

**BEFORE THE ENVIRONMENT COURT**

**I MUA I TE KOOTI TAIAO O AOTEAROA**

**IN THE MATTER OF** the Resource Management Act 1991  
**AND**  
**IN THE MATTER** of appeals under clause 14 of the First  
Schedule to the Act  
**BETWEEN** **ARATIATIA LIVESTOCK LIMITED**  
(ENV-2018-CHC-29)  
**MERIDIAN ENERGY LIMITED**  
(ENV-2018-CHC-38)  
**WAIHOPAI RŪNAKA, HOKONUI RŪNAKA, TE**  
**RŪNANGA O AWARUA, TE RŪNANGA O ORAKA**  
**APARIMA, and TE RŪNANGA O NGĀI TAHU**  
**(collectively NGĀI TAHU)**  
(ENV-2018-CHC-47)  
**ROYAL FOREST & BIRD PROTECTION**  
**SOCIETY OF NZ INC**  
(ENV-2018-CHC-50)  
*Appellants*

**AND** **SOUTHLAND REGIONAL COUNCIL**  
*Respondent*

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**STATEMENT OF EVIDENCE OF NATASHA SITARZ**  
**ON BEHALF OF THE ROYAL FOREST AND BIRD PROTECTION SOCIETY**  
**OF NEW ZEALAND INC**  
**29 July 2022**  
**(Planning)**

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## **INTRODUCTION**

1. My name is Natasha Leigh Sitarz. I am a Resource Management Planner at Royal Forest & Bird Protection Society of New Zealand Incorporated (Forest & Bird).
2. I have worked at Forest & Bird since February 2016 where I provide planning advice, assist in drafting submissions on planning documents and consent applications and provide planning evidence.

## **QUALIFICATIONS AND EXPERIENCE**

3. I hold a Bachelor of Resource and Environmental Planning from Massey University. I have 19 years' of planning experience in local and central government in New Zealand. Prior to working for Forest & Bird I worked for the New Zealand Transport Agency providing planning advice on designation processes and district plans. I have also worked for Environment Canterbury in the development of regional plans. I am a member of the New Zealand Planning institute.
4. I have prepared and presented evidence for Forest & Bird on to the Environment Court numerous times, including on:
  - a. The proposed Bay of Plenty Coastal Environment Plan council decision 2015, where I considered proposed provisions relating to regionally significant infrastructure and natural heritage protection.
  - b. The Proposed Northland Regional Pest Plan and Marine Pathway Management Plan 2017-2027 under the Biosecurity Act 1993, where I considered the adequacy of provisions to address the objective of "preventing the spread" of Kauri dieback disease.
  - c. The Proposed Otago Regional Policy Statement council decision 2016. My evidence considered proposed policy for mining activities. This included consideration of policies which provided for offsetting and compensation of residual effects on indigenous biodiversity.

- d. The Proposed Invercargill District Plan council decision 2016, where I considered wording for a definition of indigenous biodiversity in the context of plan provisions to protect indigenous biological diversity.
  - e. In 2020 I presented evidence relating to the Brookby Quarries Ltd appeal on the Auckland Unitary Plan with respect to the planning framework for mineral extraction activities in the mineral extract zone where SEA overlays apply.
  - f. In 2020 and 2021 I presented evidence on the Proposed Northland Regional Plan in relation to the activity status for reclamation in the Marsden Point Port Zone, the Significant Ecological Area overlay, mangrove removal provisions and livestock exclusion rules.
  - g. I have recently prepared evidence for an upcoming Environment Court hearing on the Te Kuha coal mining proposal on the West Coast – a proposal including loss of natural inland wetland and adverse effects on significant indigenous biodiversity values.
5. I also prepared and presented evidence in 2017 to a Board of Enquiry on the Trans-Tasman Resources iron and mining case in the South Taranaki Bight under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.
6. I have not been involved in the mediations on Topic B6 Tranche 3, or other topics related to Forest & Bird’s appeal on the proposed Southland Regional Land & Water Plan.

**SCOPE OF EVIDENCE**

7. I have been asked to provide my planning opinion regarding the unresolved matters for Topic B6 Tranche 3, specifically:
- a. Appropriate wording of Policy 26 and Rule 52A;
  - b. The appropriate activity classification for Rule 52A;

- c. The decision version of Policy 26, Rule 52 and Appendix E;
  - d. The amendments preferred by Meridian; and
  - e. Any outstanding matters.
8. I have considered whether there may be alternative or consequential amendments necessary to ensure the Plan gives effect to higher order documents<sup>1</sup> and achieves the purpose of the Act.
  9. I have considered the proposed amendments to provisions for consistency with the requirements of the higher order planning provisions and RMA matters.
  10. In drafting this evidence I have read:
    - a. The evidence of Mr McCallum-Clark dated 14 December 2018 on behalf of the Southland Regional Council for Topic A;
    - b. The evidence of Mr Feierabend dated 15 February 2019 provided on behalf of Meridian for Topic A;
    - c. The evidence of Ms Whyte dated 15 February 2019 for Meridian Energy Limited for Topic A;
    - d. The evidence of Mr Farrell dated 1 March 2019 on behalf of Southland Fish & Game Council and the Royal Forest & Bird Protection Society of New Zealand Inc for Topic A;
    - e. The statement of evidence in reply (supplementary) of Ms Kirk dated 13 May 2020 for the Director General of Conservation for Topic A;
    - f. The Officer's Reply for Council Reply Hearing dated 3 November 2017 as it addresses activity status and new rule 52A for the Manapouri Power Scheme (pages 91-93);

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<sup>1</sup> I understand there may limitation on this due to the scope of appeals.

- g. The first interim decision of the Environment Court as it addressed Objective 10, and Annexure 1 to the 4th Interim decision which confirms objective wording.

#### **CODE OF CONDUCT**

- 11. I confirm that I have read the Expert Witness Code of Conduct in the Environment Court Practice Note 2014. I have complied with the Code of Conduct in preparing this evidence and agree to comply with it while giving evidence before the Environment Court. This evidence is within my area of expertise, except where I state that I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

#### **MATTERS RESOLVED AND IN DISPUTE**

- 12. I understand that appeals on objectives are largely resolved and are subject to interim decisions of the Court. I also understand that the matters in dispute in these proceedings relate to Policy 26, Rule 52A and Appendix E.
- 13. The Forest & Bird appeal seeks:
  - a. to ensure all abstraction, damming, diversion and use of water from the Waiau catchment is non-complying, except as provided in Rules 49, 50 or 51 and the takes authorised by Section 14(3) of the Act; and
  - b. the deletion of Rule 52A on the basis that controlled activity status for Manapōuri hydro-electric generation scheme-related activities is inappropriate in an over-allocated catchment, where the objective must be to phase out over-allocation;
- 14. Forest & Bird is a s 274 party to other appeals on Policy 26 and Rule 52A. This includes:
  - a. Supporting the relief of Aratiatia Livestock Ltd, which includes amendments to policy 26 to consider adverse effects of the Manapouri hydro-electric scheme, the deletion of Rule 52A, a discretionary

activity status where standards are met, a non-complying activity where not and the deletion of provision for Manapouri hydro-electric scheme in Appendix E.

- b. Opposing the relief sought of Meridian relating to rules but does not oppose the relief sought for policy 26.

#### **EXECUTIVE SUMMARY**

- 15. I have considered relevant provisions of higher order documents including the NPSFM 2020 which was not in effect at the time of previous hearings and decisions.
- 16. I have considered that while the Southland Regional Policy Statement 2017 (RPS) gives effect to the NPSREG, the NPSFM must be considered directly.
- 17. Forest & Bird and Aratiatia Livestock Ltd have agreed on proposed relief which I support. This relief on Policy 26 is set out at paragraph 70 and on Rule 52A in Appendix 3. There is a high degree of alignment between this proposed relief and that sought by Meridian.
- 18. The key differences in relief sought are:
  - a. The inclusion of direction in Policy 26 to safeguard the mauri and provide for the ecosystem health of the Waiau River and to reverse or reduce degradation of the Waiau River, as sought by Forest & Bird and Aratiatia Livestock;
  - b. The inclusion of additional matters for restriction of discretion and scope to consider avoidance in addition to remediation and mitigation measures in Rule 52A (a) sought by Forest & Bird and Aratiatia Livestock; and
  - c. The removal of the first two matters of discretion and an additional limitation on the exercise of discretion in Rule 52A (a) sought by Meridian.

19. Forest & Bird and Aratiatia Livestock seek additional direction within Policy 26. In my opinion this direction resolves potential conflicts between policies and achieves Objective 2 in addition to Objectives 9B and 10.
20. I consider that the amendments sought to Rule 52A by Meridian would constrain decision-making in a way that could result in perverse outcomes. For example, it could lead to decisions whereby there is uncertainty on the level at which FMU limits will be set and potentially making all water above limits available to the MPS. I find that this would not achieve Objective 2 of the pSWLP and would be inconsistent with the NPSFM 2020.
21. I support a restricted discretionary status on the basis of the matters of discretion included in Forest & Bird and Aratiatia Livestock version.
22. Lastly, I have identified some matters for clarification in the wording proposed by Meridian that are not addressed in the amendments of Forest & Bird and Aratiatia Livestock.

#### **STATUTORY FRAMEWORK**

23. The RMA sets out responsibilities, functions and specific requirements for the development and review of Regional Plans. I consider the following RMA provisions are relevant to these proceedings:
  - a. Part 2, which sets out the sustainable management purpose of the RMA (section 5) and matters of national importance which must be recognised and provided for under section 6. Of particular relevance are Section 6(a), (c) and (e) which:
    - i. for freshwater are achieved through the NPSFM 2020; and
    - ii. within the coastal environment, are achieved through Policies 2, 11, and 13, of the NZCPS.



- b. In the preparation and change of plans, the obligation to have particular regard to any evaluation report prepared in accordance with section 32.<sup>2</sup>
- c. Section 32(1)(b) and (2)(a) are relevant to the further evaluation of proposed changes to provisions as required under s32AA.
- d. Section 32AA requires a further evaluation for changes that are proposed to be made since the evaluation report for the proposal was completed. Clause (c) sets out that this be undertaken at a level of detail that corresponds to the scale and significance of the changes. I have set out my s32AA assessment in Appendix 4.
- e. Section 63 requires that a regional plan must assist a regional council carry out any of its functions to achieve the purpose of the RMA.<sup>3</sup> Of relevance to these proceedings are functions regarding:
  - i. the control of the use of land for the maintenance and enhancement of the quality of water in water bodies and coastal water, the maintenance of the water quantity, and maintenance and enhancement of ecosystems in water bodies and coastal water;<sup>4</sup>
  - ii. the taking, use, damming and diversion of water, the control of flows and levels,<sup>5</sup> and the ability to allocate such use;<sup>6</sup>
  - iii. discharges of contaminants;<sup>7</sup> and
  - iv. the maintenance of indigenous biological diversity.<sup>8</sup>

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<sup>2</sup> s66(1)(e).

<sup>3</sup> Section 63, RMA.

<sup>4</sup> Section 30(1)(c).

<sup>5</sup> Section 30(1)(e).

<sup>6</sup> Section 30(1)(fa)(i).

<sup>7</sup> Section 30(1)(f).

<sup>8</sup> Section 30(1)(ga).

- f. Section 66 sets out the matters a regional plan must be prepared and changed in accordance with. This includes council's functions under s30, the provisions of Part 2, council's obligation to prepare and have regard to an evaluation report under s32, a national policy statement, NZCPS, a national planning standard and any regulations.
- g. Section 66 requires a regional council to take into account any relevant planning document recognised by an iwi authority, if lodged with the council and to the extent that their content has a bearing on the resource management issues of the region.
- h. A Regional Plan must give effect to the NZCPS, National Policy Statements (including the NPSFM) and the RPS.<sup>9</sup>

#### **New Zealand Coastal Policy Statement 2010 (NZCPS)**

24. The NZCPS is relevant when considering the management of freshwater and effects of activities within coastal environment and landward and where the CMA is the receiving environment. In particular:
- a. Policy 4 which provides for integrated management and gives consideration to land use activities that affect water quality in the coastal environment through sedimentation;
  - b. Policy 11 for the protection of indigenous biodiversity in the coastal environment;
  - c. Policy 13 for the preservation of natural character of the coastal environment; and
  - d. Policy 23 (1) which sets out that in managing discharges to water in the coastal environment, to have particular regard to:
    - (a) the sensitivity of the receiving environment;*
    - (b) the nature of the contaminants to be discharged, the particular concentration of contaminants needed to achieve the*

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<sup>9</sup> Section 67(3)(a) and (c) of the RMA.

*required water quality in the receiving environment, and the risks if that concentration of contaminants is exceeded; and*

*(c) the capacity of the receiving environment to assimilate the contaminants; and:*

*(d) avoid significant adverse effects on ecosystems and habitats after reasonable mixing;*

*(e) use the smallest mixing zone necessary to achieve the required water quality in the receiving environment; and*

*(f) minimise adverse effects on the life-supporting capacity of water within a mixing zone.*

25. I consider that the NZCPS is relevant with respect to the discharges associated with the Manapouri Power Scheme (MPS) at Deep Cove and as a receiving environment of upstream activities and effects on the Waiau River. I consider the provisions of the pSWLP should be consistent with the coastal plan, RPS, and NZPCS

#### **National Policy Statements and National environmental standards**

26. I acknowledge that there are other national policy statements and a number of national environmental standards of relevance to the pSWLP generally. Of most relevance to Topic B6 Tranche 3 is the NPSFM 2020 and the NPSREG 2011.

#### **National Policy Statement for Freshwater Management 2020 (NPSFM)**

27. The NPSFM in its current form came into effect September 2020, well after the Council Decision on the pSWLP. My understanding is the proposed plan was drafted to give effect to the NPSFM 2014 and that in making its decision the Council considered the NPSFM 2014 as updated 2017.<sup>10</sup> It was also the 2017 version which was considered by the Court for its interim decisions on Topic A.<sup>11</sup> However, I understand that the NPSFM 2020 must now be considered. This is because the NPSFM 2020 does not include any transitional provisions and the general obligation under the RMA is for a plan to give effect to a national policy statement. In my opinion, the pSWLP

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<sup>10</sup> Report and Recommendations of the Hearing Commissioners (29 January 2018) at [45].

<sup>11</sup> The First Interim Decision is dated 20 December 2019, the Second Interim Decision is dated 29 June 2020, and the Third Interim Decision is dated 23 July 2020.

should give effect to the NPSFM 2020 Objective and Policies to the extent practicable and within the scope of submissions.

28. The NPSFM 2020 has Te Mana te Wai as its fundamental concept:

*Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community*

29. In order to achieve this fundamental concept, it introduces 6 principles and the hierarchy of obligations

(5) *There is a hierarchy of obligations in Te Mana o te Wai that prioritises:*

- (a) *first, the health and well-being of water bodies and freshwater ecosystems*
- (b) *second, the health needs of people (such as drinking water)*
- (c) *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

30. The parts of the NPSFM 2020 of particular relevance to decision making are the Part 2 Objective and Policies, and Part 3 Implementation, which includes direction for regional councils<sup>12</sup> and specific requirements with respect to large hydro-electric generation schemes, including the Manapouri Scheme.<sup>13</sup>

31. The objective of the NPSFM reflects the priorities in Te Mana o te Wai:

- (1) *The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:*
  - (a) *first, the health and well-being of water bodies and freshwater ecosystems*
  - (b) *second, the health needs of people (such as drinking water)*
  - (c) *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

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<sup>12</sup> Subpart 1 Approaches to implementing the National Policy Statement, NPSFM 2020.

<sup>13</sup> Part 3: Specific requirements, 3.31 Large hydro-electric generation schemes, NPSFM 2020.

32. This objective is not fully given effect to in the pSWLP.<sup>14</sup> Objective 2 of the pSWLP reflects the subject but not the prioritisation within them. Similarly, the RPS which became operative in 2017 does not provide direction to prioritise in this way.
33. In considering the unresolved matters I consider it is necessary to ensure plan provisions are not worded in a way that would be inconsistent with the objective of the NPSFM and should, to the extent possible, give effect to it.
34. I consider the following policies<sup>15</sup> of most relevance:

**Policy 1:** *Freshwater is managed in a way that gives effect to Te Mana o te Wai.*

**Policy 2:** *Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for.*

**Policy 3:** *Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.*

**Policy 4:** *Freshwater is managed as part of New Zealand's integrated response to climate change.*

**Policy 5:** *Freshwater is managed through a National Objectives Framework to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.*

**Policy 7:** *The loss of river extent and values is avoided to the extent practicable.*

**Policy 9:** *The habitats of indigenous freshwater species are protected*

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

**Policy 13:** *The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.*

**Policy 15:** *Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.*

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<sup>14</sup> I have considered the decision version as updated from interim decisions on appeals, version 8, in Appendix 2 to this evidence.

<sup>15</sup> 2.2 Policies, Part 2: Objectives and policies, NPSFM 2020.

35. Policy 1 is an active consideration that requires implementation in freshwater management. My reading of this is that it is not just an overall outcome to be achieved but a specific requirement for each decision relating to freshwater management.
36. I set out why I consider these policies of relevance as follows:
- a. The MPS may have impacts on Māori freshwater values and an active role for tangata whenua is to be provided for under Policy 2. I understand that Ngāi Tahu is actively involved in this appeal topic.
  - b. A whole of catchment approach under Policy 3 is particularly relevant given the scale of the MPS and its impacts which extend to a receiving environment in another catchment.
  - c. Policy 4 for renewable hydro-electricity generation is a key aspect of this response which is also recognised by the NPSREG.<sup>16</sup> In my opinion both the benefits and adverse effects of renewable energy need to be considered in achieving this policy.
  - d. I consider that Policy 5 is relevant to the extent that the outcomes for improvement and maintenance are achieved through the wording and activity classification of rule 52A.
  - e. I consider that Policy 7 is relevant to the extent that any future activities may result in the loss of river extent and values. The specific requirements under Clause 3.24 Rivers is relevant to the implementation of this policy in regional plans.
  - f. Policy 9 is relevant to the effects of activities to the extent they may impact on the protection of habitats of indigenous freshwater species.

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<sup>16</sup> Preamble, NPSREG 2011.

- g. Policy 11 is for the allocation and use of freshwater to avoid overallocation and phase out existing overallocation. In my opinion this is relevant to both new and existing activities.
  - h. Of relevance Policy 13 establishes the requirement for monitoring over time and to take action to address degradation. In my opinion this is relevant to new activities and the reconsenting of existing activities.
  - i. In my opinion, the Objective and Policy 1 in particular are relevant to the interpretation of enabling under Policy 15, and must be applied in accordance with prioritisation and gives effect to Te Mana o te Wai.
37. My understanding is that the directions for the National Objectives Framework (NOF) follow on from the previous NPSFM. This means that the FMU process for the Waiau Catchment remains a requirement under the NPSFM 2020.
38. Clause 3.26 (4) and (5) of the NPSFM 2020 sets out specific regional council requirements for instream structures and fish passage. This includes the extent to which it provides efficient and safe passage for fish, at all their life stages and promoting the remediation of existing structures on fish passage where practical. While I am not familiar with any potential effects on the MPS on fish passage, the scope for council to consider remediation at reconsenting would be appropriate where fish passage is impacted.
39. Clause 3.28 “Water allocation”, sets out specific matters for regional council plans, including criteria for transfers of water take permits and to maximise efficient allocation. While the pSWLP includes policy direction on transfers<sup>17</sup> and an objective<sup>18</sup> for water to be allocated and used efficiently and policy direction on reasonable and efficient use, these policies were developed prior to the NPSFM and may not entirely be in accordance with

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<sup>17</sup> Policy 43.

<sup>18</sup> Objective 11.

it. I consider that scope for council to consider these matters at reconsenting would be appropriate.

40. Clause 3.31 sets out specific matters for regional councils with respect to FMUs that are affected by a Scheme, including the Manapouri scheme.

Clauses (2), (3) and (4) are that:

(2) *When implementing any part of this National Policy Statement as it applies to an FMU or part of an FMU affected by a Scheme, a regional council must have regard to the importance of the Scheme's:*

(a) *contribution to meeting New Zealand's greenhouse gas emission targets; and*

(b) *contribution to maintaining the security of New Zealand's electricity supply; and*

(c) *generation capacity, storage, and operational flexibility.*

(3) *Subclause (4) applies if:*

(a) *an FMU or part of an FMU is adversely affected by an existing structure that forms part of a Scheme; and*

(b) *the baseline state of an attribute in the FMU or part of the FMU is below the national bottom line for the attribute; and*

(c) *achieving the national bottom line for the attribute would have a significant adverse effect on the Scheme, having regard to the matters in subclause (2).*

(4) *When this subclause applies, the regional council:*

(a) *may set a target attribute state that is below the national bottom line for the attribute, despite clause 3.11(4); but*

(b) *must still, as required by clause 3.11(2) and (3), set the target attribute state to achieve an improved attribute state to the extent practicable without having a significant adverse effect on the Scheme having regard to the matters in subclause (2) of this clause..*

41. My reading of this is where an attribute target state is below the national bottom line there must still be an improved attribute state set through the FMU process. This aligns with Policy 5 discussed above.



## The National Policy Statement for Renewable Electricity Generation 2010 (NPSREG)

42. I agree with Ms Whyte assessment<sup>19</sup> that the RPS gives effect to the NPSREG. I have therefore focused on the RPS provision rather than the NPSREG. In doing this, I note that there are some differences in wording that, while they do not detract from giving effect to the NPSREG, may have implications when considering the NPSFM 2020.<sup>20</sup>
43. For example, RPS policies ENG.2, WQUAN.1 and WQUAN.2 which give effect to the NPSREG may not give effect to the NPSFM 2020.

- a. Policy ENG.2 for the benefits of renewable energy is to:

*Recognise and make provision for the development of renewable energy activities, and their benefits, which include:*

- *maintaining or increasing electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions;*
- *maintaining or increasing security of electricity supply at local, regional and national levels by diversifying the type and/or location of electricity generation;*
- *using renewable natural resources rather than finite resources;*
- *the reversibility of the adverse effects on the environment of some renewable electricity generation technologies;*
- *avoiding reliance on imported fuels for the purposes of generating electricity;*

*while appropriately addressing adverse effects.*

- b. Policy WQUAN.1 for instream values is to:

*Maintain instream values of surface water that derive from flows and levels of water, while recognising the special circumstances of the Waiau catchment.*

- c. Policy WQUAN.2 – Overallocation

Avoid over-allocation of surface water and groundwater, and resolve any historical instances of over-allocation, while

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<sup>19</sup> Evidence of Ms Whyte dated 15 February 2019 (for Part A topic) at Table 1, Appendix 4,

<sup>20</sup> The NPSREG does not apply to the allocation and prioritisation of freshwater. Preamble, NPSREG 2011.

recognising the special provisions made for the Waiau catchment.

44. In my opinion the recognition and provision for development of renewable energy, its benefits and appropriately addressing adverse effects in Policy ENG.2 needs to be reconciled with the hierarchy of priorities in the NPSFM. This includes in a way that prioritises firstly the health of the waterbody, secondly the health of people and thirdly, economic and social health and that gives effect to Te Mana o te Wai – in accordance with Policy 1 of the NPSFM. The MPS would sit within the third priority in my opinion.
45. Policy WQUAN.1 may not give effect to Policy 5 and 13 as it would only maintain, not improve or reverse deteriorating trends. The recognition for special circumstance of the Waiau catchment under the RPS creates uncertainty as to what is to be maintained. It may suggest some exception which may not be appropriate in giving effect to the NPSFM.
46. Similarly, the recognition for special circumstance of the Waiau catchment in Policy WQUAN.2 creates uncertainty as to how overallocation would be addressed as no exception is provided in Policy 11 of the NPSFM. The wording “instances” is also unclear in terms of an approach which would phase out overallocation under Policy 11 of the NPSFM.
47. In addition, there is no RPS provision that clearly gives effect to the hierarchy of priorities of the NPSFM or that refers to Te Mana o te Wai.
48. In my opinion the NPSFM needs to be referred to directly in considering freshwater management for this appeal topic. I also consider that potential conflicts between the RPS approach to renewable energy and the NPSFM should be resolved in the regional plan provisions to the extent this is possible under scope of this appeal topic.

**Other relevant planning documents**

49. The Council is required to take into account any relevant planning document that is recognised by an iwi authority and lodged with the

Council.<sup>21</sup> I understand there are two such documents<sup>22</sup>. The Te Rūnanga o Ngāi Tahu Freshwater Policy Statement (1999); includes identification of Ngai Tahu values and uses for freshwater, sets out requirements for protecting the mauri of a waterbody with respect to both quantity and quality, including an order of priority for protection in developing water allocation regimes. I was unable to locate a copy of the Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 (Te Tangi a Tauria) in time for consideration in this evidence.

### **Regional Policy Statement**

50. The RPS became operative in 2017 and was developed to give effect to the NPS-FM 2014<sup>23</sup> and the NPSREG 2011. Ms Whyte has set out the RPS provisions that give effect to the NPSREG.
51. In summary, read together those RPS provisions are to: recognise and provide for national significance of renewable electricity including the Manapōuri hydro-electric generation scheme in the Waiau catchment; to comply with limits or targets, meeting the needs of a range of uses; safeguard life supporting capacity of water and appropriately address adverse effects; to have regard to offsetting measures or environmental compensation where appropriate; to ensure potential adverse effects on local communities from operation and closure of energy facilities are appropriately addressed.
52. I consider that those provisions are relevant to this appeal topic except to the extent that they may conflict/detract from with giving effect to the NPSFM 2020. For the reasons discussed above, I consider that the NPSFM 2020 should be referred to directly. I have considered relevant provisions of the NPSFM above.

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<sup>21</sup> Section 66(2A)(a), RMA.

<sup>22</sup> As set out at paragraph 27 of Mr McCallum-Clark's evidence in chief dated 14 December 2018, for Topic A

<sup>23</sup> Chapter 4 page 29 RPS

53. The RPS predates the NPSFM 2020 and, in my opinion, also cannot be considered to fully give effect to it.

**Relevant provisions of the proposed Southland Water and Land Regional Plan (pSWLP)**

54. I understand that appeals on objectives have been addressed in the interim decision with wording confirmed in the third and fourth interim decisions. I have considered the Appeal version of the pSWLP dated 26 March 2021 which incorporates those changes.

55. I consider that there are a number of provisions of relevance, particularly when considering rule 52A and appropriate scope within the matters for restriction of discretion. I have set these provisions out in Appendix 1 and only include specific text for provisions I consider of particular relevance in my evidence.

56. I also understand that the pSWLP when first proposed was drafted to give effect to the NPSFM 2014 but that in making their decision on submissions the commissioners aimed to give effect to the 2017 amendments. It was the 2017 amendments which brought the concept of Te Mana o te Wai as central to the NPSFM. This is evident in the wording of the pSWLP which includes an explanation of the approach to Te Mana o te Wai and specific consideration of it in two policies. It is also the 2017 amendment version which was considered for the Topic A hearings being prior to the NPSFM 2020.

57. There are key concepts, policy direction and requirements of the NPSFM 2020 which are not captured within the pSWLP, including the 6 principles and the hierarchy of priorities within the concept of Te Mana o Te Wai.

58. I consider that the objective of the NPSFM and the hierarchy of priorities within Te Mana o te Wai is a key aspect of the NPSFM which needs to be considered in addition to the relevant pSWLP provisions. This is particularly relevant to considering the matters in dispute.

59. I have set out my assessment of relevant objectives and policies in Appendix 2. I refer to them in my assessment of the provisions subject to matters in dispute below.

**Provisions subject to the matters in dispute**

60. I understand that Forest & Bird did not oppose the amendment of Policy 26 as sought in the Meridian appeal and that it supported the amendments to Policy 26 sought in the appeal of Aratiatia Livestock.

61. In its appeal, Forest & Bird's sought the deletion of Rule 52A, and it has opposed amendments to rule 52A sought in the appeal of Meridian.

**Policy 26 decision version**

62. The decision version of Policy 26 is:

*Policy 26 – Renewable energy*

*Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri hydro-electric generation scheme in the Waiau catchment), the national, regional and local benefits of renewable electricity generation activities, the need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading, when:*

- 1. allocating surface water for abstraction, damming, diversion and use; and*
- 2. considering all resource consent applications for surface water abstractions, damming, diversion and use.*

63. This policy sets out to recognise and provide for renewable electricity generation. It provides for this when allocating surface water and when considering resource consent applications for surface water. I consider that this direction is generally appropriate for the implementation of Objective 9B and Objective 10 and gives effect to the RPS Objective ENG.4 (recognising and making provision for national significant and renewable energy activities).

64. There are outcomes to be achieved in giving effect to the NPSFM which include responding to degradation,<sup>24</sup> to ensure natural and physical resources are managed in accordance with the clause 2.1 Objective, and that freshwater is managed to give effect to Te Mana o te Wai.
65. As currently written the policy recognises the benefits of renewable electricity and its practical constraints with respect to allocation. The policy is silent in terms of adverse effects of renewable electricity generation activities. This leaves some uncertainty and potential for conflict when seeking to recognise and provide for renewable energy and managing adverse effects on freshwater in particular. I consider this further with respect to amending Policy 26 below.

#### **Policy 26 Meridian version**

66. The preferred wording of Meridian is:<sup>25</sup>

#### ***Policy 26 – Renewable energy***

*Recognise and provide for:*

1. the national and regional significance of renewable electricity generation activities including the practical constraints associated with its development, operation, maintenance and upgrading and the benefits of renewable electricity generation activities; and

2. the national and regional significance and the benefits of renewable electricity generation activities (including the existing Manapouri hydro-electric generation scheme in the Waiau catchment), the national, regional and local benefits of renewable electricity generation activities, the need to locate the generation activity where the renewable energy resource is available, and including the practical constraints associated with its development, operation, maintenance and upgrading, when:

- a. allocating surface water for abstraction, damming, diversion and use; and
- b. considering all resource consent applications for surface water abstractions, damming, diversion and use; uses of land, use of the beds of lakes and rivers and new or increased discharge of contaminants or water to water or land that may

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<sup>24</sup> Policies 5 and 13 and clause 3.20 of the NPSFM 2020.

<sup>25</sup> As provided to parties on Wednesday, 20 July 2022.

*affect the operation of the Manapouri hydro-electric generation scheme.*

67. The changes now supported by Meridian split the policy to firstly recognising and providing for renewable electricity generation activities generally and secondly set out specific considerations for the MPS with respect to allocation. I recognise that matters in a. and b. are likely only relevant to hydro-electric generation schemes, and therefore fit better with the MPS rather than generally, however I note that this may have unintended consequences for other or future hydro-electric generation schemes.
68. I understand from the Meridian appeal the additional matters in clause b. are intended to address reverse sensitivity issues. I generally agree that reverse sensitivity is an appropriate policy consideration with respect to the MPS. However, I fail to see a direct relationship with “uses of land” added to clause b, within the scope of the functions of regional councils that would be relevant when considering the significance and benefits of the MPS and that is not already captured by the other activities listed. I therefore consider that those words should be removed. I also consider it may be helpful to clarify the consideration with respect to the use of the beds of lakes and rivers, being only for “new” use.

**Policy 26 Forest & Bird and Aratiatia Livestock version (F&B and AL)**

69. Aratiatia Livestock’s appeal sought amendments to:
- a. remove policy direction to recognise and provide for locational considerations and practical constraints associated with development and use;
  - b. include direction specific to the MPS to address adverse effects on mauri of the Waiau River system and provide opportunity to reverse or reduce the damage that the scheme has caused within the catchment.
70. F&B and AL now support the following wording for Policy 26:

***Policy 26 – Renewable energy***

Recognise and provide for:

1. the national and regional significance of renewable electricity generation activities including the practical constraints associated with its development, operation, maintenance and upgrading and the benefits of renewable electricity generation activities; and

2. the national and regional significance and the benefits of renewable electricity generation activities (including the existing Manapōuri hydro-electric generation scheme in the Waiau catchment), the national, regional and local benefits of renewable electricity generation activities, the need to locate the generation activity where the renewable energy resource is available, and including and the practical constraints associated with its development, operation, maintenance and upgrading,

When:

- a. allocating surface water for abstraction, damming, diversion and use; and
- b. considering all resource consent applications for surface water abstractions, damming, diversion and use; and

While:

(c) safeguarding the mauri and providing for the ecosystem health of the Waiau River, and;

(d) reversing or reducing the degradation of the Waiau River as a result of the Manapōuri hydro-electric generation scheme.

71. I have considered these amendments with Ms Jordan, and we have agreed this wording to align with objectives and policies of the pSWLP, the NPSFM and to integrate with the structure of the policy amendments now sought by Meridian.

72. In particular, these amendments ensure that safeguarding mauri and ecosystem health is part and parcel of recognising and providing for the benefits of the MPS. These amendments implement and align with Objective 2, Policy 22, Objective 9/9A, Policy 20 and is consistent with policy direction given to the FMU process in Policy 44. They are also appropriate in giving effect to Te Mana o te Wai<sup>26</sup> and achieving ecosystem health which is a compulsory value in the national objectives framework.<sup>27</sup>

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<sup>26</sup> Protecting the mauri of water is central to Te Mana o te Wai 1.3 Fundamental concept and Policy 1 of the NPSFM.

<sup>27</sup> Requirements for ecosystem health are set out in clause 3.9(1), 3.17(4)(b), 3.24(3)(a) of the NPSFM.



73. I consider that while Policy 26A – Infrastructure provide direction with respect to adverse effects on the environment generally, the term “environment” is broad and a number of other policies set out specific matters which must also be addressed.<sup>28</sup>
74. The amendments of the F&B and AL version ensure that adverse effects are addressed in a way that gives effect to Te Mana o te Wai and responds to degradation.
- Rule 52A - Manapōuri Hydro-electric Generation Scheme, *decision version***
75. The decision version of Rule 52A is set out in Appendix 4 along with the two other versions I consider below.
76. Key aspects of the decision version are that it provides a controlled activity status for consenting of the MPS where it complies with flow and level regimes set out in the pSWLP.
77. I have considered the reply report to commissioners at the council hearing with respect to the controlled activity status. I agree with the reasoning and conclusions of the officers that restricted activity status enables the restriction of assessment matters that are to be considered in the consent process whilst ensuring that Environment Southland can consider the appropriateness of re-authorising the same activity.<sup>29</sup>
78. I consider that for these activities the council should retain wide discretion to ensure that all relevant objectives and policies in the pSWLP and provisions of higher order documents, where necessary, can appropriately be considered.
79. The benefit of having a restricted discretionary status in this case is that listing matters for discretion provides greater certainty to applicants,

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<sup>28</sup> Policies 20, 22, 26A, 28 and 39A.

<sup>29</sup> Officer’s Reply for Council Reply Hearing dated 3 November 2017 at 92.

council and interested parties on matters that can be anticipated to be considered in decision making.

80. For this reason, while I consider discretionary activity status would also be appropriate, I would agree with restricted discretionary status where the matters for discretion are adequate.
81. I also consider that there needs to be adequate scope within matters of discretion to achieve objectives, effectively implement the policies of the pSWLP and give effect to the NPSFM 2020.
82. I understand that Meridian now supports restricted discretionary status.

**Rule 52A Meridian version**

83. Meridian's preferred amendments to Rule 52A (a) include:
  - a. changing the activity status to restricted discretionary;
  - b. adding three new conditions. These conditions mean that the rule/activity classification of restricted discretionary cannot be utilised until after the FMU process for the Waiau;
  - c. deleting the first two matters for restriction of discretion<sup>30</sup> and adding three new matters;<sup>31</sup> and
  - d. adding a new part to the rule which restricts the extent of discretion.
84. Meridian also proposes changes to Rule 52A (b) as to how the rule applies with respect to other rules and to Appendix E.

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<sup>30</sup> "1. the volume and rate of water taken, used, diverted or discharged and the timing of any take, diversion or discharge, including how this relates to generation output; 2. any effects on river flows, wetland and lake water levels, aquatic ecosystems and water quality;"

<sup>31</sup> "1. mitigation or remediation measures to address adverse effects and any seasonal effects on: the customary use of mahinga kai and nohoanga; taonga species; and the spiritual and cultural values and beliefs of tangata whenua; 3. the collection, recording, monitoring, reporting and provision of information concerning the exercise of consent; 4. lapse period, duration of consent and consent review requirements;"

***Rule 52A (a) activity status***

85. As set out with respect to considering the activity status for the decision version above, I support restricted discretionary status if the matters for discretion are adequate.

***Conditions***

86. I agree that the conditions added by Meridian are generally appropriate to limit the scope of activities that can be considered under the restricted discretionary activity status until after the FMU process for the Waiau has allocation and flow regimes in place. However, having considered wording of the NPSFM I consider the word “regime” should be removed and that in condition (4) the “and/or” should become “and” as this aligns with the requirements of the NPSFM 2020 that in order to meet environmental flows and levels, every regional council must identify take limits for each FMU.<sup>32</sup>

***Restriction of discretion***

87. I consider that matters 1 and 2 from the decision version remain relevant and should not be deleted. Just because an application may not seek to increase the volume of take or change the use of water does not mean council should not consider the volume and rate of take, use, discharges and the effects on river flows and associated ecosystems.

88. In addition, these matters are necessary for decisions on consents to respond to NPSFM requirements where a resource consent must identify the flows and levels at which a take, damming or diversion will be restricted, or no longer allowed, or a discharge will be required.<sup>33</sup>

89. I also consider that because take limits are to be expressed as total volume and rate for the FMU or part of the FMU they cannot be assumed to be directly applicable as an allocation for the MPS.

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<sup>32</sup> Clause 3.17(1)(a) NPSFM 2020.

<sup>33</sup> Clause 3.17(3) of the NPSFM 2020.

90. The NPSFM is not prescriptive in all aspects of the FMU process, for example while environmental flows and levels must be set for each FMU, it is up to the council whether different flows and levels are set for different parts of an FMU.<sup>34</sup> In my opinion it would be inappropriate to prevent the council from considering the volume and rate or other matters under the first restriction of discretion, as they have a responsibility for meeting environmental outcomes.<sup>35</sup>
91. The second restriction of discretion provides for the consideration of effects on a number of matters which are relevant to direction under policies within the pSWLP and the NPSFM 2020. I also consider effects on other matters to be included in the Forest & Bird and Aratiatia Livestock version below.
92. I agree with including a new matter providing scope for Council to consider the matters added with respect to customary use, taonga species and tangata whenua. I also agree with including a matter for monitoring and information collection and for the lapse, duration and review of consents.
93. Meridian has also sought to include a further provision restricting the exercise of discretion with respect to flows and limits expected to be set in the plan for the Waiau FMU.
94. My understanding is that take limits, environmental flows and levels must be set for each FMU, and that any subsets of this for parts of an FMU is optional.
95. I consider that seeking to limit discretion in this way creates uncertainty and is not best planning practice<sup>36</sup>. In my opinion this restriction on discretion is likely to 'skew' the decision-making process.

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<sup>34</sup> Clause 6.16(1) of the NPSFM 2020.

<sup>35</sup> Clause 3.16 (3) of the NPSFM 2020.

<sup>36</sup>The RMA Quality Planning Resource *Plan Steps: Writing Provisions for Regional and District Plans* (2013) <https://www.qualityplanning.org.nz/sites/default/files/2018-11/Writing%20Provisions%20for%20Plans.pdf>, at 11-12.

96. A further reason for not supporting this provision is that there is no certainty that limits will be set at a scale that they can be determined as the allocation for the consent holder. My reading of this requirement would mean that the full “take limit” would be available to the consent holder and that the Council could not consider a lower limit being applied to the consent holder.
97. In my opinion it would not be appropriate to make the activity restricted discretionary on solely the basis of the matters identified by Meridian and would not be appropriate at all with a limitation on discretion as set out by Meridian.

***Rule 52A (b)***

98. I consider the wording for the circumstances when this rule does not apply needs clarification. In my opinion the amendment referring to “permitted, controlled or restricted discretionary activity under any other rules in this Plan” confuse the application of the rule which is already “despite any other rules in the Plan.”

***Rule 52A (c)***

99. I understand there is agreement between the parties that a non-complying activity status is appropriate where a greater quantity of water is sought.

***Appendix E***

100. I understand that the amendments to Appendix E are designed to address the concerns of Aratiatia Livestock as their appeal sought its deletion. I am supportive of these changes but consider the wording could be improved if it referred to “temporary” rather than “not result in a permanent change”. I consider that “not permanent” is uncertain and could be applied to something that is reversible after a long period, whereas temporary has a common meaning which provides more certainty.

**Rule 52A Forest & Bird and Aratiatai Livestock version (F&B and AL version)**

101. The F&B and AL version uses the Meridian version as a base and adopt some aspects of that version.

102. The conditions as worded in Meridian’s version and the restricted discretionary status are retained.

103. The key differences in the F&B and AL version are the inclusion of further matters of discretion and the removal of the limits on discretion contained in the Meridian version.

104. My consideration of the activity status and conditions is the same as for Meridian above.

***Matters of discretion***

105. As explained with respect to Meridian’s version above, I consider it is appropriate to retain the matters from the decision version. I also consider it is appropriate to expand these matters to provide scope to consider effects on the coastal waters, processes and estuaries<sup>37</sup> and on natural character.<sup>38</sup>

106. I consider it is appropriate for the council to have discretion on measures to avoid adverse effects within Matter 4 “avoidance, mitigation or remediation measures to address adverse effects on the environment, other than those identified in clause 3 above.” There are a number of policies which provide direction for this in the pSWLP and in my opinion it is appropriate to consider the avoidance of adverse effects on the environment when addressing the NPSFM in consenting decisions under the RMA. I also consider that without including such a consideration it would be difficult for council to ensure that any previous consent conditions that avoided an adverse effect were able to be placed on a renewed consent. Nor would there be a clear basis for establishing residual effects for consideration of any offset or compensation measures offered by the applicant.

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<sup>37</sup> NZCPS Policies 11, 13 and 23(1).

<sup>38</sup> Objective 19 of the pSWLP is to preserve natural character values.

107. For completeness, I also considered whether it would be helpful to replace the broad discretion for “adverse effects on the environment” by listing the matters for which effects could be considered. However, this would result in at least 10 additional matters<sup>39</sup> being specified and risks a relevant effect being inadvertently omitted. It would also not capture the broad consideration of adverse effects on the environment under Policy 26A.

***Rule 52A (b)***

108. The F&B and AL version removes the unnecessary reference to “permitted, controlled or restricted discretionary activity under any other rules in this Plan” which was included under Meridian’s version.

***Rule 52A (c)***

109. The F&B and AL version adopts the Meridian non-complying activity.

**Section 32AA**

110. I have considered the reasonably practical options for Policy 26 and Rule 52AA, being the decision version, Meridian version, and the F&B and AL version in and set out my assessment in terms of s32AA in Appendix 4.

111. This assessment shows that the F&B and AL version better achieves the objectives of the pSWLP, in particular Objective 2. By broadening the scope of matters in Rule 52A (a) relevant policies can be implemented while providing certainty to the applicant, council and interested parties on the matters that are anticipated to be considered.

112. The F&B and AL version also removes potential for perverse outcomes, ensures that pSWLP provisions are at least in accordance with the NPSFM 2020 and enables decision makers to appropriately consider it.

**Natasha Sitarz**

29 July 2022

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<sup>39</sup> Drawing from Policies A4, 20, 22 and 28 of the pSWLP.

## **Appendix 1: Relevant objectives and policies of the pSWLP** (updated version 8 including first, second and third interim decisions of the environment court)

### **Objective 1**

Land and water and associated ecosystems are sustainably managed as integrated natural resources, recognising the connectivity between surface water and groundwater, and between freshwater, land and the coast.

### **Objective 2**

The mauri of water provides for te hauora o te taiao (health and mauri of the environment), te hauora o te wai (health and mauri of the waterbody) and te hauora o te tangata (health and mauri of the people).

### **Objective 3**

Water and land are recognised as enablers of the economic, social and cultural wellbeing of the region.

### **Objective 4**

Tangata whenua values and interests are identified and reflected in the management of freshwater and associated ecosystems.

### **Objective 5**

Ngāi Tahu have access to and sustainable customary use of, both commercial and non-commercial, mahinga kai resources, nohoanga, mātaihai and taiāpure.

### **Objective 6**

Water quality in each freshwater body, coastal lagoon and estuary will be:

- (a) maintained where the water quality is not degraded; and
- (b) improved where the water quality is degraded by human activities.

### **Objective 7**

Following the establishment of freshwater objectives, limits, and targets (water quality and quantity) in accordance with the Freshwater Management Unit processes:

- (a) where water quality objectives and limits are met, water quality shall be maintained or improved;
- (b) any further over-allocation of freshwater is avoided; and
- (c) any existing over-allocation is phased out in accordance with freshwater objectives, targets, limits and timeframes

### **Objective 9/9A**

The quantity of water in surface water bodies is managed so that:



(a) the life-supporting capacity and aquatic ecosystem health, the values of outstanding natural features and landscapes, the natural character and the historic heritage values of waterbodies and their margins are safeguarded.

(b) there is integration with the freshwater quality objectives (including the safeguarding of human health for recreation); and

(c) provided that (a) and (b) are met, surface water is sustainably managed in accordance with Appendix K to support the reasonable needs of people and communities to provide for their economic, social and cultural wellbeing.

#### **Objective 9B**

The importance of Southland's regionally and nationally significant infrastructure is recognised and its sustainable and effective development, operation, maintenance and upgrading enabled.

#### **Objective 10**

The national importance of the existing Manapōuri hydro-electric generation scheme in the Waiau catchment is provided for and recognised in any resulting flow and level regime.

#### **Objective 11**

The amount of water abstracted is shown to be reasonable for its intended use and water is allocated and used efficiently.

#### **Objective 13**

Provided that:

(a) the quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land; and

(b) the health of people and communities is safeguarded from the adverse effects of discharges of contaminants to land and water; and

(c) ecosystems (including indigenous biological diversity and integrity of habitats), are safeguarded, then land and soils may be used and developed to enable the economic, social and cultural wellbeing of the region.

#### **Objective 14**

The range and diversity of indigenous ecosystems and habitats within rivers, estuaries, wetlands and lakes, including their margins, and their life-supporting capacity are maintained or enhanced.

#### **Objective 15**

Taonga species, as set out in Appendix M, and related habitats, are recognised and provided for.

#### **Objective 17**

Preserve the natural character values of wetlands, rivers and lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats, and protect them from inappropriate use and development.

## **Objective 18**

All persons implement environmental practices that optimise efficient resource use, safeguard the life supporting capacity of the region's land and soils, and maintain or improve the quality and quantity of the region's water resources.

## **Objective 19 – Fish passage (Clause 3.26 of NPSFM 2020)**

The passage of fish is maintained, or is improved, by instream structures, except where it is desirable to prevent the passage of some fish species in order to protect desired fish species, their life stages, or their habitats.

## **Ngāi Tahu Policies**

### **Policy 1 – Enable papatipu rūnanga to participate**

Enable papatipu rūnanga<sup>18</sup> to effectively undertake their kaitiaki (guardian/steward) responsibilities in freshwater and land management through the Southland Regional Council:

1. providing copies of all applications that may affect a Statutory Acknowledgement area, tōpuni (landscape features of special importance or value), nohoanga, mātaītai or taiāpure to Te Rūnanga o Ngāi Tahu and the relevant papatipu rūnanga;
2. identifying Ngāi Tahu interests in freshwater and associated ecosystems in Murihiku (includes the Southland Region); and
3. reflecting Ngāi Tahu values and interests in the management of and decision-making on freshwater and freshwater ecosystems in Murihiku (includes the Southland Region), consistent with the Charter of Understanding.

### **Policy 2 – Take into account iwi management plans**

Any assessment of an activity covered by this Plan must:

1. take into account any relevant iwi management plan; and
2. assess water quality and quantity, taking into account Ngāi Tahu indicators of health.

## **Water Quality**

### **Policy A4 of the National Policy Statement for Freshwater Management 2014 (as amended in 2017)**

1. When considering any application for a discharge the consent authority must have regard to the following matters:

- (a) the extent to which the discharge would avoid contamination that will have an adverse effect on the life-supporting capacity of freshwater including on any ecosystem associated with freshwater; and
- (b) the extent to which it is feasible and dependable that any more than minor adverse effect on freshwater, and on any ecosystem associated with freshwater, resulting from the discharge would be avoided.

2. When considering any application for a discharge the consent authority must have regard to the following matters:

(a) the extent to which the discharge would avoid contamination that will have an adverse effect on the health of people and communities as affected by their contact with freshwater; and

(b) the extent to which it is feasible and dependable that any more than minor adverse effect on the health of people and communities as affected by their contact with freshwater resulting from the discharge would be avoided.

3. This policy applies to the following discharges (including a diffuse discharge by any person or animal):

(a) a new discharge; or

(b) a change or increase in any discharge of any contaminant into freshwater, or onto or into land in circumstances that may result in that contaminant (or, as a result of any natural process from the discharge of that contaminant, any other contaminant) entering freshwater.

4. Paragraph 1 of this policy does not apply to any application for consent first lodged before the National Policy Statement for Freshwater Management 2011 took effect on 1 July 2011.

5. Paragraph 2 of this policy does not apply to any application for consent first lodged before the National Policy Statement for Freshwater Management 2014 takes effect.

#### **Policy 15A – Maintain water quality where standards are met**

Where existing water quality meets the Appendix E Water Quality Standards or bed sediments meet the Appendix C ANZECC sediment guidelines, maintain water quality including by:

1. avoiding, remedying or mitigating the adverse effects of new discharges, so that beyond the zone of reasonable mixing, those standards or sediment guidelines will continue to be met; and

2. requiring any application for replacement of an expiring discharge permit to demonstrate how the adverse effects of the discharge are avoided, remedied or mitigated, so that beyond the zone of reasonable mixing those standards or sediment guidelines will continue to be met.

#### **Policy 15B – Improve water quality where standards are not met**

Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, improve water quality including by:

1. avoiding where practicable and otherwise remedying or mitigating any adverse effects of new discharges on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines beyond the zone of reasonable mixing; and

2. requiring any application for replacement of an expiring discharge permit to demonstrate how and by when adverse effects will be avoided where practicable and otherwise remedied or mitigated, so that beyond the zone of reasonable mixing water quality will be improved to assist with meeting those standards or sediment guidelines.

#### **Policy 15C – Maintaining and improving water quality after FMU processes**

Following the establishment of freshwater objectives and limits under Freshwater Management Unit processes, and including through implementation of non-regulatory methods, improve water quality where it is degraded to the point where freshwater objectives are not being met and otherwise maintain water quality where freshwater objectives are being met.

## **Water Quantity**

### **Policy B7 of the National Policy Statement for Freshwater Management 2014 (as amended in 2017)**

1. When considering any application the consent authority must have regard to the following matters:

(a) the extent to which the change would adversely affect safeguarding the life-supporting capacity of freshwater and of any associated ecosystem; and

(b) the extent to which it is feasible and dependable that any adverse effect on the life-supporting capacity of freshwater and of any associated ecosystem resulting from the change would be avoided.

2. This policy applies to:

(a) any new activity; and

(b) any change in the character, intensity or scale of any established activity;

that involves any taking, using, damming or diverting of freshwater or draining of any wetland, which is likely to result in any more than minor adverse change in the natural variability of flows or level of any freshwater, compared to that which immediately preceded the commencement of the new activity or the change in the established activity (or in the case of a change in an intermittent or seasonal activity, compared to that on the last occasion on which the activity was carried out).

3. This policy does not apply to any application for consent first lodged before the National Policy Statement for Freshwater Management 2011 took effect on 1 July 2011.

### **Policy 20 – Management of water resources**

Manage the taking, abstraction, use, damming or diversion of surface water and groundwater so as to:

1A. recognise that the use and development of Southland's land and water resources, including for primary production, can have positive effects including enabling people and communities to provide for their social, economic and cultural wellbeing;

1. avoid, remedy or mitigate adverse effects from the use and development of surface water resources on:

(a) the quality and quantity of aquatic habitat, including the life supporting capacity and ecosystem health and processes of water bodies;

(b) natural character values, natural features, and amenity, aesthetic and landscape values;

(c) areas of significant indigenous vegetation and significant habitats of indigenous fauna;

(d) recreational values;

- (e) the spiritual and cultural values and beliefs of tangata whenua;
  - (f) water quality, including temperature and oxygen content;
  - (g) the reliability of supply for lawful existing surface water users, including those with existing, but not yet implemented, resource consents;
  - (h) groundwater quality and quantity; and
  - (j) mātaítai, taiāpure and nohoanga;
2. avoid, remedy or mitigate significant adverse effects from the use and development of groundwater resources on:
- (a) long-term aquifer storage volumes;
  - (b) the reliability of supply for lawful existing groundwater users, including those with existing, but not yet implemented, resource consents;
  - (c) surface water flows and levels, particularly in spring-fed streams, natural wetlands, lakes, aquatic ecosystems and habitats (including life supporting capacity and ecosystem health and processes of water bodies) and their natural character; and
  - (d) water quality;
3. ensure water is used efficiently and reasonably by requiring that the rate and volume of abstraction specified on water permits to take and use water are no more than reasonable for the intended end use following the criteria established in Appendix O and Appendix L.4.

### **Policy 21 – Allocation of water**

Manage the allocation of surface water and groundwater by:

1. determining the primary allocation for confined aquifers not identified in Appendix L.5, following the methodology established in Appendix L.6;
2. determining that a water body is fully allocated when the total volume of water allocated through current resource consents and permitted activities is equal to either:
  - (a) the maximum amount that may be allocated under the rules of this Plan, or
  - (b) the provisions of any water conservation order;
3. enabling secondary allocation of surface water and groundwater subject to appropriate surface water environmental flow regimes, minimum lake and wetland water levels, minimum groundwater level cutoffs or seasonal recovery triggers, to ensure:
  - (a) long-term aquifer storage volumes are maintained; and
  - (b) the reliability of supply for existing groundwater users (including those with existing resource consents for groundwater takes that have not yet been implemented) is not adversely affected;
4. when considering levels of abstraction, recognise the need to exclude takes for non-consumptive uses that return the same amount (or more) water to the same aquifer or a hydraulically connected lake, river, modified watercourse or natural wetland.

### **Policy 22 – Management of the effects of groundwater and surface water use**

Manage the effects of surface and groundwater abstractions by:

1. avoiding allocating water to the extent that the effects on surface water flow would not safeguard the mauri of that waterway and mahinga kai, taonga species or the habitat of trout and salmon, in accordance with Appendix K;
2. ensuring interference effects are acceptable, in accordance with Appendix L.3; and
3. utilising the methodology established in Appendix L.2 to:
  - (a) manage the effects of consented groundwater abstractions on surface water bodies; and
  - (b) assess and manage the effects of consented groundwater abstractions in groundwater management zones other than those specified in Appendix L.5.

#### **Policy 25 – Priority takes**

When issuing a water shortage direction, the Southland Regional Council will give priority to reasonable water abstractions for the following uses (in no particular order):

1. domestic needs, including community water supplies;
2. reasonable animal drinking needs;
- 2a. industries that process perishable foods;
3. fire-fighting purposes;
4. public health needs; and
5. animal welfare needs.

#### **Policy 26 – Renewable energy**

Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri hydro-electric generation scheme in the Waiau catchment), the national, regional and local benefits of renewable electricity generation activities, the need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading, when:

1. allocating surface water for abstraction, damming, diversion and use; and
2. considering all resource consent applications for surface water abstractions, damming, diversion and use.

#### **Policy 26A – Infrastructure**

Recognise and provide for the effective development, operation, maintenance and upgrading of regionally significant, nationally significant and critical infrastructure in a way that avoids where practicable, or otherwise remedies or mitigates, adverse effects on the environment.

#### **Policy 28 – Structures and bed disturbance activities of rivers (including modified watercourses) and lakes**

Manage structures, bed disturbance activities and associated discharges in the beds and margins of lakes, rivers and modified watercourses, to avoid, remedy or mitigate adverse effects on:

1. water quality and quantity;
2. habitats, ecosystems and fish passage;
3. indigenous biological diversity;
5. the spiritual and cultural values and beliefs of the tangata whenua;
6. mātaihai and taiāpure;
7. public access (except in circumstances where public health and safety are at risk) and amenity values;
8. natural character values and outstanding natural features;
9. river morphology and dynamics, including erosion and sedimentation;
10. flood risk;
11. infrastructural assets;
12. navigational safety; and
13. landscape values.

#### **Policy 32 – Protect significant indigenous vegetation and habitat**

Protect significant indigenous vegetation and significant habitats of indigenous fauna associated with natural wetlands, lakes and rivers and their margins.

#### **Policy 37 – Climate change**

Avoid or mitigate increased risks on the environment arising from climate change, taking into account the potential effects of rising sea levels and the potential for more variable and extreme weather patterns in coming decades.

#### **Consideration of Resource Consent Applications**

##### **Policy 39A – Integrated management**

When considering the cumulative effects of land use and discharge activities within whole catchments, consider:

1. the integrated management of freshwater and the use and development of land including the interactions between freshwater, land and associated ecosystems (including estuaries); and
2. through the Freshwater Management Unit process, facilitating the collective management of nutrient losses, including through initiatives such as nutrient user groups and catchment management groups.

##### **Policy 40 – Determining the term of resource consents**

When determining the term of a resource consent consideration will be given, but not limited, to:

1. granting a shorter duration than that sought by the applicant when there is uncertainty regarding the nature, scale, duration and frequency of adverse effects from the activity or the capacity of the resource;

2. relevant tangata whenua values and Ngāi Tahu indicators of health;
3. the duration sought by the applicant and reasons for the duration sought;
4. the permanence and economic life of any capital investment;
5. the desirability of applying a common expiry date for water permits that allocate water from the same resource or land use and discharges that may affect the quality of the same resource;
6. the applicant's compliance with the conditions of any previous resource consent, and the applicant's adoption, particularly voluntarily, of good management practices; and
7. the timing of development of FMU sections of this Plan, and whether granting a shorter or longer duration will better enable implementation of the revised frameworks established in those sections.

#### **Policy 41 – Matching monitoring to risk**

Consider the risk of adverse environmental effects occurring and their likely magnitude when determining requirements for auditing and supply of monitoring information on resource consents.

#### **Policy 42 – Consideration of water permit applications**

When considering resource consent applications for water permits to take and use water:

1. except for non-consumptive uses, consent will not be granted if a water body is over allocated or fully allocated; or to grant consent would result in a water body becoming over allocated or would not allow an allocation target for a water body to be achieved within a time period defined in this Plan;
2. except for non-consumptive uses, consents replacing an expiring resource consent for an abstraction from an over-allocated water body will generally only be granted at a reduced rate, the reduction being proportional to the amount of over-allocation and previous use, using the method set out in Appendix O;
3. installation of water measuring devices will be required on all new permits to take and use water and on existing permits in accordance with the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010;
4. where appropriate, minimum level or flow cut-offs and seasonal recovery triggers on resource consents for groundwater abstraction will be imposed; and
5. conditions will be specified relating to a minimum flow or level, or environmental flow or level regime (which may include flow sharing), in accordance with Appendix K, for all new or replacement resource consents (except for water permits for non-consumptive uses, community water supplies and water bodies subject to minimum flow and level regimes established under any water conservation order) for:
  - (a) surface water abstraction, damming, diversion and use; and
  - (b) groundwater abstraction in accordance with Policy 23.

#### **Freshwater Management Unit Process Policies**

#### **Policy 44 – Implementing Te Mana o te Wai**



Te Mana o te Wai is recognised at a regional level by tangata whenua and the local community identifying values held for, and associations with, a particular water body and freshwater management unit.

Particular regard will be given to the following values, alongside any additional regional and local values determined in the Freshwater Management Unit limit setting process:

- Te Hauora o te Wai (the health and mauri of water);
- Te Hauora o te Tangata (the health and mauri of the people);
- Te Hauora o te Taiao (the health and mauri of the environment);
- Mahinga kai;
- Mahi māra (cultivation);
- Wai Tapu (Sacred Waters);
- Wai Māori (municipal and domestic water supply);
- Āu Putea (economic or commercial value);
- He ara haere (navigation).

#### **Policy 45 – Priority of FMU values, objectives, policies and rules**

In response to Ngāi Tahu and community aspirations and local water quality and quantity issues, FMU sections may include additional catchment-specific values, objectives, policies, attributes, rules and limits which will be read and considered together with the Region-wide Objectives and Region-wide Policies. Any provision on the same subject matter in the relevant FMU section of this Plan prevails over the relevant provision within the Region-wide Objectives and Region-wide Policy sections, unless it is explicitly stated to the contrary.

As the FMU sections of this Plan are developed in a specific geographical area, FMU sections will not make any changes to the Region-wide Objectives or Region-wide Policies.

Note: It would be unfair if changes are made to Region-wide objectives and policies, which apply in other parts of Southland, without the involvement of those wider communities.

#### **Policy 46 – Identified FMUs**

The FMU Sections of this Plan are based on the following identified Freshwater Management Units for Southland, as shown on Map Series 6: Freshwater Management Units:

- Fiordland and Islands;
- Aparima and Pourakino – Jacobs River Estuary;
- Maitai – Toetoes Harbour;
- Ōreti and Waihopai – New River Estuary; and
- Waiau – Waiau Lagoon.

#### **Policy 47 – FMU processes**

The FMU sections will:

1. identify values and establish freshwater objectives for each Freshwater Management Unit, including where appropriate at a catchment or sub-catchment level, having particular regard to the national significance of Te Mana o te Wai, and any other values developed in accordance with Policies CA1-CA4 and Policy D1 of the National Policy Statement for Freshwater Management 2014 (as amended in 2017);
2. set water quality and water quantity limits and targets to achieve the freshwater objectives;
3. set methods to phase out any over-allocation, within a specified timeframe; and
4. assess water quality and quantity taking into account Ngāi Tahu indicators of health.

## Appendix 2: Assessment of relevant SWLP provisions

### Objectives

1. I consider that all objectives may be of some relevance. However, I consider those relating to groundwater and public access are not particularly relevant to the matters in contention.
2. I consider the following objectives are of particular relevance.
3. Objective 2 which provides:

*The mauri of water provides for te hauora o te taiao (health and mauri of the environment), te hauora o te wai (health and mauri of the waterbody) and te hauora o te tangata (health and mauri of the people).*
4. Objective 4 relevantly provides:

*Tangata whenua values and interests are identified and reflected in the management of freshwater and associated ecosystems.*
5. Objective 6 is that water quality will be maintained where it is not degraded and improved for it is degraded by human activities.

*Water quality in each freshwater body, coastal lagoon and estuary will be:*

*(a) maintained where the water quality is not degraded; and*

*(b) improved where the water quality is degraded by human activities.*
6. Objective 7 provides:

*Following the establishment of freshwater objectives, limits, and targets (water quality and quantity) in accordance with the Freshwater Management Unit processes:*

*(a) where water quality objectives and limits are met, water quality shall be maintained or improved;*

*(b) any further over-allocation of freshwater is avoided; and*

*(c) any existing over-allocation is phased out in accordance with freshwater objectives, targets, limits and timeframes*
7. Of particular relevance, Objective 7 applies following the FMU process. It is for water quality to be maintained or improved, that further over-allocation is avoided and existing over-allocation phased out in accordance with freshwater objectives, targets, limits and timeframes.

8. Objective 9/9A sets direction for managing water quantity which puts safeguarding life supporting capacity and aquatic ecosystem health, and freshwater quality objectives (including the safeguarding of human health for recreation) ahead of needs of people and communities to provide for their economic, social and cultural wellbeing and the allocation methodology in Appendix K.
9. This sets a prioritisation for allocation which puts ecosystem health above economic and social wellbeing, however, it is not the same nor as specific as Objective 1 of the NPSFM.
10. Objective 9B is that Southland's regionally significant infrastructure is recognised and its sustainable and effective development and operation is enabled.
11. My reading of this is that in addition to achieving other objectives, what is "sustainable and effective" provides some qualification to what is enabled and that the impacts of new activities (reverse sensitivity) will also be relevant to achieving this objective.
12. The enabling aspect of this policy is particularly relevant when considering activities that could preclude sustainable and effective development. However, this policy should not be considered as overriding when making decisions for the management of freshwater. The hierarchy of priorities must also be applied in interpreting this objective.
13. Objective 10 recognised the national importance of the MPS in the Waiau catchment. The objective is that this importance is recognised and provided for in any resulting flow and level regime.
14. In my opinion this objective is particularly relevant to the FMU process. It is also of some relevance to the matters in dispute because water allocation to the MPS effectively sets the flow and level regime for the lower Wairau River.
15. Objective 11 is that water allocation if reasonable for the intended use and used efficiently.
16. Objective 17 is to preserve natural character, including for lakes and rivers and their margin. Of relevance this includes: bed form, seasonal variable flows and natural habitats.

17. Objective 19 has been incorporated from the NPSFM 2020. It is for fish passage to the maintained or improved.
18. Reading these objectives together it is clear that the importance of the existing MPS is to be recognised above economic, social and cultural wellbeing needs of people and communities but that the health of the waterbody and water quality comes first. I consider that reference to the NPSFM is necessary to avoid inconsistencies in providing for MPS, RSI with the hierarchy and prioritisation for freshwater management.

### **Policies**

19. Several policies are relevant to the matters in dispute<sup>1</sup>. In identifying relevant policies, I have considered:
  - a. the extent to which matters within Policy 26 may be addressed by other policy, consistency with and the benefit of resolving conflicts between policies.
  - b. the extent that Rule 52A may implement relevant policy through conditions, appropriate activity classification and enable consideration of relevant policy in decision making on resource consents.
20. Policies A4, 15A and 15B set out considerations with respect to discharges. While they may not be particularly constraining in term of consents for the same activities for MPS, there is an expectation that these policies would be considered in my opinion.
21. Policy 15C is relevant to consent considerations after the FMU process. In my opinion scope to consider this policy should be included in any rule for activities that may affect water quality.
22. Policies 26A and 28 make provision for infrastructure, to manage structures respectively. Both policies include direction to address adverse effects. Policy 26A is for adverse effects on the environment to be avoided where practicable, or otherwise remedied or mitigated, while Policy 28 sets out specific matters that the management structures, bed disturbance activities and associated discharges are

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<sup>1</sup> These policies are set out in Appendix 1 with shading to identify those still subject to unresolved appeals.

to avoid, remedy or mitigate adverse effects on. I consider these matters would be relevant to the consideration of effects in consenting of the MPS and for new consents that may adversely impact on the MPS infrastructural assets.

23. Of relevance, Policy B7 applies to new activities and a change in activities involving any taking, using, damming or diverting of freshwater. In these cases, there must be scope for decisions to consider the policy direction.
24. Policies 20, 22, 26A, 28 and 39A all set direction to manage effects. Policy 26A is more general this direction as it applies to adverse effects on the environment, which is a broad concept (ref RMA definition), while other policies set out specific matters on which adverse effects are to be avoided, remedied or mitigated. Policy 26A is also different in that it qualifies the need to avoid, to “avoid where practical” and for adverse effect to be otherwise remedied or mitigated. I consider that these policies are particularly relevant when considering activities to which council discretion may be restricted in a rule.
25. Policy 32 is for the protection of significant indigenous vegetation and habitat. This is relevant to the extent that consenting of or changes to MPS scheme would contribute to or detract from achieving the policy.
26. Policies 39A, 40, 41 and 42 are specific to consideration in consent applications. They set out direction with respect to integrated management, determining consent duration, monitoring information and water permits including with respect to waterbodies that are fully allocated and conditions for minimum level or flows. In my opinion there must be scope to consider these matters within any restriction of discretion.
27. Policies 44, 45, 46 and 47 set out direction for the freshwater management unit (FMU) process and are designed to provide baseline criteria for every FMU process. In my opinion these policies are not appropriate to apply directly to a resource consent. While these policies are not relevant to resource consents, they set out direction for the FMU process that should not be pre-empted by rules. The outcomes of this process are not yet known and should not be constrained or relied upon to predetermine consent requirements. This process allows for the

inclusion of FMU specific provisions upon completion of processes for FMU sections of the plan<sup>2</sup>.

28. I consider it is necessary to consider NPSFM 2020 directly so that it informs consideration and application of plan provisions and is given effect to the extent possible within the scope of appeals.

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<sup>2</sup> Policy 45 pWLRP.

## Appendix 3 –Rule 52A options

This appendix sets out the Decision version, Meridian version and the Aratiatia and Forest & Bird version of these provisions.

### Decision version

#### Rule 52A – Manapōuri Hydro-electric Generation Scheme

(a) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme, for which consent is held and which is the subject of an application for a new consent for the same activity and is:

- (i) the taking or use of water; or
- (ii) the discharge of water into water or onto or into land; or
- (iii) the discharge of contaminants into water or onto or into land; or
- (iv) the damming or diversion of water;

is a controlled activity provided the following conditions are met:

- (1) the application is for the replacement of an expiring resource consent pursuant to section 124 of the Act;
- (2) where the replacement consent is for the taking or use of water, the rate of take and volume is not increasing, and the use of water is not changing; and
- (3) where the replacement consent is for the taking or use of water, the rate of take and volume complies with any relevant flow and level regimes set out in this Plan.

*The Southland Regional Council will reserve its control to the following matters:*

- 1. the volume and rate of water taken, used, diverted or discharged and the timing of any take, diversion or discharge, including how this relates to generation output;
- 2. any effects on river flows, wetland and lake water levels, aquatic ecosystems and water quality;
- 3. mitigation or remediation measures to address adverse effects on the environment; and
- 4. the benefits of renewable electricity generation.

*An application for resource consent under Rule 52A(a) will be publicly notified.*

(b) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme for which consent is held and which is the subject of an application for a new consent for the same activity and is:

- (i) the taking or use of water; or
- (ii) the discharge of water into water or onto or into land; or
- (iii) the discharge of contaminants into water or onto or into land; or
- (iv) the damming or diversion of water;

that does not meet one or more of the conditions of Rule 52A(a) is a non-complying activity.



## Meridian version

### Rule 52A – Manapōuri Hydro-electric Generation Scheme

- (a) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme, for which consent is held and which is the subject of an application for a new consent for the same activity and is:
- (i) the taking or use of water; or
  - (ii) the discharge of water into water or onto or into land; or
  - (iii) the discharge of contaminants into water or onto or into land; or
  - (iv) the damming or diversion of water;

is a ~~controlled~~ restricted discretionary activity provided the following conditions are met:

- (1) the application is for the replacement of an expiring resource consent pursuant to section 124 of the Act;
- (2) where the replacement consent is for the taking or use of water, the rate of take and volume is not increasing, and the use of water is not changing; and
- (3) the application is lodged after a take limit regime has been established through a FMU process for the Waiau FMU under the NPSFM 2020;
- ~~(3) where the replacement consent is for the taking or use of water, the rate of take and volume complies with any relevant flow and level regimes set out in this Plan.~~
- (4) the application complies with relevant environmental flows and levels and/or take limit regimes that have been established through an FMU process for the Waiau FMU under the NPSFM 2020; and
- (5) the applicant has requested that the application be publicly notified.

**The Southland Regional Council will ~~reserve its control~~ restrict its discretion to the following matters:**

- ~~1. the volume and rate of water taken, used, diverted or discharged and the timing of any take, diversion or discharge, including how this relates to generation output;~~
- ~~2. any effects on river flows, wetland and lake water levels, aquatic ecosystems and water quality;~~
1. mitigation or remediation measures to address adverse effects and any seasonal effects on: the customary use of mahinga kai and nohoanga; taonga species; and the spiritual and cultural values and beliefs of tangata whenua; and
- ~~3. mitigation or remediation measures to address adverse effects on the environment other than those identified in clause 1; and~~
3. the collection, recording, monitoring, reporting and provision of information concerning the exercise of consent; and
4. lapse period, duration of consent and consent review requirements; and
- ~~4.5. the benefits of renewable electricity generation.~~

In exercising its discretion to address adverse effects on the environment the Southland Regional Council may not require:

- (i) take limits, environmental flows and level limits that are more limiting for the consent holder than those set in the Plan for the Waiau FMU in accordance with the NPSFM 2020; and

(ii) water quality standards or limits that are more limiting for the consent holder than those specified in the Plan for the Waiau FMU.

~~An application for resource consent under Rule 52A(a) will be publicly notified.~~

(b) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme for which consent is held and which is the subject of an application for a new consent for the same activity and is:

- (i) the taking or use of water; or
- (ii) the discharge of water into water or onto or into land; or
- (iii) the discharge of contaminants into water or onto or into land; or
- (iv) the damming or diversion of water;

that is not a permitted, controlled or restricted discretionary activity under any other rules in this Plan, or is not a restricted discretionary or non-complying activity in Rule 52A in (c) does not meet one or more of the conditions of Rule 52A(a) is a non-complying activity is a discretionary activity.

(c) Despite any other rules in this Plan, any activity that is for the taking of water for the generation of electricity from Manapōuri hydro-electric generation scheme which:

(i) prior to a take limit regime being established through a FMU process for the Waiau FMU under the NPSFM 2020] seeks a quantity of water greater than that currently consented or

(ii) once a take limit regime has been established through a FMU process for the Waiau FMU seeks a quantity of water greater than provided within the take limit regime

is a non-complying activity.

## **Appendix E**

### **Appendix E – Receiving Water Quality Standards**

These standards apply to the effects of discharges following reasonable mixing with the receiving waters, unless otherwise stated. They do not apply to waters within artificial storage ponds such as effluent storage ponds or stock water reservoirs or to temporarily ponded rainfall.

The standard for a given parameter will not apply in a lake, river, artificial watercourse or modified watercourse or natural wetland where:

- (a) due to natural causes, that parameter cannot meet the standard; or
- (b) due to the effects of the operation an ancillary activity associated with the maintenance of the Manapōuri hydro-electric generation scheme that alters natural flows is proposed. This exception only applies where the activity requires a resource consent pursuant to a rule in this plan and will not result in a permanent change in the state of the water., that parameter cannot meet the standard. Nothing in this exception precludes consideration of the effects of the proposed activity on water quality through a resource consent process.

## Forest & Bird and Aratiatia Livestock version

Changes in **yellow highlight** made to Meridian's version.

### Rule 52A – Manapōuri Hydro-electric Generation Scheme

- (a) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme, for which consent is held and which is the subject of an application for a new consent for the same activity and is:
- (i) the taking or use of water; or
  - (ii) the discharge of water into water or onto or into land; or
  - (iii) the discharge of contaminants into water or onto or into land; or
  - (iv) the damming or diversion of water;

is a ~~controlled~~ restricted discretionary activity provided the following conditions are met:

- (1) the application is for the replacement of an expiring resource consent pursuant to section 124 of the Act;
- (2) where the replacement consent is for the taking or use of water, the rate of take and volume is not increasing, and the use of water is not changing; and
- (3) the application is lodged after a take limit regime has been established through a FMU process for the Waiau FMU under the NPSFM 2020;
- ~~(3) where the replacement consent is for the taking or use of water, the rate of take and volume complies with any relevant flow and level regimes set out in this Plan.~~
- (4) the application complies with relevant environmental flows and levels and/or take limit regimes that have been established through an FMU process for the Waiau FMU under the NPSFM 2020; and
- (5) the applicant has requested that the application be publicly notified.

**The Southland Regional Council will ~~reserve its control~~ restrict its discretion to the following matters:**

1. **the volume and rate of water taken, used, diverted or discharged and the timing of any take, diversion or discharge, including how this relates to generation output;**
2. **any effects on river flows, wetland and lake water levels, the coastal waters and coastal processes, estuaries, aquatic ecosystems, and water quality and natural character;**
- ~~13.~~ 13. mitigation or remediation measures to address adverse effects and any seasonal effects on: the customary use of mahinga kai and nohoanga; taonga species; and the spiritual and cultural values and beliefs of tangata whenua; and
- ~~324.~~ avoidance, mitigation or remediation measures to address adverse effects on the environment, other than those identified in clause 13 above; and
- ~~35.~~ the collection, recording, monitoring, reporting and provision of information concerning the exercise of consent; and
- ~~4-6.~~ lapse period, duration of consent and consent review requirements; and
- ~~4-57.~~ the benefits of renewable electricity generation.

**In exercising its discretion to address adverse effects on the environment the Southland Regional Council may not require:**

~~(i) take limits, environmental flows and level limits that are more limiting for the consent holder than those set in the Plan for the Waiau FMU in accordance with the NPSFM 2020; and~~

~~(ii) water quality standards or limits that are more limiting for the consent holder than those specified in the Plan for the Waiau FMU.~~

~~An application for resource consent under Rule 52A(a) will be publicly notified.~~

(b) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme for which consent is held and which is the subject of an application for a new consent for the same activity and is:

- (i) the taking or use of water; or
- (ii) the discharge of water into water or onto or into land; or
- (iii) the discharge of contaminants into water or onto or into land; or
- (iv) the damming or diversion of water;

~~that is not a permitted, controlled or restricted discretionary activity under any other rules in this Plan, or is not a restricted discretionary or non-complying activity in Rule 52A in (c) does not meet one or more of the conditions of Rule 52A(a) is a non-complying activity is a discretionary activity.~~

~~(c) Despite any other rules in this Plan, any activity that is for the taking of water for the generation of electricity from Manapōuri hydro-electric generation scheme which:~~

~~(i) prior to a take limit regime being established through a FMU process for the Waiau FMU under the NPSFM 2020] seeks a quantity of water greater than that currently consented or~~

~~(ii) once a take limit regime has been established through a FMU process for the Waiau FMU seeks a quantity of water greater than provided within the take limit regime~~

~~is a non-complying activity.~~

**Appendix 4: Section 32AA assessment of options:**

Option 1: decision version

Option 2: Meridian and Ngai Tahu preferred wording

Option 3: Forest & Bird and Aratiatia Livestock preferred wording

I have assessed the alternative versions of provisions put forward by the parties as other reasonably practicable options for evaluation in terms of Section 32AA and 32(1)(b)(i) below.

**Policy 26 – Renewable energy**

| <b>option</b>              | <b>Effectiveness</b>  | <b>Efficiency</b>  | <b>Costs</b>   | <b>Benefits</b>  | <b>Recommendation/overall appropriateness</b>   |
|----------------------------|---|--|--|--|---|
| Option 1: decision version | <p>Is consistent with achieving Objectives 9B and Objective 10.</p> <p>Does not provide for achieving Objective 2 and as a result is uncertain in achieving related objectives.</p> <p>Is uncertain to achieving Objective 9/9A and 18.</p> | <p>Provides clear direction for the listed purposes of significant renewable electricity generation activities which has efficiency in achieving Objectives 9B and 10.</p> <p>Not efficient in terms of achieving other objectives and 18.</p> | <p>Costs associated with resolving conflicts between policies at the time of consenting.</p> <p>Costs of adverse effects on environmental matters. In particular that achieving Te Mana o te Wai where avoidance is not considered practicable under policy 26A.</p> | <p>Reduces likelihood of reverse sensitivity issues for renewable energy which relies on freshwater resource.</p> <p>Provides certainty for provision of nationally significant renewable electricity.</p> | <p>The policy is generally appropriate to give effect to the NPSREG.</p> <p>Overall, the policy is not appropriate for achieving all relevant objectives of the Plan, in particular Objective 2 which is necessary to give effect the NPSFM.</p> <p>Does not resolve conflicts with key aspects of Te Mana o te Wai necessary to give effect to the NPSFM 2020.</p> |

|  |   |  |  |  |   |
|--|---|--|--|--|---|
| <p>Option 2: Meridian version</p>                                  | <p>As for Option 1 above with additional effectiveness in achieving Objective 10.</p>   | <p>As for Option 1 above, with:</p> <ul style="list-style-type: none"> <li>• some efficiency improvement with recognising 'benefits' that contributes to achieving Objective 10; and</li> <li>• potential to result in reduced efficiency for consent applications for other purposes, detracting from achieving Objective 3.</li> </ul> | <p>As for Option 1 above with additional consenting costs.</p>   | <p>As for Option 1 above.</p>                                    | <p>As for Option 1 above.</p>   |
| <p>Option 3: Forest &amp; Bird and Aratiatia Livestock version</p> | <p>Is consistent with achieving Objectives 9B, Objective 10 and Objective 2. Improves certain in achieving related objectives.</p> <p>Improves certainty to achieving Objective 9/9A and 18.</p> <p>Resolves potential conflicts between policies consistent with achieving objectives.</p> | <p>Provides clear direction for the listed purposes of significant renewable electricity generation activities which has efficiency in achieving Objectives 9B and 10 while also achieving other objectives including objective 2, 9/9A and 18.</p>  | <p>Reduces costs compared to Options 1.</p> <p>Potential increase in consenting costs for Manapōuri hydro-electric generation scheme</p> | <p>As for Option 1 above and improved environmental benefits</p> | <p>The amendments retain aspects of the policy giving effect to RPS provisions which in tern give effect to the NPSREG. The additional amendments are appropriate to achieving Objective 2 and giving effect to the NPSFM 2020.</p> |

**Rule 52A – Manapōuri Hydro-electric Generation Scheme**

| Option                     | Effectiveness  | Efficiency  | Costs  | Benefits  | Recommendation/overall appropriateness   |
|----------------------------|--|---|--|---|--|
| Option 1: Decision version | <p>Provides a guaranteed pathway for reconsenting</p> <p>Is uncertain for achieving Objective 2.</p>   | <p>Has efficiency in achieving Objectives 9B and 10</p> <p>Is not efficient in achieving a wider range of objectives.</p> | <p>Prevents council from considering opportunities to avoid adverse effects on the environment.</p> <p>Could result in grant of a consent which is contrary to objective 2 and the NPSFM 2020.</p> <p>Loss of environmental and cultural values.</p> | <p>Certainty to granting of consent on the basis it is applied for.</p> <p>Benefits of Manapōuri Hydro-electric Generation Scheme are enabled.</p>  | <p>Overall, the rule is not appropriate for achieving all relevant objectives of the Plan, in particular Objective 2 which is necessary to give effect the NPSFM.</p> <p>Would inappropriately restrict council discretion to consider the appropriateness of the activity and measures to address adverse effects.</p>  |
| Option 2: Meridian version | <p>Provides a consenting pathway and rule framework that will work now and extend over life of the plan.</p> <p>Implements Policy 26.</p> <p>Partially achieves Objective 2. Would limit consideration of potentially relevant policies.</p> | <p>As for Option 1 above</p>  | <p>Generally reduced costs compared to Option 1</p> <p>May have additional costs though reduced economic development opportunities for other purposes.</p>   | <p>Appropriateness of the activity can be considered within the scope of matters for discretion.</p> <p>Improved management of adverse effects.</p> | <p>Overall, the rule is uncertain for achieving all relevant objectives of the Plan, in particular Objective 2 which is necessary to give effect the NPSFM.</p> <p>Would inappropriately restrict councils' discretion with respect to setting take, flow and level limits. Such limits may not be applicable to a specific activity and this approach could effectively predetermine access</p> |

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|  | <p>The wording limits future decision making and may result in future interpretation and application issues.</p>   |   |   |   | <p>to this water for the MPS over other uses in the absence of applying the hierarchy of priorities in the NPSFM.</p> <p>Could result in perverse outcomes in terms of not giving effect to the NPSFM 2020.</p>   |
| <p>Option 3: Forest &amp; Bird and Aratiatia Livestock version</p> | <p>Implements other relevant policies, beyond that of Option 2.</p> <p>Enables decisions to achieve other relevant objectives, including Objective 2.</p> <p>Retains effectiveness in achieving Objectives 9B and 10</p> | <p>Has efficiency in achieving Objectives 9B and 10 and Objective 2</p> | <p>Reduced cost compared with Options 1 and 2.</p> <p>Potential for some increased costs and implementation costs as a result of additional conditions on consent.</p> <p>Less certainty of consent being granted on the basis applied for.</p> | <p>Improvement on Option 2 above.</p> <p>All relevant objectives and policy direction can be applied. Risk of perverse outcomes is avoided.</p> | <p>Provides scope for Council to consider relevant matters including Objective 2 and the NPSFM 2020.</p> <p>The scope of matters considered under the restricted discretionary status enables the application of relevant policies while providing certainty on the matters that are anticipated to be considered for applications.</p> <p>Given that it may be some time before the pLWRP fully gives effect to the NPSFM ensuring there is scope to fully have regard to it is appropriate. Noting that the FMU process and its incorporation into the plan will implement part of the NPSFM.</p> |