

**BEFORE THE CANTERBURY REGIONAL COUNCIL**

**UNDER** The Resource Management Act 1991

**AND**

**IN THE MATTER OF** Plan Change 4 to the Canterbury Land  
and Water Regional Plan

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**STATEMENT OF EVIDENCE BY CLAIRE HUNTER  
ON BEHALF OF TRUSTPOWER LIMITED  
(29 JANUARY 2016)**

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## 1. INTRODUCTION

### Qualifications and Experience

- 1.1 My full name is Claire Elizabeth Hunter. I hold an honours degree in Environmental Management from the University of Otago. I am a senior resource management consultant with the firm Mitchell Partnerships, which practices as a planning and environmental consultancy throughout New Zealand, with offices in Auckland, Tauranga and Dunedin.
- 1.2 I have been engaged in town and country planning and resource and environmental management for ten years. I have focused on providing consultancy advice with respect to regional and district plans, designations, resource consents and environmental management and environmental effects assessments. I have also provided resource management advice with respect to a number of industrial and infrastructure projects, and/or represented the interests of such providers in plan changes throughout New Zealand. An outline of recent projects for which I have been called upon to provide resource management advice is included at **Appendix A**.
- 1.3 I have been engaged by Trustpower Limited ("**Trustpower**"), to provide evidence in relation to Plan Change 4 ("**Plan Change**") to the Land and Water Regional Plan for Canterbury ("**LWRP**"). In preparing this brief of evidence I have reviewed the summary of submissions on the Plan Change, the further submissions made on Trustpower's submission, and the section 42A report provided by the Council in relation to this matter, which I refer to throughout this evidence.
- 1.4 I have read the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note dated 1 December 2014. I have complied with that Code when preparing my written statement of evidence and I agree to comply with it when I give any oral evidence. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.
- 1.5 My evidence will provide the following:
- a. A summary of Trustpower's interests in the Plan Change;
  - b. An overview of concerns relating to the implications for consenting processes where the terms "preserve" and "prevent" are used;

- c. A discussion of concerns relating to the implications of the inconsistent use of definitions in the Plan Change, particularly the definitions relating to vegetation clearance and inanga spawning habitat and sites;
- d. An overview of concerns about rules in the Plan Change that appear to inadvertently result in consent requirements arising for activities that the Plan Change seeks to exempt;
- e. An overview of concerns relating to permitted thresholds for earthworks; and,
- f. A table (**Appendix B**) outlining my position and recommendations on the relevant provisions of the Plan Change alongside Trustpower's submissions and Council's Section 42A recommendations.

## **2 TRUSTPOWER'S INTEREST IN PLAN CHANGE 4**

- 2.1 Trustpower is one of New Zealand's largest electricity retailers, serving almost a quarter of a million customers, and primarily utilising renewable energy generation sources. Trustpower's generation portfolio consists of 20 hydro-electricity generation schemes and two wind farms. These assets are strategically located around New Zealand, ensuring that electricity is generated close to where it is consumed.
- 2.2 In the Canterbury Region Trustpower owns and operates the Coleridge Hydro-Electric Power Scheme ("**Coleridge HEPS**") and the Montalto and Highbank Power Stations. The Montalto and Highbank Power Stations also form part of the water conveyance infrastructure that comprises the Rangitata Diversion Race ("**RDR**"). Trustpower is a shareholder in the company that owns and operates the RDR; being Rangitata Diversion Race Management Limited.
- 2.3 Trustpower is also strategically developing the Lake Coleridge Project over the medium term. In this regard, Trustpower successfully varied the National Water Conservation (Rakaia River) Order 1988 ("**Rakaia WCO**") in 2013 to enable the future consenting, construction and operation of the Lake Coleridge Project.
- 2.4 The Lake Coleridge Project involves augmenting the use of the Coleridge HEPS in a staged manner so that water stored in Lake Coleridge is able to be utilised for enhancing irrigation reliability on the Canterbury Plains and additional hydro-electricity

generation. The project enables water stored in Lake Coleridge during defined flow conditions to be exempt from the minimum flow and flow sharing restrictions in the Rakaia WCO upon its subsequent release and use for irrigation.

- 2.5 This electricity generation and water storage infrastructure requires Trustpower to undertake various works within the beds of lakes and rivers in order to operate, maintain and upgrade its assets, particularly the Rakaia, Wilberforce and Harper Rivers, and Lake Coleridge. These works include the establishment of structures, the clearance of vegetation, and bed disturbance activities. Trustpower currently hold a number of resource consents from the Canterbury Regional Council for these works.

### **National Policy Statement for Renewable Energy Generation 2011**

- 2.6 Trustpower contended that the National Policy Statement for Renewable Energy Generation 2011 (“**NPSREG**”) is a relevant consideration in light of the implications of the Plan Change for the establishment, operation, maintenance and upgrading of new and existing renewable electricity generation activities in the beds of lakes and rivers. I agree that the NPSREG is a relevant matter and it is not evident that the NPSREG has been given effect to in the development of the Plan Change. The NPSREG is only briefly mentioned in the Section 42A report and does not feature at all in the Section 32 analysis.
- 2.7 As I discuss later in this evidence, I consider that the Plan Change as proposed fails to give effect to several policies of the NPSREG<sup>1</sup> and to suitably provide for new and existing hydro-electricity generation activities in the beds of lakes and rivers in the Canterbury Region.

### **Canterbury Regional Policy Statement**

- 2.8 Section 67(3)(c) of the RMA requires that a Regional Plan must give effect to a Regional Policy Statement. Chapter 7 of the Canterbury Regional Policy Statement 2013 (“**RPS**”) addresses the management of fresh water and notes that fresh water is an essential resource supporting hydro-electric generation activities.

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<sup>1</sup> Specifically, Policies B(a) and (c), C1(a), C2 and E2.

- 2.9 Objective 7.2.1(2) notes the need to ensure the natural character values of wetlands, lakes and rivers and their margins are preserved and protected from inappropriate subdivision, use and development and where appropriate restored or enhanced. Policy 7.3.1 builds on this guidance, noting that natural character values should be preserved or maintained depending on the degree to which natural character remains unmodified or has been altered.
- 2.10 Policy 7.3.2(4) acknowledges the practical implications of renewable electricity generation. This policy exempts the ongoing operation, maintenance and upgrading of existing hydro-electricity generation schemes from the requirements of rules 7.2.3(1) – (3) relating to the natural character of braided rivers and natural lakes.
- 2.11 Chapter 10 of the RPS addresses the management of the beds of rivers and lakes and their associated riparian zones. The RPS notes<sup>2</sup> that these areas accommodate natural, physical, cultural, amenity, recreational and historic heritage values, while significant infrastructure and essential activities are often reliant on these locations.
- 2.12 Objective 10.2.1 of the RPS provides for the subdivision, use and development of river and lake beds and riparian zones, while seeking to protect and enhance the significant values of such areas (where appropriate). Objective 10.2.3 acknowledges the need to prevent damage to essential structures located in the beds/margins of rivers and lakes.
- 2.13 The Chapter 10 policies<sup>3</sup> state that significant adverse effects on the values of rivers and lakes and riparian zones should be avoided unless necessary for the maintenance, operation, upgrade, and repair of essential structures, or for flood protection. In such cases, the remediation or mitigation of adverse effects is encouraged. These areas are to be protected from inappropriate subdivision, use and development, and where appropriate, maintained and/or enhanced. The removal of vegetation and bed material from river beds is to be managed for flood protection, the protection of essential structures and erosion control, provided such management does not adversely affect the values of the river bed or the stability, performance, operation and maintenance, upgrade and repair of essential structures.

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<sup>2</sup> Canterbury Regional Policy Statement 2013, page 115 - 117.

<sup>3</sup> Specifically, Policies 10.3.1, 10.3.2, 10.3.4,

- 2.14 Chapter 12 of the RPS provides policy guidance with respect to the management of the region's landscapes. Objective 12.2.1 requires the identification of outstanding natural features and landscapes and their protection from inappropriate subdivision, use, and development.
- 2.15 As I discuss later in this evidence, I consider that the Plan Change fails to give effect to the RPS. The Plan Change contains provisions that conflict with the RPS' recognition of hydro-electricity generation schemes<sup>4</sup>, its provision for certain activities in the beds of river and lakes and riparian zones<sup>5</sup> and its regard<sup>6</sup> to the requirements of Section 6(b) of the RMA.

### **Submission Points**

- 2.16 Trustpower lodged submissions on various provisions of the Plan Change, including the definitions, objectives, policies and rules. The table attached at **Appendix B** summarises Trustpower's submission points and the comments made on these submissions in the Council Officer's s42A report. **Appendix B** also sets out relief (in terms of the deletion, amendment or retention of provisions) that I consider to be appropriate, to assist the Panel in the decision-making process. I do not intend to discuss the full content of the table today. However, I wish to comment on the key areas of concern identified in Trustpower's submission on the Plan Change.

## **3 DEFINITION OF "HIGH NATURALNESS WATERBODIES" AND OBJECTIVE 3.14**

- 3.1 The Council's Section 42A report<sup>7</sup> outlines the rationale behind the deletion of the definition of the term "Outstanding Fresh Water Bodies" and its replacement with the term "High Naturalness Waterbodies". Trustpower submitted that the definition for "Outstanding Fresh Water Bodies" is redundant, as it only appears in the LWRP at Objective 3.14, while "High Naturalness Waterbodies" appears throughout but is undefined. I note the Section 42A report recommends accepting this submission. I support the Council's view that the removal of the term "Outstanding Fresh Water Bodies" from the Plan Change and its replacement with the term "High Naturalness Waterbodies" along with an associated definition for "High Naturalness Waterbodies"

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<sup>4</sup> For example, Objective 7.2.1, Policy 7.3.2(4), Objective 7.2.4(5) and Policy 7.3.10(2).

<sup>5</sup> For example Objective 10.2.1 and Policies 10.3.1, 10.3.2, 10.3.4.

<sup>6</sup> Reflected by the drafting of Objective 12.2.1.

<sup>7</sup> See pages 143-144 of Section 42A Report Number R15/148.

is appropriate. In my opinion this amendment improves the consistency and clarity of the LWRP for users<sup>8</sup>.

3.2 A consequential amendment to Objective 3.14 arises as a result of the changes to the definitions. I support the Council's recommendation that Objective 3.14 be amended to refer to "High Naturalness Waterbodies".

3.3 Two submitters<sup>9</sup> sought that waterbodies subject to Water Conservation Orders be included in the definition of "High naturalness waterbodies". In this regard, I concur with the Council's view set out in the Section 42A report. That is, not all waterbodies (or sections of waterbodies) subject to Water Conservation Orders will also be High Naturalness Waterbodies. This being the case, I agree with Council that it would be inappropriate to amend the definition of "High Naturalness Waterbodies" to include all waterbodies subject to Water Conservation Orders.

#### **4. POLICIES**

##### **POLICY 4.85A**

4.1 Policy 4.85A of the Plan Change seeks to achieve the "preservation" of indigenous biodiversity, habitats of indigenous fauna and flora, and natural character associated with braided river systems. Preservation is sought by "preventing" the encroachment of activities, and "limiting"<sup>10</sup> vegetation clearance, in the beds and margins of waterbodies.

4.2 The terms "preservation" and "prevention" in Policy 4.85A effectively prohibit activities from locating in the beds and margins of waterbodies. In my view this is not appropriate and conflicts with other sections of the LWRP<sup>11</sup> which envisage activities occurring in such locations. For example, the LWRP includes specific provisions<sup>12</sup> to manage the adverse effects of activities located in the beds and margins of waterbodies. The Plan Change does not seek to amend those provisions. I consider that the values

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<sup>8</sup> I also support the minor consequential amendment of Objective 3.14 that arises from this change of terms.

<sup>9</sup> The Royal New Zealand Forest and Bird Protection Society (submitter no. 52265) and the Fish and Game Council North Canterbury (submitter no. 52310).

<sup>10</sup> The policy exempts (via "...for the purpose of...") some vegetation clearance from consent requirements. This is discussed further below.

<sup>11</sup> Objectives 3.3, 3.20 and 3.21.

<sup>12</sup> For example, Objectives 3.17 and 3.19 (page 50 of the LWRP), Policies 4.86 – 4.92 (pages 72-3 of the LWRP) and Rules 5.136 – 5.140, 5.143, 5.144 and 5.154 – 5.158 of the LWRP.

associated with braided river systems that Policy 4.85A seeks to manage are appropriately addressed by those other LWRP provisions.

4.3 Policy 4.85A also regulates vegetation clearance beyond the extent envisaged by the objectives and other provisions of the LWRP. Relevant objectives<sup>13</sup> seek to protect (not “preserve”) natural character values and to protect “significant” indigenous biodiversity values (rather than all biodiversity values). Policy 4.85A therefore requires amendment to achieve consistency with these LWRP objectives.

4.4 I also note that the drafting of Policy 4.85A appears to be at odds with the definition of the term “vegetation clearance” as follows<sup>14</sup>:

*Vegetation clearance:*

*means removal of vegetation by physical, mechanical, chemical or other means but excludes:*

- a. cultivation or harvesting of forestry, crops or pasture on production land established prior to 5 September 2015;*
- b. clearance for the establishment or maintenance of utilities, infrastructure, or structures;*
- c. removal of a species listed in the Biosecurity NZ Register of Unwanted Organisms or the Canterbury Pest Management Strategy;*
- d. clearance for the purposes of maintaining existing fence lines, vehicle tracks, firebreaks, drains, ponds, dams or crossings; or*
- e. domestic gardening and the maintenance of amenity planting;*
- f. clearance by, or on behalf of, the Canterbury Regional Council for the purposes of maintaining the flood-carrying capacity of a river; or*
- g. exotic vegetation clearance by the Department of Conservation or Land Information New Zealand for the purposes of pest management and maintenance of public access.*

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<sup>13</sup> Objectives 3.17 and 3.19 at page 50 of the LWRP.

<sup>14</sup> Refer to Paragraph H.87, page 112 of the Section 42A report.

- 4.5 As set out, this definition exempts vegetation clearance associated with the establishment or maintenance of structures, utilities, infrastructure and dams. Policy 4.85A refers to the term “vegetation clearance” but then seeks to exempt only certain activities listed in the definition above, but not all. The policy also introduces additional exemptions for vegetation clearance that are not present in the definition above, or variations of the exemptions therein<sup>15</sup>.
- 4.6 Definitions clarify the nature and extent of matters encompassed by a term, thereby assisting to ensure that terms are correctly and consistently used in the interpretation and application of the LWRP. I am of the opinion that the drafting of Policy 4.85A<sup>16</sup> may undermine the exemptions provided by the defined term “vegetation clearance” due to the lack of correlation between the exemptions provided for under the different provisions. This reduces the clarity of the LWRP for users.
- 4.7 Given the fact that Council has seen fit to incorporate exemptions for certain activities into the definition of “vegetation clearance” it is apparent that Council intended for these exempt activities to be provided with a more straightforward consenting regime. I am of the view that the way in which Policy 4.85A operates complicates this. Therefore, I consider that the policy requires amendment to clearly refer to the defined term “vegetation clearance”. I have set out proposed amendments in **Appendix B**.
- 4.8 As noted above<sup>17</sup>, the NPSREG identifies the national significance of renewable energy generation activities and contains related policies that must be given effect to by Regional Plans. The NPSREG sets out the following, summarised, policies relevant to the Plan Change, to which decision makers must acknowledge and have particular regard to:
- Decision-makers are to recognise and provide for renewable energy generation activities (Policy A);
  - Decision-makers are to acknowledge (Policy B) the practical implications of achieving New Zealand’s target for electricity generation from renewable resources, and, (Policy C) the practical constraints associated with the

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<sup>15</sup> For example: habitat restoration is not exempt under the definition. The Policy 4.85A references to pest management, flood control, public access and the operation, maintenance or repair of structures or network utilities do not directly correlate with the drafting of exemptions relating to these matters under the defined term “vegetation clearance”.

<sup>16</sup> As well as other provisions that I discuss below.

<sup>17</sup> Paragraphs 2.6 and 2.7.

development, operation, maintenance and upgrading of new and existing renewable electricity generation activities;

- Regional policy statements and regional and district plans shall include objectives, policies, and methods (including rules within plans) to provide for the development, operation, maintenance, and upgrading of new and existing hydro-electricity generation activities to the extent applicable to the region or district (Policy E2).

4.9 In my view, Policy 4.85A conflicts with the NPSREG, as it would potentially constrain the ability for hydro-electricity generation infrastructure to be located, operated, maintained and upgraded in the beds and margins of waterbodies. Such constraints would be contrary to the requirements of the NPSREG summarised above.

4.10 This de-facto prohibition approach also conflicts with Section 10 of the RPS<sup>18</sup>. The RPS envisages the presence of certain appropriate activities in the beds and margins of waterbodies and seeks to manage the effects of activities in these locations. Indeed, the RPS recognises that some structures/activities in these locations are essential for community well-being and therefore require protection.

4.11 In my opinion, Policy 4.85A introduces a regime for activities in the beds and margins of waterbodies that reduces the internal consistency of the LWRP and conflicts with higher order policy documents (i.e. the RPS and NPSREG).

4.12 I consider that the recommended amendments to Policy 4.85A set out in Council's Section 42A report<sup>19</sup> would continue to constrain the development and upgrade of electricity infrastructure. Council's recommended amendment of sub-clause (a) refers to "*preventing further encroachments of activities into the bed, banks and margins of lakes, rivers, wetlands or coastal lagoons*". This may recognise existing activities, but would continue to prevent new activities (or the expansion of existing activities) from encroaching into such areas. I am therefore of the view that despite the recommended amendments, the policy is inconsistent with the NPSREG, RPS and Section 5 of the RMA.

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<sup>18</sup> Canterbury Regional Policy Statement 2013, Chapter 10, Objectives 10.2.1, 10.2.3, 10.3.1.

<sup>19</sup> Refer to Page 112 of the Section 42A report.

4.13 On the basis of these issues, I consider that Policy 4.85A should be deleted.

#### **DEFINITIONS OF “INANGA SPAWNING HABITAT” AND “INANGA SPAWNING SITES” AND POLICIES 4.86A AND 4.86B**

4.14 These policies seek to manage adverse effects on inanga habitat and spawning sites. However the notified version of the Plan Change was unclear as to the spatial extent of the habitats and sites of concern and with regards to the difference between “habitats” and “spawning sites”. Trustpower sought relief by way of inserting references in these policies to enable plan users to identify the locations of inanga habitats and spawning sites by way of the planning maps.

4.15 Council’s Section 42A report recommends<sup>20</sup> the issue be resolved through an amendment to the definition of the term “inanga spawning habitat” and the introduction of a new definition for the term “inanga spawning site”. These changes will clarify the spatial extent of inanga habitats and sites by way of reference to the Planning Maps, as well as clarifying the difference between the terms.

4.16 In my view this will improve the clarity of the LWRP. I therefore agree with the Council’s S.42A recommendations relating to the definitions of “Inanga spawning habitat” and “Inanga spawning site”.

4.17 I consider however that a minor amendment to policies 4.86A and 4.86B (the insertion of a reference to the planning maps in each policy) would enhance the clarity of the Plan Change for users. I have therefore included amendments to achieve this at **Appendix B**.

## **5. RULES**

5.1 Trustpower submitted on Rules 5.163, 5.164, 5.165, 5.166, 5.94A and 5.94C.

### **RULES 5.163 – 5.166**

5.2 With regards to Rules 5.163 – 5.166, Trustpower sought that the framework for vegetation clearance and associated discharges be refined. As currently drafted, the rules refer to vegetation clearance in a general sense – the “removal and disturbance of existing vegetation”. This is presumably applicable to all vegetation removal

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<sup>20</sup> Refer to the discussion and recommendations at pages 40 – 47 of the Section 42A report.

activities. However, intermittently, the rules use the defined term “vegetation clearance”. As I have noted above, the defined term “vegetation clearance” includes some listed exemptions. In my view the rules should be drafted to ensure that Council’s intended exemptions for vegetation clearance associated with the establishment or maintenance of utilities, infrastructure, or structures are not inadvertently extinguished. This is consistent with Trustpower’s submission which sought to align Rule 5.163 with the definition of “vegetation clearance”.

- 5.3 I agree with the drafting of a rule that ensures the exemptions under the “vegetation clearance” definition are expressly permitted under Rule 5.163. This will avoid inadvertently triggering a consent requirement (pursuant to Section 13(2)(a) of the RMA and Rule 5.6 of the LWRP) for vegetation clearance associated with the maintenance of utilities and infrastructure.
- 5.4 To avoid uncertainty about how the exemptions specified under the definition of “vegetation clearance” relate to Rule 5.163, I consider that the inclusion of a method to expressly permit these activities is needed. This could potentially take the form of a stand-alone rule or an amendment to the preamble of Rule 5.163. I have included a draft example of the latter in the table at **Appendix B**.
- 5.5 A further concern arises from the proposed Conditions 9 and 10 to Rule 5.163. Trustpower’s submission opposed Condition 9 as it would require that vegetation clearance in riverbeds must not reduce the area or diversity of existing riverbed vegetation, with a non-complying activity status applying to breaches of this condition.
- 5.6 In my opinion, Condition 9 is an unduly onerous requirement to attach to a permitted activity. It appears to require detailed ecological investigations/surveys to be undertaken to ascertain the extent and diversity of riverbed vegetation. This makes it difficult to ascertain whether an activity would or would not be permitted. Condition 9 also has no regard to the significance of any vegetation that may be sought to be cleared.
- 5.7 Additionally, the application of a non-complying status<sup>21</sup> to activities that contravene Condition 9 is of concern. This could result in a non-complying status for minor vegetation clearance activities, or works, associated with the functioning of existing

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<sup>21</sup> Via Rule 5.165.

renewable electricity generation infrastructure. I would consider this to be an outcome that is contrary to the NPSREG. The NPSREG recognises the national significance of renewable energy activities. It also encourages decision-makers to acknowledge the practical constraints associated with such activities and to provide for existing and new hydro-electricity generation activities in regional plans<sup>22</sup>. A non-complying activity status creates an undue regulatory hurdle for this significant infrastructure.

- 5.8 In this regard, I note a degree of internal inconsistency in the rule framework, whereby breaches of Condition 9 to Rule 5.163 (arising from vegetation clearance) attract a non-complying activity status under Rule 5.165. However very similar breaches (arising from earthworks) of Condition 5 to Rule 5.168 attract a restricted discretionary status under Rule 5.169.
- 5.9 Condition 10 to Rule 5.163 expressly permits discharges arising from the “...maintenance or repair of network utilities and fencing”. These permitted activities do not directly correlate to those included in the exemption for “the establishment or maintenance of utilities, infrastructure, or structures” specified at sub-clause (b) of the “vegetation clearance” definition. This is another example of the disconnection between the use of the defined term “vegetation clearance” and the drafting of the Plan Change.
- 5.10 In light of these matters, I consider that Rules 5.163 – 5.166 require amendment to ensure that a clear delineation is made between vegetation clearance activities requiring consent and those benefitting from the exemptions provided by the definition of “vegetation clearance” at Section 2.9 of the LWRP.
- 5.11 I further consider, for the reasons at paragraphs 5.7 - 8 above, that Condition 9 to Rule 5.163 is inappropriate and should be deleted. This would require a consequential amendment to Rule 5.165 to remove the reference to Condition 9 of Rule 5.163. In the event that Condition 9 to Rule 5.163 is retained, I consider that the rule framework should be amended to ensure that breaches of Condition 9 to Rule 5.163 result in a less onerous assessment pathway that that provided for via a non-complying activity status.

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<sup>22</sup> NPSREG Policies C1 and E2.

- 5.12 I am also of the view that Condition 10 to Rule 5.163 requires amendment to ensure that discharges arising from exempt vegetation clearance for the establishment or maintenance of utilities, structures or infrastructure do not trigger a resource consent requirement.
- 5.13 I also consider that Rules 5.164 – 5.166 require amendment to enable the exemptions contained under the definition of “vegetation clearance” to be provided with a permitted activity status.
- 5.14 I note that the Director General of Conservation (Council reference no. C15C/153077) sought the amendment of Rules 5.163 – 5.166 to introduce a new Condition 11 to Rule 5.163, requiring applicants to obtain landowner permission in order to achieve a permitted activity status for vegetation clearance in waterbodies. In my view this is not appropriate. The RMA is an effects-based statute, rather than a system for the management of landowner approvals. The matter of landowner consent is, in my view, a matter best resolved by a separate process to the assessment of an activity’s effects under the LWRP. I therefore support the Council’s Section 42A position, being the rejection of this submission point by the Director General of Conservation.

#### **RULE 5.94A**

- 5.15 This rule seeks to manage the effects of sediment runoff associated with construction activities on water quality. Trustpower submitted that Rule 5.94A(1)(2) inappropriately nominates a permitted activity threshold of two hectares area for earthworks. Earthworks extending beyond an area of two hectares would be encumbered by a restricted discretionary activity status pursuant to Rule 5.94C.
- 5.16 This restriction on the area of earthworks is despite the fact that Rule 5.94A also contains sub-clauses (2) – (5), which regulate the quality and volume of any discharges from earthworks activities to water. In light of the measurable and enforceable nature of sub-clauses (2) – (5), Trustpower submitted that sub-clause 5.94A(1)(2) is redundant.

- 5.17 The Council's Section 42A report acknowledges Trustpower's submission point, however recommends that the two hectare threshold be retained. Council considers that larger areas of earthworks require additional management and monitoring beyond that provided by a permitted activity status, due to a higher risk of sediment and other contaminants entering surface waterbodies<sup>23</sup>.
- 5.18 I consider the controls established by the permitted activity framework to be appropriate to manage the effects of earthworks outside of erosion-prone areas. Regardless of the area of earthworks involved, Rules 5.94A(2) - (5) set clear thresholds for discharge quality and flow that are measureable and enforceable. It is unclear what environmental benefits would be achieved by way of additional water quality and flow management and monitoring under a restricted discretionary activity status. I therefore do not agree with the conclusions of Council's Section 42A report in relation to Rule 5.94(1)(2) and consider that this sub-clause of the rule should be deleted.

## 6. CONCLUSION

- 6.1 In my view amendments are required to ensure that the LWRP appropriately provides for the benefits associated with the development, operation, maintenance and upgrade of electricity infrastructure. Such infrastructure plays a significant role in supporting the social and economic wellbeing of the Canterbury region and the nation.
- 6.2 In addition to the commentary above, I have set out a number of amendments in the table at **Appendix B** to this evidence. I consider that these amendments will ensure the LWRP is consistent with the NPSREG, RPS, is internally coherent and can be efficiently utilised by Plan users. The recommended amendments will also ensure that the LWRP is consistent with the recognition and provision for matters of national importance as set out at Section 6 of the RMA.

**C Hunter**

**29 JANUARY 2016**

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<sup>23</sup> Refer to paragraph B.63 of the Section 42A report.

# APPENDIX A

## Summary of Recent Project Experience

- Alliance Group Limited – Review of the Southland Proposed Air Plan, preparation of submission and evidence.
- Alliance Group Limited – Review of the Southland and Invercargill District Plans, preparation of submissions and evidence.
- Alliance Group Limited – Review of the Proposed Otago Policy Statement and preparation of submission.
- Alliance Group Limited – Planning advice and preparation of applications with regard to the renewable of key discharge consents for its Lorneville Plant to be filed in November 2015.
- Aurora Energy Limited – Preparation of a resource consent and subdivision application for a new substation proposal in Camp Hill, Hawea
- EPA – NZTA Expressway between Mackays Crossing to Peka Peka, Kapiti Coast Project, Transmission Gully Project plan change and notices of requirements and resource consents – Assisting in the review and section 42A report writing for the Notice of Requirement and various consents required.
- Trustpower Limited - Review of the Otago and Southland Proposed Policy Statements and preparation of submissions.
- Trustpower Limited – Review of Otago Regional Council Plan Change 6A and preparation of submissions and evidence at the hearing on behalf of Trustpower Limited. Participation in Environment Court mediation to resolve issues.
- Trustpower Limited – Review of Clutha District Plan Energy Generation Plan Change and preparation of submissions and evidence at the hearing on behalf of Trustpower Limited.
- Alliance Group Limited – Preparation of statutory assessment to accompany resource consent application to renew its Pukeuri Plant biosolids discharge consent.
- LPG Association of New Zealand Limited – Preparation of evidence and hearing attendance representing the LPGA with respect to Dunedin City Council's Plan

Change 13 – Hazardous Substances. Participation in mediation to resolve LPGA appeal.

- Invercargill Airport Limited – Undertake a comprehensive review of the current management of aircraft noise in the Invercargill Operative District Plan. Review of Invercargill City Proposed District Plan, preparation of submission and evidence.
- Invercargill Airport Limited – Preparation of plan change provisions and section 32 analysis to provide for the future growth and expansion of Invercargill Airport in the Invercargill District Plan.
- Invercargill Airport Limited – Preparation of notices of requirement to amend a number of existing designations in the Invercargill District Plan including obstacle limitation surfaces and the aerodrome.
- Queenstown Airport Corporation – Provision of resource management advice for the airport and its surrounds in particular the runway end safety area extension and preparation of the notice of requirement, gravel extraction applications to both regional and district councils and other alterations required to the aerodrome designation.
- SouthPort Limited – Prepared and presented evidence on behalf of SouthPort in regards to proposed plan changes to the Southland Regional Plans and Invercargill District Plan.

# **APPENDIX B**

## Amendment Table

SECTION 2.9 DEFINITIONS, TRANSLATIONS AND ABBREVIATIONS				
PROVISION	TRUSTPOWER SUBMISSION	S.42A COMMENTARY	RESPONSE	RECOMMENDED RELIEF
Definition “High Naturalness Waterbody”	The inclusion of a definition of ‘High Naturalness Waterbody’ in Section 2.9 is supported by Trustpower as it will assist in ensuring consistency across the terminology used in the objectives, policies and rules of the Canterbury Land and Regional Plan.	Notes the comments of submitters 52265 and 52310 who sought the inclusion of water bodies subject to Water Conservation Orders in the definition of “High Naturalness Waterbody”. Considers that WCO waterbodies are not necessarily equivalent to High Naturalness Waterbodies and recommends the relief be rejected.  Notes that the replacement of the term “Outstanding Fresh Water Bodies” with “High Naturalness Waterbody” improves the consistency of terminology across the LWRP. Consequential amendment to Objective 3.14 required.  Refer to Paragraphs M.4 – M.9 of the S.42A report.	I agree with the reasoning of the Council officers and consider that the proposed definition for “High Naturalness Waterbody” should be adopted, the definition for Outstanding Fresh Water Bodies” deleted and a consequential amendment made to Objective 3.14.	Insert the definition for “High Naturalness Waterbody” as set out in the Council’s S.42A report and below.  Delete the definition for “Outstanding Fresh Water Bodies”.  Undertake a consequential amendment to Objective 3.14 to revise the wording in accordance with the changes above.  <i>High Naturalness Waterbody:</i>  <u>means those hāpua, wetlands and natural state water bodies which are considered to have outstanding or significant characteristics and which are listed as high naturalness water bodies in Sections 6 to 15 of this Plan.</u>
Definition “Outstanding Fresh Water Bodies”	The deletion of the definition of ‘Outstanding Fresh Water Bodies’ from Section 2.9 is supported by Trustpower as the term was only used in Objective 3.14 of the Canterbury Land and Regional Plan and was largely redundant.  In this regard, there are no policies or rules that seek to manage the potential effects of activities on outstanding fresh water bodies.	Refer to the comments in the row immediately above.	Refer to the comments in the row immediately above.	Delete the definition of “Outstanding Fresh Water Bodies”.
Definition “Inanga Spawning Habitat”	Trustpower did not directly submit on this provision, but sought amendments via its submission on Policies 4.86A and 4.86B. The resulting conclusions of the Council’s Section 42A report are directly related to Trustpower’s submission on those policies.	The amendment of this definition arises as a result of submissions seeking clarification of the location and extent of areas identified as inanga spawning habitat. The definition is proposed to be amended to refer plan users to relevant maps in order to identify inanga spawning habitat.	I consider that this amendment is appropriate and will enhance the clarity of the provisions relating to inanga spawning habitats for Plan users. I therefore support the recommendations of the Council’s S.42A report.	Amend the definition of “Inanga Spawning Habitat” as follows:  <i>Means that part of the bed and banks of a lake, <u>permanently or intermittently flowing river or artificial watercourse, coastal lagoon or wetland that is between mean high water springs and mean low water neaps and is within the area identified as ‘inanga spawning habitat’ on the Planning Maps.</u></i>
Definition “Inanga Spawning Site”	Trustpower did not directly submit on this provision (it is a new recommendation of the Section 42A report). However, Trustpower sought amendments via its submission on Policies 4.86A and 4.86B. The resulting conclusions of the Council’s Section 42A report and the introduction of this definition are directly related to Trustpower’s submission on those policies.	The introduction of this definition arises as a result of submissions seeking clarification of the location and extent of areas identified as inanga spawning sites. This new definition refers plan users to relevant Planning Maps in order to identify inanga spawning sites.	I consider that this amendment is appropriate and will enhance the clarity of the provisions relating to inanga spawning sites for Plan users. I therefore support the recommendations of the Council’s S.42A report.	Insert a definition of “Inanga Spawning Habitat” as follows:  <i>Means that part of the bed and banks of a lake, <u>permanently or intermittently flowing river or artificial watercourse, coastal lagoon or wetland that is between mean high water springs and mean low water neaps and is within the area identified as an ‘inanga spawning site’ in Schedule 17 and on the Planning Maps.</u></i>

**SECTION 3 OBJECTIVES**

PROVISION	TRUSTPOWER SUBMISSION	S.42A COMMENTARY	RESPONSE	RECOMMENDED RELIEF
Objective 3.14	<p>The proposed amendment of Objective 3.14 to replace reference to 'Outstanding Fresh Water Bodies' with 'High Naturalness Waterbody' is supported by Trustpower.</p> <p>In this respect, the proposed amendment will assist in ensuring consistency across the terminology used in the objectives, policies and rules of the Canterbury Land and Regional Plan.</p>	<p>Notes that this is a consequential minor amendment required to ensure coherence. Refer to Paragraphs M.2 and M.3 of the S.42A report.</p>	<p>Refer to the comments in the rows above regarding the definitions in question.</p>	<p>Amend Objective 3.14 as follows:</p> <p><del>Outstanding fresh water bodies</del> <i>High naturalness waterbodies and hāpua and their margins are maintained in a healthy state or are improved where degraded.</i></p>

**SECTION 4 POLICIES**

PROVISION	TRUSTPOWER SUBMISSION	S.42A COMMENTARY	RESPONSE	RECOMMENDED RELIEF
Policy 4.85A	<p>Policy 4.85A is opposed by Trustpower as it inappropriately seeks to restrict activities in the beds of lakes and rivers, and conflicts with other objectives and policies in the Canterbury Land and Water Regional Plan that manage activities in the beds of lakes and rivers. In particular, the focus on the 'preservation' of indigenous biodiversity, habitats of indigenous flora and fauna and natural character does not align with the objectives in Section 3 of the Canterbury Land and Water Regional Plan – which seek the protection of natural character and significant indigenous biodiversity values.</p> <p>The reference to 'preventing the encroachment of activities into the beds and margins of lakes and rivers' in clause (a) of the policy also suggests that no new activities will be allowed in the bed of lakes and rivers – despite the permitted and discretionary activity rules that apply to activities in the bed of lakes and rivers.</p> <p>Trustpower also consider that Policy 4.85A conflicts with the policies in Section 10 of the Canterbury Regional Policy Statement, which actively seek to provide for activities in the beds of lakes and rivers (including vegetation clearance) subject to the maintenance of significant bed / riparian values and the avoidance of significant adverse effects.</p> <p>Finally, the exception created for vegetation clearance associated with pest control, flood control and the maintenance of public access is considered to be create uncertainty in light of the definition of 'vegetation clearance' in Section 2.9 of the Canterbury Land and Water Regional Plan. In this regard, the definition of vegetation clearance excludes clearance activities required for the establishment and maintenance of utilities, the maintenance of dams, and flood or pest control purposes. However, Policy 4.85A suggests that some of the defined exclusion activities, particularly vegetation clearance for flood or pest control, are still considered to be vegetation clearance</p>	<p>Outlines superior policy document support for the protection of Canterbury's braided river systems and recommends the policy be retained with amendments (refer to paragraphs H.47-8 of the Section 42A report).</p> <p>Recommends amendment of Policy 4.85A to read:</p> <p><i>Indigenous biodiversity, habitats of indigenous fauna and flora, and the natural character of Canterbury's braided river systems is preserved through:</i></p> <p>(a) <i>preventing further encroachment of activities into the beds and margins of lakes and rivers; and</i></p> <p>(b) <i>limiting vegetation clearance within the bed, banks and margins of lakes, rivers, wetlands or coastal lagoons</i></p> <p><i>unless the vegetation clearance is for the purpose of pest management, habitat restoration, flood control purposes, the operation, maintenance or repair of structures or infrastructure network—utilities, or maintenance of public access.</i></p> <p>(S.42A report, Paragraph H.87).</p>	<p>I consider that the Council's proposed amendments to this policy do not sufficiently provide for the development, operation, maintenance and upgrade of renewable energy infrastructure in accordance with the NPSREG.</p> <p>The protection of biodiversity, habitat and natural character that is sought by the policy is adequately achieved through other provisions of the Plan Change (refer to paragraph 4.11 above).</p> <p>The Policy also creates uncertainty around the consistent application of exemptions relating to vegetation clearance.</p> <p>On this basis, I disagree with the conclusions of the Council's S.42A report and support Trustpower's submission seeking the deletion of this policy.</p>	<p>Delete this policy.</p>

	activities. Trustpower submit there is a need for consistency across the definitions, policies and rules of the Canterbury Land and Water Regional Plan with respect to vegetation clearance activities.			
Policy 4.86A	<p>Policy 4.86A is opposed by Trustpower as it does not clearly define the areas considered to be inanga spawning sites and, therefore, where activities should be avoided as a first priority.</p> <p>While Plan Change 4 contains a proposed definition of 'inanga spawning habitat', there is no definition of 'inanga spawning sites' and it is has to be assumed that the application of Policy 4.86A is solely limited to those sites identified in Schedule 17 and on the planning maps of the Canterbury Land and Water Regional Plan.</p> <p>Further, Policy 4.86A is not clear as to whether it only seeks to avoid activities in the beds of lakes and rivers with defined inanga spawning sites and inanga spawning habitats, or also avoid activities outside of the defined spawning and habitat sites – but which may affect these sites. Trustpower submit that greater clarity should be provided in the text of Policy 4.86A.</p>	<p>The Council recommends the retention of provisions to protect inanga spawning habitat and rejects submissions seeking greater protection of such sites (S.42A report, paragraphs A.41 - A.46).</p> <p>However such protection is to be refined in terms of clarification of the policies and areas to which the provisions apply (paragraph A.43).</p> <p>Recommends that amendments to definitions be made to facilitate these clarifications, as follows (refer also to S.42A report paragraph A.90):</p> <p>Amend the definition of "inanga spawning habitat" to read (S.42A, paragraph A.90):</p> <p><i>Means that part of the bed and banks of a lake, <u>permanently or intermittently flowing river or artificial watercourse, coastal lagoon or wetland that is between mean high water springs and mean low water neaps and is within the area identified as 'inanga spawning habitat' on the Planning Maps.</u></i></p> <p>Add a definition of "inanga spawning site" (S.42A, paragraph A.90):</p> <p><i>Means that part of the bed and banks of a lake, <u>permanently or intermittently flowing river or artificial watercourse, coastal lagoon or wetland that is between mean high water springs and mean low water neaps and is within the area identified as an 'inanga spawning site' in Schedule 17 and on the Planning Maps.</u></i></p>	<p>Given the amendment to the definition of "Inanga spawning habitat" and the introduction of a new definition for "Inanga spawning site", I support the recommendations of the Council's S.42A report. These amendments will direct plan users to the relevant maps and enable users to ascertain the spatial extent of the sites and habitats of relevance.</p>	<p>Amend Policy 4.86A as follows:</p> <p><i>Inanga spawning sites are protected through, as a first priority, avoiding activities within the beds and margins of lakes, rivers, hāpua, wetlands, coastal lakes and lagoons that may damage inanga spawning sites <u>identified on the planning maps</u>, and where these activities cannot be avoided, the use of best practicable options to minimise all impacts.</i></p> <p>Amend the definition of "Inanga Spawning Habitat" as recommended by the Council's S.42A report and as outlined earlier in this table.</p> <p>Insert a new definition of "Inanga Spawning Site" as outlined earlier in this table and as recommended by the Council's S.42A report.</p>

Policy 4.86B	Policy 4.86B is opposed by Trustpower as it does not clearly define those waterbodies where works should be avoided between 1 March and 1 June in order to minimise potential effects on inanga spawning habitat. Trustpower submit that this should be addressed in the text of the policy by specific acknowledging that works should be avoided only in those waterbodies identified as inanga spawning habitat on the planning maps.	The amendment to the definition of “Inanga Spawning Habitat” outlined above assists to clarify the geographic extent of the relevant areas.	I am of the view that despite the amendments to the definition of “inanga spawning habitat”, Policy 4.86B retains a degree of ambiguity that could be simply resolved by the insertion of a reference to the relevant planning maps. This would prevent any confusion in enforcing the requirements of the policy.	Amend Policy 4.86B as follows:  <i>Within the beds and margins of lakes, rivers, hāpua, wetlands, coastal lakes and lagoons, damage to inanga spawning habitat identified on the planning maps is minimised by scheduling works to occur outside the inanga spawning period of 1 March to 1 June inclusive where it is practicable to do so, and by extending this period to 1 January to 1 June inclusive, where the works involve vegetation clearance or earthworks, so as to allow sufficient time for regeneration of the habitat.</i>
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**SECTION 5 RULES**

PROVISION	TRUSTPOWER SUBMISSION	S.42A COMMENTARY	RESPONSE	RECOMMENDED RELIEF
Rule 5.163	<p>Rules 5.163 to 5.166 are opposed by Trustpower as the drafting of the rules fails to acknowledge that the definition of ‘vegetation clearance’ in Section 2.9 of the Canterbury Land and Water Regional Plan excludes clearance activities for the purpose of establishing or maintaining utilities or structures (as well as dams).</p> <p>The introduction to Rules 5.163 to 5.166 would appear to apply to vegetation clearance activities for the establishment or maintenance of utilities given that it simply refers to the ‘removal and disturbance of existing vegetation’. However, many of the conditions that apply under the rule refer to the term ‘vegetation clearance’, which would exclude clearance activities for the establishment or maintenance of utilities given the definition in Section 2.9 of the Canterbury Land and Water Regional Plan.</p> <p>Condition 9 also requires that permitted vegetation clearance activities not result in a reduction in the area or diversity of existing riverbed vegetation. Trustpower submit it would be difficult for a user of the riverbed to determine whether an activity will result in the reduction in the diversity of existing riverbed vegetation – which makes the enforceability of Condition 9 problematic.</p> <p>Condition 10 of Rule 5.163 provides an exclusion for the establishment and maintenance of network utilities from the total suspended solid limits applying to discharges from vegetation clearance activities. However, given that vegetation clearance associated with the establishment and maintenance of utilities and structures is not ‘vegetation clearance’, the utilisation of an exemption in Condition 10 appears unnecessary and lacking justification.</p>	<p>The Section 42A report recommends that the rule be retained without amending reference to “<i>the removal and disturbance of existing vegetation</i>” at Condition (2) to the rule.</p> <p>The report also recommends the insertion of requirements for the approval of the landowner to be obtained in order to achieve a permitted activity status for vegetation clearance, at Conditions (2) and (8).</p> <p>The report furthermore introduces and recommends the insertion of Conditions (9) and (10).</p>	<p>As discussed at paragraphs 5.2 – 5.10 of the evidence above, I consider that Rule 5.163 requires amendment to:</p> <ul style="list-style-type: none"> <li>- Include an amendment to expressly permit the removal of vegetation that is exempted under the definition of the term “vegetation clearance”;</li> <li>- Delete Condition 9 as this is unduly onerous and inoperable;</li> <li>- Amend Condition 10 to ensure that the exemptions for discharges align with the exemptions for vegetation clearance generating the discharge in question.</li> </ul>	<p>Amend the rule as follows and re-number the conditions accordingly:</p> <p><i>The introduction or planting of any plant, or the removal and disturbance of existing vegetation (including vegetation clearance exempted by the definition of “vegetation clearance” at section 2.9 of this Plan) in, on or under the bed of a lake or river and any associated discharge of sediment or sediment-laden water in circumstances where sediment may enter surface water is a permitted activity, provided the following conditions are met:</i></p> <ol style="list-style-type: none"> <li>1. <i>The activity does not prevent access to lawfully established structures, including flood protection works, or to flood control vegetation; and</i></li> <li>2. <i><del>No</del> There is no vegetation clearance of vegetation used for flood control or bank stabilisation is disturbed, removed, damaged or destroyed without the prior written permission of the person or agency responsible for maintaining that vegetation for flood control purposes; and</i></li> <li>3. <i>No woody vegetation is disposed of in, on, over or under the bed of a lake or river other than for in situ decomposition of sprayed weeds that were growing in, on, over or under the bed; and</i></li> <li>4. <i>Introduction or planting of vegetation in, on, or under the bed of any lake or river is not of a species listed in the Biosecurity NZ Register of Unwanted Organisms or the Canterbury Pest Management Strategy; and</i></li> <li>5. <i>Introduction or planting of vegetation in, on, or under the bed of any river or lake listed as a high naturalness waterbody in Section 6 to 15 is only of indigenous plant species that naturally occur in the catchment; and</i></li> </ol>

	<p>It is also noted that Rule 5.165 makes any activity that does not comply with Condition 9 of Rule 5.163 a non-complying activity.</p> <p>Trustpower submit that this activity status could have implications for the consenting of infrastructure located in the beds of major rivers (particularly if the rule is deemed to apply to the establishment of utilities). As such, it is considered that any activity that does not comply with Condition 9 of Rule 5.163 be classified as a discretionary activity.</p> <p>In summary, Trustpower consider that Rules 5.163 to 5.166 requires redrafting so that it clearly distinguishes between those activities which constitute vegetation clearance in accordance with the definitions in Section 2.9 of the Canterbury Land and Water Regional Plan, and those which are excluded under the definition.</p>			<p>6. <i>Vegetation clearance in, on, or under the bed of any river or lake listed as a high naturalness waterbody in Sections 6 to 15 is only of:</i></p> <ul style="list-style-type: none"> <li>(a) <i>non-indigenous species; or</i></li> <li>(b) <i>indigenous species that form the understorey of plantation forest that is being harvested and a minimum 5 m set back from the river or lake is provided upon replanting (if replanting occurs); and</i></li> </ul> <p>7. <i>Vegetation clearance does not occur in an inanga or salmon spawning site listed in Schedule 17, or undertaken in any inanga spawning habitat identified on the Planning Maps during the period of 1 January to 1 June inclusive; and</i></p> <p>8. <i>In a flood control rating district scheme area, the introduction or planting of any plant, has the prior written permission of the person or agency responsible for maintaining that vegetation for flood control purposes; and</i></p> <p><del>9. From 5 September 2015, and within the bed of the Clarence, Waiau, Hurunui, Waimakariri, Rakaia, Rangitata, and the Waitaki rivers the vegetation clearance does not result in a reduction in the area or diversity of existing riverbed vegetation; and</del></p> <p>9 <del>40.</del> <i>Except in relation to recovery activities, or the establishment, maintenance or repair of network utilities and fencing, establishment or maintenance of utilities, infrastructure, or structures, the concentration of total suspended solids in the discharge does not exceed:</i></p> <ul style="list-style-type: none"> <li>(1) <i>50g/m<sup>3</sup> where the discharge is to any Spring-fed river, Banks Peninsula River, or to a lake, except when the background total suspended solids in the waterbody is greater than 50g/m<sup>3</sup> in which case the Schedule 5 visual clarity standards shall apply; or</i></li> <li>(2) <i>100g/m<sup>3</sup> where the discharge is to any other river or to an artificial watercourse except when the background total suspended solids in the waterbody is greater than 100g/m<sup>3</sup> in which case the Schedule 5 visual clarity standards shall apply.</i></li> </ul>
Rule 5.164	Trustpower opposed the drafting of this rule given it does not acknowledge the exemptions for certain vegetation clearance provided for by the definition of “vegetation clearance” at section 2.9 of the Plan.	The Section 42A report indicates the reference to “ <i>the removal or disturbance of existing vegetation</i> ” will be retained (paragraph H.87, page 112).	As outlined in paragraph 5.9 of the evidence above, I consider that it is necessary for the drafting of this rule to be amended to refer to “ <i>vegetation clearance</i> ” rather than “ <i>the removal or disturbance of existing vegetation</i> ”.	Amend the rule as follows:  <del>The introduction or planting of any plant, or the removal or disturbance of existing vegetation</del> <u>clearance</u> in, on or under the bed of a lake or river...  The introduction or planting of any plant, or <del>the removal or disturbance of existing</del> <u>vegetation clearance</u> in, on or under the

			<p>The former term has a defined meaning whereas the latter term is undefined. Its use introduces unnecessary ambiguity and conflicts with the exemptions contained in the defined term “<i>vegetation clearance</i>”. Amendment of the rule as recommended will ensure that the exemptions provided in the defined term “<i>vegetation clearance</i>” are able to be exercised.</p>	<p>bed of a lake or river and any associated discharge of sediment or sediment-laden water that does not comply with one or more of the conditions of Rule 5.163, excluding conditions 2 and 4, <del>and 9</del>, is a restricted discretionary activity.</p>
<p>Rule 5.165</p>	<p>Trustpower opposed the drafting of this rule given it does not acknowledge the exemptions for certain vegetation clearance provided for by the definition of “<i>vegetation clearance</i>” at section 2.9 of the Plan. Trustpower also opposed the provision of a non-complying status for vegetation clearance where required for the establishment or maintenance of infrastructure.</p>	<p>The Council’s Section 42A report (paragraphs H.86 – H.87) does not directly comment on Trustpower’s request for the Rule 5.165 non-complying activity status be altered to discretionary for activities that do not comply with Condition 9 of Rule 5.163.</p> <p>The report does however indicate that a change to sub-clause (b) of the definition of “<i>vegetation clearance</i>” will accommodate an exemption for vegetation removal associated with infrastructure as follows:</p> <p><i>(b) clearance for the establishment or maintenance of utilities, infrastructure, or structures;</i></p> <p>The Section 42A report considers that this resolves the concerns of infrastructure operators in relation to constraints on vegetation removal associated with infrastructure.</p> <p>The report also indicates the reference to “<i>the removal or disturbance of existing vegetation</i>” will be retained (paragraph H.87, page 112).</p>	<p>My evidence above (paragraphs 5.7 - .8) in relation to Condition 9 to Rule 5.163 recommends that Condition 9 be deleted. I consider that Condition 9 to Rule 5.163 is unduly onerous in terms of the requirements it places on applicants to proceed as a permitted activity. Applying the condition in practice will be problematic for applicants and the consent authority.</p> <p>If Condition 9 to Rule 5.163 is retained as proposed by the Section 42A report, the consequential effect of Rule 5.165 will be to render minor vegetation removal from the bed of a lake or river, associated with the establishment or maintenance of utilities, infrastructure, or structures (i.e. exempt vegetation as per the definition of “<i>vegetation clearance</i>”), a non-complying activity.</p> <p>This would have significant consequences for the efficient operation of hydro-electricity generation schemes. In my view this would be contrary to the NPSREG.</p> <p>I consider that Rule 5.165 should be amended or deleted as I have indicated in the adjoining column to the right. If Rule 5.165 is deleted, non-compliance with Condition 9 will fall to a restricted discretionary activity status pursuant to Rule 5.164. This will provide Council with scope to consider the effects of vegetation removal without placing undue regulatory constraints on hydro-</p>	<p>In the event that Condition 9 to Rule 5.163 is deleted as sought by the relief set out above, consequentially amend Rule 5.165 as follows:</p> <p><i>The introduction or planting of any plant, or the removal and disturbance of existing vegetation in, on or under the bed of a lake or river and any associated discharge of sediment or sediment-laden water that does not comply with conditions 2 <del>or</del> 9 of Rule 5.163 is a non-complying activity.</i></p> <p><b>OR</b></p> <p>In the event that Condition 9 to Rule 5.163 is retained, consequentially amend this rule as set out above, and undertake further consequential amendments to the rule framework to ensure that non-compliance with Condition 9 triggers assessment under a less onerous pathway than that associated with the assessment of a non-complying activity.</p>

			<p>electric generation schemes. This would also be comparable to the manner in which Council has dealt with similar non-compliance in regards to earthworks under the framework provided by Rules 5.168 and 5.169.</p> <p>If Condition 9 to Rule 5.163 is retained, I consider that Rule 5.165 should be amended to remove reference to Condition 9 and a consequential amendment to the rule framework undertaken to trigger assessment of breaches of Condition 9 under a less onerous assessment pathway than that associated with the assessment of a non-complying activity.</p>	
Rule 5.166	<p>Trustpower opposed the drafting of this rule given it does not acknowledge the exemptions for certain vegetation clearance provided for by the definition of “vegetation clearance” at section 2.9 of the Plan.</p>	<p>The Section 42A report indicates the reference to “<i>the removal or disturbance of existing vegetation</i>” will be retained (paragraph H.87, page 112).</p>	<p>As outlined in paragraph 5.9 of the evidence above, I consider that it is necessary for the drafting of this rule to be amended to refer to “<i>vegetation clearance</i>” rather than “<i>the removal or disturbance of existing vegetation</i>”.</p> <p>The former term has a defined meaning whereas the latter term is undefined. Its use introduces unnecessary ambiguity and conflicts with the exemptions contained in the defined term “<i>vegetation clearance</i>”. Amendment of the rule as recommended will ensure that the exemptions provided in the defined term “<i>vegetation clearance</i>” are able to be exercised.</p>	<p>Amend the rule as follows:</p> <p><i>The introduction or planting of any plant, or <del>the removal and disturbance of existing</del> vegetation clearance in, on or under the bed of a lake or river and any associated discharge of sediment or sediment-laden water that does not comply with condition 4 of Rule 5.163 is a prohibited activity.</i></p>
Rule 5.94A	<p>Rule 5.94A is supported in part by Trustpower as it introduces specific permitted activity rules for the discharge of stormwater associated with construction activities.</p> <p>However, it is unclear why clause 1(2) of Rule 5.94A seeks to limit the area of disturbed land outside of High Soil Erosion Risk Areas.</p> <p>In this regard, it is considered that clauses 2 and 3 of Rule 5.94A provide suitable controls over the quality and quantity of any stormwater being discharged to a waterbody via the limits on the concentration of total suspended solids and the increase in flow in the receiving waterbody.</p>	<p>The two hectare threshold for discharges associated with earthworks [Rule 5.94A(1) (2)] is supported on the basis that larger areas of earthworks have higher risk of discharges of sediment and contaminants and require additional management and monitoring to that provided for under a permitted activity framework.</p>	<p>The focus of Rule 5.94A is on ensuring that the effects of the quality and volume of discharges is managed appropriately.</p> <p>Sub-clauses (2) to (5) of the rule set out measureable and enforceable parameters to ensure that discharges are maintained at acceptable limits.</p> <p>In light of the limits for discharge quality and volume, I consider that sub-clause (1)(2) is redundant and can be deleted</p>	<p>Amend Rule 5.94A as follows:</p> <p><i>The discharge of construction-phase stormwater to a surface waterbody, or onto or into land in circumstances where a contaminant may enter groundwater or surface water, is a permitted activity, provided the following conditions are met:</i></p> <ol style="list-style-type: none"> <li><i>The area of disturbed land from which the discharge is generated is less than:</i> <ol style="list-style-type: none"> <li><del>(1)</del> <i>1000 m2 for any construction-phase stormwater generated as a result of work carried in out in an area shown as High Soil Erosion Risk on the Planning Maps; or</i></li> </ol> </li> </ol>

			without compromising the management regime for discharges that is proposed.	<p><del>(2) two hectares in any other location; and</del></p> <p>2. The concentration of total suspended solids in the discharge shall not exceed;</p> <p>(1) 50g/m<sup>3</sup> where the discharge is to any spring-fed river, Banks Peninsula river, or to a lake except when the background total suspended solids in the waterbody is greater than 50g/m<sup>3</sup> in which case the Schedule 5 visual clarity standards shall apply; or</p> <p>(2) 100g/m<sup>3</sup> where the discharge is to any other river or to an artificial watercourse except when the background total suspended solids in the waterbody is greater than 100g/m<sup>3</sup> in which case the Schedule 5 visual clarity standards shall apply; and</p> <p>3. The discharge does not result in an increase in the flow in the receiving waterbody at the point of discharge of more than 1% of a flood event with an Annual Exceedance Probability of 20% (one in five year event); and</p> <p>4. The discharge is not from, into or onto contaminated or potentially contaminated land; and</p> <p>5. The discharge does not contain any hazardous substance.</p>
Rule 5.94C	Rule 5.94C is supported by Trustpower as it introduces a restricted discretionary activity status for the discharge of stormwater associated with construction activities where the permitted activity conditions are not satisfied.	Retain Rule 5.94C.	I consider that the provision of a restricted discretionary framework for discharges to water that do not satisfy the conditions for a permitted status under Rule 5.94A is appropriate. This will enable assessment of the effects (both positive and adverse) associated with a discharge that exceeds the permitted quality and quantity limits.	Retain this rule.