



Chari Taylor
Department of Conservation
Hokitika.

17 May 2018.

Dear Chari,

No 8 Limited's application for a lease, licence, and easement concession for a hydro scheme in McCulloughs Creek, West Coast

We wish to be heard in support of our submission

Introduction

Federated Mountain Clubs (FMC) was founded in 1931 and advocates for New Zealand's backcountry and outdoor recreation on behalf of over 20,000 members in more than 80 clubs. We have an interest in McCulloughs Creek for the recreational opportunities it offers and in terms of its status under the Conservation Act 1987, the Reserves Act 1977, and the policies and plans that fall from those statutes including the West Coast Conservation Management Strategy.

Purpose for which the land at McCulloughs Creek is held

The proposed project would take place on lands with scenic reserve, marginal strip, and stewardship classifications.

Under the Reserves Act 1977, land is held for the preservation and management of its natural values (s3).

Marginal strips are held for conservation purposes, public access, and for public recreational use (Conservation Act s24C).

The purpose for which stewardship land is held is conservation, which s2 of the Conservation Act describes as *the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.*

On the basis that the purposes for which the lands are held are preservation and conservation, it would be questionable to approve the application.

Stewardship

The Parliamentary Commissioner for the Environment noted in her 2013 report, Stewardship Land, that when the Conservation Act 1987 was enacted,

A large proportion of the land put under DOC management was denoted stewardship land. These mostly forested lands had not been protected previously, but were to be protected until their value had been assessed. After assessment, they were to be reclassified into appropriate categories of conservation land or turned over to commercial production.

Given that without appropriate classification the lands enjoy low legal protection status only, she went on to recommend that:

The Minister of Conservation instruct the Department of Conservation to identify areas of stewardship land that are clearly of significant conservation value, and reclassify them in accordance with that value.

The triggers for her report were significant tests of the protection of high value stewardship land that were enabled by the absence of appropriate classifications. It would be unacceptable, given the red flags raised by the report, and, indeed, the challenges that prompted it, for any more such challenges to bear fruit or even distract DOC significantly.

The values of the stewardship component of the land at McCulloughs Creek are yet to be fully assessed, and are therefore largely not understood (the application's environmental assessment quotes McEwen 1987: *the vegetation and flora of the District are relatively poorly known*).

Lack of information about the values of the area in question should not enable a short circuit to the compromise of those values before they can be understood. This would be abrasive to the Act - with respect to this case, and, more broadly, as a precedent.

FMC believes that, were assessment to take place, the stewardship land affected by No 8 Limited's application could be considered worthy of high or very high classification such as conservation park or Westland Tai Poutini National Park addition. Perversely, if the application were approved, the associated infrastructure's presence could have a negative impact on the land's potential for such reclassification. Consideration of No 8 Limited's case - or any similar - should take place only after assessment and appropriate classification.

Because of the relevant statutory demands of preservation and protection, and the precautionary approach which is appropriate when dealing with unassessed stewardship land, it would be inappropriate to approve the application.

No 8 Limited's case and tests laid down under Part 3B of the Conservation Act 1987

Statutory requirements relating to concessions

Specific tests laid down by Part 3B of the Act are that:

- * the applicant supply reasons and sufficient information to satisfy the Minister that granting the application is *lawful and appropriate* (s17S(g)(ii)).
- * an application not be granted *if the proposed activity is contrary to the provisions of this Act or the purposes for which the land concerned is held* (s17U(3)).
- * an application not be granted if *the activity- could reasonably use an existing structure or facility or the existing structure or facility without the addition* (s17U(4)(b)).

Concessions-related statutory requirements: No 8 Limited's application in national and regional contexts

A 2015 comprehensive report, Proposed Waitaha Hydro Scheme: Assessment of Reasons, Financial Viability, and Alternative Locations (Baldwin) comprehensively examined electricity supply and demand in national and Westland contexts. Findings included that:

- * Westland was well-served by the recently-upgraded national grid.
- * at the date of publication, national power availability exceeded demand.

* nationwide, 20 power plants had consent and were awaiting construction, with more planned.

* surplus in the national grid would increase substantially if Tiwai Point aluminium smelter, whose future is uncertain, were to close.

In Westland alone, several other hydro schemes have been commissioned or approved recently, and more are being considered. They include:

* Amethyst Hydro Scheme, operating since 2014.

* Inchbonnie Hydro, operating since January 2016 (after the publication of the report mentioned above).

* a Stockton Plateau hydro scheme, approved but not yet built.

* Griffin Creek Hydro, proposed.

Tests set by Part 3B not met

FMC is of the view that tests posed under s3B are not met:

* It is clear that the activity could take place in alternative locations (s17U(4)(b)).

* The proposed activity is, based on the previous point, contrary to the provisions of the Act and the purposes for which the land is held (s17U(3)).

* Based on the two previous points, it is unlikely that information provided will be sufficient to satisfy the Minister that it would be appropriate or lawful to grant the lease, licence and easement concession applied for (s17S(g)(ii)).

The application's lawfulness is questionable as it does not meet tests set by Part 3B of the Conservation Act 1987.

Proposed walking track

McCulloughs Creek falls within a backcountry-remote zone described in the Westland Conservation Management Strategy (3.6.1.4).

As part of the development, No 8 Limited proposes to *improve access to the general area by the construction of the penstock access track and the lookout at the summit. No 8*

proposes to provide public access to the lookout point so that the public can visit the Whataroa Scenic Reserve and see spectacular views across the Whataroa plains.

While the applicant states that the track would fall within the 'route' category, examples provided indicate a track that, while suitable for a frontcountry setting, would be inappropriate for a backcountry-remote zone.

As the application proposes constructing a track that would be incompatible with direction given by the relevant CMS, approving it would be questionable.

General - quality of application

The executive summary of the application's environmental assessment makes numerous arguments that FMC believes are in tension with the relevant statutory environment; as stated above, these include cases made for additions to existing sufficient power generation capacity, for development of unassessed stewardship land, and for construction of a front-country-style track in a backcountry-remote zone.

A further inapposite stance concerns economic benefit; the relevant Acts provide no economic mandates.

The application shows faulty understanding of the purposes of the relevant statutes, putting a question mark over its appropriateness in a general sense.

Recommendation

FMC recommends that the application be declined because:

**** it is not in accordance with the purposes for which the lands are held under the Conservation Act 1987 and the Reserves Act 1977.***

**** potential for harm to presently unknown values within the stewardship portion of the land means it is not in accordance with the purposes of the Conservation Act 1987.***

**** it fails tests under Part 3B of the Conservation Act 1987 as noted above.***

**** the track proposed would not be in accordance with the backcountry-remote zoning of the land concerned as per the West Coast Conservation Management Strategy.***

**** its flawed appreciation of the relevant statutory environment casts doubt on its appropriateness generally.***

Yours sincerely,

J R Finlayson,
Federated Mountain Clubs vice-president and freshwater spokesperson.

FMC - FEDERATED MOUNTAIN CLUBS

www.fmc.org.nz | President: Peter Wilson (021) 1513486 | Vice-President: Jan Finlayson (021) 502297

Executive Officer: Jamie Stewart (027) 7674064 | eo@fmc.org.nz
Federated Mountain Clubs | P O Box 1604 | Wellington 6104 | New Zealand/Aotearoa



A. Permission Application Number and Name of Applicant

No. 8 Limited

B. Name of Proposed Activity and Location(s)

Operation of a run-of-river hydro scheme within the Waitangi Forest Conservation Area, Whataroa Scenic Reserve and Marginal Strip – McCulloughs Creek, West Coast, South Island

C. Submitter Information-

Full Name:

Annette Phillips,
on behalf of: **New Zealand Canyoning Association (NZCA)**
<http://nzcanyoningassociation.org/about-us/>

Address for Service:

229 Beacon Point Road
Wanaka 9305

Telephone: **027043807576**

Email Address: splitapple@yahoo.com if unavailable, for urgent contact please forward correspondence to Daniel Clearwater at chucky@kiwicanyons.org

Note: Communication from DOC will be via e-mail unless alternate contact is requested below.

I wish to be contacted alternately by: _____

D. Statement of Support/Opposition

Opposed

E. Hearing Request

Do Not wish to be heard in support of this submission at a hearing.

F. Submission

Dear Chari,

The New Zealand Canyoning Association (NZCA) does not support the granting of a lease, licence and easement concession for a small hydro scheme in McCulloughs Creek, West Coast to No 8 Limited.

We do not wish to be heard in support of this submission.

We detail the reasons for our position below.

Who is NZCA and what is canyoning?

At the most basic level, canyoning is the practice of descending rivers and streams, using any combination of walking, climbing, abseiling (rappelling), swimming, jumping and sliding.

With the unprecedented growth of recreational canyoning in New Zealand, the NZCA was formed as an incorporated society in 2015. We currently represent 250 members, both national and internationally; and have over 1,000 followers on our Kiwi Canyons Facebook group.

NZCA seeks to protect canyon environs

One of our key strategic objectives is the protection and access of canyon environments (<http://nzcanyoningassociation.org/about-us/strategic-objectives/>). In adhering to our strategic objectives, we are closely watching current and future hydro schemes and proposals (throughout New Zealand) that may impact on the canyon environs and the recreational values for canyoners.

McCulloughs Creek is not a canyon, so why is NZCA interested in this application?

McCulloughs Creek is not strictly a canyon, in that it does not have narrow gorges cut into bedrock. It therefore does not have much interest to canyoners for recreational activity at this point in time.

McCulloughs Creek is, however, a pristine watercourse and has strikingly similar characteristics to canyons that we actively work to protect. The process being followed by the Department of Conservation with respect to his application is therefore of interest to us.

McCulloughs Creek falls within conservation land

As per No 8 Limited's Environmental Impact Assessment (EIA) Report, paragraph 5.2.3 pg 72, McCulloughs Creek falls within:

- Conservation Area McCullough Creek, Land unit number: 13507, CMS Map sheet 7
- Stewardship Area - s.25 Conservation Act 1987

In addition, McCullough Creek is classified in the Westland CMS 2010-2020:

- Map 18: Te Wahi Pounamu Place, Conservation Outcomes - Priority Sites for Biodiversity Management
- Map 19a: Te Wahi Pounamu Place, Recreation Outcomes - Backcountry - Remote Zone.

We believe the process being followed is not in accordance with the law

We believe the process – by which DOC has allowed No 8 Limited to be in a position of having such an application considered on conservation land – is in breach of DOC's statutory provisions that are currently protecting the land. More specifically:

- Conservation Area: As per the Conservation Act 1987, McCulloughs Creek has been set aside for the purpose of conservation. The proposed activity/use by No 8 Limited conflicts with this purpose. No 8 Limited **has not proven a need** for the activity/use at this site. No 8 Limited's Environmental Impact Assessment Report does not justify the use of high value conservation land for relatively small gain in commercial commodity (given the national availability of this hydropower resources nationwide).
- Stewardship Land: We believe that **assessment of stewardship lands for their conservation values should take place prior to allowing them to be modified for commercial gain** of any nature. Acting in the reverse manner would be in breach of the act and sets a precedent for the erosion of other areas under the same title.

We believe a decision against this application will set a precedent for protecting conservation land against developments of small commercial gain. This will help us to protect the recreational and environmental values of canyons on conservation land that are at risk of future hydropower development.

Other possible issues with the applicant's EIA

We have also identified several inadequacies in No 8 Limited's Environmental Impact Assessment Report, including:

- Insufficient information on actual low flows on this river, calculations are mostly established via averages and information from other rivers. Thus if rates vary outside these estimates over time, and at periods are too low, will the project still be viable.
- No time period given for regeneration on cleared forest and thus the longer term impact. Visual impact examples given for post regeneration, are well established tracks in other areas
- Given the river environ is home to endangered native fish and eels, what if ongoing adverse affects occur? Will the monitoring be sufficient and accurate to establish this possibility.
- Has there been sufficient monitoring of the river environment to establish if other endaged species use this habitat. For example Whio (Blue Ducks).

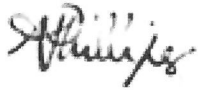
In summary

The NZCA is closely monitoring current and future hydro schemes and proposals (throughout New Zealand) that may impact on the canyon environs and the recreational values for canyoners.

No 8 Limited have not proven the need for developing a hydropower facility on conservation land. They have not given any evidence of alternative locations, outside of conservation land, being considered.

We believe the bar for approving activities that clearly conflict with the conservation objective should be set much higher than is justified by No 8 Limited's application. We therefore recommend the application be declined.

G. Your Signature



Signature of submitter or person authorised to sign on behalf of submitter

Annette Phillips

Printed name of submitter or person authorised to sign on behalf of submitter

17/05/2018

Date

Please complete this form and send to chtaylor@doc.govt.nz. You may also mail your submission to:
Director-General, c/o Department of Conservation, c/o Department of Conservation, West Coast Tai Poutini
Conservancy, Private Bag 701, HOKITIKA 7842, Attention: Chari Taylor

ROYAL FOREST & BIRD PROTECTION SOCIETY OF NEW ZEALAND INC

From West Coast Branch
Chair Kathy Gilbert
Phone 037554250
Email kgilbert@farmside.co.nz



22 May 2018

Director-General
West Coast Tai Poutini Conservancy
Department of Conservation
Private Bag 701
Hokitika

Attention: Chari Taylor Email: chtaylor@doc.govt.nz

Submission on Application for a lease, licence and easement from No 8 Limited

West Coast Forest and Bird generally support run-of-river hydro schemes that feed into the National Grid, and that are not situated in National Parks.

The application by No 8 appears to be complete, and argues that there will be minimal detrimental effects. However there is no analysis available to the public by independent or DOC experts.

There are a number of considerations not covered:

The need for this power scheme. This issue is not addressed – how does this scheme tie into future predictions of power use on the West Coast? The applicant needs to justify the need for the scheme. There are consented schemes at Arnold River and Stockton, are these preferable to this scheme?

Cumulative effects of small run-of-river power schemes. Recently there was an application for a hydro scheme in the next catchment (Parker Creek). If both schemes were consented then there could be detrimental effects on the catchment area as both creeks would be affected. There needs to be some kind of policy on how many hydro schemes would be allowed.

Biodiversity Values. The proposed project is located on public conservation land in Whataroa Scenic Reserve (769 hectares), Waitangi Forest (57,326 hectares, Stewardship Land), and McCulloughs Creek Marginal Strip, all administered by the Department of Conservation. This area is part of the Upper Whataroa Priority Site for Biodiversity Management (CMS 2010). What effect would this development have on the priority site?

Effects on birds, lizards and bats. Wildland Consultants Ltd carried out an ecological assessment of the McCulloughs Creek Hydropower Project, addressing vegetation, freshwater fish and macroinvertebrates. However potential effects on birds, lizards, bats, and the marine ecosystem were not assessed – this needs to be assessed before any

concession is granted. A DOC scientist also needs to do an independent assessment on the potential effects on both the terrestrial and freshwater environments.

Scenic Reserves (Reserves Act Section 19) These reserves are established to protect and preserve in perpetuity, for their intrinsic worth and for the public benefit, enjoyment and use, such qualities of scenic interest or beauty or natural features worthy of protection in the public interest. What is the view of an independent landscape architect on the visual intrusion of the structure - both during and after construction - given that it's a scenic reserve?

West Coast branch of Forest and Bird would like to see the independent analysis of this concession application and the DOC concession report to the decision maker. **Consequently we oppose this application being granted on the basis of insufficient information publically available.**

We would like to be heard at the hearing for this concession.

Kathy Gilbert

Chair West Coast Forest and Bird.