

## Josephine Laing

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**From:** Amelia Ching <aching@doc.govt.nz>  
**Sent:** Thursday, 17 September 2020 7:23 PM  
**To:** Plan Hearings  
**Cc:** Dean van Mierlo; Murray Brass; Kate McArthur (kate@kmwater.co.nz); Tom Drinan; Nicholas Dunn; Anita Spencer  
**Subject:** PC7 to CLWRP - Rebuttal Evidence - DGC  
**Attachments:** PC7 to CLWRP - Rebuttal Evidence Murray Brass - DOC-6430216.pdf

Kia ora

Please find attached the Rebuttal Evidence of Murray Brass for the Director-General of Conservation in relation to Plan Change 7 to the Canterbury Land and Water Plan.

Ngā mihi

### Amelia Ching

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**BEFORE THE CANTERBURY REGIONAL COUNCIL**

Under **The Resource Management Act 1991**

And

In the matter of **a submission on the proposed Plan Change 7  
to the Canterbury Land and Water Plan**

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**Rebuttal Evidence of Murray Brass  
For the Director-General of Conservation**

**Submitter Number: PC7-160**

**Dated 17 September 2020**

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**Department of Conservation**

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## Introduction

1. My full name is Murray John Brass. I have the qualifications and experience set out in paragraphs 3 –8 of my evidence in chief dated 17 July 2020 (EIC).

## Scope

2. In this statement of rebuttal evidence, I cover the following:
  - Provision for Hydro Electric Power in relation to critical habitats and fish passage
  - Nutrient reductions
  - Critical habitat mapping of water races

## Provision for Hydro Electric Power (HEP) Generation

3. The evidence of Jane Whyte and Andrew Feirerabend for Meridian Energy, Nicola Foran for Trustpower, and Phil Mitchell for Genesis seeks changes to further provide for HEP.
4. **Critical Habitat** mapping and rules: Ms Whyte and Mr Feirerabend seek to:
  - Remove mapped layers from Lakes Benmore and Aviemore which are not directly kākahi habitat, and also from anywhere within 100m of HEP assets, and/or
  - Relax controls on HEP activities within CHTIFS mapped areas.
5. Mr Mitchell seeks to extend exclusion of mapped area to 100m from Irishmans Creek culverts, and 40m from any other HEP infrastructure.
6. I disagree that mapped layers should be excluded for arbitrary distances from HEP assets. The mapped layers are intended to identify the locations of habitats, in order to provide a basis for management of those habitats through policies and rules. Regardless of the presence or not of HEP assets in the vicinity, if a location

contains critical habitat for one of the specified threatened species then that is a simple matter of fact, and the mapped layers should accurately reflect that.

7. With regard to kākahi habitat, the background report on which the mapping is based (“Critical Habitat for Canterbury Freshwater Fish, Kōura/Kēkēwai and Kākahi, Allibone and Gray 2018” see section 4.6.1) outlines potential threats to kākahi populations and considers that “all known locations” are critical habitats for kākahi.
8. I consider it would be more transparent and fact-based for the mapped layers to reflect the known actual locations of critical habitats, and to provide any recognition of the national benefits of HEP through policies and rules, should the Commissioners consider that is appropriate.
9. **Policy 4.101** (bed disturbance in critical habitats): Ms Whyte and Mr Feirerabend seek to change this from an ‘avoid’ policy to instead providing that damage or loss of critical habitat be ‘managed’ – that is, remedied, mitigated or offset generally, but only “managed to the extent practical” for the Waitaki Power Scheme (Whyte EIC para 51).
10. I consider that such an approach sets too low a bar by shifting from an ‘avoid’ policy for all activities, and would be inconsistent with Te Mana o te Wai under either the 2014 (amended 2017) or 2020 versions of the National Policy Statement for Freshwater Management as it would place users’ needs ahead of the needs of the water. If there was to be a shift from ‘avoid’, I consider it should be restricted to HEP given that there is a case to treat that differently under the National Policy Statement for Renewable Electricity Generation (NPSREG).
11. **Policy 4.102** (fish passage): Ms Whyte seeks the addition to this policy of a further clause (para 57):

*“considering alternative means of providing fish passage for appropriate species in circumstances where the modification, reconstruction or removal of structures is not practicable or would not provide effective passage.”*

12. My understanding is that this is intended to allow for alternate means (eg trap and transfer of eels) to be used for structures such as large dams where a physical fish pass is not practical or effective. While such a provision was not sought in the DGC's submission, I consider that it would be compatible with my recommendations regarding this policy (my EIC paras 81-98).
13. I note that the National Policy Statement for Freshwater Management 2020 clause 3.26(1) requires that every regional council must include the following Objective (or words to that effect) in its regional plans:
- “The passage of fish is maintained, or is improved, by instream structures, except where it is desirable to prevent the passage of some fish species in order to protect desired fish species, their life stages, or their habitats.”*
14. I consider that the wording proposed for Policy 4.102 at para 98 of my EIC would appropriately sit under that Objective (at least until such time as a full review of fish passage provisions is undertaken), and could also respond to Ms Whyte's evidence if reworded along the lines:
- “Structures ~~enable~~ maintain or improve the safe passage of fish, where that would not enable the passage of any fish species into locations where their passage is currently restricted and where their presence could adversely affect existing populations of indigenous fish species, by:*
- a. the appropriate design, placement, construction, installation and maintenance of new in-stream structures; ~~and~~*
- b. the modification or removal of existing in-stream structures; and*
- c. considering alternative means of providing fish passage for appropriate species in circumstances where the modification or removal of structures is not practicable or would not provide effective passage.”*
15. I note that as a courtesy this revised wording has been provided to Fish and Game, and I understand they are in agreement with the suggested changes.

16. **Rule 5.163** (vegetation planting or removal): Ms Whyte (para 51) seeks to permit vegetation removal within mapped critical habitats (including Lakes Benmore and Aviemore) where the vegetation is pest plants (e.g. lagarosiphon), or alternatively where the vegetation clearance is associated with the Waitaki HEP.
17. I recognise that the Canterbury Regional Pest Management Plan and the National Policy Statement for Renewable Electricity Generation do provide some justification for less restrictive controls on the activities which they cover. However, removal of vegetation could have significant adverse effects on critical habitats if not appropriately managed, and the other provisions of 5.163 would not be adequate to ensure appropriate management.
18. Under the proposed provisions, activities which do not comply with Rule 5.163 are restricted discretionary activities under Rule 5.164, which is not an unduly onerous status, and regard would be able to be had to the Pest Management Plan or NPSREG when assessing the activity under that Rule. On that basis I do not consider that permitted activity status within mapped critical habitats is warranted.

### **Nutrient Reductions**

19. The planning evidence of Bianca Sullivan for DairyNZ (paras 20-55) and Carmen Taylor for Ravensdown (section 3 and Appendix B) seeks to delay requirements for nutrient reductions and/or remove future requirements for reductions, and to instead make further plan changes in the future if targets are not being met.
20. My EIC and Dr Drinan's and Ms McArthur's EICs for the DGC address the need for nutrient reductions as a consistent theme throughout that evidence. Given the time lag between nutrient discharges and any resulting changes in water quality becoming apparent, and the difficulty of remediating water bodies once they have elevated nutrient levels (see in particular Ms McArthur EIC paras 70-73), I disagree with Ms Sullivan and Ms Taylor and consider that a proactive approach is required to managing nutrients.

21. While my EIC addresses this in terms of the higher order documents as at 17 July 2020, I note that the National Policy Statement for Freshwater Management 2020 came into force on 3 September 2020, and has provided further clarification of Te Mana o te Wai, and strengthened the weight to be applied to it. In particular, regional councils must now “*give effect to*” Te Mana o te Wai (NPSFM 2020 Policy 1 and clause 3.2(2)), not just “*consider and recognise*” it (NPSFM 2014 amended 2017 Policy AA1). I consider it would be inconsistent with Te Mana o te Wai to risk further degradation of water quality in order to provide for human use activities, especially if the approach relies on delayed water standards or reactive future plan changes to remediate adverse effects. Such an approach would directly place social and economic wellbeing ahead of the health and well-being of water bodies and ecosystems, which is the opposite of the hierarchy of obligations set out in clause 1.3(5) of the NPSFM 2020.
22. The approach, by delaying a response, would also be inconsistent with NPSFM 2020 Section 3.13 ‘Special provisions for attributes affected by nutrients’, and with NPSFM 2020 Section 3.20 ‘Responding to degradation’.

### **Critical habitat mapping of water races**

23. The evidence for Selwyn District Council of Nick Boyes (in his Section 3 and Appendix B) raises concerns with the accuracy of critical habitat mapping for artificial watercourses. His concerns relate to whether the maps are an accurate reflection of the actual situation, especially where stock water races no longer exist, and he also opposes the mapping of habitats within ‘artificial watercourses’.
24. The DGC’s submission, and my EIC and Dr Dunn’s EIC, have all supported ensuring that the mapped layers are accurate, so I support Mr Boyes suggestions for changes to mapped layers where this is required to accurately reflect the actual location of habitats.

25. However, I disagree that mapped layers should be removed from all Selwyn District Council administered stock water races on the basis that they are “artificial watercourses”. As a general point, straight channels such as water races can capture natural runoff and incorporate natural watercourses which have been modified or replaced by the channel, so caution should be exercised in assuming they are entirely artificial.
26. More importantly however, the mapped layers are intended to identify the locations of habitats, in order to provide a basis for management of those habitats through policies and rules. Regardless of how a watercourse was developed, if it now contains critical habitat for one of the specified threatened species then that is a simple matter of fact, and the mapped layers should accurately reflect that.



Murray Brass

DATED this 17<sup>th</sup> day of September 2020