



Department of Conservation
Te Papa Atawhai

To: Mark Davies, Director Operations Western South Island (Minister's delegate)

From: Judi Brennan, Permissions Statutory Land Manager, Hokitika,
Chris Hickford, Partnerships Manager, Greymouth Office (Hearing Panel)
(Both as Delegates of Director-General of Conservation)

Submission Summary/ Recommendation Report

This report is to the Decision Maker pursuant to section 49(2)(d) of the Conservation Act 1987. It provides a summary of all objections and comments received in response to public notification, and recommendations as to the extent to which they should be allowed and accepted.

Concession Application

Concession Applicant: No 8 Limited

Permission Number: 53660-OTH

The purpose of this report is to provide you with:

- A summary of the objections and comments received
- A recommendation as to the extent to which the objections and comments should be allowed or accepted
- Any recommendations of actions as a result of those submissions – e.g. special conditions, further information request etc.

For the purposes of this report, submissions which are 'allowed' are submissions which are relevant for you to consider pursuant to the Conservation Act. Allowed submissions are then analysed as to the extent to which they should be 'accepted' by the Minister (being you as the Minister's delegate).

The implications of allowed and accepted submissions are noted for you to assist you in forming a view '*before deciding whether or not to proceed with the proposal*', pursuant to section 49(2)(e) of the Conservation Act.

We note that any recommendation we, as the Director General's delegates, make to you does not fetter your discretion to come to a different view on any issues covered in the report.

1.0 BACKGROUND

The Minister has received an application for the installation and operation of an 1,890 kW run-of-river hydropower scheme at McCulloughs Creek, a tributary of the Whataroa River, in the Whataroa Scenic Reserve. The scheme includes intake structures, a power house, and penstocks. The intake structure would be located on the upper reach of McCulloughs Creek. In order to construct the scheme, the applicant is proposing to use a cableway and helicopters.

- The Application was received: 25 October 2017
- Further information was sought from the Applicant on: 23 January 2018
- Further Information Received: 16 March 2018
- The application was publicly notified: 24 April 2018
- Submissions Closed: 24 May 2018
- Three Submissions were received with two wanting to be heard
- A second further Information Request was made: 12 June 2018
- The hearing was delayed until the further information was provided and made available to submitters
- Further information was received: 29 August 2018
- Letter to submitters with further information and invite to comment: 31 August 2018
- Close date for extra comments: 14 September 2018
- Two updated submissions were received with only one submitter wanting to be heard.

2.0 DETAILS OF HEARING

Date/Time: A hearing was held in the Wanganui Room in Hokitika, Wednesday 26 September

Location: Hokitika DOC Office, Sewell St

Hearing Panel Chair: Chris Hickford, Partnerships Manager, Greymouth

Panel member: Barry Hughes -West Coast Conservation Board Member

Submitter that was heard: Jan Findlayson – Federated Mountain Clubs of New Zealand (Incorporated) (FMC) vice-president and freshwater spokesperson

Media presence: None

Written Record

A written record of the hearing and notes taken is linked here: [DOC-5594148](#)

At the hearing FMC's verbal submission reflected the written submission dated 17 May 2018 and is linked below. A couple of points were expanded on and clarified, these are summarised in the discussion points about the submissions below.

The applicant's responses to submissions provided in the letter dated 29 August 2018 are detailed in section 4 of this report.

3.0 SUMMARY OF KEY POINTS FROM WRITTEN SUBMISSIONS AND HEARING

Three written submissions were received as part of the public notification phase.

Issues Raised by each Submitter:

(a) Federated Mountain Clubs (FMC) (Link to first submission: [DOC-5593436](#), updated submission [DOC-5584832](#)):

- FMC comments that the proposed activity is not in accordance with purposes for which the lands are held as per S17U(3) Conservation Act.
- FMC notes further that Stewardship Land, despite some recent study, are yet to be fully assessed and therefore are not yet properly understood. FMC claims that were assessment to take place, the land in question could be considered worthy of high or very high classification such as conservation park or becoming part of Westland National Park. FMC recommends the application be declined noting the potential for harm to presently unknown values.
- FMC notes further the application is inconsistent with the Act and Part 3B tests are not met - FMC refers to the 2015 Baldwin Report - 'Assessment of Financial Viability and Alternative locations' and lists a range of other West Coast hydro schemes that have been commissioned or approved. FMC states that it is clear that the activity could take place in alternative locations and therefore is inconsistent with S17U(4)(b) of the Conservation Act.
- FMC also notes that national power availability exceeds demand and noted further at the hearing that the current power network is fine and there is no need for more power. And therefore, the application is unlawful/not appropriate to grant under S17S(g)(ii) Conservation Act.
- FMC noted at the hearing that economic benefits cited by the applicant in the application are not relevant considerations.

(b) Forest and Bird (F&B) (Link to first submission [DOC-5593443](#), updated submission [DOC-5580105](#)):

- F&B notes that the need for a power scheme is not addressed in the application and notes further that there are consented schemes already. F&B states that the applicant needs to justify the need for a power scheme.
- F&B notes that cumulative effects of power schemes need to be considered and that Parker Creek located in the catchment just north of McCulloughs Creek was recently applied for.
- F&B notes the area is in a priority site for biodiversity management. It asked the question – *“would this development effect the priority site?”*.
- F&B commented that there is insufficient information on potential effects on birds and lizards; that bats are not assessed; and further information requested by the Department had not been provided.
- F&B commented further that a DOC Assessment of potential effects on both terrestrial and freshwater environments is required.
- F&B commented that the Department should seek the views of an Independent landscape architect on visual intrusion both during construction and after – given that it's in a scenic reserve.

- F&B questions the validity of correlations with the Poerua and Hokitika Gorge for determining MALF, both on catchment, local environment and distance from McCulloughs Creek.
 - F&B also comment that MALF at the intake is an estimate, not measured as asked for by the DOC further information request.
 - F&B commented that the NZ Ecology report just refers to desk top studies and that the surveys requested by DOC have not been done and more information is needed to determine effects on Koaro.
 - F&B comment further that macroinvertebrates have not been further investigated and the Ecology NZ report itself states that an increased survey effort is needed to understand and establish species diversity.
 - F&B commented that the data is insufficient, and the effects cannot be properly assessed.
- (c) NZ Canyoning (Nzc) (Link to full submission [DOC-5593614](#))
- Nzc comment that its key role is in protection of canyon environments for future use and that McCulloughs Creek is a pristine watercourse that has strikingly similar characteristics to canyons that Nzc work to actively to protect.
 - Nzc also commented that it considers the proposed activity is inconsistent with the Purpose for which the lands are held.
 - Nzc believe Stewardship Lands should be assessed for their conservation values prior to allowing them to be modified for commercial gain - therefore inappropriate to approve – not in accordance with purposes of Conservation Act.
 - Nzc comment that it believes declining this application will set a precedent and therefore will help protect the recreational and environmental values of canyons on conservation land at risk of future hydropower development.
 - Nzc also commented that there is insufficient information on flows and no time period for regeneration on the cleared land is given.
 - Nzc question if ongoing adverse effects occur, *“will the monitoring be sufficient and accurate to establish this.”*
 - Nzc question if there has been sufficient monitoring to establish if there are other endangered species using this habitat e.g. whio.
 - Nzc commented that there was no evidence of alternative locations.
 - Nzc conclude that No 8 has not proven a need for the activity at this site and Nzc note that the proposal involves use of high value conservation land for relatively small commercial gain and recommend the application be declined.

4.0 APPLICANT’S REPLY

At the end of the hearing the applicant was given the opportunity to provide any clarifications, corrections or respond to questions raised.

The applicant did not make a formal reply at the hearing itself, however made the following points via its legal representative:

- The applicant had a different view of the statutory tests than FMC expressed and that these have been addressed in a letter provided with the further information to the Department dated 29th August 2018. It commented further that most of the matters raised by FMC have been addressed by the applicant in this letter. The full letter is linked here [DOC-5566151](#).
- Information on economic aspects were not put forward in the application.

The applicant’s legal representative also noted that for matters of transparency, he provides advice to the Taranaki Conservation Board on mining matters, however he didn’t consider there was any conflict of interest.

The applicant’s responses to submissions provided in the letter dated 29 August 2018 are detailed below.

5.0 ANALYSIS OF SUBMISSIONS

The extent to which the comments should be allowed/accepted are analysed and recorded below, the submissions have been broken down into issues and grouped where possible under the relevant legal tests in Part 3B of the Conservation Act.

Keeping in mind S17U(1)(f) and S49(2)(d) of the Conservation Act, we have also made recommendations to you in respect of the extent to which submissions should be (i) allowed and (ii) accepted. These recommendations are summarised in the table below and, where relevant, this considers the applicant’s reply. We have taken the approach that comments can be allowed if they are relevant to the matters to be considered under S17U (1).

Summary of issues raised and recommendations on whether they should be allowed/accepted

Issue/legal test	Specific issue raised	Allowed/accepted and any recommendations
Issue 1 Comments relating to S17S(g)(i) and (ii) - reasons and sufficient information to be satisfied that (in terms of S17U of the Act) it is both appropriate and lawful to grant	No need for the activity/more power and therefore the application is unlawful/not appropriate to grant under S17S(g)(ii).	It is noted that although the submitters referred to S17S, decisions under that section relate to what information is provided in the application and what extra information can be sought. The decision maker has to consider whether the application is appropriate and lawful under S17U. The Hearing Panel is not satisfied that the need for power, or not, is a matter required to be considered for

		<p>concession applications under Part 3B, S17U of the Conservation Act (Matters to be Considered). The Hearing Panel notes that the applicant has provided further information about the need for the proposed activity in a letter dated 29 August 2018. However, the applicant has also stated that <i>“There is no clear statutory requirement to demonstrate need ...”</i></p> <p>The Hearing Panel recommends that FMC, F&B and NZC comments on the ‘need for power’ not be allowed or accepted, although notes that the activity (being the building of a structure for the purposes of generating electricity) will have to be considered against the purpose for which the land is held.</p>
	<p>Economic benefits not relevant considerations</p>	<p>The Hearing Panel is not satisfied that the economic benefits of an activity fall under any of the matters required to be considered for a concession application under Part 3B, S17U of the Conservation Act (Matters to be considered by the Minister).</p> <p>The applicant has noted in its application at p28 that <i>“the scheme would use local contractors as much as practical for construction and local labour for on-going operations and maintenance works, benefitting the West Coast in general.”</i></p> <p>The Hearing Panel agrees with FMC that economic benefits are not relevant and recommends this comment not be allowed and the economic benefits of the application not be considered in making a decision on the proposal.</p>

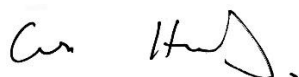
<p>Issue 2 Submissions relating to S17U(2)(b) That there are no adequate or reasonable methods to mitigate the effects.</p>	<p>NZC note its role in the protection of canyon environments for future use, and that McCulloughs Creek is a pristine watercourse that has strikingly similar characteristics to canyons the NZC work to actively protect. It appears the implication from NZC is that the application should be declined to protect the site for future use of canyoning.</p>	<p>The Hearing Panel notes that one of the potential effects of the proposed scheme could be the loss of the abstraction reach for future canyoning opportunities.</p> <p>However, the Hearing Panel notes that NZC stated that the site “<i>does not have much interest to canyoning for recreational activity at this point in time</i>”, nor did it appear the NZC representative had visited the site.</p> <p>The Hearing Panel believes that this potential loss is currently unknown however would likely be minimal and recommends that considerations of the site for future use for canyoning be given little weight.</p>
<p>Issue 3 Submissions related to S17U (3) that the proposal is contrary to the provisions of the Conservation Act or the ‘purposes for which land concerned is held’.</p>	<p>Stewardship land should be assessed for its conservation values first, before accepting concession applications, the land potentially worthy of higher classification.</p>	<p>The Hearing Panel does not consider FMC and NZC’s comments on the issue of reclassifying stewardship land are relevant considerations under Part 3B, S17U of the Conservation Act (Matters to be considered by the Minister for concession applications).</p> <p>The Hearing Panel notes that S17T of the Conservation Act details when an application must be considered by the Minister and that there is no requirement for conservation values to be assessed before applicants can apply, outside of the considerations under S17U.</p> <p>The Hearing Panel recommends that comments that stewardship land needs to be assessed before accepting concession applications not be allowed or accepted.</p> <p>The Hearing Panel notes however that S17U does require a consideration of the effects of the activity and structures on the conservation values</p>

		<p>of the land under consideration irrespective of its land status and that these effects on the values and any measures that can reasonably or practically be undertaken to avoid, remedy or mitigate any adverse effects of the activity must be taken into consideration.</p>
	<p>NZC notes that McCulloughs Creek has been set aside for the purpose of conservation and the proposed activity conflicts with this purpose.</p>	<p>The Hearing Panel acknowledges that comments on the purpose of the land are relevant, however does not accept this comment per se, noting that the lands under application include Marginal Strip, Scenic Reserve and Stewardship land and that a full analysis of the effects and mitigations of the proposed activity is required to determine whether the hydro scheme would be 'contrary to' the purpose for which the land is held.</p> <p>The Hearing Panel notes the applicant's response to the submitter comments on this and recommends that in making a decision a full analysis of the activity against the purposes of the land is undertaken once an assessment of effects is complete.</p>

<p>Issue 4 Submissions relating to S17(U)(4)(a) and (b) that the activity could reasonably be carried out in another location or use an existing structure.</p>	<p>Power could be generated at alternative locations. Other schemes are listed such as; the Arnold River, Stockton, Amethyst, Inchbonnie, Griffin Creek.</p>	<p>The Hearing Panel believes it would not be 'reasonable' nor practical or feasible to expect No 8 to undertake this activity at the alternative locations suggested, as the alternatives are owned by other electricity generation companies that the applicant does not have any control over.</p> <p>Therefore, the alternative locations suggested are not thought to be relevant considerations under S17(U)(4).</p>
	<p>No evidence of alternative locations provided.</p>	<p>The Hearing Panel recommends that NZC's comment is allowed as considering alternative locations is a relevant consideration under S17U(4)(a). The Hearing Panel notes that information on alternative locations was provided by the applicant but was withheld from the public due to its commercial sensitivity. The Hearing Panel recommends that this information should be considered by the decision maker.</p>

<p>Issue 4 Submissions related to S17U(2)(a) 'sufficiency/adequacy of information to enable assessment of effects'.</p>	<p>Insufficient information/data on birds, lizards, bats, koaro, macro invertebrates, other endangered species and questions around validity of correlations with Poerua and Hokitika Gorge for determining MALF.</p>	<p>The Hearing Panel recommends that these comments are all allowed. Sufficiency of information is a specific requirement under S17U(2)(a). The Hearing Panel recommends that further information is sought on the potential effects on fauna ecology and information on water flow data.</p>
	<p>The area is a priority site for biodiversity/Would the development effect the priority site?</p>	<p>The Hearing Panel notes the site as pointed out by F&B is a priority site for biodiversity management and that further information would help assess the effects on the biodiversity values of the site and its category as a 'priority site for biodiversity management'.</p>
	<p>Independent landscape architect view should be sought.</p>	<p>The Hearing Panel notes F&B has suggested an independent landscape architect review of the applicant's landscape assessment, and recommends the decision maker does this.</p>
	<p>No time period given for regeneration of the cleared land.</p>	<p>The Hearing Panel recommends that if a decision is made to grant the concession, clarification is sought on the time period for regeneration and that conditions include rehabilitation of the areas used for construction but which would not be required for the activity long-term.</p>
<p>Issue 5 Submissions related to S17U(2)(b) 'there are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure or facility'.</p>	<p>NZC question if the monitoring will be sufficient and accurate to assess ongoing effects (if application is granted).</p>	<p>The Hearing Panel acknowledges this is a relevant question and recommends that adequacy of ongoing monitoring is considered by the Department's specialists as part of the assessment and if the concession is granted, conditions are included that require an ongoing monitoring programme.</p>

	<p>Cumulative effects of the power scheme should be considered, with submitter noting a recent hydro scheme application on Parker Creek (adjacent catchment).</p>	<p>The Hearing Panel recommends that the F&B's submission on cumulative effects is allowed, as the meaning of 'effect' in the Conservation Act 1987 includes <i>"any cumulative effect which arises over time or in combination with other effects - regardless of the scale, intensity, duration, or frequency of the effect"</i>.</p> <p>However, the Hearing Panel notes that no concession for a hydro scheme has been granted on Parker Creek and therefore there are currently no hydro schemes on adjacent catchments. The Hearing Panel recommends the report to the decision maker assesses any cumulative effects.</p>
<p>Issue 6 Precedent effect.</p>	<p>NZC comment that it believes declining this application will set a precedent and therefore will help protect the recreational and environmental values of canyons on conservation land at risk of future hydro development.</p>	<p>The Hearing Panel does not accept NZC's view on precedent, nor that this is a relevant consideration.</p> <p>Each concession application must be considered under on its own merits as provided for under Part 3B of the Conservation Act.</p> <p>The Hearing Panel notes that the applicant's legal representative has provided a view on 'precedent' and agrees that NZC comments on precedent should be 'set aside'.</p>



Chris Hickford, Panel Chairperson,
 Delegate of the Director General of Conservation (on behalf of and in agreement with the Panel members)

Date: 30/11/2018