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From: Alice Lin <Alice.Lin@genesisenergy.co.nz>
Sent: Friday, 18 September 2020 8:23 AM
To: Plan Hearings
Cc: Karen Sky
Subject: PC7 - Rebuttal Evidence - Genesis Energy Ltd (Submitter ID 422)
Attachments: 20200827 - Genesis Energy - Phil Mitchell PC7 Rebuttal Evidence .pdf

Hi Tavisha

Hope you are well. Please find attached, rebuttal evidence from Phil Mitchell on behalf of Genesis Energy Ltd (submitter ID 422).

I would appreciate it if a receipt confirmation could be provided please. Thanks for your help.

Kind regards

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BEFORE THE INDEPENDENT HEARINGS PANEL FOR PROPOSED PLAN CHANGE 7 TO THE CANTERBURY LAND AND WATER REGIONAL PLAN

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF Proposed Plan Change 7 to the Canterbury Land and Water Regional Plan

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REBUTTAL STATEMENT OF EVIDENCE BY PHILIP HUNTER MITCHELL ON BEHALF OF GENESIS ENERGY LIMITED

18 September 2020

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1. INTRODUCTION

1.1 My full name is Philip Hunter Mitchell.

1.2 I prepared a primary statement of planning evidence, dated 17 July 2020, on behalf of Genesis Energy Limited (**"Genesis"**), in respect of Proposed Plan Change 7 to the Canterbury Land and Water Regional Plan ("**CLWRP**") ("**PC7**") ("**my primary evidence**").

1.3 My experience and qualifications are set out in paragraphs 4 – 12 of my primary evidence.

1.4 I confirm again that I have read the Environment Court's Code of Conduct for Expert Witnesses and agree to comply with it.

2. SCOPE OF REBUTTAL EVIDENCE

2.1 This statement of rebuttal evidence addresses matters raised in the primary evidence of other planning witnesses for hearings of PC7, specifically:

2.1.1 Treena Lee Davidson on behalf of Te Rūnanga o Arowhenua, Te Rūnanga o Ngāi Tahu, Te Rūnanga o Ngāi Tahu and Te Rūnanga o Kaikōura, Te Hapū o Ngāti Wheke, Te Rūnanga o Koukourārata, Ōnuku Rūnanga, Wairewa Rūnanga, Te Taumutu Rūnanga, Te Rūnanga o Arowhenua, Te Rūnanga o Waihao, Te Rūnanga o Moeraki and Te Ngai Tūāhuriri ("**Ngā Rūnanga**"); and

2.1.2 Murray Brass on behalf of the Director - General of Conservation ("**DOC**");

3. EVIDENCE OF TREENA LEE DAVIDSON

3.1 At paragraphs 151 – 153 of her evidence, Ms Davidson states in relation to hydro-electricity generation infrastructure:

Impacts on hydro-electricity generation infrastructure and activities

151. Ngā Rūnanga opposed the amendments to the rules to include a 40 metre buffer from existing hydro-electrical generation structures. The Section 42A Report recommends [at paragraph 5.44] that the 40 metre buffer zone be provided for.

152. I agree with the Section 42A report that the NPSREG requires that regional councils recognise and provide for renewable energy generation activities. I also agree with the Section 42A report at paragraph 5.40 that these are the most relevant policies. The provisions do not however take precedence over those in the NPSFM. Rather, I understand they are to be considered alongside one another. I therefore query the applicability of a 40 metre setback from the structures in all instances and in relation to all works that may take place on these rivers. I suggest an approach that is more aware of the nature of the works required and their likely effects on the habitat; and that requires that these are minimised.

153. This would in my opinion align better with the needs to still provide of Te Hauora o te Taiao and to safeguard the life-supporting capacity, ecosystem processes and indigenous species, including their associated ecosystems of fresh water.

3.2 I agree with Ms Davidson that the provisions of the National Policy Statement for Freshwater Management 2017 ("**NPSFM 2017**") (now superseded by the National Policy Statement for Freshwater Management 2020 ("**NPSFM 2020**"), which came into force after my primary evidence was submitted, and which I address later) and the National Policy Statement for Renewable Electricity Generation 2011 ("**NPSREG**") must be "considered alongside one another", as both need to be given effect to by PC7. As I detailed in my primary evidence[1] Policies A and B of the NPSREG are both important in this context. They state [**emphasis added**]:

[1] At paragraphs 25 - 31.

A. Recognising the benefits of renewable electricity generation activities

POLICY A

Decision-makers shall recognise and provide for the national significance of renewable electricity generation activities, including the national, regional and local benefits relevant to renewable electricity generation activities. These benefits include, but are not limited to:

(a) **maintaining or increasing electricity generation capacity** while avoiding, reducing or displacing greenhouse gas emissions;

(b) maintaining or increasing security of electricity supply at local, regional and national levels by diversifying the type and/or location of electricity generation;

…..

B. Acknowledging the practical implications of achieving New Zealand's target for electricity generation from renewable resources

POLICY B

Decision-makers shall have particular regard to the following matters:

(a) **maintenance of the generation output of existing renewable electricity generation activities can require protection of the assets, operational capacity and continued availability of the renewable energy resource**; and

(b) **even minor reductions in the generation output of existing renewable electricity generation activities can cumulatively have significant adverse effects on** national, regional and local **renewable electricity generation output**; and

(c) meeting or exceeding the New Zealand Government's national

target for the generation of electricity from renewable resources will require the significant development of renewable electricity generation activities.

3.3 Additionally, in my opinion, Section 3.31 of the NPSFM 2020 is directly relevant. It states [**emphasis added**]:

> **3.31 Large hydro-electric generation schemes**
>
> (1) **This clause applies to the following 5 hydro-electricity generation schemes (referred to as Schemes):**
>
> (a) Waikato Scheme
>
> (b) Tongariro Scheme
>
> **(c) Waitaki Scheme**
>
> (d) Manapouri Scheme
>
> (e) Clutha Scheme.
>
> (2) When implementing any part of this National Policy Statement as it applies to an FMU or part of an FMU affected by a Scheme, **a regional council must have regard to the importance of the Scheme's:**
>
> **(a) contribution to meeting New Zealand's greenhouse gas emission targets; and**
>
> **(b) contribution to maintaining the security of New Zealand's electricity supply; and**
>
> **(c) generation capacity, storage, and operational flexibility.**
>
> (3) Subclause (4) applies if:
>
> (a) an FMU or part of an FMU is adversely affected by an existing structure that forms part of a Scheme; and
>
> (b) the baseline state of an attribute in the FMU or part of the FMU is below the national bottom line for the attribute; and
>
> (c) achieving the national bottom line for the attribute would have a significant adverse effect on the Scheme, having regard to the matters in subclause (2).
>
> (4) **When this subclause applies, the regional council:**
>
> **(a) may set a target attribute state that is below the**

> **national bottom line for the attribute, despite clause 3.11(4); but**
>
> **(b) must still, as required by clause 3.11(2) and (3), set the target attribute state to achieve an improved attribute state to the extent practicable without having a significant adverse effect on the Scheme having regard to the matters in subclause (2) of this clause.**
>
> (5) In this clause, existing structure means a structure that was operational on or before 1 August 2019, and includes any structure that replaces it, provided the effects of the replacement are the same or similar in character, intensity and scale, or have a lesser impact.

3.4 Section 3.31 of the NPSFM 2020 reinforces, in my opinion, the appropriateness of incorporating the localised "buffers" around existing hydro-electricity infrastructure and associated structures, as set out in paragraphs 46 – 53 of my primary evidence.

3.5 In paragraphs 154 – 156 of Ms Davidson's evidence, she discusses the section 42A report authors' recommendations in respect of Policies 4.61A and 4.101, stating:

> **Policies 4.61A and 4.101 - Offsetting damage or loss of Indigenous Freshwater Species Habitat**
>
> 154. The submission by Ngā Rūnanga seeks that the offsetting clauses in Policies 4.61A and 4.101 are amended to increase stringency and certainty of the requirements for offsetting. The Ngā Rūnanga submission considers that:
>
> (a) Damage or loss of habitat should only be allowed in exceptional circumstances;
>
> (b) Policies should only allow offsetting if the habitat characteristics are improved, not just maintained; and
>
> (c) The words "or mitigated" in Policy 4.101 negate the intent of the policy to avoid damage or loss.
>
> 155. The Section 42A Report [at paragraphs 5.79 – 5.85] recommends removing the ability to offset from Policies 4.61

> and 4.101. The removal of the ability to offset goes further than the request by Ngā Rūnanga, that offsetting be allowed only in exceptional circumstances. The rationale provided by the Section 42A Report for not providing for offsetting addresses the concerns raised by Rūnanga.
>
> 156. I agree that the policies need to be stronger on the application of off-setting, however, I have no preference between the recommendation of the Section 42A Report and the recommendation in the Ngā Rūnanga submission. I would however suggest clarification as to the subsequent application of the amended policies to the rules framework. I note that where something is not a permitted activity, it falls to be considered as a discretionary activity. I would suggest that where it fails to meet the permitted or discretionary rule it is prohibited as policies 4.61 and 4.101 both use the word avoid, this would apply to Rules:5.71, 5.136, 5.137, 5.138, 5.139, 5.140, 5.140A, 5.141, 5.148, 5.151, 5.152, 5.163, 5.167 and 5.168.

3.6 There are two related issues arising from Ms Davidson's evidence that I consider to be problematic in the context of giving effect to the NPSREG 2011, if the "buffers" I refer to are not included, namely:

(a) Having an "avoid" policy[2], provides no ability to mitigate, offset or compensate for adverse effects on the Critical Habitat of Threatened Indigenous Freshwater Species; and

(b) Including a prohibited activity rule to implement the "avoid" policy.

3.7 Ms Davidson's approach appears not to have considered Policy C2 of the NPSREG which states [**emphasis added**]:

[2] Both policy 4.61A and policy 4.101 are effectively "avoid" policies as per the recommendations of the section 42A report author. Policy 4.61A requires that indigenous biological diversity be preserved by refusing consent applications for water takes where that take would reduce the area or compromise the values of the Critical Habitat of Threatened Indigenous Freshwater Species. Policy 4.101 requires the avoidance of the damage or loss of Critical Habitat of Threatened Freshwater Species from activities such as sediment discharge, vegetation clearance, excavation and disturbance.

> **POLICY C2**
>
> When considering any residual environmental effects of renewable electricity generation activities that cannot be avoided, remedied or mitigated, decision-makers shall have regard to **offsetting measures or environmental compensation including measures or compensation which benefit the local environment** and community affected.

3.8 To give effect to the NPSREG, I consider that PC7 should at least contemplate offsetting measures and environmental compensation being available for consideration when hydro-electricity generation activities may impact on Critical Habitat of Threatened Indigenous Freshwater Species. It therefore follows, that a prohibited activity rule should not be included.

3.9 I also note, as detailed in the evidence of Mr Cain, in stream works associated with the clearance of the Irishman Creek culvert where it passes beneath the Tekapo Canal are required for dam safety purposes. That critical maintenance for ensuring dam safety could be thwarted by the amendments proposed by Ms Davidson, as I discuss further later, and this is precisely the reason why the proposed buffer has been sought.

3.10 At paragraphs 137 – 139, Ms Davidson discusses the definition of "Indigenous Freshwater Species Habitat" / "Critical Habitat of Threatened Indigenous Freshwater Species". She states:

> **The definition of 'Indigenous Freshwater Species Habitat'**
>
> 137. The Section 42A Report suggests that "critical habitat of threatened indigenous freshwater species" is more appropriate than "indigenous species habitat" [paragraphs 5.58 – 5.59]. I agree it is more appropriate to the current suite of rules, however I consider it highlights the concern that the proposed approach only captures a habitat area that may form only part of a species lifecycle (albeit a critical one) and that the drafting of the policies excludes the consideration of other habitats.
>
> 138. The Section 42A Report does not recommend the inclusion

> of species recommended by Ngā Rūnanga and Ngāi Tūāhuriri. I note that, as with the expansion of habitat to include the whole of lifecycles, Ngā Rūnanga gave advice to the Council to inform its drafting that requested the addition of tuna species. This request was also made in the First Schedule Response by Ngā Rūnanga. The Section 32A Report Appendix 4 concludes that discrete habitat protection (i.e.mapped habitat) is not recommended for longfin eel, although they are "at risk, declining", as they are more widely distributed than the 11 mapped indigenous species. I have included as a part of my evidence a map of the extent of both short and long-finned Tuna for the Hearings Panel's consideration. While I appreciate that they are expansive, I am not aware of any discussion with Rūnanga to look at whether or not some areas of habitat could be identified as important habitat areas.
>
> 139. As well as seeking the inclusion of additional taonga species the submission by Ngā Rūnanga also sought that the definition is amended to delete the word 'and' after the comma in the first sentence. Ngā Rūnanga are concerned that, as the definition currently reads, there are two steps to meeting this definition – the first step being that it must be one of the mapped areas and second, that it must contain the habitat of one of the species listed.

3.11 As I understand it, Ms Davidson is proposing that additional taonga species[3] be added to the definition of Critical Habitat of Threatened Indigenous Freshwater Species. The effect of this would be that additional, as yet unspecified, waterbodies could be classified as being Critical Habitat of Threatened Indigenous Freshwater Species, which in turn would subject them to policies proposed by Ms Davidson requiring that adverse effects on those habitats be avoided.

[3] The submission of Ngā Rūnanga seeks that "consideration be given to the inclusion of tuna, pātiki/flounder and tuaki/cockles, their key habitat areas and whether these can be captured by extension of, or incorporation of, additional areas on the maps" on the basis that "the increased protection of these habitats should not be excluded on the basis that they are extensive areas as there are significant risks posed to these species from habitat loss as a result of land and water use activities."

3.12 If any further species / habitat areas are to be inserted into the CLWRP then I consider that this should occur via a specific plan change, which would provide all parties the opportunity to participate in the process required by the First Schedule of the RMA.

3.13 As I understand her evidence, Ms Davidson considers that the definition of Critical Habitat of Threatened Indigenous Freshwater Species currently has two steps - "the first step being that it must be one of the mapped areas and second, that it must contain the habitat of one of the species listed". Ms Davidson considers that only one of these tests should be satisfied for the provisions of the Critical Habitats of Threatened Freshwater Species to apply to an area.

3.14 I consider that such habitats should be both mapped/identified in the CLWRP and be shown to have at least one of the identified species present. I therefore do not support Ms Davidson's recommendation that only one of these two criteria would need to be satisfied.

3.15 Finally, in respect of Ms Davidson's evidence, she states at paragraphs 145 – 150:

> **General submissions on 'Indigenous Freshwater Species Habitat' provisions**
>
> 145. As indicated the Ngā Rūnanga submission broadly supported the inclusion of protection for indigenous fish species habitat. I agree with the Section 42A report analysis [paragraph 5.20] that activities which would disturb the habitat area are a discretionary activity.
>
> 146. I note that the Ngā Rūnanga further submission supported submission point PC7- 160.15 by the Director General of Conservation - that the condition should also apply to dewatering. I do agree with the Director-General that dewatering is an activity that could have adverse effects on freshwater habitats.
>
> 147. Another consideration is the use of "indigenous species habitat" (or now "critical habitat of indigenous species")

throughout the plan. While I understand the purpose of the approach to identify and protect some habitats, I do question if this approach, particularly with regard to policy direction and discretionary and non- complying activities is too narrow as, for example, it stops the consideration of tuna habitat in any circumstances.

148. I suggest that the narrow approach of only including critical habitats of indigenous species does not fully give effect to Objective 9.2.1 of the CRPS which seeks that the decline in the quality and quantity of Canterbury's ecosystems and indigenous biodiversity is halted and their life-supporting capacity and mauri safeguarded. I further suggest it is clearly narrower than what is intended by "significant" in Policy 9.3.1 and Appendix 3, and that it does not provide for the safeguarding of life supporting capacity, ecosystem processes and indigenous species and their associated fresh water ecosystems [CRPS Objective 7.2.3]. Reviewing policies and associated rules with this in mind would go some way towards addressing Rūnanga concerns about ki uta ki tai and tuna health.

149. For example, the Section 42A Report proposes an amendment to new water abstraction policy (4.61A) as follows:

Preserve indigenous biological diversity within water bodies by requiring applications to abstract surface water or stream depleting groundwater to assess the potential effects, including cumulative effects, of the proposed abstraction on any Indigenous Freshwater Species Habitat Critical Habitat of Threatened Indigenous Freshwater Species, and:

a. by refusing any application to take water that would reduce the area or compromise the values of the ~~Indigenous Freshwater Species Habitat~~ Critical Habitat of Threatened Indigenous Freshwater Species …

150. It could be amended to read:

Preserve indigenous biological diversity within water bodies by requiring applications to abstract surface water or stream depleting groundwater to assess the potential effects, including cumulative effects, of the proposed abstraction on

> *indigenous freshwater species habitats and:*
>
> *a. by refusing any application to take water that would reduce the area or compromise the values of Critical Habitat of Threatened Indigenous Freshwater Species*
>
> *…*

3.16 I do not agree with Ms Davidson that the use of the term "Critical Habitat of Threatened Indigenous Freshwater Species" throughout the CLWRP would "narrow" the ability to consider the effects on other species or habitats. Such effects would clearly still be relevant in terms of the evaluation required by section 104(1)(a) of the RMA.

4. EVIDENCE OF MURRAY BRASS

4.1 Mr Brass addresses Policy 4.101 in paragraphs 63 – 74 of his evidence, and states:

> **Policy 4.101 – Discharges, deposits and land uses**
>
> 63. Policy 4.101 establishes the overarching policy to address effects on Critical Habitats of Threatened Indigenous Freshwater Species due to sediment discharges, vegetation clearance, excavation and deposition of material, or other disturbances in a surface water body. It requires effects of habitat damage to be remedied or mitigated, or offset.
>
> 64. The DGC's submission supported the intent of this policy. I also support the intent, and consider that the policy needs to be retained as it provides the fundamental policy requirement for Critical Habitats where they could be affected by discharges, deposits and land use activities.
>
> 65. The DGC's submission requested two changes to the policy – adding reference to 'bed or banks' to ensure that the policy covers riparian margins, and removing the allowance for offsetting for the same reasons as discussed above for Policy 4.61A (para 54 above).
>
> 66. The s42A Report (Part 3: 5.92-94) adopts the request for riparian margins to be included. I support that recommendation, as it recognises the importance of riparian margins as part of the habitat, and it also provides clearer

direction and a logical cascade of provisions through to Rules 5.167, 5.168 and 5.189.

67. The s42A Report also adopts the DGC's request for the removal of provision for offsetting, and has gone further in response to other submissions and also removed the provision for effects to be remedied or mitigated. The result is that the policy would be a direct "avoid' policy, requiring decision-makers to avoid damage or loss of Critical Habitats caused by the specified activities.

68. While I would support the wording as proposed in the DGC's submission, I consider that the s42A recommendation provides a higher level of protection to Critical Habitats, and is a certain and effective approach.

69. The DGC's submission also requested that a new clause be added to Rule 5.154 (damming of water), to require that the damming, operation and impoundment are not within a Critical Habitat.

70. The s42A Report does not consider this request, and includes it within the table of Submission Points Potentially Beyond the Scope of Plan Change 7, on the basis that the submission point was on a rule not altered by the plan change.

71. Although the fundamental policies for Critical Habitat (4.61A and 4.101) do not specifically cover damming, I consider there is a potential basis for viewing the change as being within scope given that the requested change is a consequence of the introduction of new provisions relating to Critical Habitats of Threatened Indigenous Freshwater Species, and is required to ensure that the proposed protection of those habitats extends through the relevant existing plan provisions. The change would also provide consistency with similar provisions proposed for the rules relating to takes, discharges, and land uses, where exclusions for Critical Habitat have been added throughout the plan.

72. I consider that there is no clear reason why dams should be excluded from the Plan's approach to Critical Habitat – the s32 Evaluation Report provides no assistance in this regard,

> with no reference to dams within Section 5.4 'Habitats of indigenous freshwater species' – so there is no evidence that there was an active decision to exclude dams from the coverage of the overall approach. It may be that Policy 4.102 relating to fish passage was intended to cover the effects of damming, but this would seem unlikely given that there are other obvious potential adverse effects relating to the structures, operation and impoundment associated with dams.
>
> 73. If the Panel considers that there is scope to consider the submission point, then I consider that it should be adopted, as the statutory requirements that justify and require protection of Critical Habitats apply just as clearly to the effects of damming as they do to the effects of abstractions, discharges and land uses.
>
> 74. If the Panel considers that there is not scope to consider the submission point, then I would suggest that the regional council will need to address the omission as soon as possible through another plan change, in order to give effect to the RMA and NPSFM.

4.2 For the reasons I provide in paragraphs 3.6 – 3.8 above, I consider that a policy that requires effects on critical habitats to be "avoided" and which does not allow for mitigation, offsetting measures or environmental compensation does not give effect to the NPSREG. Nor would it appear to have had regard to the matters set out in Section 3.31 of the NPSFM 2020 regarding the importance to New Zealand of the 5 large hydro schemes listed there, including the Tekapo Power Scheme.

4.3 Additionally, I do not agree with Mr Brass regarding the ecological effects of damming, for the same reasons.

4.4 Mr Brass addresses Policy 4.47 in paragraphs 116 – 121 of his evidence, and states:

> 116. Turning to the substance of the Policy, Policy 4.47 provides

for small scale diversions of water within the beds of lakes, rivers or adjoining wetlands where the diversions occur as part of specified activities. The proposed plan change adds some environmental protection to clause 'b' which deals with gravel removal and earthworks:

"removing gravel or other earthworks provided potential adverse effects on any person, their property, or the ecological, cultural, recreational or amenity values of the fresh waterbody are minimised;"

117. The DGC's submission supported this change, but requested that it also apply to clause 'a' of that policy, which deals with "establishing, repairing or maintaining infrastructure". Such an approach would provide consistency with Rule 5.140, where the plan change introduces new provisions to address adverse effects of temporary structures and diversions associated with a range of activities.

118. The s42A Report (Part 3: 5.179) recommends that the new provision be retained, with wording changes to improve clarity and consistency. I support this recommendation.

119. However, the s42A Report (Part 3: 5.176) rejects the DGC's request in terms of clause 'a', on the grounds that the change would not be consistent with the direction provided in the CRPS and CLWRP on infrastructure, nor reasonable given the likely small scale of effects of the small-scale diversion of water. The report states *"In considering the submission from DOC on clause (a) of Policy 4.47, I have considered the RMA definition of infrastructure, the CRPS definitions of 'regionally significant infrastructure' and 'critical infrastructure', CRPS policy direction, and the CLWRP Objectives".* Regarding CLWRP objectives, the report refers in particular to Objective 3.3 which relates to nationally and regionally significant infrastructure.

120. However, clause 'a' applies to all infrastructure, not just significant or critical infrastructure. The effect of the s42A Report's approach therefore is that, in order to provide for significant and critical infrastructure, small-scale diversions related to any infrastructure regardless of its significance would be enabled to have the adverse effects outlined. Given

> that the substantial majority of infrastructure will not be significant or critical, I consider that this approach would allow an unreasonable level of adverse effects. I note that simply because a diversion is small scale, does not necessarily mean that its effects are small scale.
>
> 121. I also note that Policy 4.47 is not worded as an absolute 'avoid' policy, so in any consent process for significant or critical infrastructure it would be open to the applicant to claim the benefit of the positive policies relating to significant and critical infrastructure. I consider this approach would better promote sustainable management than would providing a blanket enabling of adverse effects for all infrastructure.

4.5 I do not agree with Mr Brass' proposed amendments to clause (a) of Policy 4.47 for the same reasons as outlined in the section 42A report and referred to in paragraph 119 of Mr Brass' evidence.

4.6 Mr Brass discusses Policy 4.102 in paragraphs 81 – 98 of his evidence. The section 42A author recommended that this policy be deleted, and I agree with that recommendation, accepting, as Mr Brass notes, that the section 42A report also proposed alternative wording, if the Panel was minded to retain Policy 4.102.

4.7 Mr Brass concludes:

> 98. Overall, I consider that the Act and higher order documents do require that fish barriers and passage are addressed, and the justification for the original proposed policy remains. However, I consider that this can be done in a way which does not generally act as a barrier to trout and salmon, and which also addresses the other concerns I have raised above. DOC has consulted with Fish and Game on possible wording, and as a result of that I offer the following suggested wording for the Panel's consideration:
>
> *"Structures enable the safe passage of ~~indigenous~~ fish, ~~while avoiding as far as practicable~~, <u>where that would not enable</u> the passage of any ~~invasive, pest or nuisance~~ fish species <u>into locations where their passage is currently restricted and</u>*

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, ~~reconstruction~~ or removal of existing in-stream structures."

4.8 I do not agree with Mr Brass' proposal to amend Policy 4.102 and consider that the policy should be deleted for the reasons outlined in the section 42A report. In the event the Panel sought to retain Policy 4.102, in my opinion, it should only apply to Critical Habitats of Threatened Indigenous Freshwater Species (rather than more generally), and that a specific exemption be made for hydro-electricity generation structures, noting also that Mr Brass' amendments would appear to go further than what is contemplated by clause 3.26(5) of the NPSFM 2020 which only serves to "promote" fish passage "where practicable".

5. CONCLUSIONS

5.1 Having reviewed the planning evidence of other parties in respect of the PC7 hearings, my conclusions remain as set out in my primary evidence.