

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

An application by **MAJAC TRUST** to vary parts of the Buller River Water Conservation Order relating to the Gowan River.

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**EVIDENCE OF PHILIP HUNTER MITCHELL  
ON BEHALF OF MAJAC TRUST**

**(11 October 2005)**

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## 1. INTRODUCTION

### Qualifications and Experience

- 1.1 I hold the degrees of Bachelor of Engineering (Hons) and Doctor of Philosophy, both from the University of Canterbury. I am the Managing Partner of Mitchell Partnerships, an environmental consulting practice based in Auckland and Dunedin, which I established in July 1997. Previously I was the Managing Director of Kingett Mitchell & Associates Ltd, a firm that I co-founded in 1987.
- 1.2 I am a past president of the Resource Management Law Association, a Full Member of the New Zealand Planning Institute, and was a member of the previous Minister for the Environment's Resource Management Act Reference Group.
- 1.3 I have been undertaking assessments of environmental effects for the past 21 years. My specialist areas of practice are: providing resource management advice to the private and public sectors, facilitating public consultation processes, undertaking planning analyses, managing resource consent acquisition projects (including many for electricity generation projects) and developing resource consent conditions. I have also acted as a Hearings Commissioner on a number of occasions.
- 1.4 Examples of recent projects in which I have had a lead planning and management role are:
  - Tongariro Power Development water related consents.
  - Huntly Power Station air and water consents.
  - Huntly "e3p" resource consents.
  - Kinleith Cogeneration Project resource consents.
  - Southdown Cogeneration Project resource consents.
  - Kiwi Cogeneration Project air discharge permit.
  - Waikato River Water Supply resource consents.
  - Kinleith Forest land use consents.
  - Ashley MDF Plant land use and water related consents.

- Northland LVL Project resource consents.
- Kinleith Complex air and water related consents.
- Tasman Pulp & Paper Mill air and water related consents.
- Methanex air discharge permit.
- Hampton Downs Landfill resource consents.
- Matahina Dam Strengthening Project resource consents.
- Shakespeare Bay Port resource consents.
- Mangere Wastewater Treatment Plant resource consents.
- Lichfield Dairy Factory resource consents.
- West Coast Coal Export Terminal resource consents.
- Kuku Mara Partnership marine farms resource consents.
- Sanford Havelock Marlborough Sounds mid-bay marine farms resource consents.
- Pickering Brownlee Partnership Blowhole Point (Pelorus Sound) marine farm resource consents.
- Pegasus Bay marine farm resource consents.
- Marlborough Mussel Co Marlborough Sounds marine farm resource consents.
- Marlborough Mussel Co Banks Peninsula marine farm resource consents.

1.5 I have been retained by the MAJAC Trust to assist in obtaining the Resource Management Act 1991 (“**RMA**” or “**the Act**”) approvals needed to establish a run of the river hydro-electric power station on the Gowan River. The first of these is to vary the Buller River Water Conservation Order (“**WCO**” or “**the Order**”), following which the necessary resource consents would need to be obtained.

1.6 I acknowledge that I have read the code of conduct for expert witnesses contained in the Environment Court Practice Note at [2005] NZRMA 193 and I agree to comply with it.

### **Scope of Evidence**

1.7 In my evidence I will:

- Summarise the RMA framework within which this application is to be assessed.
- Evaluate the proposal against that framework.

## 2. RESOURCE MANAGEMENT ACT 1991 FRAMEWORK

2.1 The WCO came into force on July 2001. It lists those waters of the Buller River and its tributaries that are to be retained in their natural state (Schedule 1) and those outstanding characteristics that are to be protected (Schedules 2 and 3, although Schedule 3 only relates to Lake Matiri and the Matiri River).

2.2 Section 8 of the WCO states:

### 8. Restrictions on alterations of river flows and form—

- (1) No resource consent may be granted or rule included in a regional plan—
  - (a) if the effect of the resource consent or rule would not generally maintain the channel cross-section, meandering pattern, and braided river channel characteristics of the form of any river specified in Schedule 2:
  - (b) if the effect of the resource consent or rule would alter the naturally occurring instantaneous flow of the water in any river specified in Schedule 2 by more than 5%.
- (2) The restriction in subclause 1(a) does not apply in respect of dams, weirs, roads, fords, bridges, access ways, or fish passes lawfully existing on the date this order comes into force.
- (3) Despite anything in subclause (1),—
 

...

  - (c) **any change in flow permitted in the Gowan River, item 11 (sic) of Schedule 2, must not be—**
    - (i) **greater than 15% of the naturally occurring instantaneous flow whenever that flow is 9 cumecs or more; or**
    - (ii) **greater than 5% of the naturally occurring instantaneous flow whenever that flow is less than 9 cumecs. [emphasis added]**

2.3 Importantly, the only characteristic the WCO serves to protect through Schedule 2 for the Gowan River is “Rafting”. The WCO and Schedule 2 do not require that the Gowan River be preserved in its natural state and instead a minimum flow regime is stipulated to protect rafting.

- 2.4 The application by MAJAC Trust to vary the WCO seeks amendments to clause 8 of the order, as follows:

**Amend** clause 8(3)(c) to read:

- (c) Subject to diversions and discharges permitted pursuant to clause 8(3)(d) hereof, any change in other flows permitted in the balance Gowan River, Item 10 of schedule 2, which are not permitted pursuant to clause 8(3)(d), must not be -
- (i) greater than 15% of the naturally occurring instantaneous flow whenever that flow is 9 cumecs or more; or
  - (ii) greater than 5% of the naturally occurring instantaneous flow whenever that flow is less than 9 cumecs

**Add** a new clause 8(3)(d) to read:

- (d) No diversion or discharge shall occur in the Gowan river within 2 kilometres of riverbed distance of either Lake Rotoroa or the confluence of the Buller and Gowan Rivers and otherwise diversion and discharge may only occur if:
- (i) The naturally occurring instantaneous flow is 9 cumecs or more;
  - (ii) The full naturally occurring instantaneous flow is able to be restored by telemetry controls from time to time for periods of no less than one and a half hours to protect its rafting amenity."

**Or**

Any alternative remedy which would allow resource consent to be granted to an application in the nature of that annexed hereto with respect to the Gowan River.

- 2.5 Section 207 of the RMA sets out the overall framework for considering this application. It states:

In considering an application for a water conservation order, a special tribunal shall have particular regard to the purpose of a water conservation order and the [other] matters set out in section 199 and shall also have regard to —

- (a) The application and all submissions; and
- (b) The needs of primary and secondary industry, and of the community; and
- (c) The relevant provisions of every national policy statement, New Zealand coastal policy statement, regional policy statement, regional plan, [district plan and any proposed plan].

- 2.6 Section 199 (which is to be had regard to under section 207) states:

1. Notwithstanding anything to the contrary in Part 2, the purpose of a water conservation order is to recognise and sustain—
  - (a) Outstanding amenity or intrinsic values which are afforded by waters in their natural state:

- (b) Where waters are no longer in their natural state, the amenity or intrinsic values of those waters which in themselves warrant protection because they are considered outstanding.

2. A water conservation order may provide for any of the following:

- (a) The preservation as far as possible in its natural state of any water body that is considered to be outstanding:
- (b) The protection of characteristics which any water body has or contributes to, and which are considered to be outstanding,—
  - i. As a habitat for terrestrial or aquatic organisms:
  - ii. As a fishery:
  - iii. For its wild, scenic, or other natural characteristics:
  - iv. For scientific and ecological values:
  - v. For recreational, historical, spiritual, or cultural purposes:
- (c) The protection of characteristics which any water body has or contributes to, and which are considered to be of outstanding significance in accordance with tikanga Maori.

2.7 In relation to section 207(c), there are no relevant national policy statements and clearly the New Zealand coastal policy statement does not apply. The transitional regional planning instruments (prepared prior to the enactment of the RMA) establish a framework of rules and do not contain any policy provisions. As such I do not consider them further.

2.8 The Proposed Tasman Resource Management Plan is well advanced, having been proposed in 1996 and with some provisions scheduled to become operative later this year. As such, the Proposed Tasman Resource Management Plan is statutorily mature such that the relevant statutory documents for this application are the:

- Tasman Regional Policy Statement (“**TRPS**”); and
- Proposed Tasman Resource Management Plan (“**PTRMP**”).

### 3. SECTION 207 MATTERS

#### Section 207(a) – The Application

3.1 As stated above, MAJAC Trust is seeking to vary the WCO by amending clause 8(3)(c) to make reference to a proposed additional clause 8(3)(d), which will set out rules governing allowable rates of water diversion in the Gowan River.

3.2 From my reading of the evidence other witnesses as to the usage of the Gowan, my understanding is that:

- The Gowan River is not frequently used for recreational or commercial rafting because the swift current, shallow rocky riverbed and overhanging willow growth pose a threat to safety.
- The ability to restore the full instantaneous flow of the river by telemetry control will conveniently enable those who wish to raft the river under natural flow conditions to do so.

#### Section 207(a) – Submissions

3.3 The application to vary the WCO received 65 submissions, 63 of which were in opposition. Many of these raise similar issues, while many are not relevant to this particular hearing. To assist the Tribunal I have addressed matters raised in the submissions according to topic rather than by reference to the individual submitters.

3.4 In respect of the effects on rafting, the main areas of concern expressed in submissions<sup>1</sup> seem to be:

- Rapid fluctuations in flow rate and a generally lower flow will pose safety risks.

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<sup>1</sup> These concerns were registered by a variety of submitters including: Lawson Davey, Whitewater Canoe Club Inc., Hutt Valley Canoe Club, Jocelyn Bieleski, Royal Forest and Bird Protection Society Nelson-Tasman Branch and Central Office, Environmental Defence Society Inc., New Zealand Recreational Canoeing Association, Joe Anderson (President Kaimai Canoe Club), Ngati Apa Ki Te Waipounamu Trust, Russell Kiddle, Nelson Canoe Club Inc., Christine Win, Peter and Linda Buss and Rapid River Rafting.

- Development on the Gowan River, and modification of its flow regime will adversely effect its contribution to the “multiple run” characteristics of the area.
- The modified flow regime will adversely effect the contribution of the “wilderness” feeling of the area to the amenity values associated with rafting.
- The requirement for rafters to assess the river and use the telemetry system if its flow is judged inadequate is contrary to the purpose of the WCO and does not protect the rafting amenity of the Gowan River.
- Only large rafting parties will be catered for by the telemetry system, the proposal will have adverse effects on small groups or individuals.
- The Buller Catchment is one of the last remaining areas providing a “source to sea” run. Modification of flow on the Gowan will have an adverse effect on this quality.
- No guarantee can be made that the telemetry system will be failsafe and during technical difficulties rafting amenity will be adversely affected.
- The “telemetry” proposal sets up a potential conflict between MAJAC Trust and rafters over the timing and frequency of flow diversion.
- Without the regular “clean out” of the river associated with regular high flows, broken branches of willow will accumulate and establish, rendering this stretch of the river unusable.

3.5 In respect of these points I note that:

- There will be evidence that the Gowan River is infrequently utilised for the purpose of rafting and that the proposed telemetry system will

conveniently restore full instantaneous flow to those rafters requiring this.

- The proposed addition of clause 8(3)(d) to the WCO will ensure that the “multiple run” and “wilderness” characteristics of the river will be restored via telemetry control, and the amenity values of the river in relation to rafting sustained.
- The proposed clause 8(3)(d) is clearly designed to ensure that all rafters seeking to utilise the river will be able to do so.
- During periods of naturally occurring high flows, and when full instantaneous flow is restored to sustain rafting activities, natural flushing of the watercourse will occur. I note in this regard that “flushing flows” are an integral part of resource consents for hydro-operations elsewhere in New Zealand.
- I understand from the evidence of Mr Swan that the change in flow rates will be greater than natural rates, but that they will still be gradual. The magnitude of changes in flow will, however, be consistent with the natural changes experienced on the Gowan and other rivers throughout the Buller catchment.
- The evidence of Mr Swan is that the intake gates will be designed to be a “fail-safe” system that can be closed by gravity.
- I also note from my experience on the Tongariro River, where there is significant flow modification, that a thriving commercial rafting operation utilises that river and the controlled flow regime makes it more accessible to a wider range of people for more of the time.
- For a raft in the river the only visible man-made structures will occur at the intake immediately below cleared farmland. The balance of the proposed canal works and plant will not be visible from the river.

*Conclusion*

- 3.6 Having considered the nature of the application and the contents of the submissions it is my opinion that the proposed variation to the WCO introduces provisions that will sustain rafting in the Gowan River, as contemplated by the WCO.

**Section 207(b) – Needs of Primary and Secondary Industry and the Community**

- 3.7 In their evidence Mr Leyland and Mr Barrow have explained that:
- New Zealand is at high risk of facing electricity shortages.
  - This situation is a direct result of failing to make sure that adequate generating capacity would be available when needed to match growth in demand.
  - The supply of electricity to the Upper South Island is particularly at risk due to transmission losses and transmission constraints between the source of generation in the southern hydro lakes and Christchurch, and between Christchurch and Nelson.
  - Transpower's plans to address these issues could take up to 10 years to design, consent and implement, with the result that the Upper South Island will face an ongoing threat to its security of supply and potential price hikes. Furthermore, these plans are designed to address issues of transmission security and will not increase generation capacity to meet the rapidly increasing growth in demand in the region.
  - If developed the Gowan hydro scheme would make an important contribution to the national generation capacity, and a particularly valuable contribution to the security of supply to the Upper South Island.

3.8 Mr Copeland has explained that:

- Various factors including the proximity to existing transmission infrastructure contribute to the Gowan River scheme having the potential to generate electricity at a cost of approximately 5 cents per kWh, which is low compared to the cost of new generation from other sources.
- The Gowan River scheme will contribute to the regional economy with an additional 52 jobs and an additional \$2.6 million of regional income for each year of the three-year construction phase of the project – a total of \$7.8 million.
- The Gowan River scheme will generate output sufficient to provide electricity to approximately 7500 households in the region.
- It is unlikely there would be any reduction in economic activity within the Nelson region as a consequence of a reduced number of visitors rafting on the Gowan River. Much more likely would be the diversion of any rafting activity which is displaced to other localities within the region, resulting in no economic loss for the region as a whole.
- Were there a reduction in visitor numbers and expenditure by visitors to the region as a whole as a consequence of reduced rafting on the Gowan River, the net economic cost (i.e. the economic efficiency loss) would only be a fraction of any measured reduction in expenditure by visitors to the region.

*Conclusion*

3.9 In my opinion the application will provide significant benefits for primary and secondary industry, and for communities in the region.

## Section 207(c) – The Relevant Statutory Documents

### Tasman Regional Policy Statement

3.10 The TRPS was made operative on 1 July 2001. It is divided into four parts, namely:

- *Part 1 – Introduction and Interpretation*  
This contains background information, defines scope, and introduces issues and the relationship between statutory planning instruments in the district.
- *Part 2- General Objectives*  
This contains 10 general objectives that reflect the approach taken to promoting the purpose and principles of the RMA.
- *Part 3 – Significant Resource Management Issues*  
This part is further divided into 10 sections, each of which identifies a broad resource management issue in the district. These sections are:
  - 4 – Tangata Whenua
  - 5 – Urban Development
  - 6 – Land Resources
  - 7 – Fresh Water Resources
  - 8 – River and Lake Resources
  - 9 – Coastal Environment
  - 10 – Contamination and Waste
  - 11 – Environmental Hazards
  - 12 – Other Significant Resource Management Issues
  - 13 – Resource Management Processes.
- *Part 4 – Monitoring and Review*  
This sets out the Council's approach to monitoring and reviewing the TRPS.

3.11 Key elements of the TRPS relevant to this application are Objectives 1, 3, 4 and 5 of Part 2 and Sections 7, 8 and 12 of Part 3, each of which I will now discuss.

*Tasman Regional Policy Statement Part 2 – General Objectives*

3.12 The TRPS describes the General Objectives as reflecting “...the approach adopted in Tasman District to the purpose and principles of the Act and its key processes in a manner that is consistent with the Act and appropriate to the circumstances of the District”<sup>2</sup>.

3.13 The key General Objectives of the TRPS relevant to this application are numbers 1, 3, 4 and 5.

3.14 General Objective 1 is the:

“Maintenance and enhancement of the quality of the Tasman District”.

3.15 In explaining this objective, the TRPS describes its intent as being to maintain and enhance the quality of natural resources, features and amenity values afforded by the environment, consistent with the key principles of Part II of the Act. This explanation encompasses the features of the Tasman District that make it “a valued place for living, production and recreation”<sup>3</sup>, and supports a balanced interpretation of this objective reflecting the quality of the Tasman District as a whole. Whilst this objective relates to environmental quality in the broad, a key component of this is the quality of the wider lifestyle needs of people, including their needs for key services such as electricity.

3.16 The proposed variation seeks to limit diversion from the Gowan River to times when the flow exceeds 9 cumecs, the threshold figure identified in the WCO below which diversions of more than 5% were not authorised. The proposed telemetry system will enable full instantaneous flow to be restored on request.

3.17 On this basis I consider that the proposal to vary the WCO will allow resource consent to be sought for a project that will contribute to the enhancement of the quality of the Tasman District, while at the same time sustaining the identified values of the local environment. As such, I consider that the

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<sup>2</sup> TPRS, Page 16

<sup>3</sup> TRPS, Page 16

proposal is consistent with the broader thrust of this General Objective, which includes the provision of necessary services such as electricity.

3.18 General Objective 3 is the:

“Avoidance, remedying or mitigation of the adverse effects on the environment and the community from the use, development or protection of resources”.

3.19 This objective clearly contemplates the use of natural resources and, consistent with section 5(2)(c) of the RMA, requires that adverse effects are avoided, remedied or mitigated.

3.20 The definition of “environment” adopted by the TRPS is broad and mirrors the RMA definition that encapsulates people and their communities as well as the bio-physical environment. The proposed variation will allow resource consent to be sought for a hydro-generation system that would offer renewable hydro-electricity to the people and communities of the Tasman District, consistent with new sections 7(i) and (j) of the RMA. The evidence of Messrs Copeland, Barrow and Leyland is that this will deliver both direct and indirect social and economic benefits to the people and communities of the district.

3.21 Importantly, and unlike various other planning documents, this objective does not ascribe any in-built preferences to the avoidance or remedying of effects, and places mitigation on an equal footing. It is well established<sup>4</sup> that mitigation means a lessening of the rigour or severity of effects and that the inclusion of the word “mitigation” in section 5(2)(c) of the Act, contemplates that some adverse effects from developments may be considered acceptable, no matter what attributes the site in question may have. The extent to which the adverse effects are acceptable is a question of fact and degree.

3.22 The application to vary the WCO avoids many if not all of the effects on rafting and remedies or mitigates any others. As such, the application sits comfortably with this objective.

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<sup>4</sup> Treble Tree v Marlborough District Council W103/96

3.23 General Objectives 4 and 5 are, respectively:

“Efficient use and Development of Resources”

and,

“Maintenance of economic and social opportunities to use and develop resources”

3.24 As explained by other witnesses, the proposed variation to the WCO would allow applications to be made for resource consent to develop a hydro-generation facility that would generate electricity in a region experiencing threats to its security of supply at a time of sustained growth in demand. The facility would be located close enough to major local load centres to supply electricity without substantial transmission losses. This generation would occur under conditions that would ensure the rafting values of the river were sustained, while providing much needed electricity, via efficient means, and maintaining the potential to develop and use the resource in other ways (tourism, commercial rafting etc).

3.25 On this basis I consider that the proposal is entirely consistent with these objectives.

*Tasman Regional Policy Statement Part 3 Section 7 – Fresh Water Resources*

3.26 The TRPS includes the following issues in relation to the significant uses of water resources in the region:

- Issue 7.1 – “Determining the allocation of available water...establishing sustainable water allocation limits for abstractive uses...allocation methods...enhancing the availability of water...allocating water for present or future priority uses or values [and]...allocation procedures...”.
- Issue 7.2 – “Protection of natural, recreational and cultural values of water bodies”.

3.27 Objectives 7.1, 7.2, 7.3 and 7.4, and Policies 7.1, 7.2, 7.3 and 7.4 of this section serve to create a framework to address these two sets of issues.

These provisions state:

Objective 7.1:

Maintenance and enhancement of the natural and cultural values, including natural character, of fresh waters, including recreational, fisheries, wildlife and other instream values.

Objective 7.2:

Fair and efficient allocation of available water to abstractive users on a sustainable basis.

Objective 7.3:

Avoidance, remedying or mitigation of reductions in water availability for sustainable water uses, and the efficient use of such available water, arising from water or land uses.

Objective 7.4:

Maintenance and enhancement of the quality of surface waters and groundwaters for all public uses and values.

Policy 7.1:

The Council will adopt a cautious approach to setting sustainable limits to water allocation for abstractive purposes.

Policy 7.2:

The Council will set water allocation limits for abstractive purposes based on a defined standard of availability of water in drought periods, consistent with the instream and life-support values of the water.

Policy 7.3:

The Council will promote efficiency in water use.

Policy 7.4:

The Council will:

- (i) preserve the natural character of wetlands, rivers and lakes, and
- (ii) protect and enhance or support the protection and enhancement of natural, recreational, cultural, intrinsic, and instream features and values of wetlands, rivers (including karst rivers), and lakes, in particular those that are of international, national, or regional significance;

and in determining significance of such water bodies for such values, the following criteria shall be applied:

- (i) size of the water body; and
- (ii) diversity of species and abundance of populations of indigenous flora and fauna supported by the water body; and
- (iii) rarity of any species of flora or fauna, or of habitat type, associated with the water body; and
- (iv) condition of the water body; and
- (v) special scientific, recreational, cultural, or amenity values of the water body; and
- (vi) recognised international, national, or regional importance of the water body; and in relation to all significant wetlands, rivers, and lakes, the risk adverse effects on their natural, recreational, cultural, intrinsic or instream values shall be relevant to achieving such protection or enhancement.

- 3.28 In my opinion, the emphasis of the proposed variation on recognising and sustaining the identified values of the Gowan River is consistent with these objectives and policies in that it will allow for efficient and sustainable use of the Gowan River while ensuring the identified value of that river as a rafting resource is maintained.

*Tasman Regional Policy Statement Part 3 Section 8 – River and Lake Resources*

- 3.29 Issue 8.2 of this section is the “protection of riverine ecosystems and instream values”. The explanation of this issue recognises that the main rivers and many of their tributaries in the Tasman District have significant recreational, fisheries, wildlife and other natural and cultural uses. It also recognises that the use or disturbance of rivers may damage or destroy fisheries, wildlife or other natural values, through physical modification of the river channel and adverse effects on water flow or quality. The TRPS goes on to state that “protective measures are needed to limit such effects of activities on the healthy functioning of the riverine ecosystem”<sup>5</sup> and that protecting rivers, their margins, and significant habitats from inappropriate development, enhancing amenity values and ecosystem health, and managing water quality are all matters to be addressed.
- 3.30 The relevant objectives of this section are Objectives 8.1, 8.2 and 8.3, and the relevant policies are Policies 8.1, 8.2 and 8.3. These state:

Objective 8.1:  
Maintenance of the stability and efficiency of rivers and floodway lands to carry floodwaters or sediment.

Objective 8.2:  
Maintenance and enhancement of natural and other instream values of rivers, lakes and streams.

Objective 8.3:  
Recreational and other activities on and in rivers and lakes that avoid, remedy or mitigate adverse effects on each other.

Policy 8.1:  
The Council will seek to maintain the stability and efficiency of river channels and floodway land.

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<sup>5</sup> TRPS, p79

Policy 8.2:

Council will avoid, remedy or mitigate adverse effects of activities in river and lake beds on intrinsic, recreational, cultural, and other instream values of rivers, lakes and streams.

Policy 8.3:

The Council will avoid or minimise conflicts between recreation and other activities on the surface of rivers and lakes.

- 3.31 These provisions create a framework that enables the physical stability, viability and instream values of rivers to be maintained, while the adverse effects of activities in those rivers are avoided, remedied or mitigated. Objective 8.3 and Policy 8.3 in particular anticipate that competing activities in rivers will need to be accommodated and managed alongside each other. These provisions contemplate the sustainable use of rivers and in my opinion the proposed variation to the WCO is consistent with them.

*Tasman Regional Policy Statement Part 3 Section 12 – Other Significant Resource Management Issues*

- 3.32 The key provisions in this section that are relevant to this application are Objective 12.1 and Policy 12.1 which state:

Objective 12.1:

The use and development of natural and physical resources for the generation and distribution of energy, in a manner which is efficient and which avoids, remedies or mitigates any adverse effects on the environment.

Policy 12.1:

The Council will seek to provide for the continuation of energy generation, transmission, or use opportunities, while avoiding, remedying or mitigating the adverse effects of such actions on natural, heritage and amenity values of resources.

- 3.33 These provisions anticipate and contemplate the use of river resources for the generation of hydro-electricity. This framework recognises the contribution that such developments may make to the Tasman District, but also acknowledges that most of the rivers and streams in the district having hydro-power potential also support often significant wildlife, fisheries, scenic and other natural values. Consequently the emphasis of these provisions is on ensuring that any developments of this kind appropriately avoid, remedy or mitigate potential adverse effects on these values.

*Conclusion*

- 3.34 In my opinion the proposed variation to the WCO sits comfortably within the framework provided by the TRPS.

**Proposed Tasman Regional Management Plan**

- 3.35 The PTRMP is divided into 6 parts as follows:

- *Part I – Introduction*  
This introduces the plan's purpose, scope and structure, cross-boundary resource management issues and the plan monitoring and review procedures.
- *Part II – Land*  
This applies to land in the district. Chapters 3 – 15 include resource management issues, objective and policies, chapters 16 – 18 provide zone rules, and chapter 19 sets out information requirements for resource consent applications.
- *Part III – Coastal Marine Area*  
This sets out provisions relating to the Coastal Marine Area.
- *Part IV – Rivers and Lakes*  
Part IV is in preparation and no draft policy proposals are in existence. This part of the plan currently relies on section 13 of the RMA and makes reference to the rules of Part V of the PTRMP.
- *Part V – Water*  
This applies to all uses of water including taking, damming and diverting.
- *Part VI – Discharges*  
This applies to all discharges of contaminants to the environment.

3.36 The key components of the PTRMP that are relevant to this application are as follows, and which I will now discuss:

- Part II – Land:
  - 5 - “Site Amenity Effects”;
  - 7 - “Rural Environmental Effects”;
  - 8 - “Margins of rivers, lakes, wetlands and the coast; and
  - 9 - “Landscape”.
  
- Part V – Water:
  - 30 - “Taking, using, damming and diverting water”.

*Tasman Regional Management Plan Part II Chapter 5 – Site Amenity Effects*

3.37 This section identifies the following issues:

Issue 5.1

- (a) Provision for appropriate protection, use and development of the District's resources so that activities at one site do not adversely affect the use and enjoyment of another site, or resource.
- (b) Residential and community facilities and services which enable people to provide for their social, economic and cultural well-being and for their health and safety.
- (c) Amenity can be compromised in site development and site use.
- (d) Some localities exhibit special characteristics which people wish to retain.
- (e) Safety of people, property, and resources.
- (f) Inappropriate management and systems for manufacturing, handling, storing, using or disposing of hazardous substances can pose significant risks to the environment.

3.38 This section includes the following objective and policy:

Objective 5.1.0

Avoidance, remedying or mitigation of adverse effects from the use of land on the use and enjoyment of other land and on the qualities of natural and physical resources.

Policy 5.1.1

To ensure that any adverse effects of subdivision and development on site amenity, natural and built heritage and landscape values, and contamination and natural hazard risks are avoided, remedied, or mitigated.

3.39 This chapter is focused largely on minimising the adverse effects of land based activities. In my opinion the proposed variation provides for the

avoidance or otherwise appropriate mitigation of any effects on rafting that may result from diversion of water from the Gowan River, and consequently is consistent with these provisions.

*Tasman Regional Management Plan Part II Chapter 7 – Rural Environmental Effects*

3.40 Chapter 7 of the PTRMP includes the following provisions:

Issue 7.1 (d)

An appropriate level of protection of rural character, ecosystems and amenity values.

7.3.0 Objective

Avoidance, remedying or mitigation of the adverse effects of a wide range of existing and potential future activities, including effects on rural character and amenity values.

7.3.3 Policy

To provide for the maintenance and enhancement of local rural character, including such attributes as openness, greenness, productive activity, absence of signs, and separation, style and scale of structures.

3.41 Although probably more relevant to land use activities, these provisions are at least partially relevant to this application. As with the other sections of the PTRMP, provision is made in this section for effects to be avoided, remedied or mitigated.

*Tasman Regional Management Plan Part II Chapter 8 - Margins of Rivers, Lakes, Wetlands and the Coast*

3.42 Issue 8.1 is the “Provision and enhancement of public access to and along the margins of lakes, rivers, wetlands and the coast, for current and future needs of residents and visitors to the District”. Key associated objectives and policies are, Objectives 8.1.0 and 8.2.0, and Policies 8.1.1, 8.1.3, 8.2.3 and 8.2.5, which state:

Objective 8.1.0:

The maintenance and enhancement of public access to and along the margins of lakes, rivers, wetlands and the coast, which are of recreational value to the public.

Policy 8.1.1:

To maintain and enhance public access to and along the margins of water bodies and the coast while avoiding, remedying or mitigating adverse effects on other resources or values, including: indigenous vegetation and habitat;

public health, safety, security and infrastructure; cultural values; and use of adjoining private land.

Policy 8.1.3:

To avoid, remedy, or mitigate the adverse effects on public access caused by structures, buildings, and activities in or adjoining water bodies or the coastal marine area.

Objective 8.2.0:

Maintenance and enhancement of the natural character of the margins of lakes, rivers, wetland and the coast, and the protection of that character from adverse effects of the subdivision, use, development or maintenance of land or other resources, including effects on landform, vegetation, habitats, ecosystems and natural processes.

Policy 8.2.3:

To avoid, remedy or mitigate adverse effects of buildings or land disturbance on the natural character, landscape character and amenity values of the margins of lakes, rivers, wetlands or the coast.

Policy 8.2.5:

To adopt a cautious approach in decisions affecting the margins of lakes, rivers and wetlands, and the coastal environment, when there is uncertainty about the likely effects of an activity.

- 3.43 The modification of river flows as contemplated by the application will not of itself adversely affect public access, and if anything access to the riparian margin of the Gowan River could improve.

*Tasman Regional Management Plan Part II Chapter 9 - Landscape*

- 3.44 Relevant provisions of this chapter are Policy 9.1.7, Objectives 9.2.0 and 9.3.0, and Policies 9.2.3 and 9.3.1, which state:

Policy 9.1.7:

To manage activities which may cause adverse visual impacts in the general rural area.

Objective 9.2.0:

Recognition of the contribution of rural landscapes to the amenity values and environmental qualities of the District, and protection of those values.

Policy 9.2.3

To retain the rural characteristics of the landscape within rural areas.

Objective 9.3.0:

Protection and enhancement of views from public viewpoints.

Policy 9.3.1:

To protect and enhance significant views from key viewpoints on tourist routes within the District.

- 3.45 These provisions require that the visual effects of activities be managed so that important views and rural characteristics are not adversely affected. Taking into account the emphasis of the application on maintaining the flow at

levels no lower than those currently identified in the WCO, and on ensuring that full instantaneous flow is able to be restored when required, the proposed variation does not, in my opinion, offend these provisions.

*Tasman Regional Management Plan Part V Chapter 30 – Taking, Using, Damming and Diverting Water*

- 3.46 In the introduction to this section the PTRMP acknowledges that alongside providing for a range of values, including recreation activities, the district's freshwater resources also have a range of public and private uses and values, including "water supply for urban uses, fire-fighting, hydro-electric power generation, industrial, irrigation and other commercial uses"<sup>6</sup>. The PTRMP also recognises that "hydro-electric power generation has benefits relating to the production of renewable energy"<sup>7</sup>, and "in some cases, water use activities, such as damming, can result in benefit by augmenting the water resource and thus increase the range of values the water body may have"<sup>8</sup>.
- 3.47 However, under the headings "Diversion of Water"<sup>9</sup> and "Competing Water Demands"<sup>10</sup> the PTRMP recognises that the diversion of water for the purpose of hydro-electric generation can have adverse effects on other values, and that the competing demands of different users must be resolved in a way that results in equitable access for all water users.
- 3.48 Issue 30.1 highlights that activities can have effects on surface flow which have adverse consequences for recreational values. In relation to this application the key provisions of this chapter are Objective 30.1.0 and Policies 30.1.1, 30.1.2, 30.1.7, 30.1.9, and 30.1.18, which state:

Objective 30.1.0:

1. The maintenance, restoration and enhancement, where necessary, of water flows and levels in water bodies that are sufficient to:
  - (a) preserve their life-supporting capacity (the mauri of the water);
  - (b) protect their natural, intrinsic, cultural and spiritual values, including aquatic ecosystems, natural character, and fishery values including eel, trout and salmon habitat, and recreational and wildlife values; and,

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<sup>6</sup> TRMP, p30/2

<sup>7</sup> Ibid., p30/2

<sup>8</sup> Ibid., p30/2

<sup>9</sup> Ibid., p30/8

<sup>10</sup> Ibid., 30/9

- (c) maintain their ability to assimilate contaminants.
2. The maintenance, restoration and enhancement where possible, of the quality and extent of wetlands in the District.

Policy 30.1.1:

To maintain and enhance the uses and values of rivers, aquifers, wetlands and lakes that may be adversely affected by reduced water flows or levels including:

- (a) the uses and values of water bodies identified in Schedule 30.1, particularly the internationally, nationally and regionally significant uses and values of water bodies;
- (b) the customary and traditional uses and values of iwi, including waahi tapu, and other taonga, particularly in relation to sustaining the mauri of the water;
- (c) the capacity of water bodies to dilute contaminants;

by taking into account the management objectives specified for each of the water bodies in Schedule 30.1.

Policy 30.1.2:

To establish a minimum flow regime or minimum water level regime for rivers, wetlands and lakes where there is a threat to uses and values of the water body or a connected water body, taking into account:

- (a) the range and significance of the existing and potential water body values and uses;
- (b) adverse effects from existing and potential abstractive water users and land use activities affecting water quantity;
- (c) natural flow characteristics;
- (d) practical monitoring and enforcement needs;
- (e) contributions to water flows and levels from dams.

Policy 30.1.7:

To manage the allocation of water taken from water bodies so that the cumulative effect of water takes does not exceed;

- (a) the stated flow or water level regime;
- (b) any allocation limit for that water body;
- (c) the sustainable yield of the aquifer;

provided that harvesting water during times of high flow may be considered, if adverse effects can be avoided, remedied or mitigated.

Policy 30.1.9:

When assessing resource consent applications to take water, particularly those applications to take water from water bodies where no allocation limit has been established, to take into account actual and potential adverse effects, including cumulative adverse effects of the proposal in combination with any existing authorised takes, on:

- (a) natural character of the water body and its margins;
- (b) associated wetlands;
- (c) cultural and spiritual, amenity and recreational values;
- (d) aquatic habitat, including plants and animals;
- (d) other water users;
- (e) water reserved for other uses;
- (f) hydrological regime of the water body;
- (g) capacity to dilute contaminants;
- (h) uses and values identified in Schedule 30.1;
- (i) sustainable yield of an aquifer and the sustainable short and long term yield of a bore based on assessment of yields over five and 100 days.

Policy 30.1.18:

To avoid, remedy or mitigate adverse effects of diversion of water, including

- (a) diversion of floodwater by stopbanks and other structures;
- (b) water augmentation schemes;
- (c) hydro-electric power generation; and
- (d) instream diversion of water;

taking into account effects of the diversion on:

- (i) uses and values of water bodies identified in Schedule 30.1;
- (ii) fish and eel passage;
- (iii) actual or potential risks of flooding or erosion;
- (iv) actual or potential impact on river sediment and gravel transport processes;
- (v) water quality;
- (vi) aquatic and riparian ecosystems, including wetlands and habitats for indigenous vegetation or fauna;
- (viii) any relevant water allocation limits;
- (ix) other water users.

3.49 These provisions serve to maintain flows and flow regimes at levels sufficient to provide appropriately for various stated values. Policies 30.1.1 and 30.1.18 refer to the relevant section of Schedule 30.1 (attached as Appendix 1 to my evidence) to identify those values of specific water bodies which are to be protected. The Gowan River is contained in Schedule 30.1 under the umbrella of the “Buller River and its Tributaries”, and its recreational, cultural, spiritual and landscape values are highlighted as those that could be adversely affected by reduced flows. The relevant management objective referred to in relation to these values is the maintenance of flows and levels consistent with the WCO.

3.50 This chapter of the PTRMP specifically contemplates the sustainable use of the Gowan River so long as the relevant values of the river (in this case rafting) are maintained and enhanced, and any adverse effects are avoided, remedied or mitigated. The proposed variation will not contribute to the flows of the Gowan River dropping below those identified in the WCO as being necessary for the maintenance of rafting, and will ensure that the full instantaneous flow will be able to be restored if and when required. Accordingly, I consider that these values will be sustained under the regime proposed by the variation and I consider that the proposed variation is consistent with this framework.

- 3.51 I also note that on 28 September 2005, The New Zealand Herald<sup>11</sup> reported a confirmed find of the invasive river weed *Didymosphenia geminata* (didymo or “rock snot”) in the Buller River. Didymo has been declared an unwanted organism under the Biosecurity Act 1993 and presumably the Gowan would be vulnerable to it, given that it is a tributary of the Buller River. If this did occur, I would expect that the appearance of the species in the Gowan would diminish the naturalness of the waterbody and as a consequence the rafting amenity would likewise diminish to some extent.
- 3.52 In much the same way, as other evidence will establish, willow infestation on the Gowan has significantly and detrimentally affected its natural amenity values, particularly affecting its rafting amenity.
- 3.53 In the absence of suitable biosecurity measures, I would presume that the transfer of rafts from the Buller to the Gowan could exacerbate the risk of transfer.

#### *Conclusion*

- 3.54 The proposed variation introduces provisions into the WCO that will enable the water resource of the Gowan River to be managed so that its identified characteristic value for rafting will be sustained, and that its potential to generate renewable energy can be harnessed. It is my opinion that the proposed variation is consistent with the framework of sustainable management promoted by the PTRMP.

## **4. OVERALL ASSESSMENT AND CONCLUSIONS**

- 4.1 As stipulated by section 207, having had particular regard to:

- The purpose of the Buller Water Conservation Order in relation to the Gowan River.

and having had regard to:

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<sup>11</sup> This report has been corroborated by Biosecurity New Zealand

- The application;
- The submissions;
- The needs of primary and secondary industry and the community; and
- The relevant provisions of the Tasman Regional Policy Statement and Tasman Regional Management Plan,

I consider that:

- The provisions of the proposed variation adequately address the issues raised by submitters;
- The proposed variation to the Buller Water Conservation Order will introduce provisions that enable the flow of the Gowan River to be managed in such a way that recognises and sustains the purpose of that Order;
- That the proposed variation will make a significant contribution to primary and secondary industry, and to the people and communities of the Tasman District; and
- That the proposed variation to the Buller Water Conservation Order sits comfortably within the framework provided by the relevant statutory planning documents.

4.2 Accordingly, I conclude that the Special Tribunal is able to grant the application made by MAJAC Trust to vary the Buller Water Conservation Order.

## **APPENDIX 1**

### **Section of Schedule 30.1 Relevant to the Gowan River**

## Section of Schedule 30.1 Relevant to the Gowan River

<b>WATER BODY USES AND VALUES AND WATER MANAGEMENT OBJECTIVES</b>		
<b>Water Body</b>	<b>Values/Uses Adversely Affected by Reduced Flows or Levels</b>	<b>Management Objectives</b>
<p><b>Instream Uses and Values</b></p> <p><b>(16) Buller River and tributaries including the Gowan, Mangles, Matakitaki, Matiri, Maruia, Fyfe, Travers, Owen, Glenroy, Tiraumea, and Tutaki and Lakes Matiri, Rotoiti and Rotoroa.</b></p>	<ul style="list-style-type: none"> <li>• Trout fisheries of national importance in the Buller River, nationally significant native fishery of Lake Matiri and regionally important trout spawning in the Travers, Owen, Maruia and Fyfe Rivers.</li> <li>• Native fisheries, eel and wildlife habitat, including regionally significant blue duck or water fowl habitat in the Buller, Matiri, Travers, and Owen rivers and Lakes Matiri, Rotoiti and Rotoroa and nationally significant blue duck habitat in the Fyfe River.</li> <li>• Regionally significant fisheries and wildlife habitat of Lake Rotoiti.</li> <li>• Nationally significant aquatic vegetation values in Lakes Rotoiti and Rotoroa.</li> <li>• Nationally significant karst values of the Owen River.</li> <li>• Contact and non-contact recreation.</li> <li>• Cultural, spiritual and landscape values.</li> </ul>	<ul style="list-style-type: none"> <li>• Maintenance of flows and levels consistent with the National Water Conservation Order (Buller River).</li> <li>• Protection of aquatic habitat especially blue duck and, trout spawning habitat.</li> <li>• Protection of cultural, spiritual and landscape values.</li> </ul>
<p><b>Other Uses and Values</b></p>	<ul style="list-style-type: none"> <li>• ~ Human consumption</li> <li>• ~ Irrigation supply.</li> <li>• ~ Community water supply.</li> <li>• ~ Stock and farm water supply.</li> <li>• Small scale hydroelectric power generation.</li> </ul>	