

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

**AN INQUIRY** by the Special Tribunal under section 206 of the Resource Management Act 1991, in respect of an Application for Amendments to the Water Conservation (Kawarau) Order 1997

**STATEMENT OF EVIDENCE OF WILLIAM DAVID WHITNEY**

- 1.** **MY** full name is William David Whitney of Alexandra. I hold a Bachelor of Town Planning Degree from the University of Auckland and a Postgraduate Diploma in Economics from the University of Otago. I was admitted as full Member of the New Zealand Planning Institute in 1980 and I am a member of the Resource Management Law Association. I am a qualified independent Hearings Commissioner. I have been involved in resource management matters on a full time basis since 1977.
- 2.** **I** am a principal in the firm of Johnston Whitney that practices as resource management and planning consultants in Alexandra and in Dunedin City at Mosgiel. I am planning consultant to the Central Otago District Council.
- 3.** **I** appeared before the Special Tribunal which conducted an inquiry into the original application for a Water Conservation Order for the Kawarau Catchment in March 1992. I presented evidence in support of a submission lodged by the Clutha-Central Otago United Council, a predecessor to the Otago Regional Council.
- 4.** **I** have considerable experience in assessing applications for resource consent under the Resource Management Act 1991. I am also experienced in the preparation of district plans and plan changes and have presented evidence before the Environment Court (and previously the Planning Tribunal) on at least 60 occasions, including proceedings relating to the renewal of resource consents for the Clyde and Roxburgh Dams in the Clutha Catchment.
- 5.** **I** have read the Code of Conduct contained in the Environment Court's Practice Note that took effect on 31 March 2005 and I agree to comply with it. This evidence is within my area of expertise as a planning and resource management expert. I confirm that I have not

omitted to consider any material facts known to me that might alter or detract from the opinions expressed herein.

## **EXECUTIVE SUMMARY**

6.

- The Central Otago District Council opposes the amendments sought to the Water Conservation (Kawarau) Order 1997 that seek to prohibit damming or diversion of the Nevis River.
- The amendments are opposed as the Central Otago District Council considers that the resource consent process is the proper mechanism for the consideration of whether damming in particular should occur on the Nevis River.
- Any proposal to dam the Nevis River would have status as a discretionary activity in terms of the Central Otago District Plan and the Otago Regional Plan : Water.
- The resource consent process will enable actual and potential effects on the environment (both adverse and positive) of allowing the activity to be properly assessed, including Part 2 matters. This contrasts with section 199 which has primacy over Part 2 matters.
- The economic resources of the Nevis Valley have been utilised, particularly for mining, since the earliest days of European settlement in Central Otago.
- An earlier Special Tribunal that considered the application for the Water Conservation (Kawarau) Order was not persuaded in 1992 that it should preclude some hydro development options by totally prohibiting damming of the Nevis River.
- No compelling reasons have been presented in the documents lodged in support of the current application to justify a total prohibition on damming of the Nevis River. The situation does not appear to have materially changed since the earlier Special Tribunal released its Interim Report in March 1992.
- Resources exist to support primary industry (mining) development in the Nevis, including oil shale and lignite coal resources. The potential development of these resources is not addressed in the application.
- Gold mining has occurred in the Nevis Valley in recent years, and there is an ongoing interest in the gold resources of the Nevis Valley.
- There has been no commitment to any particular scheme design for hydro development in the Nevis Valley.
- A total prohibition on damming of the Nevis River would be contrary to meeting the needs of the community in terms of hydro electric power requirements; and would also compromise the needs of the community in terms of providing an ongoing source of funds

for the Central Lakes Trust which provides funding for community groups in this area in the event that Pioneer Generation Limited were to develop the hydro resources of the Nevis River.

- During the past decade a total of 7 land use consents have been granted to permit bungy and associated tourism recreational activities above the Nevis River (and Doolans Creek) in the lower Nevis Gorge.
- There may be positive as well as adverse effects for recreation associated with any damming of the Nevis River.
- The Regional Policy Statement, Regional Plan : Water and Central Otago District Plan contain comprehensive objectives and policies that would be relevant to the consideration of any application to dam the Nevis River for electricity generation or to undertake mining in the Nevis Valley.
- The provisions of the Central Otago District Plan acknowledge the Water Conservation Order (Kawarau) 1997, recognise the hydro-electric power development potential of the Nevis Valley and also refer to the oil shale deposits of the valley.
- The Central Otago District Council has come to no view with respect to the outcome of any future resource consent process relating to hydro electric power generation on the Nevis River.

#### **SUBMISSION BY CENTRAL OTAGO DISTRICT COUNCIL**

**7.** **THE** New Zealand and Otago Fish and Game Councils have made an application for amendments to vary the Water Conservation (Kawarau) Order 1997 in respect of the Nevis River. The Nevis River flows from its source at the southern end of the Garvie and Hector Ranges to its confluence with the Kawarau River, approximately 50 kilometres north-east.

**8.** **THE** Nevis River and its catchment is located within the Central Otago District. The Central Otago District Council lodged a submission dated 30 September 2008 that opposes the amendments sought to the Water Conservation (Kawarau) Order 1997 that seek to prohibit damming or diversion of the Nevis River. In essence the amendments are opposed as the Council considers that the resource consent process is the proper mechanism for the consideration of whether damming in particular should occur on the Nevis River.

**9.** **ANY** such proposal would have status as a discretionary activity pursuant to sections 104 and 104B of the Resource Management Act 1991 in terms of Rule 13.7.4(iii) of the Central Otago District Plan and Rule 12.3.4.1 of the Otago Regional Plan : Water. The Central

Otago District Council considers that the discretionary activity resource consent process provides the appropriate mechanism for assessing any proposal to dam the Nevis River, as such mechanism will enable the actual and potential effects on the environment (both adverse and positive) of allowing the activity to be properly assessed. I support this view.

**10. THE** amendments sought to the Water Conservation (Kawarau) Order 1997 will effectively set aside the resource consent process, by prohibiting any damming or diversion of the Nevis River. This will deprive the community of the opportunity to have a specific proposal considered in the context of the resource consent process, which is subject to the purpose and principles of the Act as contained in Part 2.

**11. THIS** evidence contains information relevant to the statutory matters that the Special Tribunal is to have particular regard to, or is to have regard to, pursuant to sections 199 and 207 of the Resource Management Act 1991.

#### **STATUTORY CONSIDERATIONS**

**12. SECTION** 207 of the Resource Management Act 1991 confirms that in considering an application for a water conservation order, a Special Tribunal shall have particular regard to the purpose of a water conservation order and the other matters set out in section 199. Section 199(1) confirms that 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.”*

**13. SECTION** 199(2) confirms that 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.”*

**14. SECTION 207** also requires that in considering an application for a water conservation order a 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.”*

**15. SECTION 199(1)** confirms that “notwithstanding anything to the contrary in Part 2” the purpose of a water conservation order is to recognise and sustain the values stated. In essence the relevant matters stated in section 199 have primacy over Part 2. A water conservation order is therefore a significant resource management mechanism and contrasts with the statutory matters relevant to the consideration of an application for a resource consent, which is subject to the “overriding guide” of Part 2 (Brookers Note A104.01(i)).

**16. SECTION 199** refers to “outstanding” values. The determination of whether an existing feature or characteristic is “outstanding” should be a matter of rigorous scrutiny, given the consequences of a water conservation order for the use and development of resources in the district and region. In essence a water conservation order (and an amendment to it) functions as a “rule of exclusion” with which the relevant regional policy statements, regional plans and district plans must not be inconsistent with (see sections 62(3), 67(4) and 75(4) of the Resource Management Act 1991).

**17. SECTION 214(2)** of the Resource Management Act 1991 directs that the Minister shall not make a recommendation [that a water conservation order be made] except in accordance with the report of the Special Tribunal under section 208 where the Environment Court has not conducted an inquiry; or the report of the Environment Court under section 213 where the Environment Court has conducted an inquiry. In the absence of any inquiry by the Environment Court, the report of the Special Tribunal is therefore binding on the Minister, to the extent that the Minister cannot make a recommendation except in accordance with the Special Tribunal’s report. The Special Tribunal therefore has a vitally important role in determining whether the resources of the Nevis are able to be considered for the future benefit of the community, through the resource consent process.

## **HISTORY OF NEVIS**

- 18. THE** Nevis Valley was used as a route by Maori travelling between Southland and areas to the north of the Kawarau River, using a natural rock bridge near Roaring Meg. In 1836 a war party led by Te Puoho used this route to attack Ngai Tahu at Tuturau in Southland<sup>1</sup>.
- 19. IN** the spring of 1853 Nathaniel Chalmers travelled from the Maitai to the Molyneux (Clutha) via the Nevis Valley guided by the Maori Reko<sup>2</sup>. Chalmers was the first European to visit the Nevis Valley.
- 20. IN** spring 1862 goldminers first arrived in the Nevis Valley<sup>3</sup>. The miners explored the Nevis as the Clutha River was rising during a spring thaw, and as a consequence miners began exploring further afield. Miners found alluvial gold both in the headwaters of the Nevis and near its meeting point with the Kawarau River<sup>4</sup>.
- 21. FOLLOWING** the discovery of gold at the Nevis in October 1862 a store was established in the New Year and steady growth occurred that reached a peak population of 600 in 1866<sup>5</sup>. In 1871 there were 250 Chinese and 100 Europeans at the Nevis<sup>6</sup>.
- 22. IN** 1895 there were two new Ngapara dredges assembled on the Nevis<sup>7</sup>, and dredging occurred at the Nevis during subsequent decades. In “A History of Gold Mining in New Zealand” Salmon recorded that-
- “By 1923 only eight dredges were still in commission [in New Zealand], and throughout the remainder of the decade the number never rose above 5. Of these the 2 on the Nevis had a limited success....”*
- 23. THIS** brief review of the history of the Nevis Valley confirms that the economic resources of the Nevis Valley have been utilised, particularly for mining, since the earliest days of European settlement in Central Otago.

### **References**

1. Olssen, E. 1984. A History of Otago. p21.
2. Cunningham, G. 2005. Illustrated History of Central Otago and the Queenstown Lakes District. p 21/22.
3. Olssen, E. *ibid* p59.
4. Salmon, JHM. 1963. A History of Gold Mining in New Zealand. p83.
5. McGill, D. 1980. Ghost Towns of New Zealand.
6. Salmon, JHM. *ibid*. p113.
7. Salmon, JHM. *ibid*. p235.
8. Salmon, JHM. *ibid*. p274/275.

## **INTERIM REPORT OF SPECIAL TRIBUNAL : 1992**

**24. IN** October 1990 the Minister of Conservation applied under the provisions of the Water and Soil Conservation Act 1967 (WSCA) for the making of a National Water Conservation Order in respect of the Kawarau River and all contributing waters including the Shotover and Nevis Tributaries. The Resource Management Act 1991 repealed the WSCA, but continued the provisions for water conservation orders. The Minister for the Environment decided that the 1990 application should proceed as if it had been made under the Resource Management Act 1991.

**25. THE** Minister for the Environment appointed a four person Special Tribunal to hear and report on that application. That Special Tribunal consisted of Mr G Herlihy (Chairperson), Dr G Bishop, Mr W (Bill) Brander and Mrs E Murphy.

**26. THE** earlier Special Tribunal conducted a public hearing in Queenstown on 16-20 March 1992 where some 38 parties were represented and where evidence was heard from some 70 witnesses. Subsequent to this hearing the Special Tribunal released an interim report dated June 1992 to outline the interim decision of the Tribunal and to allow the parties an opportunity to make submissions on the wording of the Draft Kawarau Water Conservation Order.

**27. THE** Special Tribunal's 1992 Interim Report contains findings with respect to the Nevis. Relevant findings are presented on pages 7 and 8 of the Interim Report as follows:

### ***“5.5.1 Water bodies in their natural state***

*The tribunal found that the following parts of rivers and streams are essentially in their natural state, and had outstanding amenity and intrinsic values:*

...

*(e) The Nevis wetland at the top of the Nevis Valley was found to have outstanding ecosystem integrity, form and function. Although this wetland lies partly within this catchment and partly in the adjacent Mataura catchment, only that part in the Nevis catchment was considered by the tribunal.*

### ***5.5.2 Water bodies no longer in their natural state***

*The tribunal also considered water bodies within the Kawarau catchment that are no longer in their natural state. It was found that the following water bodies have outstanding characteristics:*

...

*(b) The Nevis River gorge from Nevis Crossing to the confluence with the Kawarau River –*

*(i) For wild characteristics; and*

- (ii) *For recreational purposes, in terms of fishing in the pools immediately below Nevis Crossing, and kayaking:*
- (c) *The Nevis River above Nevis Crossing –*
  - (i) *For scenic characteristics; and*
  - (ii) *For recreational purposes, in terms of fishing:*

**28. THE** Special Tribunal discussed the needs of industry and of the community on pages 9-12 and stated as follows on page 10:

*“In the evidence before the tribunal, the needs of industry related to the mining uses of water and the abstractive needs of agriculture and horticulture. The needs of the community essentially related to the potential for hydroelectric power generation, primarily from the Nevis River.”*

**29. THE** statement with respect to the needs of industry is made in the context of the Kawarau River Catchment as a whole, and is not specific to the Nevis. The Special Tribunal specifically addressed the needs of the community in terms of the demand for hydro electric power on pages 10 and 11 as follows:

*“The needs of the community in terms of the demand for hydroelectric power is somewhat different to other uses of the water. For example, the building of dams can disrupt the flow regimes which are important for the recreational pursuits of any particular stretch of water.*

*The Otago Central Electric Power Board’s evidence was that the Nevis River was the major area earmarked for future hydro development and in conflict with the application for a water conservation order. The Board went to considerable effort to outline its generation philosophy and development proposals. It was stated that currently the Board is completing an upgrade and refurbishment of some [of] its plant, and that in the next 5 years planning will need to be advanced for either development of the Nevis valley or another scheme on Staircase Creek. It was further stated that there were a number of options for the Nevis River, all of which would use the fall of the Nevis Gorge. Some of the proposals would involve significant flooding of the Nevis valley, whereas others would involve less flooding. Elsewhere it was noted that some of the proposals would involve a tunnel constructed parallel to the river to a powerhouse several kilometres downstream of the dam. It was also noted that small scale plants operated by the Board can be configured, designed and constructed to have minimal adverse impact on the environment.*

*Based on this evidence, the tribunal found that although the needs of the community in terms of hydroelectric power requirements were established, that in fact the Otago Central Electric Power Board had a number of options open to it that would not be in conflict with a water conservation order made over the mainstream rivers that may be covered by any order. The greatest conflict over the Nevis relates to the requirements of the outstanding kayaking use of the gorge section in terms of technical difficulty, the maintenance of the scenic upper valley, and recreational fishing. The tribunal noted that the claims of the Board as to its ability to engineer a project to provide for a shared use of the Nevis waters in terms of fishing, and kayak use of the gorge.*

*The tribunal gave special consideration to the possible scenarios for the Nevis gorge, and decided that as long as the Board, or any other party, was able to maintain the outstanding values identified for that water body then the objective of the water conservation order would be achieved. In terms of the scenic upper valley, as long as major inundation does not occur the outstanding characteristics would be protected. The tribunal was not persuaded that it should preclude some of the Board's options by totally prohibiting damming of the Nevis River. The option exists for the Board to arrive at a negotiated arrangement with those that would be affected by any scheme, should they pursue this development. [The] Otago Regional Council may approve a water permit provided the terms of the order are addressed. For example, timed releases of water or other arrangement may be sufficient to maintain the outstanding characteristics of this water body. Although this decision may reduce the desirability of this development for the Board, the tribunal recognised the other options available for development."*

**30. IN** essence the earlier Special Tribunal was not persuaded in 1992 that it should preclude some of the Board's options by totally prohibiting damming of the Nevis River. The Central Otago District Council agrees with the conclusion reached by the Special Tribunal in 1992 and considers that the discretionary activity resource consent process provides the appropriate mechanism for assessing any proposal to dam the Nevis River, and that such mechanism will enable actual and potential effects on the environment (adverse and positive) of allowing the activity to be properly assessed.

**31. IN** my opinion the Special Tribunal should very carefully consider whether the information now provided by the applicants and supporting submitters justifies a total prohibition on the damming of the Nevis River, when the earlier Special Tribunal was not persuaded in 1992 that such total prohibition was justified.

#### **CURRENT APPLICATION : 2006**

**32. IN** June 2006 the Central Otago District Council received a copy of the current application to amend the Water Conservation (Kawarau) Order 1997 as it applies to the Nevis River.

**33. THIS** application was subsequently publicly notified for submissions on 3 September 2008.

**34. THE** application at paragraphs 4.6 and 4.7 provides the basis for seeking the amendment to the existing Order. The application states:

*"4.6 Fish and Game have always considered that there should be a prohibition on the damming of the Nevis River but at the time it did not appeal the decision because first, it did not have the resources and second, it appeared that the WCO restrictions would not allow development in practical terms.*

4.7 *This application has been prompted by new published information on the river's outstanding landscape, heritage values, trophy trout fishery characteristics and conservation values, including native fishery values and increasing public awareness of the fragile and finite nature of backcountry recreational settings. Conservation and sports fisheries objectives have been defined in statutory Department of Conservation and Fish and Game plans approved by the Minister of Conservation since the original decision. Continuing interest in the Nevis River for hydroelectric power development poses a serious and unacceptable threat to existing values."*

**35. IT** is understood that the "new published information" that has become available is listed in the appendices to the application. The List of Appendices at page 21 includes the following:

- "....
6. *The Nevis River Fishery : a Review. Cawthron (Olson and Hayes).*
  7. *The Cold Sequestered Nevis (Hamel)*
  8. *Crown Pastoral Tenure Review for Lease Name Ben Nevis, LINZ, June 2004.*
  9. *Landscape and Amenity Values Assessment Nevis Valley, Central Otago, Alan Petrie.*
- ..."

**36. I** have read each of these documents, the application and other appendices in full. Whilst the various values of the Nevis River and its environs are discussed, I do not consider that compelling reasons have been presented in the documents to justify a total prohibition on damming of the Nevis River. In essence the situation does not appear to have materially changed since the earlier Special Tribunal released it's Interim Report in March 1992.

**37. THE** information presented in the reports that are now available describe landscape, heritage and fishery values that exist at the Nevis Valley. While limited information has been presented with respect to possible hydro electric power development, I note that no information has been presented with respect to the potential use of other resources which are found in the Nevis Valley, including resources that are relevant in the context of the matters that are to be had regard to by the Special Tribunal in terms of section 207.

**38. THE** extract from the Sports Fish & Game Management Plan for the Otago Fish & Game Region is presented at Appendix 2 to the application. This lists the Nevis River as a nationally important habitat, and describes the Nevis River as:

*"A nationally important wilderness trout fishery."*

**39.** I question whether the term “wilderness” is apt, given the modifications which have occurred to the Nevis environment, including the existing formed road, farm properties and dwellings that exist in the valley. I also note the difference in terminology used such as “wilderness” and “back country”, the latter term being used in paragraph 6.7 of the application.

**40.** AN extract from the Otago Conservation Management Strategy (CMS) is presented at Appendix 3 to the application. Clause 10.26.7, which lists Management Issues, refers to:

- “● *Hydro electricity generation proposals in the Nevis catchment.*”

**41.** I note that on pages 336 and 337 under “Implementation” the following Implementation Methods are stated:

- “...  
(r) *Efforts will be made to secure the landscape (both historical and natural) qualities of the Nevis River, and examples of its indigenous ecosystems.*  
  
(s) *The protection of significant natural and historic resources in the area will be advocated through Resource Management Act and other statutory processes.*  
...”

**42.** I simply note that there is no specific implementation method stated in the CMS, to the effect that total prohibition of damming of the Nevis River is to be sought.

#### **THE NEEDS OF PRIMARY INDUSTRY**

**43.** A Dictionary of Geography (Second Edition) by F J Monkhouse defines “primary industry” as follows:

*“primary industry An activity directly concerned with the collecting or utilization of the resources provided by nature; it includes agriculture, fishing, forestry, hunting, mining.”*

**44.** WHILST land in the Nevis Valley is used for farming, it appears that the application to amend the Water Conservation (Kawarau) Order 1997 would have no particular implications for agriculture in the valley. This statement is made on the assumption that any abstraction (for irrigation) would be permitted if the amendments sought are made to the Water Conservation (Kawarau) Order 1997.

**45. THE** documents lodged in support of the application, and particularly Dr Hamel’s report entitled “The Cold Sequestered Nevis” provides information with respect to the history of mining for gold and coal in the Nevis Valley. Information is available with respect to the mineral resources of the Nevis Valley and the development of such resources may be affected by the addition of a prohibition on diverting the flow of the Nevis River, as proposed in the application. Information with respect to these mineral resources is presented below.

#### **Oil Shale**

**46. THE** Nevis Valley contains oil shale deposits. These deposits are described in the New Zealand Geographical Society 1965 publication “Central Otago” in Chapter 6 – The Useful Minerals written by GJ Williams. This states as follows:

##### *“Oil Shale*

*Oil shales exist in various parts of Otago, but so far as is known the only deposit with significant tonnage is in the Nevis Valley where there is a bed several hundred feet thick extending for over two miles.*

*Oil shale is a dark brown to black substance though its weathered surface is cream to light grey in colour : it gives a dull thud when struck, is greasy to the feel, and it curls when peeled with a sharp knife. It is essentially a very fine sediment which settles in lakes occupying shallow depressions in a mature land surface, the drainage from which distributes only very fine detritus. The quiescent conditions of sedimentation in these lakes is ideal for the growth of primitive forms of vegetable life such as algae which, when fossilised, become ‘kerogen’ – the part of the sediment from which oil can be distilled.*

...

*... there are wide areas of oil shale remaining in the Nevis Valley covered only by a few feet of gravel.*

...

*Oil shale contains no free liquid oil, but when it is retorted the kerogen yields oil, and a good deal of gas and some ammonia also pass over. The black material remaining contains carbon which, together with the gas, can sometimes be burnt to provide heat for the retorting process. Oil shale is currently being worked in Estonia, Sweden, Spain, Manchuria, and Scotland. The Nevis shales are undoubtedly capable of yielding hundreds of millions of gallons of oil, but the oil yield per ton is too low for successful exploitation at present.”*

**47. THE** potential of oil shale deposits in the Nevis Valley was recognised in the Principal Section of the Clutha-Central Otago regional planning scheme which was prepared by the Clutha-Central Otago United Council under the Town and Country Planning Act 1977. Mineral Policy 5 (Clause 4.3.4) on page 35 of the Principal Section stated-

*“TO RECOGNISE THE POTENTIAL WHICH THE OIL SHALE DEPOSITS OF THE NEVIS VALLEY MAY HAVE TO SUPPORT A MAJOR ENERGY BASED PROJECT.*

Implementation

*The United Council will liaise with affected local authorities and the Southland United Council, to promote investigation of the oil shale deposits and in planning for the development of infrastructure to permit the future development of this resource if this becomes viable.*

Explanation

*The Nevis Valley contains oil shale deposits which appear to be of potential regional and national significance. They have been estimated to contain the equivalent of half to several times the recoverable resources of dry gas at Maui. Investigations into the proving of the resource, processing and transport must still be conducted. Preliminary appraisals indicate that the deposit is not economic for development given current extraction methods and overseas conditions. Investigations could be accelerated if the cost of imported fuel rises dramatically or supplies are jeopardised and the technology required to utilise the resource would probably be developed overseas in response to global economic conditions....”*

**48. THE** potential that the oil shale resources of the Nevis Valley have for liquid fuel production and the effects that the proposed amendments to the Water Conservation (Kawarau) Order 1997 may have on such potential, has not been addressed in the application.

**49. RECENT** interest has been expressed in the oil shale resources of the Nevis Valley. The Otago Daily Times on 7 November 2008 reported that a London-based mining company, Xtract Energy Plc has been granted a mineral exploration permit covering 10,450 hectares of the Nevis Valley. The press item reported a Dr John Shirley of Xtract advising that “hundreds of millions of tonnes” of oil shale is believed to be in the Nevis, which would lead to a “multi billion-dollar development” in the area. The granting of the exploration permit to Xtract Energy Plc on 25 May 2007 confirms that there is ongoing interest in the oil shale resources of the Nevis Valley.

Coal

**50. LIGNITE** coal resources are present in the Nevis Valley and are found in association with the oil shale resource. Dr Hamel’s report on pages 13 and 14 outlines the history of coalmining in the Nevis Valley, and notes that coal was worked from the time when the miners first reached the valley through to the late 1930’s for domestic use and to supply gold dredges.

**51. THE** Nevis Valley coal field is described in the “Water Resource Inventory of the Clutha, Kawarau and Hawea Rivers : A Review” published by the Otago Catchment Board and Otago Regional Water Board in March 1985. That document on page 14 states:

*“The Nevis Valley coal field lies between Nevis and Nevis Crossing. It is overlain by extensive oil shale deposits which are the largest in New Zealand. The coal exists in two seams of which the upper one is over 15m thick, and extends for 9km. Perhaps 5 million tonnes could be won by open-cast mining (Williams 1974). The field is very inaccessible; however it was mined intermittently until well into this century, and in the early years of the century was a significant source of fuel for gold dredges.”*

**52. THE** Crown Minerals website <http://www.crownminerals.govt.nz/cms/archived-pages/coal-resources-otago?searchterm=dunedin> confirms that a New Zealand Coal Resources Survey [Mines Division, Ministry of Energy] exploration of Central Otago lignite fields in 1978-79 estimated that 74 million tonnes of lignite were in the Lower Nevis area.

**53. APART** from the historic context, the coal resources of the Nevis Valley have not been recognised in the application and the effects of the amendments sought to the Water Conservation (Kawarau) Order 1997 on the potential use of coal resources has not been assessed.

### **Gold**

**54. DR** Hamel’s report contains information with respect to historic gold mining activity in the Nevis Valley. Her report notes that gold mining occurred in the Nevis Valley from the period of the Dunstan Gold Rush (1862/63) through to about 1950. Dr Hamel summarises the evolution of gold mining techniques and activity on page 13 as follows:

*“Gold mining in the Nevis had a strong continuity from 1863 to 1950, but can be divided into three eras. The first miners worked by ground sluicing until the 1890s. Then the big races were brought in for hydraulic elevating and sluicing at the same time as the dredges became effective. Most of the dredges ceased by 1920 and there was a lull except for the Nevis Crossing dredge working. The last period of activity was during the depression of the 1930[s] when subsidised miners and others were active....”*

**55. GOLD** mining in the Nevis Valley has occurred during the past two decades. Land use consents were granted by the Central Otago District Council to operate open cast alluvial gold mines on tributaries of the Nevis River in 2001. On 20 February 2001 land use consent was granted to Coleman Mining and Development Limited to operate an open cast alluvial gold mine adjacent to School House Creek, and on 27 February 2001 land use consent was granted to Stoney Creek Mining Limited to operate an open cast alluvial gold mine adjacent to Drummond Creek, also in the Nevis Valley. These consents demonstrate that there is an ongoing interest in the gold resources of the Nevis Valley.

**56. SUCH** interest in the gold resources of the Nevis Valley is evidenced by the existence of Exploration Permit 40817 that is held by Dunstan Mining Limited. This Exploration Permit was granted by the Minister of Energy pursuant to section 25 of the Crown Minerals Act 1991 and applies to the Red Rim Reef which extends between Whittens Creek and Drummonds Creek in the upper Nevis Valley. The Red Rim Reef runs the full length of the lower and upper Nevis but has not previously been worked in the area subject to Exploration Permit 40817.

**57. IT** is unclear whether the application would adversely affect the further investigation and development of gold resources in the Nevis Valley.

### **SECONDARY INDUSTRY**

**58. A** Dictionary of Geography by FJ Monkhouse defines “secondary industry” as follows:

*“secondary industry The working up or fabricating of materials derived from PRIMARY I. into manufactured articles, including building and public works construction.”*

**59. IN** my opinion the proposal will not have a direct effect on secondary industry, as manufacturing is unlikely to ever occur in the Nevis Valley. An indirect effect on secondary industry elsewhere may occur if damming is prohibited on the Nevis River as sought in the application, thus preventing any development of the hydro electric power resources of the Nevis.

### **NEEDS OF THE COMMUNITY**

**60. AS** previously noted the earlier Special Tribunal in it’s 1992 Interim Report discussed the needs of the community in terms of the demand for hydro electric power.

**61. THE** application at paragraph 7.11 refers to a description of the potential for hydro development on the Nevis River as presented in a recent report on hydro resources in New Zealand prepared by East Harbour Management Services in 2004. This description is as follows:

*“... The ... “scheme consist of two dams on the Nevis River storing and diverting water to a power house further down the Nevis. The upper Dam would be located at the Nevis Crossing and would provide water storage for the scheme. The lower dam would be some 2 km. downstream and would divert the water into a 6.5 km tunnel.”*

*“A large volume storage lake would be obtained in the lower valley by an arch dam constructed just downstream of the Nevis Bridge. An intake dam also of a concrete arch construction would be erected at the mouth of the gorge about 2km downstream and would include the additional, flow of the Nevis Burn stream. The average flow here is 10.5 m<sup>3</sup>/s and the area to be drained is 510 km<sup>2</sup>. At this point a concrete lined tunnel would be driven 8 km parallel to the river to a point above the power station and a steel penstock installed to carry water to it. The head developed would be 300 m. and with 45MW, would give approximately 197 GWh p.a. (50% plant factor). The elevation is 300m.” ”*

**62. THE** above description appears to be specific to a particular scheme design but I am unaware of where East Harbour Management Services obtained this information from or how current such information is. I have discussed this matter with Mr Mulvihill of Pioneer Generation Limited (on 1 May 2009) and Mr Mulvihill emphasised to me that Pioneer Generation has no commitment to any particular scheme design at this time. No resource consent has been sought for a hydro scheme on the Nevis. I am aware that the former Otago Central Electric Power Board undertook some work with respect to the hydro resources of the Nevis in the 1960s.

**63. THE** publication “Let There be Light ... A History of Bullendale and the Generation of Electric Power in Central Otago” written by PM Chandler and RC Hall and published in 1986 provided background information with respect to the history of the investigation of a potential hydro electric scheme in the Nevis Valley.

*“Nevis Scheme*

*The largest hydro-electric scheme contemplated by the board [former Otago Central Electric Power Board], was in the Nevis Valley. This was fully investigated during the 1960s. The board had, for some years, been checking water flows and making preliminary assessments of the potential of the Nevis River. In August 1964, the General Manager, New Zealand Electricity Department, advised that agreement in principle was given to the board to develop power from the Nevis River, construction to begin in 1970, with a second stage in 1975. To proceed with a firm proposal required confirmation of the civil engineering aspects of the scheme and a firm of consultants was engaged, while the board proceeded with its own investigations and cutting of roads into the area, to provide better access.*

*In September 1965, the board had discussions with the Assistant General Manager, New Zealand Electricity Department, who considered the board had sufficient increase in load to warrant support for the scheme, where future development would provide power at a lesser cost than when purchased from the department. He also indicated that the department would favourably consider purchase of any surplus power.*

*...*

*Another meeting was arranged with the General Manager, New Zealand Electricity Department, in March 1966, when he advised that a Ministry of Works report on the scheme indicated the cost of development could be significantly higher than the estimate from the board’s consultants. However, he was of the*

*opinion that over a number of years the scheme would result in cheaper power being available than could be supplied by the state. For this reason, and that hydro power would save 4.0d per unit in overseas finance for fuel, he appeared willing to support the board in its proposal. In August 1967, the chairman, Mr A.E. Marslin, reported on a meeting with the Minister of Electricity and the General Manager, New Zealand Electricity Department. He advised that the department had no intention of developing the Nevis River, but they would not agree to assist the board in the early stages of development by purchasing surplus units. However, an assurance was given that provided the board could prove that an economic scheme could be developed and could use all the power produced, there would be no difficulty in granting a water-power licence. Although the times were not conducive to the raising of large sums of money for the project and the government was not sympathetic, the board was still hopeful that the Nevis scheme would eventually be developed.”*

**64. THE** above confirms that the potential hydro electric resources of the Nevis River have been recognised for many decades.

**65. I** recall attending a briefing in about 1998 by the last Chief Executive of the Otago Central Electric Power Board, Mr Alex Adams, who advised that the Board’s objective was to generate 50% of the electricity required by the local community from local sources. An example of such new generation is the Horse Shoe Bend power scheme which received land use consent from the Central Otago District Council in 1997. In recent years land use consents have been granted by the Central Otago District Council to Pioneer Generation Limited (the successor of the Otago Central Electric Power Board) to establish an additional small scale hydro power generation scheme on the Teviot River, and to establish a small wind farm (3 turbines) at Horse Shoe Bend on the Teviot River.

**66. THE** Central Lakes Trust was established in about 2000 to grant funds for community charitable purposes to the Central Otago and Queenstown Lakes community being the community within the “geographical region over which the former Otago Central Electric Power Board was authorised to supply electricity”. The Central Lakes Trust owns 100% of the shares of Pioneer Generation Limited. I understand that Pioneer Generation Limited is the company that is interested in future development of the hydro electric power potential of the Nevis River.

**67. ACCORDING** to the Central Lakes Trust’s Annual Report for 2007/2008, the Trust has approved grants totalling almost \$39,000,000.00 in the seven years to 31 March 2008. The 2007/2008 report of the Trust confirms that the Trust’s dividend of \$4,000,000.00 from Pioneer Generation Limited comprised a significant and very important portion of the Trust’s surplus before grants and operating costs.

**68.** A total prohibition on damming of the Nevis River would be contrary to meeting the needs of the community in terms of hydro electric power requirements (as confirmed in the Special Tribunal's 1992 Interim Report); and would also compromise the needs of the community in terms of providing an ongoing source of funds for the Central Lakes Trust which provides funding for community groups within those parts of Central Otago and the Queenstown Lakes District formerly served by the Otago Central Electric Power Board.

**69.** OTHER community needs include the need for commercial and non-commercial tourism and recreational activity.

**70.** THE Central Otago District Council has granted several land use consents to permit bungy jumping and associated forms of recreational activity above the Nevis River in the vicinity of the Doolans Creek confluence.

**71.** LAND use consent was granted to Graph Holdings Limited and the Lakes District Trust Limited on 22 December 1998 to construct a suspension bridge above the Nevis River and to use the bridge and adjacent land for adventure tourism being bungy jumping and viewing the Nevis Gorge. This structure is known as the Nevis High Wire Bungy operation. On 25 November 1999 land use consent was granted to Queenstown Bungy Limited to install a tethered balloon over the Nevis River to carry out commercial balloon observation rides and bungy jumping. The tethered balloon proposal has not been commissioned.

**72.** ON 1 December 2006 land use consent was granted to Queenstown Bungy Limited (RC 060205) to construct and operate a 200 metre plus bungy jump (to be known as "Nevis 489") incorporating a flying fox and jump structure over the Nevis River upstream of the site of the existing Nevis High Wire Bungy operation. Land use consent was also granted on 1 December 2006 to Queenstown Bungy Limited (RC 060274) to erect a platform and arc swing (to be known as the "Nevis Arc") over Doolans Creek (a tributary of the Nevis River) at the site of the existing Nevis High Wire Bungy operation. The Nevis Arc has been constructed but the Nevis 489 has not.

**73.** FOR completeness I note that other land use consents have been granted to Queenstown Bungy Limited. This includes RC 060407 that was granted on 19 April 2007, being a

retrospective land use consent to establish and operate a helipad on the site of the Nevis High Wire Bungy operation. Land use consent was also granted to Queenstown Bungy Limited (RC 070367) on 20 December 2007 to relocate an existing building and to construct an additional building above the Nevis River and Doolans Creek, being at the Nevis High Wire Bungy operation base.

**74. DURING** the past decade a total of seven land use consents have been granted to permit bungy and associated tourism recreational activities above the Nevis River (and Doolans Creek) in the lower Nevis Gorge. Such activity is not acknowledged in the application.

**75. THE** Conservation Resources Report for Ben Nevis is presented at Appendix 8 to the application. This document states (on page 6) that the remote but accessible nature of the Nevis Valley makes it a popular destination for recreation, such as pleasure driving, camping, fishing and mountain biking. The presence of a reservoir in the Nevis Valley would create the potential to enhance the range of recreational opportunities that are available in this locality. The report by Cawthron relating to the Nevis fishery (Appendix 6 to the application) in section 3.2.1 confirms that any such reservoirs will, undoubtedly, have some fisheries value albeit that the quality of such fisheries remains uncertain. I also note in this context that the extract from the Sports Fish & Game Management Plan (Appendix 2 to the application) confirms that at least one hydro electric reservoir in Otago (Lake Dunstan) is a nationally important sports fishery and that five reservoirs in Otago (including Lake Mahinerangi, Manorburn Reservoir, Poolburn Reservoir, Lake Onslow and the Loganburn Reservoir) are listed as regionally important sports fisheries.

**76. THIS** information suggests that there may be positive as well as adverse effects for recreation associated with any damming of the Nevis River.

#### **REGIONAL POLICY STATEMENT**

**77. THE** Regional Policy Statement for Otago (RPS) became operative on 1 October 1998. The Regional Policy Statement provides an overview of the resource management issues of the Otago region and the ways of achieving the integrated management of its natural and physical resources (RPS p2).

**78. RELEVANT** objectives and policies are stated in Sections 5, 6 and 12 of the RPS which relate to Land, Water and Energy respectively.

**79. RELEVANT** objectives and policies stated in Section 5 : Land are expressed in general terms, and include the following:

**“5.4 Objectives**

5.4.1 *To promote the sustainable management of Otago’s land resources in order:*

- (a) *To maintain and enhance the primary productive capacity and life-supporting capacity of land resources; and*
- (b) *To meet the present and reasonably foreseeable needs of Otago’s people and communities.*

5.4.2 *To avoid, remedy or mitigate degradation of Otago’s natural and physical resources resulting from activities utilising the land resource.*

5.4.3 *To protect Otago’s outstanding natural features and landscapes from inappropriate subdivision, use and development.*

5.4.5 *To promote the sustainable management of Otago’s mineral resources in order to meet the present and reasonably foreseeable needs of Otago’s communities.*

**5.5 Policies**

5.5.6 *To recognise and provide for the protection of Otago’s outstanding natural features and landscapes which:*

- (a) *Are unique to or characteristic of the region; or*
- (b) *Are representative of a particular landform or land cover occurring in the Otago region or of the collective characteristics which give Otago its particular character; or*
- (c) *Represent areas of cultural or historic significance in Otago; or*
- (d) *Contain visually or scientifically significant geological features; or*
- (e) *Have characteristics of cultural, historical and spiritual value that are regionally significant for Tangata Whenua and have been identified in accordance with Tikanga Maori.*

5.5.8 *To recognise known mineral deposits and to consider the potential for access to those mineral resources to be compromised or removed by other alternative land development.”*

**80. THE** provisions relating to land resources are relevant to the extent that land resources are subject to the provisions of the Central Otago District Plan (discussed further below) and as any impoundment behind the dam would occupy the land resource. I note that Objective 5.4.5 and Policy 5.5.8 relate to mineral resources and deposits and are relevant in the context of the oil shale, lignite coal and gold resources of the Nevis Valley.

**81. RELEVANT** objectives and policies stated in Section 6 : Water of the Regional Policy Statement include:

#### **“6.4 Objectives**

- 6.4.1 *To allocate Otago’s water resources in a sustainable manner which meets the present and reasonably foreseeable needs of Otago’s people and communities.*
- 6.4.4 *To maintain and enhance the ecological, intrinsic, amenity and cultural values of Otago’s water resources.*
- 6.4.8 *To protect areas of natural character, outstanding natural features and landscapes and the associated values of Otago’s wetlands, lakes, rivers and their margins.*

#### **6.5 Policies**

- 6.5.4. *To investigate and, where appropriate, set minimum flow levels and flow regimes for Otago water bodies and maximum and minimum lake levels to protect any of the following:*
- (a) The needs of Otago’s communities;*
  - (b) Kai Tahu cultural and spiritual values;*
  - (c) Lake margin stability;*
  - (d) The natural character of the water body;*
  - (e) Habitats of indigenous fauna and flora;*
  - (f) Amenity values;*
  - (g) Intrinsic values of ecosystems;*
  - (h) Salmon or trout habitat;*
  - (i) Outstanding natural features or landscapes.*
- 6.5.9 *To allow for the community’s use, development or protection of the beds and banks of Otago’s water bodies provided:*
- (a) Any adverse effects on:*
    - (i) Kai Tahu cultural and spiritual values; or*
    - (ii) The natural character of the water body; or*
    - (iii) Habitats of indigenous fauna; or*
    - (iv) Amenity values; or*
    - (v) Intrinsic values of ecosystems; or*
    - (vi) Salmon or trout habitat; or*
    - (vii) Outstanding natural features or landscapes;**are avoided, remedied or mitigated, and that the life-supporting capacity of the water body is maintained and, where practicable, enhanced; while*
  - (b) Considering the maintenance and, where practicable, enhancement of the natural functioning of river systems; and*
  - (c) Considering the need to provide mitigation to lessen the threat posed by flooding and riverbank erosion.”*

**82. IN** my opinion these objectives and policies would be particularly relevant in the event that any application were made to dam the Nevis River for hydro electric purposes at some time in the future.

**83. OBJECTIVES** and policies presented in Section 12 : Energy would also be relevant to any future application to dam the Nevis River to generate electricity. These include:

***“12.4 Objectives***

*12.4.1 To avoid, remedy or mitigate the adverse effects on Otago’s communities and environment resulting from the production and use of energy.*

*12.4.2 To sustainably and efficiently produce and use energy taking into account community values and expectations.*

*12.4.3 To encourage use of renewable resources to produce energy.*

***12.5 Policies***

*12.5.2 To promote the sustainable management and use of energy through:*

- (a) Encouraging energy production facilities that draw on the region’s renewable energy resources; and*
- (b) Encouraging the use of renewable energy resources, in a way that safeguards the life-supporting capacity of air, water, soil and ecosystems and avoids, remedies and mitigates adverse effects on the environment, as a replacement for non-renewable energy resources: and*
- (c) Encouraging the sustainable development of Otago’s renewable energy resources.*

*12.5.4 To promote the securing of appropriate benefits for Otago’s communities from any energy developments within the region.”*

**84. THE** Regional Policy Statement encourages the use of renewable resources to produce energy, such as the Nevis River. Any such proposal would also have to be considered in the context of the objectives and policies which relate to land and water resources (as presented above).

**85. IN** my opinion Policy 12.5.4 would be particularly relevant in the event that Pioneer Generation Limited were to seek to develop the hydro resources of the Nevis River. As noted above Pioneer Generation Limited is 100% owned by the Central Lakes Trust, which distributes grants to groups within the Central Otago and Queenstown Lakes community in Otago. Through this mechanism Otago’s community’s would benefit from any energy development on the Nevis River.

**REGIONAL PLAN : WATER**

**86. THE** Regional Plan : Water became operative on 1 January 2004. Objectives and policies from Section 5 of the Regional Plan : Water are presented in Appendix 4 to the application. Policy 5.4.5 that relates to the recognition of the Water Conservation (Kawarau) Order

1997 has been omitted. This Policy, its associated Explanation and Principal reasons for adopting are as follows:

**“5.4.5 To recognise the Water Conservation (Kawarau) Order 1997 by:**

- (a) Preserving, as far as possible, the waters set out in Schedule 1 of the Water Conservation Order in their natural state;**
- (b) Protecting the outstanding characteristics of waters set out in Schedule 2 of the Water Conservation Order; and**
- (c) Sustaining the outstanding amenity and intrinsic values set out in Schedules 1 and 2 of the Water Conservation Order.**

**Explanation**

*The Water Conservation (Kawarau) Order 1997 restricts or prohibits the Otago Regional Council’s functions and powers under Section 30(1)(e) and (f) (as they relate to water) to:*

- (a) Retain, as far as possible, in their natural state, water bodies preserved by the Order; and*
- (b) Sustain and protect the outstanding characteristics of the identified water bodies.*

*The Water Conservation (Kawarau) Order is reproduced in Schedule 11 of this Plan. The values identified within the Order are included in Schedule 1A of this Plan.*

**Principal reasons for adopting**

*This policy is adopted to give effect to the Water Conservation (Kawarau) Order 1997.*

*Rules: 12.1.4.8, 12.1.5.1, 12.2.4.1, 12.3.1.1, 12.3.3.1, 12.3.4.1, 12.4.2.1, 12.5.2.1, 12.6.2.1, 12.7.2.1, 12.8.2.1, 12.8.3.1, 12.9.2.1, 12.10.2.1, 12.11.3.1, 12.13.11.1, 13.2.2.1, 13.2.3.1, 13.3.2.1, 13.4.2.1, 13.5.2.1, 13.5.3.1, 13.6.3.1, 14.3.2.1*

*Other methods: 15.2.5.1, 15.2.6.1 to 15.2.6.3, 15.2.7.1, 15.2.8.1 to 15.2.8.3, 15.4.2.1, 15.4.2.2, 15.4.3.1, 15.4.3.2.”*

**87. RELEVANT** provisions from Schedule 1A of the Regional Plan : Water are presented at Appendix 4 to the application. The Water Conservation (Kawarau) Order 1997 is presented in full at Schedule 11 to the Regional Plan : Water. The existing Order (as presented on page 366 of the Regional Plan : Water) contains restrictions and prohibitions with respect to any damming on the Nevis River, including a requirement that any impounded water is not to extend beyond F42:943468. This point is identified on Figure 3 of the Cawthron report, being Appendix 6 to the application.

**88. RULE** 12.3.4.1 states that except as provided for by Rules 12.3.1.1 to 12.3.3.1 of the Regional Plan : Water, the damming or diversion of water is a discretionary activity.

**89. SECTION** 104B of the Resource Management Act 1991 confirms that after considering an application for a resource consent for a discretionary activity, a consent authority-

- “(a) May grant or refuse the application; and*
- (b) If it grants the application, may impose conditions under section 108.”*

**90. SECTION** 104(1) identifies those matters to be had regard to when considering an application for a resource consent, including an application for a discretionary activity.

These matters include:

**“104 Consideration of applications**

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to-*
  - (a) any actual and potential effects on the environment of allowing the activity; and*
  - (b) any relevant provisions of-*
    - (i) a national policy statement;*
    - (ii) a New Zealand coastal policy statement;*
    - (iii) a regional policy statement or proposed regional policy statement;*
    - (iv) a plan or proposed plan; and*
  - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.”*

**91. SECTION** 104(3)(c) confirms that a consent authority must not grant a resource consent contrary to section 217 which relates to water conservation orders. In essence any application to dam or divert the Nevis River must comply with the provisions of the Water Conservation Order (Kawarau) 1997 and any amendments thereto.

**CENTRAL OTAGO DISTRICT PLAN**

**92. THE** Central Otago District Plan became operative on 1 April 2008. The Nevis River and its catchment is shown on Maps 51, 68 and 69 of the Central Otago District Plan. The water surface of the Nevis River is located in the “Water Surface and Margin Resource Area” as confirmed in Section 5.1 of the District Plan. The surrounding catchment is located in the Rural Resource Area.

**93. AN** Area of Outstanding Landscape Value notation applies to much of the Nevis Catchment. Schedule 19.6.2 describes the outstanding landscape at the Nevis Valley as follows:

NAME	DESCRIPTION	REASONS FOR RECOGNITION
Nevis Valley	The catchment of the Upper and Lower Nevis Valley following the District boundary from valley floor to skyline. Includes the valley floor and western slopes of the Old Woman and Garvie Ranges and east facing slopes of the Hector and Remarkables Ranges. The area identified on the district planning maps as outstanding landscape does not include the area of land identified under the Water Conservation Order (Kawarau) 1997 within which the regional council may grant a resource consent or make a rule in a plan for hydro electric development in respect of the Nevis River.	Outstanding Landscape of national importance. Impressive combination of natural features, including diverse indigenous vegetation, and subtle historic/cultural elements. Is flanked to the west by the glaciated Remarkables and Hector Range that contrast with rounded Central Otago block mountain range to the east. Part of its outstanding quality is the general absence of modification above the valley floor. In particular the upper valley is unmodified.

**94. THE** Area of Outstanding Landscape Value in the Nevis Valley does not include the area of land identified under the existing Water Conservation Order (Kawarau) 1997 within which the Otago Regional Council may grant a resource consent or make a rule in a plan for hydro electric development in respect of the Nevis River. Such land is shown on Maps 51 and 68.

**95. MAPS** 51, 68 and 69 confirm that the margins of the Nevis River are subject to an Esplanade Provision notation, and land in the catchment is also subject to a High Voltage Lines notation (in the vicinity of the Doolans confluence), Active Geological Fault notations, Heritage Item notations (Item 275 – Midden/Ovens, Item 276 – Stone Hotel Ruins) and Additional Wetlands notations (W2 - Bailey’s Hill Swamp, W3 – Ben Nevis Swamp). Two discrete areas of land in the Nevis Valley are also subject to an Area of Significant Natural Value notation, being SN 48 – Schoolhouse Flat Wetland.

**96. AS** noted above the Area of Outstanding Landscape Value notation on Maps 51 and 68 excludes the area of land identified under the Water Conservation Order (Kawarau) 1997 within which the Otago Regional Council may grant a resource consent or make a rule in a plan for hydro electric development in respect of the Nevis River.

**97. THIS** exclusion was provided for in a consent order granted by the Environment Court on 18 May 2007 which allowed an appeal (reference) by the Director General of Conservation in response to the provisions of the proposed Central Otago District Plan. In essence agreement was reached between the Director General of Conservation, Pioneer Generation Limited and the Central Otago District Council that the Area of Outstanding Landscape

Value notation would apply to all of the Nevis Valley excluding the area of land identified under the Water Conservation Order (Kawarau) 1997 within which hydro electric development may be permitted to occur.

**98. FOR** completeness I note that the Environment Court's consent order also amended Rule 4.7.6L (which relates to Areas of Outstanding Landscape Value) to exempt prospecting and exploration activities within the area subject to Exploration Permit 40817, being part of the Red Rim Reef in the upper Nevis.

**99. SECTION 2** of the Central Otago District Plan describes The Resources and Significant Resource Management Issues of the District. References made in Section 2 to the Nevis Valley and its resources include:

- Clause 2.3.1 which confirms that the Nevis Valley has been identified amongst a number of Outstanding Natural Features and Landscapes within the District.
- Clause 2.3.2(vi) which refers to the oil shale deposits of the Nevis Valley as follows:

*“Oil shale, a solid which contains oil, is known to exist in the Nevis Valley. The Nevis shales are capable of yielding millions of barrels of oil but the oil yield per ton is predicted to be low and extraction costs too high to be commercially viable.”*

- Clause 2.4.3(ii) which recognises the hydro-electric power development potential of the Nevis Valley as follows:

*“The Nevis Valley, Falls Dam, Manuherikia and some of its tributaries have also been identified as having potential for future hydro-electric power development.”*

**100. THE** Rural Resource Area comprises the rural environment of the District and is subject to Section 4 of the Central Otago District Plan. Relevant objectives and policies stated in Section 4 are as follows:

**“4.3 OBJECTIVES**

**4.3.1 Objective – Needs of the District's People and Communities**

*To recognise that communities need to provide for their social, economic and cultural wellbeing, and for their health and safety while ensuring environmental quality is maintained and enhanced.*

**4.3.2 Objective – Landscape and Amenity Values**

*To maintain and enhance rural amenity values created by the open space, landscape, natural character and built environment values of the District's rural environment.*

**4.3.3 Objective – Outstanding Landscapes and Natural Features, Land Over 900 metres and Land in the Upper Manorburn/Lake Onslow Landscape Management Area**

*To protect the Districts outstanding landscapes and natural features, land over 900 metres and land in the Upper Manorburn/Lake Onslow Landscape Management Area (including landforms) from the adverse effects of inappropriate subdivision, use and development.*

**4.3.4 Objective – Recreational Resources**

*To maintain and enhance the quality of the District’s recreation resources and public access to those resources.*

**4.3.6 Objective – Margins of Water bodies**

*To preserve the natural character of the District’s water bodies and their margins.*

**4.4 POLICIES**

**4.4.1 Policy – Landscape and Amenity Values**

*To manage the effects of land use activities and subdivision to ensure that adverse effects on the open space, landscape, natural character and amenity values of the rural environment are avoided, remedied or mitigated through:*

- (a) The design and location of structures and works, particularly in respect of skylines, ridgelines, prominent places and natural features,*
- (b) Development which is compatible with the surrounding environment including the amenity values of adjoining properties,*
- (c) The ability to adequately dispose of effluent on site,*
- (d) Controlling the generation of noise in back country areas,*
- (e) The location of tree planting, particularly in respect of landscape values, natural features and ecological values,*
- (f) Controlling the spread of wilding trees.*

**4.4.3 Policy – Riparian Margins**

*To manage the effects of the use, development or protection of land within riparian margins of water bodies (including wetlands) to ensure that the natural character and amenity of water bodies and their margins are preserved, by, as far as practicable:*

- (a) Maintaining bank stability,*
- (b) Protecting, and where appropriate, enhancing riparian and instream habitat quality,*
- (c) Maintaining riparian vegetation,*
- (d) Maintaining water quality,*
- (e) Maintaining and enhancing public access to and along the lakes and rivers,*
- (f) Reducing the incidence and severity of flooding where this is achievable, and*
- (g) Maintaining and enhancing the safety and efficiency of navigation on the adjacent water body where this is relevant*

*while recognising that some activities need to locate within riparian margins to operate efficiently.*

*Note: In matters relating to riparian vegetation Policies 8.7.1 and 8.7.2 of the Otago Regional Council’s Regional Plan : Water are relevant.*

**4.4.6 Policy – Outstanding Landscapes and Natural Features, Land Over 900 metres and Land in the Upper Manorburn/Lake Onslow Landscape Management Area**

*To recognise the District’s outstanding landscapes and natural features and land over 900 metres and land in the Upper Manorburn/Lake Onslow Landscape Management Area which:*

- (a) *Are unique to the district, region or New Zealand; or*
  - (b) *Are representative of a particular landform or land cover occurring in the Central Otago District or of the collective characteristics and features which give the District its particular character; or*
  - (c) *Represent areas of cultural or historic significance in the district, region or New Zealand; or*
  - (d) *Contain visually or scientifically outstanding geological features; or*
  - (e) *Have characteristics of cultural, historical and spiritual value that are significant to Kai Tahu ki Otago*
- and provide protection for them from inappropriate subdivision, use and development.*

**4.4.7 Policy – Significant Indigenous Vegetation, Wetlands and Wildlife**

*To protect areas of:*

- (a) *Significant indigenous vegetation,*
- (b) *Significant habitats of indigenous fauna,*
- (c) *Significant wetlands,*
- (d) *Indigenous vegetation or habitats that support a significant indigenous fresh water fishery, and*
- (e) *Habitats of statutorily managed sports fish and game.*

*from the adverse effects of land use activities and subdivision and to promote and encourage, where practicable, the retention, enhancement and reinstatement of indigenous ecosystems within the District.*

**4.4.10 Policy – Rural Subdivision and Development**

*To ensure that the subdivision and use of land in the Rural Resource Area avoids, remedies or mitigates adverse effects on:*

- (a) *The open space, landscape and natural character amenity values of the rural environment,*
- (b) *The natural character and values of the District’s wetlands, lakes, rivers and their margins,*
- (c) *The amenity values of neighbouring properties,*
- (d) *The safety and efficiency of the roading network,*
- (e) *The loss of soils with special qualities,*
- (f) *The ecological values of significant indigenous vegetation and significant habitats of indigenous fauna,*
- (g) *The heritage and cultural values of the District,*
- (h) *The water quality of the District’s surface and groundwater resources, and*
- (i) *Public access to or along the rivers and lakes of the District, particularly through the use of minimum (and average) allotment sizes.*

**4.4.14 Policy – Back Country Amenity Values**

*To ensure that activities avoid, remedy or mitigate adverse effects on the open space, landscape, historic, natural character, natural quiet and amenity values of the quality and range of recreational opportunities available in, the District’s back country and/or remote areas.”*

**101. THE** objectives and policies presented above would be relevant to any application for resource consent to develop the mineral or energy resources of the Nevis Valley.

**102. THE** rules that apply to the Rural Resource Area are presented in Section 4.7 of the Central Otago District Plan. I note in particular that any extraction and displacement

activity [mining] that exceeds an area of 2000m<sup>2</sup> or a quantity of 3000m<sup>3</sup> would breach Rule 4.7.6J(b) and that such a breach is a discretionary activity in terms of Rule 4.7.4(i).

**103.** I also note that Rule 4.7.6L applies with respect to those areas identified as Areas of Outstanding Landscape Value on the planning maps. As noted above this notation applies to much of the Nevis Valley. Rule 4.7.6L is presented below, and any breach of that rule is also a discretionary activity in terms of Rule 4.7.4(i).

**“L. Outstanding Landscapes, Land Over 900 metres and Land in the Upper Manorburn/Lake Onslow Landscape Management Area**

(1) *No activity shall have the effect of:*

- (a) *Erecting any structure (excluding post and wire fences) or building, or*
- (b) *Cutting new roads, new tracks, new landings, or new utility service lines, or*
- (c) *Excavating material in excess of 20m<sup>3</sup> (volume) and/or disturbing any land 50m<sup>2</sup> in area or greater in any one hectare in any continuous period of 5 years but excluding cultivation of areas previously cultivated (for the avoidance of doubt this does not apply to the maintenance of roads, tracks, landings, fire breaks and other works), or*
- (d) *Establishing woodlots, production forestry or shelter belts, or*
- (e) *Subdivision of land (except for the purpose of creating reserves or conservation areas),*

*within any area identified as an outstanding landscape, land over 900 metres or land in the Upper Manorburn/Lake Onslow Landscape Management Area as shown on the planning maps and including outstanding landscapes as identified in Schedule 19.6.2 except as provided for by Rules 13.7.6 and 13.7.8.*

(2) *Rule 4.7.6L(1) shall not apply to:*

- (a) *reviewable land that has been freeholded under Part 2 of the Crown Pastoral Land Act 1998 subsequent to the operative date of this plan; and*
- (b) *unrenewable occupation licence land that has been designated for disposal as fee simple under Part 3 of the Crown Pastoral Land Act 1998 subsequent to the operative date of this plan; and*
- (c) *freehold land listed in Schedule 19.6.3.*
- (d) *The area identified as Rural Resource Area (3) on the planning maps to the extent that:*
  - (i) *Rule 4.7.6L(1)(a) shall not apply to any dwelling and any accessory building authorised in terms of Rule 4.7.2(ia).*
  - (ii) *Rule 4.7.6L(1)(a) shall exclude unpainted post and wire fences only and stacked schist or stone fences that shall not exceed a height of 1.2 metres.*
  - (iii) *Rule 4.7.6L(1)(b) shall not apply to underground services or to the cutting of new roads or tracks as shown on the concept plan attached as Schedule 19.20 or to any water tank that is finished in natural tones to blend with the landscape.*
  - (iv) *Rule 4.7.6L(1)(c) shall not apply to earthworks involving up to 450m<sup>2</sup> of cut or fill per site provided that the maximum height of cut or fill is to be 0.75m unless lined with schist or to earthworks required to construct a building platform or to form access to a building platform as shown on the concept plan*

*attached as Schedule 19.20 or where a building platform is located in the Development Zone shown on the concept plan attached as Schedule 19.20 (in compliance with Rule 4.7.2(ia)(a); no rocks over 2m<sup>3</sup> (as visible above natural ground level) are to be removed or otherwise modified except to construct a building platform or to form access to a building platform as shown on the concept plan attached as Schedule 19.20 or where a building platform is located in the Development Zone shown on the concept plan attached as Schedule 19.20 (in compliance with Rule 4.7.2(ia)(a)); all un-walled cut or fill slopes are to be recontoured to blend with the surrounding natural landform and to provide for successful revegetation; all retaining walls are to be lined with schist; and a geotechnical report is required with respect to any earthworks for identified (numbered) building platform 4 and its associated access as shown on the concept plan attached as Schedule 19.20.*

- (v) *Rule 4.7.6L(1)(e) shall not apply to any subdivision authorised in terms of Rule 4.7.2(ii)(a)(i), 4.7.2(ii)(a)(iii) and 4.7.2(b)(i), (ii), (iv), (v) and (vi).*
- (e) *Prospecting and exploration on land subject to Exploration Permit 40817 (or any subsequent permit) being part Crown Land, part Run 354A, part Section 7 SO 332516 and part Garston – Nevis Road situated in Block I Lorn Survey District.*
- (3) *For the purpose of Rule 4.7.6L(2)(a) reviewable land shall be deemed to be “freeholded” when the holder’s acceptance of a substantive proposal takes effect under section 60 of the Crown Pastoral Land Act 1998.*
- (4) *For the purpose of Rule 4.7.6L(2)(b) unrenovable occupation licence land shall be deemed to be “designated for disposal as fee simple” when the Commissioner of Crown Land’s adoption of a substantive proposal takes effect under section 89 of the Crown Pastoral Land Act 1998.*
- (5) *Rule 4.7.6L(1)(a), (b) and (c) shall not apply to that part of Mount St Bathans Station located to the east and south of Hawkdun Runs Road and west of the Manuherikia River.*
- (6) *No activity shall have the effect of erecting any structure (excluding post and wire fences) or building on that part of Mount St Bathans Station located to the east and south of Hawkdun Runs Road and west of the Manuherikia River.*

*Reason*

*The effects of these activities have the potential to compromise the values of these landscapes which in some instances also constitute outstanding natural features. Resource consent will enable all effects of the activity to be considered in terms of its impact on the special values of these areas and impact on the natural and historic values of these areas including the characteristics identified in the description of the outstanding natural features and landscapes in Schedule 19.6.2.*

*The properties freeholded under tenure review are excluded from the application of Rule 4.7.6L(1) because the tenure review process provides an alternative statutory means to identify and address on a site specific basis the values which are the subject of this Rule.*

**104. SECTION 5** of the Central Otago District Plan relates to the Water Surface and Margin Resource Area. Section 5.1 confirms that this section applies to all those areas identified as “Water Surface and Margin Resource Area” on the planning maps and all other areas of water surface in the district. This would include the surface of the Nevis River. Relevant objectives and policies which apply to the Water Surface and Margin Resource Area are as follows:

**“OBJECTIVES**

- 5.3.1 Objective – Amenity Values, Environmental Quality and Natural Character**  
*To maintain and enhance the amenity values and environmental quality, and to preserve the natural character of the District’s lakes and rivers and their margins.*
- 5.3.2 Objective – Recreational Values**  
*To maintain, where appropriate, the recreational values of the surface and margins of the District’s water bodies.*

**POLICIES**

- 5.4.1 Policy – Water Surface and Margin Activities**  
*To manage the effects of activities (including the design, location and/or operation of structures) upon the water surface and margins to ensure that:*
- (a) The safe and efficient navigation of any powered or non-powered craft using the water surface is not compromised;*
  - (b) Ecological values including significant indigenous vegetation and significant habitats of indigenous fauna and instream values of the water body are protected and where appropriate, enhanced;*
  - (c) The protection of amenity, recreational and landscape values in or near the water body is promoted or otherwise provided for;*
  - (d) Conflict with other resource users on the water surface and adjoining land, including the effects that noise and/or wave generation may have, are avoided, remedied or mitigated;*
  - (e) The quality of the water within the water body is maintained and/or enhanced;*
  - (f) The stability of the bed and bank of the water body is maintained and/or enhanced;*
  - (g) The stability of any structure located in, on or near the water body is maintained;*
  - (h) The severity and incidence of flooding is not exacerbated by the activity;*
  - (i) The safe and efficient operation of the adjacent road network is maintained and enhanced;*
  - (j) Public access (where appropriate) is provided for;*
  - (k) The spread of undesirable aquatic plants is avoided, remedied or mitigated; and*
  - (l) The integrity of Kai Tahu ki Otago’s spiritual beliefs, cultural traditions and practices in respect of water resources is considered.*
- 5.4.2 Policy – Existing Statutory Instruments**  
*To ensure that the management of activities undertaken upon the surface of the District’s water bodies is consistent with the following instruments:*
- (a) The Water Recreation Regulations 1979.*

- (b) *The Lake Dunstan Harbour Bylaw 1996 in respect of the waters of Lake Dunstan.*
- (c) *The Kawarau River Water Conservation Order in respect of the waters of the Kawarau River and its tributaries.*
- (d) *Shipping (Distress Signals and Prevention of Collisions) Regulations 1988.*

**5.4.5 Policy – Recreation**

*To recognise the importance of lakes and rivers and their margins to the existing and future recreational needs of the District’s people and visitors while ensuring that adverse effects on amenity values and environmental quality are avoided, remedied or mitigated by such activities and that the safety of the recreational users is not compromised.*

**5.4.7 Other Policies**

*Policies 4.4.3, 4.4.4, 4.4.7, 4.4.10, 4.4.12 and 4.4.13 apply in the Water Surface and Margin Resource Area.”*

**105.** I note in particular that Policy 5.4.2 is to ensure that the management of activities undertaken upon the surface of the District’s water bodies is consistent with the Kawarau River Water Conservation Order in respect of the waters of the Kawarau River and its tributaries, including the Nevis River. Methods of Implementation for the Water Surface and Margin Resource Area are stated in Section 5.5 of the Central Otago District Plan. Method 5.5.5 relates specifically to the Kawarau River Water Conservation Order and states as follows:

**“5.5.5 Kawarau River Water Conservation Order**

*The Kawarau River is subject to a Water Conservation Order made pursuant to section 214 of the Act. In terms of the Central Otago District this order recognises a number of outstanding amenity and intrinsic values of the Kawarau and Nevis Rivers.*

*Council shall monitor surface water activities on the Kawarau River to ensure they are operating in a manner consistent with the Kawarau River Water Conservation Order. The Act requires that Council have regard to any Order when considering any application for resource consent including for land use activity on land in the vicinity of the river.*

**Reason**

*The District Plan must not be inconsistent with any water conservation order and the Council must have regard to the Kawarau River Conservation Order when considering any application for a resource consent.”*

**106. RULES** relating to the Water Surface and Margin Resource Area are stated in Section 5.7 of the Central Otago District Plan. I note in particular that earthworks within 10 metres of a waterbody is a discretionary (restricted) activity in terms of Rule 5.7.2(b) and that any activity that fails to comply with Standards set out in Rule 5.7.4 (which relates to structures, commercial activities and noise) is a discretionary activity in terms of Rule 5.7.3(a). The rules stated in Section 5.7 would not be relevant to determining the status of

hydro electric development on the Nevis River, as such development would be subject to Section 13 of the Central Otago District Plan.

**107. SECTION** 13 of the Central Otago District Plan relates to Infrastructure, Energy and Utilities. The section deals with the effects of the use and development of energy within the District. Relevant objectives and policies stated in Section 13 are as follows:

**“13.3 OBJECTIVES**

*The objectives in this section of the Plan are intended to provide a complete code for those activities to which Section 13 applies.*

**13.3.3 Objective – Development of Energy Resources**

*In the development of energy resources, to have particular regard to the use of natural and physical resources in a manner which avoids, remedies or mitigates significant adverse effects on the environment.*

**13.4 POLICIES**

*The policies in this section of the Plan are intended to provide a complete code for those activities to which Section 13 applies.*

**13.4.7 Policy – Development of Power Generation Facilities**

*To ensure that the development of power generation facilities avoids, remedies or mitigates:*

- (a) Adverse effects on ecosystems, habitats, soils and minerals.*
- (b) Impact on communities, infrastructure and services.*
- (c) Adverse effects generated during the construction phase particularly in terms of noise, lightspill, glare, vibration, dust, traffic generation and earthworks.*
- (d) Potential for the loss of or irreversible change to outstanding landscapes.*
- (e) Impacts on heritage values.*
- (f) Adverse effects on cultural values of importance to Kai Tahu ki Otago.*
- (g) Ongoing effects of the development including land stability issues.*
- (h) Potential effects on local climate.*
- (i) The potential impact of natural hazard events and the effect the activity itself may have on exacerbating natural hazards.*
- (j) Impact on public access to and along the margins of lakes and rivers or to natural and physical features.*

**13.4.8 Policy – Reducing the Environmental Impact of Power Generation**

*To promote the development of power generation facilities that have minimal environmental impact by encouraging investigation into a wide range of renewable energy sources and prohibiting the production of nuclear power within the District.”*

**108. THE** clauses which state that the objectives [and policies] in Section 13 are intended to provide a complete code for those activities to which Section 13 applies have been regarded as being simply a note, and objectives and policies stated elsewhere in the plan (eg. in Sections 4 and 5) have been had regard to when considering applications for development of the energy resources of the District (for hydro and wind power). On 11

October 2008 the Council publicly notified Plan Change 5P which provides for the deletion of the clauses [notes] which relate to Section 13.3 and Section 13.4 being a complete code (as stated above).

**109. THE** rules relating to Infrastructure, Energy and Utilities are specified in Section [Rule] 13.7. Rule 13.7.1 confirms that the rules in Section 13.7 provide a complete code for those activities to which Section 13 applies. Other than in relation to financial contributions (Section 15) and Subdivision (Section 16) and the definitions in Section 18, no rule in any other part of the Plan is to apply to any activity dealt with by Section 13, unless the application of that rule is directly referred to in Section 13 of the Plan.

**110. RULE** 13.7.4(iii) confirms that the development of any new power generation facility is a discretionary activity. This rule states as follows:

**“13.7.4 POWER GENERATION FACILITIES**

(iii) **Discretionary Activities – Development of New Power Generation Facilities**

*Except as provided for by (iv) below, any activity that:*

(a) *Involves or is associated with the construction and commissioning of a power generation facility,*

OR

(b) *Results in an increase in the height of a dam that comprises part of any power generation facility that has status as a scheduled activity in Clause 19.3.5 of Schedule 19.3.*

*is a discretionary activity.*

*For the purposes of this rule “construction and commissioning” activities includes those activities directly involved with the building and operation of a new energy production facility. This includes site preparation, earthworks, quarrying, concrete batching, plant construction, road construction and widening, traffic generation, reservoir formation, clearance or inundation of vegetation, but specifically excludes investigative activities such as geological sampling and surveys.*

*Activities associated with “construction and commissioning” include rapid and temporary population increases and the associated effects on infrastructure and community facilities and the need to reroute or relocate network utilities and community facilities.*

Reason

*The development of power generation facilities can have significant adverse environmental effects both in the short term and in the long term. Discretionary activity status allows full consideration of all the relevant issues.*

*The rule relating to increases in the height of dams recognises that an increase in height can facilitate an increase in the area inundated. Increasing the area of inundation (as a use of land) has the potential to create significant adverse environmental effects.”*

**111.** **ANY** proposal to construct and commission a new power generation facility on the Nevis River would require land use consent as a discretionary activity in terms of Rule 13.7.4(iii) of the Central Otago District Plan. Any such application is a full discretionary activity and the consent authority must, subject to Part 2, have regard to the matters listed in section 104(1) of the Act, such matters being presented in paragraph 90 above.

**112.** **IN** summary any proposal to utilise the Nevis River for hydro electric power development would be a discretionary activity in terms of the Central Otago District Plan. Objectives and policies stated in Sections 4, 5 and 13 of the Central Otago District Plan are comprehensive and would be relevant to the consideration of any such application by the consent authority.

### **PROPOSED PLAN**

**113.** **ON** 11 October 1998 the Central Otago District Council publicly notified proposed Plan Changes 5A – 5W to the Central Otago District Plan. The plan changes are a “proposed plan” as defined in section 2 of the Resource Management Act 1991.

**114.** **PROPOSED** Plan Changes 5A – 5W amend various provisions that apply in the Rural Resource Area. The various changes are at an early stage in the plan development process, and decisions requested in submissions in response to proposed Plan Changes 5A – 5W have not yet been notified for further submissions.

**115.** **I** have previously referred to Plan Change 5P which is relevant to Section 13 : Infrastructure, Energy and Utilities. Plan Change 5R amends Sections 19 (Schedules) of the Central Otago District Plan to insert a new Schedule 19.22 containing the “Central Otago Rural Review Landscape Assessment Maps” prepared by LA4 Landscape Architects being Issue L dated August 2008. Sheets 2.6, 2.11 and 2.16 identify the Nevis River Catchment as being an area that is rated as being of “Extreme Sensitivity” and an amendment to Section 2.3.1 that is to be made via proposed Plan Change 5A confirms that landscapes identified in the LA4 report as being Areas of Extreme [or High] sensitivity are outstanding natural landscapes in terms of section 6(b) of the Resource Management Act 1991.

**116.** **I** have not reproduced the provisions of proposed Plan Changes 5A – 5W in the body of my evidence given their inchoate status. I acknowledge that Rule 4.7.6L(1) that is reproduced at paragraph 103 above is to be amended in terms of Plan Change 5J to provide for that rule to apply with respect to an Area of Extreme or High Sensitivity as identified in the Landscape Assessment Maps in Schedule 19.22 (that is to be inserted by proposed Plan Change 5R). This rule would not apply with respect to any proposal for hydro development on the Nevis River as Section 13 is deemed to be a separate code in terms of Section [Rule] 13.7.

### **CENTRAL OTAGO DISTRICT COUNCIL RESPONSE TO THE APPLICATION**

**117.** **THE** submission of the Central Otago District Council dated 30 September 2008 explained the Council's reasons for opposing the amendments sought to the Water Conservation (Kawarau) Order 1997. The Council submission stated as follows:

*“Having regard to the status of damming in terms of the Otago Regional Water Plan and the Central Otago District Plan, and having regard to the planning history of the Water Conservation (Kawarau) Order 1997 and Central Otago District Plan provisions in the Nevis Valley, the Council does not consider that the amendments sought to the Water Conservation (Kawarau) Order 1997 relating to the prohibition of damming or diversion are justified in terms of sections 199 and 207 of the Resource Management Act 1991. The Central Otago District Council's reasons why these amendments to the Water Conservation Order for the Kawarau River are not justified in terms of sections 199 and 207 of the Resource Management Act 1991 are as follows:*

- 1. A proposal to prohibit damming of the Nevis River has previously been considered by a properly constituted Special Tribunal that gave consideration to an application for a Water Conservation Order on the Kawarau River and its tributaries in the early 1990's. That Tribunal was not persuaded that it should preclude some of the options for hydro electric power generation by totally prohibiting damming of the Nevis River, as is now sought by the applicants.*
- 2. The amendments sought to the Water Conservation Order for the Kawarau River relating to a prohibition on damming or diversion are not consistent with the needs of primary and secondary industry (including mining), and of the community in terms of section 207(b). The needs of the community essentially relate to the potential for hydro electric power generation from the Nevis River. The potential exists for renewable energy to be generated from the Nevis River and this has the potential to make a significant contribution to the energy needs of the community, particularly residents and visitors to the Central Otago and Queenstown Lakes District. If such hydro electric power generation were undertaken by Pioneer Generation Limited the community would also benefit as any profit made would flow through to the community and groups and individuals within it through the funding allocations of the Central Lakes Trust, which derives income from the generation activities of Pioneer Generation Limited.*
- 3. The resource consent process is the appropriate means to balance the needs of primary and secondary industry and of the community, and the amenity or intrinsic values of the Nevis River. Such balancing and consideration should occur in the context of decision making based on an application for resource consent made in*

*terms of Part VI of the Resource Management Act 1991, and any submissions lodged thereto.*

4. *The Nevis River is shown on Maps 51, 68 and 69 of the Central Otago District Plan. The Nevis Valley is located in the Rural Resource Area, and is subject to an Area of Outstanding Landscape Value notation, except for the area of land adjacent to the Nevis River identified under the Water Conservation Order (Kawarau) 1997 within which the Otago Regional Council may grant a resource consent or make a rule in a plan for hydro electric development in respect of the Nevis River. These are relevant provisions of the Central Otago District Plan which are to be had regard to in terms of section 207(c) of the Resource Management Act 1991.*
5. *Any activity that involves or is associated with the construction and commissioning of a power generation facility on the Nevis River is a discretionary activity in terms of Rule 13.7.4(iii) of the Central Otago District Plan, and this rule and its associated objectives and policies are relevant provisions to be had regard to in terms of section 207(c). Discretionary activity status allows full consideration of all the relevant issues associated with such a proposal, including the adverse and positive effects of such activity.*

*The resource consent mechanism provides the best mechanism to enable the community and all interested parties to participate in the decision making process with respect to any actual and potential effects on the environment of allowing such activity, and with respect to other relevant matters as stated in section 104 of the Resource Management Act 1991.*
6. *The Regional Plan : Water makes provision for damming as a discretionary activity in terms of Rule 12.3.4.1. The comments made above with respect to a discretionary activity resource consent in terms of the Central Otago District Plan apply equally with respect to an application for a discretionary activity resource consent in terms of the Regional Plan : Water.*
7. *The application for amendments to the water conservation order for the Kawarau River which prohibit damming or diversion of the Nevis River are contrary to the objectives and policies of the Otago Regional Policy Statement which encourage the use of renewable resources to produce energy. These provisions are also relevant in terms of section 207(c).”*

**118. THE** above succinctly records the Central Otago District Council’s response to the current application. My evidence has provided additional information with respect to the contents of the application, the resources present at the Nevis and to identify the objectives, policies and other provisions of regional and district planning instruments which would be relevant to the development of the resources of the Nevis.

**119. WHILE** the Council’s submission makes reference to the potential for hydro electric power generation on the Nevis River, the Central Otago District Council has emphasised in the submission that it has not come to a view with respect to the outcome of any future resource consent process that relates to this activity. In essence information is not yet available to enable the full effects of such a proposal to be properly assessed, and it would

be inappropriate for the Council (which will be a consent authority) to express a view with respect to the ultimate outcome of any such application for resource consent. Similarly I have come to no view with respect to any such proposal to develop the energy resources of the Nevis River for hydro electric power generation purposes.

## **CONCLUSION**

**120. THE** Central Otago District Council has sought that the amendments to the Water Conservation (Kawarau) Order 1997 that will prohibit damming or diversion of the Nevis River as applied for by the New Zealand and Otago Fish & Game Councils be refused. I support this position and consider that a resource consent application provides the best mechanism to enable the community and all interested parties to participate in the decision making process with respect to any actual and potential effects on the environment of a specific proposal to allow a power generation facility on the Nevis River. The resource consent decision making process enables all relevant matters in terms of section 104 and 104B of the Resource Management Act 1991 to be considered including the purpose and principles stated in Part 2 of the Act. The information lodged in support of the current application for amendments to the Water Conservation (Kawarau) Order 1997 have not demonstrated that a prohibition on damming or diversion of the Nevis River is justified.

**W D WHITNEY**

5 May 2009