

**BEFORE THE CANTERBURY REGIONAL COUNCIL**

**IN THE MATTER OF**

The Resource Management Act 1991

**AND**

**IN THE MATTER OF**

an application by **Glentanner Station Limited**  
**filed** under **CRC092721** to undertake works in  
the bed and bank of Lake Pūkaki to construct  
and maintain an intake structure.

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**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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**TABLE OF CONTENTS**

1 INTRODUCTION ..... 3

2 THE PROPOSAL ..... 3

3 DESCRIPTION OF THE ENVIRONMENT ..... 5

4 PLANNING INSTRUMENTS ..... 5

5 NOTIFICATION AND SUBMISSIONS ..... 6

6 THE SECTION 42A REPORTS ..... 6

7 THE APPLICANT’S CASE ..... 7

8 SUBMITTERS ..... 9

9 STATUTORY CONTEXT ..... 9

10 EVALUATION OF EFFECTS ..... 9

11 EVALUATION OF RELEVANT PLANNING INSTRUMENTS ..... 10

12 EVALUATION OF OTHER RELEVANT S104 MATTERS ..... 11

13 PART 2 RMA ..... 11

14 OVERALL EVALUATION ..... 12

15 DECISION ..... 13

APPENDIX A: CONDITIONS OF CONSENT (CRC092721) ..... 14

SCHEDULE 1: LIST OF BIRD SPECIES ..... 16

## 1 INTRODUCTION

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- 1.1 This is a decision on an application by **Glentanner Station 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

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- 2.1 The proposal is to construct and maintain an irrigation intake structure to facilitate the abstraction of water from Lake Pūkaki. This will involve works in the bed and bank of Lake Pūkaki, between map references NZMS 260 H38:8235-6520 and H38:8217-6519, at State Highway 8, east of the Pūkaki Dam.
- 2.2 Figure 1 below illustrates the location of the proposed activity.



**Figure 1:** Indicative location plan

- 2.3 The works will involve installing a submersible intake pump on the lake bed below the minimum lake level of 518 metres above mean sea level. An irrigation supply pipeline will be buried 600 mm below the lake bed above the minimum lake level. In addition, the applicant proposes to install a shed on the lake shore above the maximum lake control level for the purposes of housing electrical and starter equipment. All construction will be completed within a period of 3 days.
- 2.4 The applicant has proposed a range of mitigation measures for its proposed activity, including:
- (a) To install an appropriate fish screen on the intake;

- (b) To undertake works in a manner that does not cause erosion to the lake bed or banks;
- (c) To ensure that vehicles and machinery do not enter flowing water, as far as is practicable;
- (d) To minimise sediment created during the works, as far as is practicable;
- (e) To undertake maintenance works from time to time, usually at the commencement of the irrigation season;
- (f) Timing of installation will be established after consultation with Fish and Game New Zealand and Department of Conservation;
- (g) Upon completion of works the area shall be re-levelled to blend with the surrounding environment;
- (h) All practicable measures will be used to minimise adverse effects on wildlife, vegetation, ecological, recreational and amenity values;
- (i) To employ an Accidental Discovery Protocol in the event of disturbance of Koiwi Tangata (human bones) or taonga during works;
- (j) To notify the Canterbury Regional Council Compliance Monitoring Officer at least 48 hours prior to the commencement of works;
- (k) To adhere to Didymo Hygiene Protocols and all machinery utilised shall be free of plants and seeds prior to use.

### **The application**

- 2.5 The application is for an activity in the bed of a lake or river pursuant to section 13 of the RMA. Consent is required under the Natural Resources Regional Plan (NRRP), as discussed below. The applicant engaged Irrigation Resource Solutions Limited to prepare the assessment of environmental effects and provide further information.
- 2.6 The application (CRC092721) was lodged with the Canterbury Regional Council (the Council) on 22 December 2008. 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 35-year consent duration.

### **Modifications after notification**

- 2.7 The notified location for works in the bed and banks of Lake Pūkaki was between map references NZMS 260 H38:8235-6520 and H38:8217-6519. The notified range of works did not take into account the need for the structure to extend beyond the minimum lake level of 518m a.m.s.l.
- 2.8 The applicant consulted with Meridian Energy Limited and obtained information regarding the bed profile of the lake in the vicinity of proposed works in order to identify the optimum location to meet engineering requirements to extend the pipeline below the minimum lake level and enable the intake structure to be submerged. Consequently, on 30 July 2009 the applicant advised that the range of works would be between map references NZMS 260 H38:8235-6520 and H38:8214-6511. This shifted the western extent of the range of works 80 metres to the north, and amended the application to that effect. The intake location was not considered cause for further notification of the application, as there was considered to be a reduction in effects on Meridian Energy Limited, and there are no parties adversely affected by the change who had not already submitted on the application.
- 2.9 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

- 2.10 This application is directly related to a separate application by the applicant to take and use water from Lake Pūkaki (or Pūkaki Canal) for the purpose of irrigating the applicant's property (CRC071362). Our findings on this application are provided in a separate decision.
- 2.11 In addition, Pūkaki Irrigation Company Limited (PIC) has applied for consent to establish an intake location in the same location as that proposed in this application (CRC062866) to provide water to the applicant's property. The reason for the current application is to establish an independent intake from Lake Pūkaki, in the event that the PIC scheme does not proceed, or economic considerations favour the independent intake option.

## 3 DESCRIPTION OF THE ENVIRONMENT

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- 3.1 Lake Pūkaki is the largest of the glacial lakes, with a lake area of 169m<sup>2</sup>, natural inflows from the Tasman, Jollie and Hooker Rivers, and inflows controlled by Meridian Energy Limited from the Tekapo-Pūkaki canal. The operating range of the lake is between 532 metres and 518 metres above mean sea level, with levels managed and controlled by Meridian Energy Limited, the main user of the lake.
- 3.2 Fisheries, flora and fauna values are highest where the rivers flow into Lake Pūkaki, where habitat supports a high diversity of bird species. Fish species present in the lake include brown and rainbow trout, common bully, Canterbury galaxias, koaro and long-finned eel. Lake Pūkaki is a Statutory Acknowledgement Area scheduled in the Ngāi Tahu Claims Settlement Act 1998.
- 3.3 The lake is highly valued for sightseeing, walking and picnicking, with some additional use for swimming, boating, trout angling and waterfowl hunting, but not as high for these uses as other lakes in the district. The proposed intake location is in a highly modified area of the lakeside, with and spillway and rip rap protection materials in proximity. The proposed location is adjacent to the State Highway 8, and in a tourist viewing area for views of Mt Cook.
- 3.4 The Pūkaki Spillway from Lake Pūkaki is approximately 160 metres south of the proposed intake location. Terminal moraine land forms are present adjacent to Lake Pūkaki, across the State Highway, within the pipeline route to Catherine Fields, owned by Glentanner Station Limited.

## 4 PLANNING INSTRUMENTS

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- 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) Transitional Regional Plan (TRP);
  - (b) Proposed Natural Resource Regional Plan (PNRRP)
  - (c) Natural Resources Regional Plan (NRRP);
  - (d) Proposed and Operative Canterbury Regional Policy Statement (CRPS); and
  - (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 in Section 14 of 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 accordance with section 88A of the RMA, the relevant plans for determining the status of the activity are those that existed at the date the application was lodged. In relation to this application, that was the TRP and the PNRRP.
- 4.4 The TRP is silent on matters relating to works in the bed and banks of rivers and lakes in the Waitaki catchment. This activity therefore requires consent as a **discretionary** activity under the

TRP.

- 4.5 The relevant provisions of the PNRRP (as notified) are as follows:
- (a) Rule BLR2 - the erection or placement of structures in the bed of a lake or river is a permitted activity, subject to compliance with a range of conditions.
  - (b) BLR3 – the excavation, drilling, tunnelling or disturbance within the bed is a permitted activity, subject to compliance with a range of conditions.
  - (c) Rule BLR 8 – if an activity cannot comply with the conditions of Rules BL2 and/or BLR3, is it classified as a discretionary activity
- 4.6 The proposed activities cannot comply with the conditions of permitted activity rules BLR2 and BLR3. As such, the proposed activity is a **discretionary** activity in accordance with Rule BLR8 of the proposed NRRP.
- 4.7 Overall, the proposal is a **discretionary activity** under the TRP and Rule BLR8 of the Proposed NRRP (as notified) and resource consent is required in accordance with section 13 of the RMA.
- 4.8 As noted above, this application is directly related to a separate application by the applicant to take and use water from Lake Pūkaki (CRC071362), which itself is classified as a non-complying activity. Although these two activities are part of the same proposal, we have decided that it is not appropriate to “bundle” the two activities together for the purpose of determining the activity status.
- 4.9 The reason for this is that we consider that the effects of exercising this consent (if granted) will not overlap with the effects of exercising the take and use application. The effects of the activities are sufficiently distinct such that they can be assessed individually on their merits. This is consistent with approach adopted by the Environment Court in relation to the bundling of consents (*Southpark Corporation Limited v Auckland City Council* [2001] 8NZRMA 350).

## 5 NOTIFICATION AND SUBMISSIONS

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- 5.1 The application was publicly notified on 18 February 2009 and two submissions in total were received, including one in support and one in opposition.
- 5.2 Table 1 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 CRC092721*

Submitter	Reasons	Position
Ruataniwha Farm Limited	It will enable better use of farm land with irrigation; the lake is greatly modified; the effect will be minimal	Support
Meridian Energy Limited	Need to allow for full operating range of Lake Pūkaki; need to control erosion and sediment and outline the extent of protection works; effects on Meridian infrastructure	Oppose

## 6 THE SECTION 42A REPORTS

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- 6.1 A section 42A report on the application and submissions was prepared by the Council’s Consent Investigating Officer, Ms Maria Bartlett.
- 6.2 The primary report was supported by a number of specialist s42A reports prepared by Messrs Heller, Hanson, Glasson, McNae and Stewart, and Drs Clothier, Schallenberg, Meredith and Freeman. The key issues addressed by these reports were cumulative water quality effects, landscape effects, and environmental flow and level regimes.

- 6.3 All reports were pre-circulated in advance of the hearing. We have read and considered the content of the reports and refer to them as relevant throughout this decision. Specific points noted from the s42A report are summarised below.
- 6.4 Ms Bartlett said that the pipeline would be buried within the lake bed, between the minimum lake level and the lake margin, to a depth of 600mm. The extent to which erosion protection works would be required to prevent erosion at the site was unknown, given the pipeline would not be exposed to surface lake level fluctuations within the operating range of the lake.
- 6.5 Ms Bartlett said that there are likely to be adverse effects on the State Highway, managed by Transit NZ, as a result of the pipeline from the intake crossing the state highway to the irrigation area. Works would need to be undertaken in consultation with Transit NZ and concerns regarding road safety addressed during planning of works, to the satisfaction of Transit NZ.
- 6.6 Ms Bartlett said that effects on amenity values during and immediately after works will include heavy machinery presence at the site and sediment discharge producing localised deterioration in water quality. Given that works are to occur adjacent to a public viewing area, consideration should be given to timing works outside periods of high visitor numbers, and managing the site to reduce visual impact of the activity.
- 6.7 Ms Bartlett was satisfied that effects on landscape and amenity values could be adequately mitigated.
- 6.8 In her addendum Ms Bartlett said that there were no outstanding matters to be addressed with this application.

## **7 THE APPLICANT'S CASE**

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- 7.1 Legal counsel for the applicant, Mr Ewan Chapman, presented opening submissions and called evidence from Ms Haidee McCabe,

### **Opening legal submissions**

- 7.2 The applicant is part of the Upper Waitaki Applicant Group (UWAG), as described in our Part A decision. Mr Ewan Chapman presented comprehensive opening legal submissions on behalf of all UWAG applicants. He said that there may be matters of a specific legal nature relating to certain applications and those issues will be raised when the specifics of the applications were discussed in closing.
- 7.3 Mr Chapman's submission focused on the take and use applications by the various UWAG applicants and did not include any specific comment on this application. We provide a brief summary of his submissions in our separate decision on the related take and use application by the applicant (CRC071362).

### **Effects on flooding and erosion**

- 7.4 Ms McCabe said that the proposed intake structure should not create any erosion or increase bank instability given the pipe line will be buried when above the minimum operating level. Below the minimum operating level the pipe will not be buried but erosion protection works will be installed at the intake screen and pump location. This would be done in consultation with MEL during the final design stages.
- 7.5 Consultation has been occurring with MEL to ensure the location and design concept would not compromise the MEL spillway and ability to manage flood events, with concerns addressed and the submission recently withdrawn. Ms McCabe said that given this, effects on flooding or erosion were considered to be minor.

### **Effects on Man-Made Structures**

- 7.6 Ms McCabe said that the closest man made structure was the Lake Pūkaki spillway which was approximately 160 metres from the intake, in this already highly modified environment. Consultation during the design process has been carried out with MEL to ensure the spillway is not compromised by the activity proposed. MEL has withdrawn their submission regarding potential adverse effects on infrastructure.
- 7.7 Ms McCabe said consultation had now commenced with a representative of the NZ Transport

Agency over the road crossing and will be finalised by way of a Deed of Grant if this consent is granted. However given the location and distance of the road crossing from the intake, she considered it was well outside the scope of this land use consent

7.8 Effects on man-made structures were considered by Ms McCabe to be minor.

#### **Effects on Instream Values and Water Quality**

- 7.9 Ms McCabe said that Lake Pūkaki is a glacial lake with an already high sedimentation level. Once the intake structure is constructed and an initial settling period is complete from the newly disturbed area, additional sedimentation in the area would be minimal.
- 7.10 Works around the intake area Ms McCabe said would be undertaken during the initial construction period and on an as needed basis for such activities as maintenance at the beginning of the irrigation season or when lake levels are low and allowed access for this to occur.
- 7.11 Ms McCabe acknowledged that the works can cause a temporary discolouration of the water and particularly from the perspective of the aquatic ecosystems that may be present in the lake; such sedimentation can have an impact at sensitive times such as spawning, which would therefore be avoided. Specific sensitive times to avoid works had not been raised in the Fish & Game or DoC submissions or during consultation when further details of the application were provided.
- 7.12 Ms McCabe said that given the huge dilution effect of Lake Pūkaki and the already high sediment level and cloudy colouring this was expected to be localised to the works area and disperse within a close proximity. The intake would ideally be constructed and maintained during low lake levels reducing the amount of work within the lake water. However this may not be practicable.
- 7.13 Ms McCabe said that the original intake design proposed a construction timeframe for within the lake bed of approximately 3 days which was unrealistic and the actual distance to the minimum operating level was not understood. Consequently a more realistic timeframe for works was one month with actual lake bed work anticipated to be in the order of 2-3 weeks was proposed when the intake concept was altered.
- 7.14 The intake design proposed was mainly buried under the lake bed except the intake screen which should not impede fish passage. A fish screen was proposed to avoid fish from entering the intake.
- 7.15 Ms McCabe said that during the initial construction phase there would be disturbance at the lake bed, whereby instream values may be affected by the increased sediment levels. Conditions have been proposed whereby:
- (a) Works will be completed in a manner as not to increase erosion to the lake bed.
  - (b) Vehicles and machinery will as far as practical and if able to be avoided not enter the water.
  - (c) Any sediment created during the works will be minimized as far as practicable.
- 7.16 Given the proposed mitigation measures Ms McCabe believed the effects on instream values and water quality would be an opinion with which she said the reporting officer agreed.

#### **Effects on Amenity Values, People and Communities**

- 7.17 Ms McCabe said that the lake levels are largely artificially controlled by Meridian Energy through either the Pūkaki Canal or Pūkaki spillway which is within the vicinity of proposed intake location. The actual intake screen and pump will be located below the minimum operating level of 518 masl and the proposed shed will be located above the maximum operating level of 532.5 masl. Therefore a large part of this intake will always be inundated by water to ensure it can operate. The pump shed needs to be protected from flood lake levels hence the location above the maximum operating level.
- 7.18 Ms McCabe said that the area of the proposed works is located alongside state highway and in a tourist viewing area of Aoraki Mt Cook. However the environment was already highly modified and once constructed given it is buried, would barely be visible other than a small electrical shed. It would not hinder any views of Aoraki Mt Cook.



- 7.19 The pipe would be buried above the minimum lake level and the intake screen and pump was located below the minimum lake level. Ms McCabe said that this should ensure the visual effect on the highly modified landscape in this area, was minimal along with the proposal to re-level the area on completion of works.
- 7.20 Ms McCabe said that the initial installation works and maintenance proposed were for very restricted time periods. In relation to Tangata Whenua values, accidental recovery protocol has already been proposed by the applicant
- 7.21 Again Ms McCabe said that she considered that the effects on amenity, people of communities will be minor.

## **8 SUBMITTERS**

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- 8.1 Set out below is the summary of the issues raised by submitters who appeared before us. We emphasise that we have read and considered all submissions made, both in support and in opposition to the application, as well as reviewing and carefully considering evidence advanced before us.

### **Meridian Energy Limited**

- 8.2 Meridian Energy Limited had submitted in opposition to the proposed activity, expressing particular concern regarding the control of erosion and sediment, and the extent of erosion protection works. After consultation with Meridian the applicant amended the concept design and Meridian withdrew their submission.

## **9 STATUTORY CONTEXT**

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- 9.1 The relevant statutory context for a **discretionary** activity 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) Part 2 RMA
  - (e) Overall evaluation

## **10 EVALUATION OF EFFECTS**

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- 10.1 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) Flooding, erosion and artificial structures
  - (b) Water quality and ecosystems
  - (c) Landscape and amenity values

### **Flooding, erosion and artificial structures**

- 10.2 The risk of erosion and bank instability was initially raised as a concern by MEL. However following modification of the intake design and confirmation that erosion protection works will be installed as required, MEL's submission was withdrawn. MEL was also satisfied that the design would not compromise the spillway or the ability to manage flood events.
- 10.3 Other than the MEL spillway, the only other artificial structure to consider is the road crossing of SH8 from the intake to the irrigation area. However we note that a submission has not been made on this issue by NZTA and consider that this is matter for the applicant to address in consultation NZTA as required to give effect to this consent.

- 10.4 Based on the above, we are satisfied that with appropriate conditions, effects on flooding and erosion will be no more than minor.

#### **Water quality and ecosystems**

- 10.5 In relation to potential effects on water quality and ecosystems, the key issue to consider is the effects of the activity due construction of the intake. This is the period when the risk of sedimentation occurs, which can cause a temporary discolouration of the water and impact on sensitive ecosystems.
- 10.6 We accept that Lake Pūkaki is a glacial lake with an already high sedimentation level and the dilution effect given the large volume of water in the lake. Given these environmental factors, the localised nature of the works, and the relatively short duration of the works (less than one month), we are satisfied that the effects on water quality and ecosystems are acceptable.
- 10.7 This conclusion is reached taking into account the various conditions of consent proposed by the applicant. In addition, for consistency with other decisions, we have included a conditions requiring that no work shall occur within 100m of a bird breeding or nesting site.

#### **Landscape and amenity values**

- 10.8 We note that the proposed activity will occur in relatively prominent location alongside SH8 and near a tourist viewing area of Aoraki Mount Cook. However, we note that the intake structure itself will be barely visible as it will be buried beneath the lake bed below the minimum lake level.
- 10.9 The main visible component will be a small electrical shed. However given the highly modified nature of the existing environment and the fact that the structure will not hinder any views of Aoraki Mount Cook, we consider that the effects of this structure on landscape and amenity will be insignificant.
- 10.10 There will be a period of time during construction when the visual impact of machinery is evident. In addition, further work may be required for maintenance of the structure. However we consider these effects to be acceptable given their short duration and infrequent nature.

#### **Key conclusions on effects**

- 10.11 In relation to the actual and potential effects of the proposal, we are satisfied that all adverse effects will be no more than minor. In particular, we consider that any effects on flooding, erosion, artificial structures, water quality, ecosystems and landscape values are acceptable, subject to appropriate conditions.

### **11 EVALUATION OF RELEVANT PLANNING INSTRUMENTS**

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- 11.1 Under s 104(1)(b) RMA, 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.
- 11.2 In relation to the current application, we consider that the most relevant and helpful provisions are found in the regional plans and policy statements. The following sections of this decision provide our evaluation of the key objectives and policies from these planning instruments.

#### **Activities in beds of lakes and rivers**

- 11.3 The key objectives and policies that are relevant to these land use application can be found in Chapter 6 of the NRRP, which relates to activities in the beds of lakes and rivers. The chapter contains one objective and two related policies.
- 11.4 Objective BLR1 aims to ensure that works in the beds and banks of lake, rivers and streams can be undertaken while minimising effects, including flood-carrying capacity, natural character, ecosystems, other structures, erosion, Ngāi Tahu values. Given the conclusions we have reached on these matters above, we consider that, subject to appropriate conditions, the proposed works are consistent with this objective.

- 11.5 Policies BLR1 and BLR2 aim to control activities associated with the erection, placement, use and maintenance of structures within the bed of rivers to ensure that Objective BLR1 is achieved. This may include restricting activities so that they do not affect flood-carrying capacity, erosion or create plant infestations. For the reasons discussed above, with the imposition of appropriate conditions, we consider that the proposed works in the bed are consistent with these policies.

### **Landscape and amenity**

- 11.6 We discussed 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.
- 11.7 For the reasons already advanced we think that the landscape effects for this proposal are acceptable and that granting consent to this proposal will be consistent with the relevant objectives and policies relating to landscape.

## **12 EVALUATION OF OTHER RELEVANT S104 MATTERS**

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- 12.1 Under s104(1)(c), we are required to have regard to any other matter that we consider to be relevant and reasonably necessary to determine the application. After hearing all the relevant evidence, we consider that no such matters exist in relation to this application.

## **13 PART 2 RMA**

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- 13.1 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 applications.

### **Section 6 – Matters of national importance**

- 13.2 Section 6 identifies matters of national importance that we must “recognise and provide for” when making our decision, including in particular preserving the natural character of lakes and rivers (s6(a)), protecting outstanding natural features and landscapes (s6(b)) and the relationship of Maori with the environment (s6(e)).
- 13.3 In respect of s6(a) we recognise that preservation of the natural character of lakes and rivers is the imperative. In this case, given the short duration of the works and the nature of the proposed structures, we consider that the grant of consent would recognise and provides for these matters.
- 13.4 In terms of s6(b), we have evaluated the natural features and landscape and have reached the view that the grant of consent in this case is not inappropriate because it will not, in our view, diminish the natural features and landscapes such as they are in any significant way.
- 13.5 In terms of section 6(c), it is our view, taking into account the evidence received, that there are not areas of significant indigenous vegetation and significant habitats of indigenous fauna that are at risk thus requiring protection as a consequence of the grant of consent.
- 13.6 In relation to section 6(e) we are cognisant of the relationship that Ngāi Tahu hold with the natural resources of this area, and while no specific values were specified by Ngāi Tahu in relation to this application, we believe that the mitigation measures and conditions provide for the cultural relationship to this catchment that is of importance to Ngāi Tahu.
- 13.7 For the above reasons, we consider that granting consent to the proposal would recognise and provide for s6 matters, as we are required to do under the RMA.

### **Section 7 – Other Matters**

- 13.8 Section 7 lists “*other*” matters that we shall “*have particular regard to*”. We make the following observations in relation to each of those matters as they are relevant to this application, referring to the sub paragraph numbers of s7:
- 13.9 Sub-section (a) refers to kaitiakitangā. Having particular regard to kaitiakitanga in this context means paying special regard to the Ngāi Tahu view about the appropriate manner in which

natural and physical resources of the Upper Waitaki are should be managed. Ngāi Tahu have not submitted on this application, we note that where Ngāi Tahu have identified cultural issues on other applications subject to this hearing the focus has been on maintaining or enhancing water quality and associated ecosystem values. This application is for an activity that has an indirect relationship with mahinga kai resources in the catchment, and with the proposed conditions will have less than a minor effect on cultural values. The incorporation of the accidental discovery protocol in the conditions will also recognise kaitiakitanga of the respective Papatipu Runanga in regard archaeological values on the land area subject to this consent.

- 13.10 Sub-section (c)(d) and (f) refers to the maintenance and enhancement of amenity values, the intrinsic values of ecosystems, and the maintenance and enhancement of the quality of the environment. We have considered these matters and concluded that, based on the low risk of adverse effects, the grant of consent with appropriate conditions imposed will ensure that such values are safeguarded.
- 13.11 Having particular regard to the above matters in the context of section 7, we conclude that the grant of consent could be supported

### **Section 8 – Treaty of Waitangi**

- 13.12 Finally, section 8 requires that we shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).
- 13.13 The site lies within the rohe of Te Runanga o Arowhenua and Te Runanga o Waihao. Te Runanga o Ngāi Tahu have not submitted on this application, however the Canterbury Aoraki Conservation Board lodged a submission requesting that s.6, 7 and 8 of the Act be considered, this would seem to reflect a particular duty by that board to its Treaty and partnership responsibilities. We are mindful of the history of loss and redress that Ngāi Tahu have traversed, and believe that the determination of this application respects the principles of partnership, active protection and reciprocity.

### **Section 5 – Purpose of the RMA**

- 13.14 Turning now to the overall purpose of the RMA, that is, “to promote the sustainable management of natural and physical resources”.
- 13.15 In combination with the related take and use application (if granted), the proposal will allow the development of land to occur, which may provide for the economic and social well-being of the community. The applicant has proposed measures to “avoid, remedy or mitigate” the potential impacts on water quality and ecosystems, artificial structures, landscape and amenity, and Tangata Whenua values, as required in Section 5(2)(c).

## **14 OVERALL EVALUATION**

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- 14.1 Under s104B of the RMA, we have a discretion as to whether or not to grant consent. 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.
- 14.2 Overall, there were very few (if any) contentious issues in respect of this application. Given the localized nature of the works and the low potential for adverse effects, the applicant’s witness and the s42A report writer both agreed that there were no outstanding matters and that consent could be granted. In addition, there were no submissions in opposition, other than one from Meridian Energy Limited that was subsequently resolved. We agree with the views of the parties that there will be no significant adverse effects associated with this proposal and that it is consistent with the objectives and policies of the relevant plans.

- 14.3 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 the outcome which best achieves the purpose of the Act is to grant consent.
- 14.4 Notwithstanding the above, we note that in a separate decision (CRC071362) we have declined consent to take and use water from this location for a range of reasons. This consent may therefore be of no practical use to the applicant, which may choose to surrender the consent particularly given the availability of other alternative take options which have been granted consent. While this may be a somewhat unusual circumstance, we considered that we were obliged to consider and determine this application on its merits, despite our finding on the related take and use application.



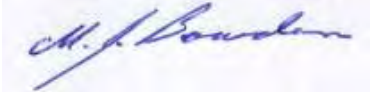
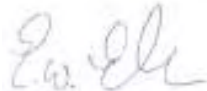
## 15 DECISION

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- 15.1 Pursuant to the powers delegated to us by the Canterbury Regional Council; and
- 15.2 For all of the above reasons and pursuant to sections 104 and 104B of the Resource Management Act 1991, we **GRANT** application **CRC092721** by **Glentanner Station Limited** for the following activity:
- to undertake works in the bed and bank of Lake Pūkaki, to construct and maintain an intake structure to facilitate the abstraction of water from Lake Pūkaki, between map references NZMS 260 H38:8235-6520 and NZMS 260 H38:8217-6519, at State Highway 8, east of the Pūkaki Dam.
- 15.3 Pursuant to section 108 RMA, the grant of consent is subject to the conditions specified at **Appendix A**, which conditions form part of this decision and consent.
- 15.4 The duration of this consent shall be until the 30<sup>th</sup> April 2025.

**DECISION DATED AT CHRISTCHURCH THIS 9<sup>TH</sup> DAY OF MARCH 2012**

Signed by:

Paul Rogers	 _____
Dr James Cooke	 _____
Michael Bowden	 _____
Edward Ellison	 _____

**Limitation on works**

1. Works in the bed and banks of Lake Pūkaki shall be limited to construction, maintenance and operation of an irrigation intake structure, consisting of a submersible pump and up to 200 mm diameter pipeline, sufficient to carry a maximum flow of 116 litres per second;
2. The irrigation intake pipeline shall be buried within the bed of the lake, above the minimum lake level of 518 metres above mean sea level, to a depth of 600 mm below natural bed level.
3. Excavation shall not exceed a depth of 1 metre below the level of the natural lake bed prior to excavation.
4. Works shall only be carried out within the bed and banks of Lake Pūkaki between map reference NZMS 260 H38:8235-6520 and H38:8214-6511, which will enable the proposed intake structure to extend below the minimum lake level of 518 metres above mean sea level.
5. In relating to the timing of the works:
  - a. Works to install the intake structure described in Condition 1 shall take no longer than one month to complete
  - b. Works to maintain the intake structure described in Condition 1 shall take no longer than one month to complete
  - c. Works shall not be carried out on weekends or public holidays
6. Works shall not cause erosion of the banks or bed of Lake Pūkaki
7. All practicable measures shall be undertaken to minimise the discharge of sediment to Lake Pūkaki, arising from the works, including, but not limited to
  - a. minimizing disturbance of lake bed;
  - b. keeping works in water to the minimum required to undertake the works;
  - c. and planning to undertake works during periods of low lake levels.
8. Prior to commencing excavation, a copy of this resource consent shall be given to all persons undertaking activities authorised by this consent
9. The Canterbury Regional Council Compliance Monitoring Officer shall be notified of the intention to carry out works and their intended type and scope at least 48 hours prior to the commencement of work.
10. To prevent the spread of Didymo or any other aquatic pest, the consent holder shall ensure that activities authorised by this consent are undertaken in accordance with the Biosecurity New Zealand's hygiene procedures.

Note: You can access the most current version of these procedures from the Biosecurity New Zealand website <http://www.biosecurity.govt.nz> or Environment Canterbury Customer Services.
11. All practicable measures shall be undertaken to minimise adverse effects on property, amenity values, wildlife, vegetation, and ecological values.
12. Works shall not occur when birds are nesting or rearing their young within 100 metres of the site of works. For the purposes of this condition, birds are defined as those bird species listed in **Schedule 1**.
13. There shall be no stockpiling of materials at the works site.

14.

- a. All practicable measures shall be undertaken to prevent oil and fuel leaks from vehicles and machinery.
- b. There shall be no storage of fuel or refuelling of vehicles and machinery within 20 metres of the bed of a river or lake.
- c. Fuel shall be stored securely or removed from site overnight.

15. Cement shall be stored securely or removed from site overnight.

16. Machinery shall be free of plants and plant seeds prior to use in the riverbed

#### **Accidental discovery protocol**

17. In the event of any disturbance of Koiwi Tangata (human bones) or taonga (treasured artefacts), the consent holder shall immediately:

- a. Advise the Canterbury Regional Council of the disturbance;
- b. Advise the Upoko Runanga of Arowhenua, Waihao and Moeraki, or their representatives, and the New Zealand Historic Places Trust, of the disturbance; and
- c. Cease earthmoving operations in the affected area until an area has been marked off around the site, and Kaumatua and archaeologists have given approval for the earthmoving to recommence. Note: This condition is in addition to any agreements that are in place between the consent holder and the local Runanga or the New Zealand Historic Places Trust.

#### **Completion of works**

18. All spoil and other waste material from the works shall be removed from site on completion of works

19. On completion of works, the area shall be restored to its original condition as far as practicable.

#### **Review of conditions**

20. The Canterbury Regional Council may, once per year, on any of the last five working days of May or November, serve notice of its intention to review the conditions of this consent for the purposes of dealing with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage.

#### **Lapsing of consent**

21. The lapsing date for the purposes of section 125 shall be 5 years from the commencement of this consent.

## SCHEDULE 1: LIST OF BIRD SPECIES

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South Island Pied Oystercatcher

Black Stilt

Pied Stilt

Wrybill

Banded Dotterel

Black-fronted Dotterel

Spur-winged Plover

Paradise Shelduck

Grey Duck

NZ Shoveler

Grey Teal

NZ Scaup

Black-billed Gull

Red-billed Gull

Caspian Tern

White-fronted Tern

Black-fronted Tern

White-winged Black Tern

Australasian Bittern

Marsh Crake

Spotless Crake

Cormorant/shag colonies