

5 August 2011

Westland District Council
Private Bag 704
HOKITIKA 7842
Attention: Martin Kennedy



Dear Martin,

KANIERE FORKS AND MCKAYS CREEK HEPS RECONSENTING APPLICATION

We refer to your letter dated 9 December 2010 regarding TrustPower Limited's ("TrustPower") application to re-consent (with some process optimisation) and construct two enhancements to the Kanier Forks and McKays Creek hydro electric power schemes ("enhanced scheme"). Further to email correspondence between Westland District Council ("WDC") and TrustPower (Richard Simpson/Ryan Piddington) dated 10 December 2010, WDC's letter of 9 December 2010 is to be regarded as a request for further information under section 92 of the Resource Management Act 1991. This response supersedes the correspondence dated 15 July 2011 as it accommodates the Consent arrangement and numbering recommended by the West Coast Regional Council. We accordingly respond to each request below.

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If you have any queries, please do not hesitate to contact me on 021 796-670

Yours faithfully

PLANIT R W BATTY & ASSOCIATES LTD

Matt Bonis

ASSOCIATE

A handwritten signature in blue ink, appearing to read "Matt Bonis", is located below the printed name and title.

Our ref.: 12 668

Requests 1 and 2: Landowners and Certificates of Title

Please find attached as “**Appendix A**” copies of the Certificates of Title for the land to which these resource consent applications relate. A list of the legal descriptions and landowners are provided in Table 1 below. As discussed, the Occupier details are not provided as is common in these circumstances, as many of the landowners occupy the areas identified, or when this is not the case, occupiers tend to be transient in nature.

Table 1 – Landowner and certificate of title details

Landowner	Legal Description
Crown Land	SO Plan 1632, SO Plan 3001, SO Plan 4134 and SO Plan 10910
TrustPower	Lot 1 DP 3654
Hurunui Jack Corporation Limited	Lot 1 DP 396999 and Lot 2 DP 396999
Kaniere Farms Limited	Lot 2 DP 324352
Westland District Council	Pt RES 1177, Pt RES 1411 and Section 1 SO Plan 12532
Department of Conservation	Pt RES 1622 and Pt RES 1667,
Jane Rogers, Ian Preston, Helen Boon and Barbara Dunn	RS 2230
Bevan Charles Climo	RS 4555
Luke Gardner and Kelly-Anne Travis	Section 1 SO Plan 12532

Request 3: Status of Application

As noted at page 9 of the Assessment of Environmental Effects (“**AEE**”) filed in support of TrustPower’s application, using an overall “bundling” approach for the WDC consent applications as is appropriate for this project, the construction, operation and maintenance of the enhanced scheme requires consent as a non-complying activity from WDC. This is because Rule 5.6.2.1 of the operative Westland District Plan provides *that “[a]ny activity which does not fall within the permitted or discretionary categories is deemed to be a non complying activity”*. In accordance with Rule 5.6.2.2C, *“[a]ny activity which complies with the standards for discretionary activities (see Table 5.7), except mining”* is a discretionary activity in the applicable Rural Zone. The standards in Table 5.7 relate to buildings and setbacks, and in particular require a 10m riparian setback from rivers and streams.

The proposed new Kaniere Forks power station and all ancillary ‘buildings’ associated with the enhanced scheme will comply with the respective setbacks. However, there are a number of ancillary components (such as the Coal Creek replacement flume pipes, and both the Wards Road and McKays tailraces) that could potentially be considered a ‘structure, or part structure’ pursuant to the definition of “*Building*” from Part 9 of the Plan, and will be

within the 10m riparian setback. These aspects of the enhanced scheme have accordingly been conservatively assessed as non-complying activities, in accordance with Rule 5.6.2.1.

For completeness, we note the AEE identifies the enhanced scheme as requiring consent for a non-complying activity in accordance with Rule 5.6.2.1, as a result of the level of vegetation clearance required. After further consideration of this rule, which is complex in its drafting, it is considered that the proposed vegetation clearance in fact requires consent as a discretionary activity in accordance with Rule 5.6.2.2C (although this is subject to the overall bundling as outlined above).

Request 4: Buildings Information

Drawing 10KNF/RUG-113 (included with Appendix G of the AEE and attached as "**Appendix B**" for ease of reference) identifies the station site of a 40m x 40m footprint within which the proposed new Kaniere Forks power station is to be located. The respective height (8m 'Other buildings') and yard (10m front, and 3m side and rear) requirements for the building will be complied with. The 10m riparian setback to the Kaniere River will be breached by the tailrace, but not the building itself. The powerhouse will have a maximum gross ground floor area of 150m².

Detailed design of the new power station is yet to be undertaken. However, the generic aspects of the station and substation (to be contained within the 40m x 40m footprint) include the following:

- Parking;
- Substation tailrace which extends from the powerhouse to the river;
- Penstocks (pipes) running from the intake into the power house;
- Powerhouse housing the turbine(s), generators, draft tubes and associated electrical / mechanical controls (150m²); and
- Substation containing transformers and switchgear located adjacent to the power house.

Drawing 08MKY/KWU-123 (included with Appendix G of the AEE and attached to this letter as "**Appendix C**" for ease of reference) identifies the location of the expanded McKays power station. The new power station extension will be of the same scale and size as the existing, to which it will be attached. The expansion shall (with the exception of the tailrace enhancement), comply with the height and setback standards identified above. The building will have a maximum gross ground floor area of 150m².

As with the new Kaniere Forks power station, detailed design is still to be done for the McKays power station extension. However, this will similarly involve the following generic components:

- A new Penstock(s) running from the intake into the power house;
- Powerhouse housing the turbine(s), generators, draft tubes and associated electrical / mechanical controls; and
- Substation containing transformers and switchgear connected to the existing substation.

As noted in Section 5.1.5 and Schedule 5 of the AEE, both the new Kaniere Forks power station and McKays power station extension will be painted in recessive colours.

Request 5: Construction Noise Assessment

Marshall Day Acoustics has prepared an Assessment of Construction Noise Effects, which is included as "**Appendix D**" of this letter.

As outlined in Table 2 below, the Assessment of Construction Noise Effects assessed the potential noise levels from general construction; concrete breaking, cutting and removal; cutting and covering; and installation activities associated with construction of the enhanced scheme at distances of 30, 50 and 100 metres from the activity respectively:

Table 2 – Noise levels for construction scenarios

Scenario / Activity	Activity Sound Power Level (dB L _{AW, eq})	Noise Level (dB L _{aeq}) (No Mitigation)		
		@30m	@50m	@100m
1. General Earthworks	117	80	76	70
2. Concrete Breaking	124	87	82	76
3. Cut and Cover	118	80	76	70
4. Installation	114	76	72	66

As a result of this assessment, the following mitigation measures have been proposed to ensure that construction noise will comply with the New Zealand standard for construction noise (NZS6803:1999), and the limits from Table 5.7 of the Plan, at nearby property boundaries:

- All significant noise generating construction activities shall occur between the hours of 0730 and 1800 Monday to Saturday;
- Work shall be undertaken in accordance with a comprehensive Construction Noise Management Plan, which includes notification and liaison with residents before and during the construction period;
- Acoustic screens may be used to provide a break in line-of-sight from any occupied houses within 50m of the construction activity;
- An acoustic lid shall be constructed over below ground activities where appropriate;
- Particularly noisy activities, such as the demolition of the existing culvert and gate system, shall be scheduled at times agreed with residents;
- Relocation will be offered to residents in dwellings within 50m of the construction corridor during the periods where construction activity is highest;
- The construction schedule for works from the inlet to 200m chainage mark shall be designed to minimise the duration of works; and
- All construction shall be completed as quickly as possible.

Request 6: Vegetation Clearance

This request relates to the identification of explicit mitigation or offsets for the loss of some 6ha of significant indigenous vegetation associated with the Kaniere / McKays enhancements. Appendix D to the AEE ('Boffa Miskell Report') identifies the vegetation communities that will be lost, but for ease of reference these are reproduced in **Table 3** below:

Table 3 - Vegetation Clearance Types

Kaniere HEPS enhancements		McKays HEPS enhancements	
Vegetation type	Area (ha)	Vegetation type	Area (ha)
(rimu) - (miro) / kamahi - quintinia forest	1.7	Secondary kamahi / quintinia forest	1.1
Secondary (rimu) / mountain toatoa - quintinia - southern rata forest	1.0		
Manuka scrub	0.2		
(Silver pine) / manuka scrub	0.3		
Myrsine scrub	< 0.1		
Carex sedgeland (W)	0.1		
Mingimingi shrubland	1.2		
Mingimingi shrubland / Carex (W)	0.2		
Silver pine forest	< 0.1		
Phormium flaxland (W)	< 0.1		
Total	4.9		

It is identified in both the AEE and Terrestrial Ecology Report (Appendix D accompanying the AEE), that there will be a more than minor adverse effect on terrestrial ecology associated with the commissioning of the HEPS enhancements which cannot be avoided, and for which TPL has not currently provided any specific mitigation. Council has accordingly requested “*details of the proposal mitigation are required for the application in this respect, along with amended conclusions and recommendations*”.

As outlined in the AEE, TPL is continuing to develop a mitigation package for the project’s ecological effects. While this is continuing to progress, it has not yet reached a stage where the detailed mitigation can be provided to Council. This will, however, occur as soon as possible. In the interim, TPL does not consider there is any lack of certainty regarding the project’s potential ecological effects that would prevent its applications from continuing to be processed and notified in the usual way. Given this situation, TPL has also proposed an appropriate consent condition requiring development of an appropriate mitigation package, and outlining criteria to guide this.

Request 7: Policy Analysis

Policies 4.9A, B and C of the Plan are identified at page 53 of the AEE as being relevant to TrustPower’s application. That policy discussion addresses the broad and overlapping themes expressed in all three of those Policies, and the Regional Policy Statement, in an integrated manner. It was accordingly considered unnecessary to traverse each relevant objective and policy individually.

With respect to Policy 4.9B, it is noted (as outlined further below) that Council has not yet listed and/or mapped all land on which there is significant indigenous vegetation or significant habitats of indigenous fauna, despite the Plan indicating that this should occur within three years of the Plan being adopted. It is also noted that the policy talks of “encouraging” the protection and enhancement of significant vegetation and habitats, thus

acknowledging and confirming caselaw that this will not occur in all instances. That said, the proposal has been developed so as to avoid losses of significant vegetation and habitat as far as practicable. As noted at pages 36-37 of the AEE, where this could not be achieved, the extent of losses will be minimised by containing construction works in the smallest corridor possible. No Threatened or Rare plant species are likely to be impacted on within the construction corridor. Noise, dust and vibration effects are likely to be short lived and the appropriate management of these matters, together with fire risk avoidance, through the Construction Management Plan will ensure that such effects are adequately mitigated. It is also considered prudent that an ecologist is involved on site during the detailed design stage of determining the construction corridor and race augmentation works so as to minimise possible fauna disturbance. The ecologist would also be able to advise where practicable as to the staging of sections of construction works so as to avoid disturbing nesting birds and bat nesting.

Further, as outlined above an ecological mitigation package is being explored with the Department of Conservation and TrustPower intends to update the Council at an appropriate stage when this further advanced. Mitigation planting will also be undertaken on the residual construction envelope to supplement natural regeneration and reduce the adverse effects of increased edge habitat. Environmental conditions in the area will result in rapid regeneration.

Overall, taking into account the ecological mitigation package being developed, together with other relevant mitigation, it is considered that the effects of the enhanced scheme on terrestrial ecology will be minor, and that the proposal is accordingly consistent with Policy 4.9B.

Policy 4.9D is a requirement incumbent on the territorial authority (not applicants) to identify areas of significant indigenous vegetation and significant habitats of indigenous fauna and outstanding features within the District. It is noted that no explicit identification of these areas can be found in the Plan Maps or Appendices, despite Method (e) stating that this would occur within three years of the Plan being adopted (which happened in 2002).

Even if the Plan did contain such information, it is noted that just because an area of vegetation or habitat has been identified in or meets criteria under the Plan does not necessarily mean it automatically becomes "significant" for the purposes of section 6(c) of the Act. Rather, case law requires assessment of the relevant vegetation and habitat against robust and objective (scientific) criteria together with informed expert opinion. As stated in *Waitakere Ranges Protection Incorporated v Waitakere City Council* (AO89/2000 at [53]) "*the proposed plan classifies the bush on the site as 'significant vegetation'. This does not mean that we should conclude, without further ado, that it is 'significant indigenous vegetation' for the purposes of section 6(c)*".

Accordingly, the criteria detailed in Policy 4.9 of the Plan have been applied to a localised determination of the significance of vegetation and habitats potentially affected by the enhanced scheme in Appendix B of TrustPower's Terrestrial Ecology Report (Appendix D of the AEE). It is therefore considered that Policy 4.9D has been addressed in TrustPower's application, to the extent possible and necessary.

Request 8: Conditions

TrustPower has now prepared a draft set of proposed consent conditions, which is attached as "**Appendix E**". These are divided into the following:

- Set A: Kaniere HEPS Enhancements Westland District Council and West Coast Regional Council
- Set B: McKays HEPS Enhancements Westland District Council and West Coast Regional Council

Appendix A

Certificates of Title

Appendix B

Drawing 10KNF/RUG-113

Appendix C

Drawing 08MKY/KWU-123

Appendix D

Assessment of Construction Noise Effects

Appendix E

Proposed Conditions