

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

UNDER the Resource Management Act 1991

IN THE MATTER of appeals under Clause 14 of the First Schedule of the Act

BETWEEN

TRANSPOWER NEW ZEALAND LIMITED
(ENV-2018-CHC-26)

FONTERRA CO-OPERATIVE GROUP
(ENV-2018-CHC-27)

HORTICULTURE NEW ZEALAND
(ENV-2018-CHC-28)

(Continued next page)

JOINT MEMORANDUM IN SUPPORT OF CONSENT ORDER

TOPIC B, TRANCHE 3

15 May 2023

Judicial Officer: Judge Borthwick

Respondent's Solicitor
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ARATIATIA LIVESTOCK LIMITED
(ENV-2018-CHC-29)

WILKINS FARMING CO
(ENV-2018-CHC-30)

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL CITY COUNCIL**
(ENV-2018-CHC-31)

DAIRYNZ LIMITED
(ENV-2018-CHC-32)

H W RICHARDSON GROUP
(ENV-2018-CHC-33)

BEEF + LAMB NEW ZEALAND
(ENV-2018-CHC-34 & 35)

DIRECTOR-GENERAL OF CONSERVATION
(ENV-2018-CHC-36)

SOUTHLAND FISH AND GAME COUNCIL
(ENV-2018-CHC-37)

MERIDIAN ENERGY LIMITED
(ENV-2018-CHC-38)

ALLIANCE GROUP LIMITED
(ENV-2018-CHC-39)

FEDERATED FARMERS OF NEW ZEALAND
(ENV-2018-CHC-40)

HERITAGE NEW ZEALAND POUHERE TAONGA
(ENV-2018-CHC-41)

STONEY CREEK STATION LIMITED
(ENV-2018-CHC-42)

THE TERRACES LIMITED
(ENV-2018-CHC-43)

CAMPBELL'S BLOCK LIMITED
(ENV-2018-CHC-44)

ROBERT GRANT
(ENV-2018-CHC-45)

**SOUTHWOOD EXPORT LIMITED, KODANSHA
TREEFARM NEW ZEALAND LIMITED, SOUTHLAND
PLANTATION FOREST COMPANY OF NEW ZEALAND**
(ENV-2018-CHC-46)

**TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA,
WAIHOPAI RUNAKA, TE RUNANGA O AWARUA & TE
RUNANGA O ORAKA APARIMA**
(ENV-2018-CHC-47)

PETER CHARTRES
(ENV-2018-CHC-48)

RAYONIER NEW ZEALAND LIMITED
(ENV-2018-CHC-49)

**ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND**
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

MAY IT PLEASE THE COURT

- 1 This joint memorandum relates to appeals against Southland Regional Council's decision on the proposed Southland Water and Land Plan (**pSWLP**), in respect of the Topic B, Tranche 3 provisions (being Policy 26, Rule 52A, and Appendix E).
- 2 The Tranche 3 matters have been heard by the Court in hearings on 14 to 18 November 2022 and 18 to 21 April 2023.
- 3 During the resumed hearing, on 21 April 2023, the parties sought a brief adjournment of the proceedings to explore whether agreement could be reached as to the matters in dispute.
- 4 In-principle agreement was reached during this time, and the Court adjourned the hearing to allow the parties further time to explore whether full agreement could be reached.
- 5 The parties advised the Court on Friday 28 April 2023 that full agreement had been reached as between the parties on the provisions the subject of Tranche 3.¹ Directions were sought (and subsequently issued) that the parties file consent order documentation, including affidavit evidence as to section 32AA, by Friday 12 May 2023.²
- 6 Accordingly, this joint memorandum is filed in support of a draft consent order to resolve the appeals relating to the Topic B, Trance 3 provisions.
- 7 This joint memorandum has been signed by each of the Appellants, the Respondent, and each of the section 274 parties.

The changes agreed, the rationale for the same, and draft Consent Orders

- 8 The changes to the provisions, as agreed between the parties, are detailed in the draft Consent Order included at **Appendix 1** to this joint memorandum.
- 9 The changes, including the rationale for the same, are also explained in more detail in the affidavit of Margaret Jane Whyte dated 12 May 2023, attached as **Appendix 2** to this joint memorandum. This affidavit provides an evaluation of the agreed changes in terms of section 32AA of the Act and (where relevant) the higher order policy documents,

¹ Memorandum of Counsel for Southland Regional Council dated 28 April 2023.

² Directions of the Environment Court dated 1 May 2023.

including in particular the National Policy Statement for Freshwater Management 2020 (**NPSFM**).

- 10 Counsel also record at the outset, that the parties, throughout the negotiation process, were cognisant of the findings in the Court's Interim Decisions³ and are satisfied that all changes agreed to are consistent with those findings and/or, within the bounds of scope, bring the pSWLP closer to the direction in those decisions.

Details of appeals

- 11 The sub-sections below detail the provisions that were appealed, who appealed each provision, what those appellants sought, and who joined those appeals as section 274 parties.
- 12 As the rationale for the changes agreed and an analysis in line with section 32AA has been provided in the affidavit of Margaret Jane Whyte, such detail is not reproduced here. Rather, cross-referencing to that reasoning is provided to assist with readability of the suite of documents filed in support of orders being made by consent.

Policy 26

- 13 Policy 26 provides policy direction requiring the recognition and provision for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri Power Scheme (**MPS**)), 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:
- (a) allocating surface water for abstraction, damming, diversion, and use; and
 - (b) considering all resource consent application for surface water abstractions, damming, diversion, and use.
- 14 Policy 26 was appealed by:
- (a) Aratiatia Livestock Limited (**Aratiatia**);

³ [2019] NZEnvC 208, [2020] NZEnvC 93, [2020] NZEnvC 110, [2020] NZEnvC 191, [2022] NZEnvC 265, and [2023] NZEnvC 051.

- (b) Meridian Energy Limited (**Meridian**);
- (c) Federated Farmers of New Zealand (Southland) (**Federated Farmers**); and
- (d) Te Runanga O Ngai Tahu, Hokonui Runaka, Waihopai Runaka, Te Runanga O Awarua & Te Runanga O Oraka Aparima (**Ngā Rūnanga**).

15 Aratiatia sought that Policy 26 be amended as follows:

Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri hydro-electric generation ~~scheme facilities~~ in the Waiau catchment), and the national, regional and local benefits ~~of relevant to~~ 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.

whilst, in the context of the Manapouri hydro-electric scheme, having regard to:

3. The potential to avoid, remedy or mitigate any adverse effects on the mauri of the Waiau River system; and
4. The opportunity to reverse or reduce the damage which the operation of the scheme has caused within the catchment by increasing the minimum flow requirements at the Mararoa Weir as specified in consents relating to the scheme.

16 Meridian sought that Policy 26 be amended as follows:

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-; and

3. considering uses of land, use of the beds of lakes and rivers and discharge of contaminants or water to water or land for, or which may impact on, renewable electricity generation activities.

17 Federated Farmers sought that Policy 26 be amended as follows:

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-

While having particular regard to:

(a) The potential to avoid, remedy or mitigate any adverse effects on the Waiau River and downstream users by increasing minimum flow provisions.

18 Ngā Rūnanga sought that Policy 26 be amended as follows:

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.

19 The following parties joined the appeal lodged by Aratiatia as section 274 parties in relation to Policy 26:

- (a) Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest & Bird**);
- (b) Robert Kempthorne;⁴
- (c) Grant & Rachel Cockburn;⁵
- (d) Waiau Rivercare Group;
- (e) Meridian;
- (f) Federated Farmers;
- (g) Hamish English; and
- (h) Southland Fish and Game Council (**Fish & Game**).

20 The following parties joined the appeal lodged by Meridian as section 274 parties in relation to Policy 26:

- (a) Waiau Rivercare Group;
- (b) Federated Farmers;
- (c) Fish & Game; and
- (d) Ngā Rūnanga.

⁴ Note that Mr Kempthorne has not formally withdrawn, nor has he participated in the proceedings. Accordingly, he has been treated as having abandoned his interest in the appeal(s) and his approval of the consent orders has not been sought.

⁵ Note that Mr & Mrs Cockburn have sought to withdraw their interest in all appeals.

- 21 The following parties joined the appeal lodged by Federated Farmers as section 274 parties in relation to Policy 26:
- (a) Forest & Bird;
 - (b) Owen Buckingham;⁶
 - (c) Grant & Rachel Cockburn;⁷
 - (d) Waiau Rivercare Group;
 - (e) Meridian;
 - (f) Hamish English; and
 - (g) Fish & Game.
- 22 The following parties joined the appeal lodged by Ngā Rūnanga as section 274 parties in relation to Policy 26:
- (a) Aratiatia;
 - (b) Waiau Rivercare Group;
 - (c) Meridian; and
 - (d) Fish & Game.
- 23 Through discussions the parties agreed to amend Policy 26 as set out in the draft consent order and paragraph [22] of the affidavit of Margaret Jane Whyte dated 12 May 2023.
- 24 The rationale for the changes agreed are also included in that affidavit at paragraphs [23] – [42].

(New) Policy 26AA

- 25 A new Policy 26AA is proposed which provides that, as an interim measure, the replacement of the existing consents for the Manapouri Power Scheme shall be managed under Rule 52A. It also provides that, as part of the implementation of the NPSFM 2020 National Objectives Framework for the Waiau FMU, a rule framework for the replacement of the existing Manapouri Power Scheme consents should be developed,

⁶ Note that Mr Buckingham has withdrawn his interest in all appeals.

⁷ Note that Mr & Mrs Cockburn have sought to withdraw their interest in all appeals.

consistent with the outcomes of the National Objectives Framework implementation process.

- 26 The wording for new Policy 26AA is set out in the draft consent order and paragraph [45] of the affidavit of Margaret Jane Whyte dated 12 May 2023.
- 27 The rationale for the changes agreed are also included in that affidavit at paragraphs [47] – [63].
- 28 In respect of scope, the parties consider that new Policy 26AA is consequential upon the agreed change to Rule 52A, and that it falls somewhere on the spectrum between the appeals of Meridian and Forest and Bird in relation to Rule 52A.
- 29 Meridian sought that Rule 52A be amended to, *inter alia*:
- (a) Remove an entry condition to the controlled activity Rule 52A(a) which required any application for a replacement consent to comply with any relevant flow and level regimes set out in the Plan.
 - (b) Insert a restriction on the matters of control reserved to the Council such that it could not consider changes or alterations to the volume and rate of water taken, used, diverted or discharged and the timing of take, where the alterations/changes were in accordance with allocation volumes and rates of take and discharge set by the pSWLP.
 - (c) Insert a restriction on the matters of control reserved to the Council such that it could not consider mitigation or remediation measures where those were changes or alterations to the relevant water quality standards or limits in the pSWLP.
- 30 In short, Meridian's appeal was intended to ensure that any application for the replacement of existing resource consents for the MPS could not have conditions applied to it which required the MPS to make any changes or alterations to its operations/consents beyond those required in any relevant surface or groundwater allocation regimes in the pSWLP.
- 31 Forest & Bird on the other hand, sought that Rule 52A be deleted and that all abstraction, damming, diversion and use of water from the Waiau

catchment be a non-complying activity, except as provided in Rules 49, 50 or 51 and the takes authorised by Section 14(3) of the Act.

Rule 52A

- 32 Rule 52A provides that any activity that is part of the MPS, for which consent is held and which is the subject of an application for a new consent for the same activity and is either the taking or use of water, the discharge of water or contaminants into water or onto or into land, or the damming or diversion of water, is a controlled activity, provided certain conditions are met. Those entry conditions require that the application is for a section 124 replacement consent, the rate of take and volume is not increasing and the use of water is not changing (where applicable), and that the rate of take and volume complies with any relevant flow and level regimes set out in the Plan. If those entry conditions are not met, the activity is a non-complying activity.
- 33 Rule 52A was appealed by Aratiatia, Federated Farmers, Ngā Rūnanga, Forest & Bird, and Meridian.
- 34 Aratiatia sought:
- (a) The deletion of Rule 52A to the effect that any applications for consent for the taking or use of water, the discharge of water or contaminants and the damming or diversion of water in relation to the MPS that would have been a controlled activity under Rule 52A require:
 - (i) Discretionary activity consent (in the event that the proposal complies with all relevant standards); or
 - (ii) Non-complying activity consent (in the event the proposal does not comply with those standards).
 - (b) The deletion of all references to Rule 52A elsewhere in the Plan.
- 35 Federated Farmers sought:
- (a) That any replacement permits associated with the Manapōuri Hydro-electric Generation Scheme be considered as a discretionary activity.
 - (b) That the relevant parts of Rule 52A read as follows:

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 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) 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.~~

36 Ngā Rūnanga sought that Rule 52A be redrafted so that it is a restricted discretionary activity where restriction includes consideration of:

adverse effects on mahinga kai, taonga species and the spiritual and cultural values and beliefs of the tangata whenua

37 Forest & Bird sought to:

(a) 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.

(b) Delete Rule 52A.

38 Meridian sought that Rule 52A be amended as follows:

Rule 52A – Manapouri and Monowai Hydro-electric Generation Schemes

(a) Despite any other rules in this Plan, any activity that is part of the Manapouri or Monowai hydro-electric generation schemes, 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; and
- (2) the applicant has requested that the application be publicly notified; ~~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 the exercise of its control to the following matters over which control is reserved are:

- ~~(1.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~~ except for changes or alterations to the volume and rate of water taken and used when this is in accordance with any relevant surface or groundwater allocation volumes and rates of take and discharge set by this Plan and
- ~~2.~~ any effects on river flows, wetland and lake water levels, aquatic ecosystems and water quality;

~~(3-b)~~ mitigation or remediation measures to address adverse effects on the environment, except for changes or alterations to:

- ~~(i)~~ relevant surface or groundwater allocation volumes and maximum or minimum rates of flow set by this Plan;
- ~~(ii)~~ relevant water quality standards or limits set by this Plan; and
- ~~(c)~~ the collection, recording, monitoring, reporting and provision of information concerning the exercise of consent, and
- ~~(d)~~ lapse period, duration of consent and consent review requirements; and
- ~~(e)~~ mitigation or remediation measures necessary to ensure that any discharge is not the cause of any water quality standards or limits set by this Plan being exceeded.

~~4. the benefits of renewable electricity generation.~~

Any application made 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 noncomplying activity.~~

Rule 52B

Any take, damming, diversion, use of water and the discharge of contaminants or water onto or into land in circumstances where contaminants may enter water, or into surface water, which is an activity

that is part of the Manapouri Power Scheme, for which a consent is held and is the subject of an application for a new consent for the same activity that does not meet the conditions of Rule 52A is a discretionary activity.

- 39 The following parties joined the appeal lodged by Aratiatia as section 274 parties in relation to Rule 52A:
- (a) Forest & Bird;
 - (b) Robert Kempthorne;⁸
 - (c) Murray & Tania Willans;⁹
 - (d) Grant & Rachel Cockburn;¹⁰
 - (e) Waiau Rivercare Group;
 - (f) Meridian;
 - (g) The Director-General of Conservation (**Director-General**);
 - (h) Federated Farmers;
 - (i) Hamish English; and
 - (j) Fish & Game.
- 40 The following parties joined the appeal lodged by Federated Farmers as section 274 parties in relation to Rule 52A:
- (a) Forest & Bird;
 - (b) Owen Buckingham;¹¹
 - (c) Grant & Rachel Cockburn;¹²
 - (d) Waiau Rivercare Group;
 - (e) Meridian;

⁸ Note that Mr Kempthorne has not formally withdrawn, nor has he participated in the proceedings. Accordingly, he has been treated as having abandoned his interest in the appeal(s) and his approval of the consent orders has not been sought.

⁹ Note that Mr & Mrs Willans have not formally withdrawn, nor have they participated in the proceedings. Accordingly, they have been treated as having abandoned their interest in the appeal(s) and their approval of the consent orders has not been sought.

¹⁰ Note that Mr & Mrs Cockburn have sought to withdraw their interest in all appeals.

¹¹ Note that Mr Buckingham has withdrawn his interest in all appeals.

¹² Note that Mr & Mrs Cockburn have sought to withdraw their interest in all appeals.

- (f) Director-General;
 - (g) Hamish English; and
 - (h) Fish & Game.
- 41 The following parties joined the appeal lodged by Ngā Rūnanga as section 274 parties in relation to Rule 52A:
- (a) Aratiatia;
 - (b) Waiau Rivercare Group;
 - (c) Meridian;
 - (d) Fish & Game; and
 - (e) Director-General.
- 42 The following parties joined the appeal lodged by Forest & Bird as section 274 parties in relation to Rule 52A:
- (a) Aratiatia;
 - (b) Waiau Rivercare Group;
 - (c) Meridian;
 - (d) Federated Farmers;
 - (e) Fish & Game; and
 - (f) Ngā Rūnanga.
- 43 The following parties joined the appeal lodged by Meridian as section 274 parties in relation to Rule 52A:
- (a) Waiau Rivercare Group;
 - (b) Director-General;
 - (c) Federated Farmers;
 - (d) Fish & Game; and
 - (e) Ngā Rūnanga.
- 44 Through discussions the parties agreed to amend Rule 52A as set out in the draft consent order and paragraph [46] of the affidavit of Margaret Jane Whyte dated 12 May 2023.

- 45 The rationale for the changes agreed are also included in that affidavit at paragraphs [47] – [63].

Appendix E

- 46 Appendix E sets out the receiving water quality standards that apply to the effects of discharges following reasonable mixing with the receiving waters.

- 47 The Tranche 3 appeals relate only to the following paragraph at the commencement of the Appendix:

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 Appendix E, insofar as it relates to Tranche 3, was appealed by Aratiatia, Alliance Group Limited (**Alliance**),¹³ and Ngā Rūnanga.

- 49 Aratiatia sought:

- (a) The deletion of the provision in Appendix E which provides that “The standard for a given parameter will not apply in a lake, river, artificial watercourse or modified watercourse or natural wetland where: ... due to the effects of the operation of the Manapōuri hydro-electric generation scheme that alters natural flows, that parameter cannot meet the standard.”
- (b) The deletion of any other provisions in the Plan to similar effect.

- 50 Ngā Rūnanga sought the deletion of the following statement from Appendix E:

¹³ Noting that Alliance has withdrawn its appeal and no party sought to take it over.

“due to the effects of the operation of the Manapōuri hydro-electric generation scheme that alters natural flows, that parameter cannot be applied”. [sic]

51 The following parties joined the appeal lodged by Aratiatia as section 274 parties in relation to Appendix E (insofar as it relates to Tranche 3):

- (a) Forest & Bird;
- (b) Robert Kempthorne;¹⁴
- (c) Grant & Rachel Cockburn;¹⁵
- (d) Waiau Rivercare Group;
- (e) Meridian;
- (f) Director-General;
- (g) Federated Farmers;
- (h) Hamish English; and
- (i) Fish & Game.

52 The following parties joined the appeal lodged by Ngā Rūnanga as section 274 parties in relation to Appendix E (insofar as it relates to Tranche 3):

- (a) Forest & Bird;
- (b) Waiau Rivercare Group;
- (c) Meridian;
- (d) Fish & Game; and
- (e) Director-General.

Orders sought

53 All parties are satisfied that all matters proposed for the Court’s endorsement are within the scope of submissions and appeals, fall

¹⁴ Note that Mr Kempthorne has not formally withdrawn, nor has he participated in the proceedings. Accordingly, he has been treated as having abandoned his interest in the appeal(s) and his approval of the consent orders has not been sought.

¹⁵ Note that Mr & Mrs Cockburn have sought to withdraw their interest in all appeals.

within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

- 54 For the avoidance of doubt, the parties are satisfied that the amendments give effect to the National Policy Statement for Freshwater Management 2020, insofar as there is scope to do so, the National Policy Statement for Renewable Electricity Generation 2011, and the New Zealand Coastal Policy Statement 2010.
- 55 The parties are also satisfied that the changes appropriately respond to the direction from the Court in its Interim Decisions.¹⁶
- 56 The parties therefore respectfully request that the Court make the orders sought in **Appendix 1** to this memorandum.
- 57 No party has any issue as to costs.
- 58 For completeness, it is noted that the order, if granted, resolves all appeals in relation to Policy 26 and Rule 52A, and partially resolves the appeals in relation to Appendix E (the remainder of which has been dealt with through Tranche 1.

DATED this 15th day of May 2023



.....
P A C Maw / A M Langford

Counsel for Southland Regional Council

.....
D Allan

Counsel for Aratiatia Livestock Limited

¹⁶ [2019] NZEnvC 208, [2020] NZEnvC 93, [2020] NZEnvC 110, [2020] NZEnvC 191, [2022] NZEnvC 265, and [2023] NZEnvC 051.

within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

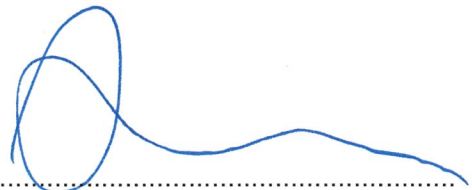
- 54 For the avoidance of doubt, the parties are satisfied that the amendments give effect to the National Policy Statement for Freshwater Management 2020, insofar as there is scope to do so, the National Policy Statement for Renewable Electricity Generation 2011, and the New Zealand Coastal Policy Statement 2010.
- 55 The parties are also satisfied that the changes appropriately respond to the direction from the Court in its Interim Decisions.¹⁶
- 56 The parties therefore respectfully request that the Court make the orders sought in **Appendix 1** to this memorandum.
- 57 No party has any issue as to costs.
- 58 For completeness, it is noted that the order, if granted, resolves all appeals in relation to Policy 26 and Rule 52A, and partially resolves the appeals in relation to Appendix E (the remainder of which has been dealt with through Tranche 1).

DATED this 15th day of May 2023

.....

P A C Maw / A M Langford

Counsel for Southland Regional Council

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a long, wavy horizontal stroke.

.....
D Allan

Counsel for Aratiatia Livestock Limited

¹⁶ [2019] NZEnvC 208, [2020] NZEnvC 93, [2020] NZEnvC 110, [2020] NZEnvC 191, [2022] NZEnvC 265, and [2023] NZEnvC 051.



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M Campbell

Counsel for Federated Farmers of New Zealand (Southland)

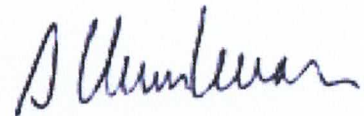
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S Gepp

Counsel for Southland Fish and Game Council



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P Anderson / M Downing

Counsel for Royal Forest and Bird Protection Society of New Zealand Inc



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S Christensen / H Tapper

Counsel for Meridian Energy Limited

.....
J Winchester

Counsel for Ngā Rūnanga

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M Campbell

Counsel for Federated Farmers of New Zealand (Southland)



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S Gepp

Counsel for Southland Fish and Game Council

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P Anderson / M Downing

Counsel for Royal Forest and Bird Protection Society of New Zealand Inc

.....

S Christensen / H Tapper

Counsel for Meridian Energy Limited



.....

J Winchester

Counsel for Ngā Rūnanga



P Williams

Counsel for Director-General of Conservation

.....

K Rusher

Counsel for Hamish English

.....

R Donnelly

Counsel for Waiau Rivercare Group

.....

P Williams

Counsel for Director-General of Conservation

A handwritten signature in black ink, appearing to be 'P Williams', written over a horizontal dotted line.

.....

K Rusher

Counsel for Hamish English

.....

R Donnelly

Counsel for Waiau Rivercare Group

.....

P Williams

Counsel for Director-General of Conservation

.....

K Rusher

Counsel for Hamish English

A handwritten signature in blue ink, appearing to read 'R Donnelly', is written over a horizontal dotted line. The signature is stylized and cursive.

R Donnelly

Counsel for Waiau Rivercare Group

Appendix 1 – Draft consent order

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

UNDER the Resource Management Act 1991

IN THE MATTER of appeals under Clause 14 of the First Schedule of the Act

BETWEEN

TRANSPower NEW ZEALAND LIMITED
(ENV-2018-CHC-26)

FONterra CO-OPERATIVE GROUP
(ENV-2018-CHC-27)

HORTICULTURE NEW ZEALAND
(ENV-2018-CHC-28)

ARATIATIA LIVESTOCK LIMITED
(ENV-2018-CHC-29)

WILKINS FARMING CO
(ENV-2018-CHC-30)

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL CITY COUNCIL**
(ENV-2018-CHC-31)

DAIRYNZ LIMITED
(ENV-2018-CHC-32)

(Continued next page)

CONSENT ORDER

TOPIC B, TRANCHE 3

Judicial Officer: Judge Borthwick

H W RICHARDSON GROUP

(ENV-2018-CHC-33)

BEEF + LAMB NEW ZEALAND

(ENV-2018-CHC-34 & 35)

DIRECTOR-GENERAL OF CONSERVATION

(ENV-2018-CHC-36)

SOUTHLAND FISH AND GAME COUNCIL

(ENV-2018-CHC-37)

MERIDIAN ENERGY LIMITED

(ENV-2018-CHC-38)

ALLIANCE GROUP LIMITED

(ENV-2018-CHC-39)

FEDERATED FARMERS OF NEW ZEALAND

(ENV-2018-CHC-40)

HERITAGE NEW ZEALAND POUHERE TAONGA

(ENV-2018-CHC-41)

STONEY CREEK STATION LIMITED

(ENV-2018-CHC-42)

THE TERRACES LIMITED

(ENV-2018-CHC-43)

CAMPBELL'S BLOCK LIMITED

(ENV-2018-CHC-44)

ROBERT GRANT

(ENV-2018-CHC-45)

**SOUTHWOOD EXPORT LIMITED, KODANSHA
TREEFARM NEW ZEALAND LIMITED, SOUTHLAND
PLANTATION FOREST COMPANY OF NEW ZEALAND**

(ENV-2018-CHC-46)

**TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA,
WAIHOPAI RUNAKA, TE RUNANGA O AWARUA & TE
RUNANGA O ORAKA APARIMA**

(ENV-2018-CHC-47)

PETER CHARTRES

(ENV-2018-CHC-48)

RAYONIER NEW ZEALAND LIMITED

(ENV-2018-CHC-49)

**ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND
(ENV-2018-CHC-50)**

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

- [A] Under section 279(1) of the Resource Management Act 1991, the Environment Court, by consent, orders that the appeal is allowed in accordance with Annexure A to this Order.
- [B] Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

- 1 The following parties have appealed provisions of the proposed Southland Water and Land Plan as they relate to Topic B, Tranche 3:¹
 - (a) Alliance Group Limited (**Alliance**);²
 - (b) Aratiatia Livestock Limited (**Aratiatia**);
 - (c) Federated Farmers of New Zealand (Southland) (**Federated Farmers**);
 - (d) Southland Fish and Game Council (**Fish & Game**);
 - (e) Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest & Bird**);
 - (f) Meridian Energy Limited (**Meridian**); and
 - (g) Te Rūnanga o Ngāi Tahu, Hokonui Rūnaka, Waihōpai Rūnaka, Te Rūnanga o Awarua, and Te Rūnanga o Oraka Aparima (**Ngā Rūnanga**).
- 2 The Court has read and considered the joint memorandum of the parties dated 12 May 2023, which proposes to resolve the appeals that relate to:
 - (a) Policy 26;
 - (b) Rule 52A; and
 - (c) Appendix E (in part).
- 3 The Court has also read and considered the affidavit of Margaret Jane Whyte dated 12 May 2023, which provides an analysis of the changes proposed by the parties in terms of section 32AA of the Resource Management Act 1991 (**Act**).

¹ The particular provisions each party has appealed is set out in the joint memorandum of the parties dated 12 May 2023.

² Noting that Alliance has withdrawn its appeal and no party sought to take it over.

- 4 The following parties gave notice of their intention to become parties under section 274 of the Act and have signed the joint memorandum of the parties dated 12 May 2023:³
- (a) Aratiatia;
 - (b) The Director-General of Conservation;
 - (c) Federated Farmers;
 - (d) Fish & Game;
 - (e) Forest & Bird;
 - (f) Grant & Rachel Cockburn;⁴
 - (g) Hamish English;
 - (h) Meridian;
 - (i) Murray & Tania Willans;⁵
 - (j) Ngā Rūnanga;
 - (k) Owen Buckingham;⁶
 - (l) Robert Kempthorne;⁷ and
 - (m) Waiau Rivercare Group.
- 5 The Court is making this order under section 279(1)(b) of the Act; such order being by consent pursuant to section 297, rather than representing a decision or determination on the merits. The Court understands that for the present purposes that:
- (a) all parties to the proceedings have executed the memorandum requesting this order; and

³ The particular appeal each party has joined as a s274 party is set out in the joint memorandum of the parties dated 12 May 2023.

⁴ Note that Mr & Mrs Cockburn have sought to withdraw their interest in all appeals.

⁵ Note that Mr & Mrs Willans have not formally withdrawn, nor have they participated in the proceedings. Accordingly, they have been treated as having abandoned their interest in the appeal(s) and their approval of the consent orders has not been sought.

⁶ Note that Mr Buckingham has withdrawn his interest in all appeals.

⁷ Note that Mr Kempthorne has not formally withdrawn, nor has he participated in the proceedings. Accordingly, he has been treated as having abandoned his interest in the appeal(s) and his approval of the consent orders has not been sought.

- (b) all parties are satisfied that all matters proposed for the Court's endorsement are within the scope of submissions and appeals, fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Act, including in particular Part 2.

Order

6 Therefore, the Court orders, by consent, that the proposed Southland Water and Land Plan be amended as set out in **Annexure A** to this Order.

7 The Order resolves the appeals as they relate to the following provisions:

- (a) Policy 26; and

- (b) Rule 52A,

and partially resolves the appeals as they relate to Appendix E.

8 There is no order as to costs.

DATED this day of 2023

J E Borthwick
Environment Judge

ANNEXURE A

Tranche 3 – Agreed changes to provisions

Amended text for Policy 26, (new) Policy 26AA, Rule 52A, and Appendix E (deleted text in strikeout, new text underlined):

Policy 26 – Renewable energy

1. 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), including the benefits of renewable electricity generation activities, ~~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-a.~~ a. allocating surface water for abstraction, damming, diversion and use; and
 - ~~2-b.~~ b. considering all resource consent applications for surface water abstractions, damming, diversion and use; and
 - c. considering adverse effects on the Manapōuri hydro-electric generation scheme of the following activities:
 1. taking of surface water or hydraulically connected groundwater that exceeds an allocation limit in this Plan;
 2. use of the beds of lakes and rivers or any activity that may affect the stability or functioning of any structures associated with the existing Manapōuri hydro-electric generation scheme;
 3. use of the beds of lakes and rivers resulting in or new or increased discharge of sediment above the Manapōuri Lake Control structure or within the Mararoa River, which exceeds a water quality standard in this Plan, that may affect the quality of

the water available for the generation of electricity;
and

4. use of the beds of lakes and rivers below the Manapōuri Lake Control structure and any associated discharge of sediment, that interferes with water quality monitoring equipment or bed and bank transect monitoring sites for the Manapōuri hydro-electric generation scheme.
2. In addition to 1 above, when applying Rule 52A, decision makers shall have particular regard to:
 - a. the mauri and ecosystem health of the Waiau River;
 - b. providing for the customary use of mahinga kai and nohoanga; taonga species; and the spiritual and cultural values and beliefs of tangata whenua, including measures to avoid, remedy or mitigate adverse effects.

Policy 26AA – Waiau FMU considerations for Plan Change Tuatahi

As an interim measure the replacement of the existing consents for the Manapouri Power Scheme shall be managed under Rule 52A of this Plan. As part of the implementation of the National Objectives Framework for the Waiau FMU in accordance with the NPSFM 2020, a rule framework for the replacement of the existing Manapouri Power Scheme consents should be developed, consistent with the outcomes of the National Objectives Framework implementation process.

Rule 52A – Manapōuri Hydro-electric Generation Scheme

- (a) Despite any other rules in this Plan, an application for a new consent that is part of the Manapōuri hydro-electricity generation scheme and is replacing one or more of the following consents:
 - (i) 96020 Water Permit
 - (ii) 96021 Discharge Permit
 - (iii) 96022 Water Permit

(iv) 96023 Discharge Permit

(v) 96024 Water Permit

(vi) 206156 Water Permit

(vii) 206157 Water Permit

is a 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 volume and rate of take is not increasing, and the use of water is not changing; and

(3) the applicant has requested that the application be publicly notified.

(b) Despite any other rules in this Plan, an application for a new consent that is part of the Manapōuri hydro-electricity generation scheme and is replacing one or more of the following consents:

(i) 96020 Water Permit

(ii) 96021 Discharge Permit

(iii) 96022 Water Permit

(iv) 96023 Discharge Permit

(v) 96024 Water Permit

(vi) 206156 Water Permit

(vii) 206157 Water Permit

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

Advice Note: This Rule is to be interpreted taking into account Policy 26AA.

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 only result in a temporary 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.

Appendix 2 – Affidavit of Margaret Jane Whyte dated 12 May 2023

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

UNDER The Resource Management Act 1991
(RMA)

IN THE MATTER Appeals under clause 14(1) of the First
Schedule of the Act in relation to the
Proposed Southland Water and Land Plan

BETWEEN **MERIDIAN ENERGY LIMITED**
Appellants (continued on next page)

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

AFFIDAVIT OF MARGARET JANE WHYTE

**Topic B6 Infrastructure – Tranche 3 – Waiau – Relating to Policies 26, 26AA,
Rule 52A, and Appendix E**

Date 12 May 2023

Judicial Officer: Judge Borthwick

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FONTERRA CO-OPERATIVE LTD
(ENV-2018-CHC-27)

HORTICULTURE NEW ZEALAND
(ENV-2018-CHC-28)

ARATIATIA LIVESTOCK LTD
(ENV-2018-CHC-29)

WILKINS FARMING CO
(ENV-2018-CHC-30)

GORE AND SOUTHLAND DISTRICT COUNCILS, INVERCARGILL CITY COUNCIL
(ENV-2018-CHC-31)

DAIRYNZ LTD
(ENV-2018-CHC-32)

H W RICHARDSON GROUP LTD
(ENV-2018-CHC-33)

BEEF + LAMB NEW ZEALAND
(ENV-2018-CHC-34 AND 35)

DIRECTOR-GENERAL OF CONSERVATION
(ENV-2018-CHC-36)

SOUTHLAND FISH & GAME COUNCIL
(ENV-2018-CHC-37)

MERIDIAN ENERGY LTD
(ENV-2018-CHC-38)

ALLIANCE GROUP LTD
(ENV-2018-CHC-39)

FEDERATED FARMERS OF NEW ZEALAND
(ENV-2018-CHC-40)

HERITAGE NEW ZEALAND POHERE TAONGA
(ENV-2018-CHC-41)

STONEY CREEK STATION LTD
(ENV-2018-CHC-42)

THE TERRACES LTD
(ENV-2018-CHC-43)

CAMPBELL'S BLOCK LTD
(ENV-2018-CHC-44)

ROBERT GRANT
(ENV-2018-CHC-45)

SOUTHWOOD EXPORT LTD, SOUTHLAND PLANTATION FOREST COMPANY OF NZ
(ENV-2018-CHC-46)

TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA, WAIHOPAI RUNAKA, TE RUNANGA O AWARUA AND TE RUNANGA O ORAKA APARIMA
(ENV-2018-CHC-47)

PETER CHARTRES
(ENV-2018-CHC-48)

RAYONIER NEW ZEALAND LTD
(ENV-2018-CHC-49)

ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NZ INC
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

CONTENTS

Introduction..... 5
Section 32AA of the Resource Management Act 6
Section 32AA Evaluation of Agreed Provisions..... 7
Policy 26..... 8
Policy 26AA and Rule 52A.....14
Appendix E20

I, Margaret Jane Whyte, of Christchurch, Consultant, solemnly and sincerely affirm:

- 1 My qualifications and experience are as set out in my Evidence in Chief dated 29 July 2022.
- 2 Where I express my professional opinion, I confirm that I have read and am familiar with the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2023. I agree to comply with that Code.
- 3 The data, information, facts and assumptions I consider in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
- 4 Unless I state otherwise, this evidence is within my knowledge and sphere of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 5 I provide the following declaration of conflict of interest. My husband is an employee of Meridian Energy. This relationship has not had any influence on my evidence and my opinion as an independent expert.
- 6 This affidavit provides an evaluation in accordance with section 32AA of the Resource Management Act 1991 (Act) to accompany the draft consent order to which this affidavit relates.¹
- 7 The consent order reflects an agreed position on wording of provisions arrived at by the parties. It does not necessarily reflect my professional opinion of what the 'best' wording may be. That said, the agreed position of the parties is the result of discussion and investment in time and thought amongst the parties, which I respect, and in which I participated as an independent expert engaged by Meridian Energy Limited. I consider that the agreed position of the parties addresses the matters needing to be resolved and the provisions as agreed between the parties are capable of being effectively implemented.
- 8 In this affidavit, as appropriate in the context of the considerations required in Section 32AA, I have addressed my understanding of the reasoning for the wording that has been agreed by the parties. I do not

¹ Directions of the Environment Court 1 May 2023 that the consent order documentation is to be accompanied by an affidavit in support of the consent order which sets out a section 32AA analysis of the agreed provisions.



purport to know each party's underlying rationale for agreeing to the agreed wording.

INTRODUCTION

- 9 This affidavit relates to all of the provisions in dispute under Tranche 3. Wording on the following provisions has been agreed between the parties, being:
- a. Policy 26;
 - b. New Policy 26AA;
 - c. Rule 52A; and
 - d. Appendix E
- 10 In this affidavit I set out the relevant matters to be considered under Section 32AA of the Resource Management Act. I then provide an evaluation in accordance with Section 32AA for each of the provisions that have been agreed between the parties.
- 11 A significant factor in my consideration is that the provisions subject to this consent order are effectively “placeholder” provisions in advance of the completion of Plan Change Tuatahi. I understand all of the parties anticipate that as part of Plan Change Tuatahi a number of provisions that apply within the Waiau Freshwater Management Unit (Waiau FMU), including those relating to the Manapōuri Power Scheme, will be reconsidered and will likely change.
- 12 Therefore the focus of the provisions subject to the consent order is to ensure they provide an appropriate framework until Plan Change Tuatahi is completed. This interim nature of the provisions has influenced the consideration of Section 32AA that I have undertaken, including influencing the level of detail necessary in the evaluation related to the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the implementation of the proposal.
- 13 While I have addressed each provision separately there is a strong interrelationship between the provisions. This is especially the case between Policy 26(2), Policy 26AA and Rule 52A which address specific matters relevant to future re consenting of the Manapōuri Power Scheme.

The interrelated nature of the provisions are addressed in the evaluation I have undertaken.

SECTION 32AA OF THE RESOURCE MANAGEMENT ACT

14 Section 32AA of the Act requires:

- (1) *A further evaluation required under this Act—*
 - (a) *is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and*
 - (b) *must be undertaken in accordance with section 32(1) to (4); and*
 - (c) *must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and*

15 Section 32(1) of the Act requires that an evaluation must –

.....

- (b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - (i) *identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) *summarising the reasons for deciding on the provisions; and*
- (c) *contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the implementation of the proposal.*

16 Section 32(2) of the Act requires that an assessment under (1)(b)(ii) must:

- (a) *identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*



- (i) economic growth that are anticipated to be provided or reduced; and*
 - (ii) employment that are anticipated to be provided or reduced; and*
 - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and*
 - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*
- 17 Section 32(3) is not relevant to the matters addressed in this affidavit given the proposed Southland Water and Land Plan (pSWLP) is not an amending proposal, rather it is a whole new plan.
- 18 Section 32(4) is not, in my view, of particular relevance in the context of the matters addressed in this affidavit.

SECTION 32AA EVALUATION OF AGREED PROVISIONS

- 19 In accordance with the requirements of sections 32(1) and 32(2), in relation to each of the provisions where the parties agree wording I:
- a. Identify the provision subject to the agreement of parties and provide any relevant background;
 - b. Identify the wording agreed by parties;
 - c. Identify the most relevant objectives in the pSWLP;
 - d. Identify the “other reasonably practicable options” for achieving the objectives;
 - e. Summarise my understanding of the reasons for the wording agreed by parties; and
 - f. Provide an assessment of benefits, costs, and risks as required by section 32(2) in the level of detail corresponding to the scale and significance of the effects that are anticipated from the implementation of this proposal.
- 20 When addressing the objectives, these have been considered in light of the interpretation statement which recognises that 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.

POLICY 26

21 Policy 26 is a policy relating to renewable electricity generation, including the Manapōuri Power Scheme.

Agreed wording on Policy 26

22 The wording agreed by the parties for Policy 26 is (deleted text in ~~strikeout~~ and new text underlined):

Policy 26 – Renewable energy

1. 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), including the benefits of renewable electricity generation activities, ~~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:
 - 4.a. allocating surface water for abstraction, damming, diversion and use; and
 - 2.b. considering all resource consent applications for surface water abstractions, damming, diversion and use; and
 - c. considering adverse effects on the Manapōuri hydro-electric generation scheme of the following activities:
 1. taking of surface water or hydraulically connected groundwater that exceeds an allocation limit in this Plan;



2. use of the beds of lakes and rivers or any activity that may affect the stability or functioning of any structures associated with the existing Manapōuri hydro-electric generation scheme;
3. use of the beds of lakes and rivers resulting in or new or increased discharge of sediment above the Manapōuri Lake Control structure or within the Mararoa River, which exceeds a water quality standard in this Plan, that may affect the quality of the water available for the generation of electricity; and
4. use of the beds of lakes and rivers below the Manapōuri Lake Control structure and any associated discharge of sediment, that interferes with water quality monitoring equipment or bed and bank transect monitoring sites for the Manapōuri hydroelectric generation scheme.

2. In addition to 1 above, when applying Rule 52A, decision makers shall have particular regard to:

- a. the mauri and ecosystem health of the Waiau River;
- b. providing for the customary use of mahinga kai and nohoanga; taonga species; and the spiritual and cultural values and beliefs of tangata whenua, including measures to avoid, remedy or mitigate adverse effects.

Relevant objectives

23 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Policy 26 is the most appropriate way to achieve the objectives, I consider the most relevant objectives are Objectives 1, 2, 3, 4, 5, 9/9A, 9B, 10, 14 and 15.

Reasonably practicable options

24 Section 32(1)(b)(i) requires the identification of "other reasonably practicable options" for achieving the objectives. The reasonably practicable options I have identified and consider are the Decisions Version wording, and the agreed wording of the parties set out in tracked changes in paragraph 22 above.



Explanation and reasons for the changes agreed

- 25 There are three matters in Policy 26 addressed by the agreed wording of the parties:
- a. Changes to the wording in the chapeau of the policy;
 - b. New clause 1(c), being a clause specific to the existing Manapōuri Power Scheme. This addresses potential effects of other activities on the Manapōuri Power Scheme; and
 - c. New Clause 2, being a clause specific to consenting the existing Manapōuri Power Scheme under Rule 52A.
- 26 The changes in the wording to the chapeau are unlikely to result in significantly different outcomes in relation to either policy alternative. The agreed wording of the parties removes unnecessary wording, by focussing on the benefits of renewable electricity generation activities, rather than separately specifying national, regional and local benefits. In addition the wording “the need to locate the generational activity where the renewable energy resource is available” is unnecessary given that the practical constraints associated with its development, operation, maintenance and upgrading is to be considered. Therefore I consider the changes to the chapeau in the agreed wording of the parties removes unnecessary words with the same or similar meaning from the policy while still enabling relevant matters to be considered.
- 27 New Clause 1c provides direction that consideration should be given to adverse effects on the Manapōuri Power Scheme from activities specified in subclauses 1-4. The policy does not seek, nor need to, specify what the outcome of any such consideration should be. This will be addressed by decision-makers on a case by case basis, according to the facts and circumstances that exist at the time consent is sought for any of the activities specified in subclauses 1-4.
- 28 The matters specified in subclauses 1-4 are deliberately narrow and address:
- a. activities that may directly impact on the stability or functioning of structures, or in the case of the Lower Waiau River, specified monitoring activities or sites, associated with the Manapōuri Power Scheme (sub-clauses 2 and 4); and



- b. activities that exceed the allocation limits or water quality standards specified in the Plan that may affect either the quantity or quality of water that is available for electricity generation from the Manapōuri Power Scheme (sub-clauses 1 and 3).

- 29 The consideration of the matters identified in subclauses 1-4 focuses on the key activities of other parties in the Waiau FMU that may have direct adverse effects on the Manapōuri Power Scheme operation. The policy requires that when consents are sought for such activities, consideration should be given to any consequential effects on the operation of the nationally significant Manapōuri Power Scheme. The clear identification in the agreed wording of the activities of interest provides clarity to consent applicants, the Council and Meridian as operator of the Manapōuri Power Scheme of the type of activities, and the potential effects of those activities, that should be considered under Policy 26.
- 30 New clause 2 provides an interim provision relating directly to any consents that may be sought under Rule 52A. This addresses the circumstances should re consenting of the Manapōuri Power Scheme occur in advance of the implementation of the National Objectives Framework process specified in the National Policy Statement for Freshwater Management 2020 for the Waiau Freshwater Management Unit being completed (i.e., in advance of Plan Change Tuatahi being completed).
- 31 I understand that all of the parties to the consent order recognise that through the implementation of the National Objectives Framework process for the Waiau FMU those matters that are included in subclauses 2a and 2b as well as other values, including electricity generation, will be addressed as part of that process. Prior to the National Objectives Framework process being completed Clause 2 of the agreed wording of the parties ensures that decision-makers will have particular regard to these matters if the Manapōuri Power Station is re consented under Rule 52A.
- 32 I consider that both the approach and structure of the pSWLP necessitates that all objectives and policies of the pSWLP, if they are relevant for any re consenting application for the Manapōuri Power Scheme under Rule 52A, will need to be considered. This means that while the matters addressed in the parties' agreed wording in clause 2 of



Policy 26 must be had particular regard to if an application is made under Rule 52A, they are not the only matters that will need to be considered, and a decision-maker will also need to consider other relevant provisions of the pSWLP.

Benefits, costs and risk assessment

- 33 In considering the benefits, costs and risks set out in section 32(2), I have focussed on the key differences between the decision version of Policy 26 and the agreed wording of the parties.
- 34 The changes to the wording in the chapeau relate to detailed wording matters, rather than differences in the chapeau's intent and meaning. On this basis I consider there are no discernible differences in relation to environmental, economic, social or cultural benefits or costs between either version of the chapeau to Policy 26.
- 35 The inclusion of clause 1(c) in the agreed wording of the parties does provide clarity that for the specified activities, where a consent is required, potential adverse effects on the nationally significant Manapōuri Power Scheme are to be considered. This has potential environmental benefits over the decision version in that it provides clear policy intent that adverse effects of proposed activities on the operation of the nationally significant Manapōuri Power Scheme are to be part of the consideration of the actual or potential effects of the activity proposed.
- 36 The addition of clause 1(c) will also have potential economic benefits for the operation of the Manapōuri Power Scheme, by reducing the risk that new activities in the Waiau FMU will be consented without consideration of any adverse effects those activities may have on the operation of the Manapōuri Power Scheme.
- 37 The potential for increased economic costs for those undertaking the activities specified in clause 1(c) have been considered. Increased economic costs would come through additional compliance costs incurred through needing to consider effects on the Manapōuri Power Scheme. In real terms potential economic costs are minimal, if they exist at all. This is because the policy will only apply to activities that already need resource consent. For these activities, the effect of the activity, including on other natural and physical resources, should already be considered in any application that conforms to the requirements of Schedule 4 of the



RMA. In addition to this, the narrow focus of activities to which the policy relates (being on activities having a direct impact on the scheme structures or monitoring sites or activities that are seeking consents that fall outside of the allocation and water quality framework specified in the Plan) limits the number of consents this policy will be applicable to.

- 38 There have been no other social or cultural costs or benefits of one policy over the other identified in relation to clause 1(c).
- 39 With respect to the inclusion of Clause 2, on the basis that the matters addressed in subclause 2 would necessarily be part of any consideration when re consenting the Manapōuri Power Scheme under Rule 52A, I have not identified any significant differences in the social or economic costs and benefits between either version of the policy. With respect to environmental and cultural costs I have also not identified any major difference between the two versions of the policy, given that the relevant matters now listed in the parties' agreed wording would be capable of consideration in the context of an application for a discretionary activity consent under Rule 52A, and a number of the matters addressed in clause 2 are also addressed in other objectives and policies of the pSWLP. I do consider that there is the potential for some environmental benefit by virtue of the increased visibility of the specified matters to which particular regard is to be had under clause 2 of the parties' version, should re consenting the Manapōuri Power Scheme occur under Rule 52A.
- 40 I do not seek to, nor am I qualified to, evaluate cultural effects. However, my understanding gained through the tranche 3 appeal process is that for Ngā Runanga, the specific identification of the values included in both subclauses 2a and 2b in the parties' agreed version are considered to have benefits over the decision version of the policy. This is through the increased visibility given to these values through their express inclusion in Policy 26.
- 41 In addressing the risk of acting or not acting if there is uncertain or insufficient information the key matter I consider is that Plan Change Tuatahi is a future process to implement the National Objectives Framework under the National Policy Statement for Freshwater Management 2020. This process is required to be a comprehensive process to identify and manage the Waiiau FMU's important freshwater values, and will result in a different planning framework being developed



than that which applies under the pSWLP today. While the mandatory process for implementing the national objectives framework is specified in the National Policy Statement for Freshwater Management 2020, the specific outcomes of that process are as yet unknown. This process will result in Policy 26 being reconsidered. This uncertainty of the outcomes of Plan Change Tuatahi exists in relation to both the decision version and the agreed wording of the parties of Policy 26.

Overall Consideration of Policy 26

42 While both versions of Policy 26 are effective in achieving the objectives, the wording of Policy 26 agreed by the parties through the specific recognition provided is considered to be the most appropriate way to achieve the objectives and is effective in relation to:

- a. The relationship of clause 1(c) to achieving Objectives 1, 3, 9B and 10; and
- b. The relationship of clause 2 to achieving Objectives 1, 2, 3, 4, 5, 9/9A, 14 and 15 if consents under Rule 52A are sought; and
- c. The environmental, economic and cultural benefits, relative to the environmental, economic and cultural benefits from the additional specificity provided in both clauses 1(c) and 2.

POLICY 26AA AND RULE 52A

43 Policy 26AA is a new policy directly addressing the interim nature of Rule 52A. Rule 52A is the rule providing for reconstenting of the principal consents related to the operation of the Manapōuri Power Scheme. Both Policy 26AA and Rule 52A (through the advice note in the agreed wording of the parties version) directly respond to the recognition that these provisions in the plan are a “placeholder” until the completion of the National Objectives Framework process for the Waiau FMU.

44 Because of the direct relationship between Policy 26AA and Rule 52A I address these together. The relationship between Policy 26(2) and Rule 52A has been considered above in relation to Policy 26.

Agreed wording Policy 26AA and Rule 52A

45 The agreed wording of the parties for Policy 26AA is:

Policy 26AA – Waiau FMU considerations for Plan Change Tuatahi



As an interim measure the replacement of the existing consents for the Manapōuri Power Scheme shall be managed under Rule 52A of this Plan. As part of the implementation of the National Objectives Framework for the Waiau FMU in accordance with the NPSFM 2020, a rule framework for the replacement of the existing Manapōuri Power Scheme consents should be developed, consistent with the outcomes of the National Objectives Framework implementation process.

46 The agreed wording of the parties for Rule 52A is:

Rule 52A – Manapōuri Hydro-electric Generation Scheme

(a) Despite any other rules in this Plan, an application for a new consent that is part of the Manapōuri hydro-electricity generation scheme and is replacing one or more of the following consents:

- (i) 96020 Water Permit
- (ii) 96021 Discharge Permit
- (iii) 96022 Water Permit
- (iv) 96023 Discharge Permit
- (v) 96024 Water Permit
- (vi) 206156 Water Permit
- (vii) 206157 Water Permit

is a 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 volume and rate of take is not increasing, and the use of water is not changing; and
- (3) the applicant has requested that the application be publicly notified.

(b) Despite any other rules in this Plan, an application for a new consent that is part of the Manapōuri hydro-electricity generation scheme and is replacing one or more of the following consents:



- (i) 96020 Water Permit
- (ii) 96021 Discharge Permit
- (iii) 96022 Water Permit 5
- (iv) 96023 Discharge Permit
- (v) 96024 Water Permit
- (vi) 206156 Water Permit
- (vii) 206157 Water Permit

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

Advice Note: This Rule is to be interpreted taking into account Policy 26AA.

Relevant objectives

- 47 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Policy 26AA and Rule 52A are the most appropriate way to achieve the objectives, the most relevant objectives are Objectives 1, 2, 3, 4, 5, 6, 7, 9/9A, 9B, 10, 11, 14, 15, 17, and 19.

Reasonably practicable options

- 48 Section 32(1)(b)(i) requires the identification of "other reasonably practicable options" for achieving the objectives.
- 49 The reasonably practicable options I consider in relation to Policy 26AA are not having a policy, consistent with the Decisions Version, and the agreed wording of the parties set out in tracked changes in paragraph 45 above.
- 50 The reasonably practicable options in relation to Rule 52A are:
- a. a controlled activity for applications that comply with flows and levels that are set in Plan Change Tuatahi and otherwise a



discretionary activity (or non-complying activity if additional water for generation is sought), consistent with the Decisions Version,

- b. a 'simple' discretionary activity rule for replacement consents that do not seek an increase in generation water that does not recognise the forthcoming change in the planning context when the National Objectives Framework for the Waiau FMU is implemented.
- c. A restricted discretionary activity rule which applies after implementation of the National Objectives Framework and which restricts the ability of the resource consent process to revisit matters that have been determined in Plan Change Tuatahi.
- d. The agreed wording of the parties set out in tracked changes in paragraph 46 above that recognises the interim nature the rule, and that the rule framework needs to be reconsidered as part of the Plan Change Tuatahi process.

Explanation and reasons for the changes agreed

- 51 The key matter addressed by the agreed wording of the parties in relation to Policy 26AA and Rule 52A is the recognition that the activity status provided for re consenting the Manapōuri Power Scheme in Rule 52A as a discretionary activity is interim. The agreed wording of the parties acknowledges that the provisions applying to the Manapōuri Power Station, particularly Rule 52A, will necessarily be revisited as part of the implementation of the National Objectives Framework for the Waiau FMU under the National Policy Statement for Freshwater Management 2020².
- 52 At the Tranche 3 hearing it was evident that any formulation of a rule that was intended to endure beyond the completion of Plan Change Tuatahi, resulted in uncertainty. A discretionary activity creates uncertainty because it leaves open the prospect that matters resolved through Plan Change Tuatahi could be re-opened, thereby undermining attainment of the outcomes for the values established in Plan Change Tuatahi. A restricted discretionary activity creates uncertainty because stating the matters over which discretion is to be restricted requires anticipating, to

² The implementation of the National Objectives Framework under the National Policy Statement for Freshwater provides for process that must be followed in setting environmental outcomes as objectives for values, setting target attribute states, setting limits on resource use, setting environmental flows and levels and identifying take limits.



an extent, what the outcome of Plan Change Tuatahi will look like. That involves a degree of informed speculation.

- 53 The agreed wording of the parties provides a pragmatic approach to the above difficulties. Certain and clear provisions will apply to reconsenting the Manapōuri Power Scheme, should that occur prior to the completion of Plan Change Tuatahi, while Policy 26AA and the advice note to Rule 52A recognise that these provisions may not be appropriate once the National Objectives Framework process is complete, and will need to be reconsidered as part of that process.
- 54 Policy 26AA recognises that as part of the future process the appropriate activity status for reconsenting the Manapōuri Power Scheme will be reconsidered. The explicit recognition of the interim nature of Rule 52A provides a rule capable of being implemented now, while acknowledging that in the context of the Manapōuri Power Scheme, the future process should not be ignored.
- 55 With respect to the detailed wording of Rule 52A the agreed wording of the parties provides the same entry conditions that were addressed in evidence at the hearing. The drafting of the rule provides clarity as to the specific consents addressed by Rule 52A, the entry conditions that must be met in order to be a discretionary activity, and the circumstances when consents would be a non-complying activity. I consider that the rule as drafted in the agreed wording of the parties is capable of being effectively and efficiently implemented.
- 56 Controlled activity status as per the decision version was not sought by any party through the Tranche 3 hearings. I do not reconsider this activity status further in this affidavit, but identify that both a controlled activity and discretionary activity status that applied in advance of Plan Change Tuatahi were addressed in the Section 32AA evaluation attached to my evidence in chief.
- 57 The focus for the evaluation in this affidavit is therefore on the recognition provided in Policy 26AA and in the advice note to Rule 52A that the activity status in Rule 52A is interim.

Benefits, costs and risk assessment

- 58 With respect to the assessment of benefits, costs and risks set out in section 32(2), I am of the opinion that the key consideration relating to



Policy 26AA and Rule 52A relates to the management of risk and uncertain information.

- 59 With respect to risk, as I have addressed earlier, providing a rule framework that we can be satisfied will endure and be appropriate once Plan Change Tuatahi is completed is elusive and resulted in uncertainty. This is because while the future process is known, the specific outcomes from that future process are not known. The agreed wording of the parties in Policy 26AA and Rule 52A appropriately acknowledges both the importance of the future process and the inevitable uncertainty of its outcomes through acknowledging that Rule 52A is interim and will be revisited as part of the future process.
- 60 In considering the risk of acting or not acting if there is uncertain or insufficient information, the key matter I consider relates to the future Plan Change Tuatahi process to implement the National Objectives framework under the National Policy Statement for Freshwater 2020. This will result in a different planning framework addressing the values within the Waiau FMU from that which exists now.
- 61 Policy 26AA and Rule 52A (through its advice note) specifically recognises that Rule 52A is interim and should be revisited as part of this future process. As such the agreed wording of the parties responds directly to the risks and uncertain information relating to this future process.

Overall Consideration of Policy 26AA and Rule 52A

- 62 I consider that Policy 26AA is more effective in achieving the objectives than not having a policy. Rule 52A including its advice note recognising the interim nature of the rule is also effective in achieving the objectives. This is because Policy 26AA and Rule 52A including the advice note recognise the importance of Plan Change Tuatahi in implementing the National Objectives Framework under the National Policy Statement for Freshwater Management 2020. Policy 26AA and Rule 52A also directly respond to Objective 7 which acknowledges outcomes for freshwater in accordance with the Freshwater Management Unit processes.
- 63 Should consenting of the Manapōuri Power Scheme occur in advance of the completion of Plan Change Tuatahi, Rule 52A as agreed by the parties will enable an application to be processed and considered as a



discretionary activity, or if more water than is currently consented is sought as a non-complying activity, and will require all of the relevant objectives and policies in the Plan to be considered.

APPENDIX E

64 Appendix E is the appendix containing the receiving water quality standards.

Agreed wording on Appendix E

65 The agreed wording of the parties for Appendix E is:

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 hydroelectric 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 only result in a temporary 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.

Relevant objectives

66 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Appendix E is the most appropriate way to achieve the objectives, the most relevant objectives are Objectives 1, 2, 3, 6 and 10.

Reasonably practicable options

67 Section 32(1)(b)(i) requires the identification of "other reasonably practicable options" for achieving the objectives. The reasonably practicable options I have identified and consider are the Decisions Version wording, and the agreed wording of the parties set out in tracked changes in paragraph 65 above.

Explanation and reasons for the changes agreed

68 The agreed wording of the parties addresses a specific exemption within Appendix E related to maintenance activities associated with the Manapōuri Power Scheme.

69 The agreed wording of the parties will apply to a narrower and more confined range of circumstances than the decision version. The exemption would only apply to:

- a. ancillary activities associated with the maintenance of the Manapōuri Hydro Scheme;
- b. activities that require a resource consent be obtained; and
- c. activities where a change of water quality would only be temporary.

70 The exemption only relates to the water quality standards in Appendix E. The agreed wording of the parties is clear that through the resource consent process effects on water quality will be able to be considered.

71 These circumstances are much narrower than the decision version of the exception and as such in my view will better align with the outcomes sought in the objectives than the decision version.

Benefits, costs and risk assessment

72 With respect to the assessment of benefits, costs and risks set out in section 32(2), I am of the opinion that the narrower focus of the exemption in the agreed wording of the parties will improve the certainty as to when the exemption will apply. In addition, providing the clarity that the exception only applies to activities requiring resource consent in combination with the clear expression that effects on water quality are to be considered is more effective and efficient and a benefit environmentally over the decision version.

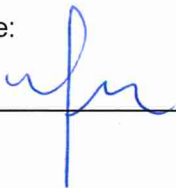


73 Overall, having considered the options, the agreed wording of the parties (and set out at paragraph 65) is considered to be the most appropriate way to achieve the objectives of the pSWLP.

AFFIRMED at Christchurch)

This 12th day of May 2023)

Before me:





MARGARET JANE WHYTE



Miles Jacin McConway
Solicitor
Christchurch