

**SPECIAL TRIBUNAL  
WATER CONSERVATION (KAWARAU) ORDER 1997  
IN RESPECT OF THE NEVIS RIVER**

In the Matter of the Resource Management Act 1991

And

In the matter of an application by New Zealand Fish and Game Council  
and Otago Fish and Game Council to amend Water  
Conservation (Kawarau River) Order 1997 in respect of the  
Nevis River

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**BRIEF OF EVIDENCE IN CHIEF OF MARK BULPITT CHRISP**

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## Introduction

1. My name is Mark Bulpitt Chrisp. I am a Director and a Principal Environmental Planner in the Hamilton Office of Environmental Management Services Ltd.
2. I have been asked by Contact Energy Limited (Contact) to provide planning evidence in relation to the application by New Zealand Fish and Game Council and Otago Fish and Game Council (collectively referred to in my evidence as “Fish and Game”) to amend the Water Conservation (Kawarau River) Order 1997 in respect of the Nevis River.
3. I have the following qualifications and experience relevant to the evidence I shall give:
  - (a) I have a Master of Social Sciences degree in Resources and Environmental Planning from the University of Waikato. I am a member of the New Zealand Planning Institute and have more than 19 years experience as a resource management consultant;
  - (b) Dealing with environmental issues associated with the development, expansion, and on-going operation of activities within the energy sector is one of my specialties. I have been a planning advisor for the following industrial / energy projects over the last 15 years:
    - Wairakei Binary Plant (1994 – 1998);
    - Te Rapa Dairy Factory Expansion and Co-generation Power Plant (1996 – 1997);
    - Ohaaki Geothermal Power Plant Re-consenting (1998 – 1999);
    - Tauhara Geothermal Power Development (1999 – 2000);
    - Tongariro Power Development Re-consenting – advising the Waikato Regional Council (Environment Waikato) (2000 – 2002);
    - Wairakei Geothermal Power Plant Re-consenting (1999 – 2007);
    - Resource consents for exploratory drilling on the Wairakei - Tauhara Geothermal System (2007 and 2008);
    - Te Mihi Geothermal Power Station (2007 – 2008);

- Mokau Hydro-electric Power Scheme (2006 – Present); and
- Hauāuru mā raki Project – Waikato Wind Farm (2006 – Present).

(c) I have assisted, or am currently assisting, Contact in relation to the following policy and planning matters:

- National Policy Statement on Freshwater Management (Current);
- National Policy Statement of Renewable Electricity Generation (Current);
- Variation 6 to the Waikato Regional Plan – Water Allocation (Current);
- Change 1 to the Waikato Regional Policy Statement and Variation 2 to the Waikato Regional Plan in relation to the management of geothermal resources (Completed);
- Review of the Waikato Regional Policy Statement (Current); and
- Proposed Plan Change 1C (Water Allocation and Use) to the Regional Plan: Water for Otago (Current).

(d) Finally, for the sake of completeness, I also note that I am a keen trout fisherman. Most of my fishing is undertaken on Lake Taupo and its tributaries.

4. I confirm that I have read the ‘Code of Conduct for Expert Witnesses’ contained in the Environment Court Consolidated Practice Note 2006. My evidence has been prepared in compliance with that Code in the same way as I would if giving evidence in the Environment Court. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

#### **Scope of Evidence**

5. My evidence will discuss the matters to be considered by the Special Tribunal under section 207 of the Resource Management Act 1991 (RMA) before determining the application by Fish and Game. Specifically, I will set out a summary of the key conclusions that I have reached in relation to my analysis of the application in respect of the relevant statutory criteria. The

evidence upon which those conclusions are based will then be presented under the following headings:

- RMA Considerations;
- Contact's submission;
- The Needs of Industry and the Community (Section 207(b));
- The Resource Consent Application Process; and
- RMA Instruments (Section 207(c)).

### **Summary of Conclusions**

6. Section 207 of the RMA sets out the matters to be considered by the Special Tribunal when determining the application by Fish and Game.
7. Contact's submission seeks that the application by Fish and Game be declined in its entirety and that the existing Water Conservation (Kawarau) Order 1997 be retained in its current form.
8. There does not appear to be any significant evidence of any change in circumstances that would, in my opinion, justify the Special Tribunal coming to a different conclusion (to that reached in 1997) whereby the fisheries values (and other values sought to be protected) should be elevated to such an extent that the damming of the Nevis River should be prohibited.
9. The application by Fish and Game is inappropriate in the light of the greater recognition required under the RMA, and Central Government policy promoting, the use of renewable sources of energy.
10. In the circumstances where it is recognised that there are a range of values held by the community in relation to the Nevis River, it would be inappropriate to impose a blanket prohibition at a generic policy level based on an evaluation of only some of those values, as has been advanced by Fish and Game.
11. Under the RMA, the appropriate process by which any proposal to dam the Nevis River should be considered is the resource consent application process set out in Part 6 of the RMA.
12. There are no approved National Policy Statements applicable in terms of section 207(c) of the RMA, however, it is my opinion that the subject matter

of the Proposed National Policy Statements in relation to Renewable Electricity Generation and Freshwater Management is a relevant consideration under section 207(b) of the RMA, being a reflection of the needs of the community (including primary and secondary industry) particularly from a national perspective.

13. The Special Tribunal should not limit its assessment of the statutory planning documents to solely considering the “outstanding characteristics of the river” in the selective way in which Fish and Game has highlighted particular characteristics. A more comprehensive assessment needs to be undertaken taking into account other values associated with the Nevis River including its potential for electricity generation purposes in line with the resource management imperatives found in Part 2 of the RMA, Central Government Policy, the Regional Policy Statement, and Regional and District Plans.
14. On the basis of the above conclusions (and the following evidence on which those conclusions are based), it is my opinion that the amendment sought by Fish and Game is inappropriate.

#### **RMA Considerations**

15. Section 207 of the RMA sets out the matters to be considered by the Special Tribunal when determining the application by Fish and Game as follows:

##### ***207 Matters to be considered***

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

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

16. As noted in section 207 of the RMA (quoted above) the Special Tribunal must have particular regard to the purpose of the water conservation order (or, more particularly in this case, the purpose of the proposed amendment to an existing water conservation order) and the other matters set out in section 199 of the RMA (which define the potential scope of any proposed water conservation order). I do not propose to make any specific comment in relation to the purpose of the application by Fish and Game other than to

note the obvious outcome (should the application be granted) that any real prospect of electricity generation on the Nevis River would be foreclosed.

17. In terms of section 207(a), the Special Tribunal has before it the application by Fish and Game and all the submissions. Other than to briefly outline the scope of Contact's submission, my evidence will focus on the matters to be considered in sections 207(b) and (c) of the RMA.

### **Contact's Submission**

18. Contact's submission seeks that the application by Fish and Game be declined in its entirety and that the existing Water Conservation (Kawarau) Order 1997 be retained in its current form. In support of that relief sought, Contact's submission sets out a number of matters under various headings.
19. On the basis that the Special Tribunal will have already read the submissions, I do not propose to repeat the contents of Contact's submission other than to highlight particular points.

### **The Needs of Industry and the Community (Section 207(b))**

20. In relation to natural and physical resources, the needs of primary and secondary industry and the wider community are often expressed as 'values'. In this case, the main 'tension' is between (primarily) the fisheries values associated with the Nevis River on the one hand and the electricity generation potential as a community value on the other hand.
21. The fisheries values and the values associated with the electricity generation potential of the Nevis River were recognised and formed part of the consideration and determination (by a Special Tribunal) of the original application made by the Minister of Conservation in 1990 for a water conservation order, which was ultimately approved in 1997. As noted in Contact's submission, having considered the relevant matters, the Special Tribunal decided not to prohibit the damming of the Nevis River.
22. For the current application by Fish and Game to be approved, there needs to be significant evidence that there has been a change in circumstances since the approval of the 1997 water conservation order. While the application by Fish and Game refers to various reports and documents (mostly written by Fish and Game or the Department of Conservation), there does not appear to be any significant evidence of any change in circumstances that would, in my opinion, justify the Special Tribunal coming to a different conclusion whereby

the fisheries values (and other values sought to be protected) should be elevated to such an extent that the damming of the Nevis River should be prohibited.

23. Paragraph 7.2 of the application by Fish and Game discusses the results of survey work undertaken in relation to the Nevis River and at paragraph 7.3 states:

*“A good proportion of anglers (>40%) considered that catching large fish was an important feature of the Nevis angling experience and an overwhelming majority (95%) of anglers considered that the natural environment and the scenery were an important feature of the experience (Trotter 2004).”*

24. Being a fisherman myself, I would say (and I would expect that a vast majority of fishermen would agree with me) that catching large fish and the enjoyment of the natural environment and scenery are important characteristics of any fishing experience, whether it be freshwater or coastal fishing. This is not something that is unique to the Nevis River and nor is it a new situation that has only been realised or acknowledged since 1997.
25. If anything, a proven change in circumstances since 1997 has been the realisation that there is a need for greater levels of investment in additional electricity generation capacity and that any new electricity generation capacity should be based on the use of renewable resources (which includes hydro-electrical generation).
26. Of particular relevance to the needs of the community in this regard, the RMA was amended in 2004 (i.e. since the Water Conservation (Kawarau) Order 1997 was approved) by way of section 7(j) being introduced. Section 7(j) of the RMA requires all persons exercising functions and powers under the RMA in relation to the use, development and protection of natural and physical resources to have particular regard to the benefits to be derived from the use and development of renewable energy.
27. In line with this legislative requirement, the New Zealand Energy Strategy to 2050 seeks to increase the use of renewable sources of energy to meet the country's increasing demand for electricity, so as to assist the New Zealand Government to meet its obligations under the Kyoto Protocol in terms of reducing greenhouse gas emissions. The new Government has adopted the goal set out in the New Zealand Energy Strategy to 2050 of achieving 90% of electricity generation from renewable sources by 2025.

28. The application by Fish and Game is, in my opinion, inappropriate in the light of the greater recognition required in the RMA and Central Government policy promoting the use of renewable sources of energy.
29. From my reading of the application by Fish and Game, it would appear that the recognition of the electricity generation potential of the Nevis River discussed in the report by East Harbour Management Services Ltd (dated 2004) may have created an increased level of anxiety, motivating the advancement of the current application as a form of a pre-emptive strike (in this case seeking a blanket prohibition on damming) before any specific proposals to dam the Nevis River are developed and advanced through the RMA planning process.
30. My evidence does not advance any conclusions as to the appropriateness or otherwise of any proposal to dam the Nevis River. That is because there are no applications for such a development at present and, accordingly, nor has there been any proper assessment of the actual or potential environmental effects of any such proposal in accordance with the Fourth Schedule to the RMA.
31. In my opinion, it is important to keep in mind that this hearing is not to determine the merits or otherwise of any proposal to dam the Nevis River for electricity generation purposes. There is no such application before the Special Tribunal, only hypothetical options which have not been the subject of a rigorous assessment of environmental effects.
32. In the circumstances where it is recognised that there are a range of values held by the community in relation to the Nevis River, it would be inappropriate, in my opinion, to impose a blanket prohibition at a generic policy level based on an evaluation of only some of those values, as has been advanced by Fish and Game. If those values highlighted by Fish and Game are, in fact, of such importance as to outweigh other values (such as the recognised potential for electricity generation) then any proposal to dam the Nevis River, where adverse effects on those values could not be appropriately avoided, remedied or mitigated, would fail to secure the necessary resource consents if such an outcome was not consistent with the purpose of the RMA.

## The Resource Consent Application Process

33. Under the RMA, the appropriate process by which any proposal to dam the Nevis River should be considered is, in my opinion, the resource consent application process set out in Part 6 of the RMA.<sup>1</sup>
34. Any proposal to dam the Nevis River would require a resource consent under the provisions of the operative Regional Plan: Water for Otago. Specifically, Rule 12.3.4.1(i) provides for the damming or diversion of water as a discretionary activity.<sup>2</sup> Similarly, any proposal to dam the Nevis River would trigger Rule 13.7.4(iii) of the Central Otago District Plan which classifies “*any activity that involves or is associated with the construction and commissioning of a power generation facility*” as a discretionary activity.
35. In accordance with section 104B of the RMA, a resource consent application for a discretionary activity can be granted consent (with conditions) or declined.
36. Section 104 of the RMA sets out the matters a consent authority must “have regard to” when assessing and determining a discretionary activity resource consent application.
37. Section 104 of the RMA states:
- (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.*
38. In relation to the assessment and determination of any proposal to dam the Nevis River under section 104 of the RMA, I make the following observations:

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<sup>1</sup> A proposed plan change (particularly in relation to the land use aspects of any proposed development within the jurisdiction of the Central Otago District Council) would also be an appropriate planning process enabling a full and proper assessment of all relevant considerations.

<sup>2</sup> This RMA status is not altered by any of the proposed changes to the Regional Plan: Water for Otago.

- There are no actual or potential effects on the environment that have been raised by Fish and Game in the context of their current application which would not be able to be considered under section 104(1)(a) of the RMA.
- Under section 104(1)(b), all relevant statutory instruments prepared under the RMA need to be considered (which is, in fact, a wider range of documents than that required to be considered under section 207(c) of the RMA).
- Section 104(1)(c) is a 'catch all' type of provision which allows other matters to be considered (e.g. Central Government Policy documents, Conservation Management Strategies, etc).

### **RMA Instruments (Section 207(c))**

#### National Policy Statements

39. There are currently only two approved National Policy Statements for the purposes of section 207(c) of the RMA,<sup>3</sup> neither of which are relevant to the application by Fish and Game.
40. There are two Proposed National Policy Statements of some relevance, namely:
  - The Proposed National Policy Statement on Renewable Electricity Generation; and
  - The Proposed National Policy Statement on Freshwater Management.
41. While they are not applicable in terms of section 207(c) of the RMA (on the basis that they are not yet operative), it is my opinion that the subject matter of these Proposed National Policy Statements is a relevant consideration under section 207(b) of the RMA being a reflection of the needs of the community (including primary and secondary industry) particularly from a national perspective.
42. The Proposed National Policy Statement on Renewable Electricity Generation sets out a single objective as follows:

*“To recognise the national significance of renewable electricity generation by promoting the development, upgrading, maintenance and operation of new and existing renewable electricity generation activities, such that 90 per cent of New Zealand’s electricity will be*

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<sup>3</sup> The New Zealand Coastal Policy Statement and the National Policy Statement (NPS) on Electricity Transmission 2008.

*generated from renewable sources by 2025 (based on delivered electricity in an average hydrological year).”<sup>4</sup>*

43. The Proposed National Policy Statement on Freshwater Management sets out nine objectives (followed by as many policies) which largely reflect the range of resource management imperatives in Part 2 of the RMA, including enabling people and communities to provide for their social, economic and cultural well-being, and their health and safety.
44. For the sake of completeness, I note that the Proposed National Environmental Standard on Ecological Flows and Water Levels is in the process of being prepared (having reached the stage whereby the period for submissions has closed). If this standard (or any other potentially relevant environmental standard) is operative at the time any resource consent application is advanced for a proposed use of the Nevis River, it would need to be taken into account.

#### Regional Policy Statements and Plans

45. The application by Fish and Game states (at paragraph 6.5):

*“Fish and Game submit that statutory planning documents approved since the original WCO decision should be taken into consideration in assessing the outstanding characteristic of the river.”*

46. I agree with that statement. However, in my opinion, the Special Tribunal should not limit its assessment of the statutory planning documents to solely considering the “outstanding characteristics of the river” in the selective way in which Fish and Game has highlighted particular characteristics.
47. The application by Fish and Game identifies and briefly discusses three planning documents, namely:
- Sports Fish and Game Management Plan (SFGMP);
  - Otago Conservation Management Strategy (CMS); and
  - Otago Regional Plan: Water.
48. The first two of the above documents have been prepared specifically to promote the protection of particular resources. Accordingly, they do not reflect the more broadly based approach to the management of natural and

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<sup>4</sup> The submission by the Ministry of Economic Development discusses the Proposed National Policy Statement for Renewable Electricity Generation in more detail.

physical resources required by the RMA, and in particular section 5 of the RMA.

49. In relation to the Regional Plan: Water for Otago, the application by Fish and Game selectively refers to only three objectives and five policies which tend to focus on protecting particular values associated with lakes and rivers within the Otago Region. Curiously, the application by Fish and Game does not refer to Policy 5.4.5 of the Regional Plan which specifically sets out how the Water Conservation (Kawarau) Order 1997 is to be recognised.
50. The application by Fish and Game does not make any reference to the Regional Policy Statement for Otago (RPS) which includes Chapter 12 – Energy. This chapter of the RPS identifies four issues as follows:
- 12.3.1 *The production and use of energy can have both positive and negative effects on Otago's communities and resources.*
  - 12.3.2 *Otago's dependence on non-renewable energy resources is unsustainable in the long run.*
  - 12.3.3 *Wasteful and inefficient energy use occurs in Otago.*
  - 12.3.4 *Long-term regional benefits from energy developments have not been fully realised in Otago.*
51. These issues are sought to be addressed by the following three objectives in the RPS:
- 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.*
52. Any proposal to prohibit the damming of the Nevis River (particularly in the absence of any such proposal being the subject of a proper application and a robust assessment of environmental effects) is clearly contrary to Objective 12.4.3 above (and the objective of the Proposed National Policy Statement on Renewable Electricity Generation quoted earlier in my evidence).
53. The relevant statutory instruments constitute a comprehensive planning framework which includes extensive policy guidance that would be applicable to the assessment of any application to dam the Nevis River for electricity

generation purposes. As highlighted in the application by Fish and Game, this policy guidance includes objectives and policies which, for example, recognise and seek to protect fisheries and landscape values. These are, properly, matters that would need to be considered and weighed in the assessment and determination of any resource consent application.

54. Contact's submission notes that Schedule 1A of the Regional Plan: Water for Otago sets out the values associated with the Nevis River, and points out that the Plan states (at page 275):

*"The opportunity to provide such protection will arise when preparing and reviewing regional and district plans under the Resource Management Act, and when considering applications for resource consents."*

55. All of the statutory instruments prepared since 1997 relating to the management of natural and physical resources within the Otago Region have been the subject of consultation and/or opportunities for public participation (e.g. submissions and hearings). There are a number of prohibited activities specified in the Regional Plan: Water for Otago, however, none of the statutory instruments developed since 1997 have included a prohibition on the damming of the Nevis River.
56. The regional and district planning instruments have established a comprehensive framework, including specific recognition of the Water Conservation (Kawarau) Order 1997, within which any proposal to use the Nevis River for electricity generation purposes can and should be properly considered via the resource consent application process.

**MB Chrisp**

**5 May 2009**