

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

ENV-2018-CHC-26 to 50

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of appeals under clause
14 of Schedule 1 to the
Act relating to the
proposed Southland
Water and Land Plan

BETWEEN **WAIHOPAI RŪNAKA,
HOKONUI RŪNAKA,
TE RŪNANGA O
AWARUA, TE
RŪNANGA O ORAKA
APARIMA, and TE
RŪNANGA O NGĀI
TAHU (collectively
NGĀ RŪNANGA)**

**Appellants in ENV-
2018-CHC-47**

AND **SOUTHLAND
REGIONAL COUNCIL**

Respondent

**STATEMENT OF EVIDENCE OF TREENA LEE DAVIDSON
ON BEHALF OF NGĀ RŪNANGA - TRANCHE 3**

Planning

1 August 2022

Solicitor acting

 **Simpson Grierson**
Barristers & Solicitors

Simpson Grierson
S K Lennon
Telephone: +64-4-924 3509
Facsimile: +64-4-472 6986
Email: sal.lennon@simpsongrierson.com
DX SX11174 PO Box 2402
SOLICITORS
WELLINGTON 6140

Counsel acting

James Winchester
Telephone: 06 883 0080
E-mail: jw@jameswinchester.co.nz
The Office
Level 1, 15 Joll Road
PO Box 8161
Havelock North

TABLE OF CONTENTS

	PAGE
INTRODUCTION	1
CODE OF CONDUCT	1
SCOPE OF EVIDENCE	1
EXECUTIVE SUMMARY	2
APPEAL AND SECTION 274 INTERESTS OF NGĀ RŪNANGA.....	3
REVIEW OF LEGISLATION AND HIGH-ORDER DOCUMENTS	5
DISCUSSION OF PROVISIONS RELATING TO MANAPŌURI	11

INTRODUCTION

1. My full name is Treena Lee Davidson.
2. My qualifications and experience are set out in my statement of evidence (Topic A), dated 15 February 2019, and updated in my statement of evidence (Topic B) dated 20 December 2021.

CODE OF CONDUCT

3. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and I agree to comply with it. I confirm that the issues addressed in this statement are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
4. I note that whilst I am engaged by Te Rūnanga o Ngāi Tahu, I am bound by the Code of Conduct and professional ethics of the New Zealand Planning Institute (NZPI) and am required to be impartial and unbiased in my professional opinions expressed.

SCOPE OF EVIDENCE

5. This statement of evidence relates to Topic B, Tranche 3 provisions which specifically relate to Policy 26 – Renewable Energy, Rule 52A – Manapōuri Hydro-electric Generation Scheme and Appendix E – Receiving Water Quality Standards.
6. In preparing this evidence I have reviewed:
 - (a) The National Policy Statement for Freshwater Management 2020 (**NPSFM**);
 - (b) The National Policy Statement for Renewable Electricity Generation 2019 (**NPSREG**);
 - (c) Te Tangi a Tauria Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan, 2008 (**Te Tangi**);

- (d) The Southland Regional Policy Statement 2017 (**SRPS**);
- (e) The proposed Southland Water and Land Plan (**pSWLP** or **Plan**);
- (f) The four Interim Decisions of the Environment Court, relating to Topic A;
- (a) The Section 32A and Section 42A Reports for the Southland Water and Land Plan;
- (b) Statement of evidence of Dr Jane Kitson (1 August 2022);
- (c) Statement of evidence of Ms Ailsa Cain (1 August 2022);
- (d) The Ngā Rūnanga Notice of Appeal to the Environment Court (dated 17 May 2018);
- (e) The submission and further submission and appeal by Te Rūnanga o Ngāi Tahu and Ngā Rūnanga on the notified proposals (Ngāi Tahu Submission and Further Submission);
- (f) The Ngā Rūnanga notice of intention to become a party to the Meridian Energy Limited (**Meridian**) appeal under section 274 (dated 22 June 2018);
- (g) My statement of evidence for Topic A (dated 15 February 2019); and
- (h) My will-say statement for Topic B (dated 11 November 2021).

EXECUTIVE SUMMARY

7. The Waiau catchment within which the Manapōuri Hydro-electric Generation Scheme sits is of considerable significance to Ngā Rūnanga. It is considered by Ngā Rūnanga to be culturally degraded and that work is needed to restore its hauora and mauri.¹

¹ Statement of evidence of Ailsa Cain (1 August 2022) at [30].

8. The Ngā Rūnanga seeks that preferential treatment is not given to renewing the consent for the Manapōuri Hydro-electric Generation Scheme and that specific consideration is given to adverse effects on tangata whenua. I consider that the Ngā Rūnanga appeal points are supported by the Objectives determined by the Court in Topic A, which direct the following specific outcomes for the drafting of provisions in relation to the Manapōuri Hydro-electric Generation Scheme:
- (a) The provisions need to be informed by and grounded in the ki uta ki tai, Te Mana o te Wai and hauora;
 - (b) The importance of the Manapōuri Hydro-electric Generation Scheme must be provided for and recognised in any resulting flow and level regime; and
 - (c) Recognise the Waiau and Lake Manapōuri as significant to Ngāi Tahu.
9. I further consider that the Objectives determined by the Court in Topic A direct that, while the importance of the Manapōuri Hydro-electric Generation Scheme is relevant, this should still be within the context of its effects on the environment and the need to improve and maintain water quality and quantity.

APPEAL AND SECTION 274 INTERESTS OF NGĀ RŪNANGA

10. The Ngā Rūnanga appeal sought the following in relation to Topic B, Tranche 3:

Policy 26	<p>Delete the text “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”.</p> <p>The additional wording gives a preference to new generation activities where the policy was originally intended to apply to existing renewable resources.</p>
Policy 26A	<p>Delete policy 26A in its entirety.</p> <p>The objective and definitions provide insufficient clarity as to what constitutes effective development, operation, maintenance and upgrading of regionally significant infrastructure, and what is not already covered by the definition of “critical” infrastructure or captured by Objective 10.</p>

New Rule 52A	<p>Redraft so new Rule 52A is a restricted discretionary activity where restriction includes consideration of the following:</p> <p style="text-align: center;"><u>adverse effects on mahinga kai, taonga species and the spiritual and cultural values and beliefs of the tangata whenua</u></p> <p>Lake Manapōuri and the Waiau River are Statutory Acknowledgement Areas. Effects of the activity on mahinga kai, taonga species and the spiritual and cultural values and beliefs of the tangata whenua should therefore be considerations when processing a consent application.</p>
Appendix E	<p>Delete the following statement from Appendix E, “due to the effects of the operation of the Manapōuri hydro-electric generation scheme that alters natural flows, that parameter cannot be applied”.</p> <p>The Waiau River is a statutory acknowledgement area. Expressly excluding the Waiau River from the applying parameter to the receiving water quality standards due to the presence of the Manapōuri hydro-electric generation scheme fails to recognise and provide for the significance of the Waiau to Ngāi Tahu.</p>

11. Ngā Rūnanga is also a section 274 party to the Meridian appeal, in respect of the following points:

Policy 26 Renewable energy	Amending the policy to recognise the effects of land use and the use of the beds of lakes and rivers and the discharge of contaminants or water to water which may impact on renewable electricity generation.
New rule 49(ab)	Extending rule to include damming and diversion as well as take and use of water (making these a permitted activity) and making Manapōuri an exception to take restrictions of 1 September to 31 March.
Rule 52, Rule 52A	Including Monowai in new rule and removing requirement for conditions to be applied where the renewal meets the relevant flow and levels regimes in the Plan and making it discretionary rather than non-complying where controlled activity status cannot be met.

12. Ngā Rūnanga opposes in part the relief sought by the Meridian because:

- (a) Lake Manapōuri and the Waiau River are Statutory Acknowledgement Areas. The amendments sought could result in development and use

of both Manapōuri and the Waiau in ways that adversely affect the relationship of Ngā Rūnanga with these waterbodies.

- (b) It is concerned that the proposed amendments could lead to the placement of new hydro-schemes in water bodies of importance to Ngāi Tahu.
- (c) It considers the objectives and policies as notified provide sufficient guidance for processing a resource consent for renewable energy.
- (d) It opposes the amendment to water abstraction rules in so far as it removes the ability for Ngā Rūnanga to consider possible use of the water that has been held under a long term consent, in particular whether or not there is the ability to allocate some of that water for mahinga kai enhancement.

13. I have been involved in extensive discussions and engagement with Meridian and Jane Whyte, planning expert for Meridian, with a view to narrowing or resolving the differences between the parties. **Attachment A** contains an agreed drafting position that has been reached between myself and Jane Whyte. I consider that the wording in **Attachment A** addresses the respective interests and concerns of Ngā Rūnanga and Meridian.

REVIEW OF LEGISLATION AND HIGH-ORDER DOCUMENTS

Ngāi Tahu Settlement Claims Act 1998

14. Ms Cain's evidence² discusses Te Tiriti o Waitangi and the Ngāi Tahu Claims Settlement Act 1998 (**NTCSA**). As Ms Cain discusses, as cultural redress, the NTCSA included mechanisms to recognise and give practical effect to Ngāi Tahu mana over taonga resources and wāhi tūpuna. These cultural redress mechanisms include Statutory Acknowledgements, Tōpuni and Nohoanga.
15. When considering the Manapōuri Hydro-electric Generation Scheme, ki uta ki tai, the following are relevant Statutory Acknowledgement Areas and nohoanga sites. The Statutory Acknowledgement areas are:

2 Statement of evidence of Ailsa Cain (1 August 2022) at [38] – [43].

- (a) Waiau River;
- (b) Motorau (Lake Manapōuri);
- (c) Te Ana-au (Lake Te Anau);
- (d) Manawapōpōre / Hikuraki (Mavora Lakes);
- (e) A topuni (Takitimu maunga); and
- (f) Coastal acknowledgements at mouth and where the river has been diverted to through Doubtful Sound.

16. There are six Nohoanga in the Waiau River Catchment. These are:

- (a) Lake Te Anau (Lake Mistletoe);
- (b) Lake Te Anau (9 Mile Creek);
- (c) Lake Manapōuri;
- (d) Waiau River Queen's Reach;
- (e) Waiau River and Lagoon (No 1); and
- (f) Waiau River and Lagoon (No 2).

National Policy Statement for Freshwater Management 2020

17. I addressed matters related to the NPSFM 2020 in my will-say statement (dated 11 November 2021) and for the purpose of this evidence would like to highlight the following points from that statement:

- (a) The Topic B provisions need to be informed by or grounded in the Topic A decisions and direction, particularly in relation to ki uta ki tai, Te Mana o te Wai and hauora.
- (b) Te Mana o Te Wai, as expressed in the NPSFM 2020 is not substantively different from how it was expressed in the NPSFM 2014

and 2017. It is, however, now a fundamental concept. The NPSFM 2020 has also explicitly set out the Te Mana o Te Wai hierarchy of obligations. It is clear and directive that the health and well-being of waterbodies and freshwater ecosystems is the first priority and is considered before the health of people, and the ability of people to provide for their social, economic and cultural well-being.

18. Clause 3.31 of the NPSFM 2020 applies specifically to named large hydro-electric generation schemes, of which one is the Manapōuri Hydro-electric Generation Scheme. However, it is clear that this clause (and the matters identified within it) apply to Freshwater Management Units (**FMUs**) (or parts of FMUs). Therefore, I consider this clause is more relevant to the development of FMUs under Plan Change Tuatahi.
19. Clause 3.31 states that regard must be had to the importance of the Scheme's:
 - (a) contribution to meeting New Zealand's greenhouse gas emissions targets;
 - (b) contribution to maintaining the security of electricity supply; and
 - (c) generation capacity, storage and operational flexibility.
20. Clause 3.31 also allows a target attribute state to be set below the national bottom line, but only if an FMU (or part of an FMU) is adversely affected by an "existing structure". As defined in subclause (5), "existing structure" means a structure that was operational on or before 1 August 2019 and includes any structure that replaces it, provided the effects of the replacement are the same or similar in character, intensity and scale, or have a lesser impact. I consider the proposed redrafting of Rule 52A in **Appendix A** of this evidence is consistent with this subclause.
21. I also draw attention to the following matters of relevance in the policies of the NPSFM 2020 (which are listed under clause 2.2):
 - (a) Freshwater is managed in a way that gives effect to Te Mana o te Wai [Policy 1];

- (b) Māori freshwater values are identified and provided for [Policy 2];
- (c) Freshwater is managed through the 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 5]; and
- (d) The loss of river extent and values is avoided to the extent practicable [Policy 7].

National Policy Statement for Renewable Energy Generation 2011

22. In my Statement of Evidence for Topic A (dated 15 February 2019) I outlined the following points, which I still consider applicable:

[97] The NPSREG recognises as a matter of national significance:

- (a) the need to develop, operate, maintain and upgrade renewable electricity generation activities throughout New Zealand; and
- (b) the benefits of renewable electricity generation.

[98] The Objective of the NPSREG is:

To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation.

[99] The NPSREG provides for large electricity generation like Manapōuri Hydro scheme, as well as smaller schemes for example those operated by Alliance Group Limited and Matura Industrial Estates at Matura on the Matura River. It then directs New Zealand towards meeting or exceeding Government's target for renewable electricity generation – in which hydro schemes play a part along with other renewable electricity generation like solar, wind and wave energy.

Te Tangi a Taurira

- 23.** Ms Cain has provided a summary of relevant policies from Te Tangi in her evidence (at paragraph [54]). I agree that the policies do not discourage hydro-electric generation, but provide strong direction on what needs to be taken into account, including:³
- (a) Requiring that hydroelectric development consideration, feasibility studies, and project management in Fiordland recognises and gives effect to the principle of ki uta ki tai (mountains to sea).
 - (b) Avoiding taking any more water from the Waiau River for the purposes of hydroelectric power generation.
 - (c) Ensuring that Ngāi Tahu ki Murihiku are involved in the setting of consent conditions (during consultation) associated with any and all resource consents for hydro power development activities.
 - (d) Avoiding mahinga kai being compromised as a result of damming, diversion or extraction of freshwater resources.

Southland Regional Policy Statement 2017

- 24.** The SRPS contains provisions relating to the Manapōuri Hydro-electric Generation Scheme – for example, Objectives and Policies in sections 4.6 and 4.7 and Chapter 16. However, the SRPS also contains the following Objectives which must also be given effect to in the context of the Manapōuri Hydro-electric Generation Scheme, when considering the pSWLP provisions:
- (a) Objective TW.2 – taking into account iwi management plans in resource management processes;
 - (b) Objective TW.3 – Mauri and wairua are sustained or improved where degraded, and mahinga kai are healthy, abundant and accessible to tangata whenua;

³ Te Tangi, pp. 97-98.

- (c) Objective TW.4 – Wāhi tapu, wāhi taonga and sites of significance are appropriately managed and protected; and
- (d) Objective TW.5 – Ngā Rūnanga can develop and use their land and resources and provide for their social, economic and cultural wellbeing, in a manner that is sustainable.

TOPIC A DECISIONS ON PSWLP

25. I consider the following objectives, that the Court determined in Topic A, to be relevant to Tranche 3 issues:

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, mātaītai 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 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 15 – Taonga species, as set out in Appendix M, and related habitats, are recognised and provided for.

26. In addition, I consider that the Interpretation Statement is also relevant:

All persons exercising functions and powers under this Plan and all persons who use, develop or protect resources to which this Plan applies shall recognise that:

- (i) Objectives 1 and 2 are fundamental to this plan, providing an overarching statement on the management of water and land, and all objectives are to be read together and considered in that context; and
- (ii) The plan embodies ki uta ki tai and upholds Te Mana o Te Wai and they are at the forefront of all discussions and decisions about water and land.

27. I consider the Objectives above, together with the Interpretation Statement, generally give effect to the NPSFM 2020 and NESREG and are consistent with the NTSCA and Te Tangi in that they direct that:

- (a) The interpretation of Plan provisions needs to be informed by and grounded in ki uta ki tai, Te Mana o te Wai and hauora;
- (b) The importance of the Manapōuri Hydro-electric Generation Scheme must be recognised and provided for; and
- (c) There must be recognition that the Waiau and Lake Manapōuri are significant to Ngāi Tahu.

DISCUSSION OF PROVISIONS RELATING TO MANAPŌURI

28. Proposed rewording of Policy 26, Rule 52A and Appendix E are contained in **Appendix A** of this evidence. As I noted earlier in this statement, this wording

was drafted with Jane Whyte, not with a view to having a joint position on these matters, but rather to see where our opinions aligned. My discussions with Ms Whyte and the planners for other parties were to ensure that the Ngā Rūnanga appeal points were appropriately reflected in any drafting efforts.

29. For this reason I have not explained all of the proposed amendments to the provisions set out in Appendix A (which contains the full suite of proposed amendments) – rather, I have only explained the amendments that specifically relate to my opinion and the interests of Ngā Rūnanga.

Policy 26 – Renewable Energy

30. The Decisions version of Policy 26 of the pSWLP reads:

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.

31. The Ngā Rūnanga appeal sought the removal of the specific requirement of the policy to recognise and provide for the need to locate [a hydro generation activity] where the resource is available, and for its development, operation, maintenance and upgrading. The concern for Ngā Rūnanga is that, to some extent, this policy gives a preference to new generation activities.

32. **Appendix A** contains a proposed redraft of Policy 26. The amended Policy addresses the NPSREG in that it recognises and provides for renewable energy generation and the practical constraints that may be associated with it, rather than specifying that it has to be located in a specific area. This gives effect to the NPSREG and also addresses the Ngā Rūnanga concern regarding giving preference to new generation activities.

33. Policy 26 in **Appendix A** also makes explicit provision for the Manapōuri Hydro-electric Generation Scheme and the constraints that must be considered when consenting it. Policy 26 in **Appendix A** also recognises what are effectively reverse sensitivity effects, resulting from new or increased contaminants entering the scheme. While Ngā Rūnanga opposed the inclusion of this clause, I consider its inclusion is appropriate in order to give effect to Policy D of the NPSREG which explicitly provides that decision makers, to the extent reasonably possible, manage activities to avoid reverse sensitivity effects on consented and existing renewable electricity generation activities.

Rule 52A-Manapōuri Hydro-electric Generation Scheme

34. Rule 52A in the Decisions version of the Plan is a controlled activity rule. The controlled activity relates to any activity that is a part of the Manapōuri Hydro-electric Generation Scheme for the:
- (a) the taking or use of water; or
 - (b) the discharge of water into water or onto or into land; or
 - (c) the discharge of contaminants into water or onto or into land; or
 - (d) the damming or diversion of water.
35. For the rule to apply, the consent applications essentially need to be applications for renewals – i.e. the application for a new consent must be the same activity for which consent is currently held.
36. The Ngā Rūnanga appeal seeks that Rule 52A become a restricted discretionary activity rule. Ms Cain's and Dr Kitson's evidence describes the significance of the wāhi tūpuna within which the Manapōuri Hydro-electric Generation Scheme sits and how this is of considerable significance to Ngā Rūnanga. Their evidence further details the loss of the mauri of the Waiau – as stated by Ms Cain at paragraph [53]:

Provision for hydro-electric generation is a delicate point when coupled with the providing for the mauri of the river. It is my understanding that for Ngāi Tahu ki

Murihiku it is not a matter of picking one over the other but considering what the waterbody needs and requires to be in a state of hauora.

- 37.** In terms of the appropriate activity status, my opinion aligns with the Ngā Rūnanga appeal – my opinion is that the activity status within Rule 52A ought to be restricted discretionary. While I consider it is extremely unlikely that the full suite of consents for the Manapōuri Hydro-electric Generation Scheme would be declined, restricted discretionary status means a consent could in fact be declined if it failed to meet a matter of discretion.
- 38.** I consider the Te Mana o Te Wai approach in the pSWLP suggests that an ability to decline consents for the Manapōuri Hydro-electric Generation Scheme is appropriate. As detailed in the NPSFM 2020, the hierarchy of obligations sets out that the health and wellbeing of the waterbody comes first. So, for example, if the health and wellbeing of the waterbody could not be prioritised in the context of granting the consent, then that might suggest the consent may need to be declined. The Regional Council would not be able to decline a consent for a controlled activity and in my view this presents a risk that Te Mana o te Wai might not be appropriately achieved.
- 39.** The proposed amendments to Rule 52A in **Appendix A** anticipate the Rule (and restricted discretionary status) will only apply after the National Objectives Framework for the Waiau has been established. The proposed rule therefore is structured as follows:
- (a) if consents are sought prior to the FMU for Waiau being established, the activity status is discretionary;
 - (b) whether applied for prior to or after the FMU for Waiau is established, any taking of water that is greater than what is currently consented is a non-complying activity.
- 40.** A fully discretionary activity status prior to the FMU for Waiau being established emphasises that Plan Change Tuatahi is the appropriate place to fully discuss matters of what is needed for the waterbodies within the Waiau catchment to be in a state of hauora, and how this will be achieved. Through Plan Change Tuatahi, the hauora of the waterbody can be discussed in conjunction with matters such as climate change, other uses of water and discharges into the

Waiau, the future of Tiwai Smelter and provision of electricity into the National Grid.

- 41.** I further consider it is appropriate, given the degradation of the Waiau River, that it is a non-complying activity to take any water additional to that which is already being taken.
- 42.** The appeal by Ngā Rūnanga further sought that in conjunction with the change in activity status, a specific matter of discretion be included relating to adverse effects on tangata whenua. The controlled activity rule in the Decisions version of the Plan does not include explicit consideration of matters of importance to Ngā Rūnanga. Rather, the matters the Council's control is limited to are focused on:
- (a) 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;
 - (b) any effects on river flows, wetland and lake water levels, aquatic ecosystems and water quality;
 - (c) mitigation or remediation measures to address adverse effects on the environment; and
 - (d) The benefits of renewable energy generation.
- 43.** I consider a provision for Manapōuri Hydro-electric Generation Scheme that specifically addresses adverse effects on tangata whenua is critically important. As evidenced by Ms Cain (at paragraph [30]) and Dr Kitson (at paragraph [26]) the Waiau is significantly culturally degraded. I do not consider that adverse effects on tangata whenua would be adequately captured as "adverse effects on the environment" or through the effects on flows, levels, volumes and rate (i.e. the sorts of matters currently found in Rule 52A). I therefore consider the following addition is appropriate:

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; ...

44. This wording clearly directs the plan-user and decision-maker to the importance of the Waiau catchment for mahinga kai, Nohoanga, taonga species and the spiritual and cultural values and beliefs of Ngā Rūnanga.
45. With regard to the Objectives of the pSWLP that have been determined by the Court, I consider that the proposed wording of Rule 52A in **Appendix A** provides recognition of Objectives 9 and 10 and the importance of the Scheme. However, the proposed wording also better provides for Te Mana o te Wai [Objective 2] and tangata whenua values and interests [Objective 4] while also not precluding consideration of Ngāi Tahu access to customary use [Objective 5] and recognising and providing for taonga species [Objective 10].
46. For completeness, I have not commented on amendments to Rule 52A provided in **Appendix A** that are beyond the scope of the Ngā Rūnanga appeal and section 274 interests.

Appendix E – Receiving Water Quality Standards

47. The Ngā Rūnanga appeal sought the following amendment to Appendix E:

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 of the Manapōuri hydro-electric generation scheme that alters natural flows, that parameter cannot meet the standard.~~

48. Given that Appendix E seeks to establish water quality standards, which are intended to at least maintain water quality (in accordance with Objective 6), I do not consider a blanket exemption for the Manapōuri Hydro-electric Generation Scheme to be appropriate. In addition, the meaning of the term “ancillary activities” is not clear. My opinion aligns with the Ngā Rūnanga appeal in that, if the Manapōuri Hydro-electric Generation Scheme is exempt from meeting the standards in Appendix E, this would fail to recognise the significance of the Waiau to Ngā Rūnanga.
49. I also consider that the Objectives of the Plan support the need for a precautionary approach as to the activities associated with the Manapōuri Hydro-electric Generation Scheme. With the exemption of the Scheme from

meeting the Standards in Appendix E, I am concerned that water quality would not be maintained in accordance with Objective 6.

50. The proposed amendments to Appendix E within **Appendix A** to this statement mean that Appendix E will only apply to:

- (a) an ancillary activity associated with maintenance of the Scheme;
- (b) that requires a resource consent; and
- (c) that will not result in a permanent change to the state of the water.⁴

51. I consider these amendments to Appendix E address the concerns of Ngā Rūnanga, because they require the water quality within the Waiau to be maintained (with no exception offered to the Manapōuri Hydro-electric Generation Scheme. This wording better implements both Objectives 2 and 6 of the pSWLP, in that it provides for Te Mana o te Wai and requires maintenance of water quality by not allowing the change in state of water to be permanent.

Treena Davidson

1 August 2022

⁴ This, however, will not preclude consideration of the effects of the proposed activity on water quality

Appendix A

Amendments proposed to Tranche 3 provisions

Key

Highlighted text indicates those changes considered specific to the Ngā Rūnanga appeal.

The remaining changes are those drafted alongside Ms Jane Whyte.

Changes are shown as underlined or ~~struck through~~.

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 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 affect the operation of the Manapōuri hydro-electric generation scheme.

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 Manapouri 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.