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Review of aspects of governance and management of Central South Island Fish and Game Council

New Zealand Fish and Game Council
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Executive Summary

Following a set of complaints and substantial information provided to the Minister of Conservation in April 2018 by Mr Steve Gerard, the Minister requested that the New Zealand Fish and Game Council (NZC) use its audit power to review aspects of governance and management at Central South Island Fish and Game Council (CSI).

The proposed audit was based on agreed Terms of Reference which sought to address:

- the management of the then CSI Chair, Mr Gary Rooney's, conflict of interests;
- the quality of the advice of the Council's management in support of Council decision-making; and
- its adherence to its policies and standing orders governing its meetings.

NZC approached Bruce Robertson of RBruce Robertson Ltd (RBRL) to undertake the audit.

Consistent with the External Reporting Board's standard on "Assurance Engagements on Compliance" (SAE 3100) this report provides *limited* assurance on the matters investigated under the Terms of Reference. However, while the assurance provided is limited in nature, the work has been designed to ensure the conclusions drawn below are "meaningful"; that is, the work undertaken was planned to ensure "the level of assurance obtained ... is likely to enhance the intended users' confidence about the compliance outcome to a degree that is clearly more than inconsequential"¹.

That confidence is provided through:

- detailed outlines of the key events associated with the complaints; and
- the independent views expressed in this report by Bruce Robertson of RBRL on those events.

Based on a detailed review of documentation provided and a series of interviews, nothing has come to the attention of the audit that confirms or indicates that the set of complaints can be substantiated.

Within the limitations of this finding, it was determined that:

- Mr Rooney's conflicts of interest were appropriately managed in terms of CSI's standing orders and policies.
- Management's advice was reasonable and logical in supporting Council's decision-making.
- Standings Orders were observed and interpreted to enable agenda items before Council to be debated and decided upon appropriately.

¹ SAE 3100, paragraph 17(o).

It was observed during the audit that Mr Rooney is a high-profile member of the South Canterbury community and his interests are well known. Without detracting from the conclusions drawn above, but with the benefit of hindsight and modern good practice, the management of his interests could have been enhanced, for example by the use of a documented conflict of interests management plan.

Before finalising this report, the draft version was subject to consultation with the affected parties and some substantial submissions were made. Where relevant, any impact on this report has been incorporated. While the changes are not, and do not, need to be listed, it is noted that one substantial change was to omit the draft findings listed against each question in the Terms of Reference, listed in Appendix 1. On balance, the assurance conclusion above, and the findings expressed in this report remove the need for those findings to be re-stated – with the consequential risk of inconsistencies.

The audit has been a substantial undertaking over a period of months. It has not always been easy and CSI, as a small organisation, has had to keep its day-to-day business operating. This is also true of the many private individuals interviewed in the course of this work. The audit records its thanks to all those involved and appreciates the full cooperation given.

As a concluding comment, it is noted that the matters described in this audit are long-running and contentious within the sector and especially within the South Canterbury region. The audit has established one complete set of facts on key matters relating to the management of interests and Council decision-making, since the mid-2000s, associated with this set of complaints. Read carefully and with an open mind, the findings should provide an opportunity for the Council to *draw a line* under these events and focus on enhancing the administration of the much-loved sports of its angler and hunter licence holders in South Canterbury.

Scope of review and approach

Minister of Conservation's request and Terms of Reference

1. The genesis for this audit was an approach to the Minister of Conservation (the Minister) by Mr Steve Gerard in April 2018 concerning matters relating to the Central South Island Fish and Game Council (CSI). In turn, this led to the Minister's June 2018 request for action by the New Zealand Fish and Game Council (NZC) to use its power to audit one of its constituent regional councils.
2. The NZC agreed to undertake an audit and issued its Terms of Reference (ToR) for the audit. The ToR are contained in Appendix 1. In September 2018, the NZC approached Bruce Robertson of RBruce Robertson Ltd (RBRL) to undertake the audit.
3. The ToR also take into account an historical complaint from a prior councillor, Mr Tom O'Connor. This matter supported the ToR's requirement for a general review of standing orders and Council meeting procedure.

Key contention

4. The key contention advanced by Mr Gerard is that CSI's approach to performing its statutory functions in relation to the region's rivers was inappropriately influenced by the interests of its then Chair, Mr Gary Rooney and the advice of CSI's Chief Executive (CE), Mr Jay Graybill².
5. The key contention of the complaints revolves around two aspects of CSI's corporate governance practices and decision-making:
 - CSI's management of the then Chair's personal interests; in particular when those interests conflicted – or were perceived to conflict – with CSI's statutory responsibilities in relation to the region's rivers. The complaint relates both to the management of conflicts of interest at Council meetings and to perceptions that the then Chair exercised influence over the CE in relation to CSI's positions, and public submissions, concerning the rivers.
 - The need for transparency in relation to CSI's decision-making, specifically the extent to which the CE should have directly advised Council on the matters concerned and enabled Council to approve or take "ownership" of the positions CSI was advancing.
6. The ToR require these two aspects of the contention to be reviewed based on the matters raised by Mr Gerard:

² Mr Rooney retired from Council at the end of the last triennium in December 2018. He chose not to stand for re-election. Mr Graybill is CSI's current Chief Executive.

- Issues surrounding the development, operation, and expansion of the irrigation scheme on the south side of the Rangitata River by Rangitata Water Limited (RWL) in which the then Chair had direct and indirect financial interests. Those matters included the consent application by RWL to take water for its scheme, the development of a fish spawning race associated with the RWL schemes and the effectiveness of the fish screen built at the scheme.
 - The allegedly unlawful diversion of Deep Creek in the headwaters of the Rangitata River, sometime around 2007.
7. In addition, the ToR required an analysis of CSI's approach to the consents sought by the Rangitata Diversion Race Limited (RDR) irrigation scheme on the north side of the Rangitata (in which the Chair is understood to have had no direct commercial interests, other than a flowshare agreement between the two schemes). The contention is that, by comparison, CSI accepted more lenient consent conditions on Mr Rooney's RWL scheme.
8. In meeting with Mr Gerard, he also raised another issue relating to CSI's approach to Bowyer Stream. However, the scope of this audit has not been extended to directly consider this additional matter, which was not part of the Minister's original request nor the subsequent ToR for the audit. Further, while there is understood to be specific circumstances relating to Bowyer Stream, they still generally involve issues similar to those already identified and reviewed in this audit.

The Chair's interests and retirement

9. For context, it is helpful to describe Mr Rooney's interests at the outset, by quoting from his interests' declaration in CSI's interests register. The interests were declared and described as:
- Earthmoving contractor
 - Deer, sheep and beef farmer
 - Dairy farmer
 - Rangitata Water Limited – irrigation provider
 - High country station owner
 - Chairman, Industry Gravel Committee
 - South Canterbury Kiwi Safaris – owner – “large animal outfitter”
10. Mr Rooney had been the Chairperson of CSI since 1999. He did not seek re-election at the 2018 election. However, we understand that NZC wishes to have this review completed so that closure can be obtained (both for CSI and personally for Mr Rooney and the CE) on these long-running issues. There will also be benefit in “learning lessons” from the events at

CSI which can be put to good use in future enhancements of the governance practices of CSI and most probably the rest of the sector.

Approach

11. The audit was commissioned by NZC under section 26C(1)(j) of the Conservation Act 1987. NZC engaged Bruce Robertson of RBRL to undertake the audit on its behalf and is responsible for reporting the results of that audit to the NZC.
12. He undertook the audit with the support of James Lovelock, a management consultant with specialist skills in volunteer-based organisations and the private sector. They were supported by Robert Buchanan, an independent public law specialist, in a peer review/quality assurance role. Despite the team composition, the findings and recommendations of this report are solely those of RBRL.
13. This audit has been guided by the standards and requirements of the External Reporting Board's (XRB's)³ standard "Assurance Engagements on Compliance" (SAE 3100 (Revised)). The conclusions reached in this report are necessarily limited. The matters dealt with are increasingly historical over a period of years and required assembling substantial documentation and undertaking a series of interviews. While all steps have been planned and taken to identify and ensure all relevant information is obtained in respect of the matters outlined in the ToR, the conclusions reached are necessarily provided on a limited assurance basis.
14. While the assurance provided is limited in nature, the work has been designed to ensure the conclusions drawn are "meaningful"; which SAE 3100 (Revised) defines as "the level of assurance obtained ... is likely to enhance the intended users' confidence about the compliance outcome to a degree that is clearly more than inconsequential"⁴.
15. Because of the statutory nature of the NZC's audit function, this report will refer to the engagement as "the audit".
16. The conclusions reached as a result of this audit are contained in "Overall audit conclusions" commencing at paragraph 149 below.
17. The applicable criteria⁵ for the audit were primarily developed from the good practice that has developed in the public sector. Key references are drawn from the work of the Office of the Auditor-General. Attention is drawn to the body of work and practice developed from its good practice publications:

³ Refer www.xrb.govt.nz. SAE 3100 is applied by RBRL to conform to NZC's ability to undertake an audit pursuant to s26P(1)(j) of the Conservation Act 1987.

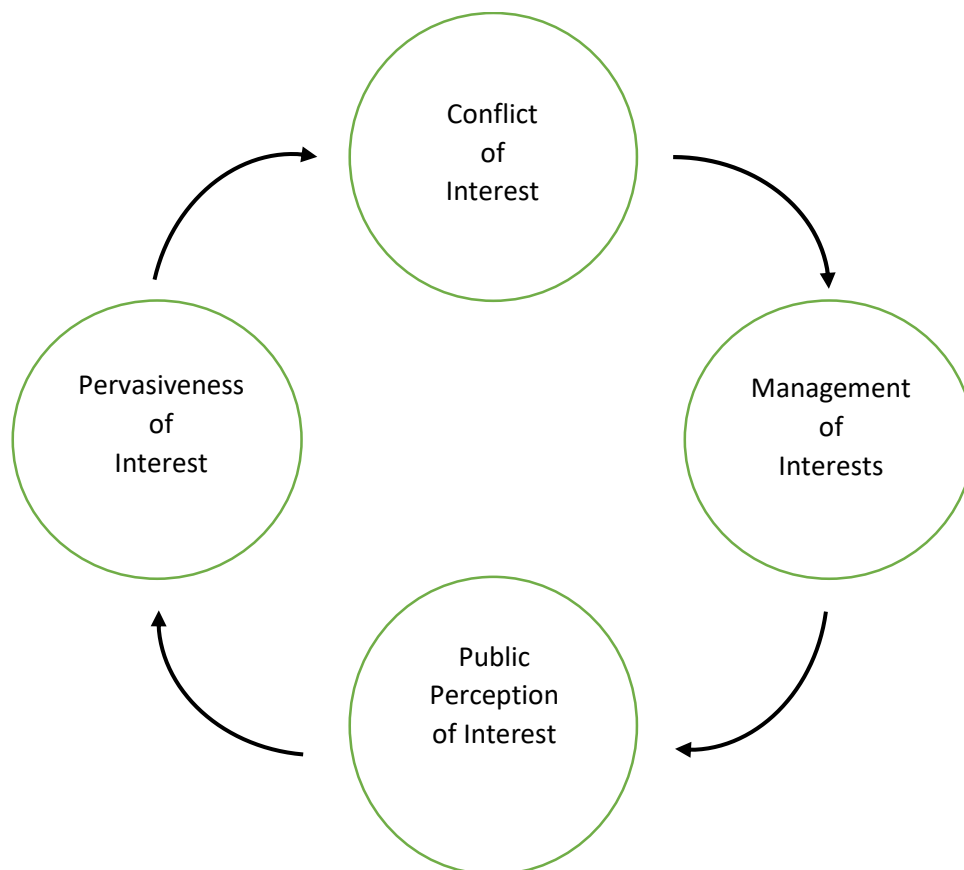
⁴ Refer AE 3100 (Revised), paragraph 17 (o).

⁵ Meaning the benchmark, framework or legislation used to evaluate whether the compliance requirements have been met (SAE 3100, para 17(g)).

- Managing conflicts of interest: Guidance for public entities (June 2007)
- Guidance for members of local authorities about the Local Authorities (Members' Interest) Act 1968 (October 2010).

Further, useful references to the body of practice that has developed around this guidance, and recognised in this audit include the Office's work investigating various matters associated with management of interests. An example is its report "Ashburton District Council: Allegations of conflicts of interest affecting decisions on a second bridge" (October 2014).

18. The following diagram represents the core dimensions of the approach developed from using this reference material applying it to this audit:



19. Inevitably in an audit of this nature there is the potential of solely evaluating the findings with the benefit of hindsight. Hindsight is both valuable – especially in identifying steps an entity can take in the future for better administrative or governance processes – and a risk – that the results of past actions are assessed based on current day practice. The good practice management of interests and their conflicts has developed beneficially since many of the events described in this audit. Those events have been interpreted in light of practice

as it existed but also with an understanding and ‘eye’ to what could have happened had current practice been used. The audit seeks to faithfully represent where the “benefit of hindsight” is being used.

Methodology and output

20. The complexity of the audit was underlined by the need to address a long and interconnected series of events, going back to the early 2000s with the original application for the Water Conservation (Rangitata River) Order 2006 (the WCO). The ToR included a number of preliminary questions, followed by more in-depth questions. Once the audit began, it became clear that all these questions needed to be considered together, as a sequenced series of issues and events. This required an in-depth review of all available information concerning the WCO application and the ensuing consent applications, all of which extended over a period of years.
21. The team also needed to understand the context of:
 - CSI’s corporate governance practices, including its processes and practices in relation to conflicts of interest and the extent of oversight exercised by CSI’s board over the work of the staff, especially concerning the approval of consent applications and submissions;
 - CSI’s approach to development of submissions on various water take consents applications made to Environment Canterbury (ECan) to draw water from the Rangitata River; and
 - the evolving science related to water takes (and their effects) and approaches to such management techniques as fish screens.

These matters were crucial in understanding the full story of each matter covered by the ToR.

22. The subject matter also inevitably raised questions of corporate governance, in particular:
 - the procedures adopted by Council at meetings, especially in relation to conflicts of interest, and how those procedures played themselves out in the broader context of the specific matters; and
 - the division of responsibilities between Council (as the governance body) and CSI’s management, especially concerning the responsibility for preparing and signing off submissions on consent applications.
23. When considered as a whole, it was preferable for the ToR’s preliminary and secondary questions to be combined into a single set of inquiries, which focused on the chronological sequence and how the individual matters played out (and overlapped) over a period of many years.

24. To respond to this complexity, the methodology used for the audit involved a combination of reviewing CSI and NZC records and undertaking a series of interviews primarily with councillors but also with the former Chair and the CE. All concerned gave their full cooperation, and the team expresses its gratitude for their cooperation and commitment to enabling the team to understand the full history of the events and reach a conclusion.
25. The output of the audit is the report findings which are in the 'Overall audit conclusions' section below. The findings necessarily focus on what are seen as pertinent matters under the ToR. However, the team was not unduly limited to the confines of the ToR, and the findings are made in accordance with the requirements of SAE 3100.

Applicable framework

26. The key elements of the applicable framework for the audit are:

Statutory context of CSI

27. Fish and Game Councils (FGCs) are established by section 26P of the Conservation Act 1987 (the Act). Each Council is a body corporate, with full capacity for the purpose of performing its functions. The functions of the Councils are set out in section 26Q(1). Under section 26R(2):

Except as provided under section 26Q(1) [that is, the listed functions], Fish and Game Councils shall not, within their areas of jurisdiction, engage in any activity that has as its predominant purpose the making of a commercial gain from that activity.

28. This restriction applies to the Councils themselves – but can be taken to extend to their members as well.

29. Councils are deemed by section 26W to be Crown Entities, but only for the purpose of Part 5, Subpart 2 of the Public Finance Act 1989 – which makes them subject to certain statutory reporting requirements under the Crown Entities Act 2004. The governance provisions of the Crown Entities Act, including the collective and individual duties of board members, do not apply.

Statutory functions and activities of CSI

30. The functions of CSI are prescribed by section 26Q of the Act. These parallel and interpret locally the functions of the NZC set out in section 26C.

31. The powers and functions of the fish and game sector are outlined on the NZC website and are paraphrased on the website as “Fish & Game NZ manages, maintains and enhances sports fish and game birds and their habitats in the best long-term interests of present and future generations of anglers and hunters”.

32. As part of its function, CSI has a statutory function, under section 26Q (e), “to represent the interests and aspirations of anglers and hunters in the statutory planning process”.

33. The primary role in relation to statutory planning is CSI’s preparation of submissions and participation in water take consent applications made to ECan, which is the decision-making body for the Rangitata River under the Resource Management Act 1991. CSI is not the decision-maker on such consents but can have an influential role as a submitter. This is of particular relevance to this audit as much of the concern relating to the issues raised in the ToR is how CSI has interpreted this role and the influence Mr Rooney is alleged to have brought on how CSI undertook its role.

NZC's oversight of Councils

34. NZC's objectives include the national coordination of the management, enhancement, and maintenance of sports fish and game (Conservation Act, section 26B(1)). Its functions (section 26C(1)) include overseeing the electoral system for FGCs, determining levies, advocating the interests of FGC, and reporting to FGCs, as well as the audit function.
35. However, each FGC is an entity in its own right, with its own statutory functions and powers (sections 26Q and 26S) and the power to appoint staff (section 26T). This autonomy extends to the conduct of meetings, which are governed by section 26ZD. The focus of that section is on matters of quorum and voting, and there are no other governance requirements (such as requirements in relation to conflicts of interest, which would be expected under modern legislative practice). Instead, each FGC is entitled to regulate its procedure as it thinks fit (section 26ZD(8)).

CSI's internal policies and practices

36. CSI uses a Governance Policy that was developed by NZC in November 2000. The Policy is a comprehensive, but complex, document that extends to 80 pages. It distinguishes between different levels of governance, and in particular the governance (that is, oversight) responsibilities of the Council and the operational responsibilities of management. After describing these responsibilities in broad terms, it contains a number of "draft policies" dealing with "governance processes", the "Council-manager linkage", and "executive limitation".
37. Relevant details of the Policy to this audit are described below.

Approach of CSI in relation to ethics and conflict of interest management

38. The Governance Policy includes a draft Code of Ethics and Proper Practice (policy GP 5, page 37). This requires all Council members to act honestly and in good faith, and in accordance with other requirements that are typically found in a document of this type. It also requires members to "avoid conflicts of interests in as far as this is possible". There is a cross-reference to the general obligation in section 11.1 to declare conflicts of interest relating to their duties as Council members.
39. The draft policy entitled "Conflict of Interests" (GP 9, page 43) notes that "the Council places great importance on making clear any existing or potential conflicts of interest for its members"; and that all such conflicts "shall be declared by the member concerned and officially documented in a Conflicts of Interest Register".
40. The detail of the policy provides that:
 - Any "business or personal matter which is, or could be, a conflict of interest involving the individual and h/role [sic] and relationship with the Council and/or Fish and Game New Zealand, must be declared and registered".

- All entries in the register must be presented to the Council at the first opportunity and minuted.
- Where a conflict is “identified and/or registered”, the member “shall not vote on any resolution relating to that conflict or issue”.
- The conflicted member may remain in the meeting room only with Council approval, which is to be minuted.
- When the Chairperson is aware of a “real or potential conflict of interest” involving one or more members, the Chairperson “must take whatever steps are necessary to ensure the conflict is managed in an appropriate manner” according to the policy.
- Individual members have a responsibility to bring to the notice of the Council any “real or potential interest of another Council member” of which they are aware.

41. The policy provides three examples of a conflict of interest:

- “When a Council member, or his/her immediate family or business interests, stands to gain financially from any business dealings, programmes or services provided to the Council and/or Fish and Game New Zealand.”
- “When a Council member offers a professional service to the Council and/or Fish and Game New Zealand or any part of it.”
- “When a Council member stands to gain personally or professionally from any insider knowledge if that knowledge is used for personal or professional advantage.”

42. The policy is supplemented by the Standing Orders for Council meetings. Under the 2017 version, Standing Order 1.13 requires a member at a meeting to declare any “direct or indirect” conflict of interest in any matter being discussed at the meeting, except an interest held in common with the public. The affected member then will:

- i. not vote on issues related to the matter;
- ii. not discuss the matter with other members;
- iii. conform to the majority view of other members present as to whether to be excluded from discussions regarding the matter and/or leave the room when the matter is discussed; and
- iv. not, subject to the discretion of the Fish and Game Council, receive further papers or other information related to the matter.

Public sector good practice on conflict of interest management

43. As noted earlier, Councils are free under the Act to regulate their procedure as they think fit. However, as public entities, Councils should be expected to follow the same principles of corporate governance that apply to similar entities in the public sector. Those practices

extend to the management of conflicts of interest, as well as obligations to disclose (via the interests register and at meetings).

44. Practice on conflict of interest has developed considerably since the Governance Policy was developed in 2000. Guidance issued by the Office of the Auditor-General in 2007 (*Managing conflicts of interest: Guidance for public entities*) recommends the following approach to conflict of interest management by public entities, including their governance bodies:

- A conflict of interest exists if a Council member's official duties or responsibilities to the Council could be, or perceived to be, affected or compromised by some other interest or duty that he or she may have.
- The other interest or duty might be:
 - a financial interest, arising from the member's own financial or business affairs;
 - a relationship interest (family or otherwise, including a business interest or community involvement or other role the member has); or
 - an opinion or view held by the member that could give rise to predetermination or bias.
- A conflict of interest could arise generally (that is, if the other interest conflicts in a general sense with the member's official duties or responsibilities) or in relation to a specific matter or transaction.
- The question to keep in mind is "might the member's other interest create an incentive or bias for them to act in a way that may not be in the best interests of the Council?"
- The existence of a conflict of interest must always be considered objectively, that is, based on what a reasonable, informed observer might think of the situation rather than what the member themselves might think or how they might intend to respond to the situation.
- However, even a subjective perception of a conflict (for example on the part of the Council's stakeholders, members of the public or the media) can create reputational risk or damage and need to be managed accordingly.

45. It is also a principle of good corporate governance that members of a governance body should disclose all interests that are (or could be perceived as) relevant to their responsibilities as a member, as well as those which "overlap" with official duties and give rise to a conflict of interest. And:

- Members' interests should be recorded in a standing register of interests, which should be periodically updated.

- At the start of each meeting, the Chair should ask for declarations of interests in relation to any items on the agenda, arising either from an entry in the interests register or any other undeclared interest.
- Because a conflict of interest can affect the business or reputation of the Council as an entity, the Council as a whole is responsible for deciding whether a declared interest should be treated as a conflict of interest (either generally or in specific circumstances), unless the member first decides to disqualify him/herself.
- In some circumstances it may be appropriate for a conflicted member to have a partial involvement in the item of business – for example, by being invited or allowed by the Council to remain in the room for, and take part in, the discussion of the item, but to leave the room when the matter comes to decision. This might be appropriate, for example, when the conflicted member has relevant knowledge of the subject matter which it would be counter-productive to exclude. But a case by case approach should be taken.
- In all situations, the declaration and/or determination of a conflict, and the decision of the Council and actions taken, should be clearly minuted.

46. Conflict of interest practice has also developed in the area of “managing” conflicts of interest that do not require exclusion or disqualification. This has arisen in large part from the then Auditor-General’s recognition in the 2007 guide that conflicts of interest may be inevitable, especially in small communities, and need to be managed effectively⁶. Permitting a conflicted board member to remain in the meeting room, and to discuss but not vote on a matter with the agreement of the board, is one example of managing a conflict. More broadly, the use of conflict of interest management plans has emerged as a good practice tool to enable the actual and potential impacts of a conflict to be assessed objectively and, where the conflict is assessed as capable of being “managed”, to document the management approach in a manner that provides both transparency and accountability.

47. CSI’s Governance Policy and Standing Orders are broadly consistent with these practices, but notably:

- The Policy is silent on conflict of interest management outside the scope of Council meetings;
- The Policy and the Standing Orders are unclear and lack consistency on the types of conflicts of interest that can arise, including the distinctions between:
 - financial and non-financial conflicts;

⁶ Refer the Auditor-General’s introduction to the 2007 guidance “Managing conflicts of interest: Guidance for public entities” (www.oag.govt.nz)

- direct and indirect interests (the term used in Standing Order 1.13); and
- conflicts that meet an objective test of perception (making them “actual” conflicts) and those which do not meet that test but nevertheless could give rise to subjective perceptions by the public or stakeholders;
- aside from the Standing Order’s reference to limiting access to information about the matter, neither document addresses active management of conflicts of whatever type (including those raising subjective perception risks), through the use of conflict of interest management plans.

48. The primary focus of the audit in relation to conflicts of interest was on the Governance Manual and compliance with the Standing Orders, but with reference to more recent good practice where relevant. The audit has concluded that, for future purposes, it would be desirable for CSI to update its Governance Policy to reflect good practice, including a more visible approach to managing conflicts of interest and the associated perceptions. This work could usefully be led by NZC on behalf of the sector.

[Approach of CSI to submitting on consents](#)

49. The Governance Policy recognises that it is for Council to develop CSI’s strategic direction, and to express this in specific “Strategic Ends” policies. It is then for Council to delegate to management the implementation of those policies:

- The draft policy entitled “Council/Manager Delegation” (policy ML 2 on page 52) provides a broad delegation to the Manager to use “any reasonable interpretation” to “establish operational policies, make all operational decisions, take all actions, establish all practices, and develop all activities”.
- The draft policy entitled “Monitoring Manager Performance” (policy ML 3 on page 55) provides for the Manager’s performance to be “continuously, systematically and rigorously assessed” by Council against performance criteria, through the use of internal and external reports and “direct Council inspection”.

50. The audit recognised the importance of how submissions are prepared. The Governance Policy does recognise the general principles to enable appropriate governance and management relationships. However, in practice the preparation of submissions is characterised as “staff do the work” with limited direction or scrutiny by the CSI Council. There were no formal delegations to management nor specific references to an approach determined by Council on what to submit on nor any guiding principles.

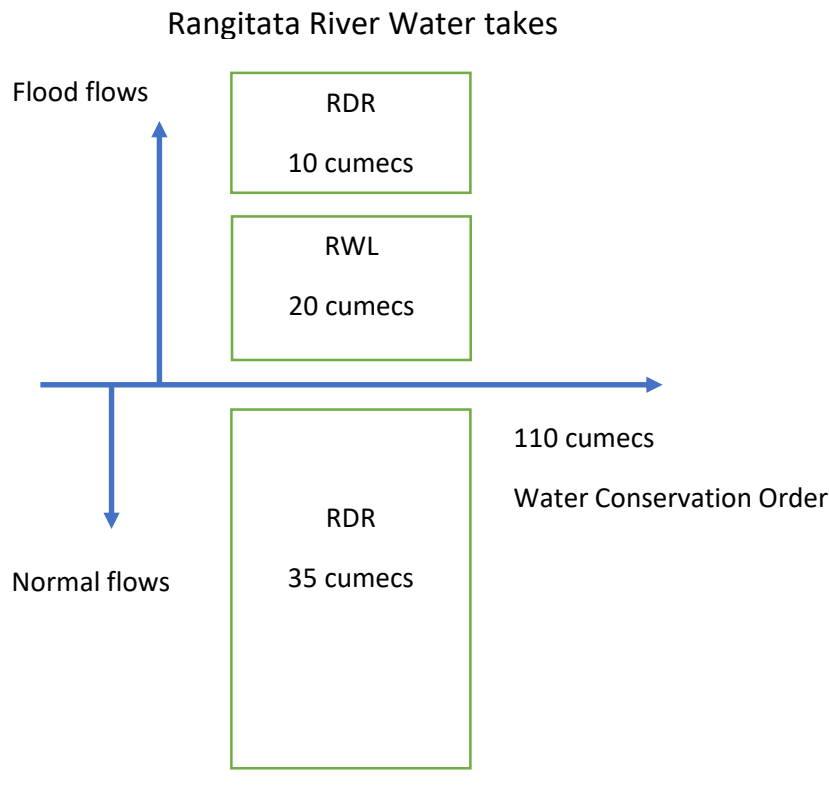
51. This doesn’t invalidate the process undertaken by CSI (and as described and evaluated in the events below) but it does mean that management’s actions are loosely governed by the annual Operational Plan and any information to CSI Council tended to be towards the end or after a submission has been prepared and/or sent. While a review of the minutes indicated CSI councillors were informed of key or contentious matters, the resultant discussion could

reflect that a more useful approach would have been a principled approach agreed prior to management engaging on a submission. This was reflected reasonably recently in a matter where a councillor raised substantial concerns over the approach to a consent for the additional high flow water take consent by RDR and the adequacy of WCO. This may have been precluded by an “up front, principled” discussion prior to commencing the submission preparation process.

52. The audit has concluded, for future purposes, it would be desirable for CSI to revisit its approach to how the governance oversight of their approach to submission preparation is undertaken. Secondly this matter is one for which CSI councillors could benefit from training and development of their understanding. There was a general level of uncertainty expressed by some councillors as to their role.

Background to the complaints

53. The matters to be reviewed in order to address the ToR and the main contention (refer paragraphs 4 and 5 above) cover a significant length of time, some aspects of which have already been reviewed by external agencies, and much of which has been speculated upon within the community and sector. Before concluding on the TOR and key contentions, it is necessary – and helpful for all readers of this report - to detail all the events relevant to the TOR.
54. The following diagram is provided as an aid to the key water take consents applied for and relating to this audit:



55. Appendix 2 combines all the following events to outline the key events and provide an overview of all matters (except for the matters relating to the complaint of Mr O'Connor, which are separately dealt with below).
56. To fully understand all matters, this and the following section have been developed to describe:
- Background matters relevant to the issues in Mr Gerard's complaint:

- the previously reviewed complaint to the Ombudsman and the Office of the Auditor-General (OAG) by former councillor, Mr Tom O'Connor.
 - the creation of the WCO which sets the framework for much of the subsequent submission and decisions of CSI⁷.
- In the 'Timelines of events' section, which follows, description of events directly relating to the ToR:
 - Deep Creek (circa 2007 – 2018) and the events relating to its illegal diversion. It also describes the timeline of events leading to Mr Gerard's complaint to the Minister of Conservation.
 - RWL (1999 – 2018) focusing on events associated with the consenting of its (flood) take consent and the fish screen trial. (The timeline also incorporates relevant matters associated with RSIL).
 - RDR (1945 – 2018) as it relates to CSI actions over its take consents and development of a fish screen.

57. Note that there are number of entries in the succeeding timelines that are highlighted in yellow. They represent the treatment of when and how Mr Rooney's interests were managed.

58. These timelines are important to understand the findings reached in this audit.

59. There is equally important value for this report to just disclose the historical events. It is doubtful one clear set of events has ever been outlined publicly, or at least in one document, and part of the issue related to these events are the separate 'narratives' that have developed over time within the community without an agreed understanding of all events.

[Prior complaint, action and conclusion – former Councillor Tom O'Connor](#)

60. The events which gave rise to Mr O'Connor's complaint – firstly to the OAG and then to the Ombudsmen - in the period 2009 - 2011 reflect the challenges to a small public sector entity having to deal with sometimes complex issues of meeting procedures and management of interests.

61. The issues arose over a strongly written letter sent by My Rooney to his fellow FGC Chairs prior to a nationally called Governors' Forum in September 2009. The memorandum was critical of the NZC and some of its officers.

⁷ The WCO was not referenced to in the ToR. However, as discussed, it is pivotal for the subsequent consideration of CSI's approach and decision-making. It is also another key matter where Mr Rooney had to consider his CSI-related actions in relation to his personal interests.

62. The matter of the Forum and the issues arising were discussed at a CSI council meeting on 22 October 2009. The discussion involved substantial moving of motions of no confidence relating to NZC, in procedural challenges as to whether matters related to this should be in 'public excluded', the ability of one non-councillor to remain in the public excluded session and whether a motion put by Mr O'Connor was in public or public excluded session.
63. Mr O'Connor was urging CSI and NZC to enter mediation over their differences.
64. However, as a result of the outcome of another meeting a year later on the 11 October 2010, Mr O'Connor wrote a letter of complaint to the OAG, which subsequently indicated that the Office did not propose to deal with the matter. It felt it was more appropriate for NZC to deal with the matter.
65. The issue compounded substantially both between CSI and NZC and within the NZC itself. The proposed action of an independent review was ultimately stopped because on 24 May 2011 - with some justified exasperation - Mr O'Connor asked the Ombudsman to intervene and review the events surrounding the original complaint. At this point Mr O'Connor indicated he did so because of the issues affecting NZC and CSI agreeing on any form of independent review and the general delay in resolving issues.
66. The Ombudsman completed his review in August 2011 and largely did not sustain Mr O'Connor's complaint other than noting some procedural issues which he drew to CSI's attention. But in regard to Mr O'Connor's concern about unresolved allegations of conflict of interest issues in the matter, he declined to comment.
67. While the matter then subsided, on 12 November 2013, the Chair of NZC wrote to Mr Rooney personally and to the CSI Council collectively "extend[ing] its apology on issues that have been running for over three years between the CSI Council and the NZ Council". Further the NZC Chair noted his regret at the impact on the relationship and that he was seeking a new direction for "NZC governance and in particular Council/Chief Executive responsibilities and inter-relationships".
68. The issues of any conflict of interests has not been fully resolved. None of the alleged conflicts – for example Mr Rooney chairing the meeting of 22 October 2009 for the item on the Forum for which he was heavily involved - appeared to be related to any financial conflict of interest but many of the individuals - at CSI and NZC levels - were deeply involved in both the events leading up to the dispute and in the attempts of dealing with it. And this continued over a substantial period of time.
69. With the benefit of hindsight, it is considered that the primary issue revealed was one of governance generally – at one level about meeting procedure (at CSI) and, secondly, management of complaints, especially where they are internal to the Fish and Game sector and involve office holders and staff.

The inability of the then Councils to deal with the matter is revealing. It certainly would have been better for there to have been a short and timely review – probably independent – to

deal with issues which were essentially about relationships and not, in this case, personal interests.

70. The implications for this audit are that for an extended period there was substantial ill will over these matters and, for Mr Rooney, an increased risk of perception that his conflicts of interest were not being reasonably managed.

Water Conservation (Rangitata River) Order 2006

71. This audit recognises the pivotal nature of the WCO on management of the Rangitata River and its implications for the regulatory approach – especially consenting – on the river. The key issues outlined in the ToR come after the establishment of the WCO, short of the original RDR take for its scheme. RDR’s original consent dates back some 50 – 60 years. It provides important context for CSI’s later actions relating to the matters reviewed in this audit, and of its approach to the Rangitata River in general.
72. The WCO was sponsored by CSI under the chairmanship of Mr Rooney.
73. The key timeline around its establishment is:

Date	Event
23 December 1999	<p>CSI alongside NZC applied to the Ministry for the Environment for a water conservation order under the RMA, in respect of the Rangitata River, its tributaries and groundwater reserves.</p> <p>The motivation for the application was concern regarding the level of additional water abstraction consent applications being lodged with ECan (over and above the 32.7 cumecs already long established in favour (predominantly) of Rangitata Diversion Race Limited (‘RDR’); and the potential impact on the river of this water take.</p>
10 October 2000	<p>Special tribunal appointed by the Minister for the Environment to hear and report on the WCO application.</p>
21 October 2002	<p>Special tribunal report issued (after public hearings late 2001), recommending that the WCO be made. The report noted that “[i]n conjunction with a minimum flow the most important flows for protecting the outstanding features are those below about 100 cumecs.....above 100 cumecs there is a need to ensure that the number and sizes of freshes and floods are not significantly reduced....However we also accept that there is significant potential to develop further irrigation using Rangitata River water”. It recommended a cap on abstraction of 33 cumecs, subject to providing for an additional 20 cumecs abstraction when the flow at Klondyke is above 110 cumecs.</p>

5 August 2004	Interim report issued by the Environment Court following the lodging of various WCO “appeal” submissions (by Rangitata South Irrigation Limited (“RSIL”), Timaru District Council, Trustpower Ltd, RDR and Federated Farmers of NZ Inc.
22 September 2005	<p>Final report issued by the Environment Court after consideration of “submissions on changes or corrections to the draft order as were considered necessary to meet the spirit of the substantive findings[.]” A notable change arising from the “appeal” process is captured by the following quote from this final report:</p> <p>“How the additional flows above 110 cumecs may be allocated can be dealt with in a Regional Plan [...]. It is the setting of the minimum flow and maximum extractions at flows above the minimum but less than 110 cumecs for the protection of identified values which is the purpose of the water conservation order.”</p>
23 June 2006	Government Order in Council made bringing the WCO in to effect.

Timelines of events

Deep Creek

74. The matter of Deep Creek centres around the actions of the CSI in its approach to what was acknowledged as a key salmon spawning creek (and tributary of the Rangitata). It was and is subject to the provisions of the WCO because of its high environmental values.
75. The following is a description of the key timeline events of CSI's actions and approach to the damage to the riverbed:

Date	Event
Circa 2007	<p>Illegal "small scale" diversion believed to have been undertaken by adjoining landowner (per 23/06/16 Golder Associates engineering report obtained by Steve Gerard ("SG")).</p> <p>Allegedly some of the illegal diversion works were completed later in time but no definitive evidence of exact timing noted.</p>
December 2011	<p>Diversion first discovered (after the creek had been closed to fishing for the previous 5 years to protect it from the didymo threat).</p> <p>The landowner alleged to have been responsible for the diversion had sold on to a new owner by this time.</p>
06 March 2012	<p>Email indication from ECan that they will consider a "de minimis" consent to enable minor manual works for the removal of the diversion.</p> <p>The CSI resource officer's email noted:</p> <p>"... We are currently working on some things with the land owner and don't really want to go down an enforcement line with the guy (and he probably inherited the problem anyway), so we are interested in seeing if we can remedy the problem without getting to[o] formal about the whole deal.</p> <p>Basically a gravel barrier has been pushed up about 5 metres ... increasing the flow down one braid and decreasing it in another. We would like to remove it. ...</p> <p>What do you think are our chances of getting a de minimis call on this?"</p>
28 August 2012	<p>Following subsequent CSI formal application ECan grants a "non-enforcement" decision to allow manual removal of the unconsented diversion.</p>

September 2012	Removal of diversion bank by hand (manual shovel work) completed by CSI staff with the assistance of SG.
10 June 2014	SG email of concern about Deep Creek to CSI councillors (forwarded via Kevin Payne on 11 June 14).
12 June 2014	<p>CSI Council meeting at which a decision was made not to promote further work in relation to “re-diversion” of Deep Creek. Minutes record as follows:</p> <p><u>“River control works in Bowyers Stream and Deep Creek</u></p> <p>Resolved (Hamilton/Koevoet) that council move in to public excluded session to protect the privacy of natural persons / to maintain legal professional privilege.</p> <p>Staff provided a description of the situation at Deep Creek and its fishery values including its “outstanding” status as listed in the Rangitata Water Conservation Order 2006 (“the WCO”). It was further recognised that Environment Canterbury is the body that is charged with undertaking river works and that gaining consent to go in with a digger at Deep Creek is unlikely to be approved. It was agreed that Mark Webb provide a response to SG describing those values including the points agreed by Council. The Chief Executive explained that he has had several amicable conversations with SG who did not seem to accept CSI’s alternative view of the effects and ECan’s responsibility for river control works.”</p>
16 June 2014	<p>Mark Webb (CSI Fish & Game Officer) sent a letter to SG on behalf of Council explaining the decision reached at 12 June 2014 meeting not to promote further work in relation to “re-diversion” of Deep Creek; the key paragraphs in the letter state:</p> <p>“Council requested that I reply to you in relation to the Deep Creek diversion.</p> <p>Council acknowledges that Deep Creek supports an important trout fishery however as you have noted in correspondence to Councillors, the Council assigns higher priority to maintenance and enhancement of salmon spawning and rearing habitat in Deep Creek. This being the reason the Rangitata River has a conservation order for its outstanding recreational salmon fishery and why both Deep Stream and Deep Creek were closed to angling when didymo first threatened invasion. Deep Creek consistently supports 70% of all Rangitata catchment salmon spawning and any threat to habitat in Deep Creek threatens the sustainability of the Rangitata salmon fishery.</p>

	<p>Your concern at decline in trout “fishing” in the identified reach of Deep Creek is understood and accepted. Council believes mechanical restoration of flow to the true left braid as you have requested will increase downstream erosion as well as threatening fenced grazing. While impacts on fencing and grazing are not issues for F and G to consider they are of concern to the landowner. We foresee ongoing erosion requiring river control and bank protection works. While increasing the flow in the true left braid will provide trout fishing habitat Council believes the threat to salmon spawning and rearing habitat in the reach and further downstream where 25% to 40% of salmon currently spawn outweighs the increase in water that is productive for trout fishing.</p> <p>For as long as current F and G staff can remember and since at least 1992 Deep Creek has maintained two branches in the reach that you have concerns for. There is no indication that either branch is anything other than a natural channel and while it is acknowledged that the unconsented bank work undertaken a decade ago diverted more water into the true right braid than normal, the bank no longer exists and to reduce the flow would require an additional and substantial intervention in a natural system.”</p>
<p>26 June 2014</p>	<p>A further letter of concern on Deep Creek and related matters was sent from SG to CSI Councillors. Copied to NZC’s CEO as well as Government Minister Hon Nick Smith and the Prime Minister John Key. It states the following as an introductory summary:</p> <p><u>“Deep Creek</u></p> <p>Please find a detailed assessment of the issues I see surround Deep Creek, there’s a summary down the bottom of the doc, this is in response to a letter from F and G also attached.</p> <p>I make no apology for continuing to push this, the stream is far too important to be allowed to be damaged permanently by an action. I demand it is addressed immediately. If F&G won’t or don’t want to be involved then I can organise the repair work, for that to happen I need to know that F&G will support such action and any consent that may need to be acquired.”</p>
<p>21 August 2014</p>	<p>Further discussion regarding Deep Creek at CSI Council meeting, in response to SG in-person query during “public issues forum” section of meeting. Decision from June Council meeting confirmed to SG as unchanged.</p>
<p>23 August 2014</p>	<p>CSI (Jay Graybill) sends an open letter to SG further explaining CSI decision as follows:</p>

<p>“Open letter to Steve Gerard and those concerned about the status of Deep Creek in the upper Rangitata.</p> <p>Steve and CSI staff have had numerous interactions about Deep Creek over the years including a joint effort in September 2012 to manually remove an unconsented diversion. When advised of the diversion CSI promptly reported it to ECan who have responsibility for enforcement action. We understand that the diversion may have been completed some five years before and by a previous owner of the station.</p> <p>Considerable effort was expended by CSI staff over a six-month period including preparing an eight-page application for waiver of conditions under the Natural Resources Regional Plan and the proposed Land and Water Regional Plan to undertake even manual (not machine) removal of the unconsented diversion in a sensitive area. A “non-enforcement decision” was granted by ECan on August 28, 2012. Joint action to remove the diversion was completed in September. Since manual removal, natural forces have been at work to shape the separation of the two channels as evidenced in the attached photo taken in July this year.</p> <p>The CSI council had a detailed discussion about Deep Creek at its June 2014 meeting that highlighted its importance as a salmon spawning stream. The view of Council was expressed in a letter to Steve on 16 June 2014 (copy attached) that sets out the reasons for Council’s view. Council reaffirmed its view as stated in its June letter at Thursday night’s Council meeting.</p> <p>It occurs to me however, that the basis for Council’s view may not be well known or understood by anglers. Deep Creek is one of only four named streams in the upper Rangitata given special status in the WCO. It is named in “Schedule two - Protected Waters” for its outstanding features for “salmon spawning”. It is for that reason that council assigns a higher priority to maintain and enhance salmon spawning and rearing habitat in Deep Creek as stated in Council’s letter of 16 June. In any year between 50% and 80% of all salmon spawning in the entire Rangitata river catchment occurs in Deep Creek!</p> <p>That high status for “salmon spawning” is further reinforced in the proposed Land and Water Regional plan. Schedule 17 of that plan specifically lists “salmon spawning sites” of regional importance. Deep Creek is specifically named. F&G fought hard to get even those values included in the plan. Furthermore, the plan has at least 12 rules that control and restrict activities that can be undertaken in named streams with high values for salmon spawning. The complexity and robustness of satisfying those rules was apparent in gaining approval from ECan and affected parties and preparing an eight-page application to manually remove the unconsented diversion as stated above.”</p>

31 August 2014	Letter of complaint (alleging that CSI are not appropriately fulfilling their statutory function to act “in the best interests of anglers”, including in relation to Deep Creek, and suggesting this is due to conflicts of interest behind the scenes) sent from SG to Lindsay Lyons as Chair of NZC.
05 September 2014	After request by NZC for comment on SG letter, CSI reply with an email explanation of its position regarding Deep Creek (essentially reiterating the matters outlined in the 23 August 2014 letter quoted above).
12 September 2014	CSI CEO prepares an open letter to Canterbury Anglers Club responding to “Stream to be Left Degraded” article in Club Magazine. (The open letter essentially reiterated the matters outlined in the 23 August 2014 letter quoted above). The Club refused to publish the letter.
26 September 2014	CSI Deep Creek site inspection held with ECan River Engineer at CSI request. Temporary and permanent “re-diversion” options were discussed, both of which were noted as involving significant machine generated, man-made disturbance that would remain visible as an unnatural mark on the landscape.
22 December 2014	A letter to SG was sent from Lindsay Lyons (Chair of NZC) advising that NZC had discussed SG’s letter of concern regarding Deep Creek at its 19/09/14 meeting, and “... agreed, after examining the evidence provided by you and the CSI, that it was satisfied with the explanation and action taken by CSI and saw no need to take the matter further”.
October 2015	SG elected on to the CSI Council.
October 2015	<p>SG approaches, by email, the ECan Principal Resource Management Advisor about the ability to get a resource consent to undertake work on the diversion. He noted:</p> <p>“One of the reasons [CSI] has given that’s been repeated again recently for not acting or supporting an attempted stream restoration was that ‘a resource consent to work machinery in the area would not be forthcoming’. Implying in part that ECan were the ones holding back any restoration work”.</p> <p>The Advisor’s response was:</p> <p>“Yes, I can confirm a resource consent could be granted for this kind of work. What I was getting at before was that it would be a tall order without [CSI’s] support as it is listed in our plan in a special schedule demanding special protections due to its outstanding nature as a salmon</p>

	<p>spawning location. If [CSI] came forward in support of such work I suggest a resource consent would not be a big hurdle”.</p>
<p>30 November 2015</p>	<p>SG submitted a Notice of Motion for the December Council meeting with supporting information:</p> <p>“That the illegal diversion of Deep Creek is addressed in the uttermost haste, to re-instate the stream to its natural pre-diversion state....”</p>
<p>Mid – December 2015</p>	<p>Staff report included in pre-meeting Council agenda papers. Consent requirements (including need for affected party approvals) were emphasised. A key portion of the report states as follows (after reiterating Deep Creek’s status under the WCO and its established importance for salmon spawning):</p> <p>“Deep Creek’s outstanding status for salmon spawning is further reinforced in the operative Land and Water Regional plan. Schedule 17 of that plan specifically lists salmon spawning sites of regional importance. Deep Creek is specifically named. Furthermore, the plan has 12 rules that control and restrict activities that can be undertaken in named streams with high values for salmon spawning.</p> <p>In September 2014 an ECan engineer was asked to assess the site and provide options for returning most of the flow to the original channel. Two options were identified with both requiring significant earthworks to manipulate the flow. The engineer noted that any work to divert flow would leave a clearly visible scar on the landscape.</p> <p>To carry out the works described by the engineer a resource consent will be required from the regional council given the works may breach up to 6 of the 12 rules within the plan. Authority from the land manager, Department of Conservation, will also be required and is likely to take the form of a concession given the scale of the works. In addition, approval from Runanga will be required.</p> <p>Deep Creek is in near-pristine condition due to its “outstanding features”, very high-water quality in an iconic high-country landscape. Any works to manipulate flow will leave a visible scar on the landscape and diminish these values.</p> <p>Note: staff will be conducting a site visit prior to the Council meeting and may be able to provide additional information at the meeting.</p> <p>Recommendation: Council take no further remedial action in manipulating flows at Deep Creek.”</p> <p>Note: Excerpts from the Canterbury Land and Water Regional Plan were attached to the report, emphasising that any diversion works were not permitted activities. Read in tandem with the main report however (as quoted) it is apparent that despite this, the staff advice was that such</p>

	<p>works were theoretically consentable (subject to getting through various “hoops” as listed).</p>
<p>17 December 2015</p>	<p>SG’s motion is tabled at the CSI meeting and then put after PowerPoint presentation and significant discussion (in which the Ngai Tahu representative “stressed to the Council that Ngai Tahu would absolutely oppose [any re-diversion] consent”).</p> <p>There was substantial discussion and following noted:</p> <p>“M Hall stated that he agreed that the diversion work was illegal, and Council must accept that this was the case. The illegal work altered the stream significantly and it used to be a lot better than it is now. He stressed however that we are now in the year 2015 and there must be a balance in what Council does. The question for Council is “is the damage that has been done worth the costs and effort that it would require to fix?” His view was that the “fix” was not viable.</p> <p>...</p> <p>Chairman advised Council that he was going to put the motion. S Gerard responded that he wished to change his motion to include that he wanted to have an independent person look at the issue. Chairman sought advice of the Council on this. M Hall advised that what Mr Gerard was suggesting is substantially different from the original motion and that a motion was on the floor with a mover and seconder with long and significant discussion and that the motion needed to be put.</p> <p>Chairman put the motion and requested a “show of hands”.</p> <p>Moved (Gerard/McLauchlan) 3 for, 7 against)</p> <p>“That the illegal diversion of Deep Creek (Mt Potts) is addressed in the uttermost haste to re- instate the stream to its natural pre diversion state so as to re-establish all lost salmon area juvenile rearing habitat and trout habitat.”</p> <p>The motion was declared LOST (S Gerard requested his vote for the motion be recorded).”</p>
<p>27 January 2016</p>	<p>SG letter of complaint to CSI councillors alleging the process at 17 December 2015 CSI meeting resulting in the decision was other than in accordance with standing orders at 17 December 2015 CSI meeting and asking multiple substantive questions on Deep Creek information and decision-making process.</p>

<p>28 January 2016</p>	<p>Fellow councillor, Linn Koevoet, emails SG expressing significant disappointment at his approach to Council’s decision-making and continued non-acceptance of same in relation to Deep Creek.</p>
<p>18 February 2016</p>	<p>Deep Creek discussed further at the CSI meeting under “matters arising”. SG’s letter of 27/01/16 was also discussed as part of this. During the discussion an expert opinion letter dated 16/02/16 from Dr John Hayes (Senior Scientist: Freshwater Fisheries) of the Cawthron Institute to SG was referred to by the Chair (a copy of this letter having been forwarded to CSI by Dr Hayes for its information). Following an expression of interest by councillors, the text of Dr Hayes’s letter was read to the meeting by the Chair. The letter stated as follows:</p> <p>“I apologise in taking so long to reply to your emails on the diversion of part of Deep Creek. You asked if I would help by way of independent advice on fixing the diversion (i.e., I assume restoring full flow down the “natural” channel). I am reluctant to wade into this issue, which I understand has been a matter of disagreement between you and others on the CSIFGC and staff. The PDFs you sent were very helpful to me to understand the issue, and I also talked to Jay Graybill for more background. My understanding from Jay is that obtaining consent to do remedial works in stream, to block off the diversion channel, would be difficult and costly – and the works would need to be substantial. Also, the consent application is unlikely to be supported by all stakeholders with an interest in the area – especially given the NWCO status of the catchment.</p> <p>Judging from the photographs I thought that the original channel, now receiving less flow, should provide good juvenile salmon rearing habitat. Jay told me that CSIFGC staff confirmed this with a field visit. On the other hand, you say that good adult trout habitat and fishing opportunities have been lost in the original channel and this has not been compensated for by alternative habitat and fishing opportunities in the diversion channel – it being too fast and narrow. I think this is likely to be a temporary feature. I note that the diversion channel is roughly the same length (maybe a little bit shorter) as the original channel and flows over similar terrain. But it is steeper in some parts. I also note from the photographs that erosion is occurring in some parts. This is what I expect to happen – the diversion channel is evolving, cutting into the banks and bed where is constricted and steep. I expected over time the channel will become more sinuous and therefore longer, the bank material will be re-worked into gravel bars (providing spawning habitat), and habitat will become more heterogeneous (i.e. varied – with deep edge pools with undercuts flowing into shallower wider runs and riffles). In the long run I expect good spawning habitat will be formed and also good adult trout habitat – not much different from what was provided by the original channel. Rivers are</p>

	<p>very good at restoring themselves without human intervention and so my recommendation is to be patient.</p> <p>I get the impression that this matter has become very contentious within CSIFGC – and spilled over into popular press. That’s a pity. I think the matter is best dealt with through the democratic process of the Council. Irrespective of the decision by the Council I encourage all parties involved to accept the decision and work constructively together. While councillors and license holders may not agree on everything I feel it is important to put disagreements into perspective – the real threat to our fisheries is not within our ranks but outside. Sometimes it is best to put a lid on our passion for a desired outcome and together move onto the next environmental battle. In this case I think nature will heal the environmental wounds made by the irresponsible farmer who started the diversion. I feel the focus now should be healing the wounds within the Council.”</p> <p>Council subsequently confirmed the decision reached at its December meeting and supported the Chair’s decision not to reply to SG 27/01/16 email / instruction to the CEO to also not reply.</p>
18 April 2016	SG wrote to Rasmus Gabrielsson (another freshwater ecologist at the Cawthron Institute) requesting an alternative independent opinion on Deep Creek.
19 April 2016	Rasmus Gabrielsson sent an email reply to SG declining to provide alternative opinion, stating “I am sure John’s [Hayes] advice was sound and perfectly independent...”
23 June 2016	<p>Golder Associates (Environmental Consultants) write to SG following a telephone request from him for an opinion on work required to complete a re-diversion of Deep Creek. After recommending consultation with all affected parties and noting the need for “clarification...as to the need for resource consent to undertake the work”, the following was outlined under the heading “Proposed Actions”:</p> <p>“The actual in-river works associated with diverting the water back in to the original mainstream channel (i.e. the pre-diversion (i.e. pre-2007) state) are likely to be minor and will be comparable in scale and cost to the work undertaken to divert the channel in the first instance (e.g. a few hours with an excavator costing somewhere between \$1000-\$2000). A River Engineer from Environment Canterbury suggested a number of options for potential restorative works that will essentially divert the majority (if not all) the water back in to the original mainstem. We would recommend less intensive work than that proposed by the Environment Canterbury River Engineer, and instead of constructing a 1-1.5m high stop</p>

	<p>bank, we recommend constructing a lower bank that is similar in height to the existing river banks...</p> <p>It is also important to be mindful that while the proposed in-river works should help to return flow to the mainstem of Deep Creek, the dynamic nature of the Deep Creek system (i.e. old adage of 'braiding rather than braided river') means that it will continue to undergo channel migration naturally. Even if considerable engineering design and works were undertaken, guaranteeing a long-term preferred alignment for Deep Creek and its associated tributaries is very unlikely."</p>
08 July 2016	SG wrote an extensive letter to the then Minister of Conservation (Hon. Maggie Barry) reiterating his concerns regarding Deep Creek and related complaints with regard to CSI, requesting the Minister to intervene and direct CSI "to fix this stream [Deep Creek] first and foremost".
28 July 2016	SG sends a letter to Office of the Auditor-General (OAG) reiterating numerous concerns about the operation of CSI.
Prior to 12 August 2016	The Minister replies to SG to the effect that his concerns relate to compliance actions and should be referred to ECan.
12/13 August 2016	SG emails the Minister further with queries as to her response. It is unclear whether the Minister replied.
18 August 2016	<p>CSI Council meeting at which the DOC liaison officer advised on the letter received by the Minister. Further discussion ensued about DOC's position where it was stated:</p> <p>"[DOC's] baseline requirement would be that any party [wanting to re-divert Deep Creek would need to] obtain the appropriate consent and seek Iwi approval."</p> <p>Note that SG was an apology for this meeting and resigned from CSI shortly afterwards.</p>
18 August 2016	R Sowman of NZC wrote to the CEO of CSI regarding SG's complaint to Minister – requesting response on specific points.
23 August 2016	Jay Graybill replied to R Sowman advising of CSI previous decision regarding Deep Creek and again summarising the reasons.
07 December 2016	Future Rivers Trust (of which SG is a founding trustee) posts several views from fishing experts lobbying that the creek should be restored under the webpage title:

	“5 Expert Anglers with combined fishing and professional experience exceeding 150 years say that Deep Creek (Rangitata River) needs to be fixed now and agree CSI Fish and Game have got this all wrong!”
10 January 2017	OAG replies to SG’s letter of 28/07/16 suggesting that NZC is the appropriate avenue for his concerns, given the s26C audit function under the Act. OAG also advises NZC of this response.
20 January 2017	SG sends a letter to NZC Chair / CE enclosing OAG letters and other documents, requesting NZC investigate the concerns he had raised with the OAG.
17/21 March 2017	Meeting between NZC and OAG, followed by a further OAG letter to NZC.
05 May 2017	OAG informal “relationship visit” to CSI (involving meetings with the Chair and CEO).
06 June 2017	OAG letters to CSI and NZC (details are summarised below).
14 June 2017	OAG email to SG confirming OAG had provided responses to CSI / NZC advising OAG would be taking <u>no</u> further action, confirming that NZC remained the appropriate avenue for his concerns, noting that NZC had agreed to prepare an audit policy, further noting that they “have encouraged CSI to review its COI policy to provide more detailed and practical guidance for councillors”.
13 April 2018	SG letter to Minister of Conservation Hon Eugenie Sage again outlining his concerns about CSI, requesting her to “dissolve this Council”.
24 April 2018	SG email to Lindsay Lyons (Chair of NZC) (copied to Martin Taylor (CE of NZC) and Minister Sage) referring to the lack of any audit or other progress regarding his CSI complaints.
June 2018	Minister of Conservation letter to Lindsay Lyons, requesting that NZC advise her on a number of matters relating to SG’s communicated concerns in respect of CSI.

RWL (and RSIL)

77. The main matter associated with the key contention is the approach of CSI (including the then Chair’s actions) to the development of the RWL-owned irrigation scheme on the south bank of the Rangitata River. The scheme was previously being planned by a group of farmers under the corporate name, Rangitata South Irrigation Limited (RSIL). As detailed

below in the timeline Mr Rooney eventually became the owner of the irrigation scheme, drawing on water from the Rangitata.

78. The following is a description of the key timeline events of CSI’s actions and approach to the water take consents issued to RWL and the events surrounding the trial of the effectiveness of its fish screen (also known as the rock bund):

Date	Events
17 June 1999	RSIL incorporated by a group of farmers occupying the area between the Rangitata and Orari Rivers.
31 January 2000	RSIL lodges a suite of three consent applications (based on a “run of the river” approach) centered around a proposal to abstract up to 6 cumecs from the Rangitata River [CRC 001229].
27 April 2000	CSI lodges a submission on the 31/01/2000 applications, objecting to them on wide river concern grounds and stating that “the [WCO] should be decided prior to the Regional Council considering any new applications to divert and take water from the Rangitata River”. Effectively on that basis the applications subsequently ended up on hold.
April 2004	RSIL lodges a suite of five further consent applications centered around a proposal to abstract up to a further 3 cumecs from the Rangitata River [CRC 042094]. It was proposed that this water be taken in accordance with the WCO and the applications again ended up on hold on that basis.
September 2006	<p>RSIL lodges a suite of three further consent applications as follows:</p> <ul style="list-style-type: none"> • CRC 070923 – a land use consent to construct and maintain an intake structure in the bed of the Rangitata River. • CRC 070924 – a water permit to abstract up to 11 cumecs of water from the Rangitata River (intended to be operated together with previous applications CRC 001229 and CRC 042094 bringing the total applied for up to 20 cumecs) and dam it in storage ponds for irrigation purposes. • CRC 070925 – a land use consent to clear vegetation and disturb soil within the riparian zone of the Rangitata River, to facilitate the construction of the intake structure, storage ponds and diversion race. <p>The applications noted that changes had been made to RSIL’s overall proposal for it to not contravene the requirements of the WCO. It was noted that virtually all of the proposed take could only be abstracted at high flows above 110 cumecs and this was referred to as the basis for the</p>

	scheme having to move to a storage system and higher abstraction rate during high flow (as opposed to the original “run of river” proposal).
September 2006 cont’d	<p>Following an RSIL proposal (communicated to CSI and managed by RSIL’s consultants, Pattle Delamore) to create a salmon spawning race as part of its scheme (we are advised that this aspect was essentially instigated by Gary Rooney [who by this point it seems had commenced, at least informally, working with RSIL via his commercial entities] two consent applications were lodged in CSI’s name alongside the RSIL applications, as follows:</p> <ul style="list-style-type: none"> • CRC 070926 – a water permit to divert up to 2.5 cumecs of water from the Rangitata River for the purpose of creating a fish spawning race. • CRC 070927 – a discharge permit to discharge water at the same rate from the fish spawning race to the Rangitata River.
26 October 2006	<p>CSI Council meeting. Minutes record as follows in relation to RSIL:</p> <p>“Ian Morten from Rangitata South Irrigation briefed Council on their proposal to abstract water from the Rangitata for storage at times of high flow.”</p> <p>The minute taker’s notes record that “GR announced his conflict of interest on the topic” but this was not formally minuted.⁸</p> <p>Note that no other CSI minutes were noted as referring to RSIL matters around this time (subsequent relevant minutes are recorded in this timeline). The CE also advised (during the audit process) as follows regarding this aspect: “I wish to make clear that during this time all of my discussions were with and through the consultants, PDP, and none took place between me and Gary Rooney on this topic”.</p>
15 May 2007	Rangitata Water Limited (RWL) incorporated as a wholly owned subsidiary of Rooney Group Limited.
May 2007	Heads of Agreement entered between RSIL and Rooney Earthmoving Limited (REL). We were not provided with a copy of this document for commercial sensitivity and confidentiality reasons given the involvement of third parties. But we were told that alongside a later Heads of Agreement between the same parties dated September 2010, also not provided, this document established terms for REL to “step into RSIL’s shoes” for the purpose of pursuing the RSIL consent applications. This was

⁸ Refer paragraph 57 for an explanation of the highlighting.

	to enable RSIL to maintain priority in the consent application queue, as part of a business arrangement for REL to drive the scheme through to completion and subsequent utilisation by RSIL.
Between 04 April and 13 June 2007	After initial requests for further information have been dealt with the RSIL/CSI consent applications are publicly notified by ECan.
28 June 2007	<p>CSI Council meeting minutes record the following:</p> <p><u>“RSIL Consent Applications</u></p> <p>G Rooney declared his conflict of interest on this agenda item and it was resolved (Scarsbrook/O’Connor) that [he] remain and be a party to the discussion. Chief Executive outlined the timetable of the applications of RSIL over the past eight years and their status under the now operative WCO. He advised that an application to divert and discharge 2.5 cumecs for a fish spawning race shows CSI Council as applicant and Council need to understand the legal responsibilities that come with that.</p> <p>Resolved (Hamilton/Hall) that Council move into public excluded to maintain legal professional privilege.</p> <p>After discussion the Council resolved as follows:</p> <p>That CSI become the applicant to the spawning race conditional that the CEO negotiates a contract to the approval and satisfaction of the CSI Council.”</p>
11 July 2007	<p>CSI lodges a submission on the RSIL applications stating that “Fish and Game opposed previous applications 042094 and CRC 001229 on the basis that the WCO was not finalised, fish screening concerns and potential for cumulative water quality impacts, and various other issues, some of which appear to have been adequately addressed”. It further states that “Fish and Game are not opposed to [the current applications] provided various areas of concern are addressed by way of adequate consultation and consent conditions.”</p> <p>The areas of concern then noted broadly relate to proper administration of any water take sharing with other consent holders, the desire of CSI to see the fish spawning race applications reduced from 35 to 20 year terms, a desire to see greater clarity around ground water monitoring plans including farm management plans, the issue of stock access to open races being better addressed and the need for didymo procedures as part of the protocols for works in the riverbed.</p>
18 December 2007	Following a review of submissions received ECan requested further information from the consent applicants. The information requested included further details on “the construction and maintenance work ...

	effects on groundwater as a result of the by-wash discharges ... how inflows will be metered and monitored ... a management plan for the scheme ... effects on groundwater level ...”
28 April 2008	<p>A response to the 18 December 2007 request for more information was provided by the applicants. As part of this “it was advised that the [fish spawning channel consent applications] were to be transferred into the name of RSIL, as an agreement on the duration requested could not be reached with Fish & Game”.</p> <p>(Note: the CE commented to the audit that of more concern to CSI at this stage was the question of responsibility for the costs of the ongoing management and maintenance of the race).</p> <p>These consent applications were officially changed in to the name of RSIL on 2 October 2008.</p>
23 October 2008	<p>CSI Council meeting minutes record the following regarding the entry of an MOU between CSI and RSIL in relation to the construction, operation and maintenance of the fish spawning race:</p> <p><u>“RSIL Memorandum of Understanding</u></p> <p>Gary Rooney, Chairman, declared that he had a conflict of interest and excused himself from the Council meeting at 9.35pm.</p> <p>CE outlined the provisions of the draft MoU as negotiated by Council’s executive committee with RSIL.</p> <p>Resolved (Scarsbrook/Batchelor) that Council approve for signing the MoU between CSI and RSIL as negotiated by Council’s executive committee.</p> <p>Rationale:</p> <ul style="list-style-type: none"> • Council recognises the potential benefit of a spawning race as enhancement to the Rangitata salmon fishery • Council recognises that in all aspects of Rangitata River Management full compliance with the WCO is paramount. <p>G Rooney resumed the chair at 10:05pm”.</p>
November 2008	<p>Fish Spawning race MoU signed by the CE (on behalf of CSI) and Mr Rooney (on behalf of RSIL).</p> <p>(Note: the CE verbally advised us that the MoU was negotiated using Pattle Delamore (Consultants) – there was no direct engagement on this with Gary Rooney until the actual signing of the agreed MoU.)</p>

<p>28 January 2009</p>	<p>Decision of Hearing Commissioners released, granting the RSIL consents for the terms requested (subject to various conditions). Particularly relevant comments or items to note from the decision are as follows:</p> <p>“[With reference to] the substantial constraints on the taking of water resulting from the regime imposed by the WCO...we observe here that the applicant has very much “cut its cloth to suit” and as a result of this the scheme as presently proposed has not attracted any particularly strong opposition.</p> <p>RSIL proposes to “harvest” water almost entirely above flows of 110 cumecs, flows which occur less than 15% of the time. It was common ground among the parties that this take would have no adverse effects on the outstanding characteristics of the river, as these are protected through the [compliance with] the WCO. Accordingly, the take sought is consistent with sustainable management.</p> <p>Fish and game raised a concern about the taking of water at Arundel when the flow monitoring point is at Klondyke, about two “flow hours” further upriver. Potentially water could be taken at flows of 130 cumecs at Klondyke while on a rising river the flow at Arundel is still substantially less than this, although only for an hour or two until the higher flow reaches Arundel. This matter was discussed between Fish and Game and RSIL and an agreement was reached [on a means to moderate this concern], which we have provided for in the conditions of consent.</p> <p>Clause 10(2) of the WCO refers to the requirement for any consent granted in relation to an intake site to provide for fish exclusion or a fish bypass system to prevent fish from being lost from the specified waters. In that regard Martin Bonnett, “a fisheries scientist and science manager with NIWA” is recorded as presenting on this aspect for the applicant – having “been involved with studies of the ecology of freshwater fish in NZ since 1980 ... published three papers on the Rangitata River fishery [and] co-author[ed] a report on good practice guidelines for fish screens.”</p> <p>After consideration of (particularly) Mr Bonnett’s submissions the Commissioners state as follows:</p> <p>“In summary, we are satisfied that the proposed fish screen meets the requirements of Clause 10(2) of the WCO. It will certainly exclude juvenile salmon and trout...”.</p>
<p>03 March 2009</p>	<p>The RSIL consents are issued by Ecan, all to RSIL apart from CRC 070925 (relating to construction matters) which is issued direct to RWL. Fish screening conditions are included on the abstraction consents. The audit was informed that the screening conditions were comparable with other consents issued around that time to other independent consent holders: for example, Totara Valley Irrigation Limited CRC 061453 and CRC 083710</p>

	(including in relation to the absence of an ongoing monitoring/testing regime).
8/9 September 2010	The RSIL consents (CRC 001229, CRC 042094, CRC 070923, CRC 070924, CRC 070926 and CRC 070927) are transferred to RWL in accordance with the earlier Heads of Agreement referred to between RSIL and Rooney Earthmoving Ltd (REL).
Circa January 2011 through September 2014	Construction of all aspects of the RSIL scheme completed by REL.
16 July 2013	Flow share consent CRC 134810 issued to RWL on a non-notified basis, effectively enabling RWL to utilise RDR's water take rights at any times when such take is not being utilised by RDR.
November 2013	<p>NIWA, via Martin Bonnett, publish a report prepared for Irrigation New Zealand, referring to "[a] trial of the effectiveness of a permeable rock bund for excluding fish at the Acton intake, Canterbury" ("the Acton Report").</p> <p>Regarding the overall measure of screen effectiveness, the report concluded as follows: "The trials demonstrated that the permeable bund at the Acton intake was very effective for Chinook salmon (95.2%) and torrentfish (97.5%) and not very effective for bluegill bullies (36.4%). Comparison of the length frequency of Chinook salmon caught in the two traps clearly indicated that small (<40mm) salmon were more vulnerable to being drawn through the permeable bund than larger fish."</p>
16 December 2016	An unsolicited email from Adam Daniel (Fisheries Manager from Fish and Game Auckland /Waikato Region) passed to CSI criticizing the Acton Report and rock bund barriers generally. CSI responded that any comment should go to NIWA as the author of the report.
16 February 2017	<p>CSI Council meeting minutes record wide ranging discussion on fish barrier effectiveness (members of the public included) following a presentation by Mark Webb.</p> <p>Of particular note are various sections of the minutes as follows:</p> <p>"Chairman invited members of the public present to address Council on any issues.</p> <p>A member of the public queried which fish screens have proven to be the most efficient? M Webb responded that permeable rock bund or gallery</p>

	<p>types were the most efficient and clarified that both the Acton scheme and the RWL scheme were rock bund barriers.</p> <p>A member of the public requested further detail on the Rangitata water scheme. Mr Rooney declared his conflict of interest on this issue and left the decision to the Council as to their views on this.”</p> <p>After explaining how conflicts of interest were dealt with at meetings, the Council checked with the public if anyone was unhappy for Mr Rooney to stay and answer questions relating to the RWL scheme. There were no objections and Council then passed a resolution that “G Rooney be requested to participate in the discussion and respond to questions from the public related to the Rangitata Water Ltd scheme”.</p> <p>The issue of testing the RWL scheme for information on fish present in the ponds was raised and anglers felt that more information was needed to help alleviate concerns. Mr Rooney is recorded as agreeing with Council “that this could be useful to do however it would first need to investigate and work out a viable way of being able to undertake testings.”</p>
8 through 15 May 2017	<p>Extensive efficiency tests are undertaken for the RWL permeable rock bund. This was completed within a 14-day window when RDR flow share water could be used due to a scheduled RDR maintenance shutdown (thus avoiding trying to run the test during high flow which was the only other option given the RWL consent conditions.</p>
15 June 2017	<p>CSI Council meeting minutes record as follows:</p> <p><u>“RWL fish screen trials</u></p> <p>G Rooney declared his conflict of interest on the issue and requested that Council decide his involvement in the discussion, if any.</p> <p>Resolved (Koevoet/Whipp) that G Rooney be requested to remain in the meeting to answer points of clarification only during the briefing of the RWL trials.</p> <p>M Webb gave Council a briefing on the trials that took place and how they were undertaken but advised that his report was still in preparation. No resolution was taken by Council.”</p>
26 October 2017	<p>Minutes of a meeting with Salmon and Riparian Support Trust Inc (the entity operating McKinnons Hatchery) record as follows:</p> <p>“Present: M Hall, A Brooks, L Koevoet, B Whipp, R Hobbs, P de Joux, R Clarke, M Webb.</p> <p>There was considerable discussion around the undertaking of F&G to pay 50c per fish for fish used in the RWL fish screen trial of May 2017. This</p>

	<p>commitment was stated by M Webb at the Trust AGM on 26 March...when the trial was being developed and the Trust’s help was critical to that. 13,110 fish were used in the trial, of which 1500 remained within the [RWL] scheme [being the fish released in the scheme during the fish trap calibration (pre-testing) phase of the trial] and are subject to a separate arrangement with RWL. The Trust believe the other 11,610 @ 50c each = \$5805 should be refunded by F&G as per original undertaking. The issue appears to be that although M Webb stated at the [AGM] meeting that F&G would pay for the fish there is no written confirmation of this with F&G.”</p>
7 December 2017	<p>CSI Council meeting minutes record as follows:</p> <p><u>“Fish and game/McKinnons 6-monthly report</u></p> <p>G Rooney and Bill Whipp both declared they had a conflict of interest.</p> <p>Council discussed the issue of Fish and Game funding the cost of the 11,610 fish used in the RWL fish screen trial and it was resolved (Isbister/Koevoet) that McKinnons Hatchery be reimbursed the cost of juvenile salmon used in the RWL fish trial at a cost of 50 cents per fish for 11610 fish with the total cost being \$5805.”</p>
14 June 2018	<p>CSI meeting minutes record that:</p> <p>“A draft copy of ‘A trial of the effectiveness of a permeable rock bund for excluding fish at the RWL intake’ was handed out to councillors in attendance and later posted to those not in attendance.”</p>
27 July 2018	<p>SG’s further letter of complaint to the Minister of Conservation (refer the Deep Creek timeline above) alleging conflict of interest issues and actions contravening the WCO on the part of both Mr Rooney and CSI more generally, with regard to various aspects of the RWL bund and the testing process undertaken.</p>
16 August 2018	<p>CSI council meeting minutes record under general business:</p> <p>“Resolved Hall/Isbister that the report on the trial of the effectiveness of a permeable rock bund for excluding fish at the RWL intake be placed on the agenda for the 18th October Council meeting”.</p>
18 October 2018	<p>CSI council meeting minutes record as follows:</p> <p>“Chief Executive’s Report: <u>A trial of the effectiveness of a permeable rock bund for excluding fish at the Rangitata Water Limited intake.</u></p>

	<p>At 7.21pm G Rooney declared a conflict of interest, vacated the Chair, asked the Chief Executive to preside for this topic, and left the Council boardroom.</p> <p>M Hall queried who owns the report? Chief Executive responded that it's a CSI report prepared by Fish and Game officer M Webb with co-author, Daryl McKenzie, providing a statistical analysis to strengthen its conclusions.</p> <p>M Hall stated that he believed what was in the report was a fair representation of the conditions at the time so was happy to receive the report on that basis but believed the limitations to the report, i.e. the size of the fish and the trial was not undertaken in flood flows.</p> <p>The Chief Executive stated that the report and its conclusions stand on their own. In his professional view the report fairly described the physical conditions that applied at the time of the trial as well as qualifying the application of the conclusions.</p> <p>Resolved (Spry/Koevoet) That Council receives the report entitled 'A trial of the effectiveness of a permeable rock bund for excluding fish at the Rangitata Water Limited intake'.</p> <p>Resolved (Hall/Koevoet) 1) That Council notes the report accurately describes the results of the tests, 2) The test reflects the results under the conditions that prevailed at the time and, 3) Council notes the limitations described in the report.</p> <p>At 7.38pm G Rooney returned to the boardroom and resumed the Chair."</p>
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RDR (as it relates to CSI)

79. To address the key contention, the review was asked to consider matters surrounding CSI's engagement on the various consenting processes associated with RDR – primarily RDR's application for additional take from the flood flows of the Rangitata River and its development of a fish screen. Behind these events was the suggestion that CSI was biased in its approach to the RDR consents in contrast to its approach to RWL – that is, it was biased in favour of Mr Rooney's commercial interests.
80. The following table sets out a description of events built up from CSI records and interview with various CSI staff. Contact was not considered necessary with RDR directly.

The relevant events are:

Date	Event
8 June 1945	RDR commences operation as a Government-established multi-use water supply conduit built to supply water for significant irrigation, power generation and stock water. Exact timing of historical abstraction development has not been established for this review, but total permitted water take of 30.7 cumecs at Klondyke subsequently broadly recognized.
26 February 1969	Legal status of the RDR water abstraction clarified via Ministry of Works and Development notice to the applicable Regional Water Board under s21(2) of the Water and Soil Conservation Act 1967. No fish screening requirements were provided for as part of this authority (or existing as part of the scheme).
November 2000	<p>In anticipation of the expiry of its abstraction authority on 1 October 2001 (The authority was due to expire pursuant to section 15 of the Irrigation Schemes Act 1990, under the transitional provisions of the Resource Management Act 1991 (“the RMA”). RDR commences the process of applying for replacement consents under the RMA, including the issuing of a draft “Assessment of the [RDR scheme] Effects on the Environment” document for public consultation. In this document, as part of considering possible detrimental effects of the scheme and suggested mitigations for same, RDR states the following in relation to salmon smolt / fish screening:</p> <p>“Diversion and entrainment of salmon smolt into the RDR canals has the potential to adversely affect the salmon fishery of the Rangitata River. ...</p> <p>RDRM⁹ has investigated the use of an Acoustic Fish Deflection System (which is sound based). Its effectiveness has been studied over the last 4 years by Lincoln Environmental. These acoustic barriers are cost effective to install, have low maintenance and running costs, and cause no harm to the fish (Nedwell and Thurnpenny, 1996). Information on the successful use of Acoustic Fish Deflection Systems is available from Nedwell and Thurnpenny (1996), and Lambert et al (1997). RDRM proposes to install an appropriate acoustic fish deflector system and monitor its effectiveness in preventing juvenile migrating salmon from entering the canal system. Alternative guidance systems will be considered if monitoring shows this to be ineffective.”</p>

⁹ RDRM and RDR refer to the same company and have been used interchangeably over time. The audit team understands the most common current usage is RDR.

<p>07 March 2001</p>	<p>CSI makes a wide-ranging submission to ECan in relation to the RDR consent applications. The main 30.7 cumecs water abstraction application CRC 011237 is objected to with reference to the WCO application in progress at that time (effectively reserving CSI's options for endeavouring to have minimum flow matters considered in the event the WCO application is unsuccessful). CSI submit the following in relation to fish screening, were the consent to be granted:</p> <p>"Another main issue is preventing sportfish from entering the RDR intake. We advocate that a fish screen or fish guidance system is operated when water is taken that will prevent sportfish from entering the intake. Additionally, the screen or fish guidance system shall be of design so as not to injure fish during their deflection and return to the river. We seek such a measure to be undertaken immediately. Fish and Game advocates that such a system shall be 100% effective. In recognising that difficulties may arise in achieving this level of effectiveness, in this particular situation, we would be satisfied with a system that is no less than 80% effective, with one condition. This condition is that if the screen or fish guidance system is less than 100% efficient then the difference shall be mitigated against in some form that is acceptable to Fish and Game."</p>
<p>31 January 2007</p>	<p>CRC 011237 issued to RDR by ECan for a 35-year term. Water abstraction levels and minimum flow provisions accord with the WCO (on which basis CSI had discontinued its objection/appeal). The consent said in relation to fish screening:</p> <p>"The 011237 issued to RDR by ECan for a 35-year term. Water abstraction levels and minimum flow provisions accord with the WCO (on which basis CSI had discontinued their objection/appeal). The following provisions are included in the consent in relation to fish screening:</p> <p>The consent holder shall take such measures as are appropriate to ensure that, so far as is reasonably practicable, juvenile salmon are excluded from the body of the diversion race and are returned to the river. To that end:</p> <p>a. Within 18 months from the commencement of this consent the consent holder shall install and commission a Bio-acoustic Fish Guidance system for the purpose of diverting as far as practicable migrating salmon smolt to the Rangitata River. That system shall be generally as outlined in the evidence presented on 14 February 2003 by Charles Paul Mitchell, Consultant Biologist;</p> <p>b. Within three years of the commencement of this consent the consent holder shall provide the consent authority with a report, prepared by a person appropriately qualified and experienced in freshwater fisheries biology, detailing the extent to which the system referred to in paragraph (a) above is meeting the object of this condition and making</p>

	<p>recommendations, if such are thought by that person to be necessary, as to the way in which that object may better be met;</p> <p>c. At any time within the fourth year of this consent and during every fourth year thereafter the consent authority may review this condition (pursuant to section 128) for the purpose of determining what steps should be taken by the consent holder so as better to achieve the object of this condition;</p> <p>d. The consent holder may at any time apply to the consent authority for a change to this condition, but for the sole purpose of the better achievement of its object.”</p>
Circa 2009	<p>Further to the above conditions on its consent, RDR develops and implements a Bio-acoustic Fish Fence (BAFF) to act as a fish screen on its take (A BAFF is a behavioural screen emitting a wall of bubbles with acoustic signatures created by loud speakers under the water, rather than a physical screen).</p>
Circa 2009 - present	<p>Biannual independent reports for RDR (provided to ECan under the consent terms) suggest that the BAFF is, on average, 33% efficient at stopping fish entering the RDR.</p>
16 July 2013	<p>Flow share consent CRC 134808 issued to RDR on a non-notified basis, effectively enabling RDR to utilise the water take held by RWL when such take is not being utilised by RWL.</p>
2016/18	<p>RDR lodges two suites of new consent applications, with the key aspects (as relate to this matter) being as follows:</p> <p>Suite 1 – the creation of a new rock bund fish screen and fish bypass, the abstraction of an additional 10 cumecs of flood flow water, the construction/operation of a storage dam adjacent to the RDR at Klondyke and a new spillway sluice channel back to the river.</p> <p>Suite 2 – a change to the new fish screen replacing the proposed rock bund with a rotary drum screen, removing the requirement for the BAFF.</p>
30 September 2016	<p>CSI makes a comprehensive submission objecting to the RDR Suite 1 consent applications (signed by the CEO). CSI Council minutes contain no evidence of prior discussion on submission. The basis for CSI’s objections are noted as primarily involve concerns with:</p> <ul style="list-style-type: none"> the proposed bund fish screen effectiveness – “Fish and Game supports a redesigned fish screen that prevents fish from being lost from the Rangitata River. Fish and Game considers the fish screen at this location should be, at a minimum, 85% efficient for

	<p>fish less than 45mm and 90% efficient for fish greater than 45mm in returning them to the River. Fish and Game believes that the design provided to date may not achieve the above-mentioned efficiency rates and the consent would therefore breach the WCO...”;</p> <ul style="list-style-type: none"> • the specifications for the proposed fish bypass; and • the proposed additional 10 cumecs take causing adverse effects relating to the sediment load and related aspects in the river.
<p>19 February 2018</p>	<p>CSI makes a comprehensive submission commenting on the RDR Suite 2 consent applications (signed by Angela Christensen). CSI minutes show no evidence of prior discussion on this submission. The submissions primarily notes:</p> <ul style="list-style-type: none"> • support for the alternative mechanical rotary fish screen design subject to “robust trialling/monitoring [...]to ensure that the screen is meeting the design specifications to prevent fish from being lost from the Rangitata.”; • support for the removal of the BAFF requirement on RDR’s existing take, provided that continued abstraction of water under the take “is dependent on the construction of the replacement fish screen within a defined time limit [that represents] the soonest practicable time for the replacement screen to be commissioned”.
<p>03 May 2018</p>	<p>Comprehensive legal submissions are filed by CSI’s lawyers with the RDR consent applications Hearing Commissioners, by independent lawyers, acting for CSI. Environmental effects are of particular concern to CSI (relating to the proposed additional 10 cumecs high flow take) were summarised as:</p> <ul style="list-style-type: none"> • Reductions in flow variability; • Adverse effects on bedload transport and channel morphology; • Increased deposition of fine sediment and associated ecological effects; • Adverse effects on salmon passage; and • Deterioration in water quality as a result of discharges from the storage pond.
<p>14 June 2018</p>	<p>A discussion is led by Matthew Hall at the CSI Council meeting, regarding aspects of the RDR consents hearing.</p>

	<p>The minutes record that Mr Rooney declared his conflict of interest (presumably as the owner of RWL, another submitter to the hearing) and offered to leave the room. Initially it was agreed that he did not need to leave but he ultimately did and was not involved in the discussion in any manner.</p> <p>Some of Mr Hall’s concerns were addressed when the full extent of CSI’s submissions was clarified (having been “taken as read” at the hearing) but nevertheless a number of motions were tabled by him and subsequently passed, relating to concerns at the lack of clear high flow protection in the WCO or the CLWRP.</p> <p>On returning to the meeting Gary Rooney “expressed concern that the Council was not pre-notified that this issue and a motion was coming forward for a decision. He stated that this Council has always taken care to make its decisions on facts and not emotions”.</p>
06 July 2018	<p>Report and Decision of Hearing Commissioners released, substantively granting the Suite 1 and 2 consents sought (“the RDR consents decision”). CRC 182542 to be issued in place of existing CRC 11237. The following extensive provisions are included in relation to fish screening:</p> <p>“6. Within 30 months of the commencement of CRC182542, the consent holder shall construct a mechanical rotary fish screen that shall be installed, continuously operated and maintained across the full intake flow to ensure that fish are prevented from entering any of the irrigation infrastructure downstream of the screen and returned safely to the river.</p> <p>7. The fish screen referred to in condition 6 shall be designed to comply with the following design specifications as defined in NIWA (2007) Fish Screening: Good Practice Guidelines for Canterbury (hereafter referred to as the Good Practice Guidelines) and Schedule 2 of the Canterbury Land and Water Regional Plan.</p> <p>Specifically, the screen shall:</p> <ol style="list-style-type: none"> a. Be located in a position as close as practical to the Rangitata River; b. Use wedge wire bars with a 2mm slot width; c. Have an average approach and/or through screen velocity ($\pm 10\%$) of less than 0.12 m/s; d. Be designed and operated so that the average sweep velocity past the fish screen elements shall be at least twice the approach velocity. The consent holder shall design and operate the fish screen with the objective of having the average sweep velocity in the order of 4 to 5 times the approach velocity;

	<p>e. Have a fish bypass channel that is designed and operated to be effective in attracting and conveying fish away from the screens down a bypass channel and returned safely to the river;</p> <p>f. Have a fish bypass channel that is designed and operated for continuous flow connection back to a flowing braid of the Rangitata River and will have design features to prevent fish from passing up the bypass channel from the river, and from returning up the bypass back to the screens;</p> <p>g. Be regularly inspected, and the screening materials shall be maintained in good condition and shall not have sharp or protruding surfaces that could damage fish coming into contact with them; and</p> <p>h. Have an associated Operations and Maintenance programme that will ensure the screen meets the effectiveness criteria in the Good Practice Guidelines and specifically includes:</p> <ul style="list-style-type: none"> i. mechanisms to regularly monitor and clean screening surfaces to ensure they do not become clogged with material; and ii. a programme to regularly monitor, detect and respond to any damage to screening surfaces, seals, and movement operation of the screens; iii. Mechanisms to remediate any damage to address (ii) above; iv. A programme to undertake monitoring and maintenance of the fish bypass and fish bypass. <p>8. The fish screen referred to in condition 6 shall be designed or supplied/constructed by a person with experience in freshwater ecology and fish screening techniques, who shall ensure that the design achieves the design criteria specified in conditions 6 and 7, and that the device is fully designed in accordance with the Good Practice Guidelines and/or Schedule 2 of the Land and Water Regional Plan.</p> <p>9. Prior to the installation of the fish screen, a report containing final design plans that demonstrates how the fish screen will meet the design criteria specified in conditions 6 and 7 of this consent, and an operation and maintenance plan for the fish screen, shall be provided to Canterbury Regional Council, Attention Regional Leader – Monitoring and Compliance for certification prior to commencement of construction.</p> <p>10. Prior to the installation of the fish screen, a Fish Screen Management Plan (FSMP) shall be prepared by a suitably qualified and experienced fisheries ecologist with experience in both salmonid and native fisheries and fish exclusion.</p> <p>The FSMP shall set out any requirement, methods and timeframes for monitoring of the function and effectiveness of the fish screen and fish bypass to demonstrate compliance with conditions 6 and 7. The monitoring programme shall include:</p>
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	<p>a. Methods to obtain field measurements where necessary to demonstrate velocities will be achieved as required by conditions 7(c) and (d);</p> <p>b. Methods to demonstrate the effectiveness of the fish bypass in attracting and diverting fish safely back to the river; and</p> <p>c. Methods and a programme for demonstrating via design features and downstream trapping within the bypass the overall effectiveness of the screen in accordance with the requirements and objectives of condition 6.</p> <p>The FSMP shall also include verifying the Operations and Management Plan required by condition 7(h).</p> <p>The FSMP shall be provided to Canterbury Regional Council, Attention Regional Leader – Monitoring and Compliance for certification that it has been prepared in accordance with this condition prior to commencement of construction.</p> <p>11. After installation of the fish screen referred to in condition 6, monitoring shall be undertaken in accordance with the FSMP to demonstrate compliance with condition 6 and demonstration of the design features of condition 7. Monitoring shall be undertaken or supervised by an appropriately qualified and experienced fisheries ecologist with specific experience in salmonid and native fisheries and fish exclusion.</p> <p>The results of each stage of monitoring shall be provided to Canterbury Regional Council, Attention Regional Leader – Monitoring and Compliance within one month of completion.</p> <p>12. In the event that the monitoring undertaken in accordance with condition 11 demonstrates that the fish screen does not achieve condition 6, the consent holder shall immediately commission a report. The report shall be prepared by an appropriately qualified and experienced fisheries ecologist with specific experience in salmonid and native fisheries and fish exclusion. The report shall recommend remedial action to be undertaken by the consent holder in order for fish screen to achieve compliance with conditions 6 and 7 and timeframes for completion of that remedial action. The report shall be provided to the Canterbury Regional Council, Attention Regional Leader – Monitoring and Compliance for certification that it has been prepared in accordance with this condition, no later than three months after completion of the monitoring which identified non-compliance. Once the report is certified by the Regional Council, the consent holder shall implement the recommended remedial action within the timeframes recommended in the report.</p> <p>13. Following implementation of any remedial action required by condition 12, the consent holder shall repeat the action required by condition 11, until compliance with conditions 6 and 7 has been demonstrated.</p>
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	<p>14. Engagement Over Draft Reports</p> <p>As required by conditions 47 to 54 of resource consent CRC170657, the consent holder shall:</p> <p>a. Forward draft copies of the Fish Screen Management Plan to the Chair of Te Runanga o Arowhenua and Central South Island Fish and Game for their review and comment at least 6-weeks prior to the documents being submitted to the Canterbury Regional Council for certification. Any comments made by Te Runanga o Arowhenua and Central South Island Fish and Game shall be considered by the authors of the Fish Screen Management Plan, and are to be attached as an appendix to the reports that are submitted to the Canterbury Regional Council for certification; and</p> <p>b. Forward final (certified) copies of the Fish Screen Management Plan to Te Runanga o Arowhenua and Central South Island Fish and Game.”</p>
23 July 2018	Six anglers (including SG) meet with CSI seeking CSI’s appeal of the RDR consents decision. The CE, Mr Rooney and two other CSI staff members attended.
25 July 2018	SG’s letter of complaint to the Minister of Conservation alleging that Mr Rooney had a conflict of interest and should not have been at the 23 July meeting, and further that he attended “primarily to safeguard his own interests” and that this was an example of CSI being “unduly influenced by this relationship with Mr Rooney”.
16 August 2018	<p>CSI Council meeting. As part of the meeting’s Public Issues forum, the South Canterbury Salmon Anglers Association (“the SCSAA”) addressed the meeting in relation to the RDR consents decision. Mr Rooney “declared his conflict of interest and offered to leave the Council boardroom if Council or any one member of the public wished him to do so”. No one made a request, so he remained in the room but handed over the chairing of that section of the meeting to the CE and is not recorded as having contributed to the remainder of the discussion.</p> <p>The minutes do not clearly refer to CSI’s decision not to directly appeal the RDR consents decision, nor the reasons for that decision. They do however record that CSI was joining the appeal of SCSAA and related parties “as a S274 party”. Further, the CE appears to have alluded to CSI’s decision not to directly appeal when he reiterated this question to the appellants: “can they bring forward new evidence that is likely to convince the Environment Court to change the Panel’s decision?”.</p> <p>Later in the meeting, during a public excluded item, the following resolutions were passed in response to the RDR consents decision (Note that some of these resolutions, with Matthew Hall present and involved,</p>

	<p>overturn resolutions proposed by him and passed at the previous Council meeting):</p> <p>i. “That CSI writes to Environment Canterbury to signal the need for a plan change to chapter 12 – Alpine rivers of the CLWRP to address high flow allocation in in the Rangitata River.</p> <p>ii. That CSI writes to the NZFG, after correspondence has been sent to Environment Canterbury, to advise them of CSI’s action of signaling to Environment Canterbury the need for a plan change to chapter 12 – Alpine rivers of the CLWRP to address high flow allocation in in the Rangitata River.</p> <p>iii. That CSI does not write to the Ministers about the omission in the WCO and the lack of planning under CLWRP.</p> <p>iv. That CSI does not write to the hearing panel for the RDR consent[s] decision.</p> <p>v. CSI makes no comment as to the inadequacy of the WCO and continues to support these statutory instruments.</p> <p>vi. That CSI are firm on the principle that action needs to be taken to address the inadequacy of the CLWRP.”</p>
<p>Also 2018</p>	<p>Of note:</p> <ul style="list-style-type: none"> • The audit was given a CSI PowerPoint presentation dated 11 November 2018 which summarises its expert evidence / opinions and covers what has been achieved via the RDR submission process (particularly in relation to the future requirements for the RDR fish screen) • RWL has lodged its own appeal against the RDR consents decision based on an argument about more specific derogation and siltation vis a vis the effect the additional RDR high flow take will have on its flow share / downstream abstraction consents

Analysis and conclusions on the key contentions

81. The following section on the key contention is complex given the nature of the interlinked matters. The approach taken is to provide a brief analysis on the matter and then the finding on that matter. These matters deal with both aspects of the key contention – management of Mr Rooney’s conflict of interest and the adequacy of advice provided by management to Council members.

The matters dealt with in this section are, in order:

- The illegal diversion of Deep Creek (primarily 2014)
- The application for the WCO (2006)
- The approach of CSI to the RSIL/RWL water take consent (2009)
- The approach of CSI to the fish screen aspects attached to the 2009 consent and contrasted to the RDR consent of 2007
- The approach of CSI to the high flow water take consent applications of RSIL/RWL (2007) and RDR (20016-18)
- The approach of CSI to the fish screen aspects of RSIL/RWL consent (2007) and RDR (2016-18)
- CSI not appealing the RDR high flow water take (2018)
- CSI’s approach to the RSIL/RWL fish screen test (2017)

Deep Creek’s illegal diversion

82. This matter is the dominant complaint made by Mr Gerard. Because Mr Gerard considers CSI has breached its statutory responsibilities, he has asked the Minister of Conservation that CSI be ‘dissolved’¹⁰.

Mr Gerard’s reasons centre on three contentions:

- Management deliberately manipulated its response to the Deep Creek and did not act in the best interest of anglers.
- Management put misleading information in front of Council, not enabling it to have all reasonable information for decision-making.

¹⁰ Letter to Minister of Conservation, 13 April 2018.

- When the matter was discussed at Council on 17 December 2015 when Mr Gerard was a CSI councillor, Mr Rooney intervened constantly and did not follow the Standing Orders.

83. This matter is therefore primarily about the adequacy of advice provided by management to Council members on options for dealing with the illegally diverted creek and the immediate impact on both trout and salmon fisheries. It is also a matter about CSI's approach to decision-making, but also about how the matter was handled when it was brought to Council's attention by Mr Gerard when he was a Council member.

84. The diversion was unconsented, and the actual timing of the diversion was unknown. It could have happened a number of years before it was discovered, because the creek had not been fished for some time because of concerns about didymo. It was closed for at least 5 years given its high conservation value as a salmon spawning site and was specifically noted under the WCO for this outstanding feature. It is also understood to have had high trout fishing values.

85. When the diversion came to CSI's attention in 2012, the options in front of CSI concerned the action that should be taken, including the need for consent from ECan to undertake any corrective action. While CSI obtained ECan's approval for some attempts to manually correct the situation in September 2012 (under a 'de minimis' consent and for which he provided assistance on site), in Mr Gerard's opinion CSI's subsequent actions were inadequate.

86. Nearly two years later on 10 June 2014, Mr Gerard wrote to CSI expressing concern about Deep Creek. At its 12 June 2014 meeting, following advice from management, the decision was made to undertake no further work and let the creek correct itself. CSI's rationale for this position was explained in some length to both Mr Gerard, firstly by a CSI Fish and Game officer and then by the CE in an open letter, dated 23 August 2014.

87. Once elected in October 2015 to the CSI Council, Mr Gerard raised the matter with his Council colleagues through a notice of motion. In his comments on a draft of this report, Mr Gerard alleged that his attempt to raise the matter was resisted and effectively closed down by Mr Rooney, in breach of the Standing Orders.

Findings

88. The timeline reinforces the length of time this matter has been a matter of contention between CSI and Mr Gerard. It has been the subject of substantive decision-making by CSI and been reviewed a number of times:

- In 2012 CSI obtained a 'de minimis' consent to attempt a manual correction of the illegal diversion. While this ultimately did not work, CSI continued the approach generally outlined in the CSI resource officer's email to ECan of 06 March 2012.

- CSI reviewed this position at its 12 June 2014 meeting, stating the basis it had adopted for decisions on management of the creek and subsequently expanded on by the CE in his open letter of 23 August 2014.
- On 22 December 2014 the NZC responded to a complaint by Mr Gerard on 31 August 2014 expressing its 'satisfaction' at the approach and decision reached by CSI.
- Once elected a CSI councillor in late 2015, CSI accepted his notice of motion to reconsider Deep Creek. In particular it enabled Mr Gerard to make a lengthy presentation to council. Ultimately council again rejected the views and solution sought by Mr Gerard.
- This decision was confirmed at the ensuing meeting in February 2016, with the benefit of the independent view of Dr Hayes.
- And as noted the matter is being re-reviewed by this audit initiated by NZC after Mr Gerard's 2018 complaint to the Minister of Conservation.

89. Much of Mr Gerard's concerns about management misleading Council relate to the advice provided to Council on the ability of CSI (or another party) to gain an ECan consent for more invasive intervention to correct the diversion – an action accepted as requiring mechanical works. In its simplest form, the argument is that it was told or implied to Council that such a consent was not possible. However, the audit's overall review of the information and advice obtained did not find any evidence to support this claim. The information and advice provided to Council did acknowledge that mechanical intervention was possible, but it noted that consent would be difficult given the provisions of the ECan Land and Water Regional Plan and the creek's status under the WCO.

90. Closely aligned with the allegation of misinformation and misleading advice was that management was manipulative over these events. This seems to primarily relate to management allegedly downplaying the significance of the diversion and the assumed date the diversion must have occurred. Mr Gerard points to the use of generalised phrasing by management, such as "may have been in place for 5 years [prior to the time of the manual correction work in 2012]", when Mr Gerard considered it possibly a much shorter time since the diversion, to support his allegation. The audit does not find this compelling. No definitive evidence was established regarding the exact timing of the diversion. Given the five-year didymo exclusion period and photographic evidence of tussock growth on the diversion, "circa 2007" appears to be as reasonable an estimate as any (and the advice independently obtained by Mr Gerard from Golder Associates refers to that approximate timing).

91. Mr Gerard expressed concern that he was prevented by the Chair – in contravention of Standing Orders – from expressing his views. This is not supported by the minutes of the meeting or the recollections of other councillors when interviewed during the audit. The consensus of the other councillors was that Mr Gerard was given an opportunity to present

and express his views at length. The majority of councillors did not agree with his position as regards what should be done about the illegal diversion. The minutes of the December 2015 and February 2016 meetings record that the matter was thoroughly discussed and determined properly in terms of meeting procedure.

92. The audit therefore concluded that those wishing to air their views, including Mr Gerard, were able to do so.
93. Indeed, it is not clear to the audit what motivation CSI might have had to manipulate information and continually reject, on any improper basis, Mr Gerard's requests for greater intervention in Deep Creek. Ultimately the audit has reached the conclusion that CSI approached the matter of Deep Creek reasonably.
94. Further it is recognised that CSI have had an array of expert advice to assist them with the reaching of their conclusions:
 - 26 September 2014 – the ECan river engineer
 - 17 December 2015 – the views of Ngai Tahu
 - 18 February 2016 – Dr John Hayes of the Cawthron Institute (also accepted by his colleague on 19 April 2016)
 - 18 August 2016 – the Department of Conservation liaison officer.
95. The evidence from the audit suggests that CSI's overriding rationale in responding to the issues raised by the diversion related to the protections accorded and priorities established for Deep Creek under the WCO, given its specification within the same as a water recognised for the outstanding characteristic or feature of 'Salmon Spawning'. The view reached by the majority of CSI Council members was that the appropriate consideration of these WCO protections and priorities (including their various implications and related matters) led to the decision that no further action attempting to rectify the diversion was warranted.
96. The audit acknowledges the genuine views held by Mr Gerard on both the fishery values of Deep Creek and his belief in what CSI should have and can still do about the illegal diversion. Over a long period of time, since he first became aware of the diversion, he has been consistent in his views that CSI, in collaboration with others, need to repair the creek. His views have been backed by the trust he is associated with - the Future Rivers Trust – which has offered to co-fund the environmental restoration of the creek.
97. However, having considered all the evidence including the review of documentation, the interviews with CSI councillors, and Mr Gerard's response to a draft of this report, the audit concludes that the matter of Deep Creek has been given a substantial airing. Council has made a genuine set of decisions and has acted in accordance with its Standing Orders. Most importantly the Council has listened to but not been persuaded by Mr Gerard's arguments.

The Water Conservation Order (WCO) application

98. Mr Rooney was CSI's Chairperson from the time the WCO application was made in 1999 until the date it was issued in 2006.
99. Throughout this time, Mr Rooney owned his earthmoving business, which potentially could have benefited from the WCO depending on the level of flow rate it set and the extent to which it might allow water to be taken from the river for irrigation purposes.
100. There is nothing however to suggest this amounted to a conflict of interest at the time of the application or thereafter, or that Mr Rooney had an "agenda" to achieve a higher flow rate from the WCO in the interests of his business.

The evidence suggests otherwise:

- First, Mr Rooney as the Chairperson was the instigator and the prime mover of the WCO project in its early years.
 - Secondly, the process was so complex, with uncertain science and so many other players involved, that it is impossible to say that he was in a position to materially influence the outcome on his own.
101. In hindsight, it might even be said that Mr Rooney's business could have been negatively (rather than advantageously) affected by the WCO, which would have been expected to limit the water take allowed and ultimately did so. The outcome of the process was difficult to predict because of the uncertain science and the fact that the Rangitata WCO was new and complex and was bound to be opposed (which it was).
 102. There is no evidence of Mr Rooney having an association with RSIL until the last few months of 2006. The audit accordingly concludes that Mr Rooney had no conflict of interest in relation to the granting of the WCO, which was finalised in June 2006.

The RSIL/RWL flood take application

103. It seems clear that Mr Rooney had a commercial relationship (at least of an exploratory nature) with RSIL by the time the September 2006 application was made to take floodwater from the river for irrigation purposes, within the limits established by the WCO.
104. CSI made a submission on the RSIL consent applications in 2007. It has been suggested that CSI's position of not objecting to the consent, and instead making submissions only on consent conditions, was potentially advantageous to Mr Rooney's commercial interests.

105. As noted above the evidence shows that Mr Rooney did have a conflict of interest in relation to this matter through his interactions with RSIL. However, there is no evidence of the matter coming before the CSI Council (or of Mr Rooney having had any communication with CSI staff about it) until the CSI Council meeting of 26 October 2006 (that is, after the September 2006 lodging (by RSIL's consultants, Pattle Delamore) of both RSIL's consent applications and the related fish spawning channel applications presumptively submitted in CSI's name. At the 26 October 2006 meeting the RSIL Chairman Ian Morten is recorded as having briefed Council on RSIL's proposal to extract water from the Rangitata for storage at times of high flow. The minute taker's notes record that Mr Rooney "announced his conflict of interest on the topic", but it appears that in error this was not carried over in to the formal meeting minutes. There is no other discussion or action regarding the matter recorded at that initial stage.
106. In May 2007, the commercial relationship between RSIL and Mr Rooney's earthmoving company was formalised via a Heads of Agreement. At around the same time, the RSIL and CSI consent applications were publicly notified by ECan. The RSIL consent applications then came before the CSI Council at its 28 June 2007 meeting. The minutes of that meeting record that Mr Rooney declared his conflict of interest on the RSIL agenda item and further (in accordance with standing orders process) it was formally resolved that he remain in the meeting. Aside from a CE briefing on the RSIL consent application history (including the proposed fish spawning race) and how it related to the now operative WCO, no other discussion was recorded, and no resolution made other than to resolve CSI becoming the applicant to the spawning race. CSI subsequently lodged its submission on the RSIL consent application on 11 July 2007.
107. The audit therefore finds that, while Mr Rooney had a conflict of interest in relation to the consent application at the time the application was open for submissions and consideration, and in subsequent CSI consideration of matters involving RSIL, he declared the interest in accordance with CSI requirements. The audit also finds that the later MOU that Mr Rooney signed on behalf of RSIL was prepared on an arms-length basis.
108. In hindsight Mr Rooney's conflict of interest could have been more effectively "managed", for example by a documented plan to ensure that Mr Rooney exercised no additional influence over the content of CSI's submission, or in the subsequent development of CSI's relationship with RSIL culminating in the MOU, in his capacity as the Chair of CSI. But there is no evidence of any corrupt or bad faith behaviour in that respect.
109. Rather it appears that CSI's decisions with regard to its submissions were reached in good faith, based on three key substantive factors relating to the water take application – compliance with the WCO regime, the provision for a fish screen with specifications supported by a recognised expert, and the benefits of the fish spawning race on offer as part of the scheme. Similarly, the entering of the MOU was a pragmatic means of recording CSI's relationship with RSIL concerning the development of the fish spawning race.

Comparison of approach taken to RDR

110. The audit firstly considered CSI's approach to various matters pertaining to RDR, as part of analysing CSI's approach to broadly comparable RSIL / RWL matters where conflicts of interest were alleged to have existed. The relevant RSIL / RWL matters and comparable RDR matters follow with findings and explanatory comments (which should be read in conjunction with the relevant sections of the detailed timelines above) noted separately with respect to each for clarity.

The fish screen aspects of the water takes (RSIL/RWL (2009) cf. RDR (2007))

111. The audit considered the fish screen aspects of the water take consents issued to RSIL in March 2009 (subsequently transferred to RWL in September 2010), compared to the same aspects of the water take consents issued to RDR in January 2007. This was relevant particularly with regard to a comparison of CSI's approach to submissions on each.

Findings:

112. The audit established that CSI submitted on RDR's main replacement run of river water take application in March 2001. While focused on seeking a "hold" on the granting of any new consent pending the resolution of the WCO application, CSI also submitted in relation to fish screening for the RDR intake. A 100% effective screening system was advocated for, subject to a pragmatic acknowledgement that 80% effectiveness might have to be accepted. No on-going fish screen monitoring requirements were referred to in CSI's submissions.

113. In January 2007, new consents were issued to RDR without objection or appeal from CSI. The audit accepts that the decisions not to object or appeal were made in good faith given that the new consents accorded with the minimum flow provisions of the (by then finalised) WCO and also included requirements for the installation of the BAAF fish screen and ongoing monitoring of its effectiveness.

114. There is no evidence of any noteworthy conflict of interest existing at the time of the RDR submission in March 2001. This was well before Mr Rooney had any connection with the later proposed RSIL scheme; and his other commercial interests did not stand to gain in any way from CSI's submission. The pragmatic suggestion made in the submission regarding 80% effectiveness "bottom lines" for the advocated new fish screen (at that time), appears to have been tabled in good faith by CSI, bearing in mind the transition from a long background of RDR having no fish screen. There is no evidence of any desire or attempt by any party to reduce the strength of CSI's advocacy on such matters in order to possibly make fish screening requirements 'easier' for other potential future water takes.

115. CSI submitted on the RSIL consent applications in July 2007. It did not oppose the applications, on the basis that they complied with the key WCO provisions relating to flow

levels and fish screening requirements. Again, no on-going fish screen monitoring requirements were referred to in CSI's submission.

116. As referred to earlier in this report, by the time CSI came to consider its submission on the RSIL consent applications, Mr Rooney had a clear conflict of interest given his company's acknowledged backing of, and involvement in, the proposed irrigation scheme (formalised via a Heads of Agreement with RSIL). As already noted however, this was formally declared at the first CSI Council meeting after the public notification of the consent applications in June 2007 (adding to his original announcement to the same effect around the time of the consent lodgments in late 2006); Mr Rooney only remained in the relevant section of that meeting after a resolution to that effect was passed (in accordance with Standing Orders); and there is no evidence of Council discussing anything about the applications or the submission to be made by CSI in relation to them, other than as regards its role with the fish spawning channel.
117. It has been suggested that the presence of on-going fish screen monitoring requirements in the January 2007 RDR consents is inconsistent with RSIL having no such requirements in its 2009 consents. This is said to support the contention that Mr Rooney's declared conflict of interest played a role in RSIL having achieved that outcome. The audit found no evidence to support this. CSI did not make submissions on on-going monitoring in either case. Anecdotal evidence from other unrelated consents backs up the explanation given: that this was due to the prevailing practices of the time and indicative of still developing science and regulatory practices in relation to fish screening.
118. Rather than supporting any suggestion of inconsistency or bad faith on the part of CSI, the audit finds that the different inclusions in the comparable consents are most likely a reflection of the different factual scenarios applicable to each (with resulting differences in the practical requirements seen as necessary by ECan, being the regulatory authority issuing the consents). More particularly, the RDR consents related to a very large run of river take following on from a significant prior consent period, with no fish screen prescribed or used at all and utilizing a relatively new and unproven type of non-physical barrier BAFF fish screen essentially on a trial basis. Conversely, the RSIL consents related to a high-flow only take, utilizing a rock bund fish screen supported by recognised expert evidence regarding the high level of effectiveness believed to be applicable for such a fish screen at that time.

Water take (RSIL/RWL (2007) cf. RDR (2016-18))

119. The audit also considered CSI's approach to its July 2007 submissions on the **water take aspects** of RSIL's (high flow take) consent applications, compared to the approach to its 2016-18 submissions on the same aspects of RDR's (also high flow take) consent applications.

Findings

120. As referred to above, CSI did not object to RSIL's high flow water take in 2007, focusing on the scheme's compliance with the recently issued (at that time) WCO.
121. Conversely, when RDR lodged its high flow take application in 2016, CSI objected strenuously (both directly and via legal submissions at the consent hearing), citing adverse effects to the river relating to siltation and a number of other significant concerns.
122. Mr Rooney had a conflict of interest in 2007 with regard to RSIL, and declared the conflict as required by the Governance Policy and Standing Orders (as outlined in the previous section). In 2016-18, Mr Rooney was again conflicted due to RWL's flow share consent with RDR and downstream water take consent (i.e., he had a commercial interest in stopping the additional RDR high flow take due to derogation and siltation arguments specific to effect on RWL).
123. There is no evidence of CSI's intended submissions to either suite of the RDR high flow applications coming before Council. There was therefore no opportunity for Council members to influence the submissions, nor for Mr Rooney to declare any interest in relation to the matter under the Governance Policy or Standing Orders.
124. The audit found no evidence to suggest that Mr Rooney sought to influence CSI's position in relation to these submissions.
125. The audit finds that the approach taken by CSI in 2007, compared to that in 2016/18, can be explained with reference to the developing science at the time, despite the fact that each case involved compliance with the WCO. In particular, it is clear that scientific understanding and practice continued to develop over this period in respect of the importance of high flow periods to river health. The audit found no evidence supporting any suggestion of improper influence on CSI decisions due to a conflict of interest.

Fish screen aspects of water take (RSIL/RWL (2007) cf, RDR (2016 -18))

126. CSI's approach to its July 2007 submissions on the fish screening aspects of RSIL's consent applications, compared to the approach to its 2016-18 submissions on the same aspects of RDR's high flow take and storage consent applications.

Findings

127. Previous sections have discussed the efficacy of CSI's submissions on the RSIL applications in 2007 (and the suggestion that Mr Rooney's conflict of interest may have played a role).
128. In 2016-2018, CSI took a far more detailed approach to the fish screening aspects of RDR's 2016-18 high flow take application, objecting to RDR's initially proposed rock bund fish screen and questioning its likely level of effectiveness. It has been suggested that CSI's decisions not to object in 2007 (RSIL) and then to object in 2016-18 (RDR) were inappropriately influenced by Mr Rooney's interests.

129. The audit has established that Mr Rooney acknowledged he was conflicted during both periods. He was conflicted in 2007 with regard to RSIL. His declaration of the conflict has been outlined in previous sections. In 2016-18 he was also conflicted due to RWL's flow share consent with RDR and downstream water take consent (i.e., he had a commercial interest in stopping the additional RDR high flow take, again as already outlined). He was also possibly conflicted at that stage in the opposite direction, as the owner of RWL, given that its rock bund fish screen might have been prone to greater scrutiny if RDR's proposed bund was objected to and/or criticized.
130. However, as already noted there is no evidence of CSI's intended submissions to either suite of the RDR high flow applications coming before Council. There was therefore no opportunity for Council members to influence it, nor for Mr Rooney to declare any interest in relation to the matter under the Governance Policy or standing orders.
131. The audit also found no evidence to suggest that Mr Rooney otherwise sought to influence CSI's position in relation to the fish screening aspects of these submissions.
132. The audit finds that the different approaches taken to these aspects by CSI in 2007, compared to 2016/18, can be explained by the developing science, technology, knowledge and best practice related to fish screens (over a period of almost 10 years), rather than supporting any suggestion of improper influence on CSI decisions due to a conflict of interest.
133. In addition, it is recognised that while the 2016-18 RDR consent applications related to a new high flow take proposal, the fish screen aspects also impacted on RDR's very large run of river take, in respect to which the relevant factual background at that time involved a non-physical barrier BAFF fish screen which had proven to be ineffective.

CSI not appealing the RDR high flow water take (2018)

134. Also considered by the audit in relation to RDR was the allegation that conflicts of interest played a role in CSI's decision not to appeal the Hearing Commissioner's decision to grant RDR's additional 10 cumecs high flow water take consent in 2018.

Findings:

135. As outlined earlier, CSI's involvement was at two stages of the process. In September 2016 it made an objecting submission to the application. In relation to suite 1, the submission questioned the likely effectiveness level of the proposed rock bund fish screen and commented on the specifications for the fish bypass and the impact of additional cumecs on sediment loads (flushing). In relation to suite 2, CSI supported the removal of the BAFF and replacement with a mechanical rotary fish screen.
136. There is no evidence that this submission came before the Council before it was made. There was therefore no opportunity for Council members to influence it, nor for Mr

Rooney to declare any interest in relation to the matter under the Governance Policy or standing orders. (The approach of CSI to Council involvement in submissions process is addressed at paragraph 49 ff of the report.)

137. At the consents hearing in May 2018, Anderson Lloyd filed comprehensive submissions on CSI's behalf that supported in detail the matters raised by CSI during the initial submission process. Again, there is no evidence that these submissions, nor CSI's approach, were brought before Council.
138. After the consent was granted by ECan, CSI decided not to appeal the decision. The audit examined the evidence surrounding this decision. This shows that the decision was made on legal advice, with reference to expert scientific advice, to the effect that there was no reasonable prospect of success. (The scientific evidence was that the impact of the additional take would be minor or less than minor; and the legal advice was that an appeal must relate to the particular consent, without reference to the cumulative effect of increased takes, or the impact on the WCO.)
139. The audit established that the first time this matter came before the Council was at its meeting on 14 June 2018. At that meeting, Mr Rooney declared a conflict of interest and offered to leave the room. This was in accordance with the Governance Policy and the Standing Orders.
140. Despite these points, the audit found no evidence to suggest that Mr Rooney sought to influence CSI's position in relation to the consent application, or the decision not to appeal ECan's decision. Mr Rooney and the CE both denied any suggestion of influence or impropriety.
141. The audit notes that RWL has lodged its own appeal against the consent decision.

RWL fish screen effectiveness trial (2017)

142. The audit also considered the details of the effectiveness trial carried out on the RWL rock bund fish screen in May 2017. This was necessary in order to consider fully the approach taken by CSI to RSIL / RWL matters (and specifically the allegations that conflicts of interest played a role in decisions and actions regarding the same over time).

Findings:

143. RWL submitted to the trial voluntarily, following an open and transparent public discussion regarding fish barrier effectiveness concerns at the February 2017 CSI meeting. RWL was not legally obliged in any manner to submit its bund to effectiveness testing.
144. Despite that, Mr Rooney clearly had a conflict of interest in this matter because of his ownership of RWL and resulting desire to see the bund verified as effective. Mr Rooney

declared his interest at the February meeting. There is nothing to suggest that he subsequently altered his behaviour (for example, he again declared his interest at both the June 2017 and October 2018 CSI Council meetings where the fish screen trial results were discussed).

145. It has been suggested that the manner in which the trial was carried out supports the contention that Mr Rooney used his position as Chair to influence CSI's approach to the trial, or indeed that CSI's approach was open to question as having consciously favoured RWL's position. In particular, questions have been raised about the 150mm size of the hatchery fish used in the trial (comparing less than ideally to the much smaller size of many wild fish encountering the bund); the timing of the trial and cost contributions to it including for the hatchery fish; and the scientific validity of the trial results (which in essence found the bund to be effective in the conditions tested), as subsequently reported.

The audit has considered these questions against the available evidence, and finds that there are satisfactory explanations in each case:

- It seems clear that there was angler pressure at the time to complete the trial, and commitments given in February to do so. The reasons for wanting to proceed without significant delay were clearly genuine.
- The trial had to be completed using run of river water, as it would have been too difficult logistically to set up the trial during flood flows. To comply with RWL's consent, that meant the trial had to be completed at a time when RDR was not using its water and RWL could accordingly use it pursuant to the flow share consent between the parties. The trial dates in May were set using a rare 14-day window of opportunity, while RDR's take was out of operation for maintenance.
- The 150mm hatchery fish were the smallest available at the time. To get smaller hatchery fish (wild fish can't be collected in sufficient numbers to release), the fish have to be placed on reduced diets at an earlier stage in their life cycle. Waiting for this, combined with the RDR water availability limitations, would have significantly delayed the trial. This was not seen as desirable. Valid scientific results were still anticipated, based on the ability to interpret findings, also bearing in mind the statistics relating to smaller wild fish expected to naturally encounter the bund during the trial.
- RWL paid for construction of the fish traps, at significant cost. RWL also paid for the hatchery fish that were released inside its scheme as part of calibrating the traps. RWL provided staff and machinery. CSI offered to pay for the hatchery fish which were released into (and found to have remained in) the river. CSI also provided some staff, and the Riparian Support Trust provided volunteers.
- The report on trial findings was completed with the expert assistance of a statistician. It clearly noted the limitations of the trial, which the findings must be interpreted against.

146. The audit has found no evidence of the Chair influencing CSI's approach to the trial. There seems no basis for saying that CSI's approach was open to question as having consciously favoured RWL's position, or otherwise having allowed the trial to be carried out in a manner not appropriately intentioned. CSI and RWL appear to have worked together to undertake the trial in a genuine manner. Given that the process was not something RWL was obliged to do and both parties areas of knowledge / interest in the findings, it was reasonable to combine resources and expertise.
147. With regard to the interpretation of the trial results, the audit recognises the presence of differing scientific opinions in the circumstances. However, the findings reported are found to have been concluded in good faith, with transparent recording of the limitations applicable; and accordingly constitute a genuine opinion which it is not the role of the audit to assess in terms of preference to alternates.
148. Again, the use of a conflict of interest management plan, addressing the perception risks in relation to the Chair's role, might have helped to increase transparency around CSI's handling of the matter.

Overall audit conclusions

149. This section summarises the overall findings from the audit.
150. Consistent with the External Reporting Board’s standard on “Assurance Engagements on Compliance (SAE 3100) this report provides *limited* assurance on the matters investigated under the ToR. However, while the assurance provided is limited in nature, the work has been designed to ensure the conclusions drawn below are “meaningful”; that is, the work undertaken was planned to ensure “the level of assurance obtained ... is likely to enhance the intended users’ confidence about the compliance outcome to a degree that is clearly more than inconsequential”¹¹.
151. That confidence is provided through:
- Detailed outlines of the key events associated with the complaints
 - The independent views expressed in this report by Bruce Robertson of RBRL.

Managing Mr Rooney’s conflict of interests

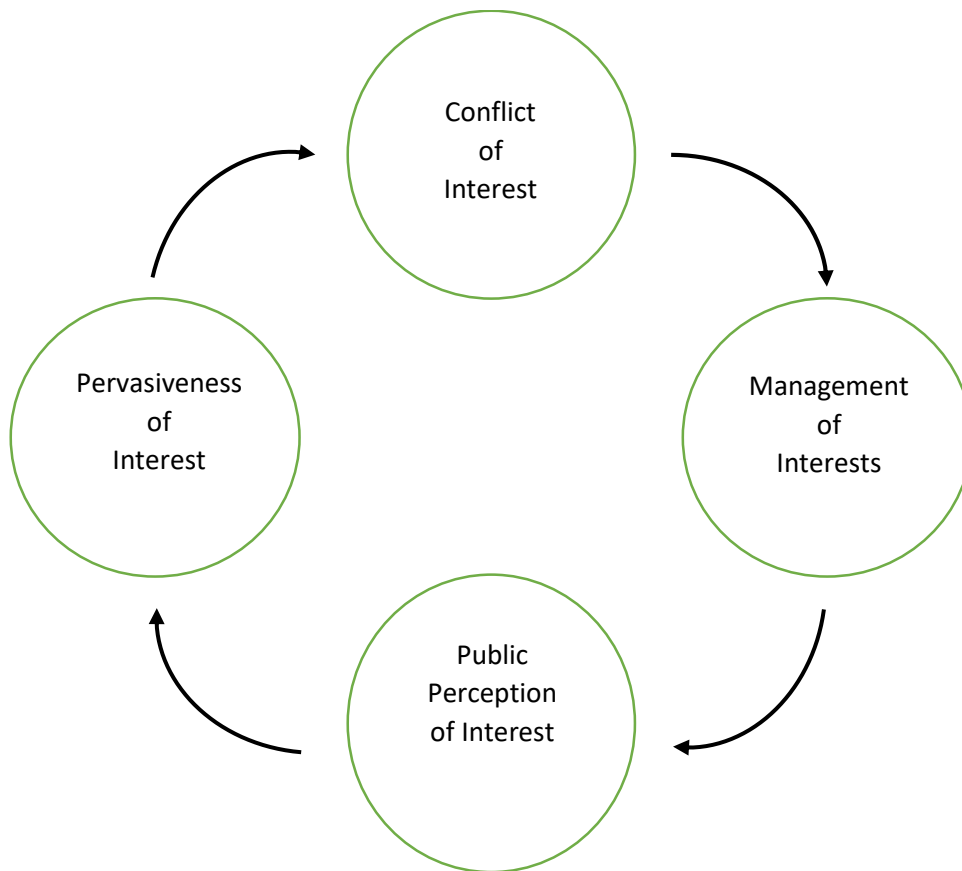
152. Mr Rooney’s declaration of interests has been quoted at paragraph 9 *ff*. It was a generalised description of his business interests of a “functional” nature. Apart from specific references to Rangitata Water Limited and Kiwi Safaris, it was not particularised with reference to his roles (for example directorships) in specific entities or business activities. Modern corporate governance practice would involve a standing declaration of interests which referred to specific interests of that type. Standing declarations should also be regularly updated. Mr Rooney does not appear to have formally updated his standing disclosure since the beginning of his last term on Council in October 2015. Importantly, though, it is noted the standing declaration had been orally confirmed as current via a standing item on each subsequent Council meeting agendas (where Council members were routinely asked to advise if they had anything to add to their declaration of interests).
153. Under CSI’s Standing Orders, a previous declaration of interests (and any other undeclared interest) needs to trigger a conflict of interest declaration at the meeting whenever an item of business arises which involves a conflict between a member’s personal interests (other than an interest held in common with the public) and his or her responsibilities as a Council member.
154. The audit has established that Mr Rooney did so in relation to each of the matters examined and these occasions are highlighted (in yellow; also refer paragraph 57) within the timelines that form part of this report:

¹¹ Refer AE 3100 (Revised), paragraph 17 (o).

155. The conflict of interest policy in the Governance Manual, and Standing Order 1.13.2, both allow a conflicted member to remain in the meeting room during the discussion of a conflicted item, with the agreement of other members, but not to be involved in voting. Both documents are unclear on whether the conflicted member in this situation should be allowed to contribute to the discussion or deliberation, but this can be implied from good practice and equivalent statutory provisions applying to elected bodies¹².
156. Again, refer to the highlighted entries for how Mr Rooney's interests were managed once declared at a meeting.
157. Accordingly, the audit finds that Mr Rooney made a general interests declaration and specific conflict of interest declarations at Council meetings in accordance with the Governance Policy and the Standing Orders.
158. Despite this, it became clear through the audit that significant perceptions remained over many years that CSI's work was being influenced by Mr Rooney's personal interests, particularly because he was the Chair. The following observations are made in relation to CSI as an entity (and do not amount to findings in relation to any individual).
159. Perception is a significant element in many conflicts of interest situations. Even if there is no conflict of interest as a matter of law or good practice (based on how a reasonable person would see the situation, as discussed above at paragraph 44), or if a conflict is declared and addressed in accordance with internal policies and procedures (such as the Governance Policy or the Standing Orders), there is still a risk that the public or other stakeholders will "perceive" that there is a conflict and/or that not enough is being done to manage a declared conflict situation. The fact that the perception may be subjective, or that its holder has an incomplete understanding of the matter or how it has been dealt with, is of no matter when reputations are at stake. Credibility and trust can over time be eroded to a point where the known interests of the individual become so pervasive, despite them having been declared in a formal sense, and the people concerned having acted in good faith and with the best of intentions, that the situation becomes counterproductive.
160. The audit revealed extensive and longstanding perceptions that Mr Rooney's business interests placed him in a position to influence CSI's positions on specific matters, to such an extent that those holding that perception considered it affected his credentials to be the Chairperson. This existed despite the evidence from the audit failing to support any suggestion of actions carried out other than in accordance with good faith and further, specifically showing that conflicts were declared at the right times.

¹² For example, refer the New Zealand Public Health and Disability Act 2000, Schedule 3 clause 36(4)).

161. This point is illustrated as follow with reference to the audit’s criteria:



162. The lack of any documented plan for managing the interests – while not required by the Governance Policy – did not help here. Under modern good practice, a management plan can provide much needed transparency and reassurance to stakeholders that a conflict of interest (even if only perceived) is being taken seriously and that steps are being taken to minimise its impact.

163. Given that Mr Rooney was the Chair, one obvious example of a management mechanism would have been to document how his conflicting interests (as declared at a Council meeting) should be managed outside meetings – for example, in business-as-usual discussions with the CE when submissions on a particular matter were being developed. It would be normal practice for a plan to impose controls on such matters, to ensure that the risk of the Chair’s personal interests being (consciously or subconsciously) prioritised was both recognized and actively managed.

164. With the hindsight of modern practice, it is reasonable to conclude that CSI did not manage the perception as well as it could have, and that it instead relied almost entirely on meeting procedure as the mechanism to manage interests – including those of Mr Rooney. The audit

does conclude that CSI should revise its approach to ensure it accounts for management of the perception as well as the extant risk.

165. This is a difficult position for a small public sector entity such as CSI but reflects the high standard all public sector entities are expected to attain in managing interests and their conflict with official activities or responsibilities. The audit recognises the challenge for an entity like CSI to maintain an awareness of modern practice and to upgrade its policies. However, ideally it would have done so in this case of Mr Rooney.
166. For completeness, the criteria also recognized the question of whether Mr Rooney's interests were so pervasive, it threatened his ability to either be the Chair or a member of the Council. Undoubtedly the Rangitata River is one of the big – if not pre-eminent - rivers within CSI's boundaries. And Mr Rooney's commercial interests clearly overlapped with the statutory functions of CSI. Pervasiveness is a combination of actual interest and their management and the issue of managing perceptions. The matters before Council were discrete and as established by the audit were managed appropriately. The lack of a management plan and possibly CSI's approach to preparation of submissions left Mr Rooney and CSI open to the challenge of pervasiveness.

With the benefit of hindsight and use of modern management practice, the audit concludes that Mr Rooney's interests were manageable and not sufficiently pervasive to prevent him from undertaking either his role as Chair or Council member.

Management's advice to the CSI Council

167. Interwoven throughout these timelines is the ongoing advice of management. This is wide ranging from advice on meeting procedures through to significant matters on substantive issues such as revealed by the Deep Creek timeline.
168. The audit has concluded that there was demonstrable evidence to support the soundness of advice provided Council to enable it to undertake its prerogative as governors and decision-makers. Nothing came to the attention of the audit which indicated management's advice was other than 'free and frank'.
169. It is noted that management's approach to preparation of submissions of consents should be reviewed. While the audit affirms the reasonableness, consistency and logicity in their approach – especially as shown when a comparison of the events surrounding the approach to both RWL and RDR are made - the audit also holds there are improvements which should be made in processes around delegated authority to management and establishing guiding principles on what consents to submit on and the general principles around which submissions are prepared.

Adherence to Standing Orders and Council policies

170. Throughout this audit, Council's approach to management of its affairs has involved using its policies and, when meeting as a council, adhering to Standing Orders.

171. Generally, CSI maintained an adequate range of policies and workable set of standing orders. Further the audit established that at key points – dealing with Mr Rooney’s interests and at key decision points associated with Deep Creek - Council followed sound process and its own standing orders and policies.

Appendix 1 – Terms of Reference

Terms of Reference for the Audit

Powers of the New Zealand Fish and Game Council

The New Zealand Fish and Game Council have agreed to audit Central South Island (CSI) Fish and Game Council under Section 26C(j) of the Conservation Act 1987.

Purpose

The purpose of the audit is to investigate issues relating to the performance of the CSI Council.

Approach to Audit

The audit will follow a two-stage approach. The first stage or preliminary audit will be used to look at the most important aspect of the complaints in relation to conflicts of interest and determine whether there are sufficient findings to move onto stage two. Stage Two would be the main audit covering all areas of the complaint.

Scope Preliminary Audit

1. What process is followed to establish perceived or real conflicts of interests in council meetings?
 - a. Is the process followed?
 - b. Do any councillors have any conflicts of interests?
 - i. If so are they commercial or non-commercial in nature?
 - c. If so how have they been recorded?
 - d. If so how have they been managed?

2. What approach did the CSI Council take in relation to the Rangitata Water Limited (RWL)?
 - a. Was a Memorandum of Understanding signed between CSI and RWL?
 - b. Was the MoU approved by CSI and recorded in the minutes of a meeting.

Scope of Main Audit

3. What approach did the CSI Council take in relation to the Rangitata Water Limited (RWL)?
 - a. What resources were spent establishing the impacts on the fishery?
 - i. What approach was taken by CSI Council to the Fish Barrier used by RWL?
 - b. What approach was taken to litigation/mediation?
 - c. What agreements if any were reached?

4. Council Meetings

- a. What standing orders have been used for meetings?
- b. Are the standing orders followed?

5. Deep Creek

- a. When was the management of Deep Creek established?
- b. Who agreed to it and why?
- c. Has the agreement on the management of Deep Creek been followed?
- d. What reporting has taken place to the Council on Deep Creek?

Appendix 2 – Overview of key matters in the combined events timelines

The following provides a brief overview of the key matters combined from all timeline events to assist the reader in maintaining an overview of the long history covered by the audit.

1991	Jay Graybill appointed CEO of CSI, Gary Rooney elected to CSI Council
1999	Gary Rooney elected as Chairman of CSI Council
December 1999	Rangitata WCO application lodged by CSI
November 2000	In anticipation of its historical “run of river water take” expiring on 1/10/01, RDR commences the process of applying for replacement consents under the RMA
March 2001	CSI lodges submissions with ECan in relation to RDR’s “run of river water take” consent applications. All Rangitata water consent matters then essentially appear to sit “in process” pending the final WCO decision
June 2006	Government Order in Council brings the Rangitata WCO in to effect
September 2006	RSIL lodges consolidating 20 cumec “high flow take and storage” consent applications, CSI concurrently lodges fish spawning race consent applications
January 2007	Replacement “run of river take” consents issued to RDR for a 35-year term
May 2007	RWL is incorporated as a wholly-owned subsidiary of Rooney Group Limited and subsequently enters in to a Heads of Agreement with RSIL
July 2007	CSI lodges submissions with ECan in relation to RSIL’s “high flow take and storage” consent applications

November 2008	MOU in relation to development of fish spawning race is signed between RSIL and CSI
March 2009	20 cumec “high flow take and storage” consents are issued to RSIL for a 35-year term. The fish spawning race consents are also issued to RSIL after CSI declines holding them directly
September 2009	The RSIL “high flow take and storage / fish spawning race” consents are transferred to RWL
Circa 2009	RDR develops and implements its BAFF fish screen in accordance with the terms of its 2007 “run of river take” consent
January 2011 through September 2014	Construction of all aspects of the RSIL (now RWL) “high flow take and storage” scheme is completed, incorporating the rock bund fish screen and fish spawning race
December 2011	Deep Creek unlawful diversion first discovered
July 2013	ECan flow share consents are issued to RDR and RWL enabling each to utilise the others water take rights when not being self-utilized
July 2016	RDR lodges suite 1 “10 cumec high flow take and storage” consent applications incorporating provision for a new rock bund fish screen
September 2016	CSI lodges submissions with ECan in relation to RDR’s suite 1 “10 cumec high flow take and storage” consent applications
May 2017	Effectiveness test undertaken for the RWL rock bund fish screen
November 2017	RDR lodges suite 2 “10 cumec high flow take and storage” consent applications, incorporating provision for the proposed rock bund fish screen included in Suite 1 to be replaced with a rotary drum fish screen
February 2018	CSI lodges submissions with ECan in relation to RDR’s suite 2 “10 cumec high flow take and storage” consent applications

July 2018	Report and Decision of Hearing Commissioners released, substantively granting to RDR the “10 cumec high flow take and storage” consents sought. Decision is being appealed by parties other than CSI (including RWL)
October 2018	Gary Rooney does not stand for re-election to CSI Council