

BEFORE THE CANTERBURY REGIONAL COUNCIL

IN THE MATTER OF

The Resource Management Act 1991

AND

IN THE MATTER OF

an application by **Lilybank Station Holdings Limited** filed under CRC071786 to take and use water from Station Stream for spray irrigation of up to 172 hectares at Lilybank Station, Lilybank Road, Lake Tekapo

REPORT AND DECISION OF HEARING COMMISSIONERS PAUL ROGERS,
MICHAEL BOWDEN, DR JAMES COOKE AND EDWARD ELLISON

PART B - SITE SPECIFIC DECISION

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1 INTRODUCTION

- 1.1 This is a decision on an application by **Lilybank Station Holdings Limited** (the applicant). It is one of many decisions we have made on 104 applications by various applicants for water permits and associated consents in the Upper Waitaki Catchment.
- 1.2 The decision should be read in combination with our Part A decision, which sets out our findings and approach to various catchment wide issues that are common to multiple applications. References to our Part A decision are made throughout this decision as appropriate.

2 THE PROPOSAL

- 2.1 The applicant proposes to take up to 100 litres per second (L/s) from Station Stream for the purpose of irrigating up to 172 ha at Lilybank Station. The proposed irrigation area includes land north of Lilybank Swamp, including the foothills adjacent to Station Stream and between Station Stream and Lilybank Lodge as shown in Figure 1 below. The intention of the applicant is to develop a links style golf course on the foothills and irrigate crops and pasture on the flats.
- 2.2 The application was originally made in the name of Lilybank Station Limited. However on 11 July 2008 Lilybank Station Limited went into liquidation. The application was transferred to Lilybank Station Holdings Limited, on the 24 July 2008. Since the change in ownership, there has been a greater focus on agricultural irrigation rather than development of the golf course, although the option to proceed with a golf course has been retained.

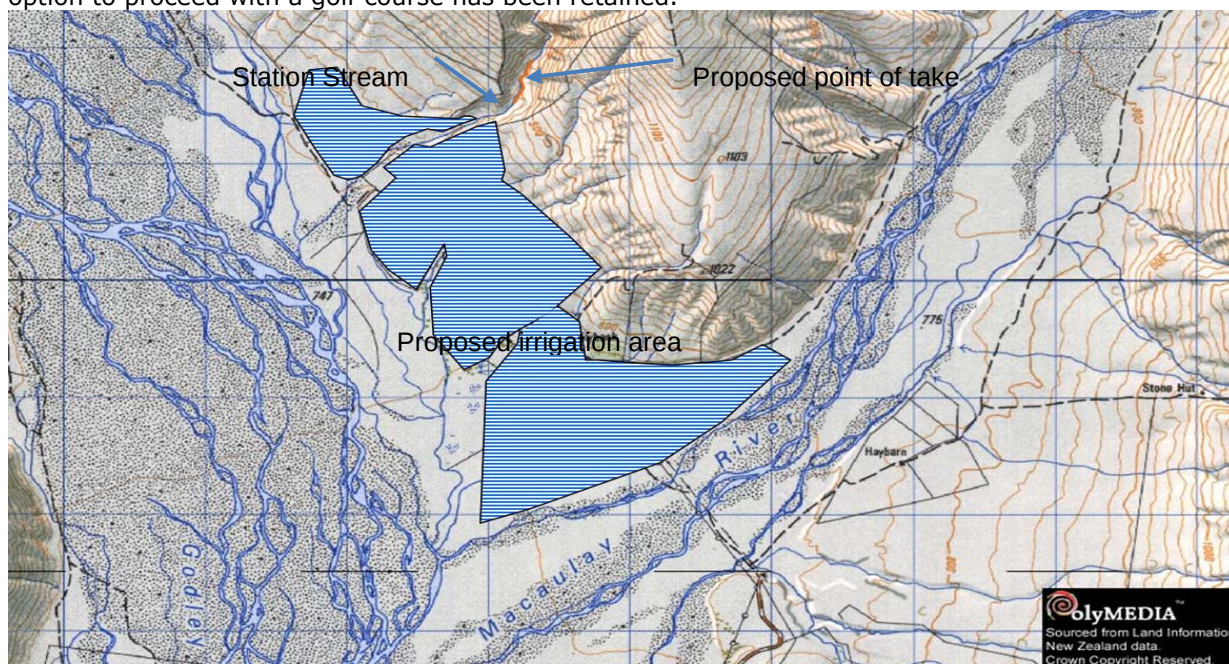


Figure 1. Map showing the location of the applicant's proposed irrigation area and proposed point of take in relation to Station Stream and the Macaulay and Godley Rivers.

- 2.3 According to the applicant the proposed pasture and crop irrigation scheme will provide security for the production of quality dry matter in the growing season that can then be made into winter feed. The intention of the applicant is to focus on increasing deer stock units with the proposed irrigation development. The applicant proposes to increase stock units to no more than 15 per ha (stocking rates are currently 4 per ha).
- 2.4 The applicant does not currently irrigate its property so this application is considered a new water take. Irrigation will occur by way of hard hose gun or pivot system. The system will likely use gravity to feed the down gradient areas, while booster pumping will be used for higher areas.
- 2.5 The applicant has applied for the following maximum rate and volume of take:
- (a) 100 litres per second; and

- (b) 60,480 cubic metres in any period of seven consecutive days; and
 - (c) 1,032,000 cubic metres between 1st July and the following 30th June.
- 2.6 In addition to these limits the applicant is also proposing a stepped reduction in the abstraction rate based on the flow rate of Station Stream as follows:
- (a) 100 L/s when the flow in Station Stream is above 420 L/s
 - (b) 75 L/s when the flow in Station Stream is between 396 to 420 L/s
 - (c) 50 L/s when the flow in Station Stream is between 371 and 395 L/s
 - (d) 25 L/s when the flow in Station Stream is between 346 and 370 L/s
 - (e) A 'managed minor take' between 321 to 345 L/s
 - (f) Cease abstraction when the flow in Station Stream falls at or below 320 L/s
- 2.7 The applicant proposes to measure flows in Station Stream downstream of the intake, at or about map reference I36:1259-2119. The Council currently operates a staff gauge and Trutrack automatic water level recorder at this location, which have been operational since 13 April 2006.

The application

- 2.8 The application is for a water permit to take and use surface water pursuant to section 14 of the RMA. Consent is required under the Waitaki Catchment Water Allocation Regional Plan (WCWARP), as discussed below.
- 2.9 The application (CRC071786) was lodged with the Canterbury Regional Council (the Council) on 14 December 2006. This application was publicly notified and there were a number of submissions that are referred to later in this decision. The application is for a new activity and requested a consent duration to 30 April 2025.

Modifications after notification

- 2.10 On 4 April 2008, the applicant advised that the irrigation command area would extend to include an area adjacent to the Macaulay River (included in Figure 1), although no more than 172 hectares would be irrigated at one time. The extended command area now totals approximately 407 ha. Re-notification was not undertaken because the Council considered that there were no adversely affected persons likely to submit on the amended application that had not already submitted.
- 2.11 The general principle for modifications after notification is that amendments are allowed provided they do not increase the scale or intensity of the activity or significantly alter the character or effects of the proposal. The key consideration is prejudice to other parties by allowing the change. In this case, we are satisfied that the change does not significant alter the intensity or effects of the proposal and that no party would be adversely affected by allowing the change.

Related consents and applications

- 2.12 Since December 2006 the applicant has lodged and been granted permits to construct a micro-hydroelectricity scheme on Station Stream. These permits were granted on the 14 October 2009 and include Land Use Consent CRC093264 (to install a submerged gallery), Water Permit CRC093265 (to take water for the hydro scheme) and Discharge Permit CRC093266 (to discharge excess water from the hydro scheme).
- 2.13 These permits allow the applicant to take up to 220 L/s from Station Stream and operate a 40 kilowatt generator. According to the conditions of the permits the water must be discharged back into Station Stream within 450 metres downstream of the point of take, which in effect creates a non-consumptive take.
- 2.14 If permit CRC071786 is granted the applicant intends to integrate the proposed irrigation intake into the micro-hydroelectricity intake. In the event this application (CRC071786) is unsuccessful, the applicant has advised that the micro-hydroelectricity scheme will operate as a stand-alone activity.

- 2.15 In addition to this application, land use consent CRC071785 was also applied for at the same time to allow the applicant to install a submerged gallery intake in the bed of Station Stream. However this application was withdrawn on 14 October 2009 as a consequence of the above hydro consents being granted.

3 DESCRIPTION OF THE ENVIRONMENT

- 3.1 Lilybank Station is a 2,246 hectare (ha) high country station comprising of 500 ha of gently sloping land, 400 ha of cultivated land with the remaining area being typical grazed high country land. According to the applicant, Lilybank Station currently runs approximately 5,000 stock units made up of approximately 70% deer, 25% beef cattle and 5% sheep
- 3.2 Station Stream is approximately 22 kilometres (km) from the Main Divide and drains the Razor Back Range and Sibbald Range, with a catchment area of 17.2km². Station Stream is a tributary of the Godley River, which in turn confluences with the Macaulay River before discharging into the northern end of Lake Tekapo.
- 3.3 Similar to other high country rivers, high stream flows occur in spring and early summer as a result of snowmelt, and during north-westerly rain events. Low stream flows occur in winter as a result of freezing, although in this case stream flows are continuous due to the steepness of terrain. According to the applicant the mean annual low flow (MALF) is 312 L/s, mean flow is 910 L/s, and the 5 Year 7 Day low flow is 262 L/s.
- 3.4 The applicant has advised that there is no other users of water on Station Stream although we note that the applicant was granted a non-consumptive take of 220 L/s on 14 October 2009 at the proposed point of take (as described above). Maria Bartlett (Ms Bartlett), the S42A report writer, also noted that there are no other consented takes within the headwater catchments of Lake Tekapo, including the Godley River and Macaulay River catchments.
- 3.5 Station Stream is defined as a High Natural Character water body in the WCWARP. Ms Bartlett also notes that The Godley River and Macaulay River have high scenic and natural appeal, high water quality, and are valued for their recreational uses and are identified as areas of national significance.
- 3.6 According to the applicant there are a number of small watercourses located within the area of proposed irrigation, but the only wetland (Lilybank Swamp) on the property is fenced from stock access.
- 3.7 The applicant has not identified depth to groundwater on their property. However Ms Bartlett noted that in 2008 the applicant installed two galleries approximately 4 metres deep within the proposed irrigation areas. These galleries intercepted groundwater at 1 metre and 0.9 metres below ground level, indicating a shallow groundwater presence.
- 3.8 The applicant provided a summary of the ecology that is supported by Station Stream and includes:
- (a) Rainbow trout, koaro and Canterbury galaxias are known to be present in Station Stream, and upland long-jaw galaxias, alpine galaxias, common bullies and upland bullies are likely to be present.
 - (b) The lower reach of Station Stream provides habitat for black stilt.
 - (c) Periphyton communities in Station Stream indicate good water quality.
 - (d) Macro-invertebrate communities in Station Stream indicate excellent water quality above the proposed intake site, with comparably lower quality in the downstream reach.
 - (e) Cool water temperatures, low specific conductance, pH close to neutral and relatively high water clarity.

4 PLANNING INSTRUMENTS

- 4.1 As discussed in our Part A decision, there is a wide range of planning instruments that are relevant under the RMA. This includes national and regional policy documents, along with regional and district plans. The key planning instruments relevant to this application are as follows:
- (a) Waitaki Catchment Water Allocation Plan (WCWARP);
 - (b) Natural Resources Regional Plan (NRRP);
 - (c) Proposed Canterbury Regional Policy Statement (PCRPS); and
 - (d) Canterbury Regional Policy Statement (CRPS)
 - (e) Mackenzie District Plan (MDP)
- 4.2 The provisions of these planning instruments critically inform our overall assessment of the application under s104(1)(b) of the RMA, as discussed later in this decision. In addition, the rules within the relevant planning instruments determine the status of the activity, as set out below.

Status of the activity

- 4.3 In our Part A decision we provide a detailed discussion of our approach to determining the status of activities. We now apply that approach to the current application.
- 4.4 This application was lodged after the WCWARP was made operative. The following rules from the WCWARP are applicable to this application:
- (a) Rule 2, clause (1) a – The applicant proposes to take up to 100 litres per second, which is approximately 31% of the mean annual low flow of Station Stream of 312 litres per second exceeding the allocation limit of 10% of mean annual low flow.
 - (b) Rule 6 – The proposed annual volume of 1,032,000 cubic metres is within the annual allocation limit of 275 million cubic metres for agricultural activities upstream of Waitaki Dam; and is within the annual allocation limit of 8 million cubic metres for agricultural activities upstream of Lake Tekapo outlet.
 - (c) Rule 16 – This is a Classifying rule, and due to non-compliance with Rule 2, this activity is non-complying.
- 4.5 Overall, the proposal is a **non-complying activity** under Rule 16 of the WCWARP and resource consent is required in accordance with section 14 of the RMA.

5 NOTIFICATION AND SUBMISSIONS

- 5.1 The application was publicly notified on 4 August 2007 and re-notified on 29 September 2007 after an error was found in the original notification. A total of 16 submissions were received, including:
- (a) 2 in support;
 - (b) 13 in opposition; and
 - (c) 1 neither in support nor opposition.
- 5.2 Table 2 is based on the relevant s42A reports and summarises those submissions that directly referenced the application. In addition to those listed, there were other submitters that presented evidence at the hearing that was relevant to this application. The relevant evidence from submitters is discussed in more detail later in this decision. Please note that all submissions hold equal importance, even if not specifically listed below.

Table 1. Summary of submissions on application CRC071786

Submitter	Reasons	Position
Fish & Game New Zealand – Central South Island Region	Need better flow statistics before granting consents in tributaries; Station Stream has clear water and high flows in spring/early summer attractive to trout	Oppose
Meridian Energy Limited	Need MIC shares & to comply with tranching arrangement; water quality effects; water metering; contrary to Part II of the RMA	Oppose
Department of Conservation	Application was deficient in assessment including effects on water quality, species habitat and the natural character of the river	Oppose
Royal Forest Bird and Game	Adverse effects have not been adequately investigated and assessed, in particular effects on natural character of rivers and their ecosystems, effects on water quantity and its effect on species, habitats and ecosystems, effects on flora and fauna, habitats and ecosystems due to changes in water quality	Oppose
Mackenzie Guardians	Effects on terrestrial ecology	Oppose

- 5.3 Overall the key issues of concern to the submitters were effects on ecosystems, water quality, allocation, minimum flows, natural character and landscape, efficiency and cultural values.

6 THE SECTION 42 REPORTS

- 6.1 A comprehensive officer report on the application and submissions was prepared by the Regional Council's planner (Ms Maria Bartlett). The report was pre-circulated in advance of the hearing and supported by a number of other specialist reports from the Council. Many of those reports considered catchment-wide issues and the reports prepared by Chris Glasson (landscape architect) and Dr Michael Freeman (dealing with cumulative water quality and cumulative landscape effects) we found more directly related to this application. We refer to the other specialist reports in detail in Part A of our Decision.

Ms Maria Bartlett

- 6.2 Ms Bartlett concluded that she is not satisfied that the actual and potential effects of the proposed activity in its current form are minor. In particular, Ms Bartlett stated there is uncertainty regarding effects on ecosystems, landscape, water quality, and efficiency of use, as discussed in more detail below.

Water Quality

- 6.3 Ms Bartlett stated that if the application is to be granted then a baseline of existing water quality needs to be established for Station Stream and other permanently flowing streams on the property. Ms Bartlett suggested that specific triggers and environmental standards, monitoring locations, frequency and methods need to be identified and set into consent conditions.
- 6.4 Ms Bartlett noted that Policy 32 WCWARP requires that there be no more than minor adverse effects on existing water quality as a result of the use of water. She also noted a number of submissions that identify water quality as a result of land use intensification as a concern, including those from Meridian Energy Limited (MEL), DoC, Royal Forest & Bird Protection Society, and Fish & Game New Zealand.
- 6.5 She noted the applicant was yet to advance the position in terms of clarifying mitigation with respect to protection of waterways within the irrigation command area through fencing or buffering zones.
- 6.6 She also noted with respect to groundwater that a shallower groundwater presence had been identified within the irrigation command area beneath the light soils of the property. She expressed the view that this increases the risk of contamination of groundwater from increased stocking rates and as a result of irrigation in excess of soil water holding capacity.
- 6.7 She did note that the applicant had undertaken some baseline sampling and indicated an

intention to undertake ongoing water sampling, which was likely to form part of the management plan for the property. She noted that such sampling would be most useful if tied to a condition proscribing actions to be taken or restricting activities if deterioration in water quality is detected. She was not satisfied the applicant had brought forward material to show that Policy 32 WCWARP could be supported, in that there would be no more than a minor effect on existing water quality if the application were approved.

Affect on flows and ecosystem values

- 6.8 The main issue that Ms Bartlett identified was that the proposed activity does not comply with Rule 2 WCWARP, which specifies an environmental flow and level regime for high natural character water quality bodies.
- 6.9 Ms Bartlett referred to Policy 32 WCWARP, which requires that abstraction have no more than a minor adverse effect on natural flow variability, Mauri, and ecosystems of indigenous species, habits of birds and fish, spawning sites of salmonids, and existing water quality.
- 6.10 She considered that the minimum flow proposed by the applicant, being the Mean Annual Low Flow (MALF), along with a stepped reduction in abstraction as the minimum flow is approached, would maintain some flow variability in the stream at times of low flow. She accepted that this would result in infrequent occurrences of low flows in the high demand period for irrigation, thus flow variability could be expected to be retained throughout the irrigation season.
- 6.11 She considered the assessment of effects provided by Dr Dean Olsen, noting that a reduction in flows would not adversely affect juvenile salmonids (which are likely to inhabit the stream) and some reduction in average water velocity may be more favourable to such juveniles. Lower velocity may also be favourable to invertebrates. According to Dr Olsen, the lower flow events and variability also provided a more suitable habitat for native species, which the reporting officer accepted.
- 6.12 In this regard, Ms Bartlett referred to comment provided by the Council's surface-water scientist, Dr Adrian Meredith, who noted that the needs of native species present in the stream could be met within the proposed flow regime. Dr Meredith noted the presence of Canterbury galaxis, likely to spawn in spring (October to December, inclusive). He also noted the presence of koaro, being expected to return from Lake Tekapo to the upper reaches of the stream with spawning in autumn (March to May, inclusive).
- 6.13 She also noted the concerns of the Department of Conservation (DoC) caused by an increase in stocking rates affecting unfenced riparian margins with the resultant risk to disturbance of breeding beds and trampling of nests, to decreased riparian stability due to stock trampling and reduced riparian vegetation, an increase in sedimentation in streams as a result of stock trampling, and decreased water quality as a result of nutrient inputs, reduction in indigenous plant communities due to browsing and trampling and resulting in increased weed invasion.

Landscape

- 6.14 In regards to irrigation of the foothills Ms Bartlett noted that it has been associated with establishment of a golf course, rather than irrigation for intensive pastoral use. Ms Bartlett acknowledged that visual effects of establishing a golf course in this location will be different to those from intensive grazing, however, it was not clear to her that such effects will be minor, without certainty about mitigation measures to be employed.
- 6.15 Ms Bartlett also advised that consideration should be given to establishing shelterbelts on the river margin, to contribute to natural character on the river, and that indigenous species, including shrubs, would be appropriate.
- 6.16 While Ms Bartlett agreed that the proposed irrigation area is already extensively cultivated, as stated by the applicant, she believed the introduction of irrigation infrastructure will further alter the landscape, in an area valued for its high scenic and natural appeal. She also considered that an increase in stocking rates as a result of irrigation would increase the visual impact of development in this location.

Efficiency of Use

- 6.17 Ms Bartlett was not satisfied that an annual volume of 1,032,000 is an efficient and effective use of the water resource. Ms Bartlett recommended an annual volume of 731,000 cubic metres

based on the irrigation of 172 ha at 425mm/ha/season. This application rate has been calculated in accordance with Policy 16 c (ii) (WQN9v2) of the WCWARP. (Refer to Applicant's Case for its comments on the proposed volume).

Chris Glasson

Visual impacts and landscape

- 6.18 Assessment undertaken by Chris Glasson (S42A writer for landscape issues), concluded that due to the close proximity of the site to the Godley and Macaulay Rivers as well as potential irrigation on the lower hill slopes, which would be clearly visible from the end of the public road and from both riverbeds, the adverse effects of the proposed irrigation would be moderate. Consequently, Mr Glasson recommended removing the proposed irrigation from the lower hill slopes to reduce the level of visual adverse effects to less than minor.
- 6.19 To further reduce the visual adverse effects Mr Glasson recommended a buffer distance of 100 metres from the Godley and Macaulay River margins. Ms Bartlett noted in her S42A report that the applicant has indicated a buffer of 600 metres from the main stem of the Macaulay River (extending only 20-30 metres from the river margin) and a 500 m buffer from Godley River.

Dr Michael Freeman

- 6.20 Dr Freeman in his report set out the legal and planning framework. He provided us an overview of the relevant planning instruments and he provided an assessment of the actual and potential cumulative environmental effects of the proposed activities from the point of view of cumulative water quality effects and cumulative landscape effects.

7 THE APPLICANT'S CASE

- 7.1 Legal counsel for the applicant, Mr Ewan Chapman, presented opening submissions covering all of the UWAG case and called the following witnesses:
- (a) Mr Bob Batty – planning issues
 - (b) Mr Andrew Craig – landscape
 - (c) Mr Buddy Mikaere – cultural issues
 - (d) Ms Haidee McCabe – irrigation and resource management consultant
 - (e) Dr Dean Olsen – ecological issues
 - (f) Mr David Boraman – hydrologist

Opening legal submissions

- 7.2 Mr Chapman presented opening legal submissions on behalf of the UWAG group but covered a broad range of issues. Many of the issues he raised are discussed in Part A of our Decision.

Mr Bob Batty – planning issues

- 7.3 Mr Batty's evidence was presented on behalf of all of the Upper Waitaki Applicant Group (UWAG) and consequently was broad in its ambit. We comment in greater detail on his evidence in Part A. However, we do record that he accepted the Consent Investigating Officer's view as to the status of the resource consent applications in every instance.
- 7.4 He was somewhat critical of the approach taken by the Consent Investigating Officers in that he thought it was generic, resulting in a circular effect given a finding by the Officers that there is a potential for a more than minor adverse effect on the environment and therefore, under that circumstance, a proposal cannot be consistent with objectives and policies relating to those matters in the relevant planning instruments.
- 7.5 He pointed out that rather, for non-complying activities, the issue is whether or not the proposal being considered is contrary to the relevant statements of objectives and policies in statutory plans in the sense of being repugnant to or opposed in basic intent to their desired outcomes.

- 7.6 He expressed his view that he endorsed the approach of Mr Kyle, in relation to his planning analysis and conclusions (which we refer to our Part A Decision and in other decisions we are issuing).
- 7.7 Mr Batty expressed the view that based on what the WCWARP provided for at page 12 (arising from the tenure review process), it was difficult to see how given that the WCWARP clearly anticipates the likely of additional irrigation in the Upper Waitaki, that applications could be seen as being repugnant to or contrary to the objectives and policies of that plan, unless they are shown to be demonstrably contrary to those viewed as a cohesive whole. He referred to and agreed with the evidence advanced in support of the individual UWAG applications provided by Mr Mikaere, Dr Coffey, Dr Ryder, Dr Bright, and Dr Robson. He accepted and endorsed the findings of Mr Craig's assessments.
- 7.8 He was satisfied, based on the technical evidence presented by witnesses appearing for MWRL and UWAG and subject to the range of conditions recommended by those witnesses to mitigate adverse effects, that the grant of resource consents to this application and all other UWAG applications would not undermine the operational integrity of the policies and provisions set out in the RPS or the WCWARP.
- 7.9 He concluded by saying that he considered the issue of a resource consent would meet the purpose of the Act.

Mr Andrew Craig - landscape

- 7.10 The applicant contracted Andrew Craig (Andrew Craig Landscape Architect Ltd) to provide an assessment of potential landscape effects. Mr Craig acknowledged that the application site is located in a landscape that displays significant scenic appeal, due to the combination of high main divide mountains, rivers, and the presence of Lake Tekapo. Thus, according to Mr Craig, the applicant's proposed irrigation area lies within 'a scenically important view catchment'.
- 7.11 Mr Craig summarised the locations where the applicant's proposed irrigation would be in view and include Lilybank Road which runs up the eastern shore of Lake Tekapo, a 4WD tract that crosses the applicant's property and provides access to the headwaters of Godley River, views from boats that go to the head of Lake Tekapo, Round Hill ski field and the top of Mt John that is located over 30km away. Mr Craig noted that there are no vantage points in the vicinity of the application site that are identified as 'scenic viewing areas' within the relevant District Plan.
- 7.12 In conclusion Mr Craig stated:

"While in an area of high natural character, the applied for activity is not going to have more than minor adverse effects on the landscape. There will be no especially discernable change to the landscape, where current activity is expected to prevail. Compounding this is the fact that the application site is relatively remote, particularly from important viewing points such as Tekapo Township, Mt John and SH8. This same remoteness also precludes cumulative effects, where there is no visual association with neighbouring stations where similar activity is undertaken".

- 7.13 Mr Craig also noted that the relevant District Plan allows for irrigation activity, although for this application he did not elaborate on the meaning of 'allows'. Therefore Mr Craig interprets that, according to the District Plan, irrigation activity and its associated effects are expected to be part of the landscape.

Mr Buddy Mikaere – cultural issues

- 7.14 Mr Mikaere (Buddy Mikaere and Associates) provided the applicant with a cultural assessment of their proposed activity. In this objective he was strongly guided by the outcomes of a Peer Review (May 2009) he had produced on the Cultural Impact Assessment. Mr Mikaere made reference to an on-site meeting with representatives of Te Runanga o Arowhenua and TRONT in August 2009. In addition, communication was undertaken by Ms Haidee McCabe with TRONT representatives.
- 7.15 The majority of the assessment undertaken by Mr Mikaere was to determine how cultural issues raised by Te Runanga O Ngai Tahu have been addressed by the applicant. In Mr Mikaere's view, the cultural issues raised in opposition to the proposed irrigation within the Mackenzie Basin are, in the main, not applicable to the Lilybank Station application.

- 7.16 Mr Mikaere considered that the cultural issues that are associated with the applicant's irrigation plans have all received proper consideration. In practical terms, Mr Mikaere believed that any cultural issues can be dealt with through the proposed FEMP.

Ms Haidee McCabe – irrigation and resource management issues

- 7.17 In her evidence, Haidee McCabe (Irrigation Resources Solutions Ltd) provided an overview of the applicant's proposal and whether or not it was consistent with the relevant statutory considerations. Mrs McCabe agreed that the application was non-complying under the WCWARP. She provided details of the consultation the applicant had undertaken to date with the submitters, an assessment of the environmental effects and details of the proposed mitigation methods. In summary the mitigation methods that applicant proposes to undertake include:
- (a) To install a submerged gallery intake that meets the criteria for effective fish exclusion outlined in the 'Fish Screening: good practice guidelines for Canterbury', NIWA Client Report: CHC2007.092, October 2007. The Panel notes that the applicant has withdrawn the consent to install the intake and proposes to use the intake structure consented under CRC093264.
 - (b) To install a suitable water metering device at the intake.
 - (c) To provide a stepped rate of abstraction from Station Stream when flow falls below a defined threshold.
 - (d) To fence stock out of permanently flowing waterways within the irrigation area and undertake riparian planting within these fenced areas.
 - (e) To include the following buffer zones between the proposed irrigation area and:
 - (i) Godley River - 500 metres.
 - (ii) from the Macaulay River margin - 20-30 metres (approximately 600 metres from the main stem).
 - (iii) Small streams adjacent to the Godley River and Macaulay River - an undefined distance, (as part of a Farm Environmental Management Plan (FEMP)).
 - (f) To undertake water quality sampling, using baseline data already collected for comparative analysis.
 - (g) To institute a FEMP and additional measures to mitigate against effects of irrigation on surface water and groundwater, as indicated by the Mackenzie Water Research Limited study.
- 7.18 In her evidence Mrs McCabe also corrected the incremental flow reduction proposal, which she believed had been incorrectly reported in Ms Bartlett's S42A report. Mrs McCabe also provided a superseded map of the irrigation areas (from that in the S42A report) that includes a 500 metre irrigation buffer from Godley River.
- 7.19 Mrs McCabe referred to a number of reports prepared for the applicant that formed part of their AEE. These reports, in the main, addressed and provided an assessment of effects of the activity on the environment. The main conclusions from these reports have been summarised below.

Efficiency of Use

- 7.20 Mrs McCabe stated in her evidence that (in accordance with Policy 16 c (ii) of the WCWARP) an application rate of 425mm/season is required by the applicant. However, the applicant has consistently sought (from its initial application) an annual volume of 1,032,000 m³/season. In her evidence Mrs McCabe stated that this volume is calculated using the MIC share entitlement of 600mm/hectare/season for 172 ha. Mrs McCabe stated that no more than 425mm of water will be applied per hectare in any one season, ensuring efficient watering and that no more than 1,032,000 cubic metres of water will be used in any one season.
- 7.21 In her evidence Mrs McCabe explained that irrigation efficiency will be achieved by strategic watering with mobile hard hose guns and fixed pivots. As the irrigation command area covers some 407 hectares, this ability to strategically water different areas will mean, in her view, that

the amount of water being applied for will be able to be efficiently used. Mrs McCabe stated that the applicant would not irrigate more than 172 hectares at any one time.

Dr Dean Olsen – effects on ecosystems

- 7.22 Dr Dean Olsen (Cawthron Institute) undertook a survey of the existing ecological values within Station Stream. The survey included fish, macro-invertebrate and periphyton communities and was carried out at three locations on the stream, two below the proposed point of take and one above. Based on his survey Dr Olsen stated that Station Stream supports trout spawning and rearing habitats (lower reaches), habitat for koaro and Canterbury galaxias and provides suitable habitat for macro-invertebrates and periphyton communities.
- 7.23 In regards to the effects on trout Dr Olsen noted that available areas for spawning is unlikely to be negatively affected, and a reduction in the average water velocity may create more favourable conditions for juvenile trout rearing.
- 7.24 Dr Olsen anticipated that any effect of the proposed abstraction on native fish species found in Station Stream would be less than minor. He does note however that reduced instream velocities may favour Canterbury galaxias over koaro.
- 7.25 In Dr Olsen's opinion the proposed stepped flow management regime will reduce the risk of an increase in the frequency and/or duration of nuisance periphyton growths. Dr Olsen believes there is some uncertainty when considering the potential effects of the proposed water take on macro-invertebrates. However, in his opinion it is likely that decreases in velocity and turbulence resulting from reduced flows will favour many invertebrate taxa and may result in no change or an overall increase in invertebrate productivity.
- 7.26 The applicant also asked Dr Olsen to comment on the effects of the abstraction on wading birds to address submitters' concerns. In his evidence Dr Olsen acknowledged that wading birds were outside his area of expertise but did provide comment. He noted that he does not expect the proposed abstraction to affect the availability of aquatic macro-invertebrate or fish prey for wading birds. However, he did note that the operation of the intake may cause fluctuations in water levels. These fluctuations may reduce the suitability of shallow water in the channel margins for invertebrates, which in turn may then affect shallow wading birds such as the wrybill and dotterel.

Mr Boraman - Hydrology

- 7.27 The applicant contracted David Boraman (Boraman Consulting Ltd) to undertake an assessment of the flows in Station Stream. Mr Boraman derived a figure for Mean Annual Low Flow for Station Stream as 312 L/s. Ms Bartlett states in her S42A report that this hydrological information is supported by Dave Stewart of Rain Effects (on behalf of the Council).
- 7.28 After consultation between the applicant and both the Council and Fish and Game agreement was reached that the mean annual low flow be rounded to a more conservative 320L/s and that this be adopted as a proposed minimum flow for this application. Mr Boraman derived the proposed stepped abstraction at flows below 420 L/s to mitigate against 'flat-lining' the rivers flow and to provide for flow variability. In light of this Mr Boraman considers the risk of flat lining to be low as the stream has natural variability and is only in the 320L/s to 420L/s flow range approximately 2.5% of the time during the irrigation season.

The FEMP

- 7.29 The final FEMP was tabled on 22 November 2010). The FEMP emphasized that the purpose of the irrigation water was primarily to increase deer stock units though the applicants intend to maintain the option of establishing a links-style golf course in the future.
- 7.30 The FEMP noted:
- (a) That the watercourses affected by irrigation (Godley and McCauley Rivers, Station stream) are the headwaters of Lake Tekapo and are classified (NRRP) as 'High Natural Character' waterways.
 - (b) That mean annual rainfall was 1140 mm and that summers were "*likely to be hot and dry*".

- (c) That according to the WQS Lilybank Station is in the "Upper Catchments" surface water catchments and that there were no nutrient thresholds proposed,
- 7.31 The FEMP described the mandatory Good Agricultural Practices (common to all applicants) and then described how the property met the thresholds set by the WQS. As there were no specific thresholds for Lilybank proposed by the WQS we assume that the property thresholds relate to meeting the Northern (Haldon) Arm lake threshold (although this is not stated). The results of Overseer modelling on the proposed farm system showed that the estimated nutrient loads (13,390 kg N, and 2230 kg P) were within this self-imposed property threshold (37,700 kg N and 2900 kg P) and therefore no further mitigation to specifically reduce nutrient losses was required.
- 7.32 The Farm Environmental Risk Assessment (FERA) completed as part of the FEMP identified a number of general issues (including those pertaining to all extensive high country stations). There were a number of risks identified that relate specifically to the irrigation development and proposed mitigation measures to remedy them. These measures included:
- (a) Fencing of stock from waterways in the irrigation area,
- (b) Reducing the size of the command area to provide a 500 m buffer to the Godley river and a 20-30 m buffer from the McCauley River bed
- (c) Applying a 20-30m layback distance from watercourses for land-based fertiliser applied to the irrigation area.
- 7.33 The FEMP proposed to continue water quality monitoring at the sites initiated by Dr Olsen. Four sites are discussed but only 3 are evident on Map E, and one of these (Station Stream) will only be monitored is contingent on there being irrigation in the NW corner. The triggers proposed (whereby some remedial action will be undertaken on the irrigation area) are that there should be "no significant decrease in water quality".

8 SUBMITTERS

- 8.1 We note that the applicant has undertaken consultation with a number of submitters on the application, details of which are contained in Mrs McCabe's evidence. The following provides a summary of the submitters' evidence provided at the hearing that relates directly to this application.

Hydrology

- 8.2 Mr Frank Scarf (representing Fish and Game as a Hydrologist) indicated his preference for a 1:1 flow share on Station Stream above the minimum flow of 320 L/s. Mr Mark Webb (representing Fish and Game as an Ecologist) stated that if consent is granted with minimum flow and flow sharing conditions proposed by the applicant the effect on trout passage and spawning areas will be less than minor.

Effects on ecosystems

- 8.3 In his evidence Dr Richard Allibone (Department of Conservation) agreed with Dr Olsen's evidence that a decline in water velocity associated with reduced river flow, is likely to suit Canterbury galaxias over koaro, which in turn may contribute to cumulative decline in koaro densities. Dr Allibone advised that koaro are now considered a declining species in the region.
- 8.4 Dr Susan Walker (Mackenzie Guardians) identified that the irrigation command area overlapped a mapped site of special wildlife interest (SSWI) and Wetlands of Ecological and Representative Importance (WERI) located within the Godley River and Delta as identified in the Protected Natural Areas Programme Survey (1984). Dr Walker believed that the proposed development at Lilybank station is a moderate threat to terrestrial biodiversity, in comparison to other proposals presented at the hearing.

Derogation Issues

- 8.5 Mr Richard Turner (MEL) identified discrepancies between the applicant's proposed consent conditions and those common consent conditions agreed with MEL prior to derogation approval being acquired. Mr Turner's evidence acknowledged that a number of applications from this hearing contain these discrepancies.

Cultural

- 8.6 Te Runanga o Ngai Tahu lodged a generic submission on the 27th September, 2007 in opposition to all applications in the Upper Waitaki in their entirety. MWRL for the applicant group commissioned Tipa and Associates to prepare a Cultural Impact Assessment (Feb 2009) on new and existing irrigation in the Upper Waitaki which set the cultural context, from which the value in respect of Lilybank Station would be achieved through on site discussions.
- 8.7 In the evidence of Mr Paul Horgan presented on behalf of Te Runanga o Ngai Tahu in January 2010, at paragraph 11, it was submitted that provided the smaller applicants and in this case Lilybank Station carry out appropriate riparian planting and fencing and undertake not to significantly increase the intensity of their farming operations, then Ngai Tahu did not oppose the grant of consent.

Landscape

- 8.8 Ms Lucas on behalf of Mackenzie Guardians told us that the upper valley landscape is vulnerable to landscape effects from extension of developed land and the intensification of the extensive site as the result of irrigation. In particular, she told us this mountain valley upstream of the basin, given its natural character, wildness and naturalness is an important landscape. She told us the naturalness of the upper valley is an important attribute of the Mackenzie Basin ONL.
- 8.9 She agreed with Mr Glasson that the site is sensitive due to the remoteness and naturalness of the context and that the proposal would have significant effects in relation to the hills above and the river below. However she did not agree with Mr Glasson's mitigation measures that buffering would adequately address the adverse effects. She was of the view that granting the irrigation consent was not appropriate.

9 UPDATES TO THE SECTION 42A REPORTS

Efficiency of use

- 9.1 Ms Bartlett calculated in her Addendum that the additional volume of water (above the 731,000) would allow the applicant to irrigate an additional 70 ha. Ms Bartlett did not accept that the irrigation of more than 172 ha in a season was within the scope of that notified, nor that the effects of additional irrigation had been assessed in terms of water quality and OVERSEER parameter inputs.

Effects on Ecosystems

- 9.2 Ms Bartlett accepted the revised condition proposed by Mr Borman as a more accurate reflection of the proposed incremental flow reduction. She drafted a condition in her addendum to reflect a 1:1 flow share that would satisfy the concerns of Mr Scarf and provide additional mitigation against reduced water velocity. In Ms Bartlett's opinion this would address Dr Allibone and Dr Olsen's concerns regarding a potential decline in koaro densities.
- 9.3 Ms Bartlett recommended that fish and invertebrate monitoring (surveys) could be implemented as part of the water quality monitoring, although she did not provide any details on how such monitoring could be carried out.
- 9.4 To address Dr Walker's concern regarding effects on the SSWI and WERI sites Ms Bartlett recommended that if consent was granted, these sites be identified through the FERA process and appropriate protection (i.e. stock fencing) be put in place.
- 9.5 Finally, she was of the view that issues raised by Dr Susan Walker on behalf of the Mackenzie Guardians could be addressed by buffers from the rivers and wetland margins and thus her concerns in relation to terrestrial ecology would be satisfied through identification within the FERA and corresponding restrictions on stock access.

Cultural

- 9.6 The s42A report of Ms Bartlett noted the onsite meeting with Runanga and consultation regarding plans for development on Lilybank Station served the section 6(e) RMA requirements. Ms Bartlett considered that kaitiakitanga has been observed by the proposed measures to provide flow variability in Station Stream, providing for buffer zones to waterways and that the FEMP will be relevant to good stewardship. Ms Bartlett considers that s8 RMA and the principles have been

observed also.

Landscape

- 9.7 In particular, in relation to landscape, she noted that while the applicant was proposing a 500m buffer from Godley River, as per the amended irrigation command area map, it was not proposing to meet the recommendations of Mr Glasson regarding irrigation of the foothills or buffer from the margin of the Mcauley River of 100m.

Water quality effects

- 9.8 In terms of water quality effects, she referred to the addendum report 4 prepared by Dr Freeman, which identifies cumulative water quality effects that are likely to be able to be mitigated in relation to this proposal subject to appropriate and robust trigger response conditions.
- 9.9 However, Ms Bartlett did not accept that the effects of irrigating more than 172 hectares in a season was within the scope of what was notified, nor that the effects of the additional irrigation had been assessed in terms of either localised or cumulative water quality. She noted that the additional 70 hectares had not been identified in OVERSEER parameter inputs, which have contributed to assumptions about water quality effects of the proposal.
- 9.10 The report writer did refer us to Policy 32 WCWARP, which deals with take and use of water from a high natural character waterbody, noting that Policy 32 WCWARP requires that there be no more than minor effects on existing water quality. In that regard, she noted that the baseline of existing water quality needs to be clearly defined at Station Stream and permanently flowing streams on the property. In addition, specific triggers and environmental standards then need to be identified in conditions, which together describe the parameters of the maximum acceptable effect on the existing water quality, beyond which, effects would be more than minor. She noted that monitoring locations, frequency, and methods need to be specified. In addition, she suggested conditions need to identify specific actions to be taken that can be expected to have a direct and timely effect on reducing the measurable parameter values if those maximum acceptable limits are approached or exceeded in a worst case scenario. She did note however that Policy 32 WCWARP envisages that exceedance should be prevented.

Planning instruments

- 9.11 Ms Bartlett then went on to consider the relevant planning instruments, their policies and objectives, and to express her view as to whether or not the grant of consent would be contrary to those objectives and policies.
- 9.12 Overall, she considered that the application might be contrary to policies regarding the setting of environmental flow and level regimes and policies specific to high country natural character waterbodies. She was of the view that without further mitigation from the applicant to address effects on natural character and landscape, efficiency of water use and the effects on water quality, she could not be certain that the effects of the proposed activities will be minor. Therefore, she could not conclude that granting the application would be in accord with section 104D RMA. We took from this that she was not satisfied that either of the gateway or threshold tests would be satisfied.

10 APPLICANT'S RIGHT OF REPLY

Mr Ewan Chapman

- 10.1 Mr Chapman provided closing submissions for the UWAG group. He provided some responses on broad ranging issues and some replies in relation to individual applications. Most of the issues he raised are considered and dealt with in Part A of our Decision. He did not specifically raise issues in relation to this particular application in his reply other than direct us to Mr Craig's evidence in relation to landscape issues, which we consider below.

Mr Andrew Craig - landscape

- 10.2 Mr Craig provided a response to Mr Glasson's addendum report. He concentrated on Mr Glasson's concern that no hillside irrigation should occur in Mr Glasson's view. Mr Glasson had noted that he was supported in that stance by Ms Lucas for Mackenzie Guardians.
- 10.3 Mr Craig made the point that all the proposed irrigation will occur on land that is already cultivated in contrast with the adjoining uncultivated areas. He provided photographs in his primary evidence. Thus it was his view that the visual relationship between those areas would not alter as a consequence of irrigation.
- 10.4 The next point he made was that it was very difficult to determine where hill slope begins and ends. He noted that the transition is reinforced by current land uses, namely cultivated and uncultivated land. Cultivated on the lower flat and gently sloping area, contrasting with uncultivated land on the steeper slopes. He therefore concluded there was no change in the prevailing land use patterns.
- 10.5 Mr Craig also addressed the views of Mr Glasson in terms of riparian margins. Mr Craig expressed the view that currently the area to be irrigated corresponded to the existing cultivated land is deer fenced from the Macauley and Godley Rivers so, as a result, a buffer already exists. Thus he concluded from a landscape point of view there is no need for buffer zones as again no changes will occur with respect to current land use patterns and their visibility.

Ms Haidee McCabe

- 10.6 Ms McCabe concentrated on addressing concerns raised about the additional 70 hectares. She noted the FEMP was now based on that extra 70 hectares so the total command area sat at 242 hectares.
- 10.7 She noted that the final FEMP showed compliance with the nutrient thresholds irrespective of whether 172 (as originally applied for) or the addition to 242 hectares was irrigated. She suggested the effect on water quality was still considered to be acceptable.
- 10.8 She further noted that the FEMP had been developed, inclusive of monitoring, with close regard to Policy 32 WCWARP given that the waterway in issue is a high natural character waterway.
- 10.9 She moved on to discuss the minimum flow and incremental flow reduction regime noting that it was considered by the applicant to be appropriate to protect instream values for koaro as detailed in Dr Olsen's evidence and subsequent comments to the Panel. In summary then, the incremental flow regime proposed by the applicant starting at 420 litres per second was still sought by the applicant. She noted the reporting officer was of the view that clarity needed to be provided on what is to occur between 345 litres per second and 320 litres per second. She noted that the applicant accepts this, and the mechanism proposed by the reporting officer to add to the applicant's condition that, between 320 and 345 litres per second, the maximum rate at which water is taken shall not exceed half the amount available above the 320 litres per second, was acceptable.

11 STATUTORY CONTEXT

- 11.1 The relevant statutory context for non-complying activities is set out in detail in our Part A decision. In accordance with those requirements, we have structured this evaluation section of our report as follows:
- (a) Evaluation of effects
 - (b) Evaluation of relevant planning instruments
 - (c) Evaluation of other relevant s104 matters
 - (d) Section 104D jurisdictional hurdles
 - (e) Part 2 RMA
 - (f) Overall evaluation

12 EVALUATION OF EFFECTS

- 12.1 Drawing on our review of the application documents, the submissions, the Officers' Reports, the evidence presented at the hearing and our site inspection, we have concluded that the effects we should have regard to are:
- (a) Effects of abstraction on environmental flow and level regime
 - (b) Water quality
 - (c) Landscape
 - (d) Costs and benefits (environmental, social, cultural and economic)

Effects of abstraction

- 12.2 We agree with Boraman that the proposed stepped reduction in abstraction as the stream approaches MALF will assist the maintenance of flow variability and ensure the the stream does not 'flat line'. We note the stream has high natural flow variability and is only within the flow range in which the stepped reduction plan would be activated approximately 2.5% of the time during the irrigation season. We agree with Ms Bartlett, that with this stepped reduction scheme and the conditions she proposed, the effects on flow maintenance and variability will be minor.
- 12.3 We accept the evidence of Dr Dean Olsen that any effect of the proposed abstraction on fish species found in Station Stream will be less than minor. His opinion was based on the widespread distribution of both the species collected in the electric fishing survey, the abundance of similar habitat upstream of the intake and elsewhere in the Tekapo catchment, consideration of the habitat preferences of the fish species that may be present, the relatively short length of river affected by residual flows (~1.5 km) and the fact that the proposed residual flow is set at MALF, which is the lowest flows expected to occur annually. Dr Olsen's evidence was largely uncontested and although Dr Allibone did comment that the flow reductions may contribute to the cumulative decline in koaro in the region. We prefer Dr Olsen's evidence, who tabled maps demonstrating that koaro had widespread distribution in adjacent waterways.
- 12.4 We had some concerns about the granting of consents (during the course of this hearing) for the take and discharge of water for a micro hydroelectricity scheme at the same intake site planned for irrigation. However we have read the reports relevant to those decisions and we are satisfied that the exercise of this consent, if granted, will not affect the residual flow requirements stipulated as a condition for the granting of CRC093265, and vice versa with respect to the conditions proposed for this application.
- 12.5 The key issue in the granting of CRC093265 was whether the discharge from the hydroelectricity scheme (450m downstream of the take) was considered 'in the vicinity' of the take. The conclusion reached by the investigating officer, after visiting the site and consulting with the applicants' experts and affected parties was that it could, and therefore it was a discretionary activity. All affected parties agreed that the effects on ecosystems in the affected reach would be less than minor and subsequently provided their written approvals. We are satisfied that the issues were properly considered in this case and that the exercise of the irrigation take with the conditions proposed, will not compromise the ecosystem in the affected reach.

Water quality

- 12.6 In Part A of this decision we rejected the MWRL proposition that all consents sought in this hearing could be granted (with conditions) without causing cumulative effects. It is incumbent upon us, therefore, to consider (as far as is possible) whether granting this application, in combination with other water permits we grant, will lead to cumulative water quality effects.
- 12.7 Dr Olsen tabled periphyton results (his Table 4) for Station Stream using a semi-quantitative method. His results indicate that at the top of the reach studied (just above the intake site) there were algal mats, but these were thin (less than 3mm). At the downstream sites, however, there were some thick (>3mm) mats of cyanobacterium (blue-green algae) of the genus *Phormidium*. The presence of these 'conspicuous' mats would be sufficient for the reach to not meet the outcomes provided for within the Proposed NRRP (as discussed further below), even though Dr Olsen concluded that the periphyton communities observed on the day of his sampling were indicative of good water quality. Other numerical outcomes in the Proposed NRRP were met in Dr

Olsen's survey. We also note that the SQMCI scores¹ reported by Dr Olsen for the lower two sites would also not meet the minimum score required for macro-invertebrate health in the now operative version of the NRRP.

- 12.8 In Part A of this decision, we rejected the MWRL premise that rivers and streams within the Upper Waitaki catchment would be largely unaffected by the irrigation proposed and we also rejected their proposed threshold of a 25% increase in periphyton calculated from nutrient concentrations. It was our view that rivers and stream in the catchment are much more sensitive to nutrient enrichment (manifest by unacceptable increases in periphyton growth) than MWRL presented. We also rejected the proposed MWRL threshold of a 25% increase above the calculated (from average stream nutrient concentrations) current periphyton biomass, favouring instead the MfE periphyton guidelines (reflected in Table WQL5 of PNRRP). Because the MWRL calculated NDA for Lilybank was based upon a flawed assumption, their calculated threshold is in our view, too high and could result in significant increases in periphyton biomass; particularly where irrigation is close to stream margins.
- 12.9 We consider that even small increases in nutrient concentrations to Station Stream and more particularly to other smaller streams transecting the proposed irrigation area, is likely to exacerbate growth of thick algal mats in these high natural-character waterbodies. Small streams intersect the irrigation area and as noted by Ms Bartlett, groundwater is shallow. We are of the view that a significant proportion of the predicted nutrient loss will discharge into these small streams and cause significant adverse effects, particularly periphyton growth. Because of the relatively large amount of phosphorus loss predicted for this station, a species change to filamentous periphyton is also possible. It is also possible in our view (though less likely because of dilution) that nuisance periphyton growths would extend to the Godley and Macaulay Rivers.
- 12.10 We have arrived at this view having particular regard to the mitigation measures proposed by the applicant, which measures are focused on seeking to reduce nutrient loss and discharge into small streams.
- 12.11 The key mitigation measures are buffer zones to waterways. We are not convinced they will be adequate because the proposed setback distances from small streams within the irrigation area are indeterminate and the groundwater is shallow because of the position of the proposed irrigation command area at the confluence of the Maccauley and Godley Rivers. Also, we refer back to our earlier finding that the NDA for Lilybank is based upon a flawed assumption resulting in a threshold that is too high. In other words, allowing a level of discharge that would result, we think, in significant increases in periphyton biomass, particularly where irrigation is close to stream margins.
- 12.12 We also have a concern that the data collected on water quality is sparse and may be insufficient to use as base line data to undertake a comparative analysis if consent were to be granted.
- 12.13 We acknowledge Dr Olsen's evidence that the changes in water quality would not be significant. However, we observe that his evidence addressed the effects of the abstraction, and not the effects of any return flow from irrigation. In our view the activity is likely to result in more than minor effects with respect to both water quality and habitats.

Landscape

- 12.14 In our Part A decision we summarised the evidence of a number of landscape experts who expressed differing views the effects that irrigation would have on visual effects. We reached some general conclusions on the issue and set out a general approach for assessing landscape effects for individual proposals. We now move on to apply this assessment approach to the current proposal.

Existing landscape

- 12.15 In terms of the existing environment, there was a high degree of agreement between Mr Glasson and Mr Craig. Both accepted, as we do, due to its remoteness the visibility of the site is low although it can be viewed from the south bank of the Maccauley River and there is a vantage point readily accessed by the public utilising Lilybank Road, which runs up the eastern shore of Lake Tekapo. There are also views from boats that go to the head of Lake Tekapo, but we readily accept these are distant views.

¹ Not included in the PNRRP

- 12.16 Both Mr Craig and Mr Glasson considered the site is located in a landscape that displays significant and scenic appeal due to the combination of high main divide mountains, rivers, and the presence of Lake Tekapo. The site lies within a scenically important view catchment. We agree with this assessment of the existing environment.
- 12.17 Mr Glasson acknowledged the current pastoral grazing, shelter belts and farm buildings and their impact in terms of modifying the environment. However, he emphasised overall the remoteness of the site and we accepted his view that the site was moderately sensitive to change due to the surrounding area being of high naturalness with an overall lack of modification. We agree with this assessment.

Changes to landscape

- 12.18 It was generally agreed between the different experts that granting consent to the proposal would bring about the following changes to the landscape;
- (a) Visibility of irrigation infrastructure, in particular the pivot irrigators; and
 - (b) Change to vegetative cover over the site, otherwise described as the “greening” of the landscape.
- 12.19 We move on to assess the significance of these changes, taking into account the evidence received from the various experts.

Significance of changes

- 12.20 Turning to evaluate these changes and their significance, we do note that the application site is located in an area identified in the WCWARP as being of high natural character, which specifically lists the tributaries of Lake Tekapo. In terms of the Mackenzie District Plan, the Godley and Maccauley Riverbeds are identified as being sites of natural significance, largely for their scenic importance. The Mackenzie District Plan zones the subject site Rural zone, and irrigation is a permitted activity within the Rural zone.
- 12.21 During the course of the hearing a number of witnesses referred us to the Mackenzie District Plan and, in particular, Plan Change 13. At the time, the Council’s decision on Plan Change 13 was still open to appeal. We understand at the time of writing of this Decision, Plan Change 13 has still not been resolved.
- 12.22 The Change however did contain statements of objective and policy in terms of the Mackenzie Basin. Objective 3A, Policy 3C and Policy 3H, with their relevant explanation and reasons accompanying them, taken collectively sent to us a clear signal that the Mackenzie District Council is concerned to protect and sustain distinctive and outstanding natural landscapes from development that would detract from those landscapes. In particular, specific mention was made of some structures associated with more intensive farming such as large irrigators or industrial-styled buildings when placed in the foreground of views that can reduce the scenic values and sense of openness valued within the Basin.
- 12.23 Both Mr Glasson and Mr Craig were both of the view that mitigation measures of some sort were required. However, they differed in terms of the extent, primarily of buffer setbacks from the Godley and Maccauley Rivers and whether or not the lower hill slopes should be included within the command area.
- 12.24 Mr Craig was of the view that the effects of the proposal would be no more than minor, primarily because of the “absorption capacity” of the landscape. He also factored what he considered to be a high level of modification to the landscape in terms of man-made interventions. Mr Glasson on the other hand considered the high natural character of the landscape would be adversely impacted, primarily as a consequence of pivot irrigation and greening of the areas where irrigation would occur. Both the pivots and the greening would be, he thought, visible. For these reasons mitigation measures were required. As well, he considered that irrigation of the lower slopes should not take place because he considered the effects of irrigation would be visible from public road viewing points.
- 12.25 In terms of the buffering or separation distance point, overall we prefer the views expressed by Mr Glasson because we accept his view that the site area is moderately sensitive to change due to the surrounding area being of high naturalness with a lack of modification. We agree that absence of an extensive buffer between the proposed irrigation and rivers would create

significant adverse effects that would require mitigation. We are also of the view, primarily because the hill slope irrigation will be capable of being sighted, that it would create significant adverse landscape effects that would require mitigation.

- 12.26 We agree with Mr Chris Glasson that irrigating the lower hill slopes would be visible from the end of the public road and that a buffer of at least 100m from (the margin of) both rivers is necessary for natural character and landscape effects to be less than minor. While the applicant has agreed to such a buffer for the Godley River, the 35m buffer proposed for the Macaulay River is less than that recommended by Mr Glasson. Also, we were not entirely convinced that all of the waterways had been fully identified by the applicant so as to determine the appropriateness or otherwise of buffers.
- 12.27 We support the recommendations made by Mr Glasson because we think they would address these concerns. He recommended that the irrigated area be modified by providing a greater buffer with the Godley and Maccauley Rivers (which he noted were classified as sites of natural significance under the Mackenzie District Plan) and to keep irrigation well down to the lower portions of the hill side. He recommended that the buffer should consist of a wide area of tussock grassland and shrubland vegetation.
- 12.28 We do not accept Ms Lucas' conclusion that no irrigation should occur on this site because of landscape effects. We think a complete exclusion fails to recognise the modified nature of the site caused by farming activities which have been occurring for many years. We do think that with the mitigation measures proposed, the landscape values Ms Lucas is concerned about can be supported.
- 12.29 In terms of cumulative effects, we do agree with both landscape experts' assessments that the remoteness of the site coupled with the lack of other similar activities in close proximity precludes any cumulative effects issues emerging.
- 12.30 So then the key conclusion we reach in terms of is that because of the high natural character landscape and amenity values, including wild and scenic values, of this location, we think that granting consent to the proposal as proposed by the applicant would result in adverse landscape and amenity effects that would be more than minor. However if the mitigation measures proposed by Mr Glassons are imposed, the proposal could proceed without unacceptable effects on landscape and amenity values.

Economic effects

- 12.31 We address the cost benefit effects of the applications in the Mackenzie Basin in Part A of our decision and do not repeat that discussion here. We recognise however that the Lilybank proposal will bring undoubted benefits to its farming operation through enhancing the properties capacity to grow winter supplements, to carry young stock to finishing weights and reduce the uncertainty that dry seasons impose on farming financial returns and decision making. The economic benefits from the proposed activity would have a flow on benefit to the wider community also.

Tangata whenua values

- 12.32 The principal evidence that we drew on to assess the tangata whenua values comes from Mr David Higgins, Upoko of Te Runanga o Moeraki and a tribal elder, the title Upoko can be described as spiritual leader of his people (hapu). In his evidence Mr Higgins addressed what is broadly referred to in policy and plans relating to Te Manahuna (Mackenzie Basin) as spiritual and cultural needs of tangata whenua.
- 12.33 The associations traverse countless generations according to the whakapapa that Mr Higgins drew on in explaining the connection. This connection extends beyond mortal tradition to the creation beliefs recounted in the story of Aoraki, the mountain, which in tradition is more than just a mountain, but a creation ancestor.
- 12.34 Mr Higgins spoke of the intergenerational activity of keeping the fires burning, a reference to the trails and traditions of hunting and gathering for food and other resources throughout the basin, The foot prints of the ancestors go to every corner of the basin, places known by name or the resources that might be gathered there.
- 12.35 The water quality and ecosystems of Station Stream and the intersecting waterways on Lilybank Station are located in the High Natural Character area of the catchment. We note that Ngai Tahu

withdrew their opposition to the smaller scale applicants including Lilybank Station, provided appropriate riparian planting and fencing is established and the applicants undertake not to significantly increase the intensity of their farming operations.

- 12.36 We think increasing stocking rates from the current 4 to a proposed 15 s.u. per hectare exceeds the measurement of “not significantly increase the intensity” of the current farming operations.
- 12.37 We think the potential for the proposed activity to result in adverse effects on cultural and spiritual values in the High Natural-Character waterbodies subject to nutrient loading to be more than minor.

Key conclusion on effects

- 12.38 In relation to the actual and potential effects of the proposal, our key conclusions on the principal issues that were in contentions are set out below.
- 12.39 For the reasons advanced under the heading of “Effects of abstraction”, we did prefer the evidence of Dr Dean Olsen in relation to the effects of reduction in stream flows. On balance, we think that he satisfied the issues in contention raised by Dr Alibone in relation to fish populating the waterway and the effect upon them of reducing stream flow.
- 12.40 Given the mitigation measures proposed by the applicant, for reasons already discussed we are not satisfied that the grant of consent does not have a more than minor adverse effect on natural character, cultural and landscape.
- 12.41 In terms of landscape, the matters in contention were clearly set out in the competing views put forward by Mr Glasson and Mr Craig. Mr Craig was of the view that irrigation would cause effects that would be less than minor. However, Mr Glasson was of a contrary view. What we found to be influential on us was the fact that the WCWARP identifies high natural character waterbodies and, via Policy 32, requires us when considering whether or not to grant a consent to ensure that a grant will not have a more than minor adverse effect on natural character, landscape, and amenity values, including wild and scenic values. Notwithstanding what Mr Craig said about the cultivation activities on the site, we have formed the view that the site overall retains high levels of natural character and is in a high value landscape with consequential high amenity values, including wild and scenic values. Thus we were driven to the conclusion we were not comfortable in a finding that the consent would have a less than minor adverse effect on such matters, unless the applicant adopted all of the mitigation measures proposed by Mr Glasson.
- 12.42 The key effect of concern was that of water quality. Primarily, it was our finding based on the evidence presented and for reasons earlier advanced that irrigation on the proposed area is likely to exacerbate the growth of thick algal mats within these high natural character waterbodies. We form the view that a significant portion of the predicted nutrient loss would discharge into the small streams that run through the irrigation area. We were also concerned about our finding that a relatively large amount of the phosphorus loss predicted for the station could result in a change to filamentous periphyton species. We were concerned about nuisance periphyton growths and their possible extension to the Godley, Macauley Rivers and other rivers. We do not think that the mitigation measures proposed by the applicant were sufficient in that regard. Accordingly, we reach the view for the reasons advanced that the effects of the activity on the environment, namely the likely exacerbation of the growth of thick algal mats within these high natural character waterbodies and the consequent impact on the health of streams and waterways, would be an adverse effect of the activity on the environment that is more than minor.

13 EVALUATION OF RELEVANT PLANNING INSTRUMENTS

- 13.1 Under s 104(1)(b) of the Act, we are required to have regard to the relevant provisions of a range of different planning instruments. Our Part A decision provides a broad assessment of those planning instruments and sets out the approach we have applied to identification and consideration of the relevant provisions. The following part of our decision should be read in combination with that Part A discussion.
- 13.2 In relation to the current application, we consider that the most relevant and helpful provisions are found in the regional plans, including in particular the WCWARP and the NRRP. In addition, the Proposed and Operative CRPS and the Mackenzie District Plan are of assistance in relation to landscape issues that arise.

- 13.3 The following sections of this decision provide our evaluation of the key objectives and policies from these planning instruments. We have organised our discussion in accordance with the key issues arising for this application, which are water quality, environmental flow and level regimes, efficient use of water, landscape values and tangata whenua values.

Water quality

- 13.4 In relation to water quality, the key documents we have considered are the WCWARP (incorporating the objectives of the PNRRP) and the operative NRRP provisions.
- 13.5 In relation to the WCWARP, we consider that Objective 1 is the critical objective. In particular, Objective 1(b) seeks to safeguard life supporting capacity of rivers and lakes. We have reached a finding in terms of the effects on periphyton that would arise as a consequence of this grant. We are conscious that those effects, we think, would lead to a potential for adverse effects on water quality, particularly having regard to the sensitivity of this location and that fact that it has water bodies either within it or alongside it that have not, to date, had intensive land use in their catchments. On this basis of this conclusion, we consider that the life supporting capacity of these water bodies will be compromised, which is contrary to Objective 1(b).
- 13.6 Objective 1(c) requires us to manage waterbodies in a way that maintains natural landscape and amenity characteristics and qualities that people appreciate and enjoy. Given our finding in terms of the likely periphyton growth, then in our view granting consent would not be consistent with Objective 1(c).
- 13.7 We note that Objectives 2, 3, 4 and 5 'in the round' deal with and provide for the allocation of water. However, the critical qualification is that water can be allocated provided that to do so it is consistent with Objective 1. Given the findings we have made about Objective 1, we must conclude that allocating water in terms of the balance objectives would not be consistent with the overall scheme of the WCWARP. We have reached this view taking into account the national and local costs and benefits (environmental, social, cultural and economic) of the proposal, as required by Objective 3.
- 13.8 Policy 2 of the WCWARP identifies tributaries of Lake Tekapo (such as Station Stream) as having a high natural character worthy of a high level of protection, because they are in a largely unmodified part of the catchment and/or contain rare or important species and habitat or habitat assemblages. This approach is consistent with the provisions of the Canterbury RPS (Chapter 9, Policy 4) regarding the identification of any waterbodies that should be sustained so far as possible in their natural state.
- 13.9 Policies 29 to 34 are closely linked to Policy 2 and emphasise the need for protection of these high natural character water bodies. Policy 32(j) requires that we must ensure that any grant of consent does not have a more than minor adverse effect on existing water quality. For the reasons discussed above, we consider that the proposal would fail to meet this policy.
- 13.10 We also note Policy 31, which discourages the taking of water for irrigation purposes from the tributaries of Lake Tekapo identified in Policy 2. However we note that all streams and rivers on or adjacent to the applicant's property are of high natural character.
- 13.11 Policy 13 links the WCWARP to the PNRRP (as it existed at the time) by requiring us to have regard to how the exercise of the consent could result in water quality objectives in the PNRRP not being achieved. As explained in our Part A decision, we have considered the objectives of the PNRRP and the now operative NRRP in relation to the current proposal.
- 13.12 Under the provisions of the PNRRP (as incorporated into the WCWARP), Station Stream (within the vicinity of the proposed point of take) would be classified as 'Alpine - upland' (Water Quality Management Units).
- 13.13 The core of the PNRRP in terms of the water quality issues does not change between PNRRP as notified and the current NRRP following the release of decisions. In particular, under the NRRP, Station Stream within the vicinity of the proposed point of take remains classified as 'Alpine - upland' (Water Quality Management Units). The current NRRP has more numerical outcomes governing dissolved oxygen, macroinvertebrates, temperature, and a microbiological indicator. As noted previously, Dr Olsen's data suggests that the macroinvertebrate outcomes at least, are not currently being achieved.

- 13.14 We note that Objective WQL1.1 NRRP requires that in rivers where one or more of the outcomes in Table WQL5 are not being achieved, the objective is to progressively improve the existing quality of the water and the bed (so it will meet the outcomes). In our view, granting this consent would be inconsistent with this objective, even though the waterbody in question may be considered small in the context of other rivers in the high natural-state area
- 13.15 Overall, we consider that the WCWARP and the NRRP place a high importance on water quality, particularly in relation to high natural character waterbodies. For all of the above reasons, we have reached the conclusion that the proposal is simply not supporting of the water quality thrust of these plans; rather to grant consent would be contrary to those policies and objectives and the scheme of the plans as they relate to water quality outcomes.

Environmental flow and level regimes

- 13.16 Policies 3 and 4 of the WCWARP refer to the setting of environmental flow and level regimes to achieve the objectives of the WCWARP. This is reflected in the rules of the PNRRP which specifies minimum flows and levels for water bodies and allocation limits for specific activities.
- 13.17 In relation to this application, rule 2 sets the allocation limit at 10% of MALF whereas the applicant proposes to abstract up to 31% of MALF, which makes this application non complying. However we note that because of high natural flow variability, Station Stream is only within the flow band approaching MALF relatively infrequently and the applicant has proposed a stepped reduction plan to minimise any effects within this flow band. We are satisfied that from a hydrological point of view, effects will be no more than minor and the application is consistent with these provisions.

Efficient use of water

- 13.18 Objective (4) of the WCWARP seeks to promote "*the achievement of a high level of technical efficiency in the use of allocated water*". Policies 15 – 20 deal with efficient and effective use of water and provide for an efficient use of water so that net benefits are derived from its use and are maximised and waste minimised.
- 13.19 We agree with Ms Bartlett that although the proposed irrigation rate (425 mm/y) meets the requirements for irrigation efficiency the total volume applied for (1,032,000 cubic metres per year) is greater than that required (731,000 cubic metres per year) to irrigate the 172 ha applied for. Although the applicant has stated that no more than 172 ha will be irrigated at any one time, if the irrigation rate is complied with then there would be sufficient water to irrigate an additional 70ha.
- 13.20 This would be contrary to Policy 18 and Objective 4 of the WCWARP which seeks water allocation on consents to reflect the actual quantity needed to undertake the activity. In addition the (up to) additional 70 ha of land would enable the applicant to carry additional stock, which has not been included in the calculation of NDA, and could be viewed as a change in the application.

Landscape values

- 13.21 We discuss the relevant objectives and policies for landscape in our Part A decision. In summary, these are primarily found in the Proposed and Operative CRPS and the NRRP. In broad terms, these provisions seek the protection of outstanding natural landscapes from inappropriate use and development.
- 13.22 The way in which protection of outstanding natural landscapes can be provided is via the district plan. While the district plan zones the site Rural, it has identified the Godley and Maccauley Riverbeds, which would be affected by this application, as being sites of natural significance – largely for their scenic importance. While the site adjoins these areas, its close connection to them is, we think, important so as to ensure that the activity here proposed does not compromise the natural significance of these river beds. We have concluded that without the mitigation measures proposed by Mr Glasson natural significance of the site, the riverbeds in particular, would be compromised.
- 13.23 We have also formed the view that to grant consent without mitigation measures would be contrary to Policy 32 WCWARP. Also, we conclude that granting consent without the mitigation measures proposed by Mr Glasson being imposed would be contrary to the policy and objective thrust of the proposed and operative CRPS in that the protection of this outstanding natural landscape from inappropriate use and development would not be achieved.

Tangata whenua values

- 13.24 Objective 1(a) of the WCWARP relates to the integrity of mauri and is closely linked to Objective 1(b). If we are not satisfied that the health of a particular water body is being safeguarded then the mauri is not being safeguarded either. As noted above, we do not have confidence that the mitigation measures proposed by the applicant will achieve sustainable water quality outcomes. It therefore follows that granting the consents may not maintain the integrity of the mauri and also, will not meet the spiritual and cultural needs of the tangata whenua.

Key conclusions on planning instruments

- 13.25 For all of the above reasons, we consider that granting the consent would be contrary to the objectives and policies of the WCWARP (incorporating the PNRRP) and the NRRP relating to water quality. As consequence of this is that the proposal would also be contrary to the objectives and policies relating to tangata whenua values.
- 13.26 In respect of environmental flows, we are satisfied that from a hydrological point of view, effects will be no more than minor and the application is consistent with these provisions. However in terms of efficiency, we are not satisfied that Policy 18 and Objective 4 are met.
- 13.27 In terms of landscape issues, if the mitigation measures recommended by Mr Glasson were included then we think that a grant of consent would be consistent with both the Operative and Proposed CRPS. However we do not understand that the applicant has accepted Mr Glasson's recommended mitigation measures.

14 EVALUATION OF OTHER RELEVANT S104 MATTERS

- 14.1 Under s104(1)(c) RMA, we are required to have regard to any other matter that we consider to be relevant and reasonably necessary to determine the application. One such matter is the potential precedent effect and impact on plan integrity.
- 14.2 Given our findings in relation to the key matters in contention, we are concerned that if we were to grant consent we would create a precedent effect and also a plan integrity issue. We have reached the conclusion that even with the mitigation measures proposed, we still conclude that a grant of consent would be contrary to the objective and policy base of the WCWARP.

15 SECTION 104D JURISDICTIONAL HURDLES

- 15.1 Based our evaluation under section 104, we now move to consider whether either of the jurisdictional hurdles under section 104D of the RMA can be met.

Would the adverse effects be minor?

- 15.2 Although the effects of the take will be no more than minor, we are of the view that the use for irrigation could result in more than minor effects on water quality and aquatic habitat of Station Stream and other watercourses intersecting the irrigation area. In particular we believe that significant growths of periphyton are likely in these small watercourses and that this would result in a decline in aquatic habitat. The applicant has, in our view not offered sufficient mitigation that convince us that the water quality and aquatic environment of Station Stream and other waterbodies crossing the irrigation area will not be effected in a more than minor way. In addition, we are not satisfied that effects on landscape amenity would be minor without the mitigation measures proposed by Mr Glasson. We understand that the mitigation measures have not been accepted by the applicant.
- 15.3 Overall, we are not satisfied that the adverse effects of the proposal will be minor and the first jurisdictional hurdle has not been met.

Would the activity be contrary to the objectives and policies of the relevant plan?

- 15.4 The relevant plan under which consent is required is the WCWARP. We have provided an evaluation of the relevant objectives and policies of that plan (including the PNRRP provisions incorporated by reference) earlier in this decision.
- 15.5 In summary, we consider that the granting of the consent would be contrary of Policies 2 and 13 and Objectives 1, 2 3, and 4 of the WCWARP. The granting of these consents would also be

contrary to Policies 29, 31, and 32 (d), (g) and (j) and Objective 1 of the WCWARP, which taken together discourage the granting of consents for irrigation in tributaries of Lake Tekapo and other high natural-character waterbodies. In terms of natural character and landscape effects we consider that without the mitigation measures proposed by Mr Glasson to grant consent would be contrary to Policy 32 WCWARP.

- 15.6 Overall, we find that the proposal will be contrary to the relevant objectives and policies and the second jurisdictional hurdle has not been met.

Conclusion

- 15.7 For the reasons identified above, we have determined that neither one of the jurisdictional hurdles are satisfied in this instance. As neither of the jurisdictional thresholds is satisfied, we do not have the ability to grant consent. Nonetheless, for completeness we discuss Part 2 matters below before providing our overall evaluation.

16 PART 2 RMA

- 16.1 Section 104(1) states that the matters which we have discussed above are subject to Part 2, which covers section 5 through section 8 inclusive. These sections are set out in full in our Part A decision and are discussed below in the context of the current application.

Section 6 – Matters of National Importance

- 16.2 Section 6 identifies matters of national importance that we must “recognise and provide for” when making our decision, including preserving the natural character of lakes and rivers (s6(a)) and protecting outstanding natural features and landscapes (s6(b)).
- 16.3 The Godley and Macaulay Rivers are identified as areas of national significance. The proposal will include development on the margins of these rivers, and in our view may adversely affect habitats of significant indigenous fauna. Further mitigation is required regarding development on the river margins.
- 16.4 Given the applicant’s own landscape assessment that concludes the irrigation area lies within a scenically important view catchment, then section 6 matters must, we think, be given due emphasis when we are considering how best to achieve sustainable management. We have concluded that Section 6(a) and (b) would neither be recognised or provided for if consent were given to the application in its current form.

Section 7 – Other Matters

- 16.5 Section 7 lists other matters that we shall “have particular regard to”. Sub-sections (a), (aa), (b), (d), (f) and (h) are relevant to this application.
- 16.6 Subsection (a) relates to Kaitiakitanga, which is represented by measures proposed to provide flow variability in Station Stream, and providing for buffer zones to waterways. Measures outlined in the FEMP demonstrate the intention to provide good stewardship, though as indicated above, we are of the view that the measures proposed are insufficient to protect streams crossing the irrigation area.
- 16.7 Sub-section (b) relates to the efficient use of water. The applicant has applied for a volume greater than that required to efficiently irrigate the 172 irrigation area. It is our view that the additional water applied for could result in more nutrients being leached from the property than has been modelled to comply with the proffered NDA.
- 16.8 Sub-section (d) refers to intrinsic values of ecosystems, which is partially addressed by the proposed flow regime, but as outlined above our view is that irrigation leachate may change those values.
- 16.9 Sub-section (f) refers to maintenance and enhancement of the quality of the environment. Our view is that this objective will not be achieved in streams transecting the irrigation area.
- 16.10 Sub-section (h) refers to protection of habitat of trout and salmon, which is adequately addressed by the proposed flow regime.

- 16.11 Having particular regard to the above matters in the context of section 7, we conclude that the grant of consent could not be supported

Section 8 – Treaty of Waitangi

- 16.12 Finally section 8 of the RMA has had a cascading influence on the development of regional and district plans in so far as they affect the Upper Waitaki through the integration of Ngāi Tahu values into the respective objectives and policies. The applicant contributed to the development of a Cultural Impact Assessment (CIA) and engaged a cultural expert (Mr Buddy Mikaere) to relate the findings of the CIA to their property. The applicant consulted (on site) with representatives of local Runanga and Te Runanga o Ngai Tahu who in turn provided qualified support to the activity, subject to, appropriate riparian management and intensity of farming constraints. The applicant has not lacked for effort in addressing section 8 matters, however we find that the proposed mitigation measures will not avoid, remedy or mitigate adverse effects on the receiving waters and therefore the associated Ngai Tahu interest.

Section 5 – Purpose of the RMA

- 16.13 Turning now to the overall purpose of the RMA, that is, “to promote the sustainable management of natural and physical resources”.
- 16.14 In our view the proposal will allow the continued development of land at Lilybank to occur, which may provide for the economic and social well-being of the community. However the land is already developed and the applicant has not shown that irrigation is necessary for their economic well-being. The possible golf course is also not consistent with sustainable management in this area of high natural character, particularly as the applicant has not proposed any mitigation measures consistent with that land use. In addition the applicant has not proposed a full set of mitigation measures to “*avoid, remedy or mitigate*” the potential impacts of irrigation on water quality and landscape values as required in Section 5(2)(c) of the RMA.

17 OVERALL EVALUATION

- 17.1 If an application for a non-complying activity passes through either of the jurisdictional hurdles in s104D, then there is a discretion as to whether consent should be granted. This requires an overall judgment to achieve the purpose of the Act and is arrived at by:
- (a) Taking into account all the relevant matters identified under s 104;
 - (b) Avoiding consideration of any irrelevant matters;
 - (c) Giving different weight to the matters identified under s 104 — depending on our opinion as to how they are affected by the application of s 5(2)(a), (b), and (c) and ss 6-8 — to the particular facts of the case; and then in light of the above; and
 - (d) Allowing for comparison of conflicting considerations, the scale or degree of conflict, and their relative significance or proportion in the final outcome.
- 17.2 In respect of this application, for the reasons outlined above, we have concluded that neither of the jurisdictional hurdles have been met. As such we do not have the discretion to grant consent. Nonetheless, for the sake of completeness the following part of the decision provides our overall evaluation of the proposal.
- 17.3 In terms of exercising our discretion, we are informed in that discretion by our findings under section 104. We find that there will be adverse effects of the activity on the environment that will be more than minor, in particular to growths of periphyton. We have also found that granting consent would be contrary to policies and objectives in the WCWARP and NRRP as we have earlier identified.
- 17.4 Our core concern is the ability, given the irrigation site proposed, to appropriately control nutrient discharge given the farming system here proposed. In very simplistic terms, the irrigation site is very close to existing river bed, if not forming part of that river bed. The core concern is that effect of that discharge on the adjacent waterways. We really question whether this is an appropriate site for the activity proposed by the applicant.
- 17.5 We are also mindful that the grant of consent will not, in our view, meet the purpose of the RMA as that purpose is embodied in section 5. The competing considerations as we see them are that

on the one hand there will be economic benefits for the applicant if consent were granted and those benefits would be available to other members of the community. Balanced against that we have identified the conflicting consideration in respect of water quality. We have also identified some troubling landscape issues.

- 17.6 Our views about the water quality issue and landscape issue are fully informed by the considerations we have undertaken in terms of section 6 and section 7 of the RMA. Overall, we are of the view that the water quality issue is of critical significance or proportion in the final outcome. Because of the findings we have made in regard to water quality we are concerned that to grant consent would not be sustaining the potential of the natural and physical resources to meet the reasonably foreseeable needs of future generations; nor would it be safeguarding the life-supporting capacity of, principally, water, soil and ecosystems; nor are adverse effects avoided, remedied or mitigated on the environment. Also, we are concerned that in this instance if we were to grant consent, then we would imperil the integrity of the WCWARP.
- 17.7 Having reviewed the application documents, all the submissions, taking into account the evidence to the hearing and taking into account all relevant provisions of the RMA and other relevant statutory instruments we have concluded that, even if we did have a discretion to exercise, the outcome which best achieves the purpose of the Act is to **decline** consent.

18 DECISION

- 18.1 Pursuant to the powers delegated to us by the Canterbury Regional Council:
- 18.2 For all of the above reasons and pursuant to sections 104, 104B and 104D of the Resource Management Act 1991, we **DECLINE** application **CRC071786** by **Lilybank Station Holdings Limited**.

DECISION DATED AT CHRISTCHURCH THIS 22ND DAY OF NOVEMBER 2011

Signed by:

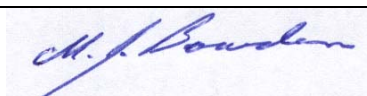
Paul Rogers



Dr James Cooke



Michael Bowden



Edward Ellison

