

BEFORE THE

Canterbury Regional Council

IN THE MATTER OF:

The Resource Management Act 1991

AND

IN THE MATTER OF:

The Proposed Canterbury Land and
Water Regional Plan

STATEMENT OF EVIDENCE OF PAUL WHYTE

INTRODUCTION

1. My name is Paul Whyte, and I hold the qualification of a Bachelor of Town Planning from Auckland University. I am a full member of the New Zealand Planning Institute. I have practised in the field of town planning/resource management since 1985, primarily working for both local government and planning consultants in Dunedin and Christchurch. Currently, I am a Senior Planner (Associate) with Beca Carter Hollings and Ferner Ltd (Beca) in Christchurch. I have prepared district and regional plans and plan changes in Southland, Otago, West Coast, Canterbury and the Chatham Islands and I have prepared Section 42A reports for district and regional councils on plans and plan changes.
2. I have prepared evidence in relation to Section 8 Damming and Diversion of Water of the Section 42A Report-Proposed Land and Water Regional Plan (pLWRP)¹. I am responsible for this section of the Report including the recommendations. My evidence at this stage takes the form of an executive summary.

¹ Page 361 of Section 42A Report

3. I have read the Environment Court Code of Conduct for Expert Witnesses issued as part of the Environment Court Practice Notes. I agree to comply with the code and am satisfied that the matters I address in my evidence are within my expertise. I am not aware of any material facts that I have omitted that might alter or detract from the opinions I express in my evidence.

SCOPE OF EVIDENCE

4. My evidence will address the following matters
- A brief background of Section 8
 - Key findings from the submissions
 - Key Issues raised in evidence received

SECTION 8 DAMMING AND DIVERSION OF WATER

5. This section refers to the damming and diversion of water which Regional Councils have the function of controlling under Section 30 of the RMA.
6. Policies 4.39 to 4.45² establish the pLWRP approach to the management of the effects of damming and diverting water bodies, which for the purposes of the policies include wetlands, hapua and coastal lakes. The Policies are directive and outcome focused.
7. The Policies require that adverse effects of diversion and damming of various water bodies be appropriately avoided, remedied or mitigated, in respect of matters such as fish passage, Ngāi Tahu values, ecological values and flood management. The Policies also require that any structure retaining water be appropriately designed to ensure there is no risk of failure.
8. Rules 5.128 to 5.132³ implement the Policies relating to damming and diversion. The rules provide for a progression of activity classes from permitted to non-complying based upon various thresholds, including storage, depth requirements and operating regimes.

KEY FINDINGS FROM SUBMISSIONS

² Pages 365-371 of Section 42A Report

³ Pages 372-378 of Section 42A Report.

9. A number of submissions request amendments relating to such matters as the definition of dams and associated structures, further provisions to distinguish between new infrastructure and established infrastructure, the variation of various thresholds and additional recognition of hydro-electricity facilities.
10. After considering these submissions amendments were recommended to be made to a number of provisions including the following:
 - Amending the definition of “dam” and including a definition of “damming” and amending the definition of “diversion.”
 - Amending Policy 4.41 to refer to “negligible adverse effects” rather than no adverse effects and the addition of other matters to consider.
 - Amending Rule 5.132 in respect of the use and maintenance of existing dams.

KEY ISSUES FROM EVIDENCE

11. The following key issues identified from a preliminary review of the evidence is as follows (although I acknowledge other matters have been raised):

RECOGNITION OF HYDRO ELECTRICITY FACILITIES

12. Further recognition of hydro electricity facilities is requested over and above existing objectives and policies in the pLWRP which primarily are Objectives 3.11, 3.15 and 3.16 and Policy 4.48. Reference in the evidence of submitters is made to the provisions of the Canterbury Regional Policy Statement and the National Policy Statement for Renewable Electricity Generation and the need to give effect to these documents by the amendment of existing objectives and policies and the addition of further policies.
13. At this stage I am of the view that the existing provisions in respect of hydro electricity facilities are satisfactory as recommended by the Section 42A report⁴. Other regional plans such as the Waitaki Catchment Water Allocation Regional Plan also clearly recognise the importance of hydro electricity.

⁴Policies 3.4, 3.7 and 3.16 on page 98 and Policy 4.48 on page 227 of the Section 42A Report

PROVISION FOR EXISTING HYDRO ELECTRICITY FACILITIES

14. Further provision is requested in the Rules section for existing hydroelectricity facilities. In particular, the use and maintenance of existing dams is recommended in the Section 42A report as a controlled activity (Rule 5.132)⁵ while the take, discharge and damming etc is generally a restricted discretionary activity. The evidence submitted requests that these other activities are also treated at least as controlled activities. It is submitted that there is sufficient robustness in the controlled activity status to deal with contentious issues.
15. While controlled rules such as those promoted by Dr Mitchell in his evidence on behalf of Genesis have merit, I consider that a precautionary approach is appropriate at this stage with Council having added discretion in terms of a discretionary activity. This is particularly relevant with the implementation of the National Policy Statement Freshwater Management which could potentially alter some flow regimes. I also note that the NRRP does not provide for the above activities as controlled activities.
16. The evidence also queries whether Rule 5.132 will require existing dams, which are provided for as controlled activities, to apply for a resource consent under Section 20A of the RMA. Given that the dams (particularly large scale hydro electricity dams) generally operate under a resource consent I assume that Section 20A does not apply. However the suggested Rule 5XX on page 23 of Dr Mitchell's evidence has merit and removes any doubt.

NO ADVERSE EFFECTS

17. A number of submitters indicated the policy test of "no adverse effects" is too stringent. This matter is addressed in the evidence of Mr McCallum-Clark.

Paul Whyte
21 February 2012

⁵ Page 378 of the Section 42A Report.