

**BEFORE A HEARINGS PANEL APPOINTED BY
THE CANTERBURY REGIONAL COUNCIL**

UNDER the Resource Management Act 1991
(**RMA**)

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

AND

IN THE MATTER OF submissions and further submissions
lodged by Trustpower Limited

LEGAL SUBMISSIONS ON BEHALF OF TRUSTPOWER LIMITED

MAY IT PLEASE THE COMMISSIONERS:

Introduction

1. Trustpower Limited (**Trustpower**) made a submission and further submissions on proposed Plan Change 7 to the Canterbury Land and Water Regional Plan (**Plan Change 7**).
2. Trustpower owns and operates, within the Canterbury region, the Montalto and Highbank Hydro-Electric Power Stations which are situated on the Rangitata Diversion Race, as well as the Coleridge Hydro-Electric Power Scheme.

3. Trustpower's schemes are regionally significant infrastructure as defined in the Canterbury Regional Policy Statement.¹ Various maintenance activities are undertaken by Trustpower in relation to its assets, and these activities are affected by the provisions of Plan Change 7, specifically in relation to the Coleridge Scheme.
4. This is as a result of the provisions within Plan Change 7 which define, map and protect indigenous freshwater species habitat.
5. Ms Foran, Lead Environmental Advisor with Trustpower, provides expert evidence in support of Trustpower's submission, acknowledging that her duty as an expert witness is to the Commissioners and not her employer. I note that subsequent to Ms Foran's Statement of Evidence being prepared, the National Policy Statement for Freshwater Management 2020 (**NPSFM**) has been gazetted.
6. In these submissions I address the following matters:
 - (a) The Coleridge scheme and related maintenance / monitoring activities;
 - (b) Current rule framework for maintenance and monitoring activities;
 - (c) Plan Change 7;
 - (d) Policy direction – integration with renewable electricity generation;
 - (e) Permitted activity rules;
 - (f) Policy 4.102 regarding fish passage.

¹ The definition of "regionally significant infrastructure" includes "national, regional and local renewable electricity generation activities of any scale".

The Coleridge Scheme and related maintenance / monitoring activities

7. The Coleridge Scheme diverts water from the Harper and Wilberforce Rivers, through canals, into Lake Coleridge. Intake structures for the power station are located at the south-eastern end of the Lake. The Coleridge Power Station discharges water back into the Rakaia River.
8. The Coleridge Scheme utilises a range of structures, including to provide valuable real time monitoring information on hydrological conditions. For Trustpower, it is critical that these monitoring structures are able to be maintained so that they can continue to provide hydrological data. In addition, on occasion new monitoring structures need to be installed to provide additional information or to replace redundant structures.
9. Examples of these structures are described, and photographs provided, in the Statement of Evidence of Nicola Foran dated 17 July 2020.²

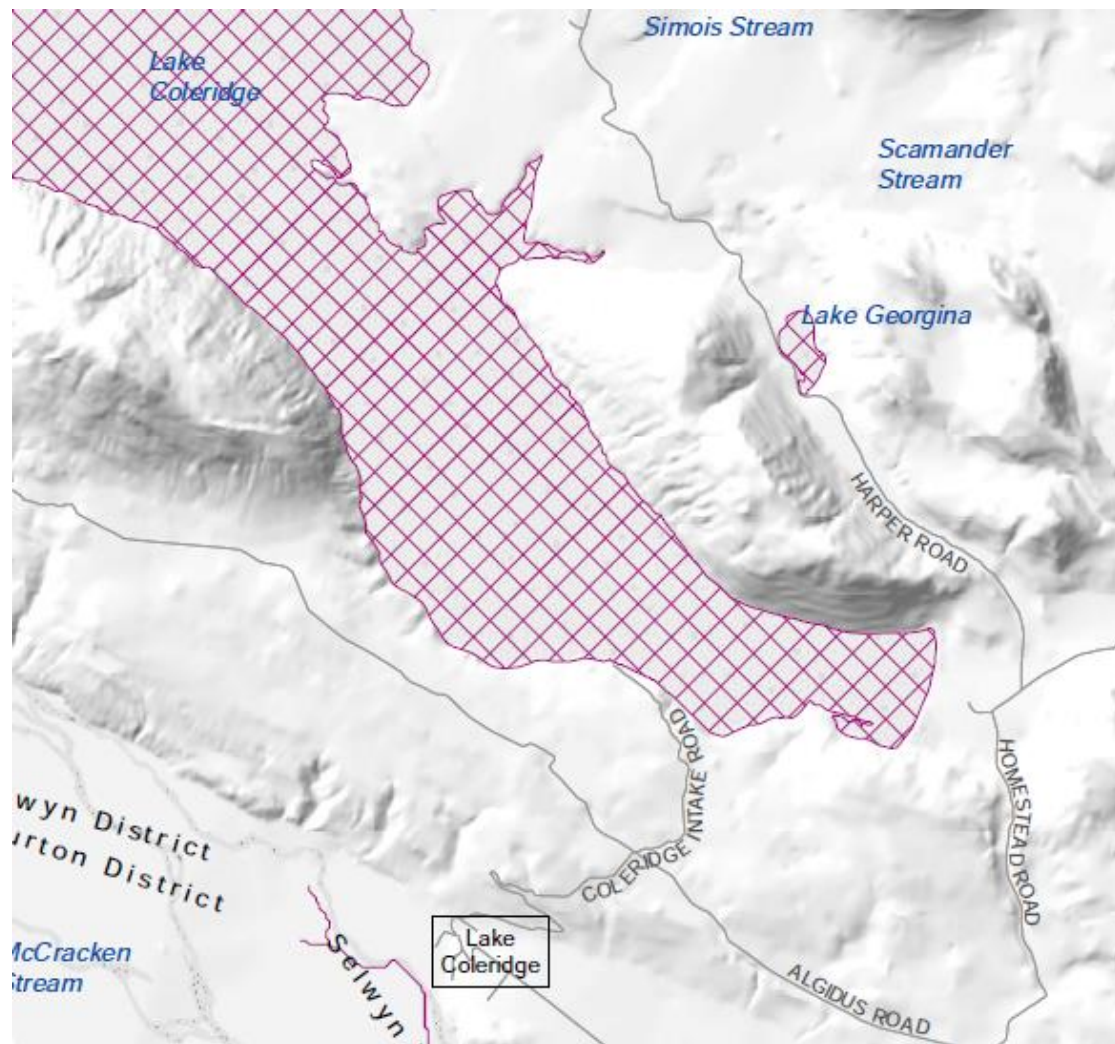
Current rule framework for maintenance and monitoring activities

10. These maintenance and monitoring activities are currently conducted as permitted activities under rules 5.139, 5.140A and 5.141 of the Canterbury Land and Water Regional Plan (the **Regional Plan**).
11. The Regional Plan contains controlled activity rule 5.125C, which provides for hydroelectricity generation activities associated with the Coleridge Scheme. Although the rule itself refers to activities “that had been lawfully established prior to 1 November 2016”, it goes on to refer within the rule, and within condition 1 to the rule, to the replacement of an existing resource consent. Rule 5.125C has not anticipated resource consent applications for hydroelectricity generation activities associated with the named schemes that have operated as lawfully established permitted activities.

² Paragraphs 4.8-4.13 and Figures 1-3.

Plan Change 7

12. Plan Change 7 introduces the mapping of Indigenous Freshwater Species Habitat, which covers Lake Coleridge. For example:³



13. The implication of this is that Trustpower will not be able to meet conditions of the proposed amendments to the permitted activity rules (5.139-5.141), which are that the activities are not undertaken within mapped Indigenous Freshwater Species Habitat. As currently proposed, its maintenance and monitoring activities would default to be considered under rule 5.141A which is a discretionary activity. The policy direction of Plan Change 7 (for example,

³ Map B-048.

policies 4.101 and 4.61A) is to avoid adverse effects/refuse resource consents within mapped Indigenous Freshwater Species Habitat. Trustpower's concern is that this:

- (a) Creates ambiguity about how those rules interrelate with rule 5.125C; and
- (b) Do not appropriately address existing maintenance and monitoring activities associated with regionally significant infrastructure.

Mapping of Indigenous Freshwater Species Habitat

- 14. Amending the mapping of Indigenous Freshwater Species Habitat would be one way to address Trustpower's concerns in respect of existing structures, and Trustpower sought this relief in its submission with respect to the weir and intake structures at Lake Coleridge.
- 15. The s 42A report agrees with Trustpower that the restrictions associated with the definition and mapping should not impact on existing renewable generation infrastructure and associated operation and maintenance activities in the immediate vicinity of this infrastructure.⁴ However, the relief suggested is to include a 10 metre 'buffer' within the definition:

means the area of the bed and the riparian margin of a surface water body that is:

- a. **within ten metres of any surface water, as measured at any time, located within the upstream and downstream extents of a line on the Planning Maps identified as 'Critical Habitat of Threatened Indigenous Freshwater Species';** and
- b. within an area identified as 'Critical Habitat of Threatened Indigenous Freshwater Species' on the Planning Maps

⁴ Section 42A report, paragraph 5.41.

16. From Trustpower's perspective this creates uncertainty, and its preference (and I submit the preferable, and achievable outcome) would be to deliver certainty through the mapping layer.

Policy direction - integration with renewable electricity generation

17. Trustpower seeks amendments to the policy direction within Plan Change 7, to more appropriately integrate it with the policy direction in the National Policy Statement for Renewable Electricity Generation, and the Regional Plan (**NPSREG**).
18. The amendments sought are twofold:
 - (a) In relation to Policy 4.61A, which applies to applications for resource consent to "abstract" surface water; and
 - (b) In relation to Policy 4.101, which relates to sediment discharges, vegetation clearance, excavation and deposition of material, or other disturbance in a surface water body.
19. The policies are of concern for Trustpower when considering how they might relate to an application made under the controlled activity rule 5.125C. As notified, although Policy 4.61A contains a direction to refuse any application to take water that would reduce the area or compromise the values of the Indigenous Freshwater Species Habitat, it also includes an exception for an application to take water for a community water supply. The s 42A report proposes to remove that exception.
20. This creates some ambiguity as to how an application to replace the resource consents at the Coleridge Scheme under rule 5.125C, some of which take surface water, integrate with Policy 4.61A which would be a policy consideration for the consent authority under s 104 of the RMA. The ambiguity

is brought into more focus as the Indigenous Freshwater Species Habitat layer relates to the whole of Lake Coleridge.

21. It is Trustpower's submission that in light of the national significance of renewable electricity generation activities, as acknowledged by the NPSREG, and the regional policy recognition of the national benefits of existing hydro-electricity generation,⁵ an appropriate integration of the protection of indigenous biodiversity with the operation of existing renewable energy generation facilities would be to reinstate the exception for community water supply and include existing hydro-electric power schemes.⁶ The corollary of this is to re-instate the second limb of the policy, which seeks to allow the significant adverse effects of such activities to be offset.
22. As notified, Policy 4.101 had a strong avoidance directive with a remediation, mitigation and offset regime. The s 42A recommendation is to remove the remediation, mitigation and offset regime. Trustpower similarly considers that a more appropriate integration of the protection of indigenous biodiversity with the operation of existing renewable energy generation facilities would be to seek minimisation of adverse effects by requiring remediation, mitigation and where appropriate offsets.

Permitted activity rules

23. For the same reasons, Trustpower has sought that permitted activity rule 5.139, relating to the use and maintenance of structures, excluding dams, on, in or under the bed of a lake or river, be amended. It currently contains an exception for bridges, culverts, pipes, ducts, cables and wires and their associated support structures, and Trustpower's submission is to include "or structures associated with existing hydro-electricity generation activities".

⁵ Policies 16.3.3 and 16.3.4 of the Canterbury Regional Policy Statement, Policy 4.51 of the Regional Plan.

⁶ As suggested by Nicola Foran at paragraph 5.22 of her Statement of Evidence.

24. On a slightly separate note, Trustpower has submitted that permitted activity rule 5.140A (related to activities associated with monitoring, measuring, or taking samples) be retained as it is in the operative Regional Plan. This is on the basis that effects on the environment from equipment associated with monitoring, measuring, or taking samples are generally insignificant, and that the rule may be counter intuitive as an impediment to environmental monitoring.

Policy 4.102 regarding fish passage

25. Trustpower had opposed Policy 4.102 regarding fish passage, and agrees with the recommendation of the s 42A report to delete the proposed policy. I note however that the NPSFM has been gazetted subsequent to the preparation of the s 42A report, and Ms Foran's evidence.

26. The NPSFM provides at 3.26(1):

Every regional council must include the following fish passage objective (or words to the same effect) in its regional plan(s):

"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."

27. At 3.26(5), the NPSFM states that every regional council must make or change its regional plan(s) to promote the remediation of existing structures and the provision of fish passage (other than for undesirable fish species) where practicable.

28. Policy 4.102 as notified referred to the "the modification, reconstruction or removed (sic) of existing in-stream structures", and the word "removed" is of concern to Trustpower given the practical difficulties that may be inherent in removing weirs or dams. It therefore suggested amendments in its submission so that the policy with respect to existing structures would read:

b. where reasonably practicable, consider the modification or reconstruction ~~or removed~~ of existing in-stream structures which impede the safe passage of indigenous fish as required by any new or variation to an existing resource consent for that structure.

29. The fish passage provisions in the NPSFM do not refer to 'removal' of existing structures. Therefore, if the Commissioners consider that in light of the NPSFM it is appropriate to retain Policy 4.102, then it is submitted that the policy as sought to be amended by Trustpower gives effect to the NPSFM.

DATED at Tauranga this 27th day of November 2020



Vanessa Jane Hamm
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