

The Hearing Commissioner

3 December 2018
9.00 am

Staff Report for Hearing

The recommendation in the staff report represents the opinion of the writer and it is not binding on the Hearing Commissioner. The report is evidence and has no greater weight than any other evidence that the Hearing Commissioner will hear and consider.

Hearing of Application – APP-20171566

Alliance Group Limited, Maitaura

Compiled by Stephen West, Principal Consents Officer

- Hearing: The hearing is scheduled to commence at 9.00 am on 3 December 2018 in the Council Chambers, Environment Southland, corner of Price Street and North Road, Waikiwi, Invercargill.
- Application: Alliance Group Limited has applied for water and discharge permits associated with the operation of its hydro-electric power generation system in the Maitaura River at Maitaura.
- Notification: The application was limited notified on 27 October 2017 and three submissions were received.
- Executive Summary: This is an application to dam, divert, use and discharge water in the Maitaura River for hydro-electric power generation. As outlined in this report the key issues are:
- effects on downstream migration of eels;
 - monitoring effects and effectiveness of mitigations;
 - consent duration.

1. Introduction

1.1 Status and purpose of this report

This report has been prepared under Section 42A of the Resource Management Act 1991 (RMA) to assist in the hearing of the application for resource consent made by Alliance Group Limited. Section 42A allows local authorities to require the preparation of such a report on an application for resource consent and allows the consent authority to consider the report at any hearing.

The purpose of the report is to assist the Hearing Commissioner in making a decision on the application.

1.2 About the author

My name is Stephen West. I am a Principal Consents Officer employed by the Southland Regional Council. I have been employed by the Council as a consents officer since 1992.

I hold the qualifications of New Zealand Certificate of Engineering (Civil) and Bachelor of Arts (Geography and Environmental Studies) degree.

I have been involved with the application since it was lodged and received by Council. I have also visited the site.

1.3 Information relied on in preparation of this report

In preparation of this report I have had regard to the following documents:

- resource consent application
- further information, including reports by the applicant and by the submitters
- Resource Management Act 1991
- National Policy Statement on Freshwater Management 2014
- National Policy Statement for Renewal Electricity Generation 2011
- Regional Policy Statement 2017
- Regional Water Plan 2010
- Proposed Southland Water and Land Plan – Decisions Version, April 2018
- Te Tangi a Tauria (Iwi Management Plan) 2008

2. The application and procedural matters

2.1 The proposed activities

Map Reference: Applicant:	Alliance Group Limited
Application:	To dam, divert, use and discharge water in the Mataura River for hydro-electric power generation.
Site address or location:	Mataura River, adjacent to 18-30 Mcqueen Avenue, Mataura
Legal description:	Crown Riverbed
Map Reference:	1,281,405E 4,876,540N NZTM

Alliance Group Limited has applied for water and discharge permits associated with the operation of its hydro-electric power generation system on the right bank of the Mataura River at Mataura.

This is an existing system. The applicant's predecessor companies established hydro-electric generation at the site in the 1890s, and the weir/race is believed to have dated from the 1920s or 1930s.

The applicant is seeking resource consents to:

- dam, divert and use water for hydro-electric power generation;
- discharge water to the Mataura River from hydro-electric power generation diversion channel.

The hydro-electric plant generates about 72,000 kW of energy per week, which works out at about \$35,000 per month of electricity savings for the applicant.

The maximum throughput of the hydro-electric plant is 10 cumecs. The plant only operates within a limited flow range due to low flow restrictions (the diversion must cease if there is less than 50 mm of water passing over the centre of the weir) and reduced head under higher flows (>400 cumecs).

2.2 Regional Planning framework

Resource consents for the above activities are required under the operative Regional Water Plan for Southland and the proposed Southland Water and Land Plan.

The damming of water is:

- a discretionary activity under Rule 19(b) of the Regional Water Plan;
- a discretionary activity under Rule 4 of the proposed Southland Water and Land Plan.

The diversion and use of water is:

- a restricted discretionary activity under Rule 18(d)(iii) of the Regional Water Plan.
- a discretionary activity under Rule 49(c) of the proposed Southland Water and Land Plan¹.

The discharge of water into the river is:

- a controlled activity under Rule 3A of the Regional Water Plan;
- a controlled activity under Rule 8 of the proposed Southland Water and Land Plan.

Use of the weir structure is:

- a controlled activity under Rule 29(e) of the Regional Water Plan;
- a permitted activity under Rule 60(ab) of the proposed Southland Water and Land Plan².

The maintenance of the hydro-electric race (excavation of sediments from the race) is:

- a permitted activity under Rule 35 of the Regional Water Plan;
- a permitted activity under Rule 66 of the proposed Southland Water and Land Plan³.

These rules also permit the associated bed disturbance, which would include the effect of releasing disturbed fine sediments during the works.

¹ Rule 49 is subject to an appeal

² Rule 60 is subject to an appeal

³ Rule 66 is subject to an appeal

An application for resource consents was lodged with Environment Southland in accordance with these requirements (attached).

Overall, the application is considered to be a **discretionary** activity.

Under Section 104B the Council may grant or refuse consent for a **discretionary** activity, and if it grants the application, may impose conditions under Section 108 of the RMA.

Although the application is bundled as a discretionary activity, it may be helpful to understand the restrictions on discretion and reservation of control for the particular rules.

With regard to Rule 18(d)(iii) of the Regional Water Plan, the rule restricts discretion to:

- (i) the volume of water to be taken (including any water to be returned to the surface water body);
- (ii) any effects on river and stream flows (including effects on minimum flows, flow variability and duration), wetland and lake water levels, aquatic ecosystems, aquifer storage volumes, the availability and reliability of supply for existing users and water quality;
- (iii) the location of the abstraction or diversion;
- (iv) the efficiency of water use;
- (v) the need for the installation of a water meter;
- (vi) monitoring requirements;
- (vii) methods to prevent fish from entering the reticulation system;
- (viii) minimum flow and level requirements;
- (ix) consistency with any water conservation order;
- (x) the degree of hydraulic connection to groundwater.

Under Rule 3A of the Regional Water Plan, control was reserved to:

- (i) flooding of any person’s property;
- (ii) erosion of the bed or banks of the receiving surface water body or artificial watercourse; and
- (iii) actual or potential effects on existing water users and aquatic ecosystems.

Under Rule 8 of the proposed Southland Water and Land Plan, control was reserved to:

- (i) the potential for flooding of any person’s property as a result of the discharge;
- (ii) erosion of the bed or banks of the receiving lake, river, artificial watercourse, modified watercourse, or natural wetland as a result of the discharge;
- (iii) actual or potential effects on existing water users and aquatic ecosystems.

2.3 Further information request

The application was originally lodged in December 2016. That application was later withdrawn but the replacement application was substantially similar. Further information was requested from the applicant on 26 January 2017. It is relevant to the current application because the application has referred to the information response in clarifying the details of the 2017 application. The requested information included:

1. a description of how the effectiveness of the proposed mitigations measures for the downstream passage of native fish and eels could be monitored;

2. an assessment of alternative mitigation systems that could be utilised if monitoring showed that the proposed mitigation measures had been insufficient to minimise adverse effects on the downstream passage of native fish and eels;
3. an assessment of the effects of the weir and diversion on the passage of brown trout and salmon, including a description of the existing fish passes and how they are maintained;
4. a description of what would occur if applicant’s plant was to close, shift or otherwise cease to utilise the weir.

The applicant’s response is included in the appendices to this report, but is summarised as follows:

- (i) The applicant withdrew the proposal to shut down the hydro-electric system during peak migration periods for eels. However, it has proposed to modify the existing trash screen to reduce the spacing in order to capture any downstream migrating eels. Captured eels will be released downstream of the hydro system. Deceased or severely injured eels will be frozen and/or euthanised for further investigation.
- (ii) Potential alternative mitigations include a shut-down period, physical barrier screens and behavioural screen systems. There are also trap and transfer and habitat enhancement options.
- (iii) Adult trout and salmon are capable of passage over the Mataura Falls during the right conditions, so the fish ladder was designed so that they could get over the weir.
- (iv) If the plant were to close or otherwise cease to use the weir, the applicant would need to investigate future use of the structure. There is also another consented user of the weir. In addition, consents may be required if the structure needed to be altered or removed.

Following the first pre-hearing meeting, the applicant has also provided:

- a draft Elver Trap and Transfer Plan;
- a draft Downstream Eel Monitoring Programme.

The submitters also commissioned a report:

- review of Fish Screening Monitoring Provisions at Mataura Meatworks Hydro Intake.

2.4 Notification and Submissions

The application was limited notified on 27 October 2017.

Three submissions were received. These are included in the appendices, and are summarised as follows:

Submitter	Oppose/ Support	Issues/comments <i>Decision/Changes sought</i>	To be Heard?
Te Ao Marama Inc on behalf of: • Hokonui Rūnaka • Te Rūnanga o Ngāi Tahu	Oppose	The significance of the Mataura River to tangata whenua has been recognised by the Crown and it is a statutory acknowledgement area under the Ngāi Tahu Claims Settlement Act. Kanakana (lamprey) and Tuna (longfin eel) are considered taonga species by Ngāi Tahu whanau. Concerns: • Effects on cultural values.	Yes

Submitter	Oppose/ Support	Issues/comments <i>Decision/Changes sought</i>	To be Heard?
		<ul style="list-style-type: none"> • Effects on ecology, particularly effects of the turbine on fish species. • Effects on fish passage. • Monitoring, including of migrating fish species. • Adequacy of the trap and transfer system for elvers. • How the proposal will adjust to the effects of climate change, particularly if it influences the life cycles of aquatic species. • Proposed duration. <p style="text-align: right;"> <ul style="list-style-type: none"> ▪ <i>Decline the application</i> ▪ <i>Approve for a short period (5 years), if concerns are addressed</i> </p>	
Department of Conservation	Oppose	<ul style="list-style-type: none"> • The application is inconsistent with plan and policy provisions. • Turbine strike has population effects on long fin eel (tuna) and lamprey (kanakana) during downstream migration. • Uncertainty about proposed mitigation measures (particularly effectiveness of shutdown period). • Structure does not have an adequate fish screen or fish bypass structure to remove fish from the canal unharmed. • There are alternatives to the Francis turbines that would better provide fish passage. • The lip of the weir restricts fish passage. • Concern about the trap and transfer system for elvers. <p style="text-align: right;"> <ul style="list-style-type: none"> ▪ <i>Grant the application for no more than 5 years</i> <ul style="list-style-type: none"> ▪ <i>Conditions to monitor and remediate effects on fish passage</i> ▪ <i>Amend the proposed mitigations, particularly around timing</i> ▪ <i>A specific review condition</i> </p>	Yes
Fish & Game New Zealand – Southland Region	Oppose	<ul style="list-style-type: none"> • Fish species are vulnerable to being caught in the intake, particularly fish that migrate upstream and downstream during their life cycle, or if they move extensively within freshwater. • The diversion is a significant portion of the river flow. • There is a lack of information about sportfish, (e.g. brown trout) entering the intake raceway. • Risk to fish becoming entrained within the intake race. • The intake structure does not comply with NIWA recommendations for effective screening of juvenile fish. • Entry of juvenile fish into the hydro turbine unit. • Injury or mortality of fish trapped against the screen or passing through the turbine unit. • Return of trapped fish to the river. • The economic life of the hydro-electric infrastructure. • Monitoring of adverse effects on fish and effectiveness of mitigation measures. • Proposed 25 year consent duration is too long. • Proposal is contrary to plan and policy provisions. <p style="text-align: right;"> <ul style="list-style-type: none"> ▪ <i>Decline the application</i> </p>	Yes

Submitter	Oppose/ Support	Issues/comments <i>Decision/Changes sought</i>	To be Heard?
		<ul style="list-style-type: none"> ▪ <i>If approved, no more than a 5 year term</i> ▪ <i>Monitoring to assess effects on fish and the effectiveness of mitigation measures</i> ▪ <i>Applicant to investigate a 'fish-friendly' turbine</i> <ul style="list-style-type: none"> ▪ <i>Turbine to be shut down if effective fish screening is not maintained.</i> 	

2.5 Section 99 pre-hearing meeting

Two pre-hearing meetings for the application were held, on 30 January and 16 August 2018. The report, as per Section 99(5), is attached.

Subsequent to the January meeting the applicant produced a draft downstream eel migration plan and a draft elver trap and transfer plan. The submitters also commissioned a review of fish screening monitoring for the applicant's hydro plant intake.

The second pre-hearing meeting was to discuss the mitigation and management measures being considered and the potential consent duration.

The pre-hearing meetings failed to reach agreement about the proposal.

3. Assessment

3.1 Statutory Considerations

Section 104 of the Act sets out the matters to be considered when assessing an application for a resource consent. Section 104(1) of the Resource Management Act, 1991, states:

- (1) *When considering an application for a resource consent and any submission 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 environmental standard:*
 - (ii) *other regulations:*
 - (iii) *a national policy statement:*
 - (v) *a regional or proposed regional policy statement:*
 - (vi) *a plan or proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

Section 104(1) states that regard must be given to relevant provisions of the specified documents. Because plan provisions give effect to the higher-level documents⁴, the plan provisions are typically more directly applicable to the consideration of the application than the higher-level documents. Therefore this report discusses the s104(1) matters in the following order:

- description of the receiving environment;
- assessment of the actual and potential effect of the activity on the environment;
- relevant provisions of the Regional Water Plan and the proposed Water and Land Plan;
- relevant provisions of the Southland Regional Policy Statement;
- relevant provisions of the National Policy Statements and National Environmental Standards;
- Part 2 of the RMA.

However, where the plan predates the higher level document or if a plan provision is incomplete or ambiguous then the provisions of the higher level document should provide guidance for the decision. There are also some plan provisions that refer directly to the purpose of the RMA.

3.2 Description of the affected environment

Alliance Group Limited and Matura Industrial Estate operate hydro-electric generation systems on either side of the Matura River, at Matura township, about 450 m above the Matura bridge. These are long-standing operations dating back to the 1890s. The U-shaped weir that diverts flow to either side is believed to have been constructed in the 1920s or 1930s.

Immediately downstream of the weir are the Matura Falls, a natural rock ledge.

The Matura River is a statutory acknowledgement area under the Ngāi Tahu Claims Settlement Act. The Crown has acknowledged Ngai Tahu's cultural, spiritual, historic, and traditional association to the Matura River. Schedule 42 of the Act notes that “The Matura was an important mahinga kai, noted for its indigenous fishery. The Matura Falls were particularly associated with the taking of kanakana (lamprey).”

There is a Mātaitai Reserve along the Matura River, including the area of the applicant’s activities. Mātaitai Reserves are created for the purpose of recognising and providing for customary management practices and food gathering. The bylaws for the Matura River Mātaitai Reserve are specific to the fishing of lamprey, shortfin and longfin eels.

The Matura River is also recognised for its outstanding fisheries and angling amenity under the Water Conservation (Matura River) Order 1997.

The Matura River in this vicinity has a mean flow of 72 cumecs, and a mean annual low flow of 19 cumecs. Upstream of the weir the river is about 80 metres wide during normal flows but downstream of the falls the river is only about 20 m wide.

The waters of the Matura River are subject to a number of point source discharges. Gore township discharges stormwater and sewage to the river about 10 km upstream, the applicant discharges treated meatworks wastewater in the vicinity of the hydro-race discharge, and Matura township discharges stormwater in the vicinity and sewage about 4 km downstream. Further downstream there are discharges

⁴ Westlaw.co.nz commentary A104.01(7), referring to case Infinity Investment Group Holdings Ltd v Canterbury Regional Council [2017] NZEnvC 36

from the Daiken Southland Limited MDF plant, the Fonterra milk processing plant and the Edendale and Wyndham sewage scheme.

3.3 Actual and potential effects

The dam, divert and discharge activities may have the following effects on the environment:

- Water quantity effects;
- Natural character effects;
- Fish passage effects.

Water allocation within the river is managed under the Water Conservation (Mataura River) Order 1997. The damming, diversion, use and discharge of water associated with the hydro-electric plant have no consumptive effects on flow in the river, although it does redistribute the flow across the river in the vicinity of the weir. As the water is returned to the river, the diversion is allowed by the Conservation Order.

The hydro-electric generation system does not generally change the biological or chemical nature of the water in the river, although the application states that there could be minor changes in temperature. During maintenance, such as excavation of accumulated sediments from the hydro-race, the release of sediment into the water column could cause discolouration. However, that would be a temporary effect and is associated with a permitted activity (maintenance of the structure).

The weir has the effect of damming and diverting water around the structure. This creates greater hydraulic head on the upstream side of the weir, and deeper water. Most water is diverted to either side of the river during normal flows, leaving the rock shelf largely exposed behind the weir. So the damming and diversion does affect the natural character of the river in the immediate vicinity of the weir and falls.

The redistribution of flow around the weir, with deeper and shallower areas created, has probably had a localised effect on aquatic habitat. However, the structure has been in place so long that it would be difficult to quantify.

The key effect to be considered is on fish passage. The weir is sited upstream of the Mataura Falls, so there is already a natural barrier to upstream migration. For upstream migration, only species that could pass the falls could be potentially affected by the weir. Section 4.1.1.1 of the application suggests that fish migration is not significantly impeded due to the presence of native fish species and trout at different life stages upstream and downstream of the weir.

There is an existing ladder structure to allow for migration by trout. The applicant has clarified that the structure is designed for adult trout, as they would also be capable of passing over the Mataura Falls during suitable conditions.

Native species, such as lamprey, giant kokopu and shortfin eels are either able to negotiate the falls and weir, or are not known to be present that far up the river. However, the passage of longfin eels upstream and downstream of the weir is an issue. Although pass structures have been attempted, upstream migration by elvers is currently facilitated by a trap and transfer system.

The application states that the hydro-electric plant would be shut down at night during optimal conditions for downstream migration of adult longfin eels as a mitigation measure. However, the applicant later

stated that it would monitor to check for adverse effects before deciding if mitigation measures were necessary.

The effects on fish passage for longfin eels are also associated with cultural values, as the site is within a statutory acknowledgement area and mataitai reserve. The applicant had consulted with representatives from Te Ao Marama Inc and Hokonui Rūnaka prior to lodging the application (Section 11.1.3 of the application).

Summary

The key adverse effect on the environment is the impediment to the life cycle of longfin eels. Upstream migration by elvers is generally achieved by trap and transfer as fixed ladder structures have failed. The applicant initially proposed measures to mitigate adverse effects on downstream migration, but later stated that it would monitor before deciding on appropriate mitigation measures, if needed.

A further issue is that the diversion into the hydro-electric generation system, or the screen over the intake, may injure or kill individuals of other fish species.

3.4 Relevant provisions of the relevant regional plan objectives, policies and rules (Section 104(1)(b)(vi))

The relevant regional plans are the Regional Water Plan for Southland and the proposed Southland Water and Land Plan.

In some cases below the policies have been abbreviated to exclude clauses that are not relevant to the application⁵.

Regional Water Plan for Southland

The Regional Water Plan for Southland was notified in 2000 and became operative in January 2010.

The objectives and policies of the Regional Water Plan that are relevant to this application are:

- Objective 2 *To manage water quality so that there is no reduction in the quality of the water in any surface water body, beyond the zone of reasonable mixing for discharges, below that of the date this Plan became operative (January 2010).*

- Objective 5 *To have sufficient water to support the reasonably foreseeable needs of current and future generations and enable people and communities to provide for their social, economic and cultural wellbeing while protecting aquatic ecosystem health, life supporting capacity, natural character and historic heritage values of surface water bodies.*

⁵ Full versions of the policies can be viewed at:

- https://www.es.govt.nz/Document%20Library/Plans,%20policies%20and%20strategies/Regional%20plans/Regional%20Water%20Plan/regional_water_plan.pdf
- [https://www.es.govt.nz/Document%20Library/Plans,%20policies%20and%20strategies/Regional%20plans/Southland%20Water%20and%20Land%20Plan/Proposed%20Southland%20Water%20and%20Land%20Plan%20-%20Part%20A%20-%20Decisions%20Version%20\(4%20April%202018\)%20PDF.pdf](https://www.es.govt.nz/Document%20Library/Plans,%20policies%20and%20strategies/Regional%20plans/Southland%20Water%20and%20Land%20Plan/Proposed%20Southland%20Water%20and%20Land%20Plan%20-%20Part%20A%20-%20Decisions%20Version%20(4%20April%202018)%20PDF.pdf)

- Objective 10 *To maintain or enhance the diversity and integrity of aquatic and riverine habitats and ecosystems.*
- Policy 1A *Any assessment of an activity covered by this plan must take into account any relevant Iwi Management Plan.*
- Policy 3 *Allow no discharges to surface water bodies that will result in a reduction of water quality beyond the zone of reasonable mixing, unless it is consistent with the promotion of the sustainable management of natural and physical resources, as set out in Part 2 of the Resource Management Act 1991, to do so.*
- Policy 4 *For surface water bodies outside Natural State Waters, manage point source and non-point source discharges to meet or exceed the water quality standards referred to in Rule 1 and specified in Appendix G “Water Quality Standards”, unless it is consistent with the promotion of the sustainable management of natural and physical resources, as set out in Part 2 of the Resource Management Act 1991, to do so and so avoid levels of contaminants in water and sediments that could harm the health of humans, domestic animals including stock and/or aquatic life.*
- Policy 14 *While recognising the positive effects resulting from the use and development of water resources, manage the taking, use, damming or diversion of surface water so as to avoid where practicable, remedy or mitigate significant adverse effects on:*
- (a) the quality and quantity of aquatic habitat;*
 - (b) natural character, natural features, and amenity, aesthetic and landscape values;*
 - (c) areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
 - (d) recreational values;*
 - (e) the spiritual and cultural values and beliefs of the tangata whenua;*
 - (f) water quality, including temperature;*
 - (g) the rights of lawful existing users;*
 - (h) groundwater quality and quantity;*
 - (i) historic heritage.*
- Policy 14A *To determine the term of a water permit consideration will be given, but not limited, to:*
- (a) the degree of certainty regarding the nature, scale, duration and frequency of adverse effects from the activity;*
 - (b) the level of knowledge of the resource;*
 - (c) relevant tangata whenua values*
 - (d) the allocation sought, particularly the proportion of the resource sought;*
 - (e) the duration sought by the applicant, plus material to support the duration sought;*
 - (f) the permanence and economic life of the activity;*
 - (g) capital investment in the activity;*
 - (h) monitoring and review requirement in permit conditions;*
 - (i) the desirability of applying a common expiry date for water permits that allocate water from the same resource; and*

- (j) *the applicant's compliance with the conditions of the previous permit (where a new water permit is sought for a previously authorised activity).*

Policy 14B

In addition to the matters specified in section 104 of the Act, when considering a water permit application for a previously authorised activity where:

- (a) *the status of the activity has altered solely as a consequence of subsequent permits being granted to increase allocation from that resource;*
 (b) *the activity and knowledge of its adverse effects are the same or similar in character, intensity, and scale to that which existed previously; and*
 (c) *the adverse environmental effects of the activity are not significant;*
regard will be given to:
 (i) *the status of the activity at the time the original water permit was granted; and*
 (ii) *the conditions that applied to that permit.*

Policy 15

- (c) *Apply allocation and minimum flow and level regimes established under any Water Conservation Order.*
- (j) *Impose monitoring on resource consents for surface water abstraction, damming, diversion and use that corresponds to the level of risk of adverse environmental effects.*

Policy 19A

When:

- (i) *allocating surface water for abstraction, damming, diversion and use; and*
 (ii) *considering all resource consent applications for surface water abstractions, damming, diversion and use;*
particular regard will be given to the benefits to be derived from the use and development of renewable energy.

Policy 21

To ensure that the rate of abstraction and abstraction volumes specified on water permits to take and use water are no more than reasonable for the intended end use.

Policy 23

Impose a condition enabling the review of consent conditions in accordance with Sections 128 and 129 of the Resource Management Act 1991 on all new permits to take and use water.

Policy 28

Manage structures and bed disturbance activities in the beds of rivers and lakes, to avoid, remedy or mitigate adverse effects on:

- (a) *water quality and quantity;*
 (b) *habitats, ecosystems and fish passage where this is normally expected to occur;*
 (c) *indigenous biological diversity;*
 (d) *historic heritage, and the spiritual and cultural values and beliefs of the tangata whenua;*
 (e) *public access (except in circumstances where public health and safety are at risk) and amenity values;*
 (f) *natural character and outstanding natural features;*
 (g) *river morphology and dynamics, including erosion and sedimentation;*
 (h) *flood risk;*

- (i) *infrastructural assets;*
- (j) *navigational safety.*

Comment

Policy 19A provides support for the application. The hydro-electric power system provides about one-third of the needs of the applicant’s plant.

Objective 10 is a key provision with regard to the fish passage issue and is linked to Policies 14 and 28, which seek to avoid, remedy or mitigate adverse effects from structures and water use on values that include aquatic habitat, and the cultural and spiritual values and beliefs of the tangata whenua. These, in brief, represent the core concerns of the submitters. Policy 28 lists fish passage “where this is normally expected to occur”. As is discussed in the application, the Mataura Falls is downstream of the weir and presents a natural barrier to some species.

Policy 1A requires consideration of the relevant Iwi Management Plan. In this case that is Te Tangi a Taurira, which is discussed in Section 3.8 of this report.

Policy 14A sets out factors that should be considered with regard to consent duration, but does not limit consideration to those factors. With regard to the listed factors:

- (a) there is uncertainty about some of the adverse effects of the activity, and the effectiveness of some of the mitigation measures that could be imposed, particularly with regard to mortality and damage to eels and other fish during downstream movement;
- (b) there is reasonable knowledge and understanding of the water resource;
- (c) effects on taonga species and mahinga kai are a key issue;
- (d) because the diversion returns the water to the river a short distance downstream, the system is in compliance with allocation under the Water Conservation (Mataura River) Order;
- (e) the applicant is seeking a 25 year consent period. The maximum period available under s123 of the RMA is 35 years. The applicant is seeking a term consistent with the provisions of Te Tangi a Taurira with regard to maximum duration, but long enough to provide security for the value of the infrastructure and future improvements;
- (f) Section 6.7 of the application states that the weir and hydro-electric power infrastructure have been in place for over a century. The remaining economic life of the structure is not clear, but the application states that improvements and maintenance have occurred;
- (g) the applicant estimates the value of the weir, race, hydro-electric plant and associated structures at \$4 million;
- (h) there are difficulties around monitoring effects on downstream fish passage. Monitoring the efficacy of mitigation measures is also difficult. A review condition can be imposed but by nature reviews are restricted in scope. The submitters are seeking certainty about triggers for review;
- (i) the Mataura Industrial Estate (MIE) on the opposite side of the river also operates a hydro-electric power system and shares in the operation of the weir. The resource consent (AUTH-203311) for the MIE diversion expires on 7 November 2026. There is some practicality in aligning the terms to ensure that the two systems are managed coherently. Considering the two operations separately over time results in inconsistent decisions, particularly where community expectations and policy provisions change;
- (j) there are no compliance issues with regard to the previous permit that would warrant a shorter consent duration.

Policy 14B requires that regard be given to the conditions of the previous resource consent. In this case some provisions should continue, such as the minimum water level over the centre of the weir, but the policy does not prevent the application of new conditions. The former conditions attempted to address

fish passage matters and address co-operation with the operator of the hydro-electric system on the opposite side of the river, and these remain issues for the current application.

Policies 3 and 4 are relevant to the discharge from the hydro-race back into the river. These policies seek to ensure compliance with the water quality standards and to avoid deterioration in water quality. Both provide for exceptions if they are consistent with the purpose of the RMA. As discussed above, the discharge may cause a change in temperature, but the effect is expected to be minor and consistent with water quality standards (the Mataura 3 standards in the Regional Water Plan) after reasonable mixing. Sediment effects may also occur, but has been discussed - these are associated with permitted maintenance activities.

Proposed Southland Water and Land Plan

The proposed Southland Water and Land Plan (pWLP) was notified by the Council on 3 June 2016 and submissions received. Following a hearing the decision on the plan was released on 4 April 2018. Appeals have been received on the decision.

The objectives and policies of the proposed Water and Land Plan that are relevant to this application are listed below. The provisions marked with an asterisk (*) have been appealed and have less weight than the corresponding provisions of the Regional Water Plan.

- | | |
|---------------|---|
| Objective 4 | <i>Tangata whenua values and interests are identified and reflected in the management of freshwater and associated ecosystems.</i> |
| Objective 5 | <i>Ngāi Tahu have access to and sustainable customary use of, both commercial and non-commercial, mahinga kai resources, nohoanga, mātaítai and taiāpure.</i> |
| Objective 9* | <i>The quantity of water in surface waterbodies is managed so that aquatic ecosystem health, life-supporting capacity, outstanding natural features and landscapes and natural character are safeguarded.</i> |
| Objective 9A* | <i>Surface water is sustainably managed to support the reasonable needs of people and communities to provide for their social, economic and cultural wellbeing.</i> |
| Objective 10* | <i>The national importance of existing hydro-electric generation schemes, including the Manapōuri hydro-electric generation scheme in the Waiau catchment, is provided for, recognised in any resulting flow and level regime, and their structures are considered as part of the existing environment.</i> |
| Objective 15* | <i>Taonga species, as set out in Appendix M, and related habitats, are recognised and provided for.</i> |
| Objective 18* | <i>All activities operate in accordance with “good management practice” or better to optimise efficient resource use, safeguard the life supporting capacity of the region’s land and soils, and maintain or improve the quality and quantity of the region’s water resources.</i> |

- Policy 1* *Enable papatipu rūnanga⁶ to effectively undertake their kaitiaki (guardian/steward) responsibilities in freshwater and land management through the Southland Regional Council:*
1. ...
 2. ...
 3. *reflecting Ngāi Tahu values and interests in the management of and decision-making on freshwater and freshwater ecosystems in Murihiku (includes the Southland Region), consistent with the Charter of Understanding⁷.*
- Policy 2 *Any assessment of an activity covered by this Plan must:*
1. *take into account any relevant iwi management plan; and*
 2. *assess water quality and quantity, taking into account Ngāi Tahu indicators of health.*
- Policy 3* *To manage activities that adversely affect taonga species, identified in Appendix M.*
- Policy 20* *Manage the taking, abstraction, use, damming or diversion of surface water and groundwater so as to:*
- 1A. *recognise that the use and development of Southland’s land and water resources, including for primary production, can have positive effects including enabling people and communities to provide for their social, economic and cultural wellbeing;*
 1. *avoid, remedy or mitigate adverse effects from the use and development of surface water resources on:*
 - (a) *the quality and quantity of aquatic habitat, including the life supporting capacity and ecosystem health and processes of waterbodies;*
 - (b) *natural character values, natural features, and amenity, aesthetic and landscape values;*
 - (c) *areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
 - (d) *recreational values;*
 - (e) *the spiritual and cultural values and beliefs of tangata whenua;*
 - (f) *water quality, including temperature and oxygen content;*
 - (g) *the reliability of supply for lawful existing surface water users, including those with existing, but not yet implemented, resource consents;*

⁶ Papatipu rūnanga in Murihiku are defined in the proposed Plan as the principal mana whenua and kaitiaki (guardian) for the Southland region:

- Waihōpai Rūnaka;
- Te Rūnanga o Ōraka-Aparima;
- Hokonui Rūnaka;
- Te Rūnanga o Awarua.

⁷<https://www.es.govt.nz/Document%20Library/Plans,%20policies%20and%20strategies/Regional%20plans/twi%20Management%20Plan/The%20Charter%20of%20Understanding.pdf>

- (h) groundwater quality and quantity;
- (j) mātaimai, taiāpure and nohoanga;

2. ...

3. ensure water is used efficiently and reasonably by requiring that the rate and volume of abstraction specified on water permits to take and use water are no more than reasonable for the intended end use following the criteria established in Appendix O and Appendix L.4.

Policy 26*

Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri hydro-electric generation scheme in the Waiau catchment), the national, regional and local benefits of renewable electricity generation activities, the need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading, when:

- 1. allocating surface water for abstraction, damming, diversion and use; and
- 2. considering all resource consent applications for surface water abstractions, damming, diversion and use.

Policy 28*

Manage structures, bed disturbance activities and associated discharges in the beds and margins of lakes, rivers and modified watercourses, to avoid, remedy or mitigate adverse effects on:

- 1. water quality and quantity;
- 2. habitats, ecosystems and fish passage;
- 3. indigenous biological diversity;
- 5⁸. the spiritual and cultural values and beliefs of the tangata whenua;
- 6. mātaimai and taiāpure;
- 7. public access (except in circumstances where public health and safety are at risk) and amenity values;
- 8. natural character values and outstanding natural features;
- 9. river morphology and dynamics, including erosion and sedimentation;
- 10. flood risk;
- 11. infrastructural assets;
- 12. navigational safety; and
- 13. landscape values.

Policy 32*

Protect significant indigenous vegetation and significant habitats of indigenous fauna associated with natural wetlands, lakes and rivers and their margins.

Policy 40*

When determining the term of a resource consent consideration will be given, but not limited, to:

- 1. granting a shorter duration than that sought by the applicant when there is uncertainty regarding the nature, scale, duration and frequency of adverse effects from the activity or the capacity of the resource;
- 2. relevant tangata whenua values and Ngāi Tahu indicators of health;
- 3. the duration sought by the applicant and reasons for the duration sought;
- 4. the permanence and economic life of any capital investment;

⁸ Policy 28 does not list a 4th value. The numbering skips from '3' to '5'.

5. *the desirability of applying a common expiry date for water permits that allocate water from the same resource or land use and discharges that may affect the quality of the same resource;*
6. *the applicant's compliance with the conditions of any previous resource consent, and the applicant's adoption, particularly voluntarily, of good management practices; and*
7. *the timing of development of FMU sections of this Plan, and whether granting a shorter or longer duration will better enable implementation of the revised frameworks established in those sections.*

Policy 41

Consider the risk of adverse environmental effects occurring and their likely magnitude when determining requirements for auditing and supply of monitoring information on resource consents.

Policy 42*

When considering resource consent applications for water permits to take and use water:

1. *except for non-consumptive uses, consent will not be granted if a water body is over allocated or fully allocated; or to grant consent would result in a water body becoming over allocated or would not allow an allocation target for a water body to be achieved within a time period defined in this Plan; and*
2. *except for non-consumptive uses, consents replacing an expiring resource consent for an abstraction from an over-allocated water body will generally only be granted at a reduced rate, the reduction being proportional to the amount of over-allocation and previous use, using the method set out in Appendix O; and*
3. *installation of water measuring devices will be required on all new permits to take and use water and on existing permits in accordance with the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010; and*
4. *where appropriate, minimum level or flow cut-offs and seasonal recovery triggers on resource consents for groundwater abstraction will be imposed; and*
5. *conditions will be specified relating to a minimum flow or level, or environmental flow or level regime (which may include flow sharing), in accordance with Appendix K, for all new or replacement resource consents (except for water permits for non-consumptive uses, community water supplies and water bodies subject to minimum flow and level regimes established under any water conservation order) for:*
 - (a) *surface water abstraction, damming, diversion and use; and*
 - (b) *.....*

Non-consumptive water takes are defined in the proposed Water and Land Plan as:

“Any take of fresh water where the associated use or discharge of that water returns water to the same general location; and does not adversely affect the spatial or temporal availability; or the physical, chemical or biological quality of; the water resource into which the water is discharged.”

Comment

Objective 10 and Policy 26 provide support for the application, as it results in the generation of renewable electricity.

Policy 20(1A) also provides support for the application, as the use of water is associated with economic activity.

Objectives 4, 5, 15 and 18, and Policies 3, 20(1), 28 and 32 are relevant to effects on the cultural values of the tangata whenua, adverse effects on taonga species and mahinga kai, and effects on indigenous fauna and fish passage. As discussed earlier, these are also the core concerns of the submitters with regard to the effects of the weir and hydro system on fish passage.

Objective 4 and Policy 1 require that the values and interests of Ngāi Tahu be reflected in the management of freshwater and freshwater ecosystems. Policy 2 requires that the provisions of the relevant iwi management plan, Te Tangi a Tauria, be taken into account. The policies of Te Tangi a Tauria are discussed later in this report.

Policy 40 is similar to Policy 14A of the Regional Water Plan, which was discussed above. However, in addition to the matters listed in Policy 14A, Policy 40 lists the timing of Freshwater Management Unit provisions and how the term would affect implementation of such provisions. The Council has a Progressive Implementation Programme⁹ for implementing the policies of the National Policy Statement for Freshwater Management 2014, which states that plan changes for the freshwater management units will be notified by December 2025. While that would be close to the expiry date of the Matura Industrial Estate’s resource consent for the diversion on its side of the weir, there would appear to be little need to align this resource consent with the FMU process. The process is likely to apply limits to water quantity and to contaminant levels, but is unlikely to bear directly on the fish passage issues at the core of this application.

3.5 Relevant provisions of the Southland Regional Policy Statement (Section 104(1)(b)(v))

Regional Policy Statement

The Southland Regional Policy Statement 2017 became operative on 9 October 2017. The Regional Policy Statement had been notified in 2012 and decisions were released on 6 June 2015.

The following objectives and policies in the Regional Policy Statement are of particular relevance to this application:

- | | |
|----------------|---|
| Objective TW.3 | <i>Mauri and wairua are sustained or improved where degraded, and mahinga kai and customary resources are healthy, abundant and accessible to tangata whenua.</i> |
| Policy TW.3 | <i>Take iwi management plans into account within local authority resource management decision making processes.</i> |

⁹https://contentapi.datacomsphere.com.au/v1/h%3Aes/repository/libraries/id:1tkqd22dp17q9stkk8gh/hierarchy/Water%20and%20Land%20factsheets/progressive_implementation_plan.pdf?version=latestPublished&activeOnly=true&download=false

- Policy TW.4 *When making resource management decisions, ensure that local authority functions and powers are exercised in a manner that:*
- (a) *recognises and provides for:*
 - (i) *traditional Māori uses and practices relating to natural resources (e.g. mātaimai, kaitiakitanga, manaakitanga, matauranga, rāhui, wāhi tapu, taonga raranga);*
 - (ii) *the ahi kā (manawhenua) relationship of tangata whenua with and their role as kaitiaki of natural resources;*
 - (iii) *mahinga kai and access to areas of natural resources used for customary purposes;*
 - (iv) *mauri and wairua of natural resources;*
 - (v) *places, sites and areas with significant spiritual or cultural historic heritage value to tangata whenua;*
 - (vi) *Māori environmental health and cultural wellbeing.*
 - (b) *recognises that only tangata whenua can identify their relationship and that of their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.*
- Policy WQUAN.1 *Maintain instream values of surface water that derive from flows and levels of water, while recognising the special circumstances of the Waiau catchment.*
- Policy WQUAN.7 *Recognise the social, economic and cultural benefits that may be derived from the use, development or protection of water resources.*
- Objective BRL.1 *All significant values of lakes and rivers are maintained and enhanced.*
- Policy BRL.2 *Lawfully established structures and activities in the beds of lakes and rivers will be recognised, including the need for maintenance, enhancement and upgrading, while avoiding wherever practicable, mitigating or remedying, any adverse effects. Where the use, maintenance, enhancement and upgrading of such structures will have no more than minor adverse effects on the environment, these activities will be specifically provided for.*
- Policy BRL.5 *Recognise the social, economic and cultural benefits that may be derived from the use, development or protection of river and lake beds.*
- Objective ENG.2 *Use, development, transmission and distribution of local and regional energy resources is undertaken where the adverse effects on the environment (including communities) are avoided, remedied, mitigated, or where appropriate, and such measures are volunteered by the resource user, offset or compensated for.*
- Objective ENG.3 *Generation and use of renewable energy resources is increased.*
- Policy ENG.3 *Encourage and make provision for the development, operation, maintenance and upgrading of small and community-scale distributed renewable electricity generation.*

Comment

The Regional Policy Statement became operative after the notification of the proposed Southland Water and Land Plan, but before the decision on the proposed plan was released. Therefore there may be

instances where the proposed plan does not fully particularise the provisions of the Regional Policy Statement.

Policy ENG.3 provides support for the application.

Policy BRL.2 is to “recognise” existing structures such as the weir. I believe that the policy seeks to accept the structure as part of the environment, while also allowing for maintenance and upgrade of the structure, provided that adverse effects are avoided, remedied or mitigated.

Policy TW.3 supports consideration of the provisions of Te Tangi a Taurira.

Policy TW.4 requires that the hearing commissioner recognise and provide for the listed values, including mahinga kai and cultural wellbeing, while making the decision.

3.6 Relevant provisions of national policy statements (Section 104(1)(b)(iii))

National Policy Statement for Freshwater Management (NPSFM) 2014

The NPSFM supports improved freshwater management in New Zealand. It does this by directing regional councils to establish objectives and set limits for fresh water in their regional plans.

The following objectives and policies in the National Policy Statement for Freshwater Management (NPSFM) 2014 are of particular relevance to this application:

Te Mana o te Wai

Objective AA1 *To consider and recognise Te Mana o te Wai in the management of fresh water.*

Comment

The National Policy Statement explains that Te Mana o te Wai is the integrated and holistic well-being of a freshwater body, and it incorporates the values of tangata whenua and the wider community in relation to each water body. Upholding Te Mana o te Wai acknowledges and protects the mauri of the water. This requires that in using water you must also provide for Te Hauora o te Taiao (the health of the environment), Te Hauora o te Wai (the health of the waterbody) and Te Hauora o te Tangata (the health of the people).

Water Quality

Objective A1 *To safeguard:*
 (a) *the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems, of fresh water; and*
 (b) *the health of people and communities, as affected by contact with fresh water;*
in sustainably managing the use and development of land, and of discharges of contaminants.

Objective A2 *The overall quality of fresh water within a freshwater management unit is maintained or improved while:*
 (a) *protecting the significant values of outstanding freshwater bodies;*
 (b) *protecting the significant values of wetlands; and*

(c) *improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.*

Objective A3 *The quality of fresh water within a freshwater management unit is improved so it is suitable for primary contact more often, unless:*
 (a) *regional targets established under Policy A6(b) have been achieved; or*
 (b) *naturally occurring processes mean further improvement is not possible.*

Objective A4 *To enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing freshwater quality, within limits.*

Policy A7 *By every regional council considering, when giving effect to this national policy statement, how to enable communities to provide for their economic well-being, including productive economic opportunities, while managing within limits.*

Comment

I have not listed Policy A4 because that only applies to new discharges or changes or increases to existing discharges. Other policies that have been omitted apply to regional plans or require implementation by regional plans before they can be applied.

As discussed earlier in this report, the discharge from the hydro-scheme is expected to have little adverse effect on water quality.

Water Quantity

Objective B1 *To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the taking, using, damming, or diverting of fresh water.*

Objective B2 *To avoid any further over-allocation of fresh water and phase out existing over-allocation.*

Objective B3 *To improve and maximise the efficient allocation and efficient use of water.*

Objective B5 *To enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing fresh water quantity, within limits.*

Policy B5 *By every regional council ensuring that no decision will likely result in future over-allocation – including managing fresh water so that the aggregate of all amounts of fresh water in a freshwater management unit that are authorised to be taken, used, dammed or diverted does not over-allocate the water in the freshwater management unit.*

Policy B8 *By every regional council considering, when giving effect to this national policy statement, how to enable communities to provide for their economic well-being, including productive economic opportunities, while managing within limits.*

Comment

I have not listed Policy B7 because that only applies to new activities or changes or increases to existing activities for taking, using, damming or diverting of water. Other policies that have been omitted apply to regional plans or require implementation by regional plans before they can be applied.

As discussed earlier, the diversion is compliant with allocation under the Water Conservation (Mataura River) Order.

Tāngata whenua roles and interests

Objective D1 *To provide for the involvement of iwi and hapū, and to ensure that tāngata whenua values and interests are identified and reflected in the management of fresh water including associated ecosystems, and decision-making regarding freshwater planning, including on how all other objectives of this national policy statement are given effect to.*

Policy D1 *Local authorities shall take reasonable steps to:*

- (a) involve iwi and hapū in the management of fresh water and freshwater ecosystems in the region;*
- (b) work with iwi and hapū to identify tangata whenua values and interests in fresh water and freshwater ecosystems in the region; and*
- (c) reflect tangata whenua values and interests in the management of, and decision-making regarding, fresh water and freshwater ecosystems in the region.*

Comment

Te Ao Marama Inc, on behalf of Ngāi Tahu, has submitted on the application. Consideration of Te Tangi a Tauria is consistent with Objective D1 and Policy D1. With regard to Policy D1(a), I note that Te Ao Marama Inc has been involved in the development of the regional policy statement and regional plans which direct the determination of this application. .

National Policy Statement for Renewal Electricity Generation 2011

Objective *To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand’s electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government’s national target for renewable electricity generation.*

Policy A *Decision-makers shall recognise and provide for the national significance of renewable electricity generation activities, including the national, regional and local benefits relevant to renewable electricity generation activities. These benefits include, but are not limited to:*

- (a) maintaining or increasing electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions;*
- (b) maintaining or increasing security of electricity supply at local, regional and national levels by diversifying the type and/or location of electricity generation;*
- (c) using renewable natural resources rather than finite resources;*

- (d) *the reversibility of the adverse effects on the environment of some renewable electricity generation technologies;*
- (e) *avoiding reliance on imported fuels for the purposes of generating electricity.*

Policy B

Decision-makers shall have particular regard to the following matters:

- (a) *maintenance of the generation output of existing renewable electricity generation activities can require protection of the assets, operational capacity and continued availability of the renewable energy resource; and*
- (b) *even minor reductions in the generation output of existing renewable electricity generation activities can cumulatively have significant adverse effects on national, regional and local renewable electricity generation output; and*
- (c) *meeting or exceeding the New Zealand Government’s national target for the generation of electricity from renewable resources will require the significant development of renewable electricity generation activities.*

Policy C1

Decision-makers shall have particular regard to the following matters:

- (a) *the need to locate the renewable electricity generation activity where the renewable energy resource is available;*
- (b) *logistical or technical practicalities associated with developing, upgrading, operating or maintaining the renewable electricity generation activity;*
- (c) *the location of existing structures and infrastructure including, but not limited to, roads, navigation and telecommunication structures and facilities, the distribution network and the national grid in relation to the renewable electricity generation activity, and the need to connect renewable electricity generation activity to the national grid;*
- (d) *designing measures which allow operational requirements to complement and provide for mitigation opportunities; and*
- (e) *adaptive management measures.*

Comment

These provisions support retention of the applicant’s hydro-electric power generation.

3.7 Relevant provisions of National Environmental Standards and other regulations (Section 104(1)(b)(i) and (ii))

National Environmental Standard for Sources of Human Drinking Water Regulations 2007

This NES is relevant to any application for a discharge permit. These regulations aim to reduce the risk of drinking water sources being contaminated. Regulations 7 and 8 only apply to an activity that has the potential to affect a registered drinking-water supply that provides no fewer than 501 people with drinking water for not less than 60 days each calendar year.

The activity is not upstream of a registered drinking-water supply that provides water to more than 501 people and which could be affected by either the water take or discharge.

Resource Management (Measurement and Reporting of Water Takes) Regulations 2010

The regulations apply only to a water permit that allows fresh water to be taken at a rate of 5 litres/second or more.

However, the regulations do not apply to a water permit if the taking of water under the permit is non-consumptive in that:

- (a) the same amount of water is returned to the same water body at or near the location from which it was taken; and
- (b) there is no significant delay between the taking and returning of the water.

I would not normally classify the diversion as water that is “taken” in terms of the regulations but it could be interpreted that way. However, because it is returned to the river, albeit downstream, I do not believe that the regulations will apply to the diversion.

Freshwater Fisheries Regulations 1983

Part 6 of the Freshwater Fisheries Regulations requires the provision of fish passage on dam structures. The regulations allow the Director-General of Conservation to require that such structures include a fish facility. However Section 43(1) states that the requirement does not apply to any dam or diversion structure subject to a water right issued under the provisions of the Water & Soil Conservation Act 1967 prior to the first day of January 1984. The applicant has confirmed that the weir structure at Mataura Falls had such a water right.

3.8 Any other matters considered relevant and reasonably necessary to determine the application (Section 104(1)(c))

Under Section 217 of the Resource Management Act, the consent authority may not grant a water permit or discharge permit that would be contrary to any restriction or prohibition of a Water Conservation Order. Therefore I believe that consideration of the Water Conservation (Mataura River) Order 1997 is a matter that is relevant and necessary to the determination of this application.

Water Conservation (Mataura River) Order 1997

The Water Conservation (Mataura River) Order 1997 recognises that the waters of the Mataura River and waters within the catchment specially identified as ‘protected waters’ include outstanding fisheries and angling amenity values.

Clause 4 of the Water Conservation Order specifies that:

“The minimum rate of flow at any point in the Mataura River and the Waikaia River above the Mataura Island Road Bridge (approximate map reference NZMS 260 F46:850158), where the flow is estimated by the Southland Regional Council from measurements taken at that point, must be 95% of –

- (a) the flow so estimated by the Southland Regional Council at that point; plus*
- (b) water taken in accordance with the Act from the protected waters upstream of that point and not returned to the protected waters –*

less authorised inflows upstream of that point which did not have their source in the protected waters.”

Flow in the river is measured at Parawa, Gore, Tuturau and Seaward Downs. The closest monitoring site is Tuturau, approximately 5 km downstream. At the monitoring point the diversion is non-consumptive, as the waters diverted into the hydro-race have been returned to the river. The diversion was occurring when the Order was developed, and it was not envisioned as being outside or in contravention of the order.

The Water Conservation Order prohibits the damming of the river, but provides an exception for the weir at Mataura, if “water permits are granted or renewed subject to similar terms and conditions to which the former permits were subject”.

Clause 7 of the Order sets standards for discharges to the river. These include that:

- “any discharge is to be substantially free from suspended solids, grease, and oil”; and
- “the natural colour and clarity of the waters must not be changed to a conspicuous extent”.

However subclause (2) allows for exceptions for maintenance work or other temporary situations.

Te Tangi a Tauira

I consider that the provisions of Te Tangi a Tauira, the Iwi Management Plan for Southland, are relevant and reasonably necessary to the determination of this application, particularly given Policy 1A of the Regional Water Plan and Policy 2 of the proposed Southland Water and Land Plan.

The policies relevant to this application are:

General Water Policy

- | | |
|-----------------|---|
| Policy 3.5.10.1 | <i>The role of Ngāi Tahu ki Murihiku as kaitiaki of freshwater must be given effect to in freshwater policy, planning and management.</i> |
| Policy 3.5.10.3 | <i>Protect and enhance the mauri, or life supporting capacity, of freshwater resources throughout Murihiku.</i> |

Rivers

- | | |
|------------------|--|
| Policy 3.5.11.4 | <i>Management of our rivers must take into account that each waterway has its own mauri, guarded by separate spiritual guardians, its own mana, and its own set of associated values and uses.</i> |
| Policy 3.5.11.7 | <i>The cultural importance of particular rivers (e.g. Statutory Acknowledgements, rivers associated with whakapapa and identity) must be reflected in the weighting of Ngāi Tahu responses and submissions on consents associated with these rivers.</i> |
| Policy 3.5.11.10 | <i>Ensure that all native fish species have uninhibited passage from the river to the sea at all times, through ensuring continuity of flow ki uta ki tai.</i> |
| Policy 3.5.11.16 | <i>Prioritise the restoration of those waterbodies of high cultural value, both in terms of ecological restoration and in terms of restoring cultural landscapes.</i> |

Discharges

Policy 3.5.12.3 *Consider any proposed discharge activity in terms of the nature of the discharge, and the sensitivity of the receiving environment.*

Mahinga kai

Policy 3.5.16.1 *Work with local authorities and other statutory agencies to ensure that cultural values and perspectives associated with those species and places valued as mahinga kai are reflected in statutory water plans, best practice guidelines and strategies, and in concession and resource consent processes.*

Policy 3.5.16.2 *Work towards the restoration of key mahinga kai areas and species, and the tikanga associated with managing those places and species.*

Policy 3.5.16.4 *Consider the actual and potential effects of proposed activities on mahinga kai places, species and activities when assessing applications for resource consent.*

Policy 3.5.16.5 *Use the enhancement of mahinga kai places, species and activities to offset or mitigate the adverse effects of development and human activity on the land, water and biodiversity of Murihiku.*

Biodiversity

Policy 3.5.17.1 *Use planning, policy and resource consent processes to promote the protection and, where necessary, enhancement, of native biodiversity of Murihiku, specifically:*

- (a) enhancement and restoration of degraded areas;*
- (b) planting of native species to offset or mitigate adverse effects associated with land use activities;*
- (c) the incorporation of biodiversity objectives into development proposals;*
- (d) prohibiting the use of pest plant species in landscaping.*

Policy 3.5.17.3 *For Ngāi Tahu ki Murihiku, all species are taonga, whether weta, snail or kiwi, and the effects of an activity on species must consider all species equally.*

Policy 3.5.17.9 *Promote the management of whole ecosystems and landscapes, in addition to single species.*

Freshwater Fisheries

Policy 3.5.20.1 *All Ngāi Tahu Whānui, current and future generations, must have the capacity to access, use and protect native fisheries, and the history and traditions that are part of customary use of such fisheries, as guaranteed by the Treaty of Waitangi.*

Policy 3.5.20.5 *Avoid compromising freshwater fishery values as a result of diversion, extraction, or other competing use for water, or as a result of any activity in the bed or margin of a lake or river.*

Industry

- Policy 3.5.4.1 *Encourage industry to set an example through demonstrating a commitment to best practice, new technology, environment, community and public health. The use of resources in industrial operations must be balanced with investments in the community and the environment.*
- Policy 3.5.4.2 *Capital expenditure for better environmental results should not be an adverse consideration, but rather an investment in the industry’s future.*
- Policy 3.5.4.3 *Address adverse effects on cultural values as a result of industrial activity via the following order of priority:*
(a) avoiding adverse effects;
(b) on site mitigation;
(c) off-site mitigation (e.g. Kākāpō recovery programmes);
(d) compensation.
- Policy 3.5.4.9 *Monitoring programmes for industrial operations should include on-site and downstream monitoring (e.g. air quality on site, kaimoana downstream).*
- Policy 3.5.4.10 *Require that monitoring programs have a degree of independence with respect to methods, and interpretation of results.*
- Policy 3.5.4.11 *Require that monitoring programs monitor for effects, but also include clear provisions for effective responses to the detection of adverse effects.*
- Policy 3.5.4.12 *Where industry is likely to have adverse effects on cultural values that are more than minor consideration of alternatives and use of new technology is required where practical and available.*
- Policy 3.5.4.13 *Advocate for consent durations of 25 years or less for industrial operations. Consent conditions should require operators to periodically review available technology, and provide a report indicating if better technology is available. Reports should highlight the use or otherwise of new or better technologies.*

Stream Health Indicators

Policy 2(2) of the Proposed Southland Water and Land Plan refers to Ngāi Tahu indicators of health for water quality and water quantity. Section 3.5.11 of Te Tangi a Tauira contains the following:

“Indicators used by tangata whenua to assess stream health:

- *Shape of the river*
- *Sediment in the water*
- *Water quality in the catchment*
- *Flow characteristics*
- *Flow variations*
- *Flood flows*
- *Sound of flow*

- *Movement of water*
- *Fish are safe to eat*
- *Uses of the river*
- *Safe to gather plants*
- *Indigenous vs. exotic species*
- *Natural river mouth environment*
- *Water quality*
- *Abundance and diversity of species*
- *Natural and extent of riparian vegetation*
- *Use of river margin*
- *Temperature*
- *Catchment land use*
- *Riverbank condition*
- *Water is safe to drink*
- *Clarity of the water*
- *Is the name of the river an indicator?"*

3.9 Section 105 matters relevant to discharge or coastal permits

Section 105 matters need to be considered as the application is for a discharge that would contravene Section 15. Under Section 105, the consent authority must have regard to:

- (a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects;
- (b) the applicant's reasons for the proposed choice; and
- (c) any possible alternative methods of discharge, including discharge into any other receiving environment.

Section 8 of the application briefly discusses s105.

3.10 Section 107 restriction on grant of certain discharge permits

Section 107(1) states that a discharge should not, after reasonable mixing, give rise to specific adverse effects, such as significant adverse effects on aquatic life or a conspicuous change in the colour or clarity of the receiving waters.

The potential for the effects listed under Section 107(1) of the Resource Management Act are discussed in Section 9 of the application.

3.11 Value of investment of the existing consent holder if an application affected by Section 124 (Section 104(2A))

Under Section 104(2A) of the Resource Management Act, when considering an application affected by Section 124 the consent authority must have regard to the value of the investment of the existing consent holder. I confirm that the application has rights of continuance for the discharges under s124. Therefore in determining the application regard must be had to the value of the investment of the consent holder.

Section 6.7 of the application estimates that the capital value of the weir and hydro-electric power generation system and structures is approximately \$4 million.

3.12 Part 2 of the Resource Management Act 1991

All considerations under Section 104 are subject to Part 2 of the RMA, which sets out the purpose and principles that guide this legislation.

The purpose of the Resource Management Act, as specified in Section 5 of the Act, is to *promote the sustainable management of natural and physical resources*. It states that:

“In this Act, “sustainable management” means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety while:

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;*
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

Section 6 of the Act specifies matters of national importance, which must be recognised and provided for by those exercising functions and powers under the Act, in achieving the purpose of the Act. The matters listed in Section 6 of the Act include the following:

- Section 6(a) *The preservation of the natural character of the coastal environment, wetlands and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development.*
- Section 6(b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development.*
- Section 6(c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*
- Section 6(d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.*
- Section 6(e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
- Section 6(f) *The protection of historic heritage from inappropriate subdivision, use, and development.*
- Section 6(g) *The protection of recognised customary activities.*
- Section 6(h) *The management of significant risks from natural hazards.*

Other matters that the Commissioner must have particular regard for are listed in Section 7 of the Act, as follows:

- Section 7(a) *Kaitiakitanga,*
- Section 7(aa) *The ethic of stewardship.*
- Section 7(b) *The efficient use and development of natural and physical resources.*
- Section 7(ba) *The efficiency of the end use of energy*
- Section 7(c) *The maintenance and enhancement of amenity values.*
- Section 7(d) *Intrinsic values of ecosystems.*
- Section 7(e) *[Repealed]*
- Section 7(f) *The maintenance and enhancement of the quality of the environment.*
- Section 7(g) *Any finite characteristics of natural and physical resources.*
- Section 7(h) *The protection of the habitat of trout and salmon.*
- Section 7(i) *The effects of climate change*
- Section 7(j) *The benefits derived from the use and development of renewable energy.*

Section 8 of the Act specifies that:

“...in achieving the purpose of the Act, all persons exercising functions and power under it, in relation to managing the use, development and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi.”

Comment

Sections 6(c) and 6(e) are clearly relevant to the effects of the weir and diversion on indigenous species that are also mahinga kai. They are matters that must be recognised and provided for.

As discussed earlier, the lower order documents give effect to the higher order documents and Part 2 of the RMA. For example, Section 7(h) refers to the habitat of trout and salmon. While trout and salmon are not generally directly named in the policies of the regional plans, the provisions in the plan with regard to water quality effects and minimum flows are often aimed at protecting the habitat of those particular fish. In this case though, s7(h) remains relevant to the effects of the weir and hydro-race diversion on passage for trout.

4. Recommendations

4.1 Whether to grant

I recommend that the application be approved, subject to conditions that:

- maintain the minimum flow level over the weir. This condition is to ensure that some flow is maintained in the central part of the river, and ensures that the existing fish ladders can operate;
- require an elver trap and transfer system. The weir is a barrier to upstream migration of elvers. A fish ladder system has been attempted but is easily damaged during high flow conditions. The trap and transfer system appears to be more practicable;
- require improvement to the existing trash screen on the hydro-race, to protect adult eels from entering the turbine. I have suggested a condition based on the spacings between the bars. The timeframe for implementation will need to be practicable, but an upgrade to the screen had been discussed in the “Draft Downstream Eel Monitoring Programme for Mataura Falls”, prepared for the applicant by Vaipuhi Consulting in March;
- require monitoring of the effects of the diversion on adult eels, and the effectiveness of mitigation measures;
- require monitoring of bycatch (such as trout) but, initially at least, not to the same degree of detail as for eels. While there may not be an adverse effect at the species level, it would be helpful to understand if other fish were being killed or damaged by the screen or turbine. However, there may not be a need to record details such as sex and weight at this stage;
- invite Hokonui Runaka to inspect the elver transfer system and the eel passage mitigation and monitoring systems. I believe that this is appropriate to try to give effect to provisions such as Policies 1 and 3 of the proposed Southland Water and Land Plan;
- allow for the submitters to provide feedback on the draft management and monitoring plans before they are submitted for certification. I note that the submitters would like to be involved in a working party with regard to management the diversion and monitoring of its effects, but that would only be practicable if the applicant was willing to participate;
- include a review condition.

I have suggested draft conditions that are based on drafts that were discussed between the applicant and submitters. However, I am concerned at making the conditions too detailed and inflexible. Because some key matters will vary, such as when elvers gather below the falls and when eel downstream migration will occur, I prefer that operational decisions can adjust, particularly based on expert advice.

I also recommend that the term of the consent coincide with the expiry date of Resource Consent AUTH-203311 on 7 November 2026. It makes sense that the resource consents for the diversions on either side of the weir be considered together in future. However, it also means that the application will be reconsidered in about eight years’ time, which reduces the risks around the detail of the consent conditions. The applicant is well aware of the issues of concern to the submitters, and is a long-term operator at this site, so will have incentive to demonstrate the effectiveness of its approach in order to ensure a longer term consent in 2026.

The weir and hydro-race are existing structures that have been in place a very long time. There are policies that support existing hydro-electric power generation and activities that derive economic value from water use. There are also policies that seek to avoid, remedy or mitigate adverse effects on the cultural values of tangata whenua and on fish passage, and which seek to protect taonga species and the habitats of indigenous fauna. In short, there is support to approve the application, but the effects on fish passage both

upstream and downstream must be addressed. An elver trap and transfer system has already been implemented, so the downstream movement of eels and fish past the turbine is the key issue. The applicant has provided a draft plan, but the parties remain in dispute about the details of management and monitoring

Overall, I believe that the application should be approved.



Stephen West
Principal Consents Officer

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AS COUNCIL POLICY UNLESS ADOPTED BY COUNCIL