC, who represent the Director General of Conservation, have a statutory responsibility to manage native freshwater fish habitats. As Council's RSU have noted, koaro are generally found in rapid flowing, tumbling rocky streams similar to Long Gully. While a fish survey did not identify any koaro or other native fish within Long Gully, there is some uncertainty around the natural state of Long Gully and whether surface flows would connect to Lake Dunstan in a manner that supports native fish habitat. Therefore, Long Gully may have conservation values in its natural state and the take may have an adverse effect on these values.
Otago Fish and Game Council (Fish and Game)	Fish and Game under the Conservation Act is a body cooperate which has the rights, powers and privileges of a natural person. The primary function of Fish and Game is to manage, maintain and enhance sports fish and game resources in the recreational interest of anglers and hunters. A fish survey identified juvenile rainbow trout populations and evidence of trout spawning within Long Gully. There is some uncertainty around the natural state of Long Gully and whether surface flows would connect to Lake Dunstan in a manner that supports trout habitat. Therefore, Long Gully may have important sports fish values in its natural state. The applicant has not proposed fish screens and the proposed water take could result in the applicant at times taking the full flow of Long Gully. As such, the proposed water take is likely to have an adverse effect on the functions of Fish and Game.
Aukaha (on behalf of Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou)	The cultural values in the area, as displayed in Schedule 1D, may be affected by the activity. The removal of water from the river as a consumptive take has an effect on the mauri of the water that is minor or more.
Te Ao Marama Incorporated (on behalf of Te Runanga o Waihopai)	The cultural values in the area, as displayed in Schedule 1D, may be affected by the activity. The removal of water from the river as a consumptive take has an effect on the mauri of the water that is minor or more.

4.2 Submissions Received

Submissions were received by the following persons:

- Otago Fish and Game Council ("**Fish and Game**")
- Aukaha on behalf of Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou)
- Te Ao Marama Incorporated (on behalf of Te Runanga o Waihopai).

Fish and Game submitted in opposition to the application seeking for the application to be declined unless the following relief was provided:

- The consent term is no longer than 6 years;
- The abstraction does not restrict adult and juvenile rainbow trout passage until the end of December, where it would occur naturally; and
- Conditions regarding race management are imposed on the consent to:
 - Ensure unobstructed fish passage back to the stream;
 - Limit the frequency and extent of dewatering races and dams;
 - Specify opportunities to capture or utilise entrained fish;
 - Regulate vegetation management; and
 - Regulate emergency works.

Aukaha opposed the application as it currently stands, but would support an amended application that:

- Has a term no longer than 6 years;
- At least 50% of the flow in the waterway is left in the waterway;
- A fish screen is installed over the intake structure; and
- The water take is metered, and results recorded.

Te Ao Marama Incorporated opposed the application as it currently stands, but would support an amended application that:

- Has a term no longer than 6 years;
- At least 50% of the natural flow in the waterway is left in the waterway;
- Suitable fish screens are fitted to any intake structures; and
- The water take is metered and reported.

All submitters raised concerns with the current regional planning framework. All submitters wish to be heard in support of their respective submissions.

5. Description of the Environment

5.1 Description of the Site and Surrounding Environment

The take is located at the base of Mt Difficulty in Bannockburn, Central Otago. Water is abstracted from the waterway locally known as Long Gully. Water is conveyed via a water race and used on land nearby. The surrounding land use is rural in nature. Figure 3 shows the general location of the take in relation to Long Gully.

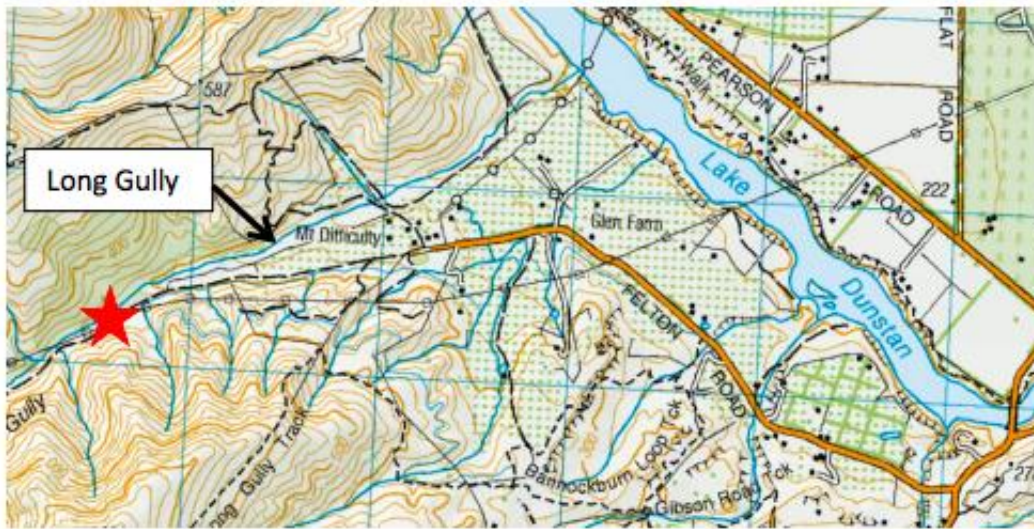


Figure 3: General location of point of take (red star) in relation to Long Gully (Source: Application)

GrowOtago indicates that the median annual rainfall at the site is between 501-550 mm and that the median potential evapotranspiration in January and February is 191-195 mm. Soils in the command area are raw, recent soils and podzol soils consisting generally of shallow to moderately deep fine sandy loams and stony sands. Soils on the river terrace are well drained with very low profile available water. Soils on the hills to the south of Felton Road are moderately drained and have low profile available water.

5.2 Description of Surface Water Body

Long Gully drains a 2,300 hectare catchment that flows into the Kawarau Arm of Lake Dunstan. Flow records have been collected by Council between December 2011 to April 2013 from a monitoring site located immediately above the Applicant’s point of take. These records show that Long Gully is dominated by low stable flows. Generally, the summer flow pattern for Long Gully is characterised by low flows interspersed with sharp peaks due to rain events. Higher sustained flows were noted from August to November due to rain and snow melt. The river characteristics and the flows for Long Gully are given in Table 1 below.

Table 1: River characteristics and flows of Long Gully (Source: Application)

Characteristic	At/Near Point of Take
Type of Waterbody	Creek/Stream – perennial in mid to upper reaches, ephemeral in lower reaches (over 1km)
Average Channel Width	1 m
Average Channel Depth	0.5m – 1m
Bed of watercourse	Sandy, silty loams with gravels and rocks
Minimum flow rates	19 l/s
Maximum flow rates	568 l/s
Source of Flow Data	Based on ORC flow site 3km upstream Dec 11 – April 13

A search of NIWA's Freshwater Fish Database shows that there have been three fish surveys undertaken in Long Gully, all in 1996. Two of the surveys indicate no fish species present with the third showing a record of rainbow trout. A further fish survey conducted by Otago Fish and Game Council in 2017 identified the presence of juvenile trout and evidence of trout spawning in Long Gully.

Council is not aware of any observations of native fish in Long Gully.

5.3 Schedule 1 of the Regional Plan: Water

Schedule 1A of the Regional Plan: Water for Otago ("RPW") outlines the natural and human use values of Otago's surface water bodies. Long Gully is not identified; however, Long Gully is a tributary to the Kawarau River between Lake Dunstan and Lake Wakatipu which is identified as having the following values:

- Large water body supporting high numbers of particular species, or habitat variety, which can provide for diverse life cycle requirements of a particular species, or a range of species.
- Gravel and rock bed composition of importance to resident biota.
- Presence of significant fish spawning areas for trout and salmon.
- Presence of indigenous fish species threatened with extinction.
- Significant presence of trout, salmon and eel.
- Absence of pest plants upstream of Lake Dunstan.
- The following outstanding natural features/landscapes:
 - Wild, scenic characteristics;
 - Natural characteristics, in particular the return flow in the upper section when the Shotover River is in flood;
 - Scientific values, in particular the return flow in the upper section when the Shotover is in flood;
 - Recreational purposes, rafting, jet boating and kayaking;
 - Spectacular and rugged river gorge, schistose landscape, fast flowing white water and rapids, old gold sluicing landscape, from confluence with Arrow River to Lake Dunstan;
- Significant habitat for koaro including many tributaries.

Schedule 1AA of the RPW identifies Otago resident native freshwater fish and their threat status. The Kawarau River between Lakes Dunstan and Wakatipu is known to provide habitat for koaro including in many tributaries, which is within this schedule. Koaro or *Galaxias brevipinnis* has a threat status of 'declining'.

Schedule 1B of the RPW identifies water takes used for public supply purposes (current at the time the RPW was notified in 1998), while Schedule 1C identifies registered historic places which occur in, on, under or over the beds or margins of lakes and rivers. There are no Schedule 1B and 1C values in the RPW listed that will be affected by the proposed activity.

Schedule 1D of the RPW identifies the spiritual and cultural beliefs, values and uses associated with water bodies of significance to Kai Tahu. Long Gully is not identified. However, the Kawarau River between Lakes Dunstan and Wakatipu is identified as having the following values:

- **Kaitiakitanga:** *the exercise of guardianship by Kai Tahu, including the ethic of stewardship.*
- **Mauri:** *life force.*

- **Waahi taoka:** treasured resource; values, sites and resources that are valued.
- **Trails:** sites and water bodies which formed part of traditional routes, including tauraka waka (landing place for canoes).
- **Cultural materials:** water bodies that are sources of traditional weaving materials (such as raupo and paru) and rongoa (medicines).

5.4 Schedule 2 of the Regional Plan: Water

The provisions of Schedule 2A-2D do not apply to this application.

5.5 Regionally Significant Wetlands

There are no Regionally Significant Wetlands in the vicinity of the activity.

6. Status of the Application

Operative Regional Plan: Water

Resource consent is required under the RPW that became operative on 1 January 2004. The taking and use of surface water originally applied for prior to 28 February 1998 as existing primary allocation from catchments not listed in Schedule 2A of the RPW is a **restricted discretionary** activity under Rule 12.1.4.5 of the RPW. The matters to which the Council has restricted discretion are listed in Rule 12.1.4.8 of the RPW.

Restricted Discretionary Activity Rule 12.1.4.5

Taking and use of surface water as primary allocation applied for prior to 28 February 1998 in catchments not listed in Schedule 2A:

- (i) *This rule applies to the taking of surface water, as primary allocation, in catchment areas not listed in Schedule 2A, if the taking was the subject of a resource consent or other authority:*
 - (a) *Granted before 28 February 1998; or*
 - (b) *Granted after 28 February 1998, but was applied for prior to 28 February 1998; or*
 - (c) *Granted to replace a resource consent or authority of the kind referred to in paragraph (a) or (b).*
- (ii) *Unless covered by Rule 12.1.1A.1, the taking and use of surface water to which this rule applies is a restricted discretionary activity. The matters to which the Otago Regional Council has restricted the exercise of its discretion are set out in Rule 12.1.4.8.*
- (iii) *Unless covered by Rule 12.1.1A.1, the taking and use of surface water in the Waitaki catchment to which this rule applies is a restricted discretionary activity provided that by itself or in combination with any other take, use, dam, or diversions, the sum of the annual volumes authorised by resource consent, does not exceed the allocation to activities set out in Table 12.1.4.2. The matters to which the Otago Regional Council has restricted the exercise of its discretion are set out in Rule 12.1.4.8.*
- (iv) *Takes to which this rule applies will not be subject to a minimum flow condition until the minimum flow has been determined by investigation and added to Schedule 2A by a plan change.*

Note: If a minimum flow has been determined for a catchment previously not listed in Schedule 2A, and that minimum flow has been set by a plan change, the catchment will then be listed in Schedule 2A and Rule 12.1.4.2 or Rule 12.1.4.4 will apply.

Rule 12.1.4.8 Restricted Discretionary Activity considerations

In considering any resource consent for the taking and use of water in terms of Rules 12.1.4.2 to 12.1.4.7 and 12.2.3.1A, the Otago Regional Council will restrict the exercise of its discretion to the following:

- (i) The primary and supplementary allocation limits for the catchment; and*
- (ii) Whether the proposed take is primary or supplementary allocation for the catchment; and*
- (iii) The rate, volume, timing and frequency of water to be taken and used; and*
- (iv) The proposed methods of take, delivery and application of the water taken; and*
- (iv) The source of water available to be taken; and*
- (vi) The location of the use of the water, when it will be taken out of a local catchment; and*
- (vii) Competing lawful local demand for that water; and*
- (viii) The minimum flow to be applied to the take of water, if consent is granted; and*
- (ix) Where the minimum flow is to be measured, if consent is granted; and*
- (x) The consent being exercised or suspended in accordance with any Council approved rationing regime; and*
- (xi) Any need for a residual flow at the point of take; and*
- (xii) Any need to prevent fish entering the intake and to locate new points of take to avoid adverse effects on fish spawning sites; and*
- (xiii) Any effect on any Regionally Significant Wetland or on any regionally significant wetland value; and*
- (xiv) Any financial contribution for regionally significant wetland values or Regionally Significant Wetlands that are adversely affected; and*
- (xv) Any actual or potential effects on any groundwater body; and*
- (xvi) Any adverse effect on any lawful take of water, if consent is granted, including potential bore interference; and*
- (xvii) Whether the taking of water under a water permit should be restricted to allow the exercise of another water permit; and*
- (xviii) Any arrangement for cooperation with other takers or users; and*
- (xix) Any water storage facility available for the water taken, and its capacity; and*
- (xx) The duration of the resource consent; and*
- (xxi) The information, monitoring and metering requirements; and*
- (xxii) Any bond; and*
- (xxiii) The review of conditions of the resource consent; and*
- (xxiv) For resource consents in the Waitaki catchment the matters in (i) to (xxiii) above, as well as matters in Policies 6.6A.1 to 6.6A.6.*

The discharge of water from the water race back to Long Gully at the point of take, and the occasional discharge of water to Bailey's Gully, beyond the scheme is captured by the following permitted activity rule.

Permitted Activity Rule 12.C.1.1

The discharge of water or any contaminant to water, or onto or into land in circumstances which may result in a contaminant entering water, is a permitted activity, providing:

- (a) The discharge does not result in flooding, erosion, land instability or property damage; and
- (b) There is no discharge of water from one catchment to water in another catchment; and
- (c) The discharge does not change the water level range or hydrological function of any Regionally Significant Wetland; and
- (d) When the discharge, including any discharge from a drain or water race, enters water in any lake, river, wetland or the coastal marine area; the discharge:
 - (i) Does not result in:
 - (1) A conspicuous change in colour or visual clarity; or
 - (2) A noticeable increase in local sedimentation, in the receiving water (refer to Figure 5); and
 - (ii) Does not have floatable or suspended organic materials; and
 - (iii) Does not have an odour, oil or grease film, scum or foam; and
- (e) When the discharge enters water in any drain that goes to a lake, river, wetland, or the coastal marine area, the discharge:
 - (i) Does not result in:
 - (1) A conspicuous change in colour or visual clarity; or
 - (2) A noticeable increase in local sedimentation, in the lake, river, wetland or the coastal marine area (refer to Figure 6); and
 - (ii) Does not result in the production of conspicuous floatable or suspended organic materials in the drain at the first of:
 - (1) The downstream boundary of the landholding where the discharge occurs; or
 - (2) Immediately before the drain enters a river, lake, wetland or the coastal marine area; and
 - (iii) Does not have an odour, oil or grease film, scum or foam; and
- (f) When the discharge enters water in any water race that goes to a lake, river, wetland, or the coastal marine area, the discharge:
 - (i) Does not result in:
 - (1) A conspicuous change in colour or visual clarity; or
 - (2) A noticeable increase in local sedimentation, in the water race (refer to Figure 7);
 - (ii) Does not result in the production of conspicuous floatable or suspended organic materials in the race at the first of:
 - (1) The downstream boundary of the landholding where the discharge occurs; or
 - (2) Immediately before the race enters a river, lake, wetland or the coastal marine area; and
 - (iii) Does not have an odour, oil or grease film, scum or foam; and
- (g) From 1 April 2026, the discharge also complies with 12.C.1.1A.

At the time of notification, it was not recognised that resource consent is also required for the taking of additional water that is bypassed back to Long Gully (non-consumptive) at the point of take and for the taking of water from the water race and dams. These components are assessed as **discretionary** activities in accordance with under Rule 12.1.5.1.

Discretionary Activity Rule 12.1.5.1

Except as provided for by Rules 12.1.1.1 to 12.1.4.7, the taking and use of surface water is a discretionary activity.

Applications involving related activities of differing activity statuses may be bundled so that the most restrictive activity status is applied to the overall proposal. As the taking of surface water from the water race and dams is intrinsically related to the taking of water from Long Gully, bundling is considered appropriate. The most restrictive activity status applying to the activities subject to this application is a **discretionary** activity, as it applies to the taking of water from

artificial water courses. On this basis, this application in its entirety is a **discretionary** activity under the RPW.

The public notification preclusion prescribed in Rule 12.1.4.8 was considered to apply to the activity at the time of notification. However, as the activity was being considered under the notification provisions that existed at the time of lodgement (2017), an assessment of effects was still required for notification purposes. This differs from the stepped process prescribed by the current notification provisions whereby an effects assessment is not required if notification is precluded by a Plan rule. The following excerpt from the notification decision describes the application of the 2017 notification provisions:

“Despite public notification being precluded, s95A(2)(a) requires consideration of the adverse effects on the environment in determining whether the application is publicly notified. The adverse effects on the environment are limited to the restricted discretionary considerations of Rule 12.1.4.8.”

As set out above, the assessment of effects was limited to the matters of discretion listed in Rule 12.1.4.8. It was concluded that the effects of the activity would be no more than minor, and that public notification was not required. In relation to the proposed activity, it is considered that the matters of discretion in Rule 12.1.4.8 provide full coverage of all actual and potential effects and the assessment can be relied upon as a complete assessment of effects for notification purposes. As such, the current assessment of the activity as a discretionary activity does not alter the notification conclusion.

Proposed Plan Change 7 (Water Permits)

Proposed Plan Change 7 (Water Permits) (“**PPC7**”) was notified for submissions on 18 March 2020. In accordance with Section 86B(3)(a), the rules of PPC7 had immediate legal effect from the date of notification.

PPC7 provides an interim regulatory framework for the assessment of applications to renew deemed permits expiring in 2021, and any other water permits expiring prior to 31 December 2025. It also establishes a requirement for short duration consents for all new water permits.

For applications to renew deemed permits expiring in 2021, and any other water permits expiring prior to 31 December 2025, PPC7 establishes a controlled activity consenting framework for short duration consents which comply with the controlled activity conditions. PPC7 also establishes a non-complying consenting framework for consents where a longer duration is proposed or where the application fails to meet one or more of the controlled activity conditions.

As the application seeks a consent term longer than six years, the application does not achieve the conditions pertaining to Rule 10A.3.1 under PPC7. Therefore, resource consent is required in accordance with Rule 10A.3.2.

10A.3.1 Controlled activity: Resource consent required

10A.3.1.1 Despite any other rule or rules in this Plan;

a. any activity that is currently authorised under a Deemed Permit; or

b. the take and use of surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) that is currently authorised by an existing water permit where that water permit expires prior to 31 December 2025;

is a controlled activity provided the following conditions are met:

- i. The consent duration sought is no more than six years; and
- ii. The deemed permit or water permit that is being replaced is a valid permit; and
- iii. The application demonstrates that the total land area under irrigation does not exceed that irrigated in the 2017-2018 irrigation season, if the abstracted water is used for irrigation; and
- iv. The rate of take shall be no more than the average maximum rate of take limit recorded during the period 1 July 2012 – 30 June 2017 and calculated in accordance with the method in Schedule 10A.4; and
- v. Any existing residual flow, minimum flow, or take cessation condition (whichever is applicable) is included in the application for resource consent; and
- vi. The volume of water taken shall be no more than the average maximum of the daily volume limit, or monthly volume limit, or annual volume limit (whichever one or more are applicable) recorded during the period 1 July 2012 – 30 June 2017, and calculated in accordance with the method in Schedule 10A.4.

10A.3.2 Non-complying activity: Resource consent required

10A.3.2.1 *Despite any other rule or rules in this Plan:*

- a. any activity that is the replacement of an activity authorised under a Deemed Permit; or
- b. the take and use of surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) that is the replacement of a take and use authorised by an existing water permit where that water permit expires prior to 31 December 2025;

that does not meet any one or more of the conditions of Rule 10A.3.1.1 is a non-complying activity.

As the application was received prior to the notification of PPC7, in accordance with section 88A of the Act, the application retains the discretionary activity status determined under the RPW. Notwithstanding this, the rules in PPC7, in addition to the objectives and policies, are still a relevant consideration when assessing the application under section 104(1)(b) as a relevant provision of a proposed plan. This is discussed further in Section 7.15.

Overall, the application is considered to be a **discretionary** activity.

All relevant permitted activity rules are complied with.

7. Section 104 Evaluation

Section 104 of the Act sets out the matters to be considered when assessing an application for a resource consent. These matters are subject to Part 2, the purpose and principles, which are set out in Sections 5 to 8 of the Act.

The remaining matters of Section 104 to be considered when assessing an application for a resource consent are:

- (a) *the actual and potential effects on the environment of allowing the activity;*
- (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;*
- (b) *any relevant provisions of a national environmental standard, other regulations, a national policy statement, the Regional Policy Statement (RPS), the Regional Plan: Water (RPW); and*
- (c) *any other matter the Council considers relevant and reasonably necessary to determine the application.*

7.1 S104(1)(a) – Actual and potential effects on the environment of allowing the activity

Section 104(1)(a) of the RMA requires the council to have regard to any actual and potential effects on the environment of allowing the activity. This includes both the positive and the adverse effects.

Positive effects

The proposal will have the following positive effects:

- Providing for the viability of horticulture through irrigation resulting in less moisture stress for crops at critical growing times.
- The proposal will maintain business surety and provide economic benefits to the local community and economy.
- Provide social benefits by supporting the families and workers who directly rely on the businesses that the water take provides for; and
- Providing for the domestic and stock drinking water and the health and well-being of people and animals.

Adverse effects

In considering the adverse effects, the Consent Authority:

- may disregard an adverse effect where the plan permits an activity with that effect (s104(2)); and
- must disregard those effects on a person who has provided written approval (s104(3)(a)(ii)).

While the Applicant can take and use water for domestic and stock drinking purposes in accordance with Rule 12.1.2.1, this rule is subject to the condition that the take does not have an adverse effect on the environment. As this permitted activity rule does not allow any adverse effects, I do not consider there to be any effects that may be disregarded in accordance with s104(2). Likewise, no persons have provided written approval to the application and there are no adverse effects that must be disregarded in accordance with s104(3)(a)(ii).

The assessment of adverse effects undertaken for the purpose of s95A appropriately identified and evaluated the adverse effects of the activity. This assessment is adopted for the purposes of s104(1)(a) and is discussed here in relation to the submissions received.

Effects on Sports Fish and Native Aquatic Ecology Values

There is general agreement that flows in the lower reaches of Long Gully are naturally intermittent. The Applicant's abstraction has historically included all surface flow as there is no residual flow requirement on the deemed permit. As such, the recharge to the water table in the lower reaches has been impacted at times of low flow which increases the length and duration of drying reaches. The proposal will result in continuation of this.

Council's RSU consider that recent flows in Long Gully have been high enough to allow spawning rainbow trout from Lake Dunstan to access the creek, and Fish and Game provide some evidence of rainbow trout spawning in their submission on the application. While some uncertainty remains around the exact nature of hydrological losses in Long Gully, flows are naturally low from May to September. Council's RSU believe these low flows combined with natural losses in the lower reaches, mean that values for trout spawning in Long Gully are likely to be very limited. While the application will result in potential adverse effects on sports fish values, these effects are considered to be minor.

The applicant has not proposed a residual flow and Council's RSU (as detailed in the attached evidence from Pete Ravenscroft) have not recommended a residual flow be required. While evidence provided in support of Fish and Game's submission suggests that there would be benefit to providing a residual flow, I do not agree with this. A residual flow is unlikely to provide any benefit to sports fish values as flows in Long Gully are naturally intermittent.

Often, it can also be appropriate to impose residual flows appropriate to provide for natural character. In this instance however, the intermittency of Long Gully forms part of its natural character. While the proposal will exacerbate this intermittency, I do not consider the adverse effects of this to be unacceptable. For this reason and that described above, I do not recommend that a residual flow is imposed.

While the recommendation that no residual flow be imposed does not address the relief sought by Aukaha and TAMI in their submissions (that 50% of the natural flow to remain in the waterway), no rationale is provided for this in their submissions. If these parties can present evidence that supports their desired relief then this should be considered.

Fish and Game's submission, more specifically, seeks for the take to not limit the outmigration of trout until the end of December when it would occur naturally. It is noted that this could be achieved by significantly reducing the instantaneous rate of take, setting a high residual flow until the end of December, or committing to flow sharing at medium and high flows. However, there are doubts as to whether these methods could achieve the desired outcome, particularly during a dry season as natural flows may limit outmigration in such instances. If further evidence can be provided in support or otherwise of this mitigation, it should be considered.

The Applicant has not proposed to screen the water race intake to prevent fish uptake and entrapment. Likewise, Council's RSU have not recommended fish screening. I am of the opinion that fish screening is not necessary at the water race intake as this would inhibit trout from occupying the habitat provided by the water race. Given the naturally low flows in Long Gully will be exacerbated by the abstraction, maintaining fish passage to the water race is likely to provide greater ecological benefit than excluding fish from the race. However, with fish passage to the water race provided for, fish screens should be installed and maintained on all off-race

abstractions. Conditions have been recommended that address this issue and their adoption would partially satisfy the relief sought by Aukaha and TAMI in respect of this matter.

It is noted that the application does not provide details of all abstraction points from the water race and dams and for compliance purposes these are required. It is therefore requested that the Applicant provide map references for these abstraction points such that these can be reference on the water permit.

On the basis of the above, I agree with the relief sought in Fish and Game's submission that conditions regarding race management would be beneficial. It is recommended that a suitable condition sets out how the water race will be managed to achieve the following:

- ensures unobstructed fish passage back to the stream (for example via the bywash);
- limits the frequency and extent of dewatering races and dams;
- provides opportunity to capture or utilise entrained fish;
- regulates vegetation management; and
- regulates emergency works.

Further collaboration between Fish and Game and the Applicant would be useful in producing a suitable practicable wording for this condition.

In terms of the effects on native fish, Pete Ravenscroft of Council's RSU has noted that koaro are generally found in rapid flowing, tumbling rocky streams similar to Long Gully. However, no koaro have been found in Long Gully which is likely restricted due to its intermittent nature. This can be considered a legacy effect of past abstraction. While there is some uncertainty as to whether koaro would populate Long Gully under a natural flow regime, it is noted that DoC was considered an affected party but did not submit on the application.

Overall, subject to the recommended conditions, I consider that the adverse effects of the proposal on aquatic ecosystems will be appropriately mitigated.

Cultural Effects

A description of the cultural effects is provided in the application. I disagree with the assessment that the proposal will have minimal (i.e. less than minor) adverse effects on these values. As the proposal seeks to take water from Long Gully at a rate that exceeds MALF, the proposal has the potential to adversely affect the mauri of the water. As discussed above, both Aukaha and TAMI have sought for 50% of the natural flow to remain in the waterway. While it can be inferred that this relief relates to the mauri of the water, contextual rationale for this has not been provided. As Long Gully is naturally intermittent, a residual flow would provide little ecological benefit and I see no practical means of mitigating the adverse effects on the mauri of the water. On that basis, I consider the cultural effects of the proposed abstraction to be minor and ultimately acceptable.

Cumulative Effects

Rule 10A.3.2.1 of PPC7 stipulates that the assessment of effects must include a robust assessment of the adverse cumulative effects on the ecology and hydrology of the surface water body (and connected waterbodies). I do not consider this to be a more onerous test than would otherwise be required, including for notification purposes. However, for completeness, I provide an assessment of the cumulative effects below.

As LGRSI are the only water users in the catchment, there are no adverse effects related to cumulative water takes. However, given that the proposal seeks to take water at a rate that

exceeds MALF, depletion of the water table below the point of take could be considered a cumulative effect. There is strong evidence to suggest that the lowering of the water table results in the extension of the length and duration of drying reaches. I consider this to have minor cumulative effects on the natural character and cultural values of the waterway. While the application will exacerbate this, these processes occur naturally and I consider these effects to be acceptable.

Similarly, Fish and Game raised concerns about the cumulative effects on the Lake Dunstan trout fishery in their submission, suggesting that minor tributaries such as Long Gully, that are often important for spawning, could get discounted as unimportant to the wider fishery. While I agree this could be considered a potential cumulative effect, the Applicant and Council's RSU are in agreement that Long Gully holds little sports fish value. On that basis, the mitigation recommended in respect of the ecological values (race management and fish screening conditions) will be sufficient to mitigate this potential effect.

Overall, I consider the cumulative effects of the activity to be minor and I see no reason as to why they cannot be appropriately mitigated by the recommend conditions.

Summary

Taking into consideration the positive environmental effects above and the assessment of adverse effects undertaken for notification purposes and discussed above, with the recommended mitigation, actual and potential effects on the environment are considered to be acceptable.

7.2 Available Water Allocation

The RPW provides for the taking of surface water by defining allocation quantities able to be taken, while providing for water body levels.

Primary allocation is defined by Policy 6.4.2(b) of the RPW:

"To define the primary allocation limit for each catchment, from which surface water takes and connected groundwater takes may be granted, as the greater of:

(a) That specified in Schedule 2A, but where no limit is specified in Schedule 2A, 50% of the 7-day mean annual low flow; or

(b) The sum of consented maximum instantaneous, or consented 7-day, takes of:

(i) Surface water as at: 19 February 2005 in the Welcome Creek catchment; or 7 July 2000 in the Waianakarua catchment; or 28 February 1998 in any other catchment; and

(ii) Connected groundwater as at 10 April 2010,

less any quantity in a consent where:

(1) In a catchment in Schedule 2A, the consent has a minimum flow that was set higher than that required by Schedule 2A.

(2) All of the water taken is immediately returned to the source water body.

(3) All of the water being taken had been delivered to the source water body for the purpose of the subsequent take.

(4) The consent has been surrendered or has expired (except for the quantity granted to the existing consent holder in a new consent).

- (5) The consent has been cancelled (except where the quantity has been transferred to a new consent under Section 136(5)).*
- (6) The consent has lapsed.”*

The 7-day mean annual low flow (MALF) for the Long Gully catchment has been calculated by the Council’s RSU as 19 L/s. Therefore, total theoretical primary allocation is 9.5 L/s. The existing primary allocation of the Long Gully catchment (i.e. calculated in accordance with Policy 6.4.2(b)) equates to 56 L/s. Therefore, the primary allocation of the Long Gully catchment is 56 L/s.

While the status of the catchment is fully-allocated, because the consent that this application seeks to replace was originally granted prior to 28 February 1998, and because the Applicant has applied to replace this consent within the statutory timeframes given in Section 124 of the Act, this take will retain its primary allocation status.

The application seeks to take up to the total volume of water defined as the primary allocation by Policy 6.4.2(b)(i). However, as the proposal seeks to take water at a reduced rate at certain times of the year, less water than was consented at 28 February 1998 is being sought. Therefore, the proposal will reduce overall allocation in Long Gully.

7.3 Historical Water Access

To assist in the reduction of primary allocation under Policy 6.4.2(b), Policy 6.4.2A allows only water that has been historically accessed under previous consents to be considered to be granted as primary allocation. An exception to this is in the case of a registered community drinking water supply where an allowance may be made for growth that is reasonably anticipated. This exception does not apply to this application.

The Council is able to control the rate, volume, timing or frequency of take, or a combination of these. The Council could grant less water than has been taken under existing consents if it is satisfied on the evidence that the lesser quantity would:

- (a) reflect only the water actually taken and the pattern of taking established under the existing consent; and/or*
- (b) minimise conflict between those taking water; and/or*
- (c) address the underutilisation of water allocated under the existing consent, including any underutilisation arising from;*
 - (i) inefficient and inappropriate practices; and/or*
 - (ii) consent holders retaining authorisation for more water than is actually required for the purpose of use.*

Council have water use records for Deemed Permit 2000.173.V1 that date back to 2013. A summary of the monitoring data provided is illustrated in Figure 4 below.

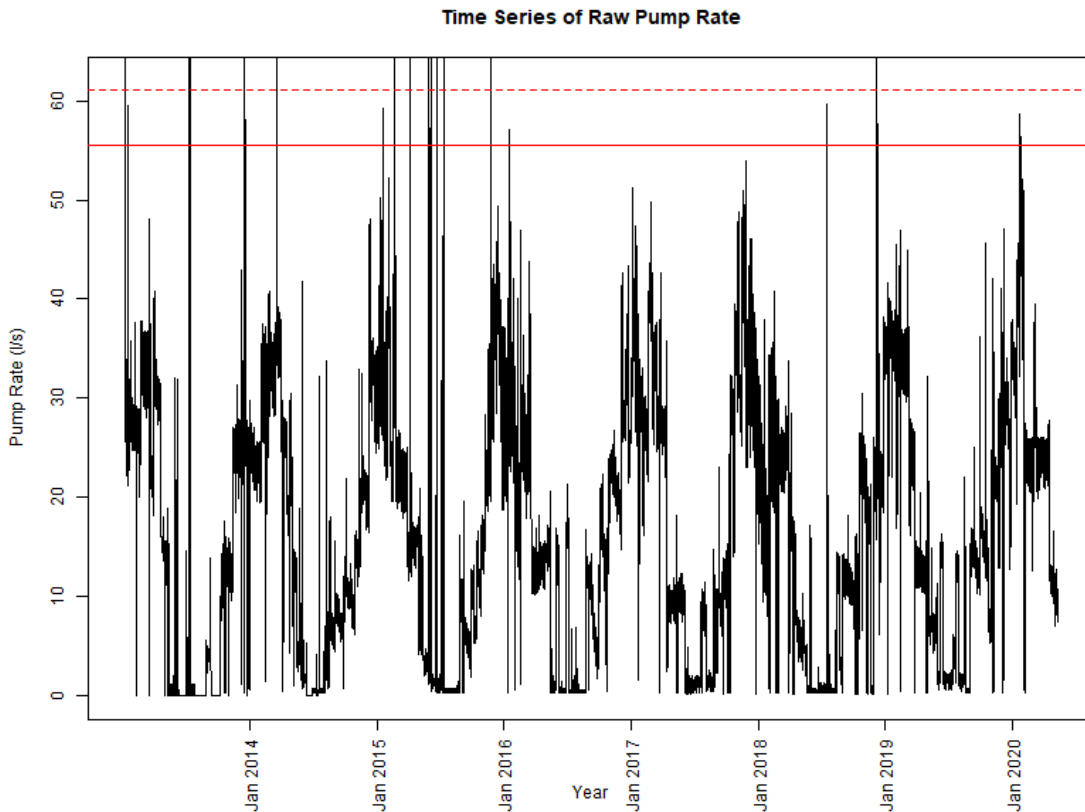


Figure 4: Time series of the instantaneous rate of take from 07/01/2013 to 10/05/2020. The red solid line represents the consented rate of take and the dashed line represents a 10% margin of measurement error.

LGRSI’s monitoring data shows spikes above the consented rate. The Applicant has noted that this has been caused by heavy rainfall run-off from the slope of the hillside entering the race between the intake site and the monitoring device, as thunder-plumps are common in this area. Spikes in the monitoring data can also be caused in winter by a film of ice forming and resulting in a false level being recorded by the monitoring device, or a build-up of debris behind the monitoring device which results in a back-up of water and a falsely high reading. A condition of consent has been recommended that requires regular checks of the measuring device during winter and after heavy rainfall events to avoid further false readings.

The Applicant’s historic water use has been calculated by Council’s Senior Resource Management Analyst. This analysis is attached to the report. The patterns of historic use are consistent with irrigation and potable domestic use and stock drinking supply. Maximum annual, monthly and daily historic use was calculated as 534,000 m³, 101,100 m³ and 4,420 m³, respectively. The annual volume sought is considerably less than provided for by the Deemed Permit and less than the historic use at 520,000 m³. In relation to the proposed stepped rate of abstraction, Table 2 below demonstrates the rates applied for relative to the historic use for the respective periods.

Table 2: Historic use analysis.

Date	Rate sought (L/s)	95 th Percentile Rate of Take (L/s)
1 May to 15 October	15	16 (Filtered Rate)
16 October to 15 November	30	34.8 (Filtered Rate)
16 November to 30 April	56	43.4 (High-Use Rate)

As detailed in Table 2, outside the irrigation season the Applicant is seeking to take slightly less water than has historically been abstracted. During the irrigation season, the analysis indicates that the 95th percentile high use rate of take is 44 L/s. In line with policy 6.4.2A and the NPS-FM (discussed below), a maximum rate of take of 44 L/s in the period 16 November to 30 April is recommended.

7.4 Efficiency of Water Take and Use

7.4.1 Irrigation

Policy 6.4.0A of the RPW requires that the quantity of water granted to take is no more than that required for the purpose of use taking into account the local climate, soil, crop or pasture type and the efficiency of the proposed water transport, storage and application system. The Council commissioned a report by Aqualinc Research Ltd (Aqualinc) entitled “*Water Requirements for Irrigation Throughout the Otago Region*”, dated October 2006, to assess water volumes required to efficiently irrigate pasture and crops. This report was updated in July 2017.

Aqualinc developed a water-balance computer model that was used to estimate soil moisture levels over a 42-year period. This model takes into account the local climate, the types of soils, crop types and the irrigation system. The irrigation strategy meets a specific irrigation objective, being that production levels were to be maintained close to maximum for most of the time, and that even in the driest of conditions sufficient water would still be available to sustain plant growth.

The land area of the Otago region was divided into four main zones (Central and Lakes District, Coastal and South Otago, Maniototo and North Otago) based on geographical distribution and climatic conditions; primarily evapotranspiration and temperature. These four zones are further divided into rainfall sub-zones using mean annual rainfall (MAR), as irrigation demand is primarily dependent on rainfall.

The soil type of an area and the rooting depth of a crop or pasture affect plant available water (PAW). PAW is the amount of water that a soil can store that is available for plants to use. Six soil PAW classes have been specified and soil data for each site can be obtained from the S-Map database (Landcare, 2014), the New Zealand Fundamental Soil Layer (NZFSL) (Landcare 2000) or a site-specific soil investigation.

This information is used to calculate the Applicant’s water requirement over monthly and seasonal periods. The monthly volume outlined in Aqualinc is the estimated peak monthly usage for any one month in an irrigation season but is not intended to be used for every month over the course of the season i.e. seasonal volume does not equal the monthly volume multiplied by the months in the irrigation season. Commonly, the peak monthly rate is used for one to two months in an

irrigation season; however, this is dependent on variables such as rainfall, climate and crop growth.

A seasonal limit on the volume of water has been given to reflect that less water is required during the 'shoulder' of the irrigation season. Aqualinc provides recommended seasonal volumes based on an average year; a one and two year drought (80th percentile); a one in ten year drought (90th percentile); and a maximum situation. For Otago it is considered that a one in ten year drought or 90th percentile is the most appropriate when considering efficient water use.

For the purpose of calculating water requirements on the Applicant's property, the take is located in the Central & Lakes District with a MAR of 450 mm/yr and PAW value of 50 mm².

Table 3 summarises water volumes and application rates (calculated by the Council based on the total area able to be irrigated) as applied for by the Applicant, and compares them to water volumes and application rates recommended by Aqualinc. It is acknowledged that actual use will only be known through the keeping of accurate pumping records.

Table 3: Summary of Applied for Water vs Aqualinc Recommendations

	Applied for by Applicant	Aqualinc recommendations for viticulture	Aqualinc recommendations for horticulture	Aqualinc recommendations for pasture	Total recommended by Aqualinc
Total volume per month	-	97,350 m ³ / month	32,490 m ³ / month	46,866 m ³ / month	176,706 m ³ / month
Maximum take rate	56 litres / second	36 litres / second ³	12 litres / second ³	17 litres / second ³	66 litres / second ³
Irrigation period	8 months	8 months	8 months	8 months	8 months
Irrigated area	180.9 hectares (Ha)	129.8 Ha	19 Ha	32.1 Ha	180.9 Ha
Total volume per season	520,000 m ³ / season	380,314 m ³ /season	174,610 m ³ /season	251,986 m ³ /season	554,924 m ³ /season

As the monthly and seasonal volumes of water applied for by the Applicant are less than the monthly and seasonal volume recommended by Aqualinc, the applied for take is considered to be efficient given the intended usage.

The recommended maximum allocation limits from Aqualinc discourage water being wasted during a dry year. However, in an average year when soil moisture levels are higher, use of the recommended allocation limits from Aqualinc could result in over-irrigation and wastage. In order to avoid water being wasted in an average year, a condition of consent is recommended to ensure

² Approximately 50% of the property has soils with a mod PAW of 24 mm and 50% of the property has soils with a mod PAW of 75 mm.

³ Based on a continuous 24-hour take rate

that there is no runoff of irrigation water on-site and off-site, there is no leakage from pipes and structures and the use of water onto non-productive land is avoided.

7.4.2 Frost Fighting

The Applicant has indicated that frost fighting will be required, however, a specific volume has not been specified. It is assumed that the Applicant has accounted for this in the volumes sought. Water for frost fighting is likely to be stored water due to the high rate of take required for effective frost fighting. Given the proposed volumes are considered efficient for irrigation and no further water has been sought for frost fighting, this use of water does not raise any efficiency concerns.

It is recommended that a condition is imposed that requires the Applicant to record the duration and volume of water used during each frost event in order to obtain a better understanding of frost fighting requirements for this location in order to ensure efficiency of resource use.

7.4.3 Communal Domestic Supply

The proposed take will supply potable water to three households. The Council considers 1,000 L/d during winter and 3,000 L/day during summer to be efficient volumes for each domestic residence. The additional volumes in summer provide for minor curtilage irrigation. Based on this, efficient volumes for this purpose are 9 m³/day, 279 m³/month and 2,190 m³/year.

The Applicant has not included these volumes into their calculation for the total volume sought. However, given the total volume sought is considered to be efficient for irrigation purposes, the use of this water for domestic purposes does not raise any efficiency concerns.

7.4.4 Stock Water Supply

Some shareholders utilise water for stock drinking water. The take provides drinking water for a relatively small number of stock including goats, cows and sheep. Based on water requirements per head of animal, Table 4 summarises the daily volume of water that is considered reasonable for consumption by the Applicants' stock.

Table 4: Total stock numbers and water requirements per day

Animal	Total number	Water requirements (Litres per head per day)⁴	Total water requirements (Litres per day)
Goats	50	5	250
Cows	4	70	280
Sheep	6	5	30
Total			560 (0.6 m³)

⁴ Aqualinc Research Limited (2004a) Water Allocation Project – Stage 1. Report for Horizons Regional Council.

The Applicant has not included these volumes into their calculation for the total volume sought. However, given the total volume sought is considered to be efficient for irrigation purposes, the use of this water for stock drinking purposes does not raise any efficiency concerns.

7.4.5 Industrial Supply

Water is also used year-round to supply two wineries, Felton Road and Terra Sancta. Specific details of the winery water use have not been provided. However, it is assumed the necessary volumes are included in the total volume sought.

Given the proposed volumes are considered efficient for irrigation and no further water has been sought for industrial use, this use of water does not raise efficiency concerns.

7.5 Efficiency of Water Transport, Storage and Application System

The water conveyance system is described in Section 3.2 of this report. The race and communal infrastructure are maintained on a voluntary basis, with all shareholders taking responsibility for this on a monthly roster. Irrigation New Zealand consider open channels to be more problematic in irrigation systems than any other conveyance methods if not designed and maintained correctly. It is noted that unlined water races can experience losses of up to 10% due to seepage and evaporation and are therefore not the most efficient form of transport. LGRSI have been maintaining and upgrading the race on an as required basis and there has been no record of leakage or losses. However, losses to seepage and evaporation are difficult to detect.

While the irrigation methods are considered efficient, the water race is not the most efficient means of water conveyance. I consider upgrading of the water race to a lined or piped system would be beneficial and would be considered appropriate in the context of a long consent term. I return to the matter of consent term below.

7.6 Alternative Water Sources

The RPW promotes the management of water in a way that enables continued access to suitable water, ensuring communities can provide for their social, cultural and economic wellbeing, now and for the future. It achieves this by requiring consideration of whether the applied for source of water is the nearest practicable given the proposed location of use including whether the take and use of the water is an efficient use of the water resource, whether there is another practically available and accessible water source, and the wider benefits (economic, social, environmental and cultural) of taking from the water source applied for compared to taking water from other sources (Policy 6.4.0C).

The application provides a detailed description of alternative water sources and that description is adopted here. The water is proposed to be used locally and will utilise existing infrastructure. It is noted that the intake from Long Gully, races and pipe infrastructure are long-established and any changes to the point of take would require considerable further investment. While one of the shareholders operates infrastructure that enables the taking water from the Kawarau Arm of Lake Dunstan, the Applicant references a number of factors, mainly the cost and effort, that make this option impractical as an alternative to the current source. Furthermore, the predominantly gravity fed scheme has a relatively low carbon/energy footprint compared to the recognised alternative

that would require continuous use of pumps. Given this information, the proposed source is considered to be the nearest practicable source.

7.7 S104(1)(ab)

I am not aware of any relevant measure proposed by the Applicant under section 104(1)(ab) relating to the offset or compensation for adverse effects.

7.8 S104(1)(b) Relevant Planning Documents

The relevant planning documents in respect of this application are:

- The National Environmental Standard for Sources of Human Drinking Water
- The National Policy Statement for Freshwater Management
- The National Policy Statement for Renewable Electricity Generation
- Resource Management (Measurement and Reporting of Water Takes) Regulations 2010
- The Operative Regional Policy Statement, Proposed Regional Policy Statement and Partially Operative Regional Policy Statement
- The Regional Plan: Water for Otago
- Proposed Plan Change 7 (Water Permits) (“**PPC7**”)

7.9 National Environmental Standard for Sources of Human Drinking Water

Regulations 7 and 8 of the National Environmental Standard for Sources of Human Drinking Water (NES) need to be considered when assessing water permits that have the potential to affect registered drinking water supplies that provide 501 or more people with drinking water for 60 or more calendar days each year.

There are no registered drinking water supplies on Long Gully or immediately downstream in the Kawarau Arm of Lake Dunstan.

7.10 National Policy Statement Freshwater Management (NPSFM)

The National Policy Statement for Fresh Water Management 2014 (amended 2017) (“**NPS-FM**”) provides a National Objectives framework to assist regional councils and communities to plan for freshwater objectives more consistently and transparently. The NPS-FM also directs how Regional Councils are to manage freshwater through their planning documents, and in the consideration of resource consent applications.

The Council has decided to progressively implement the policies in the NPS-FM in accordance with Policy E1, as set out in its Progressive Implementation Programme. The Council’s Progressive Implementation Programme provides that the Council will carry out a plan review to the RPW to implement the policies in the NPS-FM (including establishing freshwater management units, freshwater objectives, and attributes in accordance with Policy CA), to be notified by December 2023.

The objectives and policies in the NPS-FM are relevant when considering an application to replace a deemed permit. Part B of the NPS-FM relates to water quantity. Objective B2 is

particularly important in the case of over-allocated catchments as allocation is not fully addressed in the RPW. Objective B2 seeks to “avoid any further over-allocation of fresh water and phase out existing over-allocation”.⁵ If a particular catchment is considered to be over allocated, and the Council was to grant a new permit for the same volume as authorised under the current deemed permit, the decision would not avoid further over allocation in line with Objective B2. The decision to grant a new permit with the same volume in circumstances where the catchment is currently over allocated would not phase out existing over allocation.

While the Long Gully catchment does not have an allocation limit defined in accordance with the NPS-FM, it is likely to be over-allocated. The Applicant has applied to take the same primary allocation as in their existing deemed permit (based on the instantaneous rate rather than the seasonal volume). As detailed in Section 7.3 of this report, historic use shows that the instantaneous rate of take that has been accessed historically is less than previously consented. Subject to the recommended conditions that impose the historically accessed rate of take, the application will be consistent with Objective B2 of the NPS-FM as the take will not cause any further over-allocation to occur and will aid in phasing out existing over-allocation.

As the RPW is not an NPS-FM compliant plan, Objective B1 (safeguarding the life supporting capacity, ecosystem processes and indigenous species in sustainably managing the taking of freshwater), Objective B3 (improve and maximise the efficient allocation and use of water) and Objective B4 (protect significant values of wetlands and outstanding freshwater bodies) require consideration. It is considered that the proposed volumes of water, the efficient use of water, and the recommended consent duration will result in the activity being consistent with these Objectives.

Policies in the NPS-FM are also relevant to this application. In particular, Policies B5 and B7. These policies are important as there is clear direction that decisions must not result in future overallocation. As an NPS-FM compliant allocation has not yet been set for Long Gully, these policies require a precautionary approach to be taken in relation to any consents granted. In this case if the application is granted as recommended, it will reduce existing primary allocation in Long Gully. The recommendation of a 15 year term along with a suitable review condition is considered to be an appropriately precautionary approach.

All submitters raised concerns with the current planning framework not giving effect to the NPS-FM. The notification of PPC7 is a step towards addressing this issue. While the provisions of PPC7 cannot be afforded full weight, the recommended consent term is consistent with PPC7 and is considered an appropriate response to the issue.

7.11 National Policy Statement on Renewable Electricity Generation

The National Policy Statement on Renewable Electricity Generation (“**NPS-REG**”) came into effect on 13 May 2011 and has the objective of recognising the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and

⁵ The NPSFM defines over-allocation as:
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. This applies to both water quantity and quality.

upgrading of new and existing renewable electricity generation activities. The most relevant policies to this proposed take are:

- Policy A which relates to recognising the benefits of renewable electricity generation activities including maintaining electricity generation; and
- Policy B which relates to the practical implications of achieving New Zealand's target for electricity generation from renewable resources and requires decision makers to have regard to even minor reductions in the generation output of existing renewable generation activities.

The Clyde and Roxburgh power stations use water from the Clutha River catchment to generate renewable electricity. While the proposed takes are located above the Clyde and Roxburgh hydro dams, Contact Energy were not considered an affected party to the application as the adverse effects on electricity generation were considered to be less than minor. While the Applicant's proposed take will remove water from the Clutha River catchment, this is less than what would be authorised by permitted activity Rule 12.1.2.2 for direct takes from the river when applied per land holding⁶. As such, the application will not adversely affect the electricity generation output and is consistent with the NPS-REG.

7.12 Resource Management (Measurement and Reporting of Water Takes) Regulations 2010

Accurate, complete and current water information is a critical building block in establishing a water management system in which water is effectively allocated and efficiently used.

The regulations apply to holders of water permits (resource consents) which allow fresh water to be taken at a rate of 5 litres/second or more, specifically:

- Regulation 8 - Permit holder must provide records and evidence to regional council

The Applicant has already installed an appropriate water meter and has proposed consent conditions to ensure that monitoring of the water take is consistent with the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010. This recommendation has adopted these conditions with some modifications for compliance consistency. These conditions will ensure ongoing compliance with the Regulations and also satisfy the relief sought in respect of monitoring by Aukaha and TAMI in their respective submissions.

The Regulations require the meter to be installed at the location from which water is taken but give the Council unlimited discretion to approve an alternative location that is *as near as practicable* to the point of take. Due to a lack of telemetry available at the intake site, the Applicant's monitoring device is situated approximately 1 km down its race at NZTM 2000 E1294440 N5001480. An existing exemption right (WEX 0017) provides for the monitoring of the take at this location.

7.13 Regional Policy Statement, Proposed Regional Policy Statement and Partially Operative Regional Policy Statement

⁶ 100 L/s, 1,000 m³ per day, per land holding

The Regional Policy Statement for Otago (RPS) provides an overview of Otago's resource management issues, and ways of achieving integrated management of natural and physical resources. The provisions of Chapter 6 (Water) are relevant to this application. The taking of water is consistent with the policies of the RPS, provided that it is done in a conservative manner that does not adversely affect instream biota, natural character, or other lawful water users. It is noted that the RPW gives full effect to the provisions of the RPS, therefore given the applications are consistent with the provisions of the RPW, it is also consistent with the RPS.

The proposed Regional Policy Statement (pRPS) was notified on 23 May 2015 and a decision was released 1 October 2016. Significant weight can be given to the pRPS as it is substantially through the statutory process. The pRPS was made partially operative on the 14 January 2019 (PO-RPS), with the exception of all provisions and explanatory material in *Chapter 3: Otago has high quality natural resources and ecosystems*. The provisions that are the subject of court proceedings and are not made operative are shaded in grey below. Full consideration is given to the operative provisions of the PO-RPS. Weighted consideration is given to the provisions that have not been made operative in conjunction with the remaining operative provisions of the RPS, outlined above.

The relevant provisions of the pRPS/PO-RPS include:

- *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 (Policy 1.1.1)*
- *Provide for social and cultural wellbeing and health and safety by recognising and providing for Kāi Tahu values; taking into account the values of other cultures; taking into account the diverse needs of Otago's people and communities; avoiding significant adverse effects of activities on human health; promoting community resilience and the need to secure resources for the reasonable needs for human wellbeing; promoting good quality and accessible infrastructure and public services (Policy 1.1.2)*
- *Achieve integrated management of Otago's natural and physical resources (Policy 1.2.1)*
- *Taking the principles of Te Tiriti o Waitangi into account including by involving Kāi Tahu in resource management processes implementation, having particular regard to the exercise of kaitiakitaka and taking into account iwi management plans (Policy 2.1.2)*
- *Managing the natural environment to support Kāi Tahu wellbeing (Policy 2.2.1)*
- *Recognise and provide for the protection of sites of cultural significance to Kāi Tahu including the values that contribute to the site being significant (Policy 2.2.2)*
- *Enable Kāi Tahu relationships with wāhi tupuna by recognising that relationships between sites of cultural significance are an important element of wāhi tupuna and recognising and using traditional place names (Policy 2.2.3)*
- *Safe guard the life-supporting capacity of fresh water and manage fresh water to:*
 - *Maintain good water quality and enhance water quality where it is degraded*
 - *Maintain or enhance aquatic ecosystem health, indigenous habitats and indigenous species and their migratory patterns*
 - *Avoid aquifer compaction and seawater intrusion*
 - *Maintain or enhance, as far as practicable:*
 - *Natural functioning rivers, lakes, wetlands, their riparian margins and aquifers,*

- *Coastal values supported by freshwater*
 - *The habitat of trout and salmon unless detrimental to indigenous biological diversity*
 - *Amenity and landscape values of rivers, lakes and wetlands*
- *Control the adverse effects of pest species, prevent their introduction and reduce their spread*
- *Avoid, remedy or mitigate the adverse effects of natural hazards, including flooding and erosion*
- *Avoid, remedy or mitigate adverse effects on existing infrastructure that is reliant on fresh water (Policy 3.1.1)*
- *Manage the allocation and use of fresh water by undertaking all of the following:*
 - *Recognising and providing for the social and economic benefit of sustainable water use*
 - *Avoiding over-allocation, and phasing out existing over-allocation*
 - *Ensuring the efficient allocation and use of water (Policy 3.1.3)*
- *Manage for water shortage by*
 - *Encouraging land management that improves moisture capture, infiltration, and soil moisture holding capacity.*
 - *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*
 - *Providing for water harvesting and storage, subject to allocation limits and flow management, to reduce demand on water bodies during periods of low flows (Policy 3.1.4)*
- *Identify and protect outstanding freshwater bodies (Policy 3.2.13 & 3.2.14)*
- *Identify and protect the function and values of wetlands (Policy 3.2.15 & 3.2.16)*
- *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 (Policy 5.4.2)*
- *Apply a precautionary approach to activities where adverse effects may be uncertain, not able to be determined, or poorly understood but are potentially significant or irreversible (Policy 5.4.3)*

The continued use of water will enable the Applicant to continue to irrigate their land and high value crops, resulting in their own economic wellbeing as well as that of the community. Cultural and Kai Tahu values have been considered and both Aukaha and TAMI, on behalf of the local Runanga, were considered affected parties in accordance with Section 95E of the Act. Both parties submitted in opposition to the application and these submissions have been given due consideration and have informed the recommendations made in this report.

Effects on freshwater values have been considered in Section 7.1 of this report, and the proposal will maintain these values as far as practicable. The seasonal volumes sought have been compared with the Aqualinc recommendations and are considered an efficient use of water for the intended purpose of use. Water sought also does not exceed what has historically been taken,

and the recommended reduction in the primary allocation is considered a positive environmental change. The use of review conditions is consistent with the above framework, specifically the adaptive management approach directed by Policy 5.4.2.

Overall, the application as amended by the recommended conditions, is generally consistent with the provisions of both the operative and proposed RPS.

7.14 Regional Plan: Water for Otago

Objective and Policy Assessment

Relevant policies from the RPW are considered below:

- Policy 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:*
 - (a) Natural values identified in Schedule 1A;*
 - (b) Water supply values identified in Schedule 1B;*
 - (c) Registered historic places identified in Schedule 1C, or archaeological sites in, on, under or over the bed or margin of a lake or river;*
 - (d) Spiritual and cultural beliefs, values and uses of significance to Kai Tahu identified in Schedule 1D;*
 - (e) The natural character of any lake or river, or its margins;*
 - (f) Amenity values supported by any water body; and*
 - (2) Causing or exacerbating flooding, erosion, land instability, sedimentation or property damage.*
- Policy 5.4.3 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 adverse effects on:*
- (a) Existing lawful uses; and*
 - (b) Existing lawful priorities for the use, of lakes and rivers and their margins.*
- Policy 5.4.4 To recognise Kai Tahu's interests in Otago's lakes and rivers by promoting opportunities for their involvement in resource consent processing.*
- 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.*
- 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:*
- (a) Aesthetic values associated with the lake or river; and*
 - (b) Recreational opportunities provided by the lake or river, or its margins.*

The proposed activity, as amended by the recommended conditions, will avoid adverse effects on the values of the Kawarau River and the Clutha River/Mata Au as specified in Schedules 1A 1AA, 1B, 1C and 1D. While adverse effects on the natural character and amenity values will not be avoided at times of low flow, these values are not significant and the effects will be minimal. High flows will not be affected and adverse effects on channel morphology will be avoided. To that extent, the natural character of Long Gully will be maintained. No lawful water users or recreational users will be affected.

- 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.*
- 6.4.2A *Where an application is received to take water and Policy 6.4.2(b) applies to the catchment, to grant from within primary allocation no more water than has been taken under the existing consent in at least the preceding five years, except in the case of a registered community drinking water supply where an allowance may be made for growth that is reasonably anticipated.*

As discussed in Section 7.3 of this report, 95 percent of the time the Applicant has only historically accessed up to 44 L/s while they were entitled to take up to 56 L/s at all times. In accordance with policy 6.4.2A it is recommended that only the amount historically used, being 44 L/s, be granted. The Applicant's proposed 520,000 m³/year is less than what has historically been taken and is considered efficient for the intended purpose of use, taking into consideration the local climate, soils and crops. The Applicant employs efficient irrigation methods and the conveyance methods are considered to be acceptable for the recommended term of 15 years.

- 6.4.12 *To promote, establish and support appropriate water allocation committees to assist in the management of water rationing and monitoring during periods of water shortage.*
- 6.4.12A *To promote, approve and support water management groups to assist the Council in the management of water by the exercise of at least one of the following functions:*
- (a) *Coordinating the take and use of water authorised by resource consent; or*
 - (b) *Rationing the take and use of water to comply with relevant regulatory requirements; or*
 - (c) *Recording and reporting information to the Council on the exercise of resource consents as required by consent conditions and other regulatory requirements, including matters requiring enforcement.*
- 6.4.12B *To manage water rationing amongst water takes, Council may either*
- (a) *Support establishment of a water management group; or*
 - (b) *Establish a water allocation committee.*
- Council may also instigate its own water rationing regime or issue a water shortage direction.*
- 6.4.12C *Where appropriate, to include in water permits to take water a condition that consent holders comply with any Council approved rationing regime.*
- 6.4.13 *To restrict the taking of water in accordance with any Council approved rationing regime.*
- 6.6.0 *To promote and support development of shared water infrastructure.*
- 6.4.0B *To promote shared use and management of water that:*
- (a) *Allows water users the flexibility to work together, with their own supply arrangements; and*

- (b) *Utilises shared water infrastructure which is fit for its purpose.*

Water Management Groups are voluntary arrangements that provide flexibility for two or more consent holders to cooperate in exercising their consents without the added formality associated with a water allocation committee. As LGRSI are the only water users within the Long Gully catchment, management by water allocation committee or group is not necessary. LGRSI operates in a similar manner to a water management group, sharing infrastructure among its 14 water users. No conditions regarding rationing regimes or water allocation committees are considered necessary as the consent alone should ensure appropriate use of water for a single user.

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

As discussed in Section 7.6, the proposed point of take is the nearest practicable source. It is noted that the Kawarau River provides an alternative water source, and the taking of water from here would be supported by Fish and Game. However, ongoing siltation issues in this area raise concerns about the viability of a long-term take from the Kawarau River. Furthermore, establishing the required infrastructure to exercise a take from the Kawarau River would be impractical and cost prohibitive.

- 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/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.*

- 6.4.2 *To define the primary allocation limit for each catchment, from which surface water takes and connected groundwater takes may be granted, as the greater of:*

- (a) *That specified in Schedule 2A, but where no limit is specified in Schedule 2A, 50% of the 7-day mean annual low flow; or*
(b) *The sum of consented maximum instantaneous, or consented 7-day takes of:*
(i) *Surface water as at: 19 February 2005 in the Welcome Creek catchment; or 7 July 2000*
(ii) *Connected groundwater as at 10 April 2010,*
less any quantity in a consent where:
(1) *In a catchment in Schedule 2A, the consent has a minimum flow that was set higher than that required by Schedule 2A.*
(2) *All of the water taken is immediately returned to the source water body.*
(3) *All of the water being taken had been delivered to the source water body for the purpose of the subsequent take.*
(4) *The consent has been surrendered or has expired (except for the quantity granted to the existing consent holder in a new consent).*
(5) *The consent has been cancelled (except where the quantity has been transferred to a new consent under Section 136(5)).*

(6) *The consent has lapsed.*

6.4.2AA *Where Policy 6.4.2A applies and, under the existing consent, water was usually taken at flows above the minimum flow calculated for the first supplementary allocation block for that catchment, to consider granting the new resource consent to take water as supplementary allocation.*

As discussed in Section 7.2 of this report, this application to take surface water has primary allocation status and is not subject to a minimum flow.

6.4.4 *For existing takes outside Schedule 2A catchments, minimum flows, for the purpose of restricting primary allocation takes of water, will be determined after investigations have established the appropriate minimum flows in accordance with Method 15.9.1.3. The new minimum flows will be added to Schedule 2A by a plan change and subsequently will be applied to existing takes in accordance with Policy 6.4.5(d). For new takes in a catchment outside Schedule 2A, until the minimum flow has been set by a plan change, the minimum flow conditions of any primary allocation consents will provide for the maintenance of aquatic ecosystems and the natural character of the source water body.*

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:*

- (a) In the case of new takes applied for after 28 February 1998, upon granting of the consent; and*
- (b) In the case of any resource consent to take surface water from within the Taieri above Paerau and between Sutton and Outram, Welcome Creek, Shag, Kakanui, Water of Leith, Lake Hayes, Waitahuna, Trotters, Waianakarua, Pomahaka and Lake Tuakitoto catchment areas as defined in Schedule 2A, upon the operative date of this Plan subject to the review of consent conditions under Sections 128 to 132 of the Resource Management Act; and*
- (c) In the case of any existing resource consent to take surface water from the Manuherikia catchment area (upstream of Ophir) and the Taieri catchment areas Paerau to Waipiata, Wapiata to Tiroiti, 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; and*
- (d) In the case of any existing resource consent to take surface water within a catchment area not specified in Schedule 2A, upon the establishment of a minimum flow set for the water body by a plan change, subject to the review of consent conditions 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.*

No minimum flow has currently been established for the Long Gully, nor the Kawarau or Clutha River/Mata Au catchments. It is recommended that a review condition is imposed to enable a minimum flow condition to be applied if a minimum flow is set via a plan change in accordance with Policies 6.4.4 and 6.4.5 or relevant policies in any future Regional Plan.

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.*

A residual flow has been considered, however, it is concluded that a residual flow will have little ecological benefit. In terms of natural character, Long Gully is naturally ephemeral and a while

the take will exacerbate this ephemerality, the effects on the natural character of Long Gully are considered to be acceptable within the environmental context.

6.4.16 In granting resource consents to take water, or in any review of the conditions of a resource consent to take water, to require the volume and rate of take to be measured in a manner satisfactory to the Council unless it is impractical or unnecessary to do so.

The Applicant has proposed to continue measuring the take using a water meter with the data recorded electronically using a datalogger and sent to Council via telemetry. A recommended condition of consent will ensure that this is maintained. It is noted that the continued monitoring of the takes satisfies the relief sought in the submissions from Aukaha and TAMI.

6.4.18 Where a resource consent for the taking of water has not been exercised for a continuous period of 2 years or more, disregarding years of seasonal extremes, the Otago Regional Council may cancel the consent.

The proposed water metering condition will allow the Council to monitor the rate and volumes of take, and ensure the water is being used efficiently. Should metering show the consent has been unexercised in accordance with this policy, the consent may be cancelled. An advice note to this effect has been recommended.

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.*

Policy 6.4.19 is particularly important for determining the duration of the consent. Further discussion around this policy and the consent term is provided in Section 13.

6.6.2 To promote the storage of water at periods of high water availability through:

- (a) The collection and storage of rainwater; and*
- (b) The use of reservoirs for holding water that has been taken from any lake or river.*

The Applicant has a number of small storage reservoirs along the water race. These are used to better utilise water supply, consistent with this policy.

Overall, as amended by the recommended conditions, the application is consistent with the provisions of the RPW.

7.15 Proposed Plan Change 7 (Water Permits)

The objective, policies and rules in PPC7 establish an interim planning and consenting framework to manage freshwater for the transition from deemed permits to RMA water permits while a long-term sustainable framework is prepared. PPC7 has been notified to implement the

recommendations of the Minister for the Environment⁷ following Professor Skelton's investigation of freshwater management and allocation functions at Otago Regional Council.⁸

Professor Skelton's report and the Minister's recommendations both highlighted inadequacies of the current planning framework in giving effect to the higher order documents, in particular the NPS-FM. While the comprehensive overhaul of the ORC planning framework is underway, the Minister considered that there was an urgent need to ensure that an interim framework is in place between now and 31 December 2025. In his recommendation to ORC the Minister stated:

"This is necessary to manage approximately 400-600 future consent applications in over allocated catchments. The possibility of up to 600 consents being granted under the current planning and consenting framework is problematic. I understand that around 70 per cent of ORC's currently issued water permits are for durations of 25-35 years, with various expiry dates. This includes over 50 permits that expire in 2050 or later, eight of which are 35 year permits issued this year. I am advised that there is a strong expectation from deemed and RMA water permit holders that their new consents will be for similarly long terms, and that the Council is likely to come under strong pressure to meet these expectations. In my view, long terms for these new consents would be unwise, as they would lock in unsustainable water use, inhibiting the council from effectively implementing the outcomes of its intended new RPS and LWRP."

In response to Professor Skelton highlighting the importance of having robust interim measures in place to provide for short-term consents until the new regional policy statement and land and water regional plan are completed, the Minister formally recommended, under section 24A of the RMA that ORC:

Prepare a plan change by 31 March 2020 that will provide an adequate interim planning and consenting framework to manage freshwater up until the time that new discharge and allocation limits are set, in line with the requirements in the National Policy Statement for Freshwater Management.

The Minister encouraged ORC to consider a narrow plan change that provides for a relatively low cost, and fast issuing of new consents on a short-term basis, as an interim measure until sustainable allocation rules are in place. These recommendations are reflected in Objective 10A.1.1 of PPC7 which provides:

Objective 10A.1.1

Transition toward the long-term sustainable management of surface water resources in the Otago region by establishing an interim planning framework to manage new water permits, and the replacement of deemed permits and water permits to take and use surface water (including

⁷ Letter from David Parker (Minister for the Environment) to Otago Regional Council Councillors regarding the Minister's investigation of freshwater management and allocation functions at the Otago Regional Council (18 November 2019).

⁸ Peter Skelton "Investigation of freshwater management and allocation functions at Otago Regional Council: (report to the Minister for the Environment, November 2019).

groundwater considered as surface water) where those water permits expire prior to 31 December 2025, until the new Land and Water Regional Plan is made operative.

As this application is for a water permit to replace a deemed permit, Policies 10A.2.1 and 10A.2.3 are relevant and implement this objective. Policy 10A.2.2 is not applicable.

Policy 10A.2.1

Irrespective of any other policies in this Plan, avoid granting resource consents that replace deemed permits, or water permits to take and use surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) where those water permits expire prior to 31 December 2025, except where:

- a. The deemed permit or water permit that is being replaced is a valid permit; and*
- b. There is no increase in the area under irrigation, if the abstracted water is used for irrigation; and*
- c. There is no increase in the instantaneous rate of abstraction; and*
- d. Any existing residual flow, minimum flow or take cessation condition is applied to the new permit; and*
- e. There is a reduction in the volume of water allocated for abstraction.*

Policy 10A.2.3

Irrespective of any other policies in this Plan concerning consent duration, only grant new resource consents that replace deemed permits, or resource consents that replace water permits to take and use surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) where those water permits expire prior to 31 December 2025, for a duration of no more than six years, except where Rule 10A.3.2.1 applies and:

- a. The activity will have no more than minor adverse effects (including no more than minor cumulative effects) on the ecology and the hydrology of the surface water body (and any connected water body) from which the abstraction is to occur; and*
- b. The resource consent granted will expire before 31 December 2035.*

The objective in PPC7 requires a ‘transition’ toward long-term sustainable management of surface water. This relates to the management of surface water generally and the issues relating to large quantities of water being allocated to deemed permits or historic water permits (pre-RMA). Transition insinuates a process or period of changing which through the preceding policies and rules is achieved through limiting the duration of consents and thereby reducing risk for water to be allocated for a long duration under the current framework. I have considered these policies further below and in Section 13 of this report.

Policy 10A.2.1, provides strong direction to ‘avoid’ granting consent except where the provisions in (a) – (e) are met. As confirmed in the *King Salmon*⁹ case, the word ‘avoid’ takes its ordinary meaning of ‘not allow’ or ‘prevent the occurrence of’. The use of the word ‘avoid’ in this policy is deliberate and it is also deliberately different to the wording in Policy 10A.2.3 which states ‘only grant’. In respect to Policy 10A.2.1, it directs that the Council must refuse the consent, unless all of the provisions of (a) – (e) are met. In relation to these matters, the water permit that is to be replaced is ‘valid’; there is no increase to the area of irrigation; there is no increase to the instantaneous rate of take; there was no existing residual or minimum flow on the current water

⁹ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38 (King Salmon).

permit and there is a reduction in the volume of water allocated for abstraction. As the application meets these conditions, I consider granting of the application would be consistent with this policy.

Policy 10A.2.3 applies irrespective of any other policies concerning consent duration. It directs that new resource consents to replace deemed permits only be granted for a duration of no more than 6 years except where the activity will have no more than minor adverse effects (including no more than minor cumulative effects) on the ecology and the hydrology of the surface water body (and any connected water body) from which the abstraction is to occur. In that case a consent may be granted with an expiry of up to 3 December 2035. The continuation of the activity is not likely to result in adverse effects that are more than minor. However, notwithstanding the adverse effects, the Applicant has sought a consent term of 25 years and the application is contrary to this policy.

The activity would be a non-complying activity under the notified plan in accordance with rule 10A.3.2.1. A non-complying activity status introduces the most onerous test for a consent application being the Section 104D 'gateway' test. This being that the consent authority may only grant consent if the application is not contrary to provisions of all planning documents or causes a no more than minor adverse effect. Given this application was lodged prior to the notification of PPC7 it retains the discretionary activity status determined by the operative RPW. I therefore will give no further consideration to this proposed rule.

As PPC7 has been notified, regard must be had to its provisions. However, this does not necessarily mean giving full effect to its context. In terms of weight to be applied to the provisions of a proposed Plan, the following has been distilled from case law and is relevant for the decision maker to consider:

- The extent that it has progressed through the plan-making process¹⁰;
- The extent that the proposed measure has been subject to independent testing or decision making¹¹;
- Circumstances of injustice¹²;
- The extent to which a new measure, or the absence of one, might implement a coherent pattern of objectives and policies in a plan¹³; and
- Whether there has been a significant change in Council policy and the new provisions are in accordance with Part 2 of the RMA¹⁴.

I consider that while the provisions are in their initial stages of the plan making process, they are particularly directive (use of 'avoid') and are a significant change from the operative provisions of the RPW. As these provisions have been proposed in response to the Minister's recommendations that I have set out above, following an independent investigation undertaken

¹⁰ *Queenstown Central Ltd v Queenstown Lakes District Council* [2013] NZHC 815 at [9].

¹¹ *Hanton v Auckland City Council* [1994] NZMRA 289 (PT).

¹² *Keystone Ridge Ltd v Auckland City Council* (HC Auckland, AP24/01, 3 April 2001) at [16] and [37]; *Mapara Valley Preservation Society Incorporated v Taupo District Council* EnvC Auckland A083/07, 1 October 2007, at [51].

¹³ *Keystone Ridge Ltd v Auckland City Council* (HC Auckland, AP24/01, 3 April 2001) at [16] and [37]; *Mapara Valley Preservation Society Incorporated v Taupo District Council* EnvC Auckland A083/07, 1 October 2007, at [51].

¹⁴ *Keystone Ridge Ltd v Auckland City Council* (HC Auckland, AP24/01, 3 April 2001) at [16].

by Professor Skelton with a particular focus on the management of freshwater, I consider that they better achieve the purpose and principles of the Act and the NPS-FM than current operative provisions.

Water permits granted under the current operative planning provisions have the potential to frustrate the new limits imposed in the new regional plan for land and water resources that is scheduled to be notified by December 2023, and made operative by December 2025. I recognise that PPC7 is only an interim step to achieving the purpose of the RMA and giving full effect to the NPS-FM, however as set out in the section 32 report for PPC7, it is a critical measure in order to achieve this purpose in a timely manner and ensures the current planning framework is more in accordance with Part 2 of the RMA in the interim period.¹⁵ Further, PPC7 implements a coherent pattern of objectives and policies as it is designed to be a standalone consenting regime for replacement deemed permits and water permits expiring before 31 December 2025.

While PPC7 is in its infancy and is yet to be tested through a hearing, for the above reasons I consider more weight than usual should be afforded to its provisions. I acknowledge that this application was received by ORC several years before the notification of the plan change and the Applicant has not had the benefit of the controlled activity pathway to obtain a relatively low cost, albeit short term, consent under PPC7. However, the weight to be afforded to the matters under s104 should be determined at the time of consideration of the application.

7.16 Section 104(1)(c) - Any other matters

The Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008

The Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 - The Cry of the People, Te Tangi a Taura is considered to be a relevant other matter for the consideration of this application. This is because the RPW is yet to be amended to take into account this Plan and this Plan expresses the attitudes and values of the four Rūnanga Papatipu o Murihiku – Awarua, Hokonui, Ōraka/Aparima and Waihōpai.

The following objectives and policies are of most relevance to this application:

- Adopt the precautionary principle when making decisions on water abstraction resource consent applications, with respect to the nature and extent of knowledge and understanding of the resource.
- Support and encourage catchment management plans, based on the principle of *ki uta ki tai*, to manage the cumulative impacts of water abstractions in a given area.
- Require that scientifically sound, understandable, and culturally relevant information is provided with resource consent applications for water abstractions, to allow Ngāi Tahu ki Murihiku to fully and effectively assess cultural effects.
- Recommend, as a condition of consent, that any application for irrigation puts in on-farm rainwater holding facilities, to help with dairy washdown and irrigation.
- Encourage the installation of appropriate measuring devices (e.g. water meters) on all existing and future water abstractions, to accurately measure, report, and monitor volumes of water being abstracted, and enable better management of water resources.

¹⁵ Section 32 Evaluation Report for PPC7 dated 18 March 2020, p 18.

- Advocate for durations not exceeding 25 years on resource consents related to water abstractions.
- Require that Ngāi Tahu are provided with the opportunity to participate through pre hearing meetings or other processes in the development of appropriate consent conditions including monitoring conditions to address our concerns.
- Avoid adverse effects on the base flow of any waterway, and thus on the mauri of that waterway and on mahinga kai or taonga species.
- Ngāi Tahu's right to development, as per the Treaty of Waitangi, must be recognised and provided for with respect to water allocation from freshwater resources.
- Encourage water users to be proactive and use water wisely. To encourage best practice and efficient use of water, particularly in terms of:
 - sustainable irrigation design, delivery and management;
 - making best use of available water before water levels get too low;
 - reducing the amount of water lost through evaporation by avoiding irrigating on hot windy days.
- Consideration of consent applications for water abstractions should have particular regard to questions of:
 - how well do we understand the nature and extent of the water resource;
 - how well can we monitor the amount of water abstracted;
 - whether land capability (e.g. soil type, vulnerability of underlying groundwater resources) matches the land use enabled by irrigation;
 - what might happen in the future (e.g. rainfall and recharge of aquifers, climate change).
- Applications for water abstractions may be required to justify the quantities of water requested. Information may need to be provided to Te Ao Mārama Inc. regarding the proposed water use per hectare, estimated water losses, stocking rates, and the level of efficiency for the scheme. This will enable iwi to put the quantity of water sought in context, and ensure that a test of reasonableness can be applied to consents.
- Require catchment based cumulative effects assessments for activities involving the abstraction of water.
- The establishment of environmental flow regimes must recognise and provide for a diversity of values, including the protection of tangata whenua values.
- Ensure that environmental flow allocation and water management regimes for rivers recognise and provide for the relationship between water quality and quantity.
- Avoid compromising fisheries and biodiversity values associated with spring fed creeks and rivers for the purposes of water abstractions.

The application has been assessed to be in general accordance with this Plan for the following reasons:

- LGRSI have applied for a term of 25 years.
- The recommended rates of take are consistent with historic use.
- Efficient irrigation methods are employed and the seasonal volume sought and recommended is considered efficient for the proposed uses.
- The take is currently monitored in accordance Resource Management Regulations and conditions of consent will ensure that this is maintained.

- LGRSI are the only water users on Long Gully and effects can be appropriately managed by review conditions.
- Cumulative effects have been considered and are unlikely to be more than minor or require any specific mitigation.

The precautionary approach promoted by this Plan is particularly relevant given the inadequacy of the current planning framework. Fish and Game, also promote a precautionary approach in their submission on the application as they consider there to be a lack of information around the natural state of flows in Long Gully. All submitters have sought that the application be subject to a 6 year term. However, given the level of effect of the proposal, I consider a 15 year term to be appropriate. The use of review conditions provides a suitably precautionary measure to deal with unforeseen adverse effects within that term.

In addition to the above, Te Ao Marama were given the opportunity to be involved in the process through being identified as an affected party. Te Ao Marama submitted in opposition to the application and their submission has been considered. The relief sought has been adopted in part and has informed this recommendation.

The Kai Tahu ki Otago Natural Resource Management Plan 2005

The Kai Tahu ki Otago Natural Resource Management Plan 2005 (“**NRMP**”) is considered to be a relevant other matter for the consideration of this application. This is because the RPW is yet to be amended to take into account this Plan and this Plan expresses the attitudes and values of the four Papatipu Rūnaka: Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga. The following objectives and policies are of most relevance to this application:

- To require that resource consents applications seek only the amount of water actually required for the purpose specified in the application.
- To require that all water takes are metered and reported on, and information be made available upon request to Kai Tahu ki Otago.
- To oppose the granting of water take consents for 35 years.
- To encourage those that extract water for irrigation to use the most efficient method of application.
- To discourage over-watering.

The granting of this consent with the recommended term and conditions would be wholly consistent with the objectives and policies of the NRMP. Aukaha on behalf of local runanga were considered an affected party to the application and lodged a submission in opposition to it. This submission has been given due consideration and has influenced the recommendations in this report. While Aukaha sought that the term was brought back to 6 years, I do not consider such a term to be appropriate in light of the effects of the application and the current planning considerations.

Report by Professor Skelton and Ministers Recommendation

Professor Peter Skelton was engaged by the Hon David Parker, Minister for the Environment (the Minister) to investigate whether the ORC is adequately carrying out its functions under section 30(1) of the RMA in relation to freshwater management and allocation, particularly the implementation of the NPS-FM.

The October 2019 report concluded that the current planning framework in Otago is not fit for purpose to appropriately consider resource consent applications for new water permits before the expiry of deemed permits in October 2021. It also identified the need for an accelerated full review of the Water Plan (to notify a new Land and Water Plan by December 2023) and a full review of the Regional Policy Statement (to notify by November 2020).

To bridge the gap between the expiry of deemed permits in Otago in 2021 and other water permits expiring prior to a full plan review, and when a new Regional Policy Statement and Land and Water Plan for Otago will be operative, the Minister has recommended an interim change to the Water Plan. This has recently been notified as Proposed Plan Change 7 (Water Permits) (PPC7).

It is appropriate to consider Professor Skelton's Report and the Minister's recommendation as an "other matter" under section 104(1)(c) of the RMA. The Minister's recommendation, in response to the report, provides clear direction in terms of the inadequacy of the current planning framework and methods to address it. PPC7 is the direct response to that recommendation and directs that short consent terms for deemed permit replacements. While the weight to be afforded to this matter is not determinative, in my opinion, considerable weight should be given to the general direction to not issue consents that have the potential to undermine the implementation of a fit-for-purpose planning framework for the management of water abstraction activities.

Reducing the maximum instantaneous rate of take and limiting the term of the consent to 15 years, as recommended, will avoid any potential for this consent to hinder the implementation of any future allocation limits long into the future. On that basis, I consider that the recommended consent term of 15 years is appropriate and consistent with the Minister's recommendations.

There are no other matters that the Consent Authority considers relevant and reasonably necessary to determine the application.

8. Section 104(2A) Value of Investment

When considering an application affected by Section 124 of the Act, the Council must have regard to the value of the investment of the existing consent holder. While the Applicant has not provided specific evidence of the value of investment, the existing water race, distribution infrastructure and irrigation systems can be seen as the result of significant investment. Further investment will be required for ongoing use, maintenance and recommended upgrading of this infrastructure.

The abstraction provides for various commercial activities including high value horticulture that would arguably not be viable if the water take was to cease. It is clear from the application that several businesses benefit from the water take and have a vested interest in it. While the efficiency of the water conveyance would benefit from further investment in the form of pipelines and/or lined water races, the current configuration is considered to be acceptable in the context of the recommended term.

The value of investment and the viability of businesses and the social and economic well-being of people has been given consideration in determining the recommended consent term.

9. Section 124B Applications by Existing Holders of Resource Consents

The following criteria must be considered when a person who holds an existing resource consent makes an application within Section 124 timeframes:

- (a) the efficiency of the person's use of the resource; and
- (b) the use of industry good practice by the person; and
- (c) if the person has been served with an enforcement order not later cancelled under section 321, or has been convicted of an offence under section 338,
 - (i) how many enforcement orders were served or convictions entered; and
 - (ii) how serious the enforcement orders or convictions were; and
 - (iii) how recently the enforcement orders were served or the convictions entered.

Assessment of the Applicant's historic water use against efficiency guidelines demonstrates that the Applicant has historically used water efficiently. A review of the Applicant's compliance history shows that no enforcement orders have been issued to them and they have not been convicted.

10. Part 2 of the Act

Under Section 104(1) of the RMA, a consent authority must consider resource consent applications "subject to Part 2" of the RMA, specifically, Sections 5, 6, 7 and 8.

The Court of Appeal has recently clarified how to approach the assessment of "subject to Part 2" in Section 104(1). In *R J Davidson*, the Court of Appeal found that (in summary):¹⁶

- a. Decision makers must consider Part 2 when making decisions on resource consent applications, where it is appropriate to do so. The extent to which Part 2 of the RMA should be referred to depends on the nature and content of the planning documents being considered.
- b. Where the relevant planning documents have been prepared having regard to Part 2 of the RMA, and with a coherent set of policies designed to achieve clear environmental outcomes, consideration of Part 2 is not ultimately required. In this situation, the policies of these planning documents should be implemented by the consent authority. The consideration of Part 2 "would not add anything to the evaluative exercise" as "genuine consideration and application of relevant plan considerations may leave little room for Part 2 to influence the outcome". However, the consideration of Part 2 is not prevented, but Part 2 cannot be used to subvert a clearly relevant restriction or directive policy in a planning document.
- c. Where it is unclear from the planning documents whether consent should be granted or refused, and the consent authority has to exercise a judgment, Part 2 should be considered.

¹⁶ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

- d. If it appears that the relevant planning documents have not been prepared in a manner that reflects the provisions of Part 2, the consent authority is required to consider Part 2.

Given the clear need and intention of the Council to promote a revised water management framework, I consider it appropriate to assess this application against Part 2 of the RMA.

The taking of water from the Long Gully for the purposes proposed, and subject to the recommended conditions and recommended duration, is consistent with the purpose and principles of the Act, as outlined in Section 5. The use of water for production activities, including high value horticulture, will provide for the social and economic wellbeing of people and the community. The recommended conditions will safeguard the life-supporting capacity of the waterway and the water race and mitigate adverse effects of the activity on an ongoing basis. As such, the natural and physical resources of the waterway will meet the reasonably foreseeable needs of future generations.

The relevant matters under section 6 of the Act, have been recognised and provided for. The natural character of Long Gully has been recognised as intermittent and while the proposal will increase its intermittency, natural character will be preserved (section 6(a)). The proposal will not affect any outstanding natural features or landscapes (section 6(b)) and Long Gully does not support any significant habitats of indigenous fauna that require protection (section 6(c)). Public access will be maintained (section 6(d)). The relationship of Maori and their culture and traditions with water has been recognised through the identification of iwi as affected parties. The submissions of these parties have been considered and the recommendations of this report have provided for the relief sought where practicable (section 6(e)).

Particular regard has been given to the efficient use and development of natural and physical resources (section 7(b)) and the protection of habitat of trout (section 7(h)). With the recommended conditions, particularly around race management and fish screening, I consider the application is consistent with the “other matters” of Section 7 of the Act. The proposed activity is not inconsistent with the principles of the Treaty of Waitangi.

Overall, the application as amended by the recommended conditions is considered to be consistent with Part 2 of the Act.

11. Section 108 and 108AA of the Act

The appended draft water permit contains the conditions that are recommended in accordance with Sections 108 and 108AA of the Act and have generally been discussed through this report. In summary,

- Condition 1 ensures the activity is carried out in accordance with the application lodged and assessed.
- Condition 2 ensures that there are not two active consents for the same activity and avoids confusion for compliance purposes.
- Condition 3 takes into consideration the uses of water proposed and volumes applied for and the historical access to water at this site and ensures that the quantity of water granted to take is no more than that required for the purpose of use.
- Conditions 4 and 5 ensure that fish intake and entrapment is avoided outside of the water race and dams.
- Condition 6 ensures that the water race is managed in a way that provides habitat for trout.

- Condition 7 ensures monitoring of the consent is undertaken in accordance with the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010.
- Condition 8 ensures that evidence of reasonable use is provided to Council throughout the duration of the consent.
- Condition 9 ensures that accurate records of frost fighting water usage (high use) are maintained.
- Condition 10 ensures irrigation continues to be undertaken in an efficient manner and remains and efficient use of water.
- Condition 11 ensures that the consent can be reviewed when appropriate in accordance with Sections 128 and 129 of the Act including when allocation limits are set in a regional plan.

12. Recommendation

12.1 Reason for Recommendation

It is recommended that this consent application is approved subject to the appended conditions and for the recommended term for the following reasons:

- a. The adverse effects are no more than minor as the recommended conditions, including race management and fish screening, will avoid, remedy or mitigate adverse effects.
- b. The activity is consistent with the objectives and policies of the RPW and PPC7, specifically in relation to the efficient use proposed and the alignment of allocation with historic use.
- c. The activity is consistent with the Part 2 of the Act.
- d. The application is consistent with the NPS-FM as the proposed take is not causing any further allocation and is reducing current allocation as the recommended instantaneous rate of take is less than that currently consented.
- e. The proposal will not hinder the implementation of an NPS-FM compliant Plan as future allocation limits can be imposed upon renewal of this consent or periodically as provided for by the recommended review conditions.
- f. No matters have arisen in the assessment of the application that would indicate the application should have been publicly notified.

13. Term of Consent (Section 123)

The Applicant initially requested a term of 35 years, however amended this to 25 years following consultation with Aukaha and TAMI. The Applicant has sought this term to provide sufficient surety and confidence for its shareholders business management and investment decisions. All submitters raised concerns around the inadequacy of the current planning framework and in light of the direction provided in PPC7, I consider that a term of 15 years is appropriate. In reaching this recommendation I have considered the following factors, distilled from case law, which are relevant to the Council's determination of the duration of a resource consent:

- The duration of a resource consent should be decided in a manner which meets the RMA's purpose of sustainable management;
- Whether adverse effects would be likely to increase or vary during the term of the consent;

- Whether there is an expectation that new information regarding mitigation would become available during the term of the consent;
- Whether the impact of the duration could hinder implementation of an integrated management plan (including a new plan);
- Whether review conditions are able to control adverse effects;
- Whether the relevant Plan addresses the question of the duration of a consent;
- The life expectancy of the asset for which consents are sought;
- Whether there was significant capital investment in the activity/asset; and
- Whether a particular period of duration would better achieve administrative efficiency.

Policy 6.4.19 of the RPW addresses consent duration for consents to take and use water. While it does not recommend actual durations, it directs the consideration of the following criteria:

- (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 the adaptive management of the take and use of water;
- (f) The value of the investment in infrastructure; and
- (g) Use of industry best practice.

In the case of the proposed abstractions activities, the purposes are enduring, being irrigation, stock water, frost fighting, commercial use and domestic use (criteria (a)). There are no minimum flows or aquifer restriction levels that apply to the catchment (criteria (b)). Climatic variability is certain to occur but no detailed evidence of its relevance has been supplied (criteria (c)). Potential adverse effects, such as minimum flows, can be addressed through review conditions (criteria (d)). The Applicant has not proposed adaptive management (criteria (e)), although review conditions will allow allocation limits to be addressed in the future should the need arise. The Applicants have considerable investment that benefits from the water abstraction activities (criteria (f)). The irrigation methods employed are consistent with industry best practice and while the efficiency of conveyance could be improved, efficiency is considered to be acceptable in the context of the recommended term (criteria (g)).

As noted in Section 7.15, Policy 10A.2.3 of PPC7 directs that new consents to replace deemed permits only be granted for no more than 6 years except where there are no more than minor adverse effects (including cumulative effects) on the ecology and the hydrology of the surface water body (and any connected water body) from which the abstraction is to occur. This policy applies irrespective of any other policies in the Plan concerning consent duration (i.e. Policy 6.4.19). Considering this direction, granting the consent duration sought by the Applicants would be contrary to the provisions of PPC7. Given my conclusion that the adverse effects (including cumulative effects) on aquatic ecology and hydrology are no more than minor, a duration of 15 years would be consistent with Policy 10A.2.3 of PPC7. As discussed in Section 7.15 I consider that some, but not full weight should be given to PPC7 due to it recently being notified and not yet tested and the application already being in the system at the time of notification. While it is appropriate to give weight to Policy 6.4.19 of the RPW, I consider that weight should also be given the provisions of PPC7 as it responds to a ministerial direction to establish a fit-for-purpose planning framework.

In this instance, I consider that a 15 year consent term is appropriate on the basis that:

- The recommended rate of take and the annual allocation is less than the current consented limits;
- While PPC7 is at the beginning of the Plan-making process, the weight given to this will increase further through the process;
- PPC7 contains a coherent set of policies and is intended as a stand alone consenting regime and an interim step in giving full effect to the NPS-FM;
- While the application was lodged several years prior to the notification of PPC7 and was substantially through the consent process at the time of notification, the weight to be applied to relevant planning provisions is determined at the time of consideration of the application.
- The Applicant's level of investment in the water take is considerable and the surety of investment and business decision making would benefit from on a term longer than the 6 years that the submitters have sought;
- Progressive upgrading of the conveyance systems would be expected under a longer consent term such as the 25 year term sought by the Applicant and such requirements and costs to the Applicant are avoided under the recommended term.
- The adverse effects of the proposed take are no more than minor; and
- Unforeseen adverse effects can be managed by review conditions during the consent term.