

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

applications for resource consent lodged by
TrustPower Limited for the Wairau Hydro Electric
Power Scheme

**LEGAL SUBMISSIONS
ON BEHALF OF TRUSTPOWER LIMITED
RELATING TO CONDITIONS OF CONSENT**

21 JANUARY 2008

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1. INTRODUCTION

1.1 The draft conditions of consent were first made available to submitters during the early part of the hearing which commenced in June 2006. The submitters have had a copy of the final draft conditions since TrustPower's closing which was now over a year ago. During that period the conditions have been subjected to an unprecedented level of scrutiny. The original consent conditions proposed in TrustPower's closing represented a response to an extensive submission and hearing process. Following the conclusion of the hearing, the conditions have been subjected to an additional round of submissions and expert Council review. The revised conditions now put forward by TrustPower represent further refinement as a result of those submissions and Council reviews.

1.2 Thus the Hearing Panel can be satisfied that the conditions have been subject to an extremely vigorous review by a range of TrustPower, Council and submitter experts as well as the general public. In addition, TrustPower's approach towards conditions has been inherently precautionary and places the "environment first". The conditions have been drafted to ensure that any risk of significant effects will not eventuate or are so remote as to be de minimis, or if they do occur they can be mitigated to a no more than minor level. It is, however, essential the conditions also incorporate an underlying element of practicality to make sure that the consents are workable.

2. SCOPE

2.1 These submissions accord with the direction of this Hearing Panel (dated October 2007), that the purpose of this conditions process is to finalise and comment on the conditions, not to revisit the merits of the case which have been comprehensively addressed in the interim decision. Submissions seeking to revisit the merits of the case are not relevant to the conditions process.

2.2 Accordingly, these submissions and related evidence do not address the substantive merits of the case in any way. Further, as TrustPower has had no opportunity to consider the evidence of the submitters, some issues will need to be reserved for reply.

3. STRUCTURE OF SUBMISSIONS

3.1 The Hearing Panel has a copy of TrustPower's Memorandum of Counsel responding to submissions on conditions dated 22 November 2007. That Memorandum set out the reasons why TrustPower considers that the draft conditions are robust and sufficient to ensure that the adverse effects of the Scheme are appropriately addressed. The purpose of these submissions is not to repeat the information in the Memorandum of Counsel dated 22 November 2007 but to summarise the main points and answer any questions the Hearing Panel may have in relation to the issues raised in the Memorandum.

3.2 The structure of these submissions is as follows:

- (a) Evidence to be presented;
- (b) The key legal principles applying to conditions; and
- (c) A summary of the key issues arising from the submissions and Council report.

4. EVIDENCE TO BE PRESENTED

4.1 The evidence which follows has purposively been kept brief. The expert evidence will focus on key themes arising from the submissions. The experts presenting evidence will be available for questioning by the Hearing Panel and TrustPower is also willing to make any of the other experts who appeared at the substantive hearing available for questioning should that be of assistance to the Hearing Panel. The evidence to be submitted on behalf TrustPower is as follows:

- (a) Mr Dawson (Principal, Tonkin & Taylor Limited) will provide a response to submissions on conditions relating to the civil engineering design, and safety standards of the Scheme.
- (b) Mr Mitchell (Associate, Hydrologist, Riley Consultants Limited) will outline recent discussions with Marlborough District Council regarding the hydrological monitoring conditions and the proposed changes to the recommended conditions as a result of those discussions.

- (c) Mr Callander (Director, Pattle Delamore Partners Limited) will comment on the proposed groundwater monitoring and mitigation conditions.
- (d) Dr Ryder (Director, Ryder Consulting) will assess the aquatic ecology monitoring and mitigation conditions.
- (e) Dr Keesing (Principal, Boffa Miskell) will describe how the conditions proposed will ensure that any potential ecological effects of the Scheme on the aquatic environment in the southern tributaries are addressed.
- (f) Mr Jolly (Director, Jolly Consulting) will address the RBA conditions being the approach preferred by the Hearing Panel in the interim decision.
- (g) Mr Kyle (Partner, Mitchell Partnerships) will speak briefly to his report dated 22 November 2007 which contains TrustPower's response to submissions on conditions.

4.2 Due to his unavailability overseas during the period from 13 December 2007 to 7 January 2008, Dr Sanders has not been able to produce a brief of evidence. Dr Sanders will, however, be available during TrustPower's right of reply to address any questions from the Hearing Panel and / or present rebuttal evidence if necessary.

5. LEGAL PRINCIPLES APPLYING TO CONDITIONS

General legal principles

5.1 As the Hearing Panel will be aware, the test set out in *Newbury DC v Secretary of State for the Environment*¹ for validity of conditions is that the condition must:

- (a) Be for a resource management purpose, not for an ulterior one;
- (b) Fairly and reasonably relate to the development authorised by the consent to which the condition is attached; and
- (c) Not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties, could not have approved it.

¹ [1981] AC 578; [1980] 1 All ER 731; [1980] 2 WLR 379 (HL).

5.2 The recent decision of Judge Sheppard in *Living Earth Ltd v Auckland Regional Council and Manukau City Council* A126/06 ("**Living Earth**") also affirmed that the Court will assume that conditions will be complied with. In this regard, the Hearing Panel need only be satisfied that:

- (a) The conditions avoid, remedy or mitigate the effect or risk of the effect;
- (b) The conditions are practicable; and
- (c) The conditions are enforceable.

5.3 As set out above, not only have the conditions proposed been comprehensively audited by all TrustPower's experts and its legal and planning team but they have now also been subjected to an extremely comprehensive public submission process.

Adaptive management

5.4 Adaptive management will play an important role in the conditions. The key issue in respect of the conditions relating to the adaptive management plans is whether they will provide an effective mechanism for addressing potential unanticipated adverse effects associated with this development. The proposed use of adaptive management plans was considered in detail in various parts of the interim decision and endorsed by the Hearing Panel.² On that basis, the use of adaptive management plans should not be relitigated as part of this conditions process.

5.5 The key issue is ensuring that the conditions relating to the adaptive management plans are valid and enforceable. In other words, the Hearing Panel must satisfy itself that the conditions put in place an appropriate mechanism for formulation and approval of the management plans, including a process for determining appropriate triggers for intervention should adverse effects occur and a process for determining what mitigation needs to occur if those triggers are breached. Accordingly, the type of precision requested by some submitters in relation to the conditions is simply not necessary or appropriate in the resource management context.

5.6 In some instances, submitters (including the Council's consultants) have suggested amendments to the management plans themselves. These

² Interim decision page 32, paragraphs 37-39.

suggested amendments will be taken into account by TrustPower when finalising those plans for submission to the Council for its approval. However, they are only relevant to this conditions process insofar as the Hearing Panel must be satisfied that adequate and enforceable management plans can be drafted in accordance with the conditions.

Enforceability of the conditions

5.7 As stated above, the conditions must be enforceable. In his report on behalf of the Council, Mr Wilkes raises concerns that:

The conditions are very loose and are likely to present ongoing compliance complications.

5.8 A thorough legal and planning review of the conditions has been undertaken. The conditions, which have now been the subject of considerable scrutiny, are enforceable. Mr Wilkes does not provide any specific justification for this comment. However, he does express concerns about the use of the terminology "generally", "as far as practicable" and "where appropriate".

5.9 It is acknowledged that in some circumstances, this wording may affect the enforceability of some conditions. The relevant conditions are set out in the Appendices to Mr Kyle's report and appropriate amendments have been made to those conditions.

5.10 However, there are also situations where this wording is both necessary and will not affect the enforceability of the relevant condition. These specific instances are outlined in Mr Kyle's tables.

KEY ISSUES ARISING FROM SUBMISSIONS

6. THE WATER TAKE AND DISCHARGE: WAIRAU AND SOUTHERN TRIBUTARIES

6.1 The following key subject matters were raised in submissions:

- (a) River hydrology;
- (b) Aquatic ecology; and
- (c) Avifauna.

River hydrology

- 6.2 The key submissions raised in relation to hydrology relate to:
- (a) The appropriate flow regime;
 - (b) Flow monitoring and methods for ensuring adherence to the flow regime once the Scheme is operational;
 - (c) Effects of the Scheme on other users;
 - (d) The effects of the Scheme on the tributaries; and
 - (e) Climate change.

Flow regime

- 6.3 Various submissions raise concerns about the appropriate minimum flow regime and its variability. As noted above, this Hearing Panel will decline to hear any submissions or evidence from any submitter as to whether or not the flow regime set by us is factually or legally correct. No further submission is made by TrustPower on this point.

Monitoring

- 6.4 Concerns were raised in the submissions regarding the appropriate flow monitoring methodology. Further discussions have recently occurred with the Council. Mr Mitchell will in his evidence outline the agreement reached with the Council in relation to the monitoring conditions. Mr Mitchell is satisfied that the changes proposed will ensure that the monitoring proposed will be effective in measuring compliance with the minimum flow regimes.

Effects of the Scheme on water users

- 6.5 Several submissions (for example, Mr Jackson on behalf of the Grape Growers) raise concerns about the potential effects of the Scheme on other water users. Not only do conditions PS1 to PS4 ensure a net environmental gain in terms of downstream water users and the environment generally, but the Hearing Panel also concluded that:

it is unlikely therefore that flow will fall below the minimum SFR (8m³/s measured at Tuamarina) in any part of the affected

reach, when there is sufficient natural flow for the scheme to be operating.³

- 6.6 Several refinements have been made to the PS5 conditions to ensure that the wording of those conditions is clear. However, TrustPower does not agree to a new condition being added to allow the Council to undertake "steady state" monitoring on the Wairau River. Such a requirement would result in a major disruption to the operation of the Scheme and effectively require it to shut down for a period. TrustPower is, however, willing to allow reasonable monitoring by the Council to occur from time to time at its discretion.

Effects on the tributaries

- 6.7 Concerns relating to the Southern Tributaries centred around two main issues:
- (a) The monitoring methodology; and
 - (b) The potential degradation of water quality in Mill Creek and Walkers Stream.
- 6.8 Mr Mitchell will in his evidence outline the changes have been made to conditions ST4 to ST 6 as a result of discussions with the Council.
- 6.9 In terms of degradation of water quality, Mill Stream is being avoided as much as possible. Consent template B25 has also been amended to clarify that, following construction, Walkers Stream will not be captured. Dr Keesing's evidence outlines the conditions which ensure that Mill Stream and Walkers Stream are not disturbed or affected by construction and operation of the Scheme.
- 6.10 Concerns relating to the Northern Tributaries centred around ensuring that the flow connection between the tributaries and the Wairau is maintained. Condition NT1 requires monitoring of the connections between the Wairau and the tributaries. Amendments have been made to this condition in response to submissions to clarify the timing for monitoring (ie particularly between May and August). These changes are set out in Dr Keesing's evidence.

³ Interim decision page 311, paragraph 33.

Climate change

- 6.11 Several submitters have suggested that conditions should be included to address the potential effects of climate change on the river and the Scheme. This issue was addressed by the Hearing Panel in the interim decision:

We have mentioned this concern earlier in the decision. We don't propose to traverse this evidence again, except to say that for our part we are satisfied that the instream values and out of stream users are safeguarded by the residual flow regime (providing natural flows are sufficient to enable the scheme to be operating). However, there clearly are unknowns about the effects on instream values of any significant change in hydrological patterns and the way these might interact with the residual flow regime. This is not a matter that in our mind militates against consent or that conditions (other than those already proposed) can be designed to meet. We think this is properly a matter to be addressed through any review of conditions in accordance with s128 of the Act, or at the renewal of this consent, if necessary.⁴

- 6.12 Accordingly, the submissions requesting additional conditions relating to climate change seek to relitigate an issue already decided by the Hearing Panel and should be disregarded.

Aquatic ecology

- 6.13 The key issues identified in the submissions are:

- (a) Monitoring methodology for water quality, temperature etc; and
- (b) Sediment flushing; and
- (c) Periphyton.

Monitoring

- 6.14 Condition AE1 sets out the matters which are required to be monitored under the Aquatic Management Plan including water temperature, fish abundance, macroinvertebrate communities and water quality changes. Dr Ryder's evidence comments on the monitoring regime proposed and explains the changes which have been made to take into account a number of the practical suggestions made in the MDC report and the Fish & Game submission in relation to the monitoring. In particular, new requirements to monitor fish size and nutrient and indicator bacteria have

⁴ Interim decision page 323 paragraph 85.

been added along with reference to the critical monitoring period between August and March.

Sediment flushing

- 6.15 Several submissions seek the imposition of conditions restricting sediment flushing on the basis of the potential adverse effects on aquatic ecology. In the interim decision, the Hearing Panel noted that:

We have also found that, taking into account the proposed mitigation and conditions, the discharge of sediment from construction and maintenance of the intake works and from routine flushing of the settling basin will not give rise to water quality effects that are more than minor.⁵

- 6.16 Condition SF1 ensures that sediment flushing only occurs when the river flow is greater than 80m³/s, as measured immediately upstream by the Scheme intake, and when the turbidity in the river is greater than 5.6 NTU. As outlined in Mr Levy's evidence at the substantive hearing and accepted by the Hearing Panel in the interim decision, the timing of the sediment flushing is such that it will not cause any greater effects than what would be occurring in the river at that time.⁶ Accordingly, there is no justification for imposing additional conditions relating to sediment flushing.

Periphyton

- 6.17 Several submissions raise concerns that the proposed flushing flows will not be sufficient to address periphyton. In relation to periphyton, the Hearing Panel concluded that:

In considering all of the evidence on this issue, we are of the view that the effect of the proposed abstraction on nuisance periphyton needs to be kept in perspective. The scheme does not capture all of the flow above 10/20m³/s, but only the first 40m³/s above that figure leaving the remainder of the flow (above the natural flow of 50/60m³/s at the intake) in the river. We believe that this will contribute towards reducing the formation of periphyton.⁷

- 6.18 In any event, a proactive approach has been adopted in the conditions to the removal of periphyton, namely a condition of consent requiring the Scheme to be turned off (or water to be diverted back to the river via the sedimentation pond for a 24 hour period) on a fresh of 150 m³/s after extended periods to address nuisance periphyton. The effect of this

⁵ Interim decision pages 323-324, paragraph 11.

⁶ Mr Levy's answers to questions dated 15 November 2006.

⁷ Interim decision page 107, paragraph 138.

condition is that the risk of nuisance periphyton in the affected reach for any length of time is very low, particularly in light of the likely frequency of high flows in excess of 150 m³/s.⁸

- 6.19 In addition, a definition of "periphyton" has been added to condition AE2 which includes reference to mat forming growths and incorporates reference to the Ministry for the Environment criteria for assessing periphyton growths.

Avifauna

- 6.20 Several submissions raised concerns regarding the efficacy of the conditions relating to protection of avifauna and predator control. Before considering the issues raised in those submissions, it is important to bear in mind the findings of the Hearing Panel in relation to avifauna which were as follows:

[I]t is preferable to adopt a conservative approach and assume that there is a "safe island" effect and require the implementation of a predator control programme as offered by the applicant in draft conditions RBA1 - RBA14 as a condition of consent. It will of course be necessary for the applicant to establish baseline information on nesting success rates and on other matters as a baseline for monitoring the effectiveness of predator control, but this does not require testing the veracity of the "safe island hypothesis" as a pre-condition for implementing the programme.

We note this is the preferred option of the applicant.

The effect on the birds protected by such a condition will then be not more than minor. Indeed such a condition has two beneficial effects which should not be overlooked.

- (a) It might enhance the natural survival rate of the Terns by reducing predation and
- (b) It will help relieve the charge on public monies, which presently exists if DoC or the Council continues to fund the predator control programmes as at present.

...

For the reasons expressed above we are satisfied that the scheme as mitigated, and subject to the proposed predator control and Black Fronted Tern monitoring provisions contained in draft Conditions RBA1 - RBA14, will have a less than minor adverse effect on the continued survival of the Terns and the Gulls, and the applicant passes this gateway test in relation to that matter.⁹

⁸ Dr Coffey's evidence, paragraphs 7.18 -7.21.

⁹ Interim decision page 147, paragraphs 187-189.

- 6.21 Many of the submissions relating to avifauna essentially raise issues which equate to re-litigating the merits of the case and are not relevant to this conditions process. TrustPower asked its avifauna experts to review the conditions, in light of the submissions, in order to ensure that they are robust, workable and enforceable.
- 6.22 Conditions RBA1-14 include an extensive predator management plan, coupled with monitoring of fledgling success. Mr Jolly's evidence provides an overview of the RBA conditions which are preferred by both TrustPower and the Hearing Panel.
- 6.23 Conditions RBA1-14 have been incorporated into the conditions attached to Mr Kyle's report as Appendix D. Most of the submitters (and indeed the Council report) comment on conditions RB1-10. Mr Kyle has (where appropriate) carried those comments over to conditions RBA1-14. TrustPower's response to the Council's comments on conditions RB1-10 has been added as an addendum to the table in Appendix D for completeness. The key issues raised in submissions in relation to avifauna are addressed in Mr Jolly's evidence.

7. LAND USE AND AIR DISCHARGE

- 7.1 The following key issues were raised under this heading:
- (a) Construction effects - traffic, noise, dust and visual amenity;
 - (b) Safety issues;
 - (c) Flooding and insurance;
 - (d) Reduction in property values;
 - (e) Land ownership; and
 - (f) Use of terminology.

Construction effects

- 7.2 The construction effects will be dealt with under a comprehensive suite of conditions. The effects of the Scheme will be comparable to (and in many cases less than) the effects expected to be associated with permitted activities provided for in the rural zone. Concerns raised in

submissions primarily related to practical issues and the conditions have been amended to respond to these issues where practicable. For example:

- (a) The "spring period" during which dusty activities should be avoided should be defined (Council report) - A definition has been added to condition CM11.
- (b) The use of Church Lane as a haul road should be prohibited - TrustPower has confirmed that Church Lane will not be used as a haul road.
- (c) A landscaping plan should be approved - A new condition LS1 has been added requiring the engagement of an independent landscape architect to prepare a landscaping plan for approval.
- (d) Construction progress updates should be provided - Amendments have been made to condition HS2 to ensure that a monthly update is provided to local newspapers during construction which would pose a risk to recreational users of the river.

Safety issues

- 7.3 Several submissions suggested that the Scheme should be designed to High PIC standards (for example Eric Parr and Mr and Mrs Sherwood). As noted in the evidence to be presented by Mr Dawson, the PIC categorisation sets the basis for design rather than foreshadowing the likely outcome. The conditions of consent require compliance with the NZSOLD guidelines and these guidelines reflect international best practice. Accordingly, the imposition of any additional conditions in relation to dam safety would be completely without scientific basis.

Flooding and insurance

- 7.4 Several submitters have asked for conditions to be imposed which require TrustPower to pay property insurance premiums should those premiums rise as a result of the Scheme (for example Rachel Bissell and Hazel Findlay). An independent insurance report was commissioned by the Council at the hearing to report on insurance issues. That report found that insurance premiums would not be increased. The Hearing Panel in its interim decision stated:

We conclude on the evidence available to us that there is no realistic prospect that the availability of insurance will be adversely affected as a consequence of the building of the canal. Such risk as exists is not more than minor.

We also note that there is a well established legal remedy in nuisance or a remedy in absolute liability for those who are affected by a scheme such as this which involves the bringing onto their properties - and collecting there in large quantities of a substance which if it escapes is inherently dangerous. If the property owner can establish the necessary ingredients of the cause of action then liability is absolute or at worst based in nuisance.

Although property owners will not on the evidence be subjected to adverse risks which are more than minor it is worth noting that even in the case of minor risks the property owner is not without a remedy.¹⁰

- 7.5 Accordingly, the inclusion of a condition relating to insurance would be unnecessary (given private property right remedies) and unreasonable (given the Hearing Panel's finding that the risk of increased premiums is not more than minor).

Reduction in property values

- 7.6 The potential impact on land values has been raised by several submitters (for example Hazel Findlay) who suggest that conditions should be included that require TrustPower to compensate landowners for reduced property values.
- 7.7 The Hearing Panel concluded in the interim decision that, based on the evidence of Mr Penrose, there is no evidence that any reduction in property values will result from the Scheme. The Hearing Panel concluded that, in fact, the Scheme may result in the betterment of some property values:

On the evidence we are satisfied that any loss of land value which might occur will be minor or non-existent.

It is just as probably that the beneficial effects of a cheap to run irrigation scheme will add value to the affected properties who are in a position to benefit from the scheme.

As to the lower value non irrigable hill country we can find no evidence that the scheme will affect land values in any way.¹¹

- 7.8 Given this finding, any condition requiring TrustPower to compensate landowners for a potential reduction in property values is unnecessary and inappropriate. In addition, any condition of consent requiring TrustPower to compensate for loss of property values would be ultra

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Section O of the interim decision paragraphs 7 to 9, page 295.
Paragraphs 39 to 41 of the interim decision, pages 299-300.

vires. The focus of any conditions of consent should be on the physical effects on the environment rather than speculative claims that the Scheme may reduce property values of particular properties.¹²

Land ownership

- 7.9 Mr and Mrs McLauchlan's submission requests the inclusion of a condition which requires TrustPower to acquire all the land required to complete the development within 6 months of the grant of the consent.
- 7.10 TrustPower's closing submissions acknowledged that resolution of land ownership issues is a legitimate condition precedent in the sense of a matter which must be resolved if the land is required for the Scheme. In practical terms, this means that TrustPower will need to reach agreement with landowners prior to use of their land. However, it does not mean that a condition of consent should be imposed requiring all landowners approvals to be obtained. In this regard, the relevant land may relate to only a small part of the overall Scheme. There may be alternatives to the use of the land in question which may be able to be pursued without the need for variation of the consents.
- 7.11 As noted in Mr Lilley's evidence, substantial progress has been made in landowner negotiations in any event. Only a limited number of owners have submitted in opposition.¹³ While several landowner consents remain outstanding, further landowner consents have been obtained since the conclusion of the hearing last year.

Use of terminology

- 7.12 In his report, Mr Wilkes objects to the use of the terminology "commencement of construction" and instead recommends that this term is replaced with the words "upon exercise of consent". Mr Wilkes provides no justification for this change except that the words "commencement of construction" lack certainty.
- 7.13 We disagree with this view. The terms "commencement of construction" and "commencement of operation" are commonly used in resource consents and are well understood to mean, respectively, the first on-site construction work and the first operation of the activity authorised by the consent. There are numerous examples of where such terminology has

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North Canterbury Gas Ltd v Waimakariri District Council EnvC A217/02.
Lilley supplementary statement of evidence, paragraphs 7 -11.

been used in consent conditions. *REM Developments Limited v Auckland City Council* (W25/2006), *Brown v Taupo District Council* (A158/2005) and *Director General of Conservation v Marlborough District Council* (C62/2005) are examples of three recent projects where the Environment Court has endorsed conditions referring to "commencement of construction". We have undertaken a caselaw search and cannot find any caselaw questioning the use of these terms. In fact, both terms appear to be more widely used than "exercise of the consent" which carries with it inherent uncertainties as to when the consent has in fact been "exercised".

- 7.14 While the Environment Court has held that "exercise of consent" basically means taking action to give effect to the consent, it has also held that the question of whether a consent has been "given effect to" is one of degree that will vary from case to case.¹⁴ Thus, it is often difficult to determine, and susceptible to debate as to when a consent has been given effect to. For these reasons the terminology "commencement of construction" and "commencement of operation" is preferred.

8. GROUNDWATER

- 8.1 The concerns relating to groundwater relate to the following four key issues:
- (a) The adequacy of baseline monitoring;
 - (b) The period for pre-construction monitoring;
 - (c) The requirement for ongoing monitoring during operation; and
 - (d) The review conditions.
- 8.2 With regard to the adequacy of baseline monitoring, the Hearing Panel concluded that the potential effects have been adequately investigated and TrustPower has correctly identified the range of likely impacts and the nature of mitigation required to ensure that any adverse effects are no more than minor. In addition, in the interim decision the Hearing Panel concluded that the Draft Groundwater Management Plan was an appropriate mechanism for addressing any potential groundwater effects.¹⁵

¹⁴ *Goldfinch v Auckland City Council* [1997] NZRMA 117 (HC).
¹⁵ Paragraph 22 of the interim decision, page 211.

- 8.3 Mr Callander's evidence outlines the changes which have been made to groundwater conditions in response to submissions. In summary, TrustPower has agreed to extend the period for pre-construction monitoring from six months to 12 months (condition GW4). Ongoing monitoring during the operational phase of the Scheme is covered by condition GW22.
- 8.4 The Council's report also suggests that the review conditions GW23 and 24 for groundwater should include a purpose. It is not clear what is meant by this statement. The suggested redrafted condition states that the groundwater conditions may be reviewed at various times to
- ... [A]ssess whether there are any actual or potential effects on the groundwater resource within the area defined in condition GW2.
- 8.5 Stating that the purpose of the review should be to "assess" whether there are any adverse effects does not seem to achieve any useful purpose when the monitoring and reporting regime contained in the conditions sets out a very comprehensive procedure (including the appointment of a peer reviewer) to determine whether there are any adverse effects. While the amendment proposed does not appear to achieve any useful purpose, TrustPower does not oppose this amendment as such.
- 8.6 The Council's report also recommends that the groundwater peer review role is extended to include the review of the adequacy of the mitigation measures proposed in relation to groundwater effects. A peer review role has been created under condition GW15 to determine claims from third parties who believe that their groundwater resources have been adversely affected by the scheme. Extension of the peer review role beyond the scope of GW15 is inappropriate. Under the groundwater conditions the Council has control over:
- (a) The contents of the groundwater management plan (GW1);
 - (b) The groundwater benchmarking report (GW2); and
 - (c) The approval of the mitigation and monitoring regime (GW8(f) and (g)).

- 8.7 In exercising these functions, the Council may elect to engage external advisors to peer review the plans or reports requiring approval or it may choose to use internal resources within the Council for that purpose. It is completely unnecessary to require an independent peer review as a condition of consent.

9. CONCLUSION

- 9.1 The Hearing Panel can be completely satisfied that the raft of conditions agreed to by TrustPower will ensure that any risks complained of will not eventuate, or if they do occur are so remote as to be *de minimis* or can be mitigated to a no more than minor level.
- 9.2 Unlike some consenting situations, TrustPower is prepared to carry the risk and associated burden. The plethora of technically robust and appropriate conditions proposed will ensure any effects of significance are avoided, and that other effects are suitably mitigated or remedied.

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Counsel for TrustPower
21 January 2008