

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of a submission and
further submissions by
TrustPower Limited
on the **Proposed
Canterbury Land and
Water Regional Plan**

**STATEMENT OF EVIDENCE OF RICHARD JONATHON TURNER
ON BEHALF OF TRUSTPOWER LIMITED**

1. INTRODUCTION

- 1.1 My full name is Richard Jonathon Turner. I hold the degree of Bachelor of Planning (Hons) from the University of Auckland, which I obtained in 2000. I am a senior resource management consultant with the firm Mitchell Partnerships Limited, which practises as a planning and environmental consultancy throughout New Zealand and has offices in Auckland, Tauranga and Dunedin. I manage the Tauranga office.
- 1.2 I am a full member of the New Zealand Planning Institute and also a member of the Resource Management Law Association of New Zealand.
- 1.3 I have been engaged in the field of resource management planning for thirteen years. My experience includes a mix of 'in-house' and consultancy resource management work. In recent years this experience has included a particular emphasis on providing consultancy advice with respect to regional and district planning processes, the preparation of resource consent applications, and the development of Assessments of Environmental Effects.

- 1.4 With respect to my experience in the Canterbury Region, I assisted TrustPower Limited ("**TrustPower**") with its application to amend the National Water Conservation (*Rakaia River*) Order 1988 ("**Rakaia WCO**") through 2010 - 2012 and have recently assisted Genesis Power Limited in securing resource consents from Environment Canterbury ("**ECan**") and the Mackenzie District Council for extensive remediation works to the Tekapo Power Scheme. I also presented planning evidence on behalf of TrustPower on the Proposed Canterbury Regional Policy Statement in February 2012.
- 1.5 I have read, and agree to comply with, the Environment Court's Code of Conduct for Expert Witnesses contained in the Practice Note 2011. I confirm that the issues addressed in this statement of evidence are within my area of expertise (unless I state otherwise). I also confirm that I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express in this evidence.

2. **SCOPE OF EVIDENCE**

- 2.1 In this statement of evidence I canvas and discuss matters relevant to TrustPower's submission and further submissions on the Proposed Canterbury Land and Water Regional Plan ("**Proposed Plan**") under the following headings:

- Matters to be Considered;
- Ngāi Tahu's Relationship with Water and Land – Objective 3.3;
- Outstanding Fresh Water Bodies – Objective 3.5;
- Natural Character of Fresh Water Bodies – Objective 3.9;
- Fresh Water Outcomes – Tables 1(a) and 1(b);
- First and Second Order Priorities – Policy 4.4;
- The 'Regional Concept' – Policy 4.8;
- The Avoidance of Adverse Effects – Policies 4.3, 4.15, 4.41, 4.43 and 4.52;
- The Existing Environment – Policy 4.48;
- Provision for Renewable Electricity Generation Activities;
- Abstractions for Irrigation – Policy 4.67;
- Rule 5.6;

- Rule 5.132; and
 - Conclusion.
- 2.2 The rationale behind TrustPower's submission on the Proposed Plan, as well as detail on TrustPower's generation and development interests within the Canterbury Region, is provided in the evidence of Mr Lilley.
- 2.3 Given the number of individual submission points made by TrustPower on the Proposed Plan, this evidence only considers the key matters in TrustPower's submission. The specific amendments to the Proposed Plan that I consider appropriate and necessary to address these key matters are detailed in **Annexure A** to this evidence.
- 2.4 **Annexure A** also includes my comments and recommendations on the remaining submission points made by TrustPower, including my response to the recommendations in the Proposed Canterbury Land and Water Regional Plan: Section 42A Report – Volume 1 (For Hearing Group 1) ("**Section 42A Report**"). All of my recommended amendments to the Proposed Plan in **Annexure A** are tracked and, where appropriate, build upon the recommendations of the Reporting Officers in the Section 42A Report. Those recommendations of the Reporting Officers on TrustPower's submission points that I agree with (or at least do not oppose) are listed in **Annexure B** to this evidence.
- 2.5 In preparing this evidence I have reviewed the following material:
- The Proposed Plan;
 - The Proposed Canterbury Land and Water Regional Plan: Section 32 Report – August 2012 ("**Section 32 Report**");
 - The Section 42A Report;
 - The Canterbury Regional Policy Statement 2013 ("**RPS**");
 - The Canterbury Water Management Strategy ("**CWMS**");
 - The National Policy Statement on Freshwater Management 2011 ("**NPSFM**");
 - The National Policy Statement for Renewable Electricity Generation 2011 ("**NPSREG**");

- The Environment Canterbury (*Temporary Commissioners and Improved Water Management*) Act 2010 ("**ECan Act**");
- The submission and further submissions of TrustPower on the Proposed Plan; and
- The evidence of Mr Lilley and Dr Ryder to this hearing filed on behalf of TrustPower.

3. MATTERS TO BE CONSIDERED

3.1 Section 1 of the Section 42A Report provides an analysis of the purpose and required content of regional plans under the Resource Management Act 1991 ("**RMA**") and the ECan Act. In addition, it provides some discussion on the matters which the Proposed Plan must give effect to or give particular regard to, and any other matters that may be given regard due to their particular relevance.

3.2 For the most part I agree with the Reporting Officers' summation of the statutory planning framework that applies to the development of the Proposed Plan and I do not propose to repeat their summary. The matters I do want to comment on are discussed as follows.

National Policy Statement on Renewable Electricity Generation 2011

3.3 In my opinion, the Section 42A Report lacks suitable discussion on the implications of the NPSREG on the development and drafting of the Proposed Plan. Whilst I agree with the Reporting Officers' identification of the national policy statements relevant to the Proposed Plan, they have not provided any discussion on the implications of the NPSREG and the National Policy Statement on Electricity Transmission 2008 for the Proposed Plan (while the discussion on the NPSFM is also brief). Indeed, the Section 42A Report¹ does not even acknowledge the NPSREG as a document finalised since the Natural Resources Regional Plan ("**NRRP**") was developed that influenced (or should have influenced) the development of the Proposed Plan.

3.4 The Section 32 Report does contain some commentary on the NPSREG, although it seems to largely dismiss its relevance to the Proposed Plan. In this

¹ Page 19 of Section 42A Report.

regard, it quotes one paragraph from the preamble to the NPSREG which discusses the application of the policy statement to the allocation and prioritisation of fresh water.

- 3.5 The NPSREG is directly relevant to the Proposed Plan in light of the fact that the Proposed Plan specifically controls the use of natural resources under Sections 13, 14 and 15 of the RMA relevant to the operation of existing hydro-electricity generation infrastructure. It, therefore, controls the operation of, benefits derived from, and environmental effects of, hydro-electricity generation infrastructure. The NPSREG is also relevant given that it directs decision-makers² to recognise and provide for, or have particular regard to, the benefits of renewable electricity generation activities (Policy A), the practical implications of achieving New Zealand's target for electricity generation (Policy B), and the practical constraints associated with the development and operation of new and existing renewable electricity generation activities (Policy C). Policy E2 of the NPSREG also directs regional plans to include objectives, policies and methods (including rules) to provide for the development, operation, maintenance and upgrading of new and existing hydro-electricity generation activities to the extent applicable to the region.
- 3.6 As I discuss later in this evidence, I consider that the Proposed Plan currently fails to give effect to Policy E2 of the NPSREG and suitably provide for new and existing hydro-electricity generation activities in the Canterbury Region. Whilst Objectives 3.15 and 3.16 of the Proposed Plan seek to recognise and provide for hydro-electricity generation infrastructure in the Canterbury Region, the accompanying policies and rules (with the possible exception of Policy 4.48) do not seek to implement the directives in the policies of the NPSREG.
- 3.7 The requirement to provide for new and existing hydro-electricity generation activities in accordance with the NPSREG will also be relevant in determining the direction of policies in the Proposed Plan and the prioritisation or weight given to the management of potentially competing / conflicting interests in the Proposed Plan. In this respect, the national directive to recognise and provide for hydro-electricity generation infrastructure will be specifically relevant to

² Including decision-makers on regional plans.

decision-making on how to appropriately manage land and water resources in the Canterbury Region via the policies and rules in the Proposed Plan.

The Vision and Principles of the CWMS

- 3.8 In discussing the implications of the phrase 'have particular regard to', the Reporting Officers conclude³ that *"given the process of community input and local authority commitment to the CWMS, the Vision and Principles of the CWMS must be seen as worthy of significant weight"*.
- 3.9 Whilst I agree with the Reporting Officers' analysis of what 'have particular regard to' requires of a decision-maker, I do consider that caution is required over their conclusion that the vision and principles of the CWMS should be seen as *"worthy of significant weight"* by virtue of the community input into its development and the current commitments by local authorities.
- 3.10 In my opinion, the weight to be given to the vision and principles of the CWMS needs to be determined in a manner mindful of other considerations which may have equal or greater standing in the decision-making process. In this regard, the exercise of determining the relative weight to be given to the vision and principles of the CWMS cannot be undertaken in isolation and must be cognisant of the direction provided by Parliament via Part 2 of the RMA and the relevant national policy statements which must be given effect to.
- 3.11 The weight given to the vision and principles of the CWMS may also need to be tempered in circumstances where there is a conflict between it and matters which need to be given effect to under the RMA. As such, I do not agree with the Reporting Officers' conclusion that significant weight should be given to the CWMS simply because of the community input and local political support for the strategy. The priorities expressed in the various policies of the Proposed Plan (particularly Policy 4.4) will, in my opinion, need to reflect wider considerations than just the first and second order priorities identified in the principles of the CWMS.

³ Page 32 of Section 42A Report.

4. NGĀI TAHU'S RELATIONSHIP WITH LAND AND WATER

- 4.1 Objective 3.3⁴ seeks to protect the relationship of Ngāi Tahu with water and land in Canterbury. The Section 32 Report acknowledges⁵ Ngāi Tahu's "*strong relationship*" with water and land and notes that Objective 3.3 is recognised within a number of planning documents, as well as Part 2 of the RMA.
- 4.2 TrustPower's submission requests that the term "*protected*" be deleted from Objective 3.3 and replaced with the phrase "*recognised and provided for*" - on the basis that the replacement text would better align with the specific and deliberate direction provided by Section 6(e) of the RMA. The Reporting Officers are currently recommending that Objective 3.3 be redrafted (and renumbered) by deleting reference to "*protected*" and replacing it with the term "*enabled*".
- 4.3 My understanding is that Section 6(e) of the RMA does not require a specific management outcome. That is, it does not refer to the preservation, protection or maintenance of specific natural or physical resource values in the same manner as Sections 6(a), 6(b) or 6(d) of the RMA. Rather, it simply requires that the relationship of Māori with their ancestral lands, water, sites, waahi tapu, and other taonga be "*recognised and provided for*".
- 4.4 Whilst I accept that 'recognising and providing for' Ngāi Tahu's relationship with water and land may include elements of protection (e.g. the avoidance of waahi tapu sites), it is my opinion that neither the Proposed Plan, nor the Section 32 Report, provide a suitable evaluation as to why the 'protection' of Ngāi Tahu's relationship with water and land is the most appropriate way to achieve the purpose of the RMA. In particular, Section 1 of the Proposed Plan does not affirm or imply that Ngāi Tahu's relationship with land and water requires protection. Similarly, the Section 32 Report does not include any analysis of what alternatives to Objective 3.3 were considered and why a management outcome of 'protection' is preferred by ECan.

⁴ Renumbered as Objective 3.17 in the Section 42A Report.

⁵ Pages 30 – 31 of Section 32 Report.

- 4.5 In light of the direction provided in the RPS, it is my opinion that providing for Ngāi Tahu's relationship with water and land will require the consideration and implementation of a broad range of measures. In this respect, Chapter 4 of the RPS addresses how ECan will provide for the relationship of Ngāi Tahu with resources. In particular, Section 4.1 of Chapter 4 states:

"Restoring, maintaining and enhancing cultural relationships between Ngāi Tahu and their ancestral lands, waters, wāhi tapu and taonga requires the provision of opportunities to protect and use resources and to be actively involved in decision-making processes to achieve environmental results that recognise this relationship in accordance with culture and tradition. [underlining my emphasis]"

- 4.6 Section 4.1 of the RPS clearly envisages that Ngāi Tahu's relationship with water and land is to be restored, maintained and enhanced. In my opinion, Section 4.1 suggests a management outcome in Objective 3.3 that is flexible / proactive and potentially involves the implementation of a range of measures. Indeed, Section 4.1 even advises that restoring, maintaining and enhancing Ngāi Tahu's relationship with water and land will require the protection and use of resources by Ngāi Tahu (in contrast to the protection of a relationship as per Objective 3.3 of the Proposed Plan).
- 4.7 The NPSFM also proposes⁶ that local authorities take reasonable steps to (i) involve iwi and hapu in the management of fresh water, (ii) work with iwi and hapu to identify tangata whenua values and interests in fresh water, and (iii) reflect tangata whenua values and interests in the management of, and decision-making regarding, fresh water. These measures are focussed on identifying Māori's relationship with fresh water and subsequently providing for these relationships through a variety of means. As with the RPS, I do not consider the expectations in the NPSFM align with a strict management outcome of 'protection' as set out in Objective 3.3 of the Proposed Plan.
- 4.8 Finally, the CWMS⁷ does not explicitly seek the protection of Ngāi Tahu's relationship with water and land. Indeed, the achievement of many of the goals

⁶ Policy D1 of NPSFM.

⁷ Being the vision and principles of the CWMS and the main strategy document.

under the heading of "*Kaitiakitanga*" in the CWMS would actually assist in enhancing or restoring the relationship of Ngāi Tahu with water and land – rather than achieving an outcome of protection.

- 4.9 Given that Objective 3.3 will drive decision-making on resource consent applications⁸, it is my opinion that redrafting Objective 3.3 to focus on 'recognising and enabling' the relationship of Ngāi Tahu with water and land, as recommended by the Reporting Officers, is the most appropriate way to achieve the purpose of the RMA. Such an approach would place an onus on resource consent applicants to (i) identify, with Ngāi Tahu, the cultural values / relationships of significance at a site, and (ii) then consider suitable measures to recognise and enable these cultural values / relationships. Management measures to ensure resource consent applications achieve the intended outcome of Objective 3.3 (as redrafted) could include providing an opportunity for Ngāi Tahu runanga to oversee earthworks on a site where koiwi may exist, or alternatively could involve the provision of access to, protection, and restoration of historic or mahinga kai sites.
- 4.10 In essence, there are a whole range of management responses potentially available to enable or provide for Ngāi Tahu's relationship with water and land depending on the circumstances of a particular case.
- 4.11 My recommended amendments to Objective 3.3 of the Proposed Plan (which mirror the Reporting Officers' recommended relief), are tracked in **Annexure A** to this evidence.

5. OUTSTANDING FRESH WATER BODIES

- 5.1 Objective 3.5⁹ seeks the maintenance of 'outstanding fresh water bodies' and hapua in their existing state. It also seeks the restoration of these water bodies where they have been degraded.
- 5.2 TrustPower's submission seeks the deletion of Objective 3.5 and its replacement with a new objective which promotes the protection of the values of

⁸ Page 30 of Section 32 Report.

⁹ Renumbered as Objective 3.12 in the Section 42A Report.

"high naturalness water bodies" from inappropriate land uses and development. The Reporting Officers are not currently recommending any amendments to Objective 3.5 (except that it be renumbered).

- 5.3 Whilst the protection of the quality of outstanding fresh water bodies is recognised in the NPSFM (in the context of the maintaining or improving the overall water quality in a region)¹⁰, I note that within the Proposed Plan the term is only used in Objective 3.5. There are no policies or rules that refer to controlling the taking of water or land use activities within outstanding fresh water bodies.
- 5.4 While there are policies¹¹ in the Proposed Plan that specifically relate to natural wetlands and hapua (being some of the water bodies that constitute outstanding fresh water bodies), there are no policies that apply specifically to natural state water bodies or water bodies subject to Water Conservation Orders (such as the Rakaia River). As such, I consider the term *"outstanding fresh water bodies"* to be largely redundant, given that the component water bodies are not managed collectively via policies or rules.
- 5.5 Furthermore, I agree with TrustPower's submission that Objective 3.5 is somewhat ambiguous as to whether it relates to the maintenance of the values of outstanding fresh water bodies in their existing state (i.e. recreational or ecological values) or the maintenance of existing water quality and quantity regimes. In contrast to other objectives in the Proposed Plan¹², Objective 3.5 does not identify what elements or characteristics of fresh water bodies should be maintained.
- 5.6 I also consider the relief in TrustPower's submission (in terms of focussing Objective 3.5 on high naturalness waterbodies only) to be an effective and appropriate alternative. In this regard, the focus on the protection of high naturalness waterbodies from *"inappropriate land uses and development"* will reflect Policies 7.3.1, 7.3.2, 7.3.10 and 7.3.11 of the RPS - which all recognise

¹⁰ Objective A2 of the NPSFM.

¹¹ Policy 4.5 (high naturalness water bodies), Policy 4.40 (hapua), and Policies 4.79 / 4.80 (natural wetlands).

¹² Objectives 3.6, 3.7, 3.8, 3.9 and 3.10.

the potential for the natural character values of water bodies to be modified via the development of new, or upgrading of existing, water infrastructure.

- 5.7 Finally, the deletion of Objective 3.5 and its replacement with a new objective relating to high naturalness water bodies would not create a 'management void'. The particular values of hapua and natural wetlands will continue to be managed in light of the significant degree of overlap amongst the objectives of the Proposed Plan (specifically Objectives 3.6, 3.7, 3.8, 3.9 and 3.10). Likewise, the values of any natural state waterbodies, and rivers subject to Water Conservation Orders, will continue to be managed via Objectives 3.7, 3.8, 3.9, 3.10, 3.13 and 3.22.
- 5.8 On this basis, I consider that Objective 3.5 cannot be considered to be 'useful' or 'achievable' when there are no policies or rules which seek to give effect to it. As such, I am recommending the deletion and redrafting of Objective 3.5 as set out in **Annexure A** to this evidence.

6. NATURAL CHARACTER OF FRESH WATER BODIES

- 6.1 Objective 3.9 seeks that the existing natural character values of alpine rivers are protected.
- 6.2 TrustPower's submission requests that Objective 3.9 be amended to refer to the protection of the existing natural character values of alpine rivers from "*inappropriate land uses and development*". The Reporting Officers are recommending that Objective 3.9¹³ be redrafted to focus on the protection of the natural character values of all fresh water bodies – including braided rivers, wetlands, hapua and coastal lagoons.
- 6.3 In my opinion, the recommendation to redraft Objective 3.9 to apply to the natural character values of all fresh water bodies is generally appropriate. In this regard, Section 6(a) of the RMA applies to all wetlands, lakes and rivers - not just alpine rivers. That said, I do consider the request by TrustPower to include reference in the objective to "*inappropriate land uses and development*" to be appropriate.

¹³ Renumbered as Objective 3.14 in Section 42A Report.

- 6.4 The RPS contains a number of objectives and policies related to the management of the natural character of the fresh water bodies in the Canterbury Region. In particular, Objective 7.2.1 of the RPS seeks that the natural character values of wetlands, lakes and rivers are preserved and protected from inappropriate subdivision, use and development. Policies 7.3.1 and 7.3.2 of the RPS also apply specifically to the management of natural character. In particular, they relate to the need to manage natural character values in accordance with the state of the values that exist, but also recognise that modifications to natural character may be appropriate in certain circumstances – such as where an integrated solution to water management is proposed or in order to provide for the continued operation or upgrading of an irrigation or hydro-electricity generation scheme (provided there are no additional significant adverse effects).
- 6.5 Furthermore, Method (2)(b) under Policy 7.3.1 of the RPS directs ECan to establish objectives, policies and rules in regional plans to identify areas where natural character values may be modified by the taking, use, damming or diverting of water in order to achieve the purpose of the RMA.
- 6.6 In light of these directives in the RPS (and Section 6(a) of the RMA), I consider that it is appropriate for Objective 3.9 to recognise that there are qualifiers or limits on the protection of the natural character values of fresh water bodies. This approach is no different to the recommendation of the Reporting Officers in relation to Objective 3.4 (as renumbered), which specifies that water is available for social and economic activities but such uses must occur within allocation limits.
- 6.7 My recommended amendments to Objective 3.9 of the Proposed Plan are tracked in **Annexure A** to this evidence.

7. TABLE 1(A) AND 1(B) – FRESH WATER OUTCOMES

- 7.1 TrustPower's submission on Table 1(a) of the Proposed Plan seeks that the qualitative standards that apply to all river management units be deleted. Furthermore, the submission opposes the numerical standard related to the indicator of visual quality in lakes in Table 1(b). Specifically, TrustPower's

submission requests that the reference to the "*natural*" colour of a lake be deleted and that the visual quality indicator simply allow an exceedance of five munsell units "*from that which existed at the time of notification of this plan*".

- 7.2 The Reporting Officers are not recommending any amendments to Tables 1(a) and 1(b) of the Proposed Plan. The memorandum of Dr Meredith attached to the Section 42A Report notes that Tables 1(a) and 1(b) identify outcomes which may be aspirational at times. The memorandum does not, however, provide any commentary on the specific relief requested by TrustPower.
- 7.3 Dr Ryder discusses the inclusion of the qualitative standards in Table 1(a) of the Proposed Plan. Dr Ryder notes that these qualitative standards are not included in Table WQL5 of the NRRP. This is at odds with the suggestion in the Section 32 Report¹⁴ that the water quality standards from the NRRP have largely been carried across to the Proposed Plan. Dr Ryder also considers that the qualitative standards relating to 'natural' values (being proposed outcomes (iii), (iv) and (vi)) will be problematic to apply given they require a subjective assessment of whether an outcome is achieved and / or rely on historical data that may not exist. In this regard, the reference to the natural colour of water in rivers or the natural frequency of hapua openings not being altered requires a subjective assessment of what is 'natural' and at what point in time the natural state was deemed to have been occurring. Furthermore, in the case of hapua openings, the frequency of these is often dominated by coastal processes rather than river processes¹⁵.
- 7.4 As such, I support the recommendation of Dr Ryder to delete the qualitative standards in outcomes (iii), (iv) and (vi) from Table 1(a) of the Proposed Plan, unless the meaning of the term 'natural' in these outcomes can be explicitly defined.
- 7.5 With respect to Table 1(b) of the Proposed Plan, I note that Dr Ryder also considers the visual quality indicator for lakes to be problematic. The table does not specify whether the natural colour expected is that which exists at the time

¹⁴ Page 40 of Section 32 Report.

¹⁵ Recommendation of Hearing Committee on application by TrustPower Limited to amend the National Water Conservation (Rakaia River) Order 1988, 2012 [Page 87].

the Proposed Plan was notified or at some other previous point in the past. As Dr Ryder discusses, for lakes such as Lake Coleridge, it would be difficult to determine what the natural colour was before its operating level was modified and water from the Harper and Wilberforce Rivers diverted into it. I agree with Dr Ryder that it is important that the baseline against which changes in visual quality in high country lakes are to be measured is clearly specified in Table 1(b).

- 7.6 It is also important that visual quality indicators (and other intended outcomes) recognise that existing hydro-electricity generation and irrigation schemes are to be recognised as part of the existing environment (in accordance with Policy 4.48 of the Proposed Plan and 7.3.11 of the RPS). As such, I consider it appropriate that Table 1(b) be redrafted in the manner recommended by Dr Ryder so that it is cognisant of the existing water quality environment that exists in water bodies such as Lake Coleridge.
- 7.7 My recommended amendments, as detailed by Dr Ryder, are set out in **Annexure A** to this evidence.

8. FIRST AND SECOND ORDER PRIORITIES

- 8.1 Policy 4.4 specifies that water is to be managed through the setting of limits. Under the policy, limits should maintain the life-supporting capacity of ecosystems, support customary uses, and provide for community and stock drinking water supplies as a first priority. Secondary priorities include water for irrigation, hydro-electricity generation, and the maintenance of river flows and lake levels necessary for recreational activities.
- 8.2 TrustPower's submission opposes Policy 4.4 and requests that the policy be replaced with the following:

"Water is managed through the setting of limits in a manner that supports a range of catchment specific values, including, but not limited to, the maintenance of the life-supporting capacity of ecosystems, the support of customary uses, provision for community and stock drinking water supplies, provision for existing and new hydro-electricity generation and irrigation schemes and other abstractive activities, and recreational activities".

- 8.3 The Reporting Officers recommend that Policy 4.4 be retained with only minor drafting edits. They note that the policy primarily 'gives effect' to the prioritisation in the CWMS principles and that any changes to the prioritisations in the policy would detract from the implementation of the CWMS. The Reporting Officers also comment that the RMA and the RPS support the prioritisation of water allocation – particularly through Policy 7.3.4 of the RPS and Sections 14 and 30 of the RMA.
- 8.4 In my opinion, the comments by the Reporting Officers suggest a degree of pre-judgement in their thinking and a failure to appropriately consider all relevant material. As the Section 42A Report notes, the vision and principles of the CWMS are matters to be given particular regard. They are secondary considerations to the requirement to give effect to national policy statements and the RPS. Policy 4.4 is also required to implement the relevant objectives of the Proposed Plan.
- 8.5 It is difficult to reconcile the intent of Policy 4.4, and its express prioritisation of environmental values and customary uses of water, with the direction provided within Section 3 (Objectives) of the Proposed Plan, which states:
- "The Objectives of this Plan must be read in their entirety and considered together. No single Objective has more importance than any other."*
- 8.6 In effect, Section 3 clarifies that the objectives seeking the protection or maintenance of environmental or cultural values are to be given no greater weight than those relating to the provision of regionally significant infrastructure or the abstraction of water to support economic and social activities (and vice versa). Notwithstanding this, Policy 4.4 has been drafted on the premise that the objectives concerning environmental or cultural values should be prioritised in the establishment of environmental flows and water allocation limits (seemingly on the basis of one principle in the CWMS).
- 8.7 The Section 32 Report also does not provide any analysis on how ECan considers Policy 4.4 gives effect to all of the relevant objectives of the Proposed Plan. It simply notes that the approach of establishing first and second order priorities is one of the principles of the CWMS and 'should be treated in the

same manner as the other matters identified in Section 7 of the RMA'. There is no analysis in the Section 32 Report of the costs and benefits associated with priority being given to environmental or cultural values in the establishment of limits. As Mr Lilley notes in his evidence, a change in the existing priorities in the environment flow regime for the Wilberforce and Harper Rivers would have significant economic implications for the operation of the Coleridge Hydro-Electric Power Scheme ("**Coleridge HEPS**").

- 8.8 With respect to the RPS, Policy 7.3.4 of the RPS does establish a framework for the establishment of environmental flow and allocation regimes. This framework also prioritises environmental or cultural values over abstractive uses of water for social and economic wellbeing. However, the methods¹⁶ do acknowledge that environmental flow and allocation regimes should be established *"in accordance with all relevant policies, including but not limited to Policies 7.3.4, 7.3.10 and 7.3.11"*. Indeed, the methods following Policies 7.3.10 and 7.3.11¹⁷ of the RPS recognise that environmental flow and allocation regimes may be necessary to provide for the harvesting and storage of water, as well as existing hydro-electricity generation and irrigation schemes. That is, the RPS recognises that when establishing environmental flow and allocation regimes all relevant provisions will need to be considered and weighed relevant to the circumstances of the individual catchment.
- 8.9 Furthermore, and as I have discussed in Paragraphs 3.4 to 3.7 above, the objectives, policies and rules of the Proposed Plan must give effect to the NPSREG and its directive that regional plans provide for the development and operation of new and existing hydro-electricity generation infrastructure. Neither the Section 32 Report, nor the Section 42A Report, provides any discussion on the implications of Policy 4.4 for existing hydro-electricity generation infrastructure in the Canterbury Region.
- 8.10 In light of this, it is my conclusion that Policy 4.4 does not appropriately give effect to the objectives of the Proposed Plan read together or the relevant provisions of the RPS and NPSREG. I consider that the policy should be deleted and replaced with the alternative relief described below.

¹⁶ Method 1(a) to Policy 7.3.4.

¹⁷ Method 1(a) to Policy 7.3.10 and Method 1 to Policy 7.3.11.

- 8.11 In my opinion, establishing an alternative policy that enables environmental flow and allocation regimes to be developed in a manner that is cognisant of the actual natural, physical and cultural values that exist within a catchment is appropriate. This approach would recognise that the Proposed Plan and the RPS contain a suite of competing objectives that may be relevant to the establishment of an environmental flow and allocation regime in a catchment. In particular, such a regime would provide flexibility for different values or uses to be prioritised depending on the circumstances of the catchment – provided that such prioritisation was consistent with the sustainable management purpose of the RMA.
- 8.12 My recommended alternative relief to Policy 4.4 of the Proposed Plan is provided in **Annexure A** to this evidence.

9. THE 'REGIONAL CONCEPT'

- 9.1 Policy 4.8 specifies that the harvest / storage of water for irrigation or hydro-electricity generation schemes should contribute to, or at least not frustrate, the attainment of the 'regional concept' set out in Schedule 16. Furthermore, the policy seeks that the harvest / storage of water contribute to, or not frustrate, the attainment of the priority outcomes in the relevant Zone Implementation Programme ("**ZIP**").
- 9.2 TrustPower's submission on Policy 4.8 seeks that it be redrafted to more positively focus on the provision of water for storage and harvesting. It also seeks that the reference to the priority outcomes of the relevant ZIP be deleted. The Reporting Officers recommend that Policy 4.8 be largely retained as notified, with only a minor amendment that refers to harvest and storage schemes contributing to, or not frustrating, water quantity limits in Sections 6 – 15 of the Proposed Plan. The Reporting Officers go on to comment that Policy 4.8 is central to the attainment of the CWMS outcomes and that the regional concept and ZIPs are 'at risk' of being frustrated by alternative proposals.
- 9.3 I agree with the suggestion in TrustPower's submission that Policy 4.8 should be positively worded and seek to provide for the harvest / storage of water for irrigation and hydro-electricity generation activities. In this respect, the current

drafting of Policy 4.8 does not seek to enable or encourage development that will contribute to the regional concept in Schedule 16.

- 9.4 With respect to irrigation or hydro-electricity generation schemes contributing to, or not frustrating, the priority outcomes expressed in the relevant ZIP, it is also my opinion that the deletion of this text is appropriate. In this regard, ZIPs are non-statutory documents that have been developed without robust public processes. That is, while individuals were able to provide comments on the draft ZIPs, there was no formal hearing process to examine the merits of the implementation programmes proposed. In the case of the Selwyn – Waihora ZIP there was no suggestion that existing irrigation and hydro-electricity generation schemes represent a potential barrier to the attainment of the identified priority outcomes.
- 9.5 In my opinion, the priority outcomes in individual ZIPs should be incorporated into the objectives and policies that apply to the sub-regional sections of the Proposed Plan if they are considered necessary to achieve the sustainable management purpose of the RMA in individual catchments. Under the current drafting of Policy 4.8, the priority outcomes in ZIPs effectively become additional objectives that need to be achieved by irrigation and hydro-electricity generation schemes alone (or at least not be contrary to).
- 9.6 I also consider Policy 4.8 to be inconsistent with the methods established in Chapter 7 of the RPS. In this regard, Method (2) under Policy 7.3.10 of the RPS suggests that ECan will *"seek and have particular regard"* to the recommendations of the Regional Water Management Committee and Zone Water Management Committees relating to the implementation of the policy. Likewise, Method (2) under Policy 7.3.11 of the RPS states that ECan may work with stakeholders through Regional and Zone Water Committees to consider ways in which efficiency gains (from irrigation and hydro-electricity generation schemes) can be provided to consent holders – except in over allocated catchments. There is no suggestion within the policies and methods in Chapters 5, 7 and 16 of the RPS that the development or re-consenting of irrigation or hydro-electricity generation schemes should not frustrate the attainment of the priority outcomes of ZIPs.

- 9.7 In light of these matters, it is my opinion that Policy 4.8 should be redrafted in line with the relief proposed in TrustPower's submission. My recommended amendments to Policy 4.8 are tracked in **Annexure A** to this evidence.

10. AVOIDANCE OF ADVERSE EFFECTS

- 10.1 A number of policies¹⁸ in the Proposed Plan seek that land use activities, discharges of contaminants, and the take, use, damming or diversion of water not "*adversely affect*", avoid adverse effects on, or not diminish, a range of cultural, environmental and hydrological / geomorphological values.
- 10.2 These policies have been opposed by TrustPower and its submission seeks the insertion of new text specifying that adverse effects be "*appropriately avoided, remedied or mitigated*". The Reporting Officers have made a number of recommendations related to the relevant policies, but their critical statement is that the desired outcome is that damming, diversion and discharge activities not give rise to adverse effects. However, the Reporting Officers do recommend that the term 'negligible' be inserted into the relevant policies in order to provide flexibility but not to reduce the force of the policy.
- 10.3 In my opinion, the Reporting Officers have demonstrated a lack of understanding of the actual effects of existing and new water infrastructure (which the Proposed Plan does actually seek to promote via Objectives 3.15 and 3.16). As Mr Lilley explains, the development of any new water infrastructure, as well as the operation of existing water infrastructure, will inevitably have adverse effects on the environment. Such an outcome is unavoidable. Whilst the effects of the activities associated with water infrastructure may be able to be avoided, remedied or mitigated in part, it is unrealistic to suggest that an existing dam on an alpine river will not adversely affect sediment transport or fish passage to some degree¹⁹ (or that any such effects will be negligible). The effects of an existing dam on sediment transport or fish passage can be remedied or mitigated through sluicing operations or the implementation of a fish pass / trap and transfer operation. However, these

¹⁸ Policies 4.3, 4.15, 4.41, 4.43 and 4.52 of the Proposed Plan.

¹⁹ Policy 4.41 of the Proposed Plan.

mitigation measures cannot result in a dam that does not generate any adverse effects, or even 'just' negligible effects.

- 10.4 Similarly, many existing discharges to water storage lakes (including Lake Coleridge) will have difficulty complying with a requirement that the discharge not "*adversely affect*" or not have "*more than negligible adverse effects on*" the natural character values of the receiving water²⁰.
- 10.5 As Dr Ryder discusses, the discharge of water from the Wilberforce and Harper Rivers into Lake Coleridge does have effects on the water quality of the lake. In this respect, a plume can form at the northern end of the lake when the water in the Wilberforce and Harper Rivers is turbid (despite the resource consents for the Coleridge HEPS having turbidity limits). This, along with the discharge / conveyance structures, affects the natural character of Lake Coleridge – meaning that the re-consenting of the Coleridge HEPS could not be said to be consistent with Policy 4.52.
- 10.6 I also consider the identified policies to be inconsistent with the explicit approach to the management of adverse effects on natural and physical resources outlined in the RPS. In particular, the RPS contains a number of specific objectives that seek that the adverse effects of activities be avoided where practicable, and otherwise remedied or mitigated. In this respect:
- Policy 5.3.9 - seeks that the effects of regionally significant infrastructure on significant natural and physical resources and cultural values are avoided, and where this is not practicable, that they are remedied or mitigated. It also seeks that other effects are "*appropriately controlled*";
 - Policy 5.3.11 - seeks that the effects of irrigation infrastructure on significant natural and physical resources and cultural values are avoided, and where this is not practicable, that they are remedied or mitigated. It seeks that other adverse effects on the environment are "*appropriately managed*";
 - Policy 7.3.5 - seeks that the effects of land uses on the flow of water in surface water bodies are avoided, remedied or mitigated;

²⁰ Policy 4.52 of the Proposed Plan.

- Policy 7.3.7 - seeks that the effects of changes in land use on the quality of fresh water are avoided, remedied or mitigated;
- Policy 10.3.3 - seeks to manage activities in river and lake beds such that effects are avoided, or where is not practicable, remedied or mitigated; and
- Policy 16.3.5 - seeks that the effects of upgrading existing, and developing new, electricity generation infrastructure on significant natural and physical resources or cultural values are avoided, or where this is not practicable, remedied, mitigated or offset. It also seeks that other effects on the environment are *"appropriately controlled"*.

10.7 In my opinion, none of the listed policies from the RPS direct regional plans to seek that discharges, land use activities, and the take, use, damming and diversion of water have no adverse effects on the environment (or even negligible effects). The most restrictive policies in the RPS only seek that adverse effects on significant values be avoided where practicable – with flexibility being retained for the remediation or mitigation of adverse effects. In contrast, Policy 4.43 seeks that the adverse effects of instream damming on a range of values – regardless of their significance – be avoided as a first priority and otherwise remedied or mitigated.

10.8 Given the practicalities associated with achieving a threshold of 'no adverse effects' or 'negligible adverse effects' and the fact that the policies in the Proposed Plan do not reflect the management regime specified in the RPS, I consider it appropriate that the various policies of the Proposed Plan be amended. The retention of the various policies in the Proposed Plan as notified, or as recommended by the Reporting Officers, would in my opinion result in the Proposed Plan failing to give effect to the management expectations promulgated in the RPS.

10.9 In my opinion, the general approach of seeking that adverse effects are *"appropriately avoided, remedied or mitigated"* is the most appropriate way to achieve the purpose of the RMA and the directives of the RPS. I have considered amending the various provisions to recognise the tiered approach to the management of adverse effects outlined in the RPS. However, such amendments would make many of the policies unwieldy and / or overly

complex. Likewise, I have considered the appropriateness of amending the policies to refer to 'no more than minor' or 'significant' adverse effects.

10.10 In my opinion, referencing the term "*appropriately*" at the commencement of the phrase "*avoided, remedied or mitigated*" should enable resource consent applicants and decision makers to test the suitability of the mitigation measures proposed against the framework for significant natural and physical resources and cultural values (and all other values) identified in the relevant provisions of the RPS.

10.11 My recommended amendments to the relevant policies in the Proposed Plan concerning the management of adverse effects are tracked in **Annexure A** to this evidence. For completeness, I note that my summary tables in **Annexure A** generally agree with the Reporting Officers' recommendation to amend the listed values in the various policies of the Proposed Plan, although in some circumstances I consider the recommended additions to be repetitious and, therefore, unnecessary.

11. EXISTING ENVIRONMENT

11.1 Policy 4.48 recognises existing hydro-generation and irrigation schemes as part of the existing environment. It goes on to state that in re-consenting these schemes "*it is expected*" that there will be improvements in the efficiency of water use and conveyance and reductions in any adverse effects on flows and levels in water bodies in order to maximise the term of the consent.

11.2 TrustPower's submission on Policy 4.48 requests amendments to the latter part of Policy 4.48 so that the expectation over improvements in water use efficiency and reductions in adverse effects not be linked to maximising the term of any resource consents granted. The Reporting Officers are not currently recommending any amendments to the relevant text of Policy 4.48 and consider the approach adopted to be appropriate, as steps must be taken to address adverse effects.

11.3 The Reporting Officers are, however, recommending that the first part of Policy 4.48 be amended to clarify that water use activities are covered by the policy.

- 11.4 In my opinion, Policy 4.48 has been drafted to respond to the directive provided by Policy 7.3.11 of the RPS. Policy 7.3.11 of the RPS seeks to recognise and provide for the continuation of existing schemes, whilst requiring improvements in water use efficiency and reductions in adverse effects "*where appropriate*". That is, the policy recognises that efficiency improvements or reductions in adverse effects may not be feasible, justified or suitable in some circumstances. Method 1(a) to Policy 7.3.11 provides further clarification that existing schemes will be recognised and provided for through the establishment of objectives, policies and possibly methods in regional plans – including environmental flow and allocation regimes.
- 11.5 In light of this, I agree with the first part of Policy 4.48 where it states that existing schemes will be recognised as part of the existing environment. With respect to the Reporting Officers' recommendation to clarify that water use activities are also captured by the policy, I consider the relief should actually refer to "*and their associated takes, use, damming, diversion and discharge of water*" in brackets. In this respect, the phrase "*and their water takes*" is a somewhat simplistic explanation of the water use activities undertaken by hydro-electricity generation and irrigation schemes and has the potential to create greater confusion over the inclusion of activities such as discharges from hydro-electricity generation schemes (which the rules in the Proposed Plan do not currently provide for explicitly).
- 11.6 In terms of the latter part of Policy 4.48, I consider the 'expectation' that there will be improvements in water use efficiency and reductions in adverse effects to not accurately or appropriately reflect the direction set out by Policy 7.3.11 of the RPS. In particular, the requirement to improve water use efficiency and reduce adverse effects in Policy 7.3.11 is staked to a test of 'appropriateness' and not to an enticement of maximising the term of consent. Indeed, the appropriate term of consent for large infrastructure such as existing irrigation or hydro schemes will need to be determined by a wide range of factors of which the magnitude of environmental effects is just one - although I note that the Proposed Plan does not provide any policy guidance as to the matters to be considered in determining consent durations.
- 11.7 Given this, I consider it appropriate that Policy 4.48 is amended to clarify that any requirement for schemes to improve water use efficiency and reduce

adverse effects is subject to a test of 'appropriateness' and is not linked to maximising the term of the consent. My recommended amendments to Policy 4.48 are tracked in **Annexure A** to this evidence.

12. PROVISION FOR RENEWABLE ELECTRICITY GENERATION ACTIVITIES

12.1 TrustPower's submission seeks that two additional policies be added to Section 4 of the Proposed Plan (immediately following Policy 4.48) that provide policy recognition to many of the matters outlined in the NPSREG and Chapter 16 of the RPS regarding renewable electricity generation activities.

12.2 Unfortunately, no discussion exists in the Section 42A Report on the two additional policies requested by TrustPower.

12.3 With respect to the two additional policies requested, I consider their addition to be appropriate and necessary. The addition of these policies will partly ensure that the Proposed Plan gives effect to the NPSREG and RPS. As I discuss in Paragraph 3.5 above, the NPSREG seeks that decision-makers either recognise and provide for, or have particular regard to, a range of matters related to the benefits of, and development and operation of, renewable electricity generation activities.

12.4 Furthermore, Policy E2 of the NPSREG requires regional plans to include provisions that provide for new and existing hydro-electricity generation activities. At present, there are only two objectives and one policy²¹ in the Proposed Plan related to the development and operation of the hydro-electricity generation activities.

12.5 The RPS also includes methods²² directing that ECan set out objectives and policies (and possibly methods) in regional plans that:

- Recognise the local, regional and national benefits of renewable energy supply;

²¹ Objectives 3.15 and 4.16 and Policy 4.48 of the Proposed Plan.

²² Method 1 to Policy 16.3.3 and Method 1 to Policy 16.3.5 of the RPS.

- Avoid activities on the beds of lakes and rivers and uses and development that impact on the generation capacity of consented and existing electricity generation infrastructure;
- Provide for the full operation, maintenance and upgrading of existing generation infrastructure; and
- Provide for activities associated with the investigation, identification and assessment of potential electricity generation sites.

12.6 In my opinion, the policies and rules of the Proposed Plan do not even attempt to provide for any of the matters listed in Paragraph 12.5 – notwithstanding the relevance of the Proposed Plan for a number of existing and potential electricity generation schemes in the Canterbury Region and the explicit directives of the RPS. In light of this, I do not consider the Proposed Plan currently provides for the sustainable management of new or existing regionally significant infrastructure.

12.7 My recommended amendments to the policies of the Proposed Plan so that it gives effect to the NPSREG and Chapter 16 of the RPS are detailed in **Annexure A** to this evidence.

13. ABSTRACTIONS FOR IRRIGATION

13.1 Policy 4.67 has two parts. Firstly, it seeks that water abstracted for irrigation is managed so that winter flows are available for abstraction to storage, while ensuring ecosystem recovery. Secondly, it states that irrigation abstractions are for the summer period (October – April) unless specified otherwise.

13.2 TrustPower's submission notes that reference to the phrase "*ecosystem recovery*" in Clause (a) is unnecessary given that any storage proposal will need to comply with the applicable environmental flow and allocation regime. In addition, the submission notes that in catchments such as the Rakaia River the freshes that will be utilised for storage will most likely occur in late spring and summer. Despite this, the Reporting Officers are not recommending any amendments to Clause (a) of Policy 4.67.

- 13.3 With respect to the phrase "*while ensuring ecosystem recovery*", I consider its inclusion in Policy 4.67 to be unnecessary. In this regard, the policies of the Proposed Plan already establish that abstractions of water will need to comply with environmental flow and allocation limits²³. Furthermore, Rule 5.98 prohibits the taking and use of surface water where the take exceeds the environmental flow and allocation limits specified in Sections 6 – 15 of the Proposed Plan. As such, it is my opinion that the Proposed Plan is abundantly clear about the need for any abstractions to comply with the relevant environmental flow and allocation regimes.
- 13.4 In addition, managing winter abstractions to storage in accordance with environment flow and allocation limits is necessary to ensure a much broader range of outcomes than just "*ecosystem recovery*". In this respect, the establishment of environment flow and allocation limits is also necessary to manage a range of other matters, including hydrological connections between surface water and ground water, enable sediment transport, support the exercise of customary uses, and maintain natural character / amenity values.
- 13.5 As such, I consider it appropriate to delete reference to "*while ensuring ecosystem recovery*" from Policy 4.67(a). I have considered the possibility of replacing the phrase "*while ensuring ecosystem recovery*" with "*in accordance with the relevant flow and allocation limits*". However, for the reasons noted in Paragraph 13.3 above, I already consider the Proposed Plan to be abundantly clear as to the requirements for water abstractions – making this text also unnecessary.
- 13.6 In terms of the directive in Policy 4.67 that abstractions are managed so that winter flows are available for abstraction to storage, Mr Lilley provides detail on the Lake Coleridge Project and how it seeks to utilise freshes and floods in the Rakaia River Catchment for the storage of water in Lake Coleridge for irrigation supply and additional hydro-electricity generation. In particular, Mr Lilley has noted an essential element of the Lake Coleridge Project is the storage of water at all times of the year when river flows are available to be abstracted into Lake Coleridge.

²³ Policy 4.47 and 4.60(c) of the Proposed Plan.

- 13.7 The Reporting Officers have commented that Policy 4.67 "*does not exclude the storage of water during the irrigation season*". They seem to reach this conclusion on the basis that the policy does not specifically comment on the taking of summer flows for storage. In my opinion, the Reporting Officers' interpretation of Policy 4.67 is implied at best as the introduction to the policy effectively directs how water abstractions for irrigation are to be managed. That is, winter flows may be used for storage and abstraction for irrigation is to occur in the summer season.
- 13.8 If it is intended that Policy 4.67 not preclude the storage of summer flows for irrigation (as could occur with the development of the Lake Coleridge Project), then I consider that this expectation be made explicit within the policy. In this regard, it is appropriate that Clause (a) be amended to specifically mention the potential utilisation of summer flows for storage.
- 13.9 My recommended amendments to Policy 4.67 are tracked in **Annexure A** to this evidence.

14. RULE 5.6

- 14.1 Rule 5.6 specifies that any activity that would otherwise contravene Sections 13(1), 14(2), 14(3) or 15(1) of the RMA and is not listed as a permitted, restricted discretionary, discretionary, non-complying or prohibited activity in the Proposed Plan is a discretionary activity.
- 14.2 Rule 5.6 has been supported by TrustPower on the basis that a discretionary activity status for 'default' activities does not create a presumption of inappropriateness, while also providing ECan with sufficient scope to fully consider and decline resource consent applications if necessary. The Reporting Officers also recommend the retention of Rule 5.6, with only one minor amendment to refer to controlled activities.
- 14.3 I support the relief proposed by TrustPower and the recommendation of the Reporting Officers. I consider the adoption of a discretionary activity status for default activities to be pragmatic and recognises that a judgement cannot be made about the appropriateness of unknown activities or their potential effects on the environment. In addition, and as noted in TrustPower's submission, a

discretionary activity classification still enables ECan to decline resource consent applications where it is considered that the sustainable management purpose of the RMA will not be achieved. That is, the decision-making ability of ECan is not fettered.

- 14.4 A non-complying activity status in Rule 5.6 would, in my opinion, be unduly restrictive and inappropriate. In this regard, there is no policy support to suggest that all activities not provided for under the Proposed Plan are 'generally inappropriate' as per the commentary in Section 2.3 of the Proposed Plan. Indeed, in some cases Rule 5.6 is simply triggered because the Proposed Plan does not specify a rule that applies when permitted activity conditions cannot be complied with (e.g. Rule 5.77).
- 14.5 As such, I recommend that Rule 5.6 be retained in accordance with the minor corrections recommended by the Reporting Officers. These minor corrections to Rule 5.6 are detailed in **Annexure A** to this evidence.

15. **RULE 5.132**

- 15.1 Rule 5.132 specifies that the use of a structure in the bed of a river associated with a lawfully established hydro-electricity generation scheme is a controlled activity. Based on the analysis in the Section 32 Report²⁴ it is my understanding that Rule 5.132 has been drafted to give effect to Policy 4.48 and the commentary in Section 1.2.6 of the Proposed Plan recognising existing schemes as part of the 'existing environment'.
- 15.2 TrustPower's submission requests that Rule 5.132 be amended to capture all activities associated with the continued operation of lawfully established hydro-electricity generation schemes – including the take, use, damming, diversion and discharge of water and contaminants, and the use and maintenance of structures. The Reporting Officers do not support this approach and note that other activities associated with the operation of existing hydro-electricity generation schemes will require consideration under other rules of the Proposed Plan. They also note that flow regimes may be contentious due to

²⁴ Page 115 – 116 of Section 32 Report.

the NPSFM and, therefore, it is not appropriate for water take activities to be a controlled activity.

- 15.3 In my opinion, there a number of flaws in the approach adopted by ECan with respect to Rule 5.132. Firstly, Rule 5.132 (as notified) only provides for the use of an existing structure within the bed of a river. It does not provide for the associated damming of water in the bed of a river or the associated alteration, maintenance and operation of structures in the same manner as Rule 5.129 of the Proposed Plan.
- 15.4 Secondly, Rule 5.132 does not provide for structures within the beds of lakes despite it seemingly seeking to address matters covered by Section 13 of the RMA (which addresses activities on the beds of lakes and rivers). At the Coleridge HEPS this would mean that the diversion structures on the bed of the Wilberforce and Harper Rivers are controlled activities, but the intake structure to the Coleridge Power Station on the bed of Lake Coleridge is a discretionary activity under Rule 5.6. Such an approach is nonsensical given the similarities in potential environmental effects. Even with the Reporting Officers' recommended amendments to the rules of the Proposed Plan the operation of the various structures comprising the Coleridge HEPS would still be split between a number of rules²⁵.
- 15.5 Finally, and most importantly, given the established protocol of 'bundling' resource consent applications for integrated proposals (and, therefore, applying the most restrictive activity classification), it is my opinion that Rule 5.132 will not provide any material benefits to the owners of lawfully established hydro-electricity generation schemes. In this regard, the re-consenting of the Coleridge HEPS under the Proposed Plan would require a suite of resource consents for the take, use, damming, diversion of water, the discharge of water and contaminants (i.e. sediment), and the operation, maintenance and use of structures in the beds of lakes and rivers. These activities would be a discretionary activity (at best) under the relevant rules of the Proposed Plan²⁶.

²⁵ Particularly Rules 5.117 and 5.132 of the Proposed Plan.

²⁶ Rules 5.6, 5.77, 5.96, 5.121, 5.127 and 5.132 of the Proposed Plan.

- 15.6 Whilst I understand that Rule 5.132 has been drafted with the intention of recognising the existing investment in hydro-electricity generation infrastructure, I consider that a more integrated approach to the re-consenting of lawfully established schemes is required in order to reflect the relevant provisions of the Proposed RPS and the Proposed Plan. As I have already discussed in this evidence²⁷, Policy 7.3.11 of the RPS seeks to recognise and provide for the continuation of existing hydro-electricity generation schemes. In my opinion, the inference in Policy 7.3.11 is that infrastructure and water use activities will be recognised and provided for. In this respect, Method 1(a) to Policy 7.3.11 of the RPS refers to "*other existing water takes, uses, damming and diversions*".
- 15.7 Furthermore, Section 1.2.6 and Policy 4.48 of the Proposed Plan refer to focusing on improving the efficiency and reducing the environmental effects of the take and use of water when resource consents for irrigation and hydro-electricity generation infrastructure expire.
- 15.8 As such, it is my opinion that existing schemes should be provided for in Section 5 of the Proposed Plan by way of a single rule that captures all of the associated activities related to the operation of such schemes (i.e. the take, use, damming, diversion and discharge of water and contaminants, and the use and maintenance of structures). Such a rule would address the issue of bundling that currently limits the effectiveness of Rule 5.132.
- 15.9 In light of the direction within the RPS and Proposed Plan that existing schemes should be recognised as part of the existing environment, I consider that any new single rule for these schemes should be classified as a controlled activity. In this regard, if the Proposed Plan considers that it is 'not useful to debate whether hydro-electricity generation infrastructure should exist at all'²⁸, then it is unnecessary to imply via a discretionary activity rule that existing schemes may not actually be appropriate in given circumstances. Any decision to decline resource consent for the continuation of lawfully established hydro-electricity schemes would effectively require the scheme to be removed and / or decommissioned.

²⁷ Paragraph 10.4.

²⁸ Section 1.2.6 of the Proposed Plan.

- 15.10 The suggestion by the Reporting Officers that a controlled activity is not appropriate because flow regimes may be contentious due to the NPSFM is also confused. In this regard, I am not aware of any requirements in the NPSFM that suggest flow regimes in catchments supporting existing hydro-electricity generation schemes will be contentious. Furthermore, the relief recommended in TrustPower's submission, and in **Annexure A** of my evidence, seeks that any lawfully established hydro-electricity schemes comply with the environmental flow and allocation regimes in Sections 6 – 15 of the Proposed Plan.
- 15.11 As Mr Lilley discusses, a controlled activity rule would also provide some investment certainty to the owners of existing schemes via recognition that the infrastructure will be able to continue to exist and operate in some form. The matters requiring resolution would simply centre on the conditions of resource consent.
- 15.12 I also note that other regional plans in New Zealand already provide for the re-consenting of existing schemes as controlled activities²⁹. As such, a controlled activity classification for existing schemes is not fanciful or without precedent.
- 15.13 **Appendix A** to this evidence sets out the matters that I consider ECan should reserve control over when assessing resource consent applications for existing schemes. As noted above, I consider that existing schemes will need to comply with the relevant environmental flow and allocation regimes in Sections 6 – 15 of the Proposed Plan. Matters that ECan will need to reserve control over would relate to the general environmental effects associated with the operation of existing schemes (i.e. issues around fish passage, compliance with water quality standards, sediment transport processes, effects on recreational and cultural values, and management of flood events).

16. CONCLUSION

- 16.1 As I have discussed in this evidence, I consider that a number of amendments to the Proposed Plan are required in order to ensure that it promotes the sustainable management of both natural and physical resources. In particular, I

²⁹ Bay of Plenty Regional Land and Water Plan, West Coast Regional Water Plan.

consider that a number of the provisions in the Proposed Plan require amendment in order to give effect to the management expectations specified in the RPS. Indeed, many provisions in the Proposed Plan appear to have been drafted without any regard for the direction provided in the RPS (e.g. the approach to the management of adverse effects on significant natural and physical resources).

- 16.2 I also consider that amendments are required to the Proposed Plan in order for it to give effect to the NPSREG. As I have discussed, the NPSREG identifies a number of matters that should be given effect to, or given particular regard, in regional plans. The current version of the Proposed Plan, as well as the amendments recommended by the Reporting Officers, simply fails to address most of the matters set out in the NPSREG – despite the scale and importance of the hydro-electricity generation infrastructure in the Canterbury Region.
- 16.3 Finally, whilst I accept that the vision and principles of the CWMS are of particular relevance to the Proposed Plan, I consider that care needs to be taken to ensure that their importance is not unduly elevated above other matters that must be given effect to in developing the provisions of the Proposed Plan. In this respect, it is my opinion that giving particular regard to the vision and principles of the CWMS does not require or necessitate the verbatim repetition of its principles in the Proposed Plan.

R J Turner

4 February 2013

ANNEXURE A

**SUBMISSION SUMMARY TABLE
AND
RECOMMENDED RELIEF TO THE PROPOSED CANTERBURY LAND AND WATER
REGIONAL PLAN**

ANNEXURE B

**RECOMMENDATIONS OF THE
REPORTING OFFICERS THAT ARE SUPPORTED (OR NOT OPPOSED)**

RECOMMENDATIONS OF THE REPORTING OFFICERS SUPPORTED (OR NOT OPPOSED)

SECTION 2 – HOW THE PLAN WORKS AND DEFINITIONS

- Section 2 – *'Opening Paragraph'*;
- Section 2.1 – *'Objectives'*;
- Definition of *'Alpine River'*;
- Definition of *'Dam'*;
- Definition of *'Damming'*;
- Definition of *'Natural Wetland'*;
- Definition of *'Outstanding Natural Features and Landscapes'*; and
- Definition of *'Significant Indigenous Biodiversity'*.

SECTION 3 – OBJECTIVES

- Objective 3.1;
- Objective 3.2;
- Objective 3.4;
- Objective 3.6;
- Objective 3.7;
- Objective 3.8;
- Objective 3.10;
- Objective 3.16;
- Objective 3.21;
- Objective 3.22; and
- Objective 3.23.

SECTION 4 – POLICIES

- Policy 4.1;
- Policy 4.7;
- Policy 4.20;
- Policy 4.22;
- Policy 4.45;
- Policy 4.47;
- Policy 4.51;
- Policy 4.53;
- Policy 4.60;
- Policy 4.66;
- Policy 4.71;
- Policy 4.75
- Policy 4.80; and
- Policy 4.88.

SECTION 5 – RULES

- Rule 5.77
- Rule 5.84;

- Rule 5.89;
- Rule 5.94;
- Rule 5.108;
- Rule 5.117;
- Rule 5.121; and
- Rule 5.141.

ANNEXURE A

SUBMISSION SUMMARY TABLE AND RECOMMENDED RELIEF TO THE PROPOSED CANTERBURY LAND AND WATER REGIONAL PLAN

SECTION 2 – HOW THE PLAN WORKS AND DEFINITIONS

Those submissions on Section 2 of the Proposed Plan where I do not agree with the Reporting Officers recommendations, or consider further elaboration is necessary, are detailed in Table One as follows:

Table One: Commentary on Submissions of TrustPower Limited on Section 2 of the Proposed Plan

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
1	Definition of 'Outstanding Fresh Water Bodies'	Delete the definition of 'Outstanding Fresh Water Bodies' from the PLWRP.	TrustPower submits that because of its infrequent occurrence in the PLWRP, the definition of the term 'Outstanding Fresh Water Bodies' is redundant and may be deleted. The separately defined term 'high naturalness water bodies' encompasses the scope of this. It is noted that Sections 6-15 do not make mention of any specific hāpua, wetlands or 'natural state water bodies', although some sections do list 'high naturalness water bodies'.	Recommends that the definition of 'Outstanding Fresh Water Bodies' be redrafted as follows: <i>"means those includes hāpua, natural wetlands, natural state waterbodies and high naturalness waterbodies which are listed in Sections 6-15 of this Plan and waterbodies subject to Water Conservation Order".</i>	Deletion of the definition of 'Outstanding Fresh Water Bodies' is a consequential amendment in light of the request to redraft Objective 3.5 of the PLWRP. Refer to discussion Section 5 of planning evidence and Row 3 below.	Delete the definition of 'Outstanding Fresh Water Bodies'.

SECTION 3 – OBJECTIVES

Those submissions on Section 3 of the Proposed Plan where I do not agree with the Reporting Officers recommendations, or consider further elaboration is necessary, are detailed in Table Two as follows:

Table Two: Commentary on Submissions of TrustPower Limited on Section 3 of the Proposed Plan

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
2	Objective 3.3	Amend Objective 3.3 as follows (or words to like effect): <i>"The relationship of Ngāi Tahu and their culture and traditions with the water and land of Canterbury is protected recognised and provided for".</i>	No specific comments provided.	Recommends that Objective 3.3 be redrafted and renumbered as follows (3.17): <i>"The relationship of Ngāi Tahu and their culture and traditions with the water and land of Canterbury is protected recognised and enabled".</i>	Refer to discussion in Section 4 of planning evidence.	Agree with the Reporting Officers revised text to Objective 3.3 (Objective 3.17).
3	Objective 3.5	Delete Objective 3.5 and replace it with the following (or words to like effect): <i>"The values of high naturalness water bodies and their margins are protected from inappropriate land uses and development".</i> Delete the definition of 'outstanding fresh water bodies' from Section 2 of the PLWRP.	No specific comments provided.	Recommends that Objective 3.5 be retained as notified, but renumbered as Objective 3.12 as follows: <i>"Outstanding fresh water bodies and hāpua and their margins are maintained in their existing state or restored where degraded".</i>	Refer to discussion in Section 5 of planning evidence.	Delete Objective 3.5 and replace it with the following: <i>"The values of high naturalness water bodies and their margins are protected from inappropriate land uses and development".</i>

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
4	Objective 3.9	Amend Objective 3.9 as follows (or words to like effect): “The existing natural character values of alpine rivers are protected from inappropriate land uses and development”.	No specific comments provided.	Recommends that Objective 3.9 be redrafted and renumbered as follows (3.14): “ The existing n Natural character values of alpine rivers freshwater bodies, including braided rivers and their margins, wetlands, hāpua and coastal lagoons are protected”.	Refer to discussion in Section 6 of planning evidence.	Amend Objective 3.9 (3.14) as follows: “ The existing n Natural character values of alpine rivers freshwater bodies, including braided rivers and their margins, wetlands, hāpua and coastal lagoons are protected from inappropriate land uses and development”.
5	Objective 3.11	Amend Objective 3.11 as follows (or words to like effect): “Water is available for sustainable abstraction or use to support a variety of economic and social activities and maximum <u>maximise</u> social and economic benefits are obtained from <u>through</u> the efficient storage, distribution and use of the water which is available for abstraction”.	No specific comments provided.	Recommends that Objective 3.11 be redrafted and renumbered as Objective 3.4 as follows: “Water is available for sustainable abstraction or use to support a variety of economic and social and economic activities and maximum social and economic benefits are <u>maximised by</u> obtained from the efficient storage, distribution and use of the water which is made available for abstraction within the allocation limits or management regimes which are set in this Plan”. Also recommends the addition of a new objective (Objective 3.3) as follows: “Water is recognised as an enabler of the economic and social wellbeing of the region.”	Whilst I generally consider the redrafting of Objective 3.11 (3.4) to be appropriate, I consider the additional text referring to “within the allocation limits or management regimes which are set in this Plan” to be repetitive and unnecessary. In this regard, Objective 3.22 (3.15) already specifies that community outcomes for water quality and water quantity be met through management within limits. Given that the objectives of the PLWRP are to be considered together, it is not necessary to re-introduce the concept of managing water within limits through multiple objectives. Agree with the Reporting Officers recommendation to include new Objective 3.3. Consider that the objective response to the social and economic components of Part 2 of the RMA.	Amend Objective 3.11 (3.4) as follows: “Water is available for sustainable abstraction or use to support a variety of economic and social and economic activities and maximum social and economic benefits are <u>maximised by</u> obtained from the efficient storage, distribution and use of the water which is made available for abstraction.” <u>within the allocation limits or management regimes which are set in this Plan”.</u> Agree with the Reporting Officers recommendation to include new Objective 3.3 in the PLWRP.
6	Objective 3.15	Amend Objective 3.15 as follows (or words to like effect): “A regional network of water storage and distribution facilities are constructed, operated, <u>upgraded and maintained</u> which provides for sustainable, wise , efficient and multiple uses of water”.	No specific comments provided.	Recommends that Objective 3.15 be redrafted and renumbered as Objective 3.7 as follows: “A regional network of water storage and distribution facilities provides for sustainable, wise , efficient and multiple use of water, <u>including irrigation and hydro-electricity generation”.</u>	Whilst I do not have any issues with the additional text recommended to Objective 3.15 (3.3), I do consider it appropriate that the objective clarify that water storage and distribution facilities will need to be developed and operated. In the same way that other objectives of the PLWRP seek to ‘protect’ or ‘maintain’ specific natural resource values, it is appropriate that Objective 3.15 (3.3) identify that water storage and distribution facilities will need to be developed and operated in order to provide for sustainable water use. The recommendation to delete the reference to ‘wise’ from Objective 3.15 (3.7) is supported. Its inclusion in the objective is considered unnecessary given the requirement for water uses to be sustainable and efficient.	Amend Objective 3.15 (3.7) as follows: “A regional network of water storage and distribution facilities <u>is operated, maintained upgraded and developed in order to provide</u> s for sustainable, wise , efficient and multiple uses of water, <u>including irrigation and hydro-electricity generation”.</u>
7	New Objective		No specific comments provided.	Recommends the inclusion of a new Objective 3.8 as follows: “Fresh water is managed prudently as a shared resource with many values, and any abstraction is necessary and reasonable for its intended use and any water that is abstracted is used efficiently”.	I consider the new recommended objective to be unnecessary. The first part of Objective 3.8 discusses the fact that fresh water is a shared resource with many values. Whilst I do not dispute this statement, the existing objectives in the PLWRP already identify that fresh water in the Canterbury Region has a variety of uses and values (some of which are competing).	Delete new Objective 3.8.

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
					<p>Given that all of the objectives in Section 3 of the PLWRP need to be considered together, it is unnecessary to include an objective that acknowledges that fresh water has many values.</p> <p>Furthermore, the second part of Objective 3.8 states that abstracted water should be used efficiently. However, this suggested outcome is repetitive. In this regard, the objectives in Section 3 of the PLWRP already discuss water being used efficiently (notably Objectives 3.4, 3.7 and 3.16).</p>	
8	New Objective		No specific comments provided.	<p>Recommends the inclusion of a new Objective 3.10 as follows:</p> <p><i>"The quality and quantity of water in fresh water bodies and their catchments is managed to safeguard the life-supporting capacity of ecosystems and ecosystem processes, including ensuring sufficient flow and quality of water to support the habitat and feeding, breeding, migratory and other behavioural requirements of indigenous species, nesting birds and, where appropriate, trout and salmon".</i></p>	<p>As with Objective 3.8 above, the recommended version of Objective 3.10 is considered unnecessary and repetitive. In this regard, the objectives in Section 3 of the PLWRP already discuss the need to protect indigenous biodiversity values and the importance of ecosystem processes etc.</p> <p>In my opinion, the matters that Objective 3.8 is seeking to address are all already suitably addressed by Objectives 3.11, 3.13, 3.14, 3.15 and 3.16.</p>	Delete new Objective 3.10.

SECTION 4 – POLICIES

Those submissions on Section 4 of the Proposed Plan where I do not agree with the Reporting Officers recommendations, or consider further elaboration is necessary, are detailed in Table Three as follows:

Table Three: Commentary on Submissions of TrustPower Limited on Section 4 of the Proposed Plan

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
9	Policy 4.3	<p>Amend Policy 4.3 as follows (or words to like effect):</p> <p><i>"The discharge of contaminants to water or the damming, diversion or abstraction of any water or disturbance to the bed of a fresh water body shall appropriately avoid, remedy or mitigate actual or potential adverse effects on not diminish any values of cultural significance to Ngāi Tahu."</i></p>	<p>The majority of the submissions above seek modification of the wording to reduce the 'absolute' nature of the policy. However, given the more significant request for deletion and replacement of the policy by Ngā Rūnanga, modification is not the best option.</p> <p>On this basis, a slightly simplified version of the Ngā Rūnanga request is recommended for adoption.</p>	<p>Recommends that Policy 4.3 be redrafted as follows:</p> <p><i>"The discharge of contaminants to water or the damming, diversion or abstraction of any water or disturbance to the bed of a fresh water body shall not diminish any values of cultural significance to Ngāi Tahu."</i></p> <p><i>Note: See Statutory Acknowledgements and other relevant information in Schedules 18 to 23 of this Plan, the Ngāi Tahu Freshwater Policy and Iwi Management Plans."</i></p> <p><i>"The cultural values of each catchment shall be identified and provided for in the subregional sections of the plan".</i></p>	<p>Refer to Section 10 of planning evidence for discussion on approach to the avoidance of adverse effects in the PLWRP. As such, I am supportive of the recommendation to amend Policy 4.3 to remove the absolute requirement for discharges and diversions to not diminish any values of cultural significance to Ngāi Tahu.</p> <p>That said, I do consider that the policy should be amended to refer to the cultural values 'of significance to Ngāi Tahu' in accordance with the notified drafting of Policy 4.3. In this regard, the Reporting Officers' recommended amendments to the policy would take it from focussing on cultural values of significance to all cultural values. However, no justification has been provided by the Reporting Officers as to why the policy should be broadened.</p>	<p>Amend Policy 4.3 as follows:</p> <p><i>"The cultural values of significance to Ngāi Tahu in each catchment shall be identified and provided for in the subregional sections of the plan".</i></p>

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
					In addition, I note that many of the corresponding policies in the PLWRP also refer to the phrase 'values of significance to Ngai Tahu' – particularly Policies 4.41 and 4.43.	
10	Policy 4.4	Delete Policy 4.4 and replace with the following (or words to like effect): <i><u>"Water is managed through the setting of limits in a manner that supports a range of catchment specific values, including, but not limited to, the maintenance of the life-supporting capacity of ecosystems, the support of customary uses, provision for community and stock drinking water supplies, provision for existing and new hydro-electricity generation and irrigation schemes and other abstractive activities, and recreational activities"</u></i> .	This policy primarily gives effect to the prioritisation in the CWMS principles. The majority of the submitters seek either deletion of the prioritisation, changes in the prioritisation or additional priorities to be added. Any of these changes would detract from the implementation of the CWMS, which is carried through other policies and rules of the PLWRP. It is noted that the RMA, particularly through Part 2, section 14 and section 30 and the RPS in Policy 7.3.4 support prioritisation of water "allocation". On this basis, these submission are recommended to be rejected. Minor changes to the wording regarding drinking water supplies are recommended, partly to make the policy consistent with how community and stock water supplies are managed in the PLWRP and with the CWMS.	Recommends that Policy 4.4 be redrafted as follows: <i>"Water is managed through the setting of limits to maintain the life-supporting capacity of ecosystems, support customary uses, and provide for community supplies and stock drinking water supplies, as a first priority and to meet the needs of people and communities for water for irrigation, hydro-electricity generation and other economic activities and to maintain river flows and lake levels needed for recreational activities, as a second priority"</i> .	Refer to discussion in Section 8 of planning evidence.	Delete Policy 4.4 and replace it with the following: <i><u>"Water is managed through the setting of limits in a manner that supports a range of catchment specific values, including, but not limited to, the maintenance of the life-supporting capacity of ecosystems, the support of customary uses, provision for community supplies and stock water, provision for existing and new hydro-electricity generation and irrigation schemes and other abstractive activities, and recreational activities"</u></i> .
11	Policy 4.6	Amend Policy 4.6 as follows (or words to like effect): <i><u>"Where a fresh water outcome water quality or quantity allocation limit is set in Sections 6-15, resource consents will generally not be granted if the granting would cause the outcome or limit to be breached or further over-allocation to occur"</u></i> .	The majority of these submissions seek the justifiable recognition of the need to be able to grant new resource consents when existing consents are expiring. Others seek some recognition of "exceptional circumstances". Both of these situations were intended to be captured by the less than absolute "generally not be granted" statement in the policy. It is appropriate to add clarification regarding replacement consents.	Recommends that Policy 4.6 be redrafted as follows: <i><u>"Where a water quality or quantity limit is set in Sections 6-15, resource consents will generally not be granted if the granting would cause the limit to be breached or further over-allocation to occur. New consents replacing expiring consents may be granted, but will likely be subject to additional restrictions"</u></i> .	The Reporting Officers have not specifically commented on TrustPower's submission. However, I consider it is appropriate that the terminology in Policy 4.6 be amended to ensure consistency with Sections 6 – 15 of the PLWRP. In this regard, it is important that terminology is consistent to avoid the potential for the misinterpretation of provisions. I also consider the recommended text at the end of Policy 4.6 (regarding new consents for existing activities) to be unnecessary. In this regard, Policy 4.47 of the PLWRP already provides specific detail regarding the ability for existing consents to be renewed in over-allocated catchments. The recommended text in Policy 4.6 adds no additional detail or explanation for those seeking to replace expiring consents. As such, I consider that the last sentence in the Reporting Officers' version of Policy 4.6 should not be accepted.	Amend Policy 4.6 as follows: <i><u>"Where a fresh water outcome water quality or quantity allocation limit is set in Sections 6-15, resource consents will generally not be granted if the granting would cause the limit to be breached or further over-allocation to occur. New consents replacing expiring consents may be granted, but will likely be subject to additional restrictions"</u></i> .
12	Policy 4.8	Amend Policy 4.8 as follows (or words to like effect): <i><u>"Provide for the harvest and storage of water for irrigation or hydro-electricity generation schemes that contribute to or do not frustrate the attainment of the regional concept for water harvest, storage and distribution set out in Schedule 16 or the priority outcomes expressed in the relevant ZIP."</u></i>	Policy 4.8 is central to the attainment of the CWMS outcomes, particularly in relation to the more efficient storage and distribution of the available water within Canterbury. The CWMS Regional Committee has developed the "regional concept", and the individual Zone Committees enhance this with the development of Zone Implementation Plans. These documents and the CWMS are at risk of being	Recommends that Policy 4.8 be redrafted as follows: <i><u>"The harvest and storage of water for irrigation or hydro-electricity generation schemes contribute to or do not frustrate the attainment of the regional concept for water harvest, storage and distribution set out in Schedule 16 or the priority outcomes expressed in the relevant ZIP or a water quantity limit set in sections 6-15."</u></i>	Refer to discussion in Section 9 of planning evidence. The recommendation to include reference to water quantity limits sets in Sections 6 – 15 is also considered unnecessary and repetitious. The policies in the PLWRP (including Policy 4.6) already detail that water abstractions and damming activities will need to comply with the limits set in Sections 6 – 15 of the PLWRP.	Amend Policy 4.8 as follows: <i><u>"Provide for the harvest and storage of water for irrigation or hydro-electricity generation schemes that contribute to or do not frustrate the attainment of the regional concept for water harvest, storage and distribution set out in Schedule 16 or the priority outcomes expressed in the relevant ZIP or a water quantity limit set in sections 6-15."</u></i>

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
			frustrated by alternative proposals that are contrary to the regional concept or Zone Implementation Plans. On this basis, the Policy is recommended to be maintained, albeit with an addition to recognise the need to provide for proposals that can be established and operated within limits already set.			
12	Policy 4.10	Amend Policy 4.10 as follows (or words to like effect): “ For other discharges of contaminants to surface waterbodies or groundwater, <u>other than discharges of water to water as part of hydro-electricity generation or irrigation schemes</u> , the effects of any discharge are minimised by the use of measures that: (a) first, avoids the production of the contaminant; (b) secondly, reuses, recovers or recycles the contaminant; (c) thirdly, reduce the volume or amount of the discharge; or (d) finally, wherever practical utilise land-based treatment, a wetland constructed to treat contaminants or a designed treatment system prior to discharge; and (e) meets the receiving water standards in Schedule 5 after reasonable mixing”.	TrustPower wants water to water discharges exempted. As this policy deals with effects there is no need to exempt specific types of discharge. If discharges have limited effects they will be consistent with this policy. Reference to determination of water quality standards after reasonable mixing is contained in some, but not all, of the discharge rules. It is therefore not recommended to be included in the policy.	Recommends that Policy 4.10 be redrafted as follows: For other discharges of contaminants to surface waterbodies or groundwater, the effects of any discharge are minimised by the use of measures that: (a) first, avoids the production of the contaminant; (b) secondly, reuses, recovers or recycles the contaminant; (c) thirdly, reduce minimise the volume or amount of the discharge; or (d) finally, wherever practical utilise land-based treatment, a wetland constructed to treat contaminants or a designed treatment system prior to discharge; and (e) in the case of surface water result in a discharge that meets the receiving water standards in Schedule 5.	In my opinion, it is appropriate that Clause (e) of Policy 4.10 include reference to reasonable mixing. Such an amendment would add clarity to the policy and the interpretation of Schedule 5. In this regard, Schedule 5 already notes that a mixing zone applies to the application of the receiving water standards in the accompanying tables. Adding this clarity into Clause (e) will ensure there is no confusion over where and when a discharge needs to meet the receiving water quality standards.	Amend Policy 4.10 as follows: For other discharges of contaminants to surface waterbodies or groundwater, the effects of any discharge are minimised by the use of measures that: (a) first, avoids the production of the contaminant; (b) secondly, reuses, recovers or recycles the contaminant; (c) thirdly, reduce minimise the volume or amount of the discharge; or (d) finally, wherever practical utilise land-based treatment, a wetland constructed to treat contaminants or a designed treatment system prior to discharge; and (e) in the case of surface water result in a discharge that meets the receiving water standards in Schedule 5 after reasonable mixing.
13	Policy 4.15	Amend Policy 4.15 as follows (or words to like effect): “ The Adverse effects from the discharge of sediment and other contaminants to surface water from earthworks, including roading, works in the bed of a river or lake, land development or construction, <u>is</u> are <u>appropriately</u> avoided, remedied or mitigated. And if this is not achievable, the best practicable option is used to minimise the discharge to water”.	Overall, these submissions seek relatively minor refinements, either to weaken or strengthen the policy depending on the submitter.	Recommends that Policy 4.15 be retained as notified as follows: “The discharge of sediment and other contaminants to surface water from earthworks, including roading, works in the bed of a river or lake, land development or construction, is avoided, and if this is not achievable, the best practicable option is used to minimise the discharge to water”.	Refer to discussion in Section 10 of planning evidence.	Amend Policy 4.15 as follows: “ The Adverse effects from the discharge of sediment and other contaminants to surface water from earthworks, including roading, works in the bed of a river or lake, land development or construction, <u>is</u> are <u>appropriately</u> avoided, remedied or mitigated. And if this is not achievable, the best practicable option is used to minimise the discharge to water”.
14	Policy 4.41	Either delete Policy 4.41 or amend it as follows (or words to like effect): “The damming or diversion of any alpine or hill-fed river <u>appropriately</u> avoids, remedies or mitigates adverse effects on does not adversely affect: (a) values of significance to Ngāi Tahu associated with the mainstem; (b) the passage of floods and freshes needed to maintain river processes, ecosystem health and the removal of vegetation encroaching onto the bed of the mainstem; (c) sediment transport within the river and to the coast; (d) fish passage; and (e) downstream water quality.	The policy as notified establishes the baseline position that damming and diversion should not give rise to adverse effects on the stated values which clearly is the desired outcome. However it is accepted this absolute may be difficult to achieve in all cases and that some flexibility is appropriate. Generally some of the amendments sought are considered to reduce the effectiveness of the Policy by indicating lesser standards are acceptable. To provide flexibility without reducing the force of the Policy it is recommended the term “negligible” be inserted. Including reference to the ecological values of the river and threatened native riverbed populations and significant indigenous biodiversity is consistent with the intent of the Policy, which is to avoid adverse effects on significant and identifiable values that are reliant on water flow. Reference to recreation values is	Recommends that Policy 4.41 be redrafted as follows: “The damming or diversion of any alpine or hill-fed river <u>does not have more than a negligible adverse effect on</u> adversely affect: (a) values of significance to Ngāi Tahu associated with the mainstem; (b) the passage of floods and freshes needed to maintain river processes, ecosystem health and the removal of vegetation encroaching onto the bed of the mainstem; (c) sediment transport within the river and to the coast; (d) fish passage; and (e) downstream water quality.” (f) <u>the ecological values of the river;</u> (g) <u>threatened native riverbed populations and significant indigenous biodiversity;</u> (h) <u>recreation activities”</u>	Refer to discussion in Section 10 of planning evidence. In addition, I consider it unnecessary to include reference to the ecological values of the river and threatened native riverbed populations and significant indigenous biodiversity. I consider these two clauses to repetitive. In my opinion, the reference to the ecological values of the river will also capture any values intended to be captured by the reference to threatened native riverbed populations and significant indigenous biodiversity. As such, Clause (g) of Policy 4.41 should not be adopted.	Amend Policy 4.41 as follows: “The damming or diversion of any alpine or hill-fed river <u>appropriately</u> avoids, remedies or mitigates adverse effects on does not have more than a negligible adverse effect on adversely affect: (a) values of significance to Ngāi Tahu associated with the mainstem; (b) the passage of floods and freshes needed to maintain river processes, ecosystem health and the removal of vegetation encroaching onto the bed of the mainstem; (c) sediment transport within the river and to the coast; (d) fish passage; and (e) downstream water quality.” (f) <u>the ecological values of the river;</u> (g) threatened native riverbed populations and significant indigenous biodiversity; (h) <u>recreation activities”</u>

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
			also considered appropriate.			
15	Policy 4.43	<p>Amend Policy 4.43 as follows (or words to like effect):</p> <p><i>"The adverse effects of in-stream damming:</i> (a) <i>on high naturalness waterbodies identified in Sections 6-15 shall be avoided; and</i> (b) <i>on any other river complies with the environmental flow and allocation regime for that catchment and any adverse effects from the damming on;</i> (i) <i>flow variability in the river;</i> (ii) <i>sediment flows and nourishment of the coast;</i> (iii) <i>aquatic ecosystems;</i> (iv) <i>fish passage;</i> (v) <i>indigenous flora and fauna;</i> (vi) <i>the habitat of nesting birds in braided rivers;</i> (vii) <i>any sites or values of significance to Ngāi Tahu; and</i> (viii) <i>any recreational or amenity values are, as a first priority, appropriately avoided or, where unable to be avoided, are remedied or mitigated.</i></p>	<p>TrustPower considers that the policy as worded is inconsistent with Policy 5.3.9 of the RPS, which requires that only significant adverse effects of regionally significant infrastructure on significant natural, physical and cultural values are avoided, and where this is not practicable, remedying or mitigating them and all other effects need only to be 'appropriately controlled'.</p> <p>Policy 4.43 is not considered to be inconsistent with Policy 5.3.9 as both utilise the priority approach and Policy 4.43 has determined that damming of high naturalness waterbodies is a significant issue. As a consequence no amendment to this particular part of the policy is recommended.</p>	<p>Recommends that Policy 4.43 be redrafted as follows:</p> <p><i>The adverse effects of in-stream damming:</i> (a) <i>on high naturalness waterbodies identified in Sections 6-15 shall be avoided; and</i> (b) <i>on any other river complies with the environmental flow and allocation regime for that catchment and any adverse effects from the damming on flow variability in the river, sediment flows and nourishment of the coast, aquatic ecosystems, fish passage, indigenous flora and fauna, the habitat of nesting birds in braided rivers, any sites or values of significance to Ngāi Tahu, and any recreational or amenity values are, as a first priority, avoided or, where unable to be avoided, are remedied or mitigated.</i></p> <p>(b) (i) <i>flow variability in the river;</i> (ii) <i>sediment flows and nourishment of the coast;</i> (iii) <i>aquatic ecosystems;</i> (iv) <i>fish passage;</i> (v) <i>indigenous flora and fauna;</i> (vi) <i>the habitats of nesting birds in braided rivers;</i> (vii) <i>the habitat of trout and salmon</i> (viii) <i>any sites or values of significance to Ngāi Tahu; and</i> (ix) <i>any recreational or amenity values are, as a first priority, avoided or, where unable to be avoided, are remedied or mitigated.</i></p>	<p>Refer to discussion in Section 10 of planning evidence.</p> <p>The Reporting Officers also consider that Policy 4.43 is not inconsistent with Policy 5.3.9 of the RPS as high naturalness waterbodies are considered to be a 'significant natural resources'. However, the issue over the approach to the management of adverse effects relates to 'other rivers' not 'high naturalness waterbodies'.</p> <p>Clause (b) of Policy 4.43 still assumes that all values in other rivers will be significant natural resources – and therefore justifying the avoidance of adverse effects as a first priority. I still consider this approach to be inappropriate and contrary to the RPS.</p>	<p>Amend Policy 4.43 as follows:</p> <p><i>The adverse effects of in-stream damming:</i> (a) <i>on high naturalness waterbodies identified in Sections 6-15 shall be avoided; and</i> (b) <i>on any other river complies with the environmental flow and allocation regime for that catchment and any adverse effects from the damming on flow variability in the river, sediment flows and nourishment of the coast, aquatic ecosystems, fish passage, indigenous flora and fauna, the habitat of nesting birds in braided rivers, any sites or values of significance to Ngāi Tahu, and any recreational or amenity values are, as a first priority, avoided or, where unable to be avoided, are remedied or mitigated.</i></p> <p>(b) (i) <i>flow variability in the river;</i> (ii) <i>sediment flows and nourishment of the coast;</i> (iii) <i>aquatic ecosystems;</i> (iv) <i>fish passage;</i> (v) <i>indigenous flora and fauna;</i> (vi) <i>the habitats of nesting birds in braided rivers;</i> (vii) <i>the habitat of trout and salmon</i> (viii) <i>any sites or values of significance to Ngāi Tahu; and</i> (ix) <i>any recreational or amenity values are, as a first priority, appropriately avoided, or, where unable to be avoided, are remedied or mitigated.</i></p>
16	Policy 4.48	<p>Amend Policy 4.48 as follows (or words to like effect):</p> <p><i>"Existing hydro-generation and irrigation schemes are recognised as a part of the existing environment in the consideration and establishment of environment flow and water allocation regimes and the re-consenting of such schemes. In re-consenting the schemes, consideration will be given to the need for, and appropriateness of, it is expected that there will be improvements in the efficiency of water use and conveyance (assessed over the life of the consent) and reductions in any adverse effects on the environment flows and levels in water bodies in order to maximise the term of the consent."</i></p> <p>Include new Policies 4.48A and 4.48B as follows (or words to like effect):</p> <p><i>"In considering any resource consent applications for existing or new renewable electricity generation activities or any other process which affects such activities, particularly regard will be given to:</i> (a) <i>The local, regional and national benefits</i></p>	<p>Four submitters consider that the policy should reflect the approach set out in Policies 7.3.8 and 7.3.11 of the RPS, which set criteria when considering improved efficiencies for existing schemes. When considering any consent application, the ECan must have regard to the relevant provisions of the NPSFM and the RPS 2013 (set out in Section 104 of the RMA).</p> <p>Given that each consent application is to be considered on its own merits and that this policy is complementary to the policies set out in the NPSFM and RPS, it is not considered necessary to amend the policy.</p> <p>It is considered that while the policy is clear that schemes are to be considered as part of the existing environment when setting environmental and flow limits, it is not clear whether or not scheme infrastructure, associated maintenance and damming activities are covered by the Policy.</p> <p>Two submitters do not consider that it is</p>	<p>Recommends that Policy 4.48 be redrafted as follows:</p> <p><i>"Existing hydro-electricity generation and irrigation schemes and their water takes are recognised as a part of the existing environment. In re-consenting the schemes, it is expected that there will be improvements in the efficiency of water use and conveyance assessed over the life of the consent and reductions in any adverse effects on flows and levels in water bodies in order to maximise the term of the consent"</i>.</p>	<p>Refer to discussion in Sections 11 and 12 of planning evidence.</p>	<p>Amend Policy 4.48 as follows:</p> <p><i>"Existing hydro-electricity generation and irrigation schemes (and their associated and water takes, use, damming, diversion and discharge of water) are recognised as a part of the existing environment. In re-consenting the schemes, consideration will be given to the need for, and appropriateness of, it is expected that there will be improvements in the efficiency of water use and conveyance assessed over the life of the consent and reductions in any adverse effects on the environment flows and levels in water bodies in order to maximise the term of the consent"</i>.</p> <p>Include new Policies 4.48A and 4.48B as follows:</p> <p><i>"In considering any resource consent applications for existing or new renewable electricity generation activities or any other process which affects such activities, particularly regard will be given to:</i> (a) <i>The local, regional and national benefits associated with the activity, including its contribution to the regional concept for</i></p>

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
		<p><i>associated with the activity, including its contribution to the regional concept for water harvest, storage and distribution set out in Schedule 16;</i></p> <p>(b) <i>The need to maintain the full generation output of existing electricity generation facilities in the Canterbury Region;</i></p> <p>(c) <i>The locational, functional, operational or technical constraints that result in renewable electricity generation activities being located or designed in the manner proposed;</i></p> <p>(d) <i>The ability for the activity to facilitate multiple uses of water;</i></p> <p>(e) <i>The ability to avoid adverse effects on significant natural, cultural and physical resources where practicable, and other remedy or mitigate such adverse effects."</i></p> <p><i>"The use and development of activities that adversely affect the operation, maintenance and upgrading of the generation output of existing or consented renewable electricity generation activities are avoided."</i></p>	<p>appropriate that term of the consent be determined by the level of improved efficiencies or by the reduction in adverse effects, but rather should focus on the schemes continuing their operations and appropriately managing their effects. It is considered the provisions are appropriate as although they recognise the presence of schemes, steps must be taken to address adverse effects. A clear policy direction is therefore set and appears to consider the matters raised in the submissions.</p>			<p><i>water harvest, storage and distribution set out in Schedule 16;</i></p> <p>(b) <i>The need to maintain the full generation output of existing electricity generation facilities in the Canterbury Region;</i></p> <p>(c) <i>The locational, functional, operational or technical constraints that result in renewable electricity generation activities being located or designed in the manner proposed;</i></p> <p>(d) <i>The ability for the activity to facilitate multiple uses of water;</i></p> <p>(e) <i>The ability to avoid adverse effects on significant natural, cultural and physical resources where practicable, and other remedy or mitigate such adverse effects."</i></p> <p><i>"The use and development of activities that adversely affect the operation, maintenance and upgrading of the generation output of existing or consented renewable electricity generation activities are avoided."</i></p>
17	Policy 4.50	<p>Amend Policy 4.50 as follows (or words to like effect):</p> <p><i>"Any change to a resource consent to abstract surface water for irrigation as a "run-of-river" take to a "take to storage", is subject to the following conditions to mitigate any adverse effects:</i></p> <p>(a) <i>a seasonal or annual allocation limit;</i></p> <p>(b) <i>a maximum instantaneous rate of take; and</i></p> <p>(c) <i>a higher the environmental minimum flow for the relevant water body in Sections 6 - 15, if this is required to sustain ecosystem or recreation values; and</i></p> <p>(d) any required cessation required to maintain flow variability and freshes in the river."</p>	<p>It is agreed that any new minimum flow should be consistent with any flow regime set out in Sections 6-15. However the policy also provides for the circumstance where a flow and allocation regime is yet to be set for a catchment. In this circumstance, a higher minimum flow is appropriate if there are likely to be adverse effects associated with the change in the nature of the abstraction by adding storage into the system.</p> <p>It is also acknowledged that while higher minimum flows should apply to the portion of the take that will be placed into storage, there may be circumstances that the existing minimum flow for the portion of water that taken via "run of river" is not appropriate. The policy only requires the increase in minimum flow to address adverse effects on the environment, and therefore a higher minimum flow and cessation of take is not required in all circumstances.</p>	<p>Recommends that Policy 4.50 be retained as notified as follows:</p> <p><i>"Any change to a resource consent to abstract surface water for irrigation as a "run-of-river" take to a "take to storage", is subject to the following conditions to mitigate any adverse effects:</i></p> <p>(a) <i>a seasonal or annual allocation limit;</i></p> <p>(b) <i>a maximum instantaneous rate of take;</i></p> <p>(c) <i>a higher minimum flow, if this is required to sustain ecosystem or recreation values; and</i></p> <p>(d) <i>any required cessation required to maintain flow variability and freshes in the river"</i>.</p>	<p>I accept that consideration may need to be given to the need for a higher minimum flow or a requirement to cease taking water in order to maintain flow variability in circumstances where an environmental flow and allocation limit has not been established via a robust investigation and hearing process – and included in Sections 6 – 15 of the PLWRP. In this respect, the approach to develop interim limits may not suitably provide for flow variability etc.</p> <p>However, the policy should note that the matters for consideration in Clauses (c) and (d) do not apply in circumstances where environmental flow and allocation limits have been set in Sections 6 – 15. In this regard, any such environmental flow regime should be established to suitably provide for ecosystem or recreation values, while allocation limits should factor in the need to maintain flow variability and freshes.</p>	<p>Amend Policy 4.50 as follows:</p> <p><i>"Any change to a resource consent to abstract surface water for irrigation as a "run-of-river" take to a "take to storage", is subject to the following conditions to mitigate any adverse effects:</i></p> <p>(a) <i>a seasonal or annual allocation limit;</i></p> <p>(b) <i>a maximum instantaneous rate of take;</i></p> <p>(c) <i>a higher minimum flow, if <u>an environmental flow and allocation limit has not been set in Sections 6 -15, and is this is</u> required to sustain ecosystem or recreation values; and</i></p> <p>(d) <i>any required cessation required to maintain flow variability and freshes in the river, <u>where an environmental flow and allocation limit has not been set in Sections 6 -15</u>".</i></p>
18	Policy 4.52	<p>Amend Policy 4.52 as follows (or words to like effect):</p> <p><i>"The discharge of water resulting from moving water from one catchment or water body to another does <u>not facilitate the transfer of fish species, plant pests or unwanted organisms into catchments where they are not already present; and any adverse effects on:</u></i></p> <p>(a) adversely affect values of significance to Ngāi Tahu values;</p> <p>(b) adversely affect the natural character of the receiving water;</p> <p>(c) adversely affect existing drinking water treatment systems and their ability to the</p>	<p>The policy as notified establishes the baseline position that the discharge of water from one catchment to another should not give rise to adverse effects on the stated values which clearly is the desired outcome. However it is accepted this absolute may be difficult to achieve in all cases and that some flexibility is appropriate. Generally some of the amendments sought are considered to reduce the effectiveness of the policy by indicating lesser standards are acceptable.</p> <p>To provide flexibility without reducing the force of the policy it is recommended the</p>	<p>Recommends that Policy 4.52 be redrafted as follows:</p> <p><i>"The discharge of water resulting from moving water from one catchment or water body to another <u>in particular does not:</u></i></p> <p>(a) <i>facilitate the <u>unwanted</u> transfer of fish species, plant pests or <u>unwanted</u> organisms into catchments where they are not already present;</i></p> <p>(b) <i>does not have a more than a negligible adverse effect on <u>adversely affect</u> Ngāi Tahu values;</i></p> <p>(c) <i>does not have a more than a negligible adverse effect on <u>adversely affect</u> the</i></p>	<p>Refer to discussion in Section 10 of planning evidence.</p>	<p>Amend Policy 4.52 as follows:</p> <p><i>"The discharge of water resulting from moving water from one catchment or water body to another <u>in particular does not:</u></i></p> <p>(a) facilitate the <u>unwanted</u> transfer of fish species, plant pests or <u>unwanted</u> organisms into catchments where they are not already present; and adverse effects on;</p> <p>(ab) does not have a more than a negligible adverse effect on <u>adversely affect</u> values of significance to Ngāi Tahu values;</p> <p>(bc) does not have a more than a negligible adverse effect on <u>adversely affect</u> the</p>

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
		<p>extent that they are no longer able to effectively treat the water to achieve the standards set out in the Drinking-water Standards for New Zealand 2005 (revised 2008); and</p> <p>(de) adversely affect fish migration- are appropriately avoided, remedied or mitigated."</p>	<p>term "negligible" be inserted. Part (d) of the Policy can remain unchanged as it is already qualified and (a) is also not considered to be absolute.</p>	<p>natural character of the receiving water;</p> <p>(d) does not adversely affect existing drinking water treatment systems to the extent that they are no longer able to effectively treat the water to achieve the standards set out in the Drinking-water Standards for New Zealand; and</p> <p>(e) does not have a more than a negligible adverse effect on adversely affect fish migration"</p>		<p>natural character of the receiving water;</p> <p>(cd) does not adversely affect existing drinking water treatment systems and their ability to the extent that they are no longer able to effectively treat the water to achieve the standards set out in the Drinking-water Standards for New Zealand; and</p> <p>(de) does not have a more than a negligible adverse effect on adversely affect fish migration</p> <p>are appropriately avoided, remedied or mitigated."</p>
19	Policy 4.63	<p>Amend Policy 4.63 as follows (or words to like effect):</p> <p><i>"Where existing abstractors, other than those for hydro electricity generation, do not have a maximum seasonal or annual allocation, to impose these conditions when any of the following occur:</i></p> <p>(a) resource consent conditions are changed;</p> <p>(a)(b) water permits are transferred; and</p> <p>(b)(e) existing resource consents to abstract water expire and are renewed; or</p> <p>(d) the consent authority determines a review of consent conditions is required to impose seasonal or annual volumes in a catchment.</p>	<p>The submitters state that Section 127(3)(b) of the RMA limits the consideration of any application to change or cancel a consent condition to the effects of that change or cancellation. The submitters consider that CRC is unable to impose an annual allocation limit on a resource consent unless it relates to the change or cancellation requested. This appears to be the case and to remove doubt Section 127 should be referenced.</p> <p>One submitter also considers that Section 128 does not allow for the circumstance where a consent is reviewed to add a condition which limits the volume of water abstracted. The submissions state that in general, any such review needs to relate to the adverse effects associated with the exercise of a resource consent or in circumstances where a regional plan has set rules relating to maximum or minimum levels, flows or rates of use. Section 128(1)(b) of the RMA allows for the review of conditions to enable the consent to meet rules in a Regional Plan which relate to the rate of use of water. As an annual allocation limit is the rate at which water is taken and used over a year, and given there are rules (Rules 5.96 and 5.101) that relate to the rate at which water is used, it is considered that Policy 4.63 is consistent with Section 128 of the RMA.</p>	<p>Recommends that Policy 4.63 be redrafted as follows:</p> <p><i>"Where existing abstractors do not have a maximum seasonal or annual allocation, to impose these conditions when any of the following occur:</i></p> <p>(a) <i>resource consent conditions are changed in accordance with Section 127 of the RMA;</i></p> <p>(b) <i>water permits are transferred;</i></p> <p>(c) <i>existing resource consents to abstract water expire and are renewed; or</i></p> <p>(d) <i>the consent authority determines a review of consent conditions is required to impose seasonal or annual volumes in a catchment"</i>.</p>	<p>In light of the Reporting Officers' recommendations with respect to Policy 4.60 (i.e. the exemption of hydro-electricity generation activities from annual volume requirements), I consider it appropriate that Policy 4.63 also clarify that the circumstances listed in Clauses (a) to (d) will not be utilised to trigger an annual volume on resource consents for hydro-electricity generation schemes.</p>	<p>Amend Policy 4.63 as follows:</p> <p><i>"Where existing abstractors, other than those for hydro-electricity generation activities, do not have a maximum seasonal or annual allocation, to impose these conditions when any of the following occur:</i></p> <p>(a) <i>resource consent conditions are changed in accordance with Section 127 of the RMA;</i></p> <p>(b) <i>water permits are transferred;</i></p> <p>(c) <i>existing resource consents to abstract water expire and are renewed; or</i></p> <p>(d) <i>the consent authority determines a review of consent conditions is required to impose seasonal or annual volumes in a catchment"</i>.</p>
20	Policy 4.67	<p>Delete Policy 4.67 and replace it with the following (or words to like effect):</p> <p><i>"Water for irrigation is applied to land between October and April unless specified otherwise."</i></p>	<p>Four submitters expressed concern that takes to storage have been confined to the winter period, and water should be able to be stored during the irrigation season if the water is available. These submission points are not accepted as the Policy does not exclude the storage of water during the irrigation season.</p>	<p>Recommends that Policy 4.67 be redrafted as follows:</p> <p><i>"Water abstraction for irrigation is managed so that:</i></p> <p>(a) <i>winter flows are available for abstraction to storage, while ensuring ecosystem recovery; and</i></p> <p>(b) <i>abstraction is for the summer (Oct-Apr) (1 September – 30 April) irrigation season, unless specified otherwise"</i>.</p>	<p>Refer to discussion in Section 13 of planning evidence.</p>	<p>Amend Policy 4.67 as follows:</p> <p><i>"Water abstraction for irrigation is managed so that:</i></p> <p>(a) <i>summer and winter flows are available for abstraction to storage, while ensuring ecosystem recovery; and</i></p> <p>(b) <i>abstraction for use is for the summer (Oct-Apr) (1 September – 30 April) irrigation season, unless specified otherwise"</i>.</p>
21	Policy 4.70	<p>Amend Policy 4.70 as follows (or words to like effect):</p> <p><i>"Systems to convey or apply water are designed to maximise the efficient use of water, including the improvement over time of existing systems, except where there will be an adverse effect on ecosystems or existing abstractors from a loss</i></p>	<p>Generally it is considered the policy is consistent with the RPS but that additional wording could be added to make it more consistent with these policies.</p>	<p>Recommends that Policy 4.70 be redrafted as follows:</p> <p><i>"Systems to convey or apply fresh water are designed to maximise efficient use of water, including the improvement over time of existing systems, except where there will be an adverse effect on ecosystems or existing</i></p>	<p>In my opinion, further amendments to Clause (a) of Policy 4.70 are required in order to give effect to the RPS. In this respect, Policy 7.3.8 of the RPS acknowledges that regard should be given to the benefits and costs of changing existing systems and the relevant physical environment when</p>	<p>Amend Policy 4.70 as follows:</p> <p><i>"Systems to convey or apply fresh water are designed to maximise efficient use of water, including the improvement over time of existing systems, except where there will be an adverse effect on ecosystems or existing abstractors from a loss of recharge", taking into account</i></p>

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
		<p>of recharge.”</p> <p>Include new Policy 4.70A as follows (or words to like effect):</p> <p><i>“Systems designed to convey water maximise the efficient use of water, including improvements over time to existing infrastructure, taking into account:</i></p> <p>(a) <i>the nature of the infrastructure being utilised;</i></p> <p>(b) <i>the benefits and costs of retrofitting infrastructure with a higher level of efficiency;</i></p> <p>(c) <i>the practicality of implementing changes; and</i></p> <p>(d) <i>the physical environment in which the activity takes place, including any natural hazards.</i></p>		<p>abstractors from a loss of recharge”. <i>taking into account</i></p> <p>(a) <i>practicable options to implement any change required to existing systems; and</i></p> <p>(b) <i>adverse effects on ecosystems or existing abstractors from a loss of any recharge currently arising from conveyance inefficiencies.</i></p>	<p>considering the ability for conveyance infrastructure to be more efficient.</p> <p>The reference to ‘practicable options to implement any change required’ does not, in my opinion, suitable detail the factors that should be considered when determining whether infrastructure upgrades are feasible and / or appropriate. Additional text should be added to Clause (a) to align it with the expectations of the RPS.</p>	<p>(a) <u>practicable options to implement any changes required to existing systems, including the benefits and costs of changing existing systems and the natural of the physical environment in which the activity takes place;</u></p> <p><u>and</u></p> <p>(b) <u>adverse effects on ecosystems or existing abstractors from a loss of any recharge currently arising from conveyance inefficiencies.</u></p>
22	Policy 4.84	<p>Amend Policy 4.84 as follows (or words to like effect):</p> <p><i>“Earthworks and structures in the beds or margins of lakes, rivers, natural wetlands, hapua, coastal lakes and, lagoons:</i></p> <p>(a) <i>maintain the character and variable channel characteristics of braided rivers;</i></p> <p>(b) protect sites and appropriately avoid, remedy or mitigate adverse effects on areas of significant indigenous biodiversity values or of cultural significance to Ngāi Tahu; <i>and</i></p> <p>(c) <i>do not preclude any existing lawful access to the bed of the lake, river, natural wetland hapua, coastal lake, or lagoon for recreational, customary use, or flood control purposes.”</i></p>	<p>TrustPower requests that clause (b) state “appropriately avoid, remedy or mitigate adverse effects on areas....” The term “protect” sets a higher standard than remedying or mitigating and is considered appropriate for areas of significant indigenous vegetation given the provisions in section 6 (c) of the Act and RPS 2013 Policy 10.3.2 – Protection and enhancement of areas of river and lake beds and their riparian zones which refers to protection or preservation. However, both these provisions also refer to protection from inappropriate subdivision, use and development, which indicates that protection is not to be absolute in all cases, such as those where the development is “appropriate”.</p> <p>This is a different test to the one of practicability proposed by Genesis which could provide for inappropriate development in the bed of a lake, river or wetland simply because there is no practical alternative. Similarly the TrustPower wording does not set a level of protection. In these circumstances it is considered that current wording should be retained.</p>	<p>Recommends that Policy 4.80 of the PLWRP be redrafted as follows:</p> <p><i>“Earthworks and structures in the beds or margins of lakes, rivers, natural wetlands, hapua, coastal lakes and, lagoons:</i></p> <p>(a) <i>maintain the character and <u>channel characteristics of rivers including the variable channel characteristics of braided rivers;</u></i></p> <p>(b) <i>protect sites and areas of significant indigenous biodiversity values or of cultural significance to Ngāi Tahu; and</i></p> <p>(c) <i>do not preclude any existing lawful access to the bed of the lake, river, natural wetland hapua, coastal lake, or lagoon for recreational, customary use, <u>water intakes or supplies or flood control purposes except where necessary to protect public health and safety</u>.”</i></p>	<p>The Reporting Officers suggest that reference to ‘protection’ is appropriate in light of Section 6(c) of the RMA. However, this ignores the fact that Clause (b) of Policy 4.80 also addresses matters that are not covered by Section 6(c) of the RMA.</p> <p>As per the discussion in Section 10 of planning evidence it is considered that Policy 4.80 should be redrafted in a manner that reflects the approach to the management of adverse effects set out in the RPS. In this regard, the RPS recognises that provision should be made for the remediation or mitigation of adverse effects in the management of natural resources and cultural values.</p>	<p>Amend Policy 4.80 as follows:</p> <p><i>“Earthworks and structures in the beds or margins of lakes, rivers, natural wetlands, hapua, coastal lakes and, lagoons:</i></p> <p>(a) <i>maintain the character and <u>channel characteristics of rivers including the variable channel characteristics of braided rivers;</u></i></p> <p>(b) protect sites and appropriately avoid, remedy or mitigate adverse effects on areas of significant indigenous biodiversity values or of cultural significance to Ngāi Tahu; <i>and</i></p> <p>(c) <i>do not preclude any existing lawful access to the bed of the lake, river, natural wetland hapua, coastal lake, or lagoon for recreational, customary use, <u>water intakes or supplies or flood control purposes except where necessary to protect public health and safety</u>.”</i></p>
23	Policy 4.86	<p>Amend Policy 4.86 as follows (or words to like effect):</p> <p><i>“Earthworks, structures, or the planting or removal of vegetation (other than by spraying) in the beds of lakes or rivers or within a wetland boundary <u>avoid significant adverse effects on the values of those beds and their riparian zones, unless they are necessary for the maintenance of essential structures, or for the prevention of losses from floods, in which case significant adverse effects should be mitigated or remedied, do not occur in flowing or standing water unless any effects on water quality, ecosystems, or the amenity, recreational or cultural values will be minor or the effects of diverting water are more significant than the</u></i></p>	<p>TrustPower requests removal of any reference to flowing water and that reference is simply to avoiding significant effects on the values of the rivers and margins as well as providing an exemption for essential structures. As this policy is to do with impacts of working in water it makes no sense to remove reference to this.</p>	<p>Recommends that Policy 4.86 of the PLWRP be retained as notified as follows:</p> <p><i>“Earthworks, structures, or the planting or removal of vegetation (other than by spraying) in the beds of lakes, rivers, hapua, coastal lakes and lagoons, or within a wetland boundary do not occur in flowing or standing water unless any effects on water quality, ecosystems, or the amenity, recreational or cultural values will be minor or the effects of diverting water are more significant than the effects of the activity occurring in flowing or standing water”.</i></p>	<p>Policy 4.86 is still considered to be inconsistent with Policy 10.3.1 of the RPS. This has not been addressed by the Reporting Officers.</p> <p>Track changes in Annexure B should continue to seek amendments to Policy 4.86 in accordance with TrustPower’s submission.</p>	<p>Amend Policy 4.86 as follows:</p> <p><i>“Earthworks, structures, or the planting or removal of vegetation (other than by spraying) in the beds of lakes, rivers, hapua, coastal lakes and lagoons, or within a wetland boundary do not occur in flowing or standing water unless any effects on water quality, ecosystems, or the amenity, recreational or cultural values will be minor or the effects of diverting water are more significant than the effects of the activity occurring in flowing or standing water”.</i></p>

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
		effects of the activity occurring in flowing or standing water.				

SECTION 4 – TABLES 1A AND 1B

Those submissions on Section 4 of the Proposed Plan where I do not agree with the Reporting Officers recommendations, or consider further elaboration is necessary, are detailed in Table Four as follows:

Table Four: Commentary on Submissions of TrustPower Limited on Tables 1A and 1B of the Proposed Plan

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
24	Table 1A	Delete the qualitative standards that apply to all river management units from Table 1a of the PLWRP. Clarify at what locations on rivers the numerical standards in Table 1a are to be achieved.	No specific comments provided in response to TrustPower's submission.	Recommends that Table 1A be retained as notified.	Refer to Section 7 of planning evidence and evidence of Dr Ryder on behalf of TrustPower.	Delete the following outcomes from Table 1A of the PLWRP as follows: The natural colour of the water in a river shall not be altered. Natural frequency of hapua, coastal lake, lagoon and river openings is not altered. Natural continuity of river flow is maintained from source to sea, without reaches being induced to run dry.
25	Table 1B	Amend the 'Visual Quality Indicator' in Table 1b as follows (or words to like effect): "The natural colour of the lake is not altered by more than five Munsell Units from that which existed at the time of notification of this plan." In the alternative, amend Table 1b to recognise and provide for the continued discharge of water and contaminants associated with lawfully established regionally significant infrastructure. Clarify at what locations within lakes the numerical standards in Table 1b are to be achieved.	No specific comments provided in response to TrustPower's submission.	Recommends that Table 1A be retained as notified.	Refer to Section 7 of planning evidence and evidence of Dr Ryder on behalf of TrustPower.	Amend the 'Visual Quality Indicator' in Table 1B of the PLWRP as follows: The natural colour of the lake is not altered by more than five Munsell Hue Units from that which existed at the time this plan was made operative.

SECTION 5 – RULES

Those submissions on Section 5 of the Proposed Plan where I do not agree with the Reporting Officers recommendations, or consider further elaboration is necessary, are detailed in Table Five as follows:

Table Four: Commentary on Submissions of TrustPower Limited on Section 5 of the Proposed Plan

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
26	Rule 5.6	Retain the discretionary activity status for all activities captured by Rule 5.6 as notified in the PLWRP.	This rule has been the subject of three submissions seeking that it be retained and two submissions that seek changes to it. Ngā Rūnanga has also noted that	Recommends that Rule 5.6 of the PLWRP be redrafted as follows: "Any activity that is not a recovery activity"	Refer to discussion in Section 14 of planning evidence.	Agree with Reporting Officers' revised text to Rule 5.6.

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
			<p>“controlled” activity status has been omitted. It is agreed that this was an error and should be included.</p>	<p><i>that would otherwise contravene sections 13(1), 14(2), s14(3) or s15(1) of the RMA and is not listed as a permitted, <u>controlled</u>, restricted discretionary, discretionary, non-complying or prohibited activity in this Plan is a discretionary activity”.</i></p>		
27	Rule 5.85	<p>Amend Rule 5.85 as follows (or words to like effect):</p> <p><i>“The take and use of water from any river or part of a river, lake or an artificial watercourse that is subject to a Water Conservation Order is a restricted discretionary activity provided the following conditions are met:</i></p> <ol style="list-style-type: none"> <i>1. The take or diversion is at a rate of less than 5 L/s and a maximum volume of 100 m3 per day;</i> <i>2. Fish are prevented from entering the water intake as set out in Schedule 2; and</i> <i>3. The take or diversion of water for other than an individual’s reasonable domestic and stockwater use ceases when the flow is at or below the minimum flow for that water body as set out in the relevant Water Conservation Order-;</i> <i>4. The take or diversion of water for other than an individual’s reasonable domestic and stockwater use complies with the allocation limits for that water body as set out in the relevant Water Conservation Order; and</i> <i>5. Where the take is from an irrigation or hydro-electricity canal or storage facility, the abstractor holds a current written agreement with the holder of the resource consents for the taking or diversion of water into the canal or storage facility.</i> <p><i>The CRC will restrict discretion to the following matters:</i></p> <ol style="list-style-type: none"> <i>1. Whether the take, in combination with all other takes, complies with the relevant Water Conservation Order.</i> 	<p>TrustPower submits that the rule does not contain any requirement for a proposed user seeking to take water from an irrigation or hydro-electricity canal or storage facility to hold a current written agreement with the holder of the resource consent. It is noted that this is addressed under Rule 5.94.</p> <p>TrustPower also submits that the rule should allow for the abstraction of water from a lake or artificial water course that is subject to a Water Conservation Order. The existing WCO’s in the region relate to “rivers” (except for Lake Ellesmere) and it is considered these documents should be relied upon to define the water body.</p>	<p>Recommends that Rule 5.85 be redrafted as follows:</p> <p><i>“The take and use of water from any river or part of a river that is subject to a Water Conservation Order is a restricted discretionary activity provided the following conditions are met:</i></p> <ol style="list-style-type: none"> <i>1. The take or diversion is at a rate of less than 5 L/s and a maximum volume of 100 m3 per day;</i> <i>2. Fish are prevented from entering the water intake as set out in Schedule 2; and</i> <i>3. The take or diversion of water for other than an individual’s reasonable domestic and stockwater use ceases when the flow is at or below the minimum flow for that water body as set out in the relevant Water Conservation Order”.</i> <p><i>The CRC will restrict discretion to the following matter:</i></p> <ol style="list-style-type: none"> <i>1. The provisions of Whether the take, in combination with all other takes, complies with the relevant Water Conservation Order.</i> 	<p>In my opinion, it is inappropriate for Rule 5.85 to include reference to the provisions of relevant Water Conservation Orders as a <u>matter for discretion</u>. In this respect, there is no discretion over compliance with the allocation limits in Water Conservation Orders – if proposed takes and uses of water cannot comply with the allocation limits in the Water Conservation Order then they cannot be granted resource consent in accordance with Section 217(2) of the RMA.</p> <p>As such, compliance with a relevant Water Conservation Order should be determinative of a resource consent applicant’s ability to achieve the threshold for a restricted discretionary activity under Rule 5.85.</p> <p>In addition, I consider the statement of the Reporting Officers that Water Conservation Orders in the region only relate to rivers to be incorrect. In this regard, the Rakaia River Water Conservation Order restricts the taking of water from Lake Coleridge. Therefore, the reference to ‘lakes’ in Rule 5.85 is considered appropriate.</p>	<p>Amend Rule 5.85 as follows:</p> <p><i>“The take and use of water from any river, or part of a river, or lake that is subject to a Water Conservation Order is a restricted discretionary activity provided the following conditions are met:</i></p> <ol style="list-style-type: none"> <i>1. The take or diversion is at a rate of less than 5 L/s and a maximum volume of 100 m3 per day;</i> <i>2. Fish are prevented from entering the water intake as set out in Schedule 2; and</i> <i>3. The take or diversion of water for other than an individual’s reasonable domestic and stockwater use ceases when the flow is at or below the minimum flow for that water body as set out in the relevant Water Conservation Order-; and</i> <i>4. <u>The take and use of water complies with, in combination with all other takes, the environmental flow and allocation limits as set out in the relevant Water Conservation Order;</u></i> <p><i>The CRC will restrict discretion to the following matter:</i></p> <ol style="list-style-type: none"> <i>1. <u>The provisions of Whether the take, in combination with all other takes, complies with the relevant Water Conservation Order.</u></i>
28	Rule 5.88	<p>Amend Rule 5.88 as follows (or words to like effect):</p> <p><i>The taking and using of water for a group or community water supply from groundwater or surface water is a restricted discretionary activity provided the following conditions <u>is</u> are complied with:</i></p> <ol style="list-style-type: none"> <i>1. There is an operative Water Supply Strategy-; and</i> <i>2. <u>The take and use of water complies with the minimum flow and allocation limits as set out in any relevant Water Conservation Order.</u></i> <p><i>The CRC will restrict discretion to the</i></p>	<p>TrustPower submitted in opposition to Rule 5.88, stating that compliance with a Water Conservation Order should be a condition of the rule and not a matter of discretion. They further state that if a group or community water supply take cannot comply with the terms and conditions of a Water Conservation Order it cannot be lawfully granted. However, it is noted that an activity with a restricted discretionary status can still be declined and the rule, as currently worded, does not conflict with Section 217 of the RMA.</p>	<p>Recommends that Rule 5.88 be redrafted as follows:</p> <p><i>“The taking and using of water for a group or community water supply from groundwater or surface water is a restricted discretionary activity provided the following condition is complied with...”</i></p>	<p>Refer to comments on Rule 5.85 in Row 27 above.</p>	<p>Amend Rule 5.88 as follows:</p> <p><i>“The taking and using of water for a group or community water supply from groundwater or surface water is a restricted discretionary activity provided the following conditions <u>is</u> are complied with:</i></p> <ol style="list-style-type: none"> <i>1. There is an operative Water Supply Strategy-; and</i> <i>2. <u>The take and use of water complies with, in combination with all other takes, the environmental flow and allocation limits as set out in any relevant Water Conservation Order.</u></i> <p><i>The CRC will restrict discretion to the</i></p>

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
		<p><i>following matters:..</i> 6. Compliance with any relevant Water Conservation Order.</p>				<p><i>following matters:..</i> 6. Compliance with any relevant Water Conservation Order.</p>
29	Rule 5.90	<p>Amend Rule 5.90 as follows (or words to like effect):</p> <p><i>“The taking and using of water from any river or part of a river, lake or an artificial watercourse that is subject to a Water Conservation Order, for infrastructure construction, maintenance and repair is a restricted discretionary activity provided the following conditions are met:”</i></p> <p><i>1. The take or diversion of water ceases when the flow is at or below the minimum flow for that water body as set out in the relevant Water Conservation Order;</i></p> <p><i>2. The take or diversion of water complies with the allocation limits for that water body as set out in the relevant Water Conservation Order; and</i></p> <p><i>3. Where the take is from an irrigation or hydro-electricity canal or storage facility, the abstractor holds a current written agreement with the holder of the resource consents for the taking or diversion of water into the canal or storage facility.</i></p> <p><i>The CRC will restrict discretion to the following matters:</i></p> <p><i>1. Whether the take, in combination with all other takes, complies with the relevant Water Conservation Order.</i></p> <p><i>2. The location of the take, the effect on the immediate vicinity and the need for any restriction to prevent the flow from reducing to zero in this vicinity.</i></p>	<p>TrustPower suggests a number of amendments to the rule. The matters are generally covered by the rule (which is a restricted discretionary activity) and the matters subject to discretion. In particular, it is noted that the WCO will specify the particular waterbodies subject to the order and that the written approval of the consent holder will normally be required as an affected party (noting the application is a restricted discretionary activity). However, it is agreed that Section 217 of the RMA states that the grant of resource consents shall not be contrary to a WCO and that the WCO can remain without change. Consequently this matter of discretion should be amended to reflect this.</p>	<p>Recommends that Rule 5.90 be redrafted as follows:</p> <p><i>“The taking and using of water from any river or part of a river that is subject to a Water Conservation Order, for infrastructure construction, maintenance and repair is a restricted discretionary activity.”</i></p> <p><i>The CRC will restrict discretion to the following matters:</i></p> <p><i>1. Whether the take, in combination with all other takes complies with the provisions of the relevant Water Conservation Order; and</i></p> <p><i>2. The location of the take, the effect on the immediate vicinity and the need for any restriction to prevent the flow from reducing to zero in this vicinity”.</i></p>	<p>Refer to comments on Rule 5.85 in Row 27 above.</p>	<p>Amend Rule 5.90 as follows:</p> <p><i>“The taking and using of water from any river, or part of a river, or lake that is subject to a Water Conservation Order, for infrastructure construction, maintenance and repair is a restricted discretionary activity provided the following conditions are met:”</i></p> <p><i>1. The take and use of water complies with, in combination with all other takes, the environmental flow and allocation limits as set out in the relevant Water Conservation Order.</i></p> <p><i>The CRC will restrict discretion to the following matters:</i></p> <p><i>1. Whether the take, in combination with all other takes, complies with the relevant Water Conservation Order.</i></p> <p><i>2. The location of the take, the effect on the immediate vicinity and the need for any restriction to prevent the flow from reducing to zero in this vicinity.</i></p>
30	Rule 5.95	<p>Amend Rule 5.95 as follows (or words to like effect):</p> <p><i>“The taking or use of water from irrigation or hydroelectric canals or water storage facilities that does not meet one or more of the conditions in Rules 5.84, 5.89 and 5.94 is a discretionary non-complying activity”.</i></p>	<p>Two of the opposing submissions from Fish & Game and Ngā Rūnanga are related to changing the wording of Rule 5.94 and subsequent amending of Rule 5.95. As indicated above this is considered appropriate.</p> <p>The submission by TrustPower was opposed to the rule as they considered the classification of water takes from irrigation or hydro-electricity canals or storage as discretionary activities to be inappropriate and that a non-complying activity status should be applied. However, discretionary activity status it considered to be sufficient for this activity.</p>	<p>Recommends that Rule 5.95 be redrafted as follows:</p> <p><i>The taking or use of water from irrigation or hydroelectric canals or water storage facilities that does not meet one or more of the conditions in Rule 5.94, or the use of the water, is a discretionary activity.</i></p>	<p>Limited discussion is provided by the Reporting Officers as to why discretionary activity status is preferred over non-complying activity status.</p> <p>In my opinion, it is appropriate that Rule 5.95 be reclassified as a non-complying activity. In this respect, any water within an irrigation or hydro-electricity canal will be allocated to an existing user such as TrustPower or the Rangitata Diversion Race. As such, any proposed take of water from these canals that does not have the approval of the canal owner / resource consent holder will most likely involve a potential derogation of the water rights held by the canal owner etc. Given these circumstances it is entirely appropriate that the activity classification of Rule 5.95 is increased to non-complying – in recognition of the statement in Section 2.3 of the PLWRP that non-complying activity are “generally inappropriate” but</p>	<p>Amend Rule 5.95 as follows:</p> <p><i>The taking or use of water from irrigation or hydroelectric canals or water storage facilities that does not meet one or more of the conditions in Rules 5.84, 5.89 and 5.94, or the use of the water, is a discretionary non-complying activity.</i></p>

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
					<p>that there may be exceptional cases which warrant resource consent being granted.</p> <p>I also consider it appropriate that Rule 5.95 cross reference to Rules 5.84 and 5.89 in light of the fact that these rules also apply to takes from irrigation or hydro-electricity generation canals.</p>	
31	Rule 5.96	<p>Amend Rule 5.96 as follows (or words to like effect):</p> <p>The taking and use of surface water from a river or lake is a restricted discretionary activity, provided the following conditions are met:</p> <ol style="list-style-type: none"> 1. <i>Unless the proposed take or diversion is the replacement of a lawfully established affected by the provisions of section 124 of the RMA, the take, in addition to all existing resource consented takes, complies with any rate of take and environmental flow and allocation limits seasonal or annual volume limits set in Sections 6-15 for that surface water body;</i> 2. <i>Unless the proposed take is the replacement of a lawfully established take affected by the provisions of section 124 of the RMA, if no environmental flow and allocation limits are set in Sections 6-15 for that surface water body, the take, both singularly and in addition to all existing resource consented takes meets a flow regime with a minimum flow of 50% of the 7-day mean annual low flow (7DMALF) as calculated by the CRC and an allocation limit of 20% of the 7DMALF; and</i> 3. <i>The take is not from a natural wetland, hāpua or a high naturalness river that is listed in Sections 6-15.</i> <p>The CRC will restrict discretion to the following matters:</p> <ol style="list-style-type: none"> 1. <i>Any effects on water quality, including whether the activity, in combination with all other activities, will <u>achieve the fresh water outcomes specified in Sections 6-15 after the water quality allocation status of the relevant catchment;</u></i> 2. <i>Whether the amount of water to be taken and used is reasonable for the proposed use. In assessing reasonable use for irrigation purposes, the CRC will consider the matters set out in Schedule 10. <u>For all other water uses a determination as to whether the take and use is reasonable will occur on a case by case utilising the best available information;</u></i> 3. <i>For water used for irrigation, the management of water allocation and resulting nutrient discharges on</i> 	<p>TrustPower submits that reference to activities potentially frustrating the attainment of the regional network for water harvest, storage and distribution is flawed (matter for discretion (7)). They do not consider it to be appropriate to consider a resource consent application to take water against a concept for which resource consent applications have not been made (and may never be made). However, the regional network is a vital component of water management in Canterbury (e.g. see CWMS) and it is appropriate that regard be given to it.</p> <p>TrustPower further submits that the use of the term 'zero' is misleading and the rule should reflect the wording contained in Sections 6-15. It is considered that in order for environmental outcomes to be met, it is appropriate in terms of equity that all existing users should be working towards reducing the rate at which water is taken in times of low flows. It is also considered that the wording is appropriate as it applies to situations where there are no provisions contained in Sections 6-15.</p> <p>TrustPower also submits that matter for discretion (10) is redundant. It is agreed that a consent application cannot be granted that is contrary to a water conservation order in accordance with Section 217 of the RMA although it is considered some reference to the Water Conservation Order is still appropriate.</p> <p>Two submitters submit that the rule should only apply to surface water abstractions and sought to remove references to diversions. It is agreed that this rule should only apply to abstractions, and it is recommended that references to "diversions" be deleted.</p> <p>ECan seeks to include an additional matter for discretion to consider the effects of irrigation on significant indigenous biodiversity. Given that this matter is integral to many waterbodies, it is agreed that the rule should be amended in the manner sought.</p>	<p>Recommends that Rule 5.96 be redrafted as follows:</p> <p>"The taking and use of surface water from a river or lake is a restricted discretionary activity, provided the following conditions are met:</p> <ol style="list-style-type: none"> 1. <i>Unless the proposed take or diversion is the replacement of a lawfully established affected by the provisions of section 124 - 124C of the RMA, the take, in addition to all existing resource consented takes, complies with any rate of take and seasonal or annual volume limits set in Sections 6-15 for that surface water body;</i> 2. <i>Unless the proposed take is the replacement of a lawfully established take affected by the provisions of section 124 - 124C of the RMA, if no limits are set in Sections 6-15 for that surface water body, the take, both singularly and in addition to all existing resource consented takes meets a <u>complies with the following flow regime: with a minimum flow of 50% of the 7-day mean annual low flow (7DMALF) as calculated by the CRC and an allocation limit of 20% of the 7DMALF;</u></i> <ol style="list-style-type: none"> (a) <u>For rivers with mean flows less than or equal to 5 m³/s, a minimum flow of 90% of the 7-day mean annual low flow (7DMALF) as calculated by the Canterbury Regional Council and an allocation limit of 30% of the 7DMALF; and</u> (b) <u>For rivers with mean flows greater than 5 m³/s, a minimum flow of 80% of the 7DMALF as calculated by the Canterbury Regional Council and an allocation limit of 50% of the 7DMALF; and</u> 3. <i>The take is not from a natural wetland, hāpua or a high naturalness river that is listed in Sections 6-15.</i> <p>The CRC will restrict discretion to the following matters:</p> <p>...</p> <ol style="list-style-type: none"> 6. <i>The effects the take or diversion has on any other authorised takes or diversions;</i> 7. <i>The potential to frustrate or prevent the attainment of the regional network for</i> 	<p>In my opinion, it is appropriate that Rule 5.96 appropriately cross reference to other sections of the PLWRP. Given that Sections 6 – 15 of the PLWRP refer to 'environmental flow and allocation limits' as the limits to be complied with, it is appropriate that Rule 5.96 also refers to these terms when discussing whether a take complies with Sections 6 -15.</p> <p>In addition, I note that Matter for Discretion (1) refers to the 'water quality allocation status' for the relevant catchment. However, this phrase is not used in any other provision of the PLWRP and is somewhat unclear as to its intent. Given this, I consider that Matter for Discretion (1) should refer to the 'fresh water outcomes' noted in Sections 6 -15 of the PLWRP – this being a phrase that is defined by policy (e.g. Policy 4.1).</p> <p>I also consider it appropriate that Matter for Discretion (2) clarify how non-irrigation takes will be assessed to determine whether they are a 'reasonable use'. At present, Rule 5.96 provides no direction as to how resource consent applicants or decision-makers should assess the reasonableness of a proposed take of water.</p> <p>Finally, for the reasons outlined in Row 27 above, I consider it appropriate that compliance with any relevant Water Conservation Order not be a matter of discretion.</p>	<p>Amend Rule 5.96 as follows:</p> <p>"The taking and use of surface water from a river or lake is a restricted discretionary activity, provided the following conditions are met:</p> <ol style="list-style-type: none"> 1. <i>Unless the proposed take or diversion is the replacement of a lawfully established affected by the provisions of section 124 - 124C of the RMA, the take, in addition to all existing resource consented takes, complies with any <u>environmental flow and allocation limits, including any rate of take and seasonal or annual volume limits set in Sections 6-15 for that surface water body;</u></i> 2. <i>Unless the proposed take is the replacement of a lawfully established take affected by the provisions of section 124 - 124C of the RMA, if no limits are set in Sections 6-15 for that surface water body, the take, both singularly and in addition to all existing resource consented takes meets a <u>complies with the following flow regime: with a minimum flow of 50% of the 7-day mean annual low flow (7DMALF) as calculated by the CRC and an allocation limit of 20% of the 7DMALF;</u></i> <ol style="list-style-type: none"> (a) <u>For rivers with mean flows less than or equal to 5 m³/s, a minimum flow of 90% of the 7-day mean annual low flow (7DMALF) as calculated by the Canterbury Regional Council and an allocation limit of 30% of the 7DMALF; and</u> (b) <u>For rivers with mean flows greater than 5 m³/s, a minimum flow of 80% of the 7DMALF as calculated by the Canterbury Regional Council and an allocation limit of 50% of the 7DMALF; and</u> 3. <i>The take is not from a natural wetland, hāpua or a high naturalness river that is listed in Sections 6-15.</i> <p>The CRC will restrict discretion to the following matters:</p> <ol style="list-style-type: none"> 1. <i>Any effects on water quality, including whether the activity, in combination with all other activities, will <u>achieve the fresh water outcomes specified in Sections 6-15 after the water quality allocation status of the relevant catchment;</u>...</i> 2. <i>Whether the amount of water to be taken</i>

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
		<p>individual farms;</p> <p>4. The potential effects on groundwater recharge where the groundwater allocation zone is fully or over-allocated as set out in Sections 6-15;</p> <p>5. The availability and practicality of using alternative supplies of water;</p> <p>56. The effects the take or diversion has on any other authorised takes or diversions;</p> <p>7. The potential to frustrate or prevent the attainment of the regional network for water harvest, storage and distribution, shown on the Regional Concept diagram in Schedule 16;</p> <p>68. The reduction in the rate of take in times of low flow and restrictions to prevent the flow from reducing to below the environmental flow set out in Sections 6-15 zero as set out in policies to this Plan;</p> <p>79. Whether and how fish are prevented from entering the water intake; and</p> <p>10. Whether the take, in combination with all other takes, complies with any relevant Water Conservation Order.</p>		<p>water harvest, storage and distribution, shown on the Regional Concept diagram in Schedule 16;</p> <p>8. The reduction in the rate of take in times of low flow and <u>the need for any additional restrictions to prevent the flow from reducing to zero as set out in policies to this Plan;</u></p> <p>9. Whether and how fish are prevented from entering the water intake; and</p> <p>10. <u>The provisions of Whether the take, in combination with all other takes, complies with any relevant Water Conservation Order.</u></p>		<p>and used is reasonable for the proposed use. In assessing reasonable use for irrigation purposes, the CRC will consider the matters set out in Schedule 10. <u>For all other water uses a determination as to whether the take and use is reasonable will occur on a case by case utilising the best available information;</u></p> <p>10. Whether the take, in combination with all other takes, complies with any relevant Water Conservation Order.</p>
32	Rule 5.107	<p>Provide an appropriate definition for the term 'surface water allocation zone' in either explanatory material to Rule 5.107 or in Section 2 (Definitions) of the PLWRP.</p>	<p>One submitter seeks clarification of the term 'surface water allocation zone', noting that this is the first time the term has been introduced in the PLWRP. At this stage it is considered appropriate to delay a recommendation on this matter until the hearings for sub-regional Sections 6-15 of the PLWRP are completed given its relevance to these sections.</p> <p>It is agreed that the rule should be amended to allow for water to be transferred to principal water suppliers.</p>	<p>Recommends that Rule 5.107 be redrafted as follows:</p> <p><i>"The temporary or permanent transfer, in whole or in part, (other than to the new owner of the site to which the take and use of the water relates and where the location of the take and use of water does not change) of a water permit to take or use surface water or groundwater, is a restricted discretionary activity, provided the following conditions are met:</i></p> <p>....</p> <p>5. <i>In a catchment where the surface water and/or groundwater allocation limits set out in Rule 5.96 or Sections 6-15 are exceeded any transferred water is surrendered in the following proportions:</i></p> <p>(a) <i>0% in the case of transferring surface water to an irrigation scheme or principle water supplier which includes a storage component;..."</i></p>	<p>Awaiting recommendation on submission relating to the term 'surface water allocation zone' until the hearings on the sub-regional sections of the PLWRP.</p> <p>However, it is noted that it is difficult for resource users to understand the implications and usefulness of Rule 5.107 when no information is provided as to what a surface water allocation zone constitutes and how they will even be determined in individual catchments.</p>	<p>Provide a definition or explanatory text in the PLWRP as to what a 'surface water allocation zone' is and / or how they will be determined.</p>
33	Rule 5.129	<p>Amend Rule 5.129 as follows (or words to like effect):</p> <p><i>"The damming of water in the bed of a river and the constructing, using, altering, maintaining and operating structures within the bed of a river, and the use of a lake or land to store water, including any associated impounding of water outside the bed of a river or natural lake that does not meet the conditions of Rule 5.128 is a discretionary activity, provided the following conditions are met:</i></p> <p>1. <i>The damming of water complies with the environmental flow and</i></p>	<p>It is appropriate to amend Clause (1) as requested by TrustPower as the proposed wording is clearer.</p> <p>In terms of the inclusion of "lake", this creates a potential conflict with Rule 5.131. Generally, it is considered that if a lake is to be "dammed" it is usually the river at the outlet of the lake. No change is therefore recommended.</p> <p>It is also considered appropriate to amend Clause (2) so that the rule refers to new dams given the provisions of Rule 5.132.</p>	<p>Recommends that Rule 5.129 be redrafted as follows:</p> <p><i>"The damming of water in the bed of a river and the constructing, using, altering, maintaining and operating structures within the bed of a river, and the use of land to store water, including any associated impounding damming of water outside the bed of a river or natural lake that does not meet the conditions of Rule 5.128 is a discretionary activity, provided the following conditions are met:</i></p> <p>1. <i>The damming of water complies with the environmental flow and allocation</i></p>	<p>In my opinion it is appropriate to include reference to 'lakes' in Rule 5.129. While I agree with the Reporting Officers that a lake being dammed / controlled will generally involve a dam in a river outlet, the storage of water in a lake through the control of lake levels still needs to be recognised in the rule.</p> <p>In my opinion, Rule 5.131 only applies to new dams and damming activities and not the reconsenting of existing dam structures that involve the control of lake levels (e.g. Lake Coleridge).</p>	<p>Amend Rule 5.129 as follows:</p> <p><i>"The damming of water in the bed of a river and the constructing, using, altering, maintaining and operating structures within the bed of a river, and the use of a lake or land to store water, including any associated impounding damming of water outside the bed of a river or natural lake that does not meet the conditions of Rule 5.128 is a discretionary activity, provided the following conditions are met:</i></p> <p>1. <i>The damming of water complies with the environmental flow and allocation limits does not cause water flow to fail to meet</i></p>

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
		<p>allocation limits does not cause water flow to fail to meet any limits set in Sections 6-15;</p> <p>2. Any new dam is not located in a river listed as an high naturalness lake or river in Sections 6-15 or in the mainstem of any river; and</p> <p>3. The damming does not prevent water being taken by any existing domestic or stock water supply, or reduce the reliability of supply of any existing legally authorised water take.</p>	<p>In terms of the addition of “existing” in respect of domestic and stock water supply it is noted that these takes are provided for in the RMA under Section 14(3)(b).</p> <p>The reference to “impounding” in the rule should also be amended to “damming” to provide consistency with Rule 5.128 amendments.</p>	<p>limits does not cause water flow to fail to meet any limits set in Sections 6-15;</p> <p>2. The Any new dam is not located in a river listed as an high naturalness lake or river in Sections 6-15 or in the mainstem of any river; and</p> <p>3. The damming does not prevent water being taken by any domestic or stock water supply, or reduce the reliability of supply of any existing legally authorised water take”.</p>	<p>In addition, it is considered that Condition (3) should be limited to existing domestic and stockwater takes. Without such a caveat, damming activities would need to be designed to ensure that all unspecified future domestic and stockwater uses are provided for – even though they do not form part of the existing environment and would not be known at the time of granting consent. Such an approach is considered flawed and problematic to administer.</p> <p>I also consider the Reporting Officers' reliance on Section 14(3)(b) of the RMA to be misguided. Section 14(3)(b) simply enables certain activities to take water without resource consent, subject to caveats. It does not establish a preference for stockwater takes over other uses, nor does it preserve water for future stockwater uses.</p>	<p>any limits set in Sections 6-15;</p> <p>2. The Any new dam is not located in a river listed as an high naturalness lake or river in Sections 6-15 or in the mainstem of any river; and</p> <p>3. The damming does not prevent water being taken by any existing domestic or stock water supply, or reduce the reliability of supply of any existing legally authorised water take”.</p>
34	Rule 5.132	<p>Delete Rule 5.132 and replace it with the following (or words to like effect):</p> <p><u>“The discharge of water to water, discharge of contaminants to water, the take and use of water, the damming and diversion of water, and the use and maintenance of structures associated with a lawfully established hydro-electricity generation that existed prior to the notification of this plan is a controlled activity.</u></p> <p><u>The CRC reserves control over the following matters:</u></p> <p>(a) <u>Measures to avoid, remedy or mitigate adverse effects on aquatic ecosystems;</u></p> <p>(b) <u>The maintenance or improvement of fish passage;</u></p> <p>(c) <u>Measures to prevent or mitigate fish from entering an intake structure;</u></p> <p>(d) <u>Compliance with environmental flow and allocation regimes in Sections 6-15;</u></p> <p>(e) <u>Passage of flood flows;</u></p> <p>(f) <u>Compliance with fresh water outcomes in Sections 6-15;</u></p> <p>(g) <u>Measures to manage erosion effects;</u></p> <p>(h) <u>Measure to avoid, remedy or mitigate adverse effects on sediment transport processes; and</u></p> <p>(i) <u>Sites of cultural significance to Ngāi Tahu.</u></p>	<p>TrustPower requests that associated activities such as the take and use and discharge of water are also controlled activities. The maintenance and upgrading of such structures is also referred to in the submissions.</p> <p>This rule is intended to capture existing structures at the time they are required to renew resource consents. The controlled activity status for the use of the structures recognises the generally large scale and capital cost of structures associated with hydroelectricity power schemes and that their consenting is unlikely to be declined given the effects are self-evident and they are now an established part of the environment.</p> <p>However, it is not considered appropriate to make such structures a permitted activity as requested. The controlled activity status provides the appropriate balance as it enables an assessment of a potentially substantial structures that may have been consented for a lengthy period of time and the imposition of appropriate conditions</p> <p>The PLWRP anticipates that other activities associated with the operation of a hydroelectricity scheme (taking, damming, diverting and discharging) will require consideration under other rules of the Plan in order that the effects on flow regimes can be properly assessed. Given that a flow regime may be contentious particularly given the NPS Freshwater it is therefore not considered appropriate these activities are a controlled activity as suggested by TrustPower.</p> <p>It is noted that while Policy 4.48 recognises</p>	<p>Recommends that Rule 5.132 be redrafted as follows:</p> <p><u>“The use and maintenance of a structure in the bed of a river associated with a lawfully established hydroelectricity power scheme dam that existed on 1 November 2013 is a controlled activity.</u></p> <p><u>The CRC reserves control over the following matters:</u></p> <p>1. <u>The maintenance of, or improvement of, fish passage;</u></p> <p>2. <u>The risk of dam failure;</u></p> <p>3. <u>Whether and how fish are prevented from entering any intake structures;</u></p> <p>4. <u>Passage of flood waters”.</u></p>	<p>Refer to discussion in Section 15 of planning evidence.</p>	<p>Delete Rule 5.132 and replace it with the following:</p> <p><u>“The discharge of water to water, discharge of contaminants to water, the take and use of water, the damming and diversion of water, and the use and maintenance of structures on the beds of lakes and rivers associated with a lawfully established hydro-electricity generation scheme that existed prior to the notification of this plan is a controlled activity provide the following condition is met:</u></p> <p>1. <u>The proposed take, use, damming and discharge of water for the operation of the lawfully established hydro-electricity generation scheme complies with, in addition to all existing consent takes, the environmental flow and allocation regime limits set in Sections 6 – 15 for the relevant surface water body.</u></p> <p><u>The CRC reserves control over the following matters:</u></p> <p>(a) <u>Measures to avoid, remedy or mitigate adverse effects on aquatic and terrestrial ecosystems;</u></p> <p>(b) <u>Measures to avoid, remedy or mitigate adverse effects on wetland values;</u></p> <p>(c) <u>The maintenance or improvement of fish passage;</u></p> <p>(d) <u>Measures to prevent or mitigate fish from entering an intake structure;</u></p> <p>(e) <u>The passage of flood flows;</u></p> <p>(f) <u>Effects on water quality, including the ability to comply with the fresh water outcomes in Sections 6-15 and the receiving water standards in Schedule 5;</u></p> <p>(g) <u>Measures to manage erosion effects.</u></p>

NO.	PROVISION	TRUSTPOWER SUBMISSION	REPORTING OFFICER RESPONSE	REPORTING OFFICER RECOMMENDATION	RESPONSE	RECOMMENDED RELIEF
			<p>the presence of existing hydro generation schemes changes may occur in respect of flow regimes. It is noted that Rule 5.117 allows the use and maintenance of structures excluding dams, lawfully established prior to the notification of the PLWRP, as permitted activities. Accordingly, the rule allows existing irrigation infrastructure and also a hydroelectricity scheme except for a dam. Accordingly there is no requirement to include irrigation infrastructure in Rule 5.132. It is considered that the Rule should be amended to make it more consistent with Rule 5.117. It would be appropriate to include maintenance in the Rule but not upgrading as this implies a potential increase in scale.</p>			<p><i>including lakeshore erosion;</i> <i>(h) Measure to avoid, remedy or mitigate adverse effects on sediment transport and river morphology processes;</i> <i>(i) Measures to avoid, remedy or mitigate adverse effects on sites of cultural significance to Ngāi Tahu; and</i> <i>(j) Effects on other authorised takes and diversions.</i></p>