

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of hearings by the Board of Inquiry on
the Proposed National Policy
Statement for Freshwater
Management

STATEMENT OF EVIDENCE BY BRIDGETTE MAREE MALCON

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QUALIFICATIONS AND EXPERIENCE

1. My full name is Bridgette Maree Malcon. I am employed by Ryder Consulting Limited, as an Associate Planner. Ryder Consulting Limited is an environmental consultancy that specialises in the provision of ecological, planning and project management services, with offices in Dunedin, Christchurch and Tauranga.
2. I am a qualified and experienced environmental planning and resource management professional, having graduated from the University of Waikato in 1999. I hold a Bachelor of Social Science with Honours, specialising in Resource and Environmental Planning and Geography.
3. I have been employed by Ryder Consulting Limited as an Associate Planner for approximately one year. In this position I undertake a number of environmental planning and project management related tasks, including providing expert planning advice to various clients.
4. I have in excess of eight years experience in private consultancy, corporate and local government planning. Prior to working for Ryder Consulting I was employed by TrustPower Limited as a Senior Environmental Officer. Preceding TrustPower Limited, I was an environmental planning consultant in Tauranga (Harrison Grierson Consultants Limited) and in Gisborne (Turnpenny Associates Limited). I also worked as a policy planner / consent processing officer for a unitary authority (Gisborne District Council).

MY ROLE

5. I have been commissioned by TrustPower Limited (**'TrustPower'**) to prepare planning evidence in support of the Company's submission to the Proposed National Policy Statement for Freshwater Management (**'proposed NPS'**).
6. In preparing this evidence I have considered the following:
 - the proposed NPS;
 - the proposed NPS Section 32 Evaluation; and
 - TrustPower's principal submission to the proposed NPS.

7. My evidence covers the following topics, which are the subject of TrustPower's submission to the proposed NPS:
 - Objectives 1 – 9;
 - Policies 1 – 9; and
 - the Consumptive Use definition.
8. I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses (July 2006).

OBJECTIVE ONE

9. TrustPower supported Objective One of the proposed NPS and sought that it be retained unmodified. The Company submitted that the Objective is consistent with the definition of sustainable management as set out within section 5 of the Resource Management Act 1991 (**'the Act'** or **'RMA'**).
10. I consider the Objective to be appropriate. Most resource management policy, relating to the use and management of freshwater generally focuses on the negative effects of the use or management. This does little to promote sustainable management of natural and physical resources. Objective One allows for a balancing of effects, in that it enables freshwater resources to be managed in such a way that they provide for the social, economic and cultural wellbeing and health and safety of people and communities. As Objective One is consistent with the Act, and allows for a balancing of effects, I also consider that the Objective should be retained unmodified.

OBJECTIVE TWO

11. TrustPower sought amendment to Objective Two, considering the Objective to be 'unclear and highly uncertain'. The Company submitted that the provision did not provide any guidance as to how the term 'effective integrated management' was to be interpreted or applied. Further, TrustPower contended that Objective Two should focus on water quality rather than water quantity, as this is the key water related benefit of integrated land-use.

12. In my opinion Objective Two lacks clarity making its purpose confused and more complex than is warranted. No explanation has been provided to Objective Two to assist in providing guidance as to how the Objective is to be interpreted, and terminology used within the Objective, such as 'effective integrated management' has not been defined.
13. I understand that land-use development (and discharges of contaminants associated with the same) have a much greater effect or impact on water quality, than they do on water quantity. Given this, I agree with TrustPower's submission when it suggests that Objective Two be simplified to focus on promoting integrated land-use management to maintain, and where appropriate, enhance the quality of freshwater. I consider that an Objective which focuses water quality, when related to land-use development and management is logical and appropriate, and also more suitably fulfils the intent of the Objective.
14. For completeness, I repeat TrustPower's relief sought below.

Objective Two: Relief Sought

15. That Objective Two be amended as follows:

To ensure ~~effective integrated management (including by the co-ordination and sequencing of Land-use Development with investment in infrastructure for supply, storage and distribution of fresh water)~~ of the effects of Land-use ~~activities~~ Development and associated discharges of contaminants to maintain, and where ecologically necessary enhance the ~~on the~~ quality and available quantity of fresh water.

Explanation: Freshwater resources will only be enhanced, where practicable and appropriate, so as to meet necessary water quality standards by 2035.

OBJECTIVE THREE

16. TrustPower sought to have Objective Three amended, stating that the terms 'progressive enhancement' and 'overall quality' need to be defined. Further, the Company considered that the requirement to 'exceed' swimmable water quality standards was both restrictive and inappropriate. As an alternative TrustPower recommended that the objective be re-cast so that swimmable water quality standards be 'achieved', and possibly linked to appropriate water quality standards. Lastly, TrustPower noted that Objective Three did not set a

timeframe within which all freshwater resources were to 'exceed' swimmable standards, thus making the Objective even more ambiguous.

17. I agree that Objective Three is both unclear and overly restrictive. In particular, I consider that the need to 'exceed' a swimmable water quality standard is inappropriate. While a resource consent applicant may be able to exceed a prescribed standard, this should not be a necessity. A requirement to exceed standards creates ambiguity and potentially unnecessary uncertainty for an applicant. I consider that it is appropriate that provisions suggest that prescribed standards, such as swimmable water quality standards, should be achieved.
18. Using the words 'or exceed' within Objective Three, could result in more restrictive and / or ambiguous rules developed within local government planning documents, with resource consent applicants required to 'exceed' particular standards, or exceed standards by a specified quantum that has no scientific basis / cannot be robustly defended.
19. In my opinion, if a particular standard provides insufficient protection to maintain a particular resource, then it is the standard that should be amended, rather than the resource consent applicant that is required to exceed the standard.
20. Dr. Greg Ryder¹, an aquatic ecologist with 18 years experience working as an environmental consultant throughout New Zealand, states that appropriate swimmable water quality standards will depend on the individual characteristics of a locality. Further, water quality standards should be developed for particular river types, and derived through a consultation process. I agree that this approach is appropriate. I further understand that not all freshwater resources are able to achieve swimmable standards. Indeed, Dr. Ryder advises that from research he has undertaken in Southland, not all lowland streams would be able to achieve bathing / swimmable standards unless there was a radical change to land use, and that in some cases in Southland it has been more appropriate to link provisions to other water quality standards such as stock drinking water standards, at least in the short to medium term. Dr. Ryder also noted that many lowland streams are unsuitable for bathing due to

¹ Pers. Comm. Dr. Greg Ryder, 26th May 2009.

low clarity, nuisance algal growths, soft bottom beds, and weeds. Therefore it is unreasonable to apply 'blanket standards' without strong justification for doing so².

21. I consider that TrustPower's relief sought is appropriate. However, I suggest a minor amendment to include reference to appropriate water standards as opposed to swimmable standards.

Objective Three: Relief Sought

22. That Objective Three be amended as follows:

To ~~improve~~ ensure the progressive enhancement of the overall ~~the~~ quality of degraded Freshwater Resources, including actions to ensure appropriate water quality standards can be achieved. ~~appropriate Freshwater Resources can reach or exceed a swimmable standard.~~

Explanation: Degraded freshwater resources will be improved, where practicable and appropriate, so as to meet the necessary water quality standards by 2035.

OBJECTIVE FOUR

23. TrustPower submitted that Objective Four required significant modification. The Company stated that the Objective was unclear, particularly in relation to how the term 'ecological values' was to be interpreted and applied. TrustPower noted that the term 'ecological values' was listed within the definition for 'notable values' set out within the definitions section of the proposed NPS, but was not defined or explicitly explained. The Company further questioned the need for both the recognition and protection of the 'life supporting capacity' and 'all ecological values' within Objective Four, and also noted that Objective Four should be amended to be consistent with Part II of the Act.
24. As drafted, Objective Four is more restrictive than Part II of the Act, in that it requires that recognition and protection of life supporting capacity and 'all' ecological values, rather than 'significant' ecological values. Given this, I

² Ryder, G. 1995. Maitara Catchment Water Quality Review. Report prepared by Robertson Ryder Limited for Southland Regional Council.
Ryder, G. 1998. Lower Maitara River Water Quality Investigation, 1996-1998. Report prepared by Ryder Consulting Limited for Southland Regional Council.
Ryder, G. 2004. Environment Southland Water Quality and the Draft Regional water Plan. An Examination of Possible Water Quality Standards. Report prepared by Ryder Consulting Limited for Environment Southland.

question the appropriateness of the Objective and doubt that it achieves the obligations set out within section 32 of the Act.

25. In drawing this conclusion I have considered Part II, particularly section 6 of the Act. Section 6 sets out the matters deemed to be of national importance and utilises the words ‘recognise’ and ‘provide for’. While section 6 does not specifically refer to ‘life supporting capacity’ or ‘ecological values’, it does require the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna³.
26. In developing this evidence, I have reviewed existing planning documents to determine if they refer to the term ‘ecological values’. This analysis revealed an explanation contained within Environment Southland’s Proposed Regional Water Plan⁴:

“The term “ecological values” refers to the value of all vegetation and fauna that may be present within and dependant on a water system. For practical purposes, the most important ecological values that need to be considered under this objective are areas of significant indigenous vegetation, significant habitats of indigenous fauna, and the habitats of trout and salmon. It should be noted that certain activities affecting surface water bodies (such as restoration of existing habitats and creation of new habitats, through damming and diversion) can result in enhancement of ecological values”

27. I consider that Environment Southland’s interpretation is useful in that it uses terminology consistent with section 6 of the Act. If applied in this instance, I consider that Objective Four should be amended to be consistent with, and not made more restrictive than section 6, in particular part (c). Making the Objective consistent with section 6(c) would allow a more balanced assessment of effects to occur. While all freshwater resources have ecological values, it is not appropriate for ‘all’ ecological values to be recognised and provided for, this would be inconsistent with the principle of sustainable management, in that it would tip the balance in favour of biophysical considerations. I therefore agree with TrustPower’s proposed

³ Section 6(c) of the Resource Management Act 1991.

⁴ Environment Southland Proposed Regional Water Plan (amended in accordance with Council and Environment Court decisions), January 2009, Publication No. 2009-01, ISBN 0-909043-38-8; Interpretation taken from the Explanation to Water Quantity Objective Five – Sufficient water availability.

relief sought, with a minor amendment to the terminology utilised and the explanation provided. I propose that the words to ensure that ‘all significant indigenous’ ecological values are used, as these words are consistent with section 6 of the Act. Further, I consider that the explanation of ecological values provided within Environment Southland’s Proposed Regional Water Plan is appropriate to use to explain Objective Four.

28. I provide the amended relief sought below.

Objective Four: Relief Sought

29. That Objective Four be amended as follows:

To ensure ~~that all significant indigenous the life supporting capacity and ecological values of Freshwater Resources are recognised and provided for,~~ protected from inappropriate –

- (a) ~~— taking, use, damming or diverting of fresh water; and~~*
- (b) ~~— Land-use Development; and~~*
- (c) ~~— discharges of contaminants.~~*

Explanation: The term “Ecological Values” refers to the value of all vegetation and fauna that may be present within and dependant on a water system. For practical purposes, the most important ecological values that need to be considered under this objective are areas of significant indigenous vegetation and significant habitats of indigenous fauna.

OBJECTIVE FIVE

30. TrustPower stated that Objective Five is both onerous and unnecessarily restrictive. The Company noted that Objective Five refers solely to land use development and associated discharges of contaminants, but does not consider any other potential causes of degradation.
31. TrustPower noted that it undertakes erosion control works within the vicinity of all its Schemes, which may result in the temporary degradation of a water course. Further to this, an example was provided within the Company’s submission to show that if freshwater degradation in the form of discharge of suspended sediment into the water column was to occur for a short period of time, such as during the maintenance and / or construction of a structure, or

during dredging of a storage lake bed, the sedimentation, or discharge plume created, would effectively be inconsistent with Objective Five.

32. I agree that Objective Five as currently drafted is onerous and unnecessarily restrictive.
33. The objective does not allow for temporary discharges, nor does it allow for any adverse effects of land-use development and discharges of contaminants to be remedied or mitigated. In promoting the sustainable management of natural and physical resources section 5(c) of the Act allows for the avoidance, remediation or mitigation of any adverse effects of activities on the environment. While the intent of the Objective is appropriate, the Objective requires amendment to make it less restrictive and clearer. For these reasons, I agree with the amendments to Objective Five that TrustPower has sought, and for completeness, repeat these below.

Objective Five: Relief Sought

34. That Objective Five be amended as follows:

To ~~ensure that control the permanent adverse effects of any activity or discharge of contaminants to water are avoided, remedied or mitigated so that the freshwater resources are not significantly adversely affected. Land-use Development and discharges of contaminants to avoid further degradation of Freshwater Resources.~~

OBJECTIVE SIX

35. TrustPower sought amendment to Objective Six, stating that provision (c) of the Objective was ambiguous and therefore open to interpretation. Further, it stated that Objective Six does not explicitly explain how freshwater is to be sustainably managed when over-allocation has already occurred. The Company sought that Objective Six should be amended to provide protection, ensure non-derogation from existing uses and to provide certainty of supply to encourage investment. In addition, it suggested that Objective Six should be amended to recognise the balance between positive and negative effects.

36. I consider that Objective Six could be worded more clearly, and that the Objective should provide guidance as to how freshwater is to be sustainably managed when over-allocation has already occurred, providing protection to existing uses.
37. As noted in my analysis of Objective One, most policy relating to the demand for and management of freshwater resources generally focuses on negative effects and protection of the resources from these. Consequently, it fails to strike a balance and acknowledge the benefits that water management and use can have, which does little to promote sustainable management of natural and physical resources. Recognition of both the positive and negative effects of water use will promote a framework that will assist in a more balanced assessment of proposals as they arise.
38. In my opinion existing uses should be afforded protection, particularly where the level of investment and community benefit associated with the existing use / abstraction is substantial. From my knowledge of the hydroelectric power industry, even a small decrease in water available to be abstracted and used by an existing Scheme can have a significant effect. Mr Watson provides examples within his evidence of how even a minor decrease in water available for generation can result in significant adverse consequences.
39. I therefore consider that the relief sought by TrustPower is appropriate, and for completeness, repeat the same below.

Objective Six: Relief Sought

40. That Objective Six be amended as follows:

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

- (a) the available supply of fresh water;*
- (b) the need to provide for resilience against the biophysical effects of climate change (such as through infrastructure for supply, storage and distribution of fresh water);*
- (c) the ~~adverse~~ environmental effects (both negative and positive) that arise from the allocation of water; ~~those demands.~~*

(d) the need to ensure that the rights of existing users are not derogated by allocation to new applicants; and

(e) the level of investment and community benefit associated with an existing abstraction, particularly in catchments where over-allocation necessitates a review of the water being abstracted.

OBJECTIVE SEVEN

41. TrustPower considered Objective Seven appropriate, and only sought minor amendment to the Objective. In this regard, the Company considered that the statement *“to ensure that allocated water is used efficiently”* was appropriate. TrustPower’s interpretation of Objective Seven was that it appeared to allow for the facilitation of transfer of water to ensure efficiency of use. As a Company, TrustPower considers that this is appropriate, however, sought that minor amendment to Objective Seven was necessary to clarify that facilitating the transfer of water should not derogate from or affect existing uses.
42. I consider the intent of Objective Seven to be appropriate. In my opinion, it is crucial that Freshwater is utilised efficiently, particularly as there are regions in New Zealand, such as Canterbury and Marlborough, where a number of Freshwater resources are reaching allocation limits, or are already over-allocated. As the demand for Freshwater continues to increase, so too does the need to ensure efficient use, thus allowing benefits for a larger number of users / uses.
43. Transferability of freshwater should help to ensure that water is not wasted, but utilised more efficiently. However, I agree with TrustPower that transferability will only be effective if it does not derogate from, or affect existing users / uses. To do so would defeat the purpose of trying to ensure efficiency, by adversely affecting an existing use.
44. For these reasons I support TrustPower’s amendment to Objective Seven, with minor amendment to reference transferability and, for completeness, repeat this below.

Objective Seven: Relief Sought

45. That Objective Seven be amended as follows:

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

- (a) avoiding wastage;*
- (b) avoiding excessive contamination; and*
- (c) facilitating opportunities, such as transferability, to increase benefits from the use of fresh water that allows for efficiency of use, while not adversely affecting or derogating from existing uses*

OBJECTIVE EIGHT

46. Within its submission, TrustPower stated that it is beneficial for Tangata Whenua values and interests to be identified, as proposed within Objective Eight. The Company, however, sought clarification as to how the term 'interests' was to be defined. TrustPower considered that the identification of areas of specific value to Tangata Whenua would provide a degree of certainty to those who wish to develop new projects by providing guidance as to where areas of particular value or constraint are located. The Company further considered that this would enable the avoidance of such areas where possible and that it would also allow for discussions with the appropriate iwi and hapu groups regarding whether remediation or mitigation can be achieved to occur at an earlier stage in a project scoping process.
47. TrustPower noted that it was unclear as to what was intended by iwi and hapu 'involvement' in the management of freshwater resources and contended that, as this term has not been defined, any 'involvement' should be consistent with, and not elevated above, those matters listed in Part II of the RMA. TrustPower further suggested that the term 'involvement' be deleted from Objective Eight, and that Objective, instead reference the appropriate sections of the Act.
48. It would be beneficial for cultural values and interests to be identified in plans dealing with freshwater resources. In my experience, the cultural values attributed to a freshwater resource, are often one of the key components that determine how a project is progressed, and whether it is progressed at all. The cultural values of particular freshwater resources are not always readily

apparent, as local government planning documents may not always cover the cultural value of freshwater resources, or cover these in detail.

49. As the terms ‘interests’, and in particular, ‘involvement’ have not been defined or explained within Objective Eight, I agree with TrustPower’s suggestion that reference needs to be made to the appropriate sections of the Act, being section 6(e), 7(a) and 8. Together these sections provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga⁵, to be recognised and provided for; state that particular regard shall be given to kaitiakitanga⁶; and require that the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) are taken into account⁷. Further I consider that providing reference to the Act will give greater certainty to resource consent applicants.
50. I therefore support TrustPower’s proposed amendment to Objective 8, with minor amendment regarding the reference to the Act. Instead of including the reference within the Objective, I have provided the reference within an explanation.

Objective Eight: Relief Sought

51. That Objective Eight be amended as follows:

To ensure that iwi and hapu ~~are involved~~, and Tangata Whenua Values and Interests are identified and reflected, in the management of Freshwater Resources including the matters specified in Objectives 1–7.

Explanation: Objective Eight is intended to be implemented in accordance with Sections 6(e), 7(a) and 8 of the Resource Management Act 1991.

OBJECTIVE NINE

52. TrustPower considered that regional councils and territorial authorities undertaking ‘effective’ monitoring and reporting would be both beneficial and appropriate. However, the Company noted that it was concerned to ensure that such monitoring and reporting is in fact ‘effective’ and also ‘necessary’.

⁵ Section 6(e) of the Resource Management Act 1991

⁶ Section 7(a) of the Resource Management Act 1991

⁷ Section 8 of the Resource Management Act 1991

53. TrustPower sought that an explanation should be provided to Objective Nine, to explain the thresholds that any monitoring undertaken shall meet. The Company considered that this was necessary as it is concerned that consent holders are likely to receive the burden of increases in monitoring pursuant to their resource consent conditions.
54. Further, in its submission, TrustPower stated that it is anxious to ensure that monitoring is not duplicated, by both the consent authority and consent holder. It also noted that implementation of Objective Nine may result in new consenting and re-consenting projects having more restrictive consent conditions imposed upon their resource consents.
55. I consider effective monitoring and reporting to be essential. Not only does such monitoring lead to problems being identified and remedied earlier, but can also lead to more efficient use of freshwater resources, and can provide useful trends and patterns that occur within a freshwater course, both naturally and as a result of a particular activity or activities.
56. While effective and necessary monitoring is useful, as noted by TrustPower, unnecessary monitoring can lead to excessive cost to an applicant by way of increased compliance charges or more restrictive resource consent conditions. From my experience, it is not unusual for an activity to be required to operate in accordance with a number of resource consents and consent conditions. Often it is not whether an activity is granted consent, but the type of conditions imposed, which govern whether or not the activity can viably proceed. In this regard, it is important that any monitoring and reporting to be undertaken is both effective and necessary, and that consent conditions are not unnecessarily onerous, or require the same potential effect to be monitored in a number of different ways or to duplicate monitoring being undertaken by others. I further consider that it is important for monitoring and reporting to be able to be changed or adapted in accordance with the outcomes achieved. For example, if an activity is shown to be inducing a negligible or a positive effect, over a particular time period, the level of monitoring required could perhaps be reduced.
57. For these reasons, I support TrustPower's proposed amendment to Objective Nine and for completeness, repeat the same below.

Objective Nine: Relief Sought

58. That Objective Nine be amended as follows:

To ensure that regional councils and territorial authorities undertake effective and necessary monitoring and reporting of the matters specified in Objectives 1–8.

Explanation: effective and necessary monitoring and reporting shall be monitoring and reporting that is required in order to determine whether an adverse effect is created; or whether a mitigation measure, strategy or regime is successful.

POLICIES ONE, TWO AND THREE

59. TrustPower considered Policies One, Two and Three together as these policies are all related to requirements for policy changes, variations, proposed plans, or statements.
60. The Company noted that Policy One, which informs Policies Two and Three, would be more simply put if it was broken down into separate and specific policies addressing discrete topics.
61. From TrustPower’s perspective, Policies One, Two and Three establish inadequate timeframes for the drafting of proposed regional and district policy. The Company is concerned that the timeframes prescribed will not allow enough time for the necessary research and drafting of appropriate provisions and that if adequate time is not allowed, consultation and feedback at an early stage is likely to be limited. As a consequence impractical provisions may be notified by local authorities.
62. To implement Policy One alone, TrustPower noted that regional councils are required to identify all the freshwater resources within their region that are considered to be ‘outstanding’ or ‘degraded’. Further, the policy requires councils to consult with Tangata Whenua to identify values and interests and update existing iwi and hapu planning documents. TrustPower considered the proposed two-year timeframe inadequate to undertake such research and work and contended that a timeframe of five years would be more realistic.
63. TrustPower stated that it is unclear within the provisions who is to decide what is ‘outstanding’ and what is ‘degraded’. The Company considers that it is

inappropriate for local government authorities to classify what freshwater resources are considered to be outstanding or degraded, rather that it is more appropriate for independent experts to be employed and freshwater resources to be assessed against appropriate criteria. In order to provide certainty, TrustPower further considered that Policy One should establish the applicable criteria for the various values rather than leaving this to case law and individual interpretation of various local government authorities.

64. With regard to environmental flows, TrustPower contended that these need to be identified on a case-by-case basis, and that flow setting should not be restricted to a specific methodology / methodologies. It further considered that it is both important and appropriate to be able to adapt the 'toolbox' of preferred options as research is undertaken and technological advances occur.
65. While TrustPower considers that the setting of minimum and environmental flows is appropriate, the Company noted the setting of upper allocation limits or levels is not something that is universally accepted by the scientific community, therefore, it is opposed to the setting of allocation limits or levels. TrustPower also made this point in its submission on the proposed National Environmental Standard on Ecological Flows and Water Levels ('**proposed NES**'), and believe that both the proposed NPS and proposed NES would be better advanced together.
66. TrustPower considers that the setting of inappropriate environmental flows and limits or levels will potentially have an adverse effect on both new and existing activities, and may result in existing activities losing water in over allocated areas. Indeed, from the Company's reading of the section 32 analysis, it appears that in the majority of cases environmental flows will be established that are the same or greater than present. This means there will be the same, or less, water available for consumption, and as a consequence, for existing uses and users. Further, TrustPower noted that the section 32 analysis states that the likely effects of an increase in environmental flows on hydroelectricity will be a possible decrease in the water stored for generation. It is considered that this could decrease the resilience of the generation network, and in some circumstances bring about an increase in electricity prices. The Company considers that this runs contrary to Section 7(j) of the Act and also the

proposed National Policy Statement for Renewable Electricity Generation, and is thus considered inappropriate.

67. TrustPower stated that a flow regime imposed on a hydroelectric power generation scheme has the single greatest impact on the volume of energy produced by the scheme. Any reduction in water available for hydroelectricity impacts on the economics of hydroelectricity development in general.
68. The Company further contended that the policies of the proposed NPS are likely to result in provisions at both district and regional levels which impose additional restrictions to existing activities when they come to be reconsented, thus must be implemented carefully. TrustPower considered that when activities such as existing hydroelectric power generation schemes have demonstrated a sustainable flow regime, then such flows should not be adjusted unless there is a robust reason to do so.
69. TrustPower assumes that the proposed NPS appears to be heading towards a 'catchment-wide' approach, as the section 32 analysis states that the 'first in, first served' approach to allocation may not be sustainable and that such an approach *'does little to promote the efficient use of water or the effective management of cumulative effects'*. The Company considers that the outcomes conveyed regarding the 'first in, first served' approach are inappropriate and further contended that this approach, when coupled with an effective system of consent transfer, is environmentally appropriate, efficient, recognises the value of existing investment, and the principle of non-derogation.
70. TrustPower is concerned that the timetabling of priorities to determine when Freshwater Quality Standards and environmental flows and levels are set may lead to council's granting consents for shorter terms. The Company considers that together with catchment-wide common expiry dates, this could lead to greater cost and more regular reconsenting. This is particularly onerous for large scale projects and leads to a greater level of uncertainty, particularly in over-allocated catchments when a number of resource consents are due to expire at the same time. TrustPower stated that the costs faced during the consenting and reconsenting process are already significant and common expiry dates will not only add to the costs, but will be problematic for local

government authorities to administer as a substantial number of resource consents may be due to be processed at the same time.

71. TrustPower is particularly concerned with the wording utilised in Policy One (g) and submitted that it is unclear what exactly is intended by the term 'restrict' and how this restriction will be applied in times of low flow. The Company noted that while there may be instances where restricting water use may be appropriate, they need to be advanced with considerable care and be the 'exception', not the rule.
72. The Company is also concerned that Policy One (i) seeks to prioritise the allocation of consumptive freshwater takes, therefore sought an amendment to this provision so that the prioritisation of consumptive freshwater takes can only occur on a first in, first served basis.
73. Finally, TrustPower contended that Policies Two and Three will impose impractical conditions and a greater degree of monitoring and reporting upon resource consents. The Company considers that all monitoring and reporting must be both necessary and effective, as discussed within its submission to Objective Nine.
74. Policies One, Two and Three are in my opinion conceptually long, complex and overly prescriptive. I consider that the three policies as drafted are very difficult to amend without making the policies even more prescriptive.
75. Instead of trying to provide policies that set out all the requirements that local government must include within its plan changes, variations and proposed plans within three prescriptive policies, I believe that the policies would be less confused and clearer if they were broken into the various themes addressed within the policies perhaps, with separate, clear and discrete policies drafted.
76. I consider that the most appropriate themes to address specifically are water quality, water quantity, environmental flows and levels and water use and efficiency. The purpose of the proposed NPS is to provide provisions as to the management of freshwater resources as a matter of national significance relevant to achieving the purpose of the Act.

77. I further consider that a number of the other themes listed within these policies will fall out of the specific water related themes and are already provided for within Part II of the Act.
78. While breaking up Policies One, Two and Three in accordance with the themes I have identified would increase the number of policies provided within the proposed NPS, it would also help to provide certainty and clarity with regard to what is intended, and how it is to be implemented / undertaken.
79. Like TrustPower, I consider that the timeframes prescribed within the policies are inadequate. I accept that setting short timeframes is aimed at ensuring that action occurs much more quickly to enable New Zealand's freshwater resources to be managed more wisely. I am, however, concerned that imposing unrealistic timeframes will lead to a lack of background research and consultation being undertaken before provisions are notified. This may in turn lead to more onerous and restrictive provisions, as overly conservative approaches are adopted to compensate for a lack of robust and independent research.
80. In my experience, inadequate consultation leads to greater levels of opposition and alienation. Restrictive timeframes will also create resourcing issues, and an increase in costs faced, not only at a local government level, but also for developers, existing freshwater resource users, land-owners and others alike. In his evidence, Mr Watson elaborates on the number of local government planning document processes that TrustPower is involved in throughout New Zealand, highlighting how both the resourcing and costs involved with actively engaging in all of the local government planning processes over such a short period of time would be extreme, with the level of engagement heightened if provisions were overly restrictive.
81. I agree with TrustPower that the timeframes for undertaking research and work behind the drafting of provisions should be extended, and further consider that up to five years would be more realistic.
82. I consider that terminology used within the Policies should be drafted more clearly or clearly defined or explained, so as to provide clarity and certainty to both local authorities and resource consent applicants alike when interpreting

the provisions to be implemented. This will ensure fewer disputes and will lead to more straightforward planning processes.

83. There are a number of references to environmental flows and levels, restrictions during times of low flow, prioritisation of allocation, sustainable management of the demands for freshwater and water efficiency within Policies One, Two and Three. Mr Watson discusses these terms and how they may impact TrustPower's hydroelectric power generation schemes if implemented inappropriately in some detail within his evidence. For this reason I do not propose to address these topics, except to say that I consider that it is crucial that adequate research and consultation is undertaken before provisions are drafted. Implementing inappropriate, conservative and overly restrictive provisions may induce disastrous effects, particularly to existing uses / users, affecting the viability of particular activities.
84. I consider that TrustPower's relief sought is appropriate, and for completeness, repeat the same with minor amendment, in terms of the themes to be covered within new policies below.

Policies One, Two and Three: Relief Sought

85. That Policies One Two and Three be amended or redrafted to:
- *cover the specific water related themes, being water quality, water quantity, environmental flows and levels and water use and efficiency in separate and distinct policies;*
 - *clearly define / clarify key terminology used;*
 - *allow for adequate research and consultation to be undertaken prior to provision drafting;*
 - *set appropriate thresholds. Independent experts should be employed, appropriate criteria established within the proposed NPS; and freshwater resources should be assessed against such criteria, particularly in terms of assessing the values of freshwater resources;*
 - *recognise that environmental flows need to be identified on a case by case basis and that flow setting should not be restricted to a specific methodology / methodologies;*
 - *delete the requirement for upper allocation limits;*

- *ensure that the proposed NPS is not contrary to other central government policy;*
- *take into account the flow regimes that have been established for existing lawfully operating activities, and only adjust such regimes if there is a robust reason to do so and if the benefits of such restrictions outweigh the costs to other aspects of the environment;*
- *take into account the first in, first served approach to water allocation and recognise that prioritisation of the take, diversion and use of water should occur on a first in, first served basis;*
- *recognise and provide for the sustainable management of physical resources by recognising the value of existing investment in physical resources and the principle of non-derogation; and*
- *recognise that any restrictions imposed in times of low flow should be the exception and not the rule, particularly for activities such as hydroelectric power generation schemes that while technically considered consumptive, do return the water that they use for generation to a freshwater resource.*

POLICIES FOUR AND FIVE

86. TrustPower submitted that, to give effect to Policies One, Two and Three, Policies Four and Five list those matters local authorities must consider when preparing a plan, variation, or plan change. TrustPower sought that those matters listed within the policies should be amended so that they are consistent with, and not elevated above, the requirements listed within Part II of the Act. Alternatively, and as a minimum, TrustPower sought that the following key terms within Policies Four and Five be defined or better defined.

- a. 'notable values';
- b. 'sensitivity of the freshwater resource';
- c. tangata whenua 'interests';
- d. social and economic 'transition costs'; and
- e. 'the value of swimmability to the community'.

87. I consider that Policies Four and Five should be made consistent with, and not elevated above the requirements listed within not only Part II of the Act as sought by TrustPower, but the Act as a whole. The Act is intended to promote the sustainable management of natural and physical resources, while enabling people and communities to provide for their social, economic and cultural

wellbeing and their health subject to the three environmentally focussed caveats. If provisions within the proposed NPS are made more restrictive than those prescribed within the Act, this may unnecessarily restrict resource users.

88. I further consider that key terminology used within Policies Four and Five should be clearly defined or explained, so as to provide clarity and certainty to both local authorities and resource consent applicants alike. Without such certainty the implementation of the proposed NPS is likely to vary between regions, undercutting a key benefit of having such a document.
89. For the reasons identified in my analysis of Policies Four and Five, I agree with TrustPower's relief sought, with minor amendment. I consider that Policies Four and Five should be amended to be more consistent with the wording of the Act. I also contend that the policies could be simplified and that rather than listing a number of themes that local authorities must consider, the policies should state that consideration must be given to the section 6, 7 and 8 matters that are relevant to (i) regional and (ii) territorial authorities.
90. With regard to the alternative relief that TrustPower have suggested, I provide minor amendment, with respect to the meaning of the values of swimmability to the community.

Policies Four and Five: Relief Sought

91. That Policies Four and Five be amended to be more consistent with the wording prescribed within the Resource Management Act 1991.
92. In the alternative, that the terminology utilised within Policies Four and Five, is defined as follows:
 - *Notable Values should be defined as a Freshwater Resource which has any of the following attributes;*
 - (a) *significant indigenous vegetation and / or significant habitats of flora and fauna;*
 - (b) *nationally recognised recreational values;*
 - (c) *significant cultural values;*
 - (d) *nationally significant economic and social values.*

- *Sensitivity of the Freshwater Resource – means the potential for notable values within a Freshwater Resource to be significantly adversely affected by a particular activity or activities;*
- *Tangata whenua interests – means Freshwater Resources that are utilised by tangata whenua for traditional customary activities;*
- *Social and economic transition costs – means the costs associated with the siting of an activity at an alternative location when compared to the preferred location;*
- *The values of swimmability to the community – means, whether a Freshwater Resource is of a suitable quality to be utilised for swimming by a community, and if so the level of recognition afforded to the Freshwater Resource in terms of recreational value.*

POLICY SIX

93. TrustPower noted that Policy Six directs local authorities to include conditions, unless inappropriate, on any relevant resource consents, or recommendations on designations. The Company considers that conditions included on consents and designations are entirely appropriate where they serve a purpose, and are reasonable and necessary. However, such conditions should not require developers to exceed industry standards, nor should they impose greater restrictions than those set out within the Act and national and local government policy.
94. TrustPower sought that Policy Six be amended, and the inclusion of an explanation or advice note be provided to set out the criteria or thresholds that a condition must meet in order to be included on a resource consent or designation.
95. I agree with the comments made by TrustPower with regard to Policy Six. Suitable conditions on resource consents, or recommendations on designations, are appropriate. I consider that it is important to ensure that such conditions or recommendations are indeed appropriate as, if inappropriate, the viability of the proposed activity and costs associated with the same may be amplified.
96. In reviewing Policy Six I consider that this Policy provides little guidance as to how conditions or recommendations may be applied and does not seem to

require consistency with the Act, or achievement of particular standards. A number of the themes discussed within Policy Six have also been discussed within the Objectives of the proposed NPS. In this regard, I consider that Policy Six should be modified to be made consistent with the Objectives as amended and discussed within this evidence.

Policies Six: Relief Sought

97. That Policy Six be amended as follows:

Without limiting Policies 1 to 3, this National Policy Statement will be achieved also through the inclusion, unless inappropriate, of conditions on any relevant resource consents granted and recommendations on designations confirmed in respect of the following:

- (a) *To ensure eEfficient Consumptive Uuse of fresh water (including where appropriate, the return of fresh water to Freshwater Resources);*
- (b) *To ensure that the permanent adverse effects of any activity or discharge of contaminants to fresh water are avoided, remedied or mitigated so that the freshwater resources are not significantly adversely affected; Protection against degradation of the quality of Freshwater Resources (including through the management of activities giving rise to stormwater discharges);*
- (c) *To ensure that the demand for freshwater is managed sustainably, while recognising that that rights of existing users are not to be derogated; Sustainable management of demands on fresh water in a manner which has regard to available supply of fresh water and adverse effects, both individual and cumulative*
- (d) *To ensure integrated management of the effects of Land-use activities and associated discharges of contaminants such that Freshwater Resources can meet the appropriate water quality standards; Integrated management of the effects of Land-use Development and discharges of contaminants on the quality and available quantity of Freshwater Resources: to be achieved, as a minimum, by the use of industry good practice;*
- (e) *To ensure effective and necessary Mmonitoring and reporting on matters relating to paragraphs (a) to (d).*

Explanation: effective and necessary monitoring and reporting shall be monitoring and reporting that is required in order to determine whether an adverse effect is created; or whether a mitigation measure, strategy or regime is successful.

POLICY SEVEN

98. TrustPower considered that Policy Seven was unclear and that the Policy did not direct local government to use non-regulatory methods; rather it stated that local government 'may' use such methods. TrustPower noted particular concern with the reference to 'financial and development contributions' within the policy and stated that it did not believe that such contributions were strictly 'non-regulatory' methods. TrustPower sought the deletion of the reference to 'financial contributions and development costs' from Policy Seven and noted that more guidance should be provided with regard to methods of use and how these might be implemented, particularly those methods that impose a cost.
99. I consider financial and development contributions to be a regulatory method because the Act limits the circumstances where a condition can be imposed seeking a financial contribution and makes it plain that the purpose and extent of the contribution must be in accordance with a plan or proposed plan⁸. In my experience, this typically means that rules establish the circumstances where a contribution may be taken.
100. The type and numbers of non-regulatory methods available are extensive and can include things such as fencing and land retirement. Given the direct benefit of such measures to freshwater management, it difficult to understand why they are not listed, whereas development and financial contributions are. Rather than extending Policy Seven in an attempt to provide an exhaustive list of activities, a more appropriate response, in my opinion, is to delete reference to specific examples.
101. For the foregoing reasons I support TrustPower's requested relief in principle, with the minor amendment that I have highlighted below.

Policies Seven: Relief Sought

102. That Policy Seven be amended as follows:

In addition to giving effect to Policies 1 to 3 and Policy 6 by regulatory means, regional councils and territorial authorities may give effect to this National Policy Statement through non-regulatory methods. (~~including financial~~

⁸ Section 108(10) of the Resource Management Act 1991.

~~contributions, development contributions under the Local Government Act 2002, and other methods).~~

POLICY EIGHT

103. TrustPower supported the retention of Policy Eight, in that this policy requires all local authorities to make publicly available a record of the processes used to identify the Tangata Whenua Values and interests in Freshwater Resources within a region and also to make publicly available an up to date register of the regulatory and non-regulatory methods they have used to give effect to the proposed NPS. TrustPower considered that such information would be useful, particularly to developers of infrastructure when undertaking the scoping stage of a new proposal.
104. As discussed in my analysis of Objective Eight, the provision of information, as anticipated in Policy Eight, would greatly assist in the management of freshwater resources within New Zealand, while complementing those provisions of Part II of the Act that afford special recognition to Tangata Whenua and its relationship with the environment. Consequently I support TrustPower's requested relief to retain Objective Eight unmodified.

POLICY NINE

105. TrustPower supported the retention of Policy Nine. TrustPower noted that the time period specified for review (ten years) is consistent with that specified for regional policy statements and regional and district plans under section 79 of the RMA.
106. I agree the proposed NPS needs to be reviewed, and that the timeframe specified within Policy Nine is appropriate. Thus, like TrustPower, I support the retention of Policy Nine.

CONSUMPTIVE USE DEFINITION

107. TrustPower considered that the definition of consumptive use should be amended to further clarify the difference between true consumptive uses that remove water on a permanent basis, and consumptive uses such as

hydroelectric power generation dams, which take water and return it to either the same water course or an alternative water course. TrustPower noted that water taken by a hydroelectric power generation scheme is available for downstream users subsequent to use within the scheme.

108. In reviewing the definition of consumptive use, as prescribed within the proposed NPS, I consider that the submission made by TrustPower is entirely appropriate. I agree that clarity should be provided between those consumptive uses that take and use water, and those that take water and return it to a water course, albeit at a different location. I therefore support TrustPower's proposed relief sought, and for completeness repeat the same below.

Consumptive Use Definition: Relief Sought

109. *That the definition of consumptive use is amended to clarify the difference between true consumptive uses, and consumptive use that takes and return water, albeit downstream, to the same or an alternative watercourse.*

CONCLUSION

110. TrustPower lodged a comprehensive submission to the proposed NPS. The tenor of the submission was one of qualified support. A number of amendments, refinements and modifications were, however, sought by the Company in order to improve the performance of the proposed NPS.
111. I have reviewed the submission lodged on behalf of the Company and believe that it is appropriate and that the relief requested, if implemented, would result in a document that better fulfils the purpose of the proposed NPS. Consequently I recommend that the submissions lodged by TrustPower be approved, subject to the various refinements that I have recommended in this statement of evidence.

Bridgette Maree Malcon



Associate Planner

**Ryder Consulting Limited
3rd of June 2009.**