

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of Manawatu-Wanganui Regional Council's  
Proposed One Plan

---

**LEGAL SUBMISSIONS ON BEHALF OF GENESIS ENERGY**

**(1 JULY 2008)**

---

---

**RUSSELL McVEAGH**

Paul F Majurey / T L Hovell  
Phone 64 9 367 8000  
Fax 64 9 367 8163  
PO Box 8  
DX CX10085  
Auckland

## I. INTRODUCTION

1. Genesis Energy generates renewable energy in the Manawatu Wanganui Region via a nationally significant physical resource, the Tongariro Power Scheme ("TPS").<sup>1</sup>
2. By way of overview, Genesis Energy has sought amendments to the proposed plan, including:
  - (a) The inclusion of overarching policies which recognise the benefits that can arise from the use and development of natural and physical resources.
  - (b) Provision for existing infrastructure of national and regional importance, including the TPS as a physical resource required to be sustainably managed under the RMA.
  - (c) Recognition of renewable energy resources in the region and provision for the use and development of renewable energy.
3. The Officer's Report for the Overall Plan Hearing states:<sup>2</sup>

"To include a generic statement as to the benefits of using resources would be to state the obvious and would not add to the POP or add any useful interpretation of the RMA. I believe the recognition these submitters seek is inherent in the framework and does not need to be specifically stated."
4. These submissions and the Genesis Energy evidence<sup>3</sup> address this approach and the rationale for the proposed amendments to the plan.

---

<sup>1</sup> Formerly known as TPD.

<sup>2</sup> At page 83.

<sup>3</sup> **Mr Robert Weir** (General Manager, Production, at Genesis Energy) provides a background to Genesis Energy, overviews the New Zealand electricity generation system and the importance of TPS, and outlines the implications of the Proposed One Plan for the supply of electricity to New Zealand.

**Mr Jarrod Bowler** (Environmental Manager, Renewable Energy, at Genesis Energy) provides an overview of TPS, details the implementation of resource consents in relation to TPS, and outlines relevant agreements between Genesis Energy and third parties.

**Mr Richard Matthews** (Partner of Mitchell Partnerships) evaluates the relevant RMA framework and assesses the Proposed One Plan against that framework. He also sets out proposed amendments to the Proposed One Plan in order that it meets the requirements of the RMA.

## II. ELECTRICITY

### Electricity

5. The Environment Court has confirmed the place of electricity in New Zealand:

"Electricity is a vital resource for New Zealand. There can be no sustainable management of natural and physical resources without energy, of which electricity is a major component."<sup>4</sup>

"From a national level, electricity is an essential commodity to New Zealand households (directly they spend in excess of \$2 billion on it) and industry. It provides the basis for our economic prosperity and way of life. Unlike in some other countries, electricity cannot be imported, and for some purposes it has no practical alternatives."<sup>5</sup>

6. This is echoed in the National Policy Statement on Electricity Transmission:

#### "Preamble

... The efficient transmission of electricity on the national grid plays a vital role in the well-being of New Zealand, its people and the environment."

7. The provision of electricity is essential to enabling people and communities to provide for their social and economic wellbeing, and for their health and safety.

### Renewable Energy

8. The New Zealand Government is pursuing a major policy shift in the nation's electricity generation regime.
9. Through the New Zealand Emissions Trading Scheme Framework ("**NZ ETS Framework**")<sup>6</sup> and New Zealand Energy Strategy ("**NZES**")<sup>7</sup> (released on 20 September and 11 October 2007 respectively), the Government has set a target for 90 per cent of New Zealand's electricity to be generated from renewable sources by 2025 (based on an average hydrological year).

---

<sup>4</sup> *Genesis Power Limited v Franklin District Council* [2005] NZRMA 541.

<sup>5</sup> *Rotokawa Joint Venture Ltd and Mighty River Power Ltd v Waikato Regional Council* (A41/07) at [422].

<sup>6</sup> *The Framework for a New Zealand Emissions Trading Scheme*, September 2007.

<sup>7</sup> *New Zealand Energy Strategy to 2050 - Powering Our Future*, October 2007.

## NZ ETS

10. The NZ ETS Framework contains the following statement in relation to renewable energy:<sup>8</sup>

"Notwithstanding our high use of renewable electricity sources, New Zealand needs to take action on emissions from electricity generation. Between 1990 and 2006, greenhouse gas emissions from electricity generation increased by approximately 138 per cent, while emissions from energy use by manufacturing industries increased by approximately 10 per cent. Without further action, the government projects that greenhouse gas emissions from stationary energy (including fugitive emissions) will increase by approximately 7 per cent between 2005 and 2015."  
[Footnote omitted]

## NZES

11. The NZES contains the following statements in relation to renewable energy:<sup>9</sup>

"It is in New Zealand's longer-term economic and environmental interests to meet increases in demand through an economic mix of renewable energy sources that will meet our security objectives. It is easier for New Zealand to commit to a low emissions electricity system than almost any other country. In this strategy, the government is introducing a target for 90 per cent of electricity being generated from renewable sources by 2025.

This is a challenging target but, given our wealth of natural energy resources, is considered achievable without imposing significant additional costs on the electricity sector. The resultant generation mix should ensure New Zealand's energy system is well placed to prosper in a low carbon economy. To achieve this outcome, a very high rate of investment in new renewable generation, lower utilisation of existing fossil fuel plant and decommissioning of older fossil fuel plant is required."

...

"In 2004, the RMA was amended to include section 7(j), which states that, in exercising the functions and powers under the Act, all persons shall have regard to the benefits to be derived from the use and development of renewable energy. Recent Environment Court decisions have provided further guidance on how decision-makers could consider these benefits in resource consents, policy and plans."

---

<sup>8</sup> At pages 82-83.

<sup>9</sup> At pages 22-23 and 82.

## NEECS

12. The New Zealand Energy Efficiency and Conservation Strategy (released in October 2007) contains the following statements in relation to renewable energy:<sup>10</sup>

"A renewable electricity target has been set in the NZES to increase the proportion of electricity generated from renewable resources to 90 per cent by 2025. This is a challenging target, but given New Zealand's wealth of renewable energy resources, it is considered achievable without the imposition of significant costs on the electricity sector."

...

"A number of barriers have been identified that are hindering the uptake of renewable electricity. They include:

**Regulatory barriers** – can discourage developers from investing in renewable generation. For example, some of the provisions in the Electricity Industry Reform Act 1998 can inhibit investment in renewable generation by lines companies. Other examples include the lack of national guidance on renewable energy which can make obtaining consents for large-scale renewable energy developments more difficult. For small generation, obtaining consents under the Resource Management Act (RMA) and Building Code can be a challenge."

### Section 7(j)

13. As noted in the NZES, the Resource Management (Energy and Climate Change) Amendment Act 2004 ("**Amendment Act**") inserted section 7(j) in the RMA, which requires decision-makers to have regard to:

"the benefits to be derived from the use and development of renewable energy."

14. The purpose of the Amendment Act states:

#### **"3 Purpose**

The purpose of this Act is to amend the principal Act-

- (a) to make explicit provision for all persons exercising functions and powers under the principal Act to have regard to-
  - (iii) the benefits to be derived from the use and development of renewable energy"

---

<sup>10</sup> At page 68.

15. The Explanatory Note to the Amendment Act states:<sup>11</sup>

"For energy, the policy objectives are to -

- Provide a stronger legal mandate for consideration of energy efficiency and the **value of renewable energy** so that decisions and council plans under the RMA take into consideration national objectives detailed in the NEECS and climate change policies" [Emphasis added]

16. Against this background, the One Plan should provide an appropriate enabling regime for present and future sources of renewable energy.

### III. NATIONAL SIGNIFICANCE OF TPS

17. The water from TPS contributes approximately 4% of the country's total electricity generation,<sup>12</sup> and is capable of supplying up to 9% of the country's instantaneous electricity demand.<sup>13</sup>

18. Water from the Manawatu-Wanganui region diverted through the TPS scheme enables significant additional generation through the Waikato Hydro System,<sup>14</sup> and supports electricity

---

<sup>11</sup> At pages 4 and 5. The reference in the Explanatory Note to the National Energy Efficiency and Conservation Strategy was to the 2001 document, which included an explicit goal for all renewable energy (at page 2):

"• **Renewable energy systems.** Renewable energy systems will ultimately be the main source of energy for a sustainable economy. They replace dependency on fossil fuels and provide permanent solutions to the issue of energy sector CO2 emissions. They do have potential localised environmental effects, but these can be managed by effective processes."

<sup>12</sup> Weir evidence - para 5.6.

<sup>13</sup> *Ngati Rangi Trust v Manawatu Wanganui Regional Council* (Environment Court, Judge Whiting, A67/04, 18 May 2004) ("*TPD*") at [338].

<sup>14</sup> The relationship between TPS and the Waikato Hydro System was acknowledged by the Environment Court in *TPD* as follows:

"[339] The Rangipo and Tokaanu power stations supply an average of 1,220 GWh's of electricity annually. In addition the water diverted into Lake Taupo, supplementing the nine hydro power stations and eight dams on the Waikato River, owned and operated by Mighty River Power Limited allows an extra 630 GWh's to be generated by these stations. This gives a total 1,850 GWh/yr or about 8% of national renewable energy. The court was told that this equates to sufficient energy to supply some 237,180 households, which represents a population approximately half the size of Auckland, five times the size of Hamilton or ten times the size of Rotorua, based on Statistics NZ 2001 Census." [Footnote omitted]

generation from the Huntly Power Station by contributing to cooling water flow and thus contributing further to New Zealand's electricity generation capacity.<sup>15</sup>

19. TPS has a strategic location and importance to the national power supply system given the vulnerability of the national transmission grid and significant transmission losses over long distances.<sup>16</sup>
20. The Environment Court has recognised the crucial role of TPS:<sup>17</sup>

"[374] It is accepted from the evidence that **the TPD has strategic significance and value, particularly in relation to its location and special functions in the electricity system** for voltage support, frequency control, black start and provision of spinning reserve and for meeting peak loads."

"[338] **The TPD produces approximately 3.5% of New Zealand's annual energy demand in an average year**, but including the contribution made through the Waikato River hydro stations, this rises to approximately 5% of New Zealand's average electricity demand. However, when operating on full capacity, **this can increase to 9% on an instantaneous basis.**"

"[401] **We have found that the TPD makes a significant contribution to the hydro electric production of New Zealand.** It is infrastructure, with its "sunk-costs" and existing capacity to produce 360MW - not to mention the re-use of the water down the Waikato River - **reflects its contribution to the New Zealand economy...**" [Emphasis added]

21. The Environment Court also confirmed the national importance of fully utilising TPS.<sup>18</sup>

"[402] Clearly, it is in the national interests for the TPD structure to be as fully utilised as possible..."

22. Clearly, TPS is a 'physical resource'<sup>19</sup> of national significance.

### Physical effects

23. The Environment Court made the following overall finding on the physical effect of the TPS - Western and Eastern Diversions:

"[323] With the exception of the effects occasioned by a reduction in flow and water level, we are satisfied from the extensive scientific evidence we heard that there is no evidential connection between the operation of the TPD and the decline in native fish life. Also, many of the

<sup>15</sup> Weir evidence - para 5.7.

<sup>16</sup> See Weir evidence, for example, paragraphs 5.11, 5.21.

<sup>17</sup> TPD.

<sup>18</sup> TPD at [402].

<sup>19</sup> The s2 RMA definition of 'natural and physical resource' includes structures.

physical effects on the rivers are caused by factors other than the TPD. In the overall context such physical effects are minor. The effects of the TPD are more greatly felt on Maori spiritual values."

### **Māori spiritual and cultural values**

24. The Environment Court made the following overall finding on the effect of the TPS - Western and Eastern Diversions on Māori spiritual and cultural values:

"[331] After a careful consideration of all the evidence, we have come to the clear conclusion that the diversion of the waters by both the Western and Eastern diversions has had and continues to have deleterious effects on the cultural and spiritual values of the Maori people. We find that these effects are considerable."

### **IV. PART 2**

25. Sections 61(1) and 66(1) of the RMA list relevant considerations for determining the Proposed One Plan. All considerations are subservient to Part 2 of the RMA.

#### **Sustainable management purpose - enabling aspect**

26. The section 5 purpose of the RMA accords pre-eminence to promoting the sustainable management of natural and physical resources.
27. The 'enabling part' of section 5 provides for the use and development of natural and physical resources. In contrast, the latter part of section 5 deals with adverse environmental consequences arising from use and development. Under the RMA, Council is required to prepare the Proposed One Plan in accordance with Part 2 of the RMA.<sup>20</sup> In order for the Proposed One Plan to accord with Part 2 of the RMA, the Proposed One Plan must include overarching objectives and policies that reflect the enabling aspect of section 5.
28. Effects to be managed under the RMA include both positive and adverse effects. It is important that the positive effects people and communities obtain from the use and development of natural and physical resources (especially renewable energy) be afforded similar recognition in the Proposed One Plan than other Part 2 matters are given.<sup>21</sup>
29. The current omission from the Proposed One Plan of objectives and policies that reflect the enabling aspect of s5 results in an unbalanced focus on adverse effects, and an inappropriately restrictive planning environment.

---

<sup>20</sup> Sections 61(1) and 66(1) of the RMA.

<sup>21</sup> Matthews evidence - paras 5.9 - 5.10 and 7.2 - 7.6.



### TPS a 'physical resource'

30. TPS is a nationally significant 'physical resource'. It generates significant levels of electricity and has strategic significance and value in New Zealand's electricity generation system.
31. The use of TPS is therefore to be managed in a way which enables people to provide for their social, economic and cultural wellbeing. It is therefore crucial to New Zealand that TPS is fully available as and when required.<sup>22</sup>
32. Furthermore, in light of the increasing potential for electricity shortages, the Environment Court has acknowledged the importance of maximising existing generation output.<sup>23</sup>

"Over recent years, New Zealand's demand for electricity has been growing faster than new generation. We were told... that for the year 2005 the growth rate was 2.5%... [It was] ...stressed that because of the potential for electricity shortages combined with the uncertainty surrounding new generation, it is very important that existing generation is at least retained where possible, if not increased. [It was] ...said:

'From an economic perspective, it is important that resource consent conditions do not have the effect of reducing generation output, unless it is absolutely necessary to achieve sustainable management.' "

33. Genesis Energy is lawfully entitled<sup>24</sup> to dam, divert, take and discharge water from the catchments comprising TPS, subject to environmental constraints. The extent to which environmental constraints reduce generation from TPS was noted by the Environment Court.<sup>25</sup>

"[402] Clearly, it is in the national interests for the TPD structure to be as fully utilised as possible. The water and the waterways, utilised by the TPD, can in an average year and in the absence of providing any flows for environmental reasons, produce 1,801 GWh/yr of electricity. The potential generation has been reduced as a result of environmental constraints to a potential annual generation of 1,437 GWh/yr. In reality, the actual average annual generation for the period 1989 to 2003 was only 1,246 GWh/yr - the difference being that not all available water can be diverted all the time.

---

<sup>22</sup> See *TPD* at [402]:

"[402] Clearly, it is in the national interests for the TPD structure to be as fully utilised as possible..." [Footnotes omitted]

<sup>23</sup> *Rotokawa Joint Venture Ltd and Mighty River Power Ltd v Waikato Regional Council* (A41/07) at [425].

<sup>24</sup> Bowler - paras 3.1-3.3.

<sup>25</sup> TPS at [402]-[403].

[403] The current situation (prior to these new resource consents becoming operative) has resulted in the spillage of water for environmental reasons such that approximately only 82% of the potential generation is able to be achieved. We are thus conscious of the effect of further eroding the available water that can be used."  
[Footnotes omitted]

34. The Proposed One Plan needs to ensure that the TPS as a physical resource is sustainably managed, including that the authorisations for the TPS are not further compromised without foundation into the future.

### **Future renewable generation**

35. The region is home to strategically important renewable resources.
36. There is a clear Government policy encouraging the development of renewable energy generation. This policy has also been specifically incorporated into the RMA framework including through section 7(j). It is, therefore appropriate for the One Plan to provide an enabling regime for future renewable energy generation in order to achieve the purpose of the RMA.

## **V. CONCLUSION**

37. The objectives of the Proposed One Plan must be the most appropriate way to achieve the purpose of the RMA.
38. Similarly, having regard to their efficiency and effectiveness, the policies, rules and other methods of the Proposed One Plan must be the most appropriate for achieving the objectives.
39. Ultimately, the Proposed One Plan must more fully serve the purpose of the RMA than would declining or modifying it.<sup>26</sup>
40. The amendments proposed by Genesis Energy (as detailed in the evidence of Mr Richard Matthews) more fully serve the purpose of the RMA.

**Paul F Majurey / T L Hovell**

Counsel for Genesis Energy  
(1 July 2008)

---

<sup>26</sup> Refer *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145 (HC) at 179; *Marlborough Ridge Ltd v Marlborough District Council* [1998] NZRMA 73.