BEFORE THE COMMISSION
APPOINTED BY THE OTAGO REGIONAL COUNCIL

UNDER	the Resource Management Act 1991 (RMA)
IN THE MATTER	Of an application RM18.004631
BY	**PIONEER ENERGY LIMITED** **Applicant**

OPENING SUBMISSIONS OF COUNSEL FOR THE APPLICANT

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INTRODUCTION

1. This is an application to amend two existing resource consents held by Pioneer Energy Limited (Water permit 2001.475 Water Permit 2001.476.V3). The permits enable the damming and operation of Lake Onslow as part of the Teviot Hydroelectricity scheme. The proposed change is to increase the seven-day average drawdown rate from 0.2m to 0.4m.

2. The application is made under section 127 of the Resource Management Act 1991 therefore falls to be assessed as a discretionary activity.

3. Lake Onslow, as it is today, was formed for hydroelectricity generation purposes. It would not exist otherwise. The values of the Lake for scenic, recreation and trout habitat purposes are a fortunate side-benefit arising from the core purpose of the water allocation under the existing resource consent. In other words, as the operator of the Lake, Pioneer's first obligation is to maximise the efficient use of the allocated water resource for the purpose that it was allocated. This application is made in pursuit of that obligation.

4. Evidence has been filed on behalf of the applicant as follows:

    a. Mr Tony Jack – Design Engineer. Mr Jack's evidence sets out the reasons for the application and the modelling work done to assist in assessing the effects of the application.

    b. Mr Ross Dungey – Freshwater Ecologist. Mr Dungey provides an assessment of the ecological effects of the proposal. Mr Dungey also provides some evidence regarding angler access etc given his significant personal experience of the Lake.

    c. Mr Will Nicolson – Resource Management Planner. Mr Nicolson has completed the planning analysis of the proposal in accordance with the Act. Mr Nicolson also provides some comments with respect to proposed conditions.

5. Applicant agrees with the ultimate conclusion of the Section 42A report, that consent for the variation should be granted.

KEY ISSUES

6. The key issues of contention are:

    a. the existing environment against which this proposal needs to be assessed;

    b. the robustness of the model prepared by Pioneer to assist the assessment of the proposal;

    c. the relationship between the two relevant national policy statements namely the National Policy Statement for Renewable Electricity Generation and the National Policy Statement for Freshwater Management.

Existing Environment

7. Counsel has reviewed the advice from Wynn Williams attached with the section 42A report. Counsel agrees with the conclusions of that advice, in particular that the existing resource consents, exercised to their fullest extent comprise the 'environment' against which this variation application must be considered.

8. Given my agreement with that advice I do not re-traverse the caselaw and analysis in these submissions.

9. This effectively means that it is a comparison of Scenario B and C that are the legally relevant considerations.

10. That is not to say that the 'on the ground' environment is to be completely ignored. A certain degree of pragmatism needs to be employed, taking a 'real world' view of how the consents will be exercised. Mr Jack discusses this in his evidence. This suggests that the 'on the ground outcome of this application will be something between Scenario A and C.

The robustness of the model

11. Mr Jack produced the model following a series of questions from Ms Pritchard. It was developed to help the Council and other parties understand the proposed variation.

12. Because the consent has not been exercised to its fullest extent historically, 'what we see on the ground' is not the baseline for assessing effects of the proposal.

13. What needs to be borne in mind when considering the model is:

    a. The complexity of the variables at play including:

        i. Variable inflows;

        ii. Variable outflows;

        iii. Electricity demand variation;

        iv. Natural seasonal variability both in terms of the hydrology, but also the ecology.

        v. The variable lake form;

        vi. The suite of existing resource consent conditions which influence the operating regime in different ways at different times and lake levels.

        vii. Paucity of data in some respects.

14. It is inherently difficult to predict or replicate these complexities. Hence the model should be considered with that in mind. It is but one of the pieces of information available to assess the potential effects of the proposed variation.

15. The significant variation that can arise from the operation of the Lake is perhaps best depicted in Figure 1 of Mr Jack's evidence.

16. Mr Jack's evidence responds to some of the matters raised by the section 42A report, including completing some further calibration analyses which reinforce the correction factor applied. He also

explains the rationale for relying on the Taieri derived data set for calculating lake inflows.

17. It is noted that the National Policy Statement for Freshwater Management 2020 requires the best information available at the relevant time to be used. Based on the evidence of Mr Jack it is submitted that this is the model. None of the other witnesses have promoted alternative information or data that is better, or more reliable.

18. Clause 1.6(3) requires that decisions not be delayed due to uncertainty.

Relationship between the two NPS's

19. Both the National Policy Statement for Renewable Electricity Generation and the National Policy Statement for Freshwater Management are relevant to this application under section 104(1)(b).

20. The NPSREG Preamble notes that the NPSREG does not apply to the allocation and prioritisation of freshwater, however I do not consider this particular application is an allocation or prioritisation decision as anticipated by the preamble. Freshwater has already been allocated by the consent that is the subject of this variation application.

21. The NPSFM is more recent and is drafted in more direct terms. It also includes Policy 4 which seeks to ensure freshwater is managed as part of New Zealand's response to climate change. To this extent the NPSFM has sought to provide direction on the reconciliation of the potentially competing matters in the two NPS's. It is submitted that Policy 4 is a nod to renewable electricity generation unless there are other competing policies that count against the proposal.

22. Based on the evidence available, it is submitted that the proposed change is not going to jeopardise the health and wellbeing of affected water bodies, whether assessed against the maximum consented baseline, or the previous operating regime for that matter. This is not a case where Priority 1 of the NPSFM Objective is in jeopardy.

23. Nor does the evidence suggest that Policy 9 or 10 will not be achieved[1].

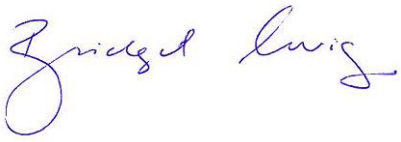
24. There is an element to policy 11 of the NPS FM that is also relevant:

    Policy 11: Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided.

25. This case is not about allocation, but rather the efficient use of water that has been allocated for a particular purpose. It is the freedom to make better use of the existing allocated resource that Pioneer seeks.

26. On this basis it is submitted that there are no barriers created by the NPSFM to granting the variation sought and doing so would be consistent with the direction of the NPSREG and Policy 4 and 11 of the NPSFM.

Signed:



B Irving

Counsel for Pioneer Energy Limited

1 July 2022

[1] The ecological experts appear to be aligned, refer Evidence of Jayde Couper at [70].