

**IN THE MATTER OF** the Resource Management Act  
1991

**AND**

**IN THE MATTER OF** Application by the New Zealand  
Fish and Game Council/North  
Canterbury Fish and Game  
Council and New Zealand  
Recreational Canoeing  
Association for a Water  
Conservation Order for the  
Hurunui River.

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**STATEMENT OF EVIDENCE OF DAVID MICHAEL NEWEY ON BEHALF OF  
THE DIRECTOR-GENERAL OF CONSERVATION**

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Dated: 13 March 2009

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Director-General of Conservation  
Department of Conservation

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# 1. INTRODUCTION

## Qualifications and experience

- 1.1 My name is David Michael Newey. I am currently employed by the Department of Conservation (Canterbury Conservancy) in the position of Community Relations Supervisor (Resource Management Planner). I have held this position for approximately three years.
- 1.2 I hold a Bachelor of Science (Zoology) and Post Graduate Diploma in Resource Studies and have eleven years experience in resource management. I was admitted as an affiliate member of the New Zealand Planning Institute in 1997.
- 1.3 My work experience has been with local, regional and central government. My responsibilities in these positions included a range of planning work in consents analysis, policy planning, strategic planning and community based planning.
- 1.4 I have been involved in several water plans and irrigation resource management consent applications including submitting and presenting evidence on the Proposed Natural Resources Regional Plan, Variation 8 in particular, and various irrigation proposals.
- 1.5 I am familiar with and have visited parts of the upper and lower Hurunui catchment, to which these proceedings relate. I have also read and considered the application, key submissions and evidence in support and opposition to the proposed water conservation order (WCO).
- 1.6 I have read the Environment Court's Code of Conduct for Expert Witnesses [as set out in the Environment Court Consolidated practice note 2006], and I agree to comply with it.
- 1.7 I confirm that the issues addressed in this brief of evidence are within my area of expertise, except where I state that I am relying on facts or

information provided by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

## **Scope of evidence**

1.8 My evidence will address:

- Policy and Planning framework for Water Conservation Orders
- Other matters to be considered – Section 207 RMA
- Proposed provisions for a Water Conservation Order
- Summary and Conclusions

1.9 In addressing these matters I refer to and rely on evidence presented by Drs Hughey and Jellyman on behalf of the Department of Conservation and various experts for the applicants, in particular Ms Lucas, Dr Young, Ms Marx and Mr Bejakovick.

1.10 When referring to the Hurunui River I variously use the terms “upper” and “lower” river or catchment. In this context “Upper Hurunui” means the entire upper Hurunui catchment upstream of (but not including) the confluence with the Mandamus River, while “Lower Hurunui” refers to all parts of the waterway below the Mandamus confluence.

## **2. POLICY FRAMEWORK FOR WATER CONSERVATION ORDERS**

2.1 Water Conservation Orders (WCO) are provided for in Part 9 of the Resource Management Act 1991 (RMA). Section 217 outlines the effect of a WCO once operative, being that the relevant consent authorities cannot grant water, discharge or coastal permits which would be contrary to any provision of the order.

### **2.2 Section 199 – Purpose of Water Conservation Orders**

Section 199 RMA contains a specific statement of purpose for water conservation orders being:

*“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.”*

2.3 To qualify for a water conservation order, it must be shown that a water body, or the characteristics contributing to that water body, are ‘outstanding’. The term ‘outstanding’ is not defined in the RMA, however in decisions pre RMA on the Mataura River water conservation order (Decision No: C32/90) and the Mohaka River (Decision No: W20/92), the Planning Tribunal held the test in respect to a WCO, as to what is outstanding, is a reasonably rigorous one. In order to qualify as outstanding, a characteristic would need to be quite out of the ordinary on a national basis, and therefore stand out in comparison with those characteristics of other rivers.

2.4 While Part 2 of the RMA is concerned with the sustainable management of all natural and physical resources, the specific purpose of water conservation orders is wholly concerned with recognising and sustaining the outstanding amenity and intrinsic values of a water body. The provisions of Part 2 of the RMA must be read in light of s.199. Therefore, when assessing an application under Section 207, Part 2 considerations can be used to support the purpose and matters set out in Section 199, but those Section 199 matters will override inconsistent matters otherwise given weight under Part 2.

2.5 The test under Part 9 therefore is, if in its natural state the values of a water body are outstanding, or other values are outstanding, the WCO is the mechanism appropriate for its preservation and/or protection, depending on the values in question. I shall examine this point further

when considering the relevant plan provisions and the protection they provide.

- 2.6 A water conservation order may provide for any of the characteristics or elements as set out in S.199 (2):
- (a) provides for “*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 You have heard from experts and individuals appearing for the applicants who have presented a variety of evidence and information regarding a range of values. Evidence has been presented on the characteristics of parts of the upper Hurunui which make it an outstanding fishery, those natural values which contribute to its amenity and value as a recreational area, and its outstandingness due to wild, scenic and natural character values.
- 2.8 Dr Hughey and Dr Jellyman have appeared for the Department. The Department’s submission supports the application and also seeks to extend it to include a set of minimum flows on the lower river and exemption for takes in the upper catchment for conservation purposes (from this point on referred to as the amended application). This expansion is sought to protect the characteristics which contribute to the Hurunui River being an outstanding habitat for indigenous bird species, in particular in the braided river sections, as outlined by Dr

Hughey. Dr Jellyman describes the value the lower river provides for migratory fish species and indigenous fish values of the upper catchment.

- 2.9 In particular, the Hurunui supports significant populations of the threatened black fronted tern, banded dotterel and black billed gull. In Dr Hughey's opinion, based on his research and that of others he refers to:

*“management of waters in the Hurunui River should seek to sustain these outstanding (and for some species at severe conservation risk) bird life communities. Sustainability, in the context of bird populations, is defined in terms of ensuring the maintenance of sufficient amounts of high quality foraging, roosting and breeding sites for bird life to maintain viable populations in perpetuity. There needs to be sufficient habitat available so that birds can disperse, and still thrive, if unfavourable conditions develop in particular parts of the habitat.”*

- 2.10 He goes on to outline the protection mechanisms needed, in his opinion, to protect these values, being;

*“maintenance of as close as possible to natural flow regime conditions on the Hurunui River is essential for maintaining feeding and nesting habitat of river birds, particularly the conservation at risk species. Maintenance of these conditions during the critical breeding months (August to January, and more particularly September to December) will ensure that the full range of channel types required for birds are present i.e., backwaters and pools, seepage zones, saturated sand banks, minor riffles and runs and major channel riffles and runs; shallow channels <40 mm deep for shallow water waders, channels up to 200 mm deep for moderate sized deep water waders. But, in addition to these requirements there needs to be provision of higher flows that maintain the ability to keep the riverbed substantially clear of weeds and woody vegetation and to maintain a relatively high degree of security against mainly mammalian predators.”*

- 2.11 In my opinion, based on the evidence presented by the applicants and submitters in support, the wild, scenic and natural character, fisheries and amenity and intrinsic values of the upper Hurunui River in their natural state meet the test for being outstanding – quite out of the ordinary on a national basis. The values of the waters in the lower Hurunui, in particular being their provision of habitat for indigenous bird species, are also outstanding, based on the evidence of Dr Hughey.

### **3. SECTION 207 – MATTERS TO BE CONSIDERED**

Section 207 identifies the matters to be considered by the Special Tribunal in considering a water conservation order application.

- 3.1 Section 207 outlines that when considering an application there is a requirement to have “particular regard” to the purpose of the WCO and the other matters identified in Section 199. This means that those matters carry more weight in the assessment process than the matters set out below to which Section 207 directs only “regard” be had.

*“The Special Tribunal 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.”*

- 3.2 There are a number of statutory planning and policy documents which are relevant for consideration. These matters are addressed below.
- 3.3 In the hierarchy of planning instruments under the RMA, a water conservation order takes precedence over the Regional Policy Statement, regional plans and district plans.

- 3.4 I also note that in considering the relevant provisions of the planning documents referred to, that the ultimate test when such plans are being prepared, debated and adopted is whether the provisions within them represent sustainable management. That test differs from the one applied when considering a WCO application, being to recognise and sustain outstanding values.
- 3.5 Given that differing test, combined with the analysis below of the planning provisions currently in place to manage the waters of the Hurunui, it is my opinion that the outstanding values referred to through expert evidence will not be protected through reliance on those plans and policies.

## **NATIONAL POLICY STATEMENTS**

### **4. NEW ZEALAND COASTAL POLICY STATEMENT**

- 4.1 The New Zealand Coastal Policy Statement (NZCPS) is a mandatory document under the RMA and was prepared and is administered by the Minister of Conservation. The NZCPS was issued by notice in the Gazette on 5<sup>th</sup> May 1994 and is currently under review.
- 4.2 The purpose of the NZCPS is to state policies to achieve the promotion of sustainable management of natural and physical resources in relation to the coastal environment. While the 'coastal environment' is not defined in the NZCPS, the term is generally taken to mean "*the environment in which the coast usually is a significant element or part*". This includes at least the coastal marine area (CMA), the active coastal zone and the land backdrop, where there is a coastal influence on the flora and fauna, habitats, processes etc.
- 4.3 Within the coastal environment of the Hurunui River, the key policy of interest in the NZCPS covering matters raised by the Department is:

- *Policy 1.1.2 – it is a national priority to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna;*

4.4 It needs to be recognised that the CMA is excluded from the definition of ‘water body’ and therefore a water conservation order cannot directly control activities within the CMA. This however does not mean that a water conservation order for the Hurunui River will not have effects outside the water body e.g. affecting the flow of water through the mouth of the river.

4.5 Of relevance to the Hurunui River is the identification of a significant bird habitat at the mouth/lagoon area (Dr Hughey) and unrestrained flood flows protecting the river mouth habitat. The river mouth provides an important link between the river and the sea. The continued functioning of the river – sea link provides for the migration of both native and salmonid fish species.

4.6 In my opinion, the making of a water conservation order as proposed by the Fish and Game Council and amended by the Director General of Conservation, is not inconsistent with the NZCPS and will in fact promote Policy 1.1.2.

## **5. THE CANTERBURY REGIONAL POLICY STATEMENT**

5.1 The Canterbury Regional Policy Statement (RPS) became operative in June 1998. While the RPS gives a broad overview of the planning issues within the Canterbury region through its Objectives and Policies, it is the implementation of regional and territorial plans, and WCO’s, that give effect to the RPS. The proposed WCO, if approved, would sit “above” the RPS. This is because the WCO refers to and seeks to protect higher order values than those identified under Part 2 of the RMA through the RPS.

- 5.2 Having said that, the RPS lends support to the submission by the Department for an amended WCO, as outlined below.

### **Chapter 8: Landscape, Ecology and Heritage**

- 5.3 Chapter 8 deals with the landscape, ecology and heritage resources of the Canterbury region.

#### **Objective 2 and Policy 3**

- 5.4 Objective 2 and Policy 3 seek to protect and enhance the regions distinctive natural features and landscapes from development. Based on Ms Lucas's evidence, various reaches of the upper Hurunui have been assessed as being Outstanding for a range of values. The provisions of the proposed WCO, which aim to preserve the natural character of the upper Hurunui River, would implement this objective and policy.

#### **Objective 3 and Policy 4**

- 5.5 Objective 3 and Policy 4 seek to protect and enhance the regions indigenous biodiversity from development. Dr Hughey has presented evidence which establishes, through the use of comparative criteria and survey results, the Hurunui River as an outstanding habitat for indigenous river birds. The provisions of the proposed WCO, as amended by the Department of Conservation submission, would fulfil this objective and policy through the protection of adequate water flows.

## **Chapter 9: Water**

### **Objective 1, 2 and 3 and Policies 1-10**

- 5.6 Overall Objective 1, 2 and 3 and Policies 1-10 set a framework to allocate and allow water to be used for peoples benefit in an efficient and prioritised way while safeguarding and protecting the other users and values of those waterways.
- 5.7 Chapter 9 specifically refers to the Hurunui River, stating that high water quality and upper catchments, high country lakes and braided rivers are valuable features of Canterbury and that some may be investigated further to sustain their natural values, including the Hurunui above the Mandamus.
- 5.8 In my opinion, from the evidence presented (Ms Lucas re outstanding natural character, Dr Young re natural state water quality and Dr Hughey re flow requirements for protection of outstanding habitat for threatened bird species), the proposed amended WCO is consistent with these objectives and policies in so far as it allows for the protection and preservation of some of the values identified by the RPS. The amended WCO also allows for some development and use of water on the lower Hurunui, which is in recognition of and the Objectives and Policies I have referred to above.

## **Chapter 10: Beds of Lakes and Rivers and their Margins**

### **Objective 1 and Policies 1-3**

- 5.9 Objective 1 sets a framework to protect and where appropriate enhance values in the beds and margins or lakes and rivers which is largely reflective of Part II RMA matters.
- 5.10 Policy 1 states that areas important for their conservation values should be identified, and that land use or development should avoid causing significant adverse effects on the conservation values in those areas. Prior to identification of those areas, activities should be carried out in ways that avoid or mitigate adverse effects, including effects on

habitats of indigenous fauna (particularly threatened species) and species rare or endemic within Canterbury, habitats of the unimpeded passage of indigenous fish, landscape values, wetlands, areas of indigenous vegetation, spawning habitats and amenity and recreational values. Policy 2 goes on to state that areas of ecological, cultural or landscape significance or any other area with natural values which is in a degraded state, should be enhanced.

- 5.11 The bed the Hurunui River has been identified by a range of experts as having one or more of the values listed in Objective 1 and Policy 1 and further that it is outstanding in some reaches in relation to indigenous bird habitat and natural character in particular.
- 5.12 In my opinion, the proposed amended WCO would meet this objective and policies as it would protect the values identified by Objective 1 while also allowing the natural flooding and flushing by the waters.
- 5.13 Overall, from the evidence presented, I consider the granting of the proposed amended WCO would be an appropriate fulfilment of the policy direction of the Canterbury Regional Policy Statement.
- 5.14 I note however that given some of the language used in the RPS, particularly in relation to how areas may be identified for their values and protected through the PNRRP, there is a degree of discretion which introduces an element of uncertainty as to what level of protection may be implemented while still giving effect to the RPS. I refer here to statements such as “may be desirable” and “subject to investigations”.
- 5.15 I also note that the RPS is currently under review and the outcomes or provisions that may evolve through that process are unknown. That lack of clarity creates further uncertainty as to the ability of the RPS to protect those values which the experts I have referred to have outlined as outstanding.

5.16 I also refer to my earlier discussion regarding the different test the RPS must undergo when compared to a WCO. My conclusion therefore, when all of these factors are taken into account is that the outstanding values identified by the expert evidence will not receive the same protection under the RPS that would be appropriate under Part 9.

## **6. TRANSITIONAL REGIONAL PLAN**

6.1 The Transitional Regional Plan for Canterbury is currently operative. While containing no Objectives or Policies, the Plan does contain bylaws and ordinances which set a general framework for managing natural and physical resources.

6.2 In general terms I consider the proposed amended WCO is not inconsistent with the general intent of the Transitional Plan.

## **7. REGIONAL COASTAL ENVIRONMENT PLAN**

7.1 The Proposed Regional Coastal Environment Plan was adopted on 30 November 2005. The plan relates solely to the Coastal Environment and the rules only apply within the Coastal Marine Area. For the purposes of the Hurunui River, the coastal marine area extends approximately 300m inland from the seaward side of the lagoon arm.

7.2 The mouth of the Hurunui River is identified in Schedule 2 as an "Identified Area of High Natural, Physical, Heritage or Cultural Value". The following values are identified:

- Wetland, estuaries and coastal lagoons;
- Marine mammals and birds;
- Ecosystems, flora and fauna habitats

7.3 No rules in the proposed plan refer to Schedule 2, although it appears the intent is that these values will be protected under Chapter 6,

Natural Character and Appropriate Use of the Coastal Environment. Objective 6.1 seeks to protect and where appropriate enhance areas of high natural, physical, heritage or cultural value. Policy 6.1 implements the Objective through looking at controlling activities which have or are likely to have an adverse effect on the identified values, and through adopting a precautionary approach.

- 7.4 The proposed amended WCO is not inconsistent with the Regional Coastal Environment Plan. This is especially so, given that any water within the CMA is excluded from a water conservation order. Even so, a water conservation order, with the amendments proposed by the Director General of Conservation, (an absence of dams and greater effect of natural flow variability) will facilitate maintenance of the river mouth as part of the natural functioning of the braided river system and to ensure passage for migratory native and introduced fish. It will also serve to maintain the significant bird habitat at the mouth of the river which Dr Hughey refers to, through maintaining adequate flows.

## **8. PROPOSED NATURAL RESOURCES REGIONAL PLAN (PNRRP)**

- 8.1 The PNRRP has been publicly notified and along with several variations, is now progressing through the hearings stage. No decisions have yet been released on the parts of the plan of most direct relevance to this WCO application, being Chapter 5, Water Quantity.
- 8.2 Variation 8 to Chapter 5 was notified in September 2007. The Variation proposes to establish an environmental flow and allocation regime for the Hurunui River and tributaries. No Council hearing has commenced.
- 8.3 Given that both Chapter 5 and Variation 8 are not very far through the statutory process and that they both may change substantially in form and content before finally being adopted, only limited weight can be

given to them and assessment must focus on the documents as notified.

- 8.4 In the following sections I compare the relevant sections of the PNRRP with the proposed amended WCO.

**Policies WQN1 and WQN2**

- 8.5 Policy WQN1 recognises the natural state of several Hurunui Lakes, including Lakes Sumner / Hoka Kura and Taylor, Sheppard and Loch Katrine and seeks to retain lake levels in their natural state. Through reference to Schedule WQN 5, the policy also covers the North Hurunui River and tributaries upstream of Lake Sumner, the upper reaches of the South Hurunui River and tributaries (from Stoney stream) and the upper reaches of the North Esk River and tributaries (from the confluence with Lucy Stream).
- 8.6 The Explanation to the Policy states that these water bodies have high natural values when tested against a range of matters, including natural character, amenity, areas of significant indigenous vegetation and significant habitats of indigenous fauna and their tenure as Crown Reserve, and should be sustained as far as possible in their natural state. Rules to implement this policy classify any proposal to dam or take water from these lakes as a non-complying activity.
- 8.7 I note that the Policy does not include Lake Mason, Lake Mary or Raupo lagoon, which is not therefore classified as Natural State or High Naturalness Water bodies.
- 8.8 I also note that these water bodies are referred to specifically in evidence to this hearing as to their contribution to outstanding values. In particular Ms Lucas assesses these lakes as being nationally outstanding in terms of their contribution to the natural character of the lakes complex of which they are a part.

- 8.9 The levels of protection for these water bodies under the PNRRP are considerably less (discretionary activity status for damming) and do not approach the levels appropriate for their values as those being sought by the proposed amended WCO.
- 8.10 Policy WQN2 recognises the high naturalness of the Hurunui River mainstem from the mouth to Lake Sumner and all tributaries upstream of the confluence with the Mandamus River. The Policy is also clear in stating that such recognition need not rule out the taking or use of water. Rules to implement this policy classify damming of the Hurunui River mainstem, which is undefined, as a prohibited activity, while damming of tributaries upstream of Mandamus is classified as a non-complying activity.
- 8.11 In my opinion the proposed amended WCO application is in general accord with Policy WQN 1 – recognising the significance of the listed waters and seeking to protect the values which make them significant, and is in accord with Policy WQN 2 with regard to restrictions on damming.
- 8.12 I also note however, that while having no more weight than any other submission and having no status in relation to these proceedings, NRRP Officers Report 16 (prepared for hearings on Policy WQN 1 and 2) provides useful background information as to the level of protection the Regional Council may be heading toward for the Hurunui River.
- 8.13 If adopted the provisions suggested by the Officers Report would merge “natural state” and “high naturalness” water bodies into one category (High naturalness water bodies) and “protection” will be downgraded from a prohibition on damming to becoming non-complying. This suggests that the level of protection under the PNRRP may well fall short of protecting or maintaining these values.

### Variation 8 to the Proposed Plan

- 8.14 A further factor to consider for the management framework for the Hurunui River is the proposed Variation 8 to the PNRRP. The Regional Council publicly notified Variation 8 to the Proposed Plan on August 25, 2007. Variation 8 introduces Schedule WQN1.7, which sets out environmental flow and allocation regimes for the taking of surface water, and hydraulically connected groundwater, for the Hurunui River mainstem and tributaries of the Lower Hurunui River.
- 8.15 The original WCO application does not prescribe an environmental flow or allocation regime for this reach of the mainstem. However the Department of Conservation seeks to include a provision in the water conservation order setting minimum flows on the lower Hurunui River in order to protect and preserve outstanding bird habitat.
- 8.16 The proposed minimum flows put forward in Variation 8 are based on the modelling of ecological information available at the time it was being investigated along with a “balancing” of environmental and economic/social needs. Those proposed flows (lower Hurunui) are:

Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
15m <sup>3</sup> s	12m <sup>3</sup> s	12m <sup>3</sup> s	15m <sup>3</sup> s	12m <sup>3</sup> s	12m <sup>3</sup> s	12m <sup>3</sup> s	13m <sup>3</sup> s	15m <sup>3</sup> s	15m <sup>3</sup> s	15m <sup>3</sup> s	15m <sup>3</sup> s

- 8.17 Based on the subsequent work undertaken for Environment Canterbury by Maurice Duncan (NIWA) and the evidence presented by Dr Hughey, these proposed Variation 8 minimum flows would not result in an adequate level of protection for the outstanding bird habitat of the Hurunui and will not provide an optimal level of protection from predators nor adequate invertebrate productivity at critical times of the year. The flows are far below those being recommended by Dr Hughey during the bird breeding season, being:

Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
20m <sup>3</sup> s	12m <sup>3</sup> s	12m <sup>3</sup> s	15m <sup>3</sup> s	12m <sup>3</sup> s	12m <sup>3</sup> s	12m <sup>3</sup> s	25m <sup>3</sup> s	40m <sup>3</sup> s	40m <sup>3</sup> s	40m <sup>3</sup> s	40m <sup>3</sup> s

8.18 I note that these flows differ slightly from those proposed in the Department's submission. The above figures reflect the results of further work carried out by Dr Hughey.

### **Schedule WQN12**

8.19 Schedule WQN12 ("Fish screen standards") provides design guidelines for fish screens that apply throughout the Canterbury region and that are intended to "*prevent the intake of fish*". The guidelines specify a maximum mesh size or slot width which varies depending on the distance of the take from the coast. The guidelines also require that the velocity of flow at and through the screen ("approach velocity") will prevent fish and fish fry being trapped on the screen. The guidelines require the screen to be positioned to ensure unimpeded fish passage to and along the waterways to avoid the entrapment of fish at the point of abstraction, and to prevent fish stranding.

8.20 The amended WCO application is partly consistent with Schedule WQN12. Both the PNRRP and this application require a fish screen to be installed on all intakes. In both cases, the intention is to prevent the intake of fish and also to prevent the entrapment of fish on the screen face.

8.21 Schedule WQN12 also requires that fish are provided with unimpeded fish passage to the waterway, including that fish stranding be prevented. The application is consistent with this approach, by seeking that an effective bypass channel be provided to ensure the safe transport of fish from any off river fish screen back to an active flowing channel of the river from which they were diverted.

8.22 As Mr Bejakovick notes however, the provisions in Schedule WQN12 (either in its notified form or as recommended by the Officers Report) do not adequately provide for fish exclusion to the standard considered appropriate to protect the Hurunui fishery. The standards for trout and

salmon exclusion are similar to those required for native fish and as such the same conclusion applies.

8.23 The above policies, Variation and Officers reports illustrate some key issues:

- As evident from the WCO amended application and supporting expert evidence, the Hurunui River system can be identified as being outstanding for a number of values in both the upper and lower catchment and as such is worthy of the higher level of protection that a WCO affords. While not in their definitive form, Policy WQN 1 and 2, Variation 8 and Schedule WQN 12 reflect their formulation under Part 2, providing for sustainable management rather than the protection contemplated by s199.
- All of the management mechanisms provided under the PNRRP provide no long term certainty of protection. These provisions are still not in their final form and could offer some higher or lower level of protection at some point in the future. Once finalised, they will be subject to at a minimum a 10 yearly review or a Plan change at some shorter interval depending on community, economic, social or environmental pressure which may arise. The WCO provisions do not provide for such reviews. Although a WCO may be challenged, this is not a regular occurrence and the tests to be passed are much higher than those under section 104 and Part 2.

## **9. HURUNUI DISTRICT PLAN**

9.1 The operative Hurunui District plan is the relevant district plan for consideration. The relevant key Issues, Objectives and Policies are as follows:

9.2 Objective 2 and Policies 2.1, 2.2 and 2.2a in Part I of the District Plan identify the need to protect ecologically intrinsic and conservation

values through identifying significant natural areas in Appendix 7.1 and in particular protecting the natural character of wetlands.

- 9.3 Appendix 7.1 lists the Hurunui River Mouth (site 29), Hurunui River (site 91), Hurunui River Springs (site G2), Lake Sumner Torlesse structures (G3), Hurunui River sandstone diapers (site G20), and Hurunui River ethelton conglomerate (G22) as significant natural areas.
- 9.4 Part I also contains Issue 4 (Water resources and riparian management) and associated Objectives and Policies. In general terms the intent of this section aligns with that of the proposed WCO, being to protect the values of the water resource while also allowing for its use.
- 9.5 I note that the implementation methods only relate to land use activities and activities on water surface and not the management of water and as such are only indirectly relevant to the provisions which may be established under a WCO.
- 9.6 Part II of the District Plan specifies five “Environments of Special Concern”. These are defined as “areas within the Hurunui District that have special character and values, and are confronted with issues and pressures which require specific management which cannot be adequately addressed under a district-wide management framework.”
- 9.7 Issue 18 of the District Plan identifies the Hurunui Lakes area as a collective “Environment of Special Concern”. The introduction to Issue 18 states that *“the Hurunui Lakes area has been identified as one of the District’s significant natural assets. The area is one of high natural and recreational value, not only to the District, but regionally and nationally, and requires careful management to protect and enhance its intrinsic qualities.”*

- 9.8 There are a number of provisions under Issue 18 which are relevant to this application.
- 9.9 Objective 18 is titled "*The maintenance and enhancement of the natural values of the Hurunui Lakes area while providing for compatible activities.*" Associated policies suggest that the term "compatible activities" is inclusive of recreational activities and the farming activities of run-holders in the area.
- 9.10 The relevant policy that gives effect to Objective 18 is Policy 18.4, which is titled "*To protect the special features of the Hurunui Lakes area, including its natural landscape, ecological and habitat values and recreational amenity values from adverse effects.*" Among other things, the explanation for this policy notes that "*collectively, the lakes are of national importance for wildlife, especially water birds*" and that "*the Council also supports the concept of providing long term protection to the conservation values of the Hurunui River, and its lakes and tributaries.*" This Policy is in direct accord with section 199.
- 9.11 Ten methods are specified to achieve this policy. The method of most relevance to this application is:  
*"Council, in conjunction with other management agencies, to investigate methods to provide long term protection for the Hurunui River (including its lakes and tributaries) above its confluence with the Mandamus River."*
- 9.12 I consider that the application for a Water Conservation Order, including the additions sought by the Department of Conservation, to be not inconsistent with the provision of the District Plan outlined above, given that both instruments are seeking to recognise the significant values of the Hurunui lakes area, provide opportunities to protect its special features and provide for long term protection.

## **10. SUMMARY OF PLANNING INSTRUMENTS AND RELATIVE WEIGHTING**

- 10.1 In my opinion, the proposed amended WCO, including the proposed minimum flow regime and exemption for takes in the upper catchment for conservation purposes, seeks to establish the minimum standards to protect and sustain the outstanding values supported by appropriate water flows and unimpeded fish passage.
- 10.2 It does not preclude all development in the lower catchment and nor does it exclude reasonable new water takes for personal use in the upper catchment.
- 10.3 The question is whether the current, or future, statutory plans are able to also establish a framework which can preserve or protect the outstanding values.
- 10.4 Given the issues I have previously identified with the relevant plans, policy statements and planning provisions, being:
- The different framework such mechanisms are formulated under (Part 2) which provide a lower level of protection than a WCO does;
  - The lack of long term certainty that plans provide in terms of on going review, variations and plan changes, all of which could alter the status or level of protection for particular water bodies;
  - The apparent disparity between the proposed Objectives and Policies of the RPS and PNRRP in particular, which identify a range of very high values for the upper Hurunui in particular, and the apparent lower level of protection provided through the rules or mechanisms implementing those policies, for example discretionary activity status for damming of Lakes Mason, Mary and Raupo Lagoon and setting minimum flows for the lower Hurunui mainstem below what is required to protect outstanding or even significant bird habitat;

10.5 I am of the opinion that the relevant provisions of those planning instruments are not able to preserve as far as possible nor protect those values and characteristics outlined in section 199 (2).

## 11. COMMUNITY NEEDS

11.1 Section 207 requires regard be had to the needs of primary and secondary industry and the community. In terms of an expression of community aspiration and values identified for the Hurunui River, the Canterbury Conservation Management Strategy (2000 – 2009), being a publicly notified document which was formulated through a submission and public involvement process, contains Objectives and Policies for the protection of those values, being;

*“Section 4.2.1 Hurunui Ecosystems and Species – Objective “To protect and enhance the viability of priority threatened species’ populations and their habitats in the Hurunui unit”*

*“Section 4.2.4 Lake Sumner Forest park and Hurunui Lakes Management – Objective “To advocate to avoid adverse effects on the remote character and ecological values of the Hurunui lakes area – via “Supporting the findings of the Hurunui Lakes Working Party, which recognise the areas semi-wilderness and high ecological values”. The Working Party , with representation from runholders, the Department, Ngai Tahu, Canterbury Regional Council, Hurunui District Council, the North Canterbury Conservation board and recreation and conservation groups has worked on recommendations on the integrated management of natural resources in the Upper Hurunui/Lake Sumner catchment.*

*Implementation 7 – “Support investigations and application for a water conservation order for the upper Hurunui River and catchment.”*

## **12. PROVISIONS FOR A WATER CONSERVATION ORDER**

- 12.1 If the Special Tribunal accepts evidence by the applicants and others that the amended WCO application puts forward, that the upper Hurunui catchment and the waters of the lower Hurunui are outstanding and that the relevant planning provisions will not protect those values that are outstanding, then some other provisions through the mechanisms of the proposed WCO are needed to protect them.
- 12.2 The Department through its submission supports the majority of the provisions being sought in the original application. The applicants have presented a large body of evidence in support of the need to provide for no damming of the mainstem of the Hurunui, adequate fish screen design and no large water takes in the upper Hurunui.
- 12.3 The Department has also sought 2 further provisions, being a set of minimum flows in the lower Hurunui and a provision for small scale water takes in the upper for conservation purposes.
- 12.4 The ecological evidence presented by Dr Hughey, provides a strong basis for minimum flows that recognises the specific needs of the avian fauna. Such minimum flows necessitate a higher minimum flow over the spring and summer months. Conversely, a lower minimum flow could be set for the winter months when in-stream requirements are lower. These lower flows mirror those being proposed through Variation 8, which have been formulated to allow water to be taken over the winter months and stored for use at other times.
- 12.5 Dr Hughey has established the flow management regime required to support the black-fronted tern habitat in the lower Hurunui River. This requirement shows that in order to sustain the outstanding habitat, a higher minimum flow than what has been notified in Variation 8 is required. Likewise, Dr Hughey has established the habitat requirements of threatened species, such as the black fronted tern, and

his evidence shows developments such as a dam located in the South branch will destroy some of this habitat.

- 12.6 Protection of the flood flows is also necessary for the maintenance of the river bed habitat for the specialist riverbed birds. Dr Hughey has given evidence on the need for these birds to have secure and vegetation free 'islands' on which to nest. Protecting the flood flows is necessary to help clear or control exotic plant growth in the riverbed, which harbours predators and reduces the available nesting sites. This is especially important in the lower river where there is a greater abundance of exotic weeds.
- 12.7 In terms of the proposed water take exemption being sought, it is proposed that this apply to possible small scale takes for hydro-generation and water supply. These are needed to enable conservation works to take place and recreational facilities, such as those possible at Loch Katrine, to be available for the public to continue to enjoy the use of these areas while minimising effects on the environment.

### **13. CONCLUSION**

- 13.1 A WCO is a water management mechanism established under the RMA which enables the protection and preservation of outstanding features and values. This is achieved through the introduction of restrictions on water related activities. A WCO sets a higher test to pass for the identification of important values. Once that threshold is passed, it introduces a higher level of protection than Part 2 of the RMA.
- 13.2 Experts for the applicant and submitters in support have provided a range of evidence as to the values of both the upper and lower Hurunui River along with their opinion as to which features they consider to pass the test as being outstanding.

- 13.3 There is no operative water management plan in Canterbury. There is therefore no certainty of protection of the values of the Hurunui River through that plan. The other plans and policy statements which are operative also provide little certainty given the differing factors considered in their formulation under Part 2 and the statutory 10 year review period which could result in very different provisions and even lower levels of protection than those currently in place. In the absence of such a plan, the outstanding values will not be protected to the level required under a WCO.
- 13.4 In my opinion, based on the expert evidence presented and my analysis of the relevant planning provisions, a WCO for the Hurunui River including a minimum flow regime, exemption for small scale water takes for conservation purposes and the other protection provisions outlined in the original application would be the most appropriate mechanism to protect and preserve the outstanding features and values found there.