

Hydroelectricity or Wild Rivers? Report from the Commissioner for the Environment

On 31 May 2012, Jan Wright, Parliamentary Commissioner for the Environment, released a report analysing one of New Zealand's most polarising environmental debates - arguably second only to the issue of mining conservation land - our goal of reaching 90% renewable energy generation by 2025 versus our desire to protect our wild and scenic rivers and ecosystems.

The Commissioner was motivated by the conflict over Meridian Energy Limited's proposal for a hydro scheme on the Mokihinui River, an example of where decisions in respect of wild and scenic rivers are arguably the hardest to make. As the Commissioner stated hydroelectricity is "good for the environment" (and the economy) and likewise wild and scenic rivers in their natural state are "good for the environment" – in the Commissioner's words, conflict over wild and scenic rivers is "environment versus environment" when you get to this end of the spectrum and a "genuine dilemma".

The report is a primarily desk top review and brief summary of the history of hydroelectricity in New Zealand, the concept of wild rivers and how they are protected and an outline of the Resource Management Act 1991 and Conservation Act 1987. It contains a high level summary of how the legislation guides the consenting of hydroelectric schemes, the protection of wild and scenic rivers and five recommendations aimed at improving the system. The research does not appear to have involved in depth interviews with relevant stakeholders, which is an area where the opportunity for valuable insights on practical and interpretive issues has been missed.¹ The conclusions and recommendations of the Commissioner are therefore based on a reasonably superficial analysis and need to be read in that context.

Conclusions and recommendations

From her analysis, the Commissioner makes five recommendations aimed at improving the legislation, processes and institutions within which decisions on protection or use of wild rivers are made.

Firstly, she calls for better recognition of the value of wild and scenic rivers within the government's National Policy Statements on Renewable Electricity Generation and Freshwater Management, which, in her view, currently favour renewable electricity and hydroelectricity projects.

She calls for the improvement of protection of wild rivers through investigation and identification of rivers outside conservation land that may be suitable for protection via a water conservation order, with the investigation to be undertaken by either the Ministry for the Environment or the Land and Water Forum. In our experience given the potential consequences of such a classification, recommendations similar to this one in the past have simply been put in the "too hard" basket, as vested interests would undoubtedly cause the process to become unwieldy. The report contains no acknowledgement of this very real problem.

A recommendation is also made to streamline the water conservation order process, which she considers is too expensive and time consuming, by placing a nine month time limit on decisions and having the matter heard by the EPA. While this streamlining recommendation has merit, it is based, in our opinion, on an incorrect assumption that the cost and time involved in obtaining a WCO is somehow more than comparable processes under the RMA. In our experience the WCO process is simpler than the equivalent mechanism available for protection of any natural feature in district and regional plans. The process of Variations and Plan Changes to firstly identify, and secondly protect, natural features such as landscapes, rivers, lakes and coastlines is equally, if not more complex and costly than the process of applying for a discrete WCO.

¹ Based on the endnotes and list of references

As with the Mokihinui River, a number of rivers currently run through stewardship land, which is land administered by the Department of Conservation ("DOC"), but awaiting specific classification under the Conservation Act. As such the values of the land have often not been fully assessed. The Commissioner has recommended the rivers with high conservation value be identified, and the land reclassified to give them a higher level of protection.

Currently a lot of riverbeds within land administered by DOC are not themselves managed by DOC. The Commissioner has made a recommendation that river beds within conservation land be transferred to DOC's control.

The Commissioner expressed her concern about the inefficiency and uncertainty involved for applicants for projects on conservation land, having to gain consent under the Resource Management Act and permission under the Conservation Act. She recommends this process be streamlined through amendments to the legislation, being:

- a. A commercial operation on conservation land must have approval under the Conservation Act before resource consents can be sought; or
- b. A commercial operation on conservation land that requires resource consent is considered at a single concession-consent hearing, albeit that the concession and consent decisions are made separately given the different decision makers and statutory tests involved.

In our experience, there is certainly a need for a more streamlined process for seeking the necessary permissions for commercial operations on conservation land. The current framework inevitably requires both developers and interested parties to commit large amounts of time, expertise and money to two separate processes with limited scope for efficiencies where the processes overlap. The second option joining the processes together would reduce time and costs for all parties significantly.

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