

Under the Resource Management Act 1991 (*RMA, the Act*)

In the matter of an application for a Water Conservation Order pursuant to section 201(1) of the Act

By **NEW ZEALAND FISH & GAME COUNCIL (NZFGC) &
NORTH CANTERBURY FISH & GAME COUNCIL (NCFG) &
NEW ZEALAND RECREATIONAL CANOEING ASSOCIATION (NZRCA)
(THE APPLICANTS)**

**STATEMENT OF EVIDENCE OF CHRISTOPHER ADRIAN HANSEN
ON BEHALF OF THE HURUNUI WATER PROJECT LIMITED AND MAINPOWER NZ LTD
DATED: 30 MARCH 2009**

INTRODUCTION

Qualifications and Experience

1. My name is Christopher Adrian Hansen and I am a Senior Planning Consultant with Sinclair Knight Merz Ltd in its Wellington Office.
2. I hold a Bachelor of Regional Planning (Hons.) from Massey University (1980), am a full member of the New Zealand Planning Institute, and I am a Certified and practicing RMA Hearings Commissioner. I have over 27 years planning and resource management experience that includes 14 years in planning and management positions in the former Ministry of Works & Development, the Department of Conservation, and the Ministry for the Environment. For the last 13 years I have undertaken work as a planning consultant with private companies. I have a wide range of planning experience including preparing submissions on legislation, policy and plans and attendance at Select Committees, the Environment Court, Board of Inquiries and council hearings, and preparing Notice of Requirements and resource consents.
3. Of specific relevance to this inquiry is work for Contact Energy renewing its resource consents for the Clyde, Roxburgh and Hawea generation facilities; providing expert planning evidence for the Board of Inquiry to the Waitaki River Water Catchment Plan on behalf of the Whole of Government; reviewing the Proposed WCO for the Nevis River for Contact Energy; providing expert planning advice to MainPower NZ Ltd on consenting issues relating to a number of generation opportunities in North Canterbury; preparing submissions to the Fish & Game South Island Salmon Management Plan on behalf of Contact Energy and MainPower; and reviewing and preparing submissions to numerous regional water plans around New Zealand on behalf of several national clients.
4. In addition, I have provided RMA planning services to the Hurunui Water Project Limited (*HWPL*) and MainPower NZ Ltd (*MainPower*) for the past 5 years. These services include providing planning advice on the proposed projects in the Hurunui District. I have been involved in the review of the proposed Hurunui Water Conservation Order (*Proposed WCO*) for HWPL and MainPower and have assisted in the preparation of submissions. In addition, I have undertaken a site visit of the Upper Hurunui River from the Mandamus Confluence to the upper end of Lake Sumner and the South Branch. This site visit included inspections of the outlet at Lake Sumner and a possible dam site on the South Branch.
5. This evidence is given on behalf of the HWPL and MainPower in relation to its submission to the application by the New Zealand Fish & Game Council, North

Canterbury Fish & Games Council and New Zealand Recreational Canoeing Association on a Proposed WCO on the Hurunui River.

6. I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses. This evidence is 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 that I express.

Scope of Evidence

7. My evidence will cover the following:
- An overview of the Proposed WCO;
 - Consideration of what level of protection is required;
 - An overview of the legislation on water conservation orders (WCO);
 - A s.207 assessment in terms of the RMA;
 - My conclusions.

EXECUTIVE SUMMARY

8. As will be discussed in my evidence, I understand from the legal submission and expert evidence of Dr Keesing and Dr Rough that while there may be some amenity and intrinsic values in the Upper Hurunui River, the river is however no longer in a natural state that is worthy of recognition through a WCO pursuant to section 199(1)(a) of the Act.
9. In respect of whether the amenity and intrinsic values in the entire Hurunui River water are worthy of protection because they are outstanding, I rely again on the evidence of Dr Keesing's who concluded that these values are not considered outstanding, apart from perhaps a 4km stretch (immediately below the Lake Sumner Outlet) which may be considered as 'outstanding' in terms of trout abundance and trout habitat. To put it into context, a 4km stretch is 2 % of the primary Hurunui River system – I find it difficult to accept the use of a WCO pursuant to section 199(1)(b) for the protection of outstanding values when it is clearly limited.
10. In terms of landscape and visual values that contribute to amenity and intrinsic values, I rely on the evidence of Dr Rough who concluded that for the North Branch and Lake Sumner, only the landscape associated with the Hurunui River from its source near Harpers Pass down to approximately No. 3 Hut, and

Lake Sumner from Charleys Point to its outlet is outstanding at a national level; for the South Branch only landscape associated with the upper reaches of the South Branch within the Hurunui Mainland Island is outstanding at a national level; and that the rest of the Hurunui River Catchment cannot be considered outstanding at a national level.

11. As a result of my assessment of planning mechanisms, I conclude that there are sufficient planning mechanisms already in place, which would provide the level of protection that the Proposed WCO seeks to achieve.
12. In particular and at a national level, the Proposed National Policy Statement for Freshwater Management includes a clear direction of how freshwater should be managed that enables community well-being, while providing for the appropriate protection from inappropriate use (such as the taking, use, damming or diverting of fresh water).
13. At a regional level, the Operative Canterbury Regional Policy Statement and the Proposed Natural Resources Regional Plan (including Chapter 5 of Variation 1) both provide considerable direction and guidance on how water resources with high water quality, natural character and recreational use should be managed. I consider that the level of protection offered by these documents, along with various other regional and district level studies and plans, means that the Proposed WCO is unnecessary and inappropriate to achieve the purposes of the Act.

INTRODUCTORY COMMENTS

14. Following my review of the Proposed WCO it is my interpretation that there are three key matters that the Proposed WCO would need to address:
 - (i) What matters of outstanding characteristics currently exist in the Hurunui River catchment being identified under the Proposed WCO?
 - (ii) Do outstanding characteristics require protection? If so, what levels of protection are needed?
 - (iii) What planning mechanisms are currently in place and do they provide an appropriate level of protection?
15. In addressing the first two matters outlined above, I am reliant on the facts and information provided to me by other expert witnesses, including river ecology, landscape, and recreational values. My evidence will however be focusing on the third matter, which includes an assessment of the current planning

mechanisms in place to determine whether they are sufficient to provide a level of protection of the Hurunui River catchment that the Proposed WCO seeks to offer. From the outset I would acknowledge that a WCO is, in my view, a most appropriate and necessary RMA mechanism available for protection of a water body that has amenity and intrinsic values that are outstanding.

OVERVIEW OF THE PROPOSED WCO

16. The Proposed WCO has been made to the Minister for the Environment pursuant to section 201(1) of the Act. In particular, the Proposed WCO has been made in respect of:

- The mainstem of the upper Hurunui River and all of its lakes, tributaries and contributing waters (including hydraulically connected groundwaters) from its source in the Main Divide of the Southern Alps down to immediately above its confluence with the Mandamus River (*the Upper Hurunui Waters*); and
- The mainstem of the lower Hurunui River from immediately above its confluence with the Mandamus River down to the sea (*the Lower Hurunui River*).

17. In their application, the Applicants have assessed the values of these waters and consider that:

- *'The Upper Hurunui Waters have outstanding amenity and intrinsic values which are afforded by the waters in their natural state and should be preserved in accordance with section 199(2)(a) and 2(a)[sic] of the Act; and*
- *The Lower Hurunui River contributes to outstanding characteristics and should be protected in accordance with section 199(2)(b) of the Act.'* (Page 1 of the Application document).

18. In essence the Proposed WCO identifies:

- The Upper Hurunui Waters in their natural state as affording *outstanding* habitat for brown trout (s.199 (2)(b)(i));
- The Upper Hurunui Waters in their natural state as affording *outstanding* brown trout fishery (s.199 (2)(b)(ii));
- All of the Upper Hurunui Waters have *outstanding* natural characteristics (wild and scenic values) (s.199 (2)(b)(iii));

- The Upper Hurunui Waters are *outstanding* for recreational purposes including fishing, kayaking/canoeing and tramping (s.199 (2) (b)(v));
- The waters of the Hurunui Catchment have characteristics which are considered by tangata whenua to of *outstanding* significance with tikanga Maori (s.199 (2))(c).

I note the Proposed WCO does not specifically identify scientific and ecological values (s.199 (2)(b)(iv)) as being *outstanding* in the Hurunui Waters.

19. In order to address the matters identified, the Proposed WCO seeks to preserve the Upper Hurunui Waters in their natural state. This would mean that the quality, quantity, level and rate of flow of the Upper Hurunui Waters will be retained, as far as possible, in their natural state. Such a requirement would be intended to prevent any damming or further takes or diversion of water in the Upper Hurunui Waters. The reasonable future takes for domestic needs, stockwater and fire fighting purposes are allowed, subject to compliance with proposed minimum fish screen design parameters.
20. In respect of the Lower Hurunui River, the application states that while this part of the River is not considered to be in a natural state, it contributes to the *outstanding* brown trout habitat and fishery in the Upper Hurunui Waters by providing rearing habitat and fish passage, and the *outstanding* recreational value of the Upper Hurunui River by providing a safe "get out" point for kayaking and canoeing. The Proposed WCO seeks to restrict the damming of the mainstem of the Lower Hurunui River with no resource consent or rule in a regional plan that allows such damming. All intake structures associated with the taking or diversion of water are to be screened as well as designed and maintained with minimum standards.
21. Appendix D addresses the matters to be considered by a Special Tribunal and notes that it is not practical for the Applicants at this stage to provide a comprehensive account of the needs of primary and secondary industry, and of the community – the Applicants expect the submission process will address this matter. The Proposed WCO goes on to state that specific restrictions and prohibitions proposed have been tailored to minimise likely adverse effects on primary and secondary industry. These restrictions are intended to:
 - Preclude any damming or any new diversion or abstraction of water from above the Mandamus confluence;
 - Any damming of the Hurunui mainstem below the Mandamus confluence.

OVERVIEW OF LEGISLATION

22. Part 9 of the RMA provides the legislative framework for a Water Conservation Order.
23. Section 200 of the Act provides the definition of a WCO which means “...an order made under section 214 for any of the purposes set out in section 199 and that imposes restrictions or prohibitions on the exercise of regional councils' powers under paragraphs (e) and (f) of section 30(1)...” where they relate to water. Particularly, these restrictions or prohibitions relate to quantity; quality; rate of flow or level of water body; maximum allocation for abstraction; maximum contaminant loading; temperature and pressure in a water body. I note the functions of a regional council in s.30 (e) includes the taking, use, damming and diversion of water (amongst other things), and WCO can impose restrictions or prohibitions on these matters.
24. Section 199 of the Act defines the purpose of WCOs as the following:

Section 199 Purpose of water conservation orders

(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**.

25. It is my understanding that this part of the Act relating to WCO contains its own statement of purpose, which must be met notwithstanding those overarching principles of the sustainable management of natural and physical resources contained in Part II. This may mean that conservation is given a priority over sustainable management.
26. I have bolded in the paragraph above all those key words which I consider are of particular relevance in the understanding of the purpose of a WCO. In particular, it is my interpretation that the principal purpose of a WCO requires it to only recognise and sustain outstanding amenity or intrinsic values. I note that the purpose applies in two scenarios – where waters are in their natural state and where waters are no longer in their natural state. In the first scenario the natural state of the waters make amenity or intrinsic values worthy of

protection. In the second scenario, the amenity and intrinsic values themselves, if outstanding, may warrant a level of protection.

27. I note that the RMA does not define 'natural state'. The HWPL and MainPower's legal submission addresses the difficulty in defining whether a river is in its natural state, and outlines common law principles. I note Environment Canterbury included a river classification of 'Natural State' in its notified Proposed NRRP. However, subsequent Officer Reports prepared for the hearings have recommended that the Natural State classification be combined with the High Naturalness classification.
28. 'Amenity values', as defined under the RMA means those natural or physical qualities and characteristics of an area that *contribute to people's appreciation* of its pleasantness, aesthetic coherence, and cultural and recreational attributes. On the other hand, 'intrinsic values' in relation to ecosystems, means those aspects of ecosystems and their constituent parts which have *value in their own right*, including their biological and genetic diversity; and the essential characteristics that determine an ecosystem's integrity, form, functioning, and resilience.
29. From this I understand that it is not the purpose of a WCO to enhance characteristics so they become outstanding or even to improve them if already outstanding.
30. Section 199 continues with the purpose of WCO to state what it may provide:
 - (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.

31. Beyond recognising and sustaining those outstanding amenity and intrinsic values of waters, a WCO therefore may provide – but does not have to provide – for the 'preservation as far as possible' of any water body that is in an outstanding natural state [section 199(2)(a)]. In addition, a WCO may provide for the 'protection' of any outstanding characteristics that any water body has or contributes to [section 199(2)]. Again, in my reading of this part of the Act, there is no requirement for a WCO to address these matters meaning other planning mechanisms are legitimately able to provide for these matters.
32. From my analysis, I have come to the conclusion that a WCO only seeks to recognise and sustain outstanding amenity and intrinsic values of waters and it may preserve the water body in its natural state or protect outstanding characteristics of a water body to achieve this purpose. The RMA does not provide for the use of WCO if it is to provide preservation or protection that is not the water body itself.
33. Further to section 199, section 207 of the Act states the matters that must be considered by the Special Tribunal in an application for a WCO. In particular, particular regard is to be made for the purpose and matters set out in section 199, however regard shall also be made 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.*
34. To determine the level of protection that may be afforded to the waters of the Hurunui River, there are a series of question that must now be asked:
- Does the entire Hurunui River system afford itself to require the level of protection given in the proposed WCO?; or
- Does the 4km stretch of river immediately below the outlet of Lake Sumner afford itself to require the level of protection given in the proposed WCO?; or
- Are these specific amenity and intrinsic values that require the level of protection given in the proposed WCO?; or

Are there other planning mechanisms available that provide adequate protection of the amenity and intrinsic values of the Hurunui River that would allow for them to be recognised and sustained?.

35. I address these questions when I undertake my s.207 assessment below.

SECTION 207 ASSESSMENT

36. As outlined in my evidence above, s.207 provides direction to the Special Tribunal as it considers the WCO application made by the applicants.

Particular regard given to the purpose and matters set out in section 199

37. Legal advice received by the HWPL and MainPower from Duncan Cotterill states:

*"The test as to what is outstanding is a reasonably rigorous one and that to qualify as outstanding a characteristic would need to be **quite out of the ordinary on a national basis**" – (Rangitata South Irrigation Ltd v NZ and Central South Island Fish and Game Council EnvC C109/04 (emphasis added) also accepted in the Mohaka River case).*

Amenities should stand out on a national comparative basis. If one takes a national comparative approach, the fact that the wider region is well endowed with similar high-quality features may well suggest that particular waters do not stand out when considered in a national context." – Rangitata South Irrigation Ltd v NZ and Central South Island Fish and Game Council EnvC C109/04.

It is not necessary to establish that a characteristic is unique – what must be established is that the outstanding characteristic stands out in comparison with those of other rivers – Kawarau River case." (Advice from Duncan Cotterill; 10 March 2009)

38. In my view, there are two elements included in section 199(1)(a) and (b) relevant for a WCO on the Hurunui River that need to be considered – is the Hurunui River in its natural state and are the amenity and intrinsic values outstanding. These are, in my view, the two primary issues for the applicant, and for the Special Tribunal, to establish. In my assessment below, I have relied on the expert evidence of Dr Keesing and Dr Rough along with the legal submission provided on behalf of the HWPL and MainPower in order to consider the matters put forward in the Proposed WCO, as outlined above in my evidence.

39. In relation to the question whether the waters of the Hurunui River are in a natural state, I rely on HWLP and MainPower's legal submission that expresses the view that it cannot be deemed to be in a natural state. Based on the legal advice and the evidence of Dr Keesing and Dr Rough, I find it difficult to accept a proposition that the Upper Hurunui River waters are in a natural state and worthy of recognition through a WCO (s.199 (1)(a)).
40. Furthermore, I do not consider the WCO application makes a compelling argument that the Upper Hurunui River is in a natural state either. The evidence of Dr Keesing and Dr Rough suggests that while there may be some amenity and intrinsic values, the Upper Hurunui River waters themselves are not in a natural state. In my view, the test of whether the waters of the Upper Hurunui River are in their natural state has not been proven, and a proposition that a WCO is required in terms of s.199 (1)(a) is not justifiable.
41. This leaves the second question being whether the amenity and intrinsic values in the entire Hurunui River water in themselves warrant protection because they are outstanding. In relation to Brown Trout habitat (s.199 (2) (b) (i)) and fishery (s.199 (2) (b) (ii)), Dr Keesing, a Senior Ecologist and principal with Boffa Miskell, has undertaken investigations to determine whether the Brown Trout abundance and habitat is "outstanding". Dr Keesing also addresses in his evidence what he considers "outstanding" means in his area of expertise, and concludes the top 5% of listed features could be considered to be outstanding.
42. Dr Keesing concludes in his executive summary: *"Based on the array of evidence I have been able to collect and access, of the 150 km of the North Branch main stem of the Hurunui and the 50km of river in the South Branch, I can, by ranking quantitative data values for various parameters (such as trout number per kilometre and aquatic invertebrate densities) only recommend that around 4km (that river reach immediately below the Lake Sumner Outlet) of the Hurunui system be considered as "Outstanding" in terms of trout abundance and trout habitat. I do not consider that 4km (2%) of the primary river system is sufficient to recommend that the waterways of the catchment in their entirety be considered Outstanding, especially where Outstanding is a test of "quite out of the ordinary on a national basis" or otherwise exceptional."*
43. Dr Keesing also concludes in his evidence that *"Given the broad nature of the wording in section 199 (terrestrial and aquatic organisms) but considering the purpose being "Water" focused, I interpret the Act as requiring consideration of all of the fish species, all of the aquatic macroinvertebrate species, all of the*

aquatic plant species and the plant and animal species on the edges of the water dependent on the water or whose habitat is a product of the water."

44. In relation to the proposed Dam on the South Branch of the Hurunui River, Dr Keesing concludes *"However, given that the values in this area in regard to water birds is not outstanding and there are no "outstanding" aquatic plants or plant communities, that inundation and the formation of a Lake has no affect on any Outstanding value. In return the lake will supply water fowl habitat."* (paragraph 104)
45. I concur with the findings of Dr Keesing, and rely on them for my assessment of the level of protection required for amenity and intrinsic values of the waters of the Hurunui River, and whether the planning mechanisms available achieve the outcomes sought by the WCO.
46. In relation to wild and scenic characteristics (s.199 (2) (b) (iii)), and recreational (s.199 (2)(b)(iv)), Dr Peter Rough concludes: that for the North Branch and Lake Sumner, only the landscape associated with the Hurunui River from its source near Harpers Pass down to approximately No. 3 Hut, and Lake Sumner from Charleys Point to its outlet is outstanding at a national level; for the South Branch only landscape associated with the upper reaches of the South Branch within the Hurunui Mainland Island is outstanding at a national level; and that the rest of the Hurunui River Catchment cannot be considered outstanding at a national level.
47. I concur with the findings of Dr Rough, and rely on them for my assessment of the level of protection required for amenity and intrinsic values of the waters of the Hurunui River, and whether the planning mechanisms available achieve the outcomes sought by the WCO.
48. In relation to tangata whenua interests (s.199 (2)(c)), I note the applicant has not addressed this matter.
49. Overall I conclude that there may be elements of amenity and intrinsic values that may be considered outstanding in a 4km stretch of the Upper Hurunui River below the outlet from Lake Sumner, and landscapes outstanding at a national level in the upper reaches of the North and South Branches of the Hurunui River, and that these characteristics may need to be considered in terms of s.199 (1)(a). The question that leads from this conclusion is what level of protection is required, and whether the level of protection proposed in the WCO is necessary.

Regard shall also be had to –

(a) The application and all submissions; and

50. I have outlined the matters included in the application above. Specialists on behalf of the HWPL and MainPower have addressed technical aspects that will be required to be given regard to as part of the Special Tribunal consideration of the Proposed WCO.

51. In relation to submissions, I understand from the Ministry for the Environment website on the Proposed WCO, 368 submissions have been received with 97 submissions in opposition. Those in opposition include the Hurunui District Council, Environment Canterbury, Federated Farmers (Combined Canterbury Provinces), and MainPower. I also understand that while Ngai Tahu has submitted in support of the application, this support is conditional as they seek an environmental flow regime that allows for run of the river takes of water above the environmental flow.

*(b) The needs of primary and secondary industry, and of the community;
and*

52. As already outlined above, the Proposed WCO identifies that power companies and some members of the farming community may in future apply for resource consent for new takes and/or diversions from the Hurunui River. Notwithstanding this recognition of potential use, the Proposed WCO does not have an assessment of the actual needs of either industry or the community. However it purports to allow for reasonable use by primary and secondary industries but there is no measurement for what 'reasonable use' might be. Furthermore the test is not what reasonable use is, but is to give regard to the needs of industry and the community.

53. Evidence presented by Todd Mead of MainPower, Amanda Loeffen of HWPL, and a number of farmers highlight the potential use of the waters of the Hurunui River by industry and the Community. However, the needs of industry and community are broader than just the potential use of the river by power companies and some farmers, as outlined by evidence presented by Dr Caroline Saunders. Dr Saunders evidence states there are potential direct, indirect and induced benefits in terms of increased revenue and employment from agriculture. Depending on the area that can be irrigated, there are significant economic returns and job increases.

54. In my opinion, the Proposed WCO is really about trying to stop the potential use of the waters of the Hurunui River by industry and the community as the Applicants believe there is an imminent threat of a resource consent application being made for a dam. This is based on the Applicant clearly

outlining in the third paragraph of the covering letter attached to the original application that *"The Hurunui River and its associated lakes and tributaries are under increasing threat from major irrigation and hydro-electricity proposals. The Hurunui River needs robust and durable statutory protection to ensure that future generations are able to continue to experience its outstanding values."* In my view, this clearly shows the Applicants are seeking to protect the river due to the potential development rather than for the values the river actually possesses.

55. I have difficulty with a WCO being used with this intent. As discussed above, the purpose of a WCO is to recognise and sustain the amenity and intrinsic values of the water body, and the need to have restrictions to control activities (s.200) should come from that purpose, and not vice versa.

(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.

56. In my assessment of the Proposed WCO, I have undertaken a review and assessment of a number of statutory and non-statutory instruments that are already in place or being proposed which should be "had regard to" when considering the Proposed WCO. Specifically, these documents are:

- Proposed National Policy Statement for Freshwater Management
- Operative Canterbury Regional Policy Statement
- Proposed Natural Resources Regional Plan
- Variation 1 of the Proposed Natural Resources Regional Plan – Chapter 5: Water Quantity
- Variation 8 of the Proposed Natural Resources Regional Plan
- Hurunui River Management Plan
- Canterbury Strategic Water Study
- Hurunui Operative District Plan
- Draft Hurunui LTCCP

57. In the following sections I will discuss the details of my assessment.

Proposed National Policy Statement for Freshwater Management (Proposed NPS)

58. The Proposed National Policy Statement for Freshwater Management was publicly notified on 20th September 2008 with submissions closed on 23rd January 2009. 149 submissions were received by the Board of Inquiry, including submissions from the NZFGC (supports in part) and NZRCA (supports in concept but opposes the Proposed NPS as notified). I note that the majority of the submissions received were supportive of the intent of the Proposed NPS. Further submissions were called for on 15 March 2009 and close on 10 April 2009. It is understood that public hearings are anticipated to be held in mid-2009.

59. The purpose of the Proposed NPS is to help guide decision-making on freshwater management at the national, regional and district levels. While I accept that s.207 does not specifically refer to having regard to a *proposed* NPS, and that the weight placed on the provisions of the Proposed NPS for Freshwater Management needs to be determined accordingly, I consider that it is useful to look at what Government intends the outcomes of a national policy to be. Specifically it sets out the NPS is to:

'...state inter-related and integrated objectives and policies as to the management of Freshwater Resources as a matter of national significance that is relevant to achieving the purpose of the Act.'

60. The Proposed NPS recognises the importance of water to the social, economic and cultural wellbeing of many aspects of New Zealand's society and recognises the challenges New Zealand faces in balancing the cultural, ecological, economic and social goals for managing the freshwater resources. It is intended to enhance management of New Zealand's freshwater resources so that, by 2035, these meet the needs and aspirations of all New Zealanders.

61. Of relevance to the consideration of the Proposed WCO are the following objectives that must be had regard to:

Objective 1 – Enabling well-being of people and communities

*"To ensure that Freshwater Resources are managed in a way that **enables** the people and communities of New Zealand to provide for their social, economic and cultural well-being, and their health and safety."*

Objective 4 – Recognising and protecting life supporting capacity and ecological values

“To ensure the life supporting capacity and ecological values of Freshwater Resources are recognised and protected from inappropriate –

(a) taking, use, damming or diverting of fresh water.”

Objective 6 – Managing demand for fresh water

“To ensure that demands (including social, economic and cultural demands) for fresh water are sustainably managed in a manner that has regard to the following:

(a) Available supply of fresh water;

(b) The need to provide for resilience against the biophysical effects of climate change (such as through infrastructure for supply, storage and distribution of fresh water)...”

Objective 7 – Efficient use of fresh water

“To ensure that allocated fresh water is used efficiently particularly in terms of the following:

(c) Facilitating opportunities to increase benefits from the use of fresh water.”

62. The Proposed NPS also includes a number of policies that focus on regulatory and non-regulatory methods to implement the objectives. Policy 1 requires every RPS to specify objectives, policies and methods which (amongst other things) identify *Notable Values* (including potential values) of any *Outstanding Freshwater Resources* and any *Degraded Freshwater Resources* (Policy 1(b)). *Notable Values* include scientific, ecological and biodiversity values; cultural values; and recreational values. *Outstanding Freshwater Resources* is defined as those Freshwater Resources of a region whose *Notable Values* and/or *Tangata Whenua Values* and *Interests* are such as to require that priority to be given to protection in order to achieve the purpose of the Act.
63. Policy 1 also requires an RPS to guide and direct:
- The setting in regional plans for all Freshwater Resources of the region Freshwater Quality Standards and Environmental Flows and Level (Policy 1 (c) (i)(ii)) including for protection of *Notable Values* of any *Outstanding Freshwater Resources*;
 - Regional plans (including considerations for the determination of resource consent applications) to restrict existing takes, uses, damming and

diversion of fresh water in order to sustain Notable Values in times of low flows (Policy 1 (g));

- Regional and district plans (including considerations for the determination of resource consent applications and notices of requirements) to manage the demands of fresh water in a manner which (amongst other things) provides certainty to communities and water users, promotes efficient Freshwater use, increases resilience to the effects of climate change, and controls adverse effects (Policy 1 (i));
- Regional and district plans (including considerations for the determination of resource consent applications and notices of requirements) to ensure integrated management of the effects of Land-use development by encouraging co-ordination and sequencing of infrastructure for supply, storage and distribution of fresh water and controlling adverse effects on quality and available quantity of Freshwater Resources (Policy 1 (j)).

64. Policy 2 provides clear directives to every regional council on how it must amend its RPS to implement the matters contained in Policy 1. Once an RPS is amended, a regional council must notify a proposed regional plan, or a change or variation to a regional plan, with rules to implement Policy 1 within 40 working days to give effect to the RPS. Policy 3 provides similar directives to every territorial authority on how it must notify a proposed district plan, or change or vary a district plan, with rules to implement Policy 1, within 40 working days of the RPS being amended pursuant to Policy 1 is made operative.

65. Policy 4 outlines the matters a regional council must consider when preparing a RPS/regional plan or variation or change to give effect to Policy 1:

- (a) *The Notable Values of each Freshwater Resource*
- (b) *The sensitivity of each Freshwater Resource and its Notable Values to adverse effects including effects of Land-use Development and discharge of contaminants;*
- (c) *The needs of primary and secondary industry and communities for sustainable fresh water supply;*
- (d) *The contribution of existing and potential uses of Freshwater Resources and of existing economic investment to regional and national social, economic and cultural well-being;*

- (e) *The importance of avoiding over-allocation of Freshwater for Consumptive Use;*
- (f) *Tangata Whenua Values and Interests;*
- (g) *Social and economic transition costs;*
- (h) *The value of swimmability to the community.*

66. Policy 5 provides direction to territorial authorities preparing district plans or variations or changes to give effect to Policy 3, and Policy 6 provides direction to councils as resource consents and designations are considered regarding what matters conditions should address. The non-regulatory methods (Policy 7) include the provision of financial contributions, development contributions (pursuant to the Local Government Act 2002) and other methods which may be used to give effect to the Proposed NPS.
67. I note that the implementation methods outlined in the Proposed NPS are focused at the territorial authorities and do not include reference to the use of a WCO as a possible means of achieving the objectives and policies of freshwater management.
68. In my opinion, the Proposed NPS would provide significant guidance and direction to regional and district councils for the management of Freshwater resources if it was made operative in its current form. In particular, I consider there are intended objectives and policies which achieve similar outcomes as a WCO by requiring the identification of Notable Values (including potential values) and requiring protection of Notable Values of any Outstanding Freshwater Resources, and would achieve greater outcomes as a WCO by requiring the enhancement or restoration of Notable Values of any Degraded Freshwater Resources. I also consider the framework that could be established through the Proposed NPS is in keeping with the overall intent of the RMA, and I support the more balanced/enabling approach to the management of Freshwater resources.
69. While I accept that the Proposed NPS has yet to be made operative, I consider it sends a very clear and strong message from Government how it intends Freshwater Resources to be managed. In relation to the Hurunui River and the amenity and intrinsic values identified and discussed above, the Proposed NPS would require the RPS to identify the Notable Values of the River that are outstanding, and would then require the regional and district plans to manage the water resource accordingly. I would expect such an approach to identify the Notable Values of the 4km stretch of the mainstem below the outlet of Lake Sumner and the upper reaches of the North and South

Branches, and implement management of these values accordingly. In my opinion, such an approach would be more appropriate than the Proposed WCO which intends to restrict activities such as damming. I would see no need for a WCO under this scenario.

National Policy Statement for Renewable Energy Generation

70. This NPS outlines the importance of renewable electricity generation for New Zealand in meeting its growing energy demand while also responding to the risks of climate change. It recognises that the locations renewable energy is generated from will often coincide with areas of significant natural character but specifically states that a nationally consistent approach to balance the competing values is to be implemented.

71. I consider that the restrictions in the Proposed WCO on damming and taking of water from the Upper Hurunui River, and the restriction of damming the mainstem of the Lower Hurunui River, would prohibit the use of the waters of the Hurunui River for electricity purposes. In my view this is contrary to the NPS for Renewable Energy Generation. This is a matter the Special Tribunal will need to have regard to when considering the Proposed WCO, and is particularly relevant to the needs of industry and the community I have discussed above in my evidence.

Operative Canterbury Regional Policy Statement 1998 (RPS)

72. The RPS provides an overview of the resource management issues in the Canterbury region and sets out how natural and physical resources are to be managed in an integrated way to meet Part 2 of the Act. Pursuant to section 62(3) of the RMA, a regional policy statement must *not be inconsistent* with any WCO and must *give effect* to a national policy statement or New Zealand coastal policy statement. I note that the RPS for the Canterbury region was made operative prior to the development of any national policy statements, and would need to be amended if the Proposed NPS for Freshwater Management became operative. Notwithstanding this, s.207 of the Act requires the Special Tribunal to give regard to the operative RPS.

73. I consider the resource management issues covered in the RPS that are relevant to the Proposed WCO are:

- Chapter 8: Landscape, Ecology and Heritage;
- Chapter 9: Water; and
- Chapter 10: Beds of Rivers and Lakes and their Margins

74. The Introduction to Chapter 9 of the RPS acknowledges that water is of vital importance to the whole of the Canterbury community. Many of the water bodies in the upper catchments have high water quality which is described as a valuable feature of Canterbury, and there are also a number of water bodies with a high natural character and recreational use or potential. In particular, the RPS states:

“Subject to investigations such water bodies may include:

- *... Hurunui River above the Mandamus...; and*
- *many of the high country lakes and tarns and their catchment streams and rivers that are not presently controlled for hydro-electricity storage.”*
(Section 9.1, page 121)

I note that the RPS uses the term 'high' (and not 'outstanding') in reference to water quality and natural character and recreational use and the commentary is at a regional level. The findings of Dr Keesing and Dr Rough support the regional importance of the Hurunui River.

75. Chapter 9 of the RPS identifies three regional issues relating to water in the Canterbury region, including: the competing demands for water (Issue 1); the effects of land uses on water quantity (Issue 2); and quality (Issue 3).

76. In addressing the competing demands (Issue 1), Objective 1 seeks to achieve sufficient quantities of water that will enable present and future generations to gain cultural, social, recreational, economic and other benefits from those water bodies in the region, while addressing many of the matters included in Part II of the Act, particularly s.6 (a) relating to natural character of rivers, s.6(c) relating to outstanding natural features and landscapes and 7(h) relating to the habitat of trout and salmon. In achieving this objective, Policies 1 and 2 set out the need for the regional council to set water flow, level or allocation regimes for water bodies with the aim of:

(a) Enabling people and communities to maximise the wellbeing obtained from Canterbury's water resources through taking account of its value both instream and out of stream; and

(b) Where appropriate enhancing the availability of water for present and future generations through increased efficiency of use, augmentation or storage. (Policy 2)

Policy 2 goes on to state the methods that will be used by the regional council in achieving these aims, which are the use of regional plans; resource

consents; encourage the preparation of iwi management plans; and surveillance and enforcement.

77. In addition to the above, Policy 4 is also relevant in that it seeks to investigate water bodies which should be sustained as far as possible in their natural state, and lists those water bodies that should be given *priority* in the establishment of water flow, level or allocation regimes. A similar list is also given in Policy 10(b) which has been identified as a priority for setting standards to address the issue of ensuring that water quality in the region's water bodies provides cultural, social, recreational, economic, health and other benefits (Objective 3).
78. I note with interest that the Hurunui River is not included in this list of priorities, which in my view reflects the view of the Regional Council that it is not in its natural state. Such a position is consistent with the findings of Dr Keesing and Dr Rough and the legal submission made on behalf of the HWPL and MainPower.
79. Eight environmental results are anticipated by the RPS implementing the policies and methods contained in Chapter 9, which include:
- (2) *Protection of the lift-supporting capacity of water resources, including the health and diversity of their ecosystems;*
 - (3) *Protection of areas of mahinga kai and water values of cultural significance to Tangata Whenua;*
 - (4) *Efficient use, and better availability, of abstracted water;*
 - (5) *Greater benefits from the use, development and protection of Canterbury's water bodies;*
 - (6) *Maintenance of water quality and quantity to the standards and flow and level regimes set for water bodies and coastal water;*
 - (7) *Maintenance of the health, integrity and value of groundwater aquifers, including water quality, spring flows and associated wetlands and ecosystems. (Section 9.6)*
80. In my view, the RPS already provides considerable direction and guidance on how the water resources of the region with high water quality, natural character and recreational use should be managed. Based on the findings of Dr Keesing and Dr Rough, I consider that the level of consideration of the waters of the Upper Hurunui River is appropriate as it is not a natural state, and the high values are being investigated and protected accordingly. Such a

position would be stronger should the Proposed NPS for Freshwater Management be operative in its current form. I therefore do not consider a WCO with the level of protection it proposes for the waters of the Hurunui River is necessary, nor appropriate.

81. In addition to my assessment of the matters covered in Chapter 9, Chapter 8 of the RPS covers matters on landscape, ecology and heritage. This chapter is of relevance to the Proposed WCO as it also seeks to protect the landscape values of the Hurunui River.

82. Chapter 8 identifies the meaning of landscape to be more than just visual – it expresses character and identify and at the same time, it is about the perceptions that people have placed on it. I note Chapter 8 specifically recognises the Lake Sumner area and headwaters of the Hurunui River as being dominated by red, silver and mountain beech forests.

83. Issue 1 identifies the adverse effects of the use, development and protection of natural and physical resources on the integrity, distinctive characteristics, and contribution to a regional sense of identity of (amongst other things): the natural character of rivers and lakes; natural features and landscapes including their cultural, amenity and recreational values; and habitats of indigenous fauna and ecosystems. Objectives 2 and 3 intend to protect and enhance these characteristics, and Policies 3 (natural landscapes and features) and 4 (habitats for indigenous fauna) implement these objectives.

84. In brief, the environmental results anticipated included in this chapter are:

(1) Protection or enhancement of distinctive characteristics of the Canterbury region, including those identified landscape, biological and heritage values.

(2) Protection of the quantity and quality of water within existing wetlands

(3) Greater use of artificial wetlands as means of water treatment or as natural habitats.

The RPS anticipates that these results will be achieved through a combination of regional plans, investigations, district plans, iwi management plan, heritage orders, and resource consents.

85. In my view, Chapter 8 compliments Chapter 9 in that it focuses on the landscape and ecological values of the Hurunui River, and intends to protect and enhance them. Furthermore, the provisions of the RPS are appropriate and necessary for the features identified by Dr Keesing and Dr Rough. I

therefore do not consider a WCO with the level of protection it proposes for the waters of the Hurunui River for these values is necessary, nor appropriate.

86. Chapter 10 of the RPS covers those issues relating to the beds of rivers and lakes and their margins. It recognises that these are vital elements of the Canterbury landscape and are important habitats for indigenous flora and fauna.
87. In particular, Issue 1 identifies the potential damage (with respect to land use activities within water bodies, their beds and margins) to the natural character of lakes and rivers, habitats of indigenous flora, fauna, trout and salmon, as well as the potential reduction of significant amenity, cultural and recreation values or natural features and landscapes.
88. The enhancement of the natural character, habitats of indigenous flora and fauna, habitats of trout and salmon, and ecological health of aquatic ecosystems is one of the eight anticipated environmental results identified as a result. The RPS, through investigations and the use of regional and district plans, resource consents and iwi management plans, will seek to ensure those areas containing important conservation values are identified, and any land use or development of these sites should avoid significant adverse effects (Policy 1). At the same time, Policy 2 seeks the enhancement of those sites that currently exist in a degraded state, particularly for those areas with important ecological values.
89. In my opinion, the RPS provides clear direction and guidance to the preparation of regional plans, district plans and for the consideration of resource consents, that important conservation values are identified and protected. I therefore do not consider a WCO with the level of protection it proposes for the waters of the Hurunui River is necessary, nor appropriate.

Proposed Natural Resources Regional Plan (Proposed NRRP)

90. The Proposed NRRP addresses sustainable management of natural resources in the Canterbury Region. It was first proposed in June 2002, and was followed by Variation 1, which introduced Chapters 4-8 in July 2004. Hearings are continuing at present with the Hearings Commissioners intending to release decisions after the hearings are completed. While the Hearings Commissioners have provided verbal comment on how they have either adopted or viewed a number of the Officer Report recommendations which may change the final form of the NRRP, at this stage regard can only be given to the Proposed NRRP as notified. Of relevance to the Proposed WCO are (note I will only assess Chapter 5 in my evidence below):

- Chapter 4: Water Quality
- Chapter 5: Water Quantity
- Chapter 6: Beds and Margins of Lakes and Rivers

Variation 1 of the NRRP – Chapter 5: Water Quantity (Variation 1)

91. Chapter 5 of the Proposed NRRP is a complex document with a large number of objectives, policies and methods. I do not intend to do a comprehensive assessment of this Chapter, but only highlight some key points. In my view, the context of Chapter 5 of the Proposed NRRP is possibly as important as the provisions it contains. Firstly, Section 67(3) of the RMA states that a regional plan must *give effect* to any national policy statement [s.67(3)(a)]. I consider this is important in the context of the Proposed NPS for Freshwater Management I have spent quite some time assessing above, and the operative RPS. Secondly, the proposed NRRP must *give effect to* a regional policy statement [s.67(3)(c)]. Therefore, regardless of the final form of the NRRP, it must give effect to the operative RPS for Canterbury which again I have assessed above. Finally, I also note that s.207 states that regard has to be given by the Special Tribunal to a proposed plan. Therefore, regardless of what stage through the plan preparation process the NRRP has got to, the provisions of the proposed Plan can be considered. At the very least the NRRP in its final form will give effect to the protection and preservation intent of the RPS for Canterbury.
92. In this context, I consider the following provisions of Chapter 5 of Variation 1 are relevant:
- *Policy WQN1 Natural state water bodies* – intends to retain river flows or lake levels in certain water bodies in their natural state – including Lake Sumner; Lake Taylor; lake Sheppard; Lock Katrine; Any taking, using, damming, and diverting of water or discharging of water into water within these natural state water bodies must not have, by itself, or in combination with any other takes, damming, diversion or discharges in the same area, more than a minor adverse effect on (amongst other things: natural character and landscape values of the area; habitats of indigenous birds and fish; passage and spawning areas for trout or salmon; amenity, including wild and scenic values;
 - *Policy WQN2 High naturalness water bodies* - Outside the areas covered by Policy WQN1, the following water bodies are classified as high naturalness water bodies - the mainstem of the Hurunui River to Lake Sumner; tributaries of the Hurunui River upstream of the confluence with,

but not including, the Mandamus River; Maintain the high naturalness of these water bodies by: preventing damming in mainstem of Hurunui River to Lake Sumner; prevent damming of any water bodies where this would significantly impact on the values in the area to be dammed or on the flow regime needed to maintain instream values downstream, including flows needed to maintain natural character of the river; maintain habitats for indigenous birds and fish; maintain spawning areas for trout and salmon.

- *Explanation and principal reasons* - Policy WQN2 recognises that high naturalness warrants careful management but that this need not rule out the taking or using of water. Accordingly, the policy recognises both the outstanding natural and cultural values, and the potential of these river systems to provide social and economic benefits. Any development involving the taking, damming or using of water will need to ensure a flow regime is maintained that will satisfy the values identified in the policy.
- *Rules - Taking or diverting of water from natural state water bodies – **non-complying activity** (Rule WQN11); where the activity is not in accordance with the allocation limits set in Schedule WQN1, the activity is a **prohibited activity** (WQN12); where damming and/or diverting of water that is within a natural state or high naturalness water body – **non-complying activity** (Rule WQN42); where damming and/or diverting of water in a natural state or a high naturalness water body (other than the mainstem of a high naturalness water body) listed in Schedule WQN5 that is not permitted by rules WQN36, WQN37, WQN38, WQN39 or authorised via a resource consent under rule WQN40 and WQN41, is a **non complying activity**; where the activity is to dam the mainstem of a high naturalness water body, the activity is a **prohibited activity** (Rule WQN43); where damming of water in the main stem of high naturalness water bodies – **prohibited activity**(Rule WQN43); the damming of water in a river that is the main stem of a high naturalness water body listed in Schedule WQN5, is a **prohibited activity** for which no resource consent shall be granted.*
- *Section 5.11 Environmental results anticipated* - Environmental result anticipated WQN1 is no decline in naturalness of river flows and lake levels in natural state water bodies; Environmental result anticipated WQN2 is no decline in naturalness of river flows and lake levels in high naturalness water bodies; Environmental result anticipated WQN3 is sufficient levels of water and sufficient flows of water are maintained instream, and sufficient flow variability is maintained, for the protection of instream values in lakes, rivers, lowland streams and wetlands.

93. I acknowledge that no decisions have been released yet on submissions on Chapter 5 of the Proposed NRRP. I note the Officer Report recommendation to the Hearings Commissioners is that the natural state and high naturalness classifications be combined to make one classification – high naturalness. I consider this confirms the Regional Councils view that the waters in the Hurunui River are not in a natural state, and that appropriate preservation and protection can be achieved through combining the current provisions. I concur with such a position. While it is difficult at this stage to provide informed comment on the provisions of Chapter 5 of the Proposed NRRP without the decisions released, I would reiterate that the NRRP will have to give effect to the operative RPS, and in its current form significantly restricts (in fact prohibits) the damming of the mainstem of the Hurunui River. In my view, even if the Hearings Commissioners' decisions changed the activity status for damming the mainstem to non-complying, this would be a very high test to meet for a hydro or irrigation project. .

Variation 8 of the NRRP (Variation 8)

94. Variation 8 of the proposed NRRP was notified in September 2007 and has been incorporated into the hearing of submission on Variation 1. Variation 8 takes the work done in the Hurunui River Management Plan and amends Chapter 5 of the NRRP by adding a new Schedule WQN1.7 outlining the minimum flow and allocation conditions on the Hurunui River and Tributaries.
95. *Schedule WQN1.7 Hurunui River and Tributaries*

Purpose of management for the Hurunui River and Tributaries:

(i) to safeguard the mauri of the rivers;

(ii) to protect wahi tapu and other wahi taonga of value to Ngai Tahu;

(iii) to maintain the natural character and amenity of the rivers;

(iv) to safeguard the life-supporting capacity for trout;

(v) to safeguard the life-supporting capacity for indigenous species; and

(vi) to provide for the taking of water for out-of-stream use providing sufficient water is retained instream to satisfy purposes (i) to (v).

Purposes (i)-(vi) will be achieved through the setting of an environmental minimum flow and an allocation regime for the water above the minimum flow. Abstractions for irrigation shall cease at the minimum flow. Takes servicing

domestic, stockwater and fire-fighting uses will be restricted in according to Policy WQN19.

96. Table WQN14.7 sets out the minimum flow and an allocation regime for the Hurunui River and Tributaries, and lists the A permits (currently allocated) and B permits (for allocation) that vary depending on the time of the year. The allocation limits that apply directly to the Hurunui River are as follows:

(l/sec)	Min. Flow A Permits	Allocation limit for A Permits	Min. Flow B Permits	Allocation limit for B Permits
Hurunui River Amuri Plains (Upper Hurunui River)	15,000 Sep-Jan 12,000 Feb-Mar 15,000 Apr 12,000 May-Jul 13,000 Aug	6,700 Oct-Apr 15,000 May-Sep	26,700 Sep-Jan 23,700 Feb-Jul 24,700 Aug	10,000 May-Sep 15,000 Oct-Dec 10,000 Jan or 15,000 when flows exceed 40,000 at recorder 7,500 Feb-Mar or 15,000 when flows exceed 40,000 at recorder 10,000 Apr or 15,000 when flows exceed 40,000 at recorder and no more than 90 million cumecs in the period 1 May – 30 Sep.
Hurunui River Domett Plains (Lower Hurunui River)	15,000 Sep-Jan 12,000 Feb-Mar 15,000 Apr 12,000 May-Jul 13,000 Aug	2,000 Oct-Apr 1,500 May-Sep	26,700 Sep-Jan 23,700 Feb-Jul 24,700 Aug	1,500 Oct-Sep

97. In essence adopting Variation 8 is the mechanism by which a river is moved from Table WQN11 in Appendix WQN2 into Schedule WQN1.7.
98. I accept that Variation 8 is yet to be made operative and therefore may be subject to change. Notwithstanding this, of relevance to the consideration of the WCO, in my view are the outcomes of the flow regime established in Variation 8 will achieve similar outcomes, particularly to protecting wahi tapu and other wahi taonga of value to Ngai Tahu; maintaining the natural character and amenity of the rivers; and safeguarding the life-supporting capacity for trout. Based on these observations, I would consider the proposed WCO achieves similar outcomes, and I consider it is unnecessary from this perspective.

Hurunui River Management Plan (HRMP)

99. The Draft Hurunui River Management Regime (Report No. R06/40) is a non-statutory document prepared by the Regional Council and released for comment in May 2007. The HRMP represents an extensive study of the Hurunui River and its tributaries and has been undertaken to set a comprehensive flow regime for the Hurunui River. The review is divided into three parts: Part A deals with the review of the mainstem flow regime and draws on a wide source of information. Part B deals with a review of the environmental flows for the tributary streams with an aquatic ecosystem flow-needs study carried out by NIWA with a technical panel established to provide expertise and advice on flow requirements, Part C brings together the conclusions and recommended minimum flow and allocation regimes for the mainstem and tributaries.
100. As discussed above, the HRMP provides the basis for the management regime proposed in Variation 8 to the Proposed NRRP, discussed above. In my view, it is inconsistent to introduce a WCO that in effect ignores the extensive work undertaken in the HRMP not only in the mainstem, but also the tributaries, and renders the flow regime proposed irrelevant.

Canterbury Strategic Water Study (CSWS)

101. The CSWS is a non-statutory process initiated by the Ministry of Agriculture and Forestry, the Ministry for the Environment and Environment Canterbury, and is a study undertaken to find a way to better control the supply and demand of water in the Canterbury region. To date, the CSWS has undergone three stages, which were:
- Stage 1 (published 2002): a sub-regional water balance evaluation of current and likely future water supply and demand. This study concluded that water storage should be considered as part of meeting future demands for water – primarily for irrigation – to supplement supply in the Canterbury region in times of low natural flows.
 - Stage 2 (2008): identified potential water storages and their hydrological feasibility, including the area they could irrigate and their impacts on river flows.
 - Stage 3 (2008): involved an initial evaluation by multi-stakeholder groups of the environmental, social, cultural and economic impacts, and the likely public acceptability of the major water storage options (at least 50,000,000m³) identified in Stage 2. It has identified two key findings:
 - (i) landuse intensification and its effects on water quality; and

- (ii) the need to rigorously explore maintaining or improving the flow variability in major rivers.

102. The CSWS has evaluated water storage options based on 12 major reservoirs. The multi-stakeholder groups included people with a wide range of interests in water in the Canterbury region, including irrigation, Hurunui Water Development Group, North Canterbury Fish and Game Council, kayaking, farming, community development and Ngai Tahu. The evaluation has indicated that some options, including Lake Sumner and the Hurunui River offers storage options that '*were more likely to meet a range of expectations and requirements than other options considered*' (page 3, CSWS Stage 3 Report).

103. In particular, section 5 of the CSWS (Stage 3) considers the water storage options in the Hurunui District. In the introductory paragraphs, it considers the Hurunui River:

- Is a *nationally important wild and scenic river*;
- Is a *regionally important trout fishery* (rated fifth best salmon fishery in New Zealand); and
- Is a *nationally important kayaking river* (page 27).

104. Whilst the CSWS has made these statements, I am however unable to find from the report whether those nationally and regionally important aspects refer to the whole or particular sections of the Hurunui River. I do note however, that in the evaluation of the South Branch storage option, there are mixed opinions on whether this option would have an impact on kayaking, as the damming of the South Branch could introduce higher flows which would be good for some reaches, but may drown-out the popular Maori Gully (page 29).

105. The CSWS is a regional strategic assessment that identifies the importance of water storage options for the Canterbury Region. The WCO is contrary to the findings of the CSWS with the restrictions it proposes, and this seems difficult to understand when the applicants have been fully involved in the process.

Hurunui Operative District Plan (District Plan)

106. The District Plan controls land use activities outside the bed of Hurunui River, and activities on the surface of the river. The Proposed WCO cannot place limitations on a territorial authority as it exercises its functions under s.31 of the Act (s.200 states a WCO can only impose restrictions on the exercise of regional councils).

107. The key provisions of the District Plan are:

- *Sustainable management issue: The use of renewable resources - water*

Objective 4 - The protection and enhancement of the quality and quantity of the District's geothermal and freshwater resources, and the recognition of their value to the community.

Policy 4.1 - To avoid, remedy or mitigate the adverse effects of land use activities on the quality and quantity of water resources (implemented in part by rules to permit land use activities which meet environmental standards and the resource consent process to assess potential adverse effects of land use on water resources and associated ecosystems and values).

Policy 4.3 - To avoid, remedy or mitigate the adverse effects of land use activities, public access and utilisation of water resources on the cultural integrity and the natural and physical characteristics of the margins of water bodies.

Policy 4.4 - To provide for the use of the surface of water bodies in a way that protects water quality and quantity and reflects the conservation, ecological, aesthetic, cultural and recreational values of such water bodies (implemented in part by rules including controls relating to access and water margins, water surfaces, and significant natural resources.

108. The Operative District Plan intends to control land uses that may hinder the protection and enhancement of the quality and quantity of the District's freshwater resources. In my view, this adds another level of protection that the WCO cannot provide and is another example of a statutory planning mechanism that already exists that achieves outcomes of relevance to the WCO.

- *Environments of special concern: Issue 18 – Hurunui Lakes area*

Objective 18 - The maintenance and enhancement of the natural values of the Hurunui Lakes area while providing for compatible activities.

Policy 18.4 - 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 (implemented in part by rules to manage those activities with the potential to create significant adverse effects).

Policy 18.5 - To protect and enhance conservation and recreation values by controlling activities on the surface of water bodies (implemented in part by

rules to manage those activities with the potential to create significant adverse effects on the surface of water bodies).

Policy 18.6 - To promote the integrated and consistent management of the Hurunui Lakes area.

109. As outlined in more detail by Dr Rough, the District Plan includes a number of provisions relating to natural landscapes and character, and Dr Rough concludes that the areas considered to be of outstanding natural value at the Hurunui District level have been appropriately identified. In particular, the District Plan introduces Issue 18 – Hurunui Lakes area which is an environment of special interest. The Hurunui Lakes are identified as one of the District's significant natural area, and a special management area is identified. This special management area gives recognition to the need for a comprehensive and well integrated management framework for the Hurunui Lakes. An anticipated environmental outcome from the provisions of Issue 18 is the maintenance and enhancement of the area's landscape values and natural character. In my view, the provisions of the Operative District Plan provide some significant planning mechanisms, including rules that control land use activities that achieve outcomes above and beyond the proposed WCO. In this context, I consider the Proposed WCO is unnecessary and inappropriate.

Draft Hurunui Long Term Council Community Plan 2009-2019 (LTCCP)

110. The Draft LTCCP is a statutory document prepared under the Local Government Act that integrates strategies, policies and activities in the context of identified community outcomes, and in a way that promotes public accountability and integrated decision making. The Draft LTCCP identifies one of the District's biggest issues as being the long-term planning concerns of water, and that there is a recognised need to develop a comprehensive water management strategy, which will address issues surrounding storage, distribution, quality and conservation of water. It is acknowledged that this strategy will draw on a number of projects and parties, including the HWP, the CSWS, the Canterbury Mayoral Forum and Environment Canterbury.
111. The Draft LTCCP section on the Hurunui Water Management Strategy contains the position/strategy of the Hurunui District Council (*the Council*) on the issues relating to water in the district. I note that the Council's strategy in relation to the CSWS is to support the objectives and conclusions with regard to water storage and the relationships between water and economic development for Canterbury. In particular the Draft LTCCP states:

“The guiding themes of the Hurunui Water Management Strategy are responsible and sustainable growth and development for Hurunui and the

prosperity of its communities whilst concurrently protecting natural and traditional environmental and recreational values, and at the same time pursuing and applying leading edge and best practice land care research, scientific advances in water use efficiency and water conservation."

"... Council opposes the application for a WCO application being sought for the Hurunui River. Council firmly believes that such an application does not represent the best interests of the Hurunui District, in that if granted a WCO would eliminate any consideration of the storage options and development opportunities that the wider Hurunui community has the right to debate and consider."

"Council will support other investigation and discussions with regard to river flow regimes, abstraction and development opportunities in other areas (e.g. Waipara and Cheviot) as appropriate." (page 178)

112. In my view, the Draft LTCCP reflects the needs of the community, and is a document that should be given regard to be the Special Tribunal in terms of s.207 (b). Not only does the LTCCP go through a statutory process that includes public submission and input, it also becomes the blueprint for future financial commitments by Council through the Annual Plan. In this context, it provides a clear indication of what the community considers is its needs, and provides the Council with a mandate to take the Hurunui District forward. In my view, the Draft LTCCP is contrary to the intentions of the WCO, and the views expressed should be given weight by the Special Tribunal.

CONCLUSIONS AND RELIEF SOUGHT

113. Based on the expert evidence of Dr Keesing and Dr Rough I conclude that while there may be some amenity and intrinsic values in the Upper Hurunui River, the river is however no longer in a natural state that is worthy of recognition through a WCO pursuant to section 199(1)(a) of the Act.
114. In respect of whether the amenity and intrinsic values in the entire Hurunui River water are worthy of protection because they are outstanding, I rely on Dr Keesing's evidence, who concluded that these values are not considered outstanding, apart from perhaps a 4km stretch (immediately below the Lake Sumner Outlet) which may be considered as 'outstanding' in terms of trout abundance and trout habitat. To put it into context, a 4km stretch is 2 % of the primary Hurunui River system – I find it difficult to accept the use of a WCO pursuant to section 199(1)(b) for the protection of outstanding values when it is clearly limited.

115. In terms of landscape and visual values that contribute to amenity and intrinsic values, I rely on the evidence of Dr Rough who concluded that for the North Branch and Lake Sumner, only the landscape associated with the Hurunui River from its source near Harpers Pass down to approximately No. 3 Hut, and Lake Sumner from Charleys Point to its outlet is outstanding at a national level; for the South Branch only landscape associated with the upper reaches of the South Branch within the Hurunui Mainland Island is outstanding at a national level; and that the rest of the Hurunui River Catchment cannot be considered outstanding at a national level.
116. As a result of my assessment, I conclude that there are sufficient planning mechanisms already in place, which would provide the level of protection that the Proposed WCO seeks to achieve.
117. In particular and at a national level, the Proposed National Policy Statement for Freshwater Management includes a clear direction of how freshwater should be managed that enables community well-being, while provides for the appropriate protection from inappropriate use (such as the taking, use, damming or diverting of fresh water).
118. At a regional level, the Operative Canterbury Regional Policy Statement and the Proposed Natural Resources Regional Plan (including Chapter 5 of Variation 1) both provide considerable direction and guidance on how water resources with high water quality, natural character and recreational use should be managed. I consider that the level of protection offered by these documents, along with various other regional and district level studies and plans, means that the Proposed WCO is unnecessary and inappropriate to achieve the purposes of the Act.
119. Overall I conclude that the proposed WCO is unnecessary and inappropriate.
120. I recommend the WCO application be declined.

Dated 30 March 2009

Chris Hansen

Senior Planning Consultant

Sinclair Knight Merz Ltd