

BEFORE THE CANTERBURY REGIONAL COUNCIL

UNDER The Resource Management Act 1991

AND

IN THE MATTER OF Application CRC145237 by NSK Farming Limited for a water
permit to take and use surface water

DECISION OF HEARING COMMISSIONER

BIANCA SULLIVAN

Dated 15 April 2021

REPRESENTATION AND APPEARANCES

Applicant

Ms. Georgina Hamilton – Counsel

Mr. Nat Small – Director, NSK Farming Limited

Ms. Keri Johnston – Water Resources Engineer (Irricon Resource Solutions Limited)

Dr. Dean Olsen – Freshwater Scientist (Freestone Freshwater Limited)

Dr. Peter Espie – Terrestrial Ecologist (AgScience Limited)

Mr. Tim Ensor – Planner (Tonkin and Taylor)

Submitters

Mr Karl Russell – Cultural, Te Rūnanga o Arowhenua

Ms Kylie Hall – Planner, Aoraki Environmental Limited representing Te Rūnanga o Arowhenua

Mr Steve Gerard – Future Rivers Trust and Federation of Freshwater Anglers

In addition, tabled supplementary statements were received from Ms Nicky Snoyink, representing the Royal Forest and Bird Protection Society of New Zealand Inc., and from Ms Elizabeth Weir, Ms Rosalie Calder and Mr Colin Morris, who made a joint submission.

Canterbury Regional Council

Ms Suzanne Gabites – Science Team Leader, Hydrology (for Ms Carey Lintott)

Mr Graeme Clarke – Principal Science Advisor, Surface Water Science

Dr Helen Greenup – Ecologist, Environmental Science and Hazards (for Dr Jean Jack)

Ms. Susannah Black – Senior Consents Planner

BACKGROUND AND PROCEDURAL MATTERS

1. This is the decision of independent hearing commissioner Ms Bianca Sullivan. I was appointed by the Canterbury Regional Council (CRC) to hear and decide this consent application by NSK Farming Limited (applicant) pursuant to the Resource Management Act 1991 (RMA or 'the Act') to take and use surface water.
2. The application is associated with a wider suite of consents which have a complex history. Together they provide for water to be taken from Grampians Stream during times of high flow, stored in an instream dam in Morton Stream and taken and used for irrigation of the applicant's property in the Hakataramea Valley. The original consents were issued in 2010, as part of a larger group of applications in the Lower Waitaki River catchment. Four consents were issued for this proposal:
 - a. Water permit CRC040989, to divert water from Grampians Stream at a rate not exceeding 1,000 litres per second (L/s) and 4,140,000 cubic metres per year (m³/yr). The rate of diversion shall not exceed 50% of the flow in Grampians Stream immediately upstream of the diversion and shall cease when the flows in the Hakataramea River at SH82 fall below 4.5 cubic metres per second (cumecs).
 - b. Water permit CRC040988, to dam 2,600,000 cubic metres (m³) behind a 23 metre (m) high dam in Morton Stream, with residual flows to be maintained in Morton Stream.
 - c. Water permit CRC051766, to take water from the storage dam at a maximum rate of 200 L/s and volumes not exceeding 120,960 m³ in any period of seven consecutive days and 1,540,000 m³ per year, to irrigate 275 hectares (ha) of crops and pasture.
 - d. Land use consent CRC071825, to excavate and disturb bed of Grampians Stream to construct a diversion bund, and Morton Stream to construct a concrete faced, rock fill dam to impound 2.6 million m³ of water.
3. These consents were issued with a common lapse date of 19 July 2015. This lapse date has been extended three times, with the lapse date on these consents now being 19 July 2024.
4. This application CRC145237 was lodged on 10 March 2014 as change of conditions to consent CRC051766, to increase the volume taken from the dam as well as the irrigated area. Alongside this application, a change was also sought to the conditions of CRC040989 to increase the volume of water diverted from Grampians Stream. The CRC receipted these as new applications as they were considered to be beyond the scope of the original consents. There have been a number of amendments to the application post-lodgement and the 'change' to consent CRC040989 was subsequently withdrawn on 9 October 2019. This consent CRC145237 is intended to replace CRC051766.
5. While application CRC145237 has been in process, the applicant applied for and obtained a land use consent to farm. The reference number for this consent is CRC203263, and the consent sets a nitrogen loss limit for the property.
6. The section 42A report was circulated to the parties on 30 October 2020 and in response the applicant sought to provide additional information. This was provided by 22 January 2021 and a section 42A addendum was then provided by 12 February 2021.

7. The hearing commenced at 10.10 am on Monday 8 March 2021 and was adjourned that same day at 5 pm.
8. The section 42A report (including addendum) and applicant's evidence was pre-circulated to the parties prior to the hearing, as was the evidence of Te Rūnanga o Arowhenua, in accordance with section 103B of the Act. No other submitters prepared evidence in advance of the hearing. All pre-circulated evidence was pre-read prior to the hearing and was taken as read at the hearing.
9. I visited the site on Tuesday 9 March 2021 accompanied by the CRC Consents Hearings Officer Ms Alison Cooper. We were shown around the property by Mr Nat Small, and viewed the dam location, storage dam area, proposed irrigation areas (dam block and home block), the 8 ha matagouri area within the dam block, wetlands within and adjacent to the home block irrigation area, and parts of Grampians, Morton and Gormans Streams.
10. Ms Hamilton, the applicant's legal counsel, provided a written right of reply and further information on behalf of the applicant on 23 March 2021. The further information included supplementary statements of evidence from Dr Olsen and Ms Johnston. I closed the hearing on 24 March 2021.

THE APPLICATION

11. The original application and accompanying Assessment of Environmental Effects were of limited relevance to this hearing given the substantive changes that were made during the seven years since the application was lodged.
12. The application is summarised in the section 42A report at paragraphs 16-23 and 35-40. I consider this to be an accurate description of the application and adopt it for the purposes of this decision.
13. In summary, the application is to take water from the storage dam on Morton Stream a rate not exceeding 345 L/s, with a volume not exceeding 3,169,000 m³/yr. Water is proposed to be used for the irrigation of up to 500 ha of land within an 800 ha command area on the applicant's property located at 159 Gormans Road, Hakataramea Valley (legal description lot 4DP 7999, Part lot 3 DP 8000, RS27294, RS27295, Part lot 2 DP 1997 and Part RS 27296). The command area is comprised of an area of approximately 300 ha known as the "dam block" and an area of approximately 500 ha known as the "home block".
14. The applicant seeks to carry out the same overall system as that authorised by the 2010 consents, with water taken from Gormans Stream to a storage dam on Morton Stream, then used for irrigation. The rate and volume of water taken from Gormans Stream is not proposed to change, neither is the dam volume. The key difference is the increase in the rate and volume of water taken from the dam and an increase in the irrigated area and command area.
15. The applicant seeks an expiry of 19 July 2045, consistent with that of the 2010 consents. A five-year lapse period is sought.

NOTIFICATION AND SUBMISSIONS

16. This application was publicly notified on Saturday 7 December 2019, with public notices in the Timaru Herald, Otago Daily Times, Oamaru Mail and Waimate community newspaper. Individual notices were served on a number of consent holders in the Hakataramea catchment as well several community groups, as detailed in paragraph 92 of the section 42A report.
17. Seven submissions were received, all in opposition, with six submitters requesting to be heard. Ms Black's section 42A report summarises the submissions at paragraph 94. I have read all of the submissions in full and consider that Ms Black's summary is complete and accurate. I adopt it for the purposes of this report.

THE HEARING

Applicant

18. **Ms Georgina Hamilton** of Gresson Dorman and Co, acted as the applicant's Counsel. She presented opening legal submissions placing the application on the context of the existing consent, and addressing the activity status, other consent requirements, the existing environment, effects on the environment and relevant effects to be considered, consent conditions and statutory considerations. Ms Hamilton submitted that the application should be granted with an expiry date of 19 July 2045.
19. **Mr Nat Small**, a director of NSK Farming Limited, detailed the background to the current application and the steps taken to implement irrigation on the property. Mr Small noted that they have been unable to implement the existing consents as the irrigation area is incorrect.
20. **Ms Keri Johnston**, Director and Principal for Irricon Resource Solutions Limited, provided further detail on the application and its history, and placed this in the context of the Waitaki Catchment Water Allocation Regional Plan (WCWARP) flow and allocation regimes. She also discussed the methodology and findings of her hydrological analysis, provided her views on the applicability of the Environment Court's findings in *Infinity Group Holdings Limited v Canterbury Regional Council*¹, and addressed consent conditions.
21. **Dr Dean Olsen**, freshwater ecologist and owner-operator of Freestone Freshwater, described the existing aquatic environment of Grampian Stream and Morton Stream and commented on the water quality and health of the Hakataramea River. He addressed the section 42A report, in particular that of Mr Clarke, which he disagrees with in a number of areas. He expects that the effects of the proposal on the ecology of the Hakataramea River will be no more than minor.
22. **Dr Peter Espie**, a research scientist and Director of AgScience Limited, updated me on his caucusing with Dr Greenup (discussed later in this decision) and addressed the effects of the proposed irrigation on indigenous vegetation and fauna within and adjacent to the proposed irrigation areas. A particular focus was wetlands and surface water features, in particular whether these would be defined as "natural inland wetlands" for the purpose of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F). Another key matter was the significance of an 8 ha area of matagouri vegetation in the area known as the Dam Block.

¹ [2017] NZEnvC 36

23. **Mr Tim Ensor**, a Principal Planner at Tonkin and Taylor Limited, addressed the applicable regional planning framework and activity status, discussed the scope of the application, other resource consents required and the environmental effects, and considered the application against documents including the Canterbury Regional Policy Statement (CRPS) and National Policy Statement for Freshwater Management (NPS-FM).

Submitters

24. **Mr Karl Russell** presented cultural evidence as kaitiaki on behalf of Kāti Huirapa, with the support of Te Rūnanga o Arowhenua (Arowhenua) and Te Rūnanga o Ngāi Tahu. Mr Russell presented the history of the area and its importance to Arowhenua, emphasising the importance of the Waitaki River catchment as the pathway of waters from Aoraki to the sea, and the concept of ki uta ki tai. Mr Russell emphasised the Hakataramea catchment's significant value as the largest tributary of the Waitaki River below the Waitaki Dam, and described the values that led Ngāi Tahu to choose it as a statutory acknowledgement area. Mr Russell is concerned about further degradation of the catchment.
25. **Ms Kylie Hall**, Principal Planner at Aoraki Environmental Consultancy, presented planning evidence for Arowhenua. Ms Hall's planning assessment applied the cultural evidence and presentation of Mr Russell to the statutory planning framework.

Section 42A reporting officers

26. **Ms Susannah Black**, Senior Consent Planner at Environment Canterbury, presented her section 42A report and reiterated her recommendation that the application be declined. She also addressed matters of scope, applicable plans and further consent requirements which are addressed in this decision. Ms Black also addressed mitigation and draft consent conditions, which she had jointly prepared with Ms Johnston.
27. **Ms Suzanne Gabites**, Science Team Leader – Hydrology at Environment Canterbury, commented on Ms Johnston's hydrology modelling and the review that was undertaken by Ms Carey Lintott for the Council.
28. **Mr Graeme Clarke**, Principal Science Advisor (Surface Water Science) at Environment Canterbury, addressed the effects of the proposal on water quality and aquatic ecology in response to Dr Olsen's assessment and evidence. He prepared an additional statement which was read at the hearing and circulated to those present.
29. **Dr Helen Greenup**, Scientist (Environmental Science and Hazards) at Environment Canterbury, presented on behalf of Dr Jean Jack who was unavailable. Dr Greenup addressed the ecological effects of the proposed use of water, in particular on wetlands within and adjacent to the irrigation area, and the 8 ha matagouri area in the dam block. She also provided comment on the expert caucusing that she had undertaken with Dr Espie, which I discuss later in this decision, and addressed mitigation and consent conditions.

Applicant's right of reply

30. Ms Hamilton provided a written right of reply on behalf of the applicant on 23 March 2021. Accompanying this were supplementary statements of evidence from Dr Olsen and Ms Johnston responding to questions from me at the hearing, a copy of the *Infinity* decision. Ms Hamilton submitted that the application could be granted pursuant to draft conditions attached to her right of reply.

CONSIDERING THE APPLICATION

31. I have considered all relevant documentation that applies to this application for the purposes of my assessment in the following sections, and for my final decision. This includes the application, AEE and subsequent technical assessments, all submissions, the section 42A report and addendum, expert evidence, legal submissions and supplementary evidence provided by the applicant with their right of reply.

Applicable regional planning framework

32. Ms Black and Ms Hall both consider that the status of the application should be determined by the WCWARP, while Mr Ensor considers that the Canterbury Land and Water Regional Plan (LWRP) applies.
33. Mr Ensor's reasoning is provided in paragraphs 3.3 to 3.7 of his evidence. To summarise, the application is to take water from a storage dam, which he considers does not meet the definition of a "water body" under the RMA. A water body is defined in the RMA as "*fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area*". Given that section 5 of the WCWARRP states that the plan applies to "*the taking, using, damming or diverting of water from water bodies within the Waitaki catchment...*" (emphasis added), Mr Ensor concludes that the WCWARRP provisions do not apply.
34. Ms Black and Ms Hall do not accept Mr Ensor's view that the storage pond is not a water body as defined by the RMA. They both consider that, as a storage pond formed by the damming of Morton Stream, the storage pond is essentially part of that stream.
35. I agree with Ms Hall and Ms Black that the storage pond is a water body under the RMA and therefore that the WCWARRP applies to this application. It seems counter-intuitive to me that a stream would cease to be classified as a water body if it is dammed for water storage. This is essentially what Mr Ensor is maintaining. I am also guided in this conclusion by Mr Russell and Ms Hall, who emphasised the importance of ki uta ki tai, connectedness from the mountains to the sea. This is also reflected in the statutory planning framework, which I discuss later in this decision.

Status of the application

36. All parties agreed that the application is a discretionary activity although, as discussed above, there was variation in which plan applies.
37. Mr Ensor considers that, because the WCWARRP does not apply, the application should be considered under Rule 5.122 of the LWRP. This rule applies to the taking or use of water from irrigation or hydroelectric canals or water storage facilities. Given my conclusion above that the WCWARRP does apply, I have not accepted Mr Ensor's rule assessment.
38. Ms Hall and Ms Black both consider that the activity is discretionary under Rule 19 of the WCWARRP. I agree with this interpretation. Rule 19 applies to activities to which Rule 2 (which sets the environmental flow and level regimes) and Rule 6 (which specified annual allocations to activities) do not apply. I agree that these rules do not apply in this case, as the environmental flow regime is managed by the consent to divert water from the Grampian

Stream to Morton Stream (CRC040989) and by the consent to dam water (CRC040988). The annual allocation under Rules 6 is consented by CRC040989.

39. The section 42A report states that the application was lodged prior to the notification of Plan Change 3 to the WCWARP (which became operative on 25 August 2016), but that this plan change did not affect the classification of the activity. In any case, section 88A of the RMA would apply, with the status of the activity being determined at the time the application was lodged.

Statutory considerations

40. This application was lodged in 2014 and, as such, the RMA provisions of that time apply. This means that the RMA amendments of 2017 and 2020 do not apply. Ms Hamilton usefully provided me with copies of the key relevant provisions. The sections that I refer to in this decision are those that applied at the time of lodgement, rather than the current sections of the RMA.

41. Section 104 of the RMA guides consideration of consent applications. Section 104(1) lists the matters that I must have regard to in considering the application, stating that:

When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—

(a) any actual and potential effects on the environment of allowing the activity; and

(b) any relevant provisions of—

(i) a national environmental standard:

(ii) other regulations:

(iii) a national policy statement:

(iv) a New Zealand coastal policy statement:

(v) a regional policy statement or proposed regional policy statement:

(vi) a plan or proposed plan; and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

42. Section 104B of the RMA states that I can grant or refuse an application that is a discretionary activity and, if granted, may impose conditions under section 108.

43. The following sections consider section 104 matters.

SECTION 104(1)(a) – ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

44. To aid in my discussion of the actual and potential effects of the proposal, I first clarify the existing environment and the scope of effects to be considered. This latter point was the subject of disagreement between the section 42A officers and the applicant.

45. For the purposes of this decision, the effects of the proposal are split into those resulting from the take of water and those resulting from the use of water. Some effects, such as water

quality, arise from both the taking and use of water, however they are discussed separately below. Positive effects and effects on tangata whenua values are then addressed.

The existing environment

46. Before addressing the actual and potential effects of the proposed activity, I outline the environment against which the effects are assessed. The existing environment is described in section 5 of the AEE, with additional and updated information provided through the applicant's additional information, the section 42A report (paragraphs 41-50), and expert evidence. There was agreement between the parties that the existing environment includes the resource consents already granted to the applicant, even though these are yet to be exercised.
47. It was evident from Mr Small's presentation to the hearing as well as the site visit that considerable effort has been undertaken to progress this proposal and that his intention is to implement the consents. I therefore accept that the existing resource consents are part of the existing environment and have assessed the application in this way.
48. No evidence was provided to suggest that the permitted baseline, as provided for by section 104(2), should apply in this case.

Scope of effects for consideration

49. A key matter of dispute for this application, and which is material to my decision, is the scope of effects that should be considered. I address this matter here as it defines the effects that are to be considered below.
50. There is agreement that the additional rate and volume of water sought to be taken from the storage dam by this application will result in some degree of adverse effect on the Hakataramea River. However, there is disagreement over whether I can consider this effect in making my decision.
51. The applicant's position is set out in the legal opinion of the applicant's former legal counsel, now Judge Prue Steven (dated 4 June 2019), and in the opening legal submissions and right of reply of Ms Hamilton. Ms Johnston and Mr Ensor also address the scope of matters I can consider in their respective statements. In summary, their position is that my consideration of effects should be limited to those that result from the use of water from the storage dam. It would therefore exclude the effects of the taking of water.
52. The reason for this is complex but I will summarise it here. Given that the water 'take' from Grampians Stream authorised by consent CRC040989 is included in the Table 3 and Table 6 allocations under the WCWARP (rather than the take from the dam storage pond), and that the rate and volume authorised by this consent will not change, the applicant considers that any additional water taken from the storage pond is irrelevant in the context of the WCWARP allocations. Further, as CRC040989 forms part of the existing environment and the rate and volume sought by this application are within that already authorised by CRC040989, the applicant considers that the effects of the take and use are already accounted for.
53. The applicant's position is not supported by Ms Black, who considers that the scope may extend beyond the volume proposed to the overall proposal. This would therefore include the effects of the additional water taken to irrigate a larger area, including those effects on the Hakataramea River. I note here that the effects on the Hakataramea River were a key

concern for all submitters. The matter of scope is addressed by Forest and Bird and Arowhenua, who both support Ms Black's approach.

54. There is no dispute between the parties that the paper allocation for the overall proposal is the rate and volume of water that is taken² from Grampian Stream. While I do not dispute this, it worth acknowledging here that, while the take of water from Grampian Stream under consent CRC040989 is counted in the WCWARP Table 3 and Table 6 allocations, the water is fed to an instream storage dam that also receives inflows from Morton Stream.
55. It is worth emphasising that this application is to take and use water and that the take component is greater than that of the existing consent CRC051766. The proposed increase in take is not trivial, with the rate increasing from 200 l/s to 345 l/s and the annual volume increasing from 1,540,000 m³ to 3,169,600 m³. This led me to question Ms Johnston as to why the annual volume and rate for the take from Grampian Stream are so high.
56. Ms Johnston was the consultant for the applicant for the original applications and presented evidence for the applicant at the consent hearings for these applications. She explained that the rate and annual volume for the take from Grampian Stream comprises that sought for irrigation, the volume required to fill the storage dam, and an extra component to account for losses. Largely supporting this is Ms Black's section 42A report, which refers to a response to a request for further information for CRC040989. This stated that the 4,140,000 m³ annual volume for the Grampians stream take comprises 2,600,000 m³ dam volume and 1,540,000 m³ for the use of water for irrigation under CRC051766. This apportionment was not included as a consent condition but forms part of the application.
57. Ms Johnston compared the suite of consents and the current application to a similar set of applications by GT Hayman (CRC173180, CRC173181 and CRC173182), also in the Hakataramea catchment. Similar to the application being considered here, GT Hayman sought to amend their consent to take and use water from a storage dam by increasing the irrigation area and increasing the rate and return period volume to be taken from the storage dam, with no increase in the rate or volume taken from the stream supplying the storage dam. This change was granted without notification, and the effects of the increased take were not considered.
58. Ms Johnston's evidence considered that the application being considered here mirrors that of GT Hayman, however she acknowledged when questioned that Mr Hayman's application did not seek to increase the annual volume of the take from the storage dam. The dam had already been constructed and filled, so the annual volume was decreased to remove the dam fill volume. This ensured that the increased rate and return period volumes would be kept within the existing irrigation annual volume and that no additional water would be removed from the streams. The GT Hayman scenario therefore differs considerably from the application I am considering here, which was acknowledged at the hearing by Ms Johnston.
59. While the outcome of the GT Hayman application does not influence my decision here, it assists in understanding how I have considered this matter. In this case, the portion of the annual volume of the Grampians Stream take that is provided for filling the storage dam will, once the dam is filled, contribute to additional water for irrigation use. As stated above, the conditions of the consent to take from Grampians Stream do not limit the annual volume to

² Note that Ms Johnston and Ms Black agree that under the current plan definitions this consent would have been issued as a take, rather than a divert. From this point, I refer to it in this decision as a take.

that used for dam fill and that used for irrigation. Had this been the case, that condition would have needed to change to provide for the additional irrigation use under this proposal.

60. The use of the water being taken from Grampians Stream is changing through a greater portion being used for irrigation. The decision makers to the original consent applications presumably would have considered, within the suite of applications, whether the annual volume taken from Grampian Stream comprised an efficient use of water, and how that take affected the downstream environment.
61. I am considering the change sought by this application as a change to the whole proposal. That the original applications were separated into three water permits and a land use consent is largely an administrative construct. The way that these applications are split should not have the effect of constraining how I consider the effects of this proposal. This is the approach taken by Ms Black and I consider it to be correct.
62. The only change to conditions to enact the proposal is to consent CRC051766, however I consider that it is appropriate to consider the effects of the change to the proposed activity in its entirety. Section 104(1)(a) directs me to have regard to *“any actual and potential effects on the environment of allowing the activity”*. To be constrained in doing so by the water accounting construct created by the WCWARP would in my view not be consistent with section 104(1)(a). These allocations are primarily for managing water allocation to define the activity status of consent applications. They should not be used to dictate the breadth of effects to be considered for a consent application.
63. In addition, to not consider these effects would restrict my consideration of the interconnectedness of the tributaries with the Hakataramea River and wider Waitaki River catchment, as described in the evidence of Mr Russell and Ms Hall, and which I am required to consider under Policy 1 of the WCWARP and Policy 3 of the NPS-FM 2020. In conclusion, I find that it is appropriate to consider the effects of the proposed change on the Hakataramea River irrespective of how the allocation is counted under the WCWARP.

Effects resulting from the take of water

64. The applicant seeks to increase the take from the storage dam from 200 l/s to 345 l/s, and to increase the annual volume from 1,540,000 m³ to 3,123,175 m³. The effects of this are discussed under the following headings:
 - Effects on hydrology
 - Effects on water quality and aquatic ecology
 - Effects on recreation and amenity.
65. Following from my determination of the scope of effects, I consider in this section the effects of the increased rate of take and annual volume on the downstream environment, in particular the Hakataramea River. The applicant assessed these effects in further information provided after the section 42A report was circulated, although they still maintained that these effects could not be considered. The audit of this further information by Council officers was then documented in the section 42A report addendum.

Effects of the take of water on hydrology

66. Firstly, I address the effects of the proposal on the downstream hydrology. It is relevant to consider this first as the effects on water quality, instream ecology and recreation and amenity values are all informed to some degree by hydrological effects.
67. In response to the section 42A report, Ms Johnston undertook hydrological modelling to assess the effects on the flows and water availability in the Hakataramea River. The model and accompanying report was peer reviewed by Ms Lintott for the Council, with the process and findings of the peer review documented in the memo of Ms Lintott and Ms Gabites that is appended to the section 42A report addendum.
68. Ms Johnston and the Council hydrologists agree on the conclusions of the model, although there is some disagreement over the degree of resulting effects, in particular the cumulative effects. I will not dig into the model approach and assumptions here but will summarise the key findings below before considering effects.
- (a) In five of the seven years modelled, more water would have been taken from Grampians Stream to meet the proposed increased take volume. This difference ranged from 187,408 m³/yr to 2,323,687 m³/yr, with water taken from Grampians Stream in the worst case for 22 additional days in a year.
 - (b) With a minimum flow of 4.5 m³/s (above the flow-sharing threshold in the WCWARP), less additional water is taken in dry years when the flows in the Hakataramea River are low.
 - (c) When the flows in the Hakataramea River were large, the proposed abstraction is 6% of the flow in the Hakataramea River.
 - (d) This is estimated to result in the minimum flow in the Hakataramea River being triggered an additional 0.8% of the time, which equates to an additional three days per year.
69. Ms Johnston considers the above effects, both individually and cumulatively, to be less than minor. She also considers that the Court's findings in *Infinity* are largely irrelevant as this case deals with a low flow take rather than a high flow take, as is the case here. The *Infinity* case was regularly referred to by parties in the evidence and during the hearing and I will return to it.
70. The Council hydrologists agree that the effects summarised above are small, but they expressed concern over the cumulative effects. They consider that the large volume of water already allocated in the catchment has resulted in a flow in the Hakataramea River which is already substantially altered from the naturalised flow.
71. The WCWARP allocation limit for the mainstem of the Hakataramea River is 500 l/s, of which 432 l/s has been allocated to 10 consents. Ms Johnston highlights the available allocation in her evidence. The WCWARP does not contain allocation limits for the tributaries of the Hakataramea River, or an overall allocation for the catchment. Ms Johnston noted five high flow consented abstractions in the catchment, including the applicant's, that total 1,253 l/s and that abstract between flows of 4.5 m³/s and 10 m³/s.
72. Over-allocation in the catchment was a common theme for submitters, particularly Arowhenua. Mr Russell explained the cultural values and the relationship that mana whenua has with the catchment. He also explained how these values have been affected, including from what he considers to be the abstraction of too much water. I discuss these effects further in a following section.

73. There were no submissions from abstractors, however it was pointed out to me by the Council hydrologists that reliability of supply in the catchment is poor. The *Infinity* decision (at paragraph 80) supports this, recording expert agreement that the current reliability of supply in the catchment is poor at about 67%.
74. I consider that the *Infinity* decision is relevant to this application, as it makes key findings on the health of the Hakataramea River as well as the planning context. While its focus is on the effects of a proposal to take water at low flows, as demonstrated by the conclusions above, this proposal will also have a low level of effect on the hydrology of the Hakataramea River at low flows.
75. The *Infinity* decision records ongoing doubt over the extent to which the WCWARP allocations from the tributaries were considered when developing the Hakataramea River allocation. It considers that the WCWARP is incomplete as it does not give effect to the policies in the NPS-FM 2014 which requires a whole of catchment approach. These policies have been superseded by those in the NPS-FM 2020 but I consider that the conclusion holds.
76. Given the already poor reliability of supply for abstractors from the Hakataramea River, I consider that any further reduction must be considered significant.

Effects of the take of water on water quality and aquatic ecology

77. The effect of the take on water quality and freshwater ecology was a common matter raised by submitters. Ms Weir, Mr Morris and Ms Albrett were concerned that reducing the tributary flows would adversely affect downstream water quality. All submitters emphasised the importance of flushing flows for flushing out nuisance algal growths. The Future Rivers Trust and the New Zealand Federation of Freshwater Anglers also noted a decrease in the values of the Hakataramea catchment as a sports fishery.
78. Dr Olsen's evidence for the applicant addressed the values of Gormans and Grampians Streams, and he provided comment at the hearing on the values of and Morton Stream. While there is limited recent information on the health of these waterways, Dr Olsen considers that Grampian and Gormans Streams appear to have reasonable water quality and support healthy ecosystems. There is no water quality data for Morton Stream, but fish records suggest a healthy waterway. It is worth noting that Morton Stream does not flow year-round, while Grampian and Gormans Streams are permanently flowing. Dr Olsen considers that the effects on these tributary streams will be minimal.
79. Mr Clarke responded to Dr Olsen's evidence in his section 42A report and at the hearing. He agrees with Dr Olsen's conclusions about the health of the tributary streams.
80. Dr Olsen also addressed the effects of the abstraction on the Hakataramea River. He concludes that *"the effects of this proposal on the Hakataramea River will be no more than minor, and in the context of the application and the broader Hakataramea catchment, not significant"*. Dr Olsen's evidence and supplementary statement focussed on the areas of disagreement with Mr Clarke: that a reduction in mid-range flows will increase nuisance periphyton growths and reduce invertebrate drift, with subsequent effects on trout and native fish.
81. Mr Clarke and Dr Olsen agree that the mid to high range flows result in shear stress that reduce periphyton biomass, particularly long filamentous algae. A reduction in such flows could impact on the river's ability to reduce periphyton biomass. Both experts agree that the

proposed abstraction could have a small adverse effect on periphyton removal. Dr Olsen considers that this is not significant, while Mr Clarke considers that this will increase the risk of nuisance algal blooms and with it the risk that LWRP periphyton objectives are not met.

82. Native fish, such as Canterbury galaxias and kōaro, are known to feed on invertebrates drifting in the water column. Mr Clarke considers that a reduction in flows could on occasion reduce the availability of food for drift feeding fish. Dr Olsen disagrees with this, considering that the presence of trout will mean that Canterbury galaxias will be benthic feeding rather than drift feeding. He further considers that trout predation to be a more important factor for Canterbury galaxias survival. Mr Clarke pointed out that brown and rainbow trout, which are present in the Hakataramea River, are also known drift feeders.
83. Mr Clarke presented results to the hearing of Council monitoring, with Quantitative Macroinvertebrate Community Index (QMCI) results from two Hakataramea River sites not meeting LWRP objective four of the last five sampling rounds. Mr Clarke and Dr Olsen both attribute this to the adverse effects that nuisance periphyton growths have on macroinvertebrate communities. Mr Clarke considers that the risk of nuisance periphyton growths will increase with additional flow allocation and increased nutrient concentrations. The potential for increased nutrient concentrations is discussed in the section below dealing with the effects of the use of water.
84. Mr Clarke provided information from a Canterbury study conducted by NIWA, which concluded that lower flows were associated with higher water temperatures in 46 of the 47 rivers included in the study. Mr Clarke goes on the record that there have been 10 instances of water temperature in the Hakataramea River exceeding 20 °C at flows higher than 4.5 m³/s. Such temperatures can have adverse effects on aquatic species.
85. Dr Olsen has reviewed the study that Mr Clarke refers to and further explains the context in his supplementary statement. Following from the study's findings, he considers that the largest potential effect from this proposal would be when the take from Grampians Stream is at its maximum rate and flows in the Hakataramea River are 4.5 m³/s at the flow recorder. While he considers such a scenario to be unlikely, it would equate to a 0.22 °C increase in temperature at the flow recorder. Dr Olsen considers such an increase to be negligible.
86. The impacts on flow are discussed above, where the modelling provided by Ms Johnston shows that there will be some degree of reduction in flow. Dr Olsen and Mr Clarke relied on this modelling for their assessments, which conclude that the reduction in flow will result in a small increase in the risk of nuisance algal growths and potentially a small increase in temperature.
87. Mr Clarke observed that the current ecological state does not include the effects of the applicant's existing consents, which are yet to be exercised. He considers that the impacts of these consents increase the risk of the LWRP outcomes not being achieved, particularly in relation to water temperature, periphyton growth and invertebrate communities.
88. In reaching a conclusion on the effects of the proposal on water quality and aquatic ecology, I am guided to some extent by the *Infinity* decision. The conclusion here was that the Hakataramea River will not meet the outcomes of Table 1 of the LWRP. The decision finds (at paragraph 300) that "*the outcomes are not all being met now and that the trends are worsening*". I have no evidence before me to suggest that this is not still the case.

89. While I accept that the effects resulting from this proposal will be small, given the already degraded and over-allocated state of the Hakataramea River and its catchment, I find that the cumulative effects of the proposal would be significant. This is further discussed below in relation to the relevant planning documents.

Effects of the take of water on recreation

90. The Future Rivers Trust and New Zealand Federation of Freshwater Anglers emphasised the value of the Hakataramea River as a sports fishery in their submissions and in the presentation of Mr Gerard to the hearing. Mr Gerard submitted that the Hakataramea River sports fishery is in decline, with dry reaches in the lower river meaning that salmon cannot always access the upper reaches to spawn. He considered that it is attributable to over-allocation and considered that no more water should be allocated until the catchment is restored.
91. These effects on instream values and water quality are discussed above, and Dr Olsen and Mr Clarke both considered the effects of the proposal on trout and salmon. Consistent with my findings above, I consider that there may be effects on trout and salmon that would affect recreational values in the Hakataramea River.

Conclusion on the effects of the take of water

92. My findings are that the effects of the abstraction of water by itself will be minor, but cumulatively these effects are significant.

Effects resulting from the use of water

93. The applicant proposes to use the 345 l/s of water to irrigate 500 hectares of land within a command area of 800 hectares. This equates to an application depth of 5.9 millimetres. The section 42A report considered this to be a reasonable and efficient use of water that is consistent with policies 15, 16, 19 and 21 of the WCWARP. There was no evidence to suggest otherwise and I have not considered this effect further.
94. The other key effects of the use of water are effects on water quality and aquatic ecology; and effects on terrestrial biodiversity values, including indigenous flora and fauna; and effects on wetlands. These are discussed in turn below.

Effects of the use of water on water quality and aquatic ecology

95. It is worth emphasising here that the applicant has already obtained a land use consent to farm (CRC203263). The land use consent to farm manages the nutrient loss from the whole farm through setting nutrient loss limits, requiring a Farm Environment Plan (FEP) to be prepared and maintained, and requiring the farm operations to be audited against the FEP. The applicant provided Overseer modelling to demonstrate that they will be able to operate the farm within the nutrient loss rates set by CRC203263 and with the proposed irrigation of 500 hectares. The audit of this modelling is discussed in the section 42A, and Ms Black is satisfied that the irrigation can be undertaken within the limits set by CRC203263. There was no evidence raised to the contrary and I am therefore satisfied that the effects of the whole-of-farm nutrient loss will be within that authorised by CRC203263.
96. The localised effects on water quality resulting from the use of water can also be considered here. The water quality evidence before me focuses primarily on the effects of the water take on the Hakataramea River, rather than the effects of the use of water on the tributary streams. Dr Olsen considered effects on the tributary streams in his evidence, as discussed above in relation to the effects of the taking of water on water quality and aquatic ecology.

Mr Clarke and Ms Black also consider the use of water in their respective section 42A reports and the effects are addressed through proposed consent conditions.

97. Forest and Bird are concerned that further degradation of the Hakataramea River and its tributaries will result from further land use intensification in the catchment. This concern was echoed by Mr Gerard and other submitters. No submitter addressed this effect or the proposed mitigation in any detail and it appears that their concerns primarily relate to the effects of the abstraction of water.
98. I discuss the values of the tributary streams in relation to the effects of the taking of water on water quality and aquatic ecology. That discussion is relevant here as well.
99. The applicant proposes to adopt and strengthen the conditions of existing consent CRC051766, as well as adopt key mitigation conditions from CRC203263. The condition set provided with the right of reply includes comments from the applicant's representatives and section 42A officers. There is agreement on conditions requiring monthly sampling of Gormans Stream (proposed condition 18) and Grampians Stream (proposed condition 19) upstream and downstream of the irrigation area, with sampling commencing at least 12 months prior to irrigation commencing. Proposed condition 21 requires action should there be a deterioration from the upstream site to the downstream site.
100. In addition to the proposed monitoring, the draft conditions include ensuring stock are kept 12 m from the Hakataramea River and 5 m from all other waterways, and fencing riparian buffers. Mr Clarke and Ms Black also referred me to the Resource Management (Stock Exclusion) Regulations 2020 which require stricter stock exclusions than those included in the applicant's existing FEP. Mr Clarke concludes that the risk of negative water quality impacts on Gormans, Morton and Grampian Streams is low if all the proposed mitigation measures are adhered to.
101. Based on the evidence presented and the conclusions of the section 42A report, I consider that the proposed conditions are appropriate to ensure that effects of the use of water on water quality and aquatic ecology will be minimal.

Effects of the use of water on terrestrial indigenous biodiversity values

102. The effects of irrigation on terrestrial biodiversity are a key matter for this application. Submitters raised concerns about the continuing loss of biodiversity resulting from land use intensification. Forest and Bird emphasised that unirrigated dryland farmland can provide important habitat for indigenous species and that these values are lost with irrigation. They explained that this does not only apply to the area subject to irrigation but that these effects can also occur beyond the irrigated area. Mr Russell explained that matagouri is a taonga that is now seriously diminished in this area.
103. Following from the submitters' concerns, the applicant commissioned Dr Espie to assess the potential effects of irrigation on biodiversity values. Dr Espie's assessment was audited by Dr Jack, who prepared a section 42A report. Dr Jack was unable to attend the hearing and her findings were presented by Dr Greenup, who has also visited the property and had been involved in Dr Jack's audit.
104. The most contiguous area of native vegetation is 8 ha of scattered matagouri vegetation (with occasional porcupine shrubs, native broom and creeping pōhuehue) within introduced pasture present in the proposed dam block. A key matter of contention was the value of this

area and the potential for irrigation to impact on these values. The 8 ha area is outside of the area originally proposed to be irrigated under CRC051766 so it is within the scope for consideration under this application. Matagouri is classified as an at risk species and the expert ecologists agreed that that matagouri shrubland has the potential to support a wide variety of lizard and insect species.

105. Neither Dr Espie or Dr Greenup considered themselves qualified to comment on potential lizard and invertebrate values and no surveys have been undertaken. Dr Jack's section 42A report suggests that the area may support the at-risk southern grass skink.
106. Dr Jack's section 42A report states that it is the cultivation and increased stocking rates commonly associated with irrigation that would result in irreversible damage. Increased stocking rates damage such vegetation assemblages through vegetation clearance, increased browsing and trampling. Dr Jack considered the value of the 8 ha area to be "moderate" when considered against the ecological significance criteria in Appendix 3 of the Regional Policy Statement (RPS). She concluded that matagouri is locally common, with higher value areas elsewhere on the property She considered that the magnitude of the potential effect of irrigation on the 8 ha area to be low without mitigation.
107. Dr Espie's evidence contests Dr Jack's description of the 8 ha area as matagouri shrubland, instead classifying the area as introduced pasture grassland with scattered matagouri. He recommends that the matagouri be maintained and not cleared but considers that the effects of irrigation can be managed through periodic grazing. Irrigation will result in increased pasture growth and he suggested that some grazing will be required to maintain habitat suitability for lizards and invertebrates. The area is currently grazed.
108. At the applicant's suggestion, I directed Dr Espie and Dr Greenup to undertake caucusing prior to the hearing. They presented the findings of their caucusing at the hearing and had largely reached agreement as to the values of the area and the mitigation required to maintain these values. In addition to the mitigation proposed by Dr Espie and mentioned above, they recommend that there be no spraying, cultivation, direct drilling or removal of matagouri plants in the area. To maintain the stream bed within this area (which likely provides lizard habitat), they recommend that there is no disturbance of the bed other than to maintain existing farm tracks. They also recommended that 5-yearly ecological surveys be carried out within the area to enable the area to be managed to maintain or improve the existing values. These measures are included in condition 26 of the draft conditions provided to me with the right of reply.
109. The only area of disagreement between Dr Espie and Dr Greenup is the requirement for a lizard management plan. Dr Greenup, supported by Dr Jack, considers a lizard management plan to be appropriate, while Dr Espie considers that the 8 ha area would provide low value lizard habitat and that this is not necessary. The applicant's right of reply addresses this matter, stating that the ecological surveys required by the matagouri management condition (draft condition 26 as appended to the right of reply) will be adequate to address effects on lizards.
110. While I acknowledge that other areas on the property may have higher values as lizard habitat, I also acknowledge the concerns of submitters who do not want to see further habitat degradation or loss. No lizard survey has been undertaken and I therefore am not satisfied that either the value of the habitat for lizards is low, or that the draft condition 26 will protect

any values that do exist. For these reasons I consider that it is appropriate to require the preparation of a lizard management plan.

111. However, considering the evidence presented and the outcome of the expert caucusing, I find that the values of the of the 8 ha matagouri area are likely to be low and the effects on the values of this area could be mitigated through both the provided agreed draft conditions and an additional lizard management plan condition.

Effects of the use of water on wetlands

112. Small spring fed wetlands and ephemeral waterways occur both within the Home Block and the Dam Block. Dr Espie undertook a wetland assessment in response to the submission by Ms Weir, Ms Albrett and Mr Morris. Dr Espie's assessment found that the largest and best examples of wetlands are outside of the irrigation command area, however that there are smaller wetlands within the command area. Of note are two spring fed, modified wetlands within the Home Block (wetlands A and B) which are identified on Plan CRC145237 attached to the draft conditions. The right of reply highlighted another potential wetland that Dr Greenup had identified on the Council's GIS. I received no information on the values or nature of this wetland, although it is adjacent to the Home Block and identified as wetland C on Plan CRC145237.
113. There was agreement between Dr Espie and Dr Greenup that wetlands A and B are modified and dominated by exotic species. They agreed that these wetlands do not meet the threshold for ecological significance criteria under the RPS. They also agreed that mitigation should include fencing with a minimum setback of 5 m, no fertiliser being applied within the fenced area, and that light grazing by sheep may be appropriate to control vegetation growth. For wetland C, they agreed that there should be no irrigation, cultivation, direct drilling, fertiliser application or stock grazing (except light grazing by sheep to manage vegetation growth).
114. The two experts disagreed over whether these wetlands would be considered as natural wetlands under the NPS-FM. As stated, they are dominated by exotic species but are spring fed. This is relevant because I am advised by Ms Hamilton and Ms Black that if the wetlands are considered to be natural wetlands then consents will be required under Regulation 54 of the NES-F as a non-complying activity. It is also relevant for consideration against Policy 6 of the NPS-FM.
115. I sought guidance from Ms Black and Ms Hamilton as to whether they considered that I had the authority to determine the NES-F consents through this consent application process. Ms Hamilton advised in her right of reply that she considers the NES-F requirements to be within the scope of this application, and that she considered it would be efficient for me to make a determination alongside this application.
116. The applicant had not specifically applied for consent under Regulation 54 of the NES-F and Ms Black's section 42A report reflects this. When questioned at the hearing, Ms Black was unsure whether I have the delegation to determine the NES-F applications and, if so, whether it would be appropriate for me to do so. She questioned whether other submitters would have submitted on the application had an NES-F application been included at the time.
117. I agree with Ms Hamilton that a consent requirement triggered under Regulation 54 of the NES-F would be within the scope of this application and that section 88A(1A) would apply. However, I also note that the NES-F was not current at the time the application was lodged or publicly notified. The public notice for the application makes no reference to irrigation within

or adjacent to wetlands. I consider it would likely have done so if the application had been notified to include applications under Regulation 54 of the NES-F. I also note that Dr Espie's wetland assessment was done in response to submitter concerns and that there would have been very little information to inform effects on wetlands in the application at the time of notification.

118. After considering this matter, I have decided not to make a determination here on any consent requirement under Regulation 54 of the NES-F. It is possible that other parties may have submitted had the application been notified to include an NES-F application. In addition, the information I have before me is not sufficient for me to decide an NES-F application. I refer here to the additional wetland raised in Ms Hamilton's right of reply. I have no information about this wetland other than the reply stating that Dr Espie does not consider it to be a natural wetland. I consider it appropriate that any applications required under the NES-F are made to the Council with the appropriate supporting information.
119. When considering the evidence before me and the proposed mitigation, I find that the effects on the wetlands would be negligible and that the application would be consistent with Policy 6 of the NPS-FM. It is therefore not necessary for me to determine whether the wetlands would be defined as natural under the NPS-FM.

Effects of the use of water on visual and amenity values

120. This effect was addressed in Ms Black's section 42A report but not directly by the applicant or submitters.
121. The proposed irrigation area for the dam block is larger than that authorised by the existing consent, while the home block is a new addition. Ms Black points out that farming activities are prevalent in the area, including irrigation.
122. Condition 16 of consent CRC051766 requires the planting of shelter belts within 12 months of the granting of consent. The applicant has not planted these and so is not in compliance with this consent condition. Mr Small explained that he has not planted the shelter belts in part because he proposes to amend the irrigation area (through this consent application) and also because of the difficulties getting plants established without a water supply.
123. Mr Small's preference is to plant shelter belt trees once irrigation water is in place. This was discussed at the hearing, with the parties agreeing that Mr Small's proposed approach is appropriate. This is reflected in the draft conditions provided to me with the right of reply and I have no issue with this approach.
124. I agree with Ms Black that the proposed irrigation of 500 ha within an 800 ha command area will have an acceptable effects on visual and amenity values.

Effects on tangata whenua values

125. Submissions were received from Te Rūnanga o Waihao and Te Rūnanga o Arowhenua. Evidence was presented at the hearing on behalf of Arowhenua, representing Kāti Huirapa, by Mr Russell (cultural) and Ms Hall (planning). The applicant did not present any cultural evidence and did not engage with rūnanga during the application process.
126. Mr Russell's evidence and presentation explained his role and duties as kaitiaki, as well as kāti huirapa's history and relationship with the Hakataramea catchment and wider Waitaki catchment. The Hakataramea is a statutory acknowledgement area, which Mr Russell

explained is because of its significance as a ara tawhito (travel route) to Aoraki and Te Manahuna (the Mackenzie Basin). It once provided plentiful mahinga kai opportunities.

127. Mr Russell's evidence and presentation emphasised the connectivity between the tributaries with the Hakatamea River, the Hakatamea River with the Waitaki River, and the Waitaki River with the ocean. He was critical of the applicant's evidence for losing sight of this connectivity. He explained that the Hakatamea catchment is more significant because the Waitaki Dam cuts the connectivity to further upstream.
128. Mr Russell considers the Hakatamea River and tributaries to be degraded and out of balance, with no wetlands and no food available. He referred to the impact of this degradation on the mental and physical health of his people. He is concerned about the dam being constructed but acknowledges that this is already consented. He is also concerned that the allocation of any additional water will further degrade the catchment. He considers that any minor adverse effects on the Hakatamea River are major in combination with other pressures.
129. Mr Russell and Ms Hall both discussed Te Mana o Te Wai and helped explain its meaning for the Hakatamea catchment. Te Mana o Te Wai is a fundamental concept in the NPS-FM and I return to this in my assessment of statutory documents. Ms Hall also referred to the relevant iwi management plans, which I will also address in my assessment of statutory documents.
130. I acknowledge the cultural significance of the Hakatamea catchment and also the now degraded nature of the catchment, particularly the Hakatamea River. Referring also to my conclusions in relation to the taking of water, I accept Arowhenua and Waihao's submissions that this application will further degrade the cultural values of the catchment.

Positive effects resulting from the take and use of water

131. Section 104(1)(ab) was inserted by the 2017 amendments to the RMA and, for reasons discussed earlier, does not apply to this application. Positive effects do need to be considered under section 104(1)(a), as the RMA definition of "effect" includes positive effects.
132. Mr Small's evidence outlined the advantages of irrigation to his property through increasing small seed production and being able to finish stock earlier in the season. I accept that the additional irrigation sought through this application would have positive effects on the applicant.

SECTION 104(1)(b) – RELEVANT PLANNING PROVISIONS

133. Section 104(1)(b) requires me to have regard to any relevant provisions of statutory planning documents. Ms Black's section 42A report contains what I consider to be a complete record of the relevant documents and provisions, with Ms Hall's planning evidence providing a more comprehensive record of the relevant provisions in the iwi management plans and RPS. There was no dispute at the hearing on the relevant documents or the provisions that applied, other than Mr Ensor's view that the LWRP applied to the water take rather than the WCWARP. This was discussed earlier, where I concluded that the WCWARP does apply. I therefore do not discuss below any objectives or policies in the LWRP that relate to water allocation.
134. I consider the NPS-FM to be a key document for this application, in part because it was gazetted after the development of the RPS, LWRP and WCWARP. These three planning documents therefore were prepared without consideration of the NPS-FM. This particularly

applies to the WCWARP, which became operative in 2005, before any earlier version of the NPS-FM existed.

135. I discuss the key documents and provisions below that are material to my decision and determine if the proposal is acceptable against this framework.

National environmental standards

136. The NES-F has been discussed above in relation to consent requirements and I will not discuss it further here other than to say that separate consents under regulation 54 are likely to be required.
137. The Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 (amended 2020) is the only other relevant national environmental standard that applies. They require that any abstractions be telemetered by 3 September 2022.

National Policy Statement for Freshwater Management 2020

138. Submitters raised concerns that the application is inconsistent with the NPS-FM and Te Mana o Te Wai and this has been touched on above. There are a number of provisions in the NPS-FM that are relevant to this proposal, primarily the single objective and Policies 1, 2, 3, 6, 7, 9, 10 and 11. I have considered all of these provisions in making my assessment however will focus my discussion on those that most directly relate to the effects of the proposal.
139. Te Mana o Te Wai is the fundamental concept of the NPS-FM, which is given effect to through the objective and Policy 1. It directs that natural and physical resources are managed in a way that prioritises:
- (a) first, the health and well-being of water bodies and freshwater ecosystems*
 - (b) second, the health needs of people (such as drinking water)*
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*
140. Policy 3 requires me to focus on the use and development of land on a whole-of-catchment basis. Policies 6 and 7 address the loss of the extent of wetlands and rivers respectively, while Policy 9 protects the habitats of indigenous freshwater species and Policy 10 protects the habitat of trout and salmon, subject to Policy 9. Policy 11 is also important, requiring freshwater to be allocated and used efficiently, phasing out existing over-allocation and avoiding future over-allocation.
141. In addressing these policies, I refer to my finding on effects above and the *Infinity* decision. I accepted that the effects of the use of water would be acceptable. In relation to the abstraction of water, I concluded that the catchment is degraded and over-allocated and that there are likely to be effects on water quality and aquatic ecology. While the effects of the proposal are small, cumulatively they are significant. The NPS-FM directs me to prioritise the health and well-being of the Hakatamea River and its catchment. I am unable to do this through allocating more water to this proposal. I therefore find that the proposal cannot comply with the objective and policies of the NPS-FM.

Canterbury Regional Policy Statement 2013

142. The following RPS provisions were identified as being relevant to my consideration of the application: Objectives 7.2.1 to 7.2.3 and 12.2.1, and Policies 7.3.3, 7.3.7, 7.3.8, 9.3.1 to 9.3.6 and 12.4.4. I have considered these provisions in making my assessment of the application. Similar to my findings of the application against the NPS-FM, I conclude that the proposal is not consistent with the provisions of the RPS.

Waitaki Catchment Water Allocation Regional Plan

143. The WCWARP was made operative in 2005 and predates the RPS, LWRP and NPS-FM. It does not directly address water quality, but Policy 13 requires the consent authority to have regard to *“the extent to which the exercise of consent could result in the water quality objectives in the Natural Resources Regional Plan not being achieved”*. The Natural Resources Regional Plan was superseded by the LWRP and there was consensus among the parties that the LWRP water quality objectives should apply when considering Policy 13 of the Waitaki Plan.

144. Objectives 1 and 2, and Policies 13, 15, 16, 21, 26 and 43 were identified by Ms Black and Ms Hall and I consider these to be relevant to this application. I have considered these provisions in my assessment of the proposal against the WCWARP. I have also had regard to the recent minor amendments made to the WCWARP as directed by the NPS-FM: Policies 1A and 1B were moved to section 5 and Policy 5A.4 was added.

145. Policy 5A.4 is relevant as it directs that the loss of river extent or values are avoided unless there's a functional need for the activity, and the effects are managed by applying the effects management hierarchy (as defined in the NPS-FM). Following from my conclusions about the effects of the abstraction, the additional volume of water proposed to be abstracted will result in the loss of river values, albeit small. I have examined the effects management hierarchy and agree with Ms Black that the proposal is not consistent with Policy 5A.4.

146. Policies 15 and 16 relate to the efficient use and conveyance of water. I concluded above that the effects of the use of water are efficient and acceptable and I consider that the proposal is consistent with these policies.

147. Policy 26 of the WCWARP seeks to maintain the existing reliability in the Hakataramea catchment where the reliability is less than that specified in Policy 26(a). In this case the existing reliability is less than that specified in Policy 26(a) so I must consider whether this proposal will maintain existing reliability. I concluded above that there will be a small but cumulatively significant adverse effect on the reliability of downstream users resulting from the increase in take from the storage dam. I therefore find that this proposal will not achieve the outcome sought by Policy 26.

148. Policy 43 identifies the key values of the Hakataramea River that are to be managed by the environmental flow regime. I conclude that these values cannot be maintained with a further reduction in flow and the associated adverse effects on water quality and instream ecology.

149. In conclusion, I find that the proposal is not consistent with policy direction in the WCWARP.

Canterbury Land and Water Regional Plan

150. Section 15B of the LWRP addresses matters relating to water quality for the Waitaki catchment. This section defines a freshwater management unit for the whole of the

Hakataramea catchment. It sets water quality outcomes through Table 15B(a) that are to be met by 2030, and water quality limits through Table 15(c). I have assessed the application against the relevant provisions of the LWRP, including those in section 15B and the strategic objectives and policies in sections 3 and 4 respectively. Policy 4.1 requires the fresh water outcomes established through Table 15B(a) to be met by 2030.

151. I accept that the use of water for irrigation will occur within the confines of the applicant's land use consent to farm and consider that the effects of the use are acceptable. I therefore conclude that the use of water is consistent with the provisions of the LWRP.
152. As stated earlier, it was accepted in the *Infinity* decision that that the Hakataramea River water quality outcomes are not being met and are not likely to be met. I concluded that the effects of the abstraction of water will result in a small but significant reduction in flow and therefore further degradation of water quality. Considering this, I do not consider that the proposal is consistent with the LWRP.

SECTION 104(1)(c) – OTHER MATTERS

153. Ms Black and Ms Hall list the relevant iwi management plans in their respective evidence and Ms Hall provides a comprehensive assessment against the provisions of these. The iwi management plans were also addressed in the AEE although in Ms Hall's views the assessment was limited. I have had regard to these documents in making my decision and have been guided by Ms Hall as to the relevant provisions.
154. The iwi management plans seek to ensure that the rights and interests of Ngāi Tahu are provided for. They also require ki uta ki tai and the recognition of water for its intrinsic values, as well as improvement of water quality so it can provide for its mauri.
155. Ms Black's section 42A report addressed the Canterbury Water Management Strategy as an other matter under section 104(1)(c). I agree that it is relevant to consider this document and the Lower Waitaki Zone Implementation Programme Addendum, which sets outcomes for the Hakataramea River. The outcomes that are relevant to this proposal were also expressed by submitters and I have considered them in making my decision.
156. For the record, I am considering the *Infinity* decision under section 104(1)(c), although I have discussed it throughout this decision report.

PART 2 OF THE RMA

157. Section 104(1) of the RMA states that the matters to be considered must be done so subject to Part 2. The Court of Appeal's decision in *RJ Davidson v Marlborough District Council*³ was referred to by Ms Hamilton and Ms Black. This decision clarifies how to approach the directive by section 104(1) to consider provisions subject to Part 2.
158. Ms Hamilton submitted the proposal is consistent with the objectives and policies of the LWRP relevant to the application and that, given the LWRP is a modern plan, it is not necessary to address Part 2. Ms Black concludes that the objective and policies of the relevant

³ [2018] NZCA 316

plans were prepared to give effect to Part 2, and is also of the view that Part 2 need not be considered.

159. In this case, there is no conflict between objectives or policies that would benefit from consideration against Part 2. With reference to *Davidson*, I find that there would be no benefit to my evaluation of the proposal from consideration of Part 2.

DECISION

160. Under the powers delegated to me by the Canterbury Regional Council, for the reasons given above, pursuant to sections 104 and 104B, and subject to Part 2 of the Resource Management Act 1991, I DECLINE the application by NSK Farming Limited for water permit CRC145237 to abstract water from a storage dam to use for irrigation.

Dated at Christchurch this 15th day of April 2021



Bianca Sullivan
Independent Hearing Commissioner