

Joint Witness Statement – Topic B6 – Waiau – Planning

Topic: Proposed Southland Water and Land Plan – Topic B6 Infrastructure






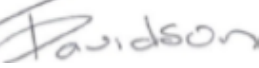

Date of conference: 21 September 2022

Venue: Remote AVL

Facilitator: Commissioner Leijnen

Recorder: Matthew McCallum-Clark

Attendees

Name	Employed or engaged by	Signature
Ben Farrell	Southland Fish and Game Council	
Linda Kirk	Director-General of Conservation	
Natasha Sitarz	Royal Forest and Bird Protection Society of New Zealand Inc	
Margaret Jane Whyte	Meridian Energy Ltd	
Matthew McCallum-Clark	Southland Regional Council	
Treena Davidson	Ngā Rūnanga	
Claire Jordan	Aratiatia	

Environment Court Practice Note

- 1 All participants confirm that they have read the Environment Court Consolidated Practice Note 2014 and in particular Section 7 (Code of Conduct, Duty to the Court and Evidence of an expert witness) and Appendix 3 – Protocol for Expert Witness Conferences and agree to abide by it.

Experts' qualifications and experience

- 2 The qualifications of the experts are set out in their respective statements of evidence.

Purpose of expert conference

- 3 The purpose of the conferencing is to, if possible, narrow the issues as between the experts thereby streamlining the hearing. Another potential advantage of conferencing is that the joint witness statement can, if comprehensive, stand-in for rebuttal evidence.
- 4 The experts may assist the court by responding to a series of questions agreed by experts relating to infrastructure matters and associated issues that the court may wish to consider when determining the appeals. For each question, the experts are to state matters on which they agree and on which they do not agree, with reasons.

Key information sources relied on

- 5 No additional material to that relied upon in planning evidence provided on Tranche 3.

Proposed plan provisions relevant to this conference

- 6 Policy 26, Rule 52A and Appendix E.

Topic B6 issues to be considered

- 7 Are there any agreed refinements to the wording suggested by various planners?

See attached consolidated provisions.

Notes:

Having considered each other's evidence and through further discussion, the planners were able to agree a number of minor changes of wording and clarifications, which are recorded in the attached updated consolidated provisions.

As discussed below, a number of the substantive differences remain.

Rule 52A:

Notification clause deleted in (a) as it is addressed by a condition of the RDA options in Rule 52A(a).

J Whyte recognises issue regarding (b). However, needs more time to consider implications re wider rule structure and how other minor activities/consents are addressed.

- 8 Is the Fiordland Freshwater Management Unit (**FMU**) a relevant consideration under Rule 52A?

L Kirk, C Jordan, B Farrell: Support inclusion of Fiordland FMU in clause for of Rule 52A. Reasoning: Ability to consider the discharge of water and its potential effects on receiving environments is important so that integrated management of the scheme is considered and so as to not pre-empt Plan Change Tuatahi process. L Kirk considers the inclusion gives effect to NPSFM 2020 clauses 1.3(1), 1.5, Policies 1 and 3, clauses 3.5, 3.11(8), 3.16(3), 3.17(b), 3.31, Appendix 1B values to be considered such as 1 - Natural form and character, 3 - Wai tapu ('no artificial mixing of the wai tapu'), and 6 Hydro-electric power generation.

N Sitarz: Supports intent of L Kirk amendment, however considers important thing is that matter of discretion 2 includes coastal waters, consistent with her evidence.

M McCallum-Clark, T Davidson: Ambivalent, as it is unlikely a flow and limit regime will be set for coastal waters (T Davidson adds that not addressed in her evidence).

J Whyte: Considers it is a matter for the coastal plan, rather than this plan.

Certainty of NOF Process for the Waiau FMU

T Davidson notes that Ngā Rūnanga sought a restricted discretionary activity status and does not have an opinion on Rule 52A becoming a discretionary activity. T Davidson further notes the primary concerns of the Ngā Rūnanga appeal are not the subject of questions in this JWS and the matters in the questions have not been considered in her evidence.

- 9 *Planners consider that an important question relating to the RDA rule is whether it is appropriate that conditions which are more limiting than the flow, levels and take limits set for the FMU could or should be imposed on the consent.*

N Sitarz considers that there needs to be the ability for the council to set limits that may be more limiting on the consent holder in order to be within the flows, levels and limits set for the FMU.

C Jordan agrees with N Sitarz, and is concerned that the limitation of discretion may make it difficult for the council to place conditions with the level of specificity and nuance that is appropriate within a resource consent process.

M McCallum-Clark, B Farrell, L Kirk and C Jordan consider that there is uncertainty as to how the flow regime will be specified, including whether limits will be set for different activities. Further, it is likely that there will be some matters that are not able to be specified in the flow regime, such as an adaptive management regime for flushing flows, so it may be important for some ability to be more limiting to be retained.

L Kirk, B Farrell, N Sitarz, and C Jordan consider it is important not to pre-empt future planning processes.

J Whyte considers that for matters that are included in the flow, level and take regime, there is no need to revisit them, but for matters that are not determined

through that process, then that would be a relevant matter to consider in the consent process.

“Over-allocation”

- 10 For the purpose of Policy 11 of the NPSFM, does “over-allocation” have the meaning set out in the definition of that term in clause 1.4 of the NPSFM?

All: Yes – relevant Policy and definitions are set out below.

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

over-allocation, in relation to both the quantity and quality of freshwater, is the situation where:

- (a) *resource use exceeds a limit; or*
- (b) *if limits have not been set, an FMU or part of an FMU is degraded or degrading*

degraded, in relation to an FMU or part of an FMU, means that as a result of something other than a naturally occurring process:

- (a) *a site or sites in the FMU or part of the FMU to which a target attribute state applies:*
 - (i) *is below a national bottom line; or*
 - (ii) *is not achieving or is not likely to achieve a target attribute state; or*
- (b) *the FMU or part of the FMU is not achieving or is not likely to achieve an environmental flow and level set for it; or*
- (c) *the FMU or part of the FMU is less able (when compared to 7 September 2017) to provide for any value identified for it under the NOF*

degrading, in relation to an FMU or part of an FMU, means that any site or sites to which a target attribute state applies is experiencing, or is likely to experience, a deteriorating trend (as assessed under clause 3.19)

- 11 Is there any other additional definition of “over-allocation” that can also be considered when implementing the NPSFM such that freshwater could be over-allocated in situations where it does not meet the NPSFM definition of “over-allocation”?

J Whyte: No.

The planners note that there is a different definition of “over-allocation” in the Southland RPS (noted below).

N Sitarz notes with respect to the NPSFM definition that the situation that could arise is where there is degradation which is considered overallocation before a limit is set through the FMU process, but the degradation is not/cannot be considered overallocation after a limit is set.

C Jordan considers that the definition in the NPSFM 2020 is the definition for the purpose of implementing the NPSFM 2020. Under the NPSFM 2020, once limits are set, over-allocation is constrained to not exceeding the limit, whereas beforehand it is tied to degradation/degrading. Particularly given the additional consideration afforded to the Manapouri Power Scheme in clause 3.31 of the NPSFM 2020, it is possible that a limit might be set which doesn't remedy a degraded state that was considered overallocation prior to the FMU process, making the catchment not over-allocated with respect to the NPSFM 2020. It is my view that policy WQUAN.2 from the RPS envisaged a broader definition of over-allocation would apply post the FMU process, and I consider it important that to implement that policy (among others) that this be considered in the pSWLP, such as through the proposed relief of N Sitarz/myself for Policy 26. I note that the step away from a controlled activity status by the parties also provides some comfort in this regard.

N Sitarz, L Kirk, T Davidson, B Farrell, C Jordan and M McCallum-Clark consider that the definition in the NPSFM is the definition of “over-allocation” when implementing the NPSFM. However, the definition is very specific and is somewhat less inclusive than a plain-English understanding of the term, which creates difficulties in addressing the issue prior to the FMU process being completed. J Whyte agrees with this statement, other than not being sure as to what a “plain-English understanding of the term” means.

Southland RPS Policy WQUAN.2 – Overallocation

Avoid over-allocation of surface water and groundwater, and resolve any historical instances of over-allocation, while recognising the special provisions made for the Waiau catchment.

RPS overallocation definition (from NPSFM 2017):

Over-allocation

Is the situation where the resource:

- (a) has been allocated to users beyond a limit or*
- (b) is being used to a point where a freshwater objective is no longer being met.*

This applies to both water quantity and quality.

Not all planners considered the below questions very helpful to answer in terms of the JWS or that they involved matters of interpretation that are more appropriately addressed in legal submissions, for these reasons they have not been addressed.

12 Must hydro-electric power generation in the Waiau FMU be *considered* for inclusion as a value?

13 Does:

- (a) the identification in Objective 10 of the national significance of the existing Manapōuri Power Scheme (**MPS**) and the requirement that it be recognised and provided for in any resulting flow and level regime,
- (b) its significance as a major existing user of freshwater in the Waiau FMU, and
- (c) the provision made for the MPS in clause 3.31 of the National Policy Statement for Freshwater Management 2020 (**NPSFM**),

mean it is inevitable that hydro-electric power generation will be a value *identified* for inclusion in Plan Change Tuatahi (**PCT**)?

14 Does Objective 10 require the flow and level regime identified for the Waiau FMU to recognise and provide for the existing MPS?

- 15 Assuming hydro-electric power generation is identified as a value in the Waiau FMU (or part of the FMU in which the MPS is located), must an environmental outcome (or outcomes) for hydro-electric generation be identified and included in PCT as one or more objectives?
- 16 Does the environmental outcome for hydro-electric power generation need to be accompanied by the identification of specific attributes capable of being assessed in numeric terms (where practicable) to be used for assessing achievement of the environmental outcome?
- 17 Must the target attribute state set for every attribute identified for the value hydro-electric power generation be set in order to achieve the environmental outcome that is established for that value (i.e. for hydro-electric power generation)?
- 18 Must PCT include regional rules that set environmental flows and levels in the Waiau FMU that achieve the environmental outcomes for all values, including at least the four compulsory values (ecosystem health, human contact, threatened species and mahinga kai), hydro-electric power generation, and any other values established through the process?
- 19 In the Lower Waiau River, must PCT include regional rules for environmental flows and levels to be expressed in terms of the water level and flow rate (including variability as appropriate) at which any taking, damming, diversion or discharge of water meets the environmental outcomes for all the values identified for the river, any connected water body and receiving environments?
- 20 Must PCT include take limits for the Waiau FMU as regional rules? Must these be expressed as a total volume, total rate, or a combination of volume and rate at which water may be taken, diverted or dammed?
- 21 Is the purpose of take limits to meet environmental flows and levels?

Consolidated changes sought to Waiau provisions per JWS

21 Sept 2022

Key/Guide

1. The base document is the “Appeals Version” of the pSWLP (being the Decisions Version, with appeals noted by way of shading).
2. The recommended provision of each planner has been added in black underline and strikeout within boxes. Where planners have recommended different provisions, this is usually shown as an alternative within the box.
3. The relevant planners which support the particular wording are noted in each box. In order to more clearly identify differences, bold is selectively used where this may be helpful to highlight minor differences.
4. Where there is a provision with multiple sub-clauses, the relief sought is shown for each sub-clause, as many planners only seek reasonably small differences. For example, for Policy 52A all changes to sub-clause (a) are set out before sub-clause (b).
5. Numbering of clauses has not been adjusted, even where there are clear discrepancies, so that references to those clauses in evidence are not disrupted.

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.

Davidson (Ngā Rūnanga), Whyte (Meridian), Jordan (Aratiatia), Sitarz (Forest and Bird), Farrell (Fish and Game), McCallum-Clark (Southland Regional Council):

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 including 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

Davidson (Ngā Rūnanga), Whyte (Meridian), McCallum-Clark (Southland Regional Council):

- 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 Manapouri hydro-electric generation scheme.

Jordan (Aratiatia) and Sitarz (Forest and Bird):

- b. considering all resource consent applications for surface water abstractions, damming, diversion and use; and
while;
 - (1) Safeguarding the mauri and providing for the ecosystem health of the Waiau River, and;
 - (2) reversing or reducing degradation of the Waiau River as a result of the Manapōuri hydro-electric generation scheme.

Farrell (Fish and Game) and Jordan – could support (d) and (e) statements (Aratiatia):

...

- b. considering all resource consent applications for surface water abstractions, damming, diversion and use;
- c. *[insert a specific reverse sensitivity policy in relation to the MPS that identifies (i) what activities and development may be incompatible with the MPS and (ii) how this infrastructure should be protected from such activities].*
- while;
 - d. ~~Safeguarding the mauri and~~ providing for the ecosystem health of the Waiau River, and;
 - e. reversing or reducing degradation of the Waiau River as a result 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 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.

Whyte (Meridian), Davidson (Ngā Rūnanga), Sitarz equally preferred option (Forest and Bird), Jordan secondary option (Aratiatia), and Kirk secondary option (Director-General of Conservation):

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, **has been made operative**;
- ~~(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 **made operative following that have been established through** an FMU process for the Waiau FMU under the NPSFM 2020; and

Kirk (Director-General of Conservation), Farrell (Fish and Game), Jordan (Aratiatia), Sitarz – also comfortable with this (Forest and Bird), Davidson – also comfortable with this (Nga Runanga), McCallum-Clark – also comfortable with this (Southland Regional Council):

- (4) the application complies with relevant environmental flows and levels and/or take limit regimes **made operative following that have been established through** an FMU process for the Waiau FMU **and the Fiordland FMU** under the NPSFM 2020; and

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

Whyte (Meridian) and Davidson (Ngā Rūnanga) with regard to new matter of discretion 1. Davidson does not address matters relating to other matters of discretion in evidence.

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~~
- ~~3-2. 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.

Sitarz equally preferred option (Forest and Bird), Jordan secondary option (Aratiatia) and Kirk secondary option (Director-General of Conservation):

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, coastal waters, coastal processes, estuaries, aquatic ecosystems, and water quality, and natural character;
- 3. mitigation or remediation measures to address adverse effects and any seasonal effects on: the customary use of mahinga ka and nohoanga; taonga species; and the spiritual and cultural values and beliefs of tangata whenua; and
- 4. avoidance, mitigation or remediation measures to address adverse effects on the environment other than those identified in clause 3 above; and
- 5. the collection, recording, monitoring, reporting and provision of information concerning the exercise of consent; and
- 6. lapse period, duration of consent and consent review requirements; and
- 7. 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;

Whyte (Meridian), Davidson (Ngā Rūnanga):

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.

Sitarz (Forest and Bird), McCallum-Clark (Southland Regional Council), Jordan secondary option (Aratiatia) and Kirk secondary option (Director-General of Conservation), Davidson – equal support (Ngā Rūnanga):

~~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 the 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 **being made operative**, 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 **under the NPSFM 2020 being made operative**, seeks a quantity of water greater than provided within the take limit regime~~
- ~~is a non-complying activity.~~

Farrell (Fish and Game), Jordan preferred option (Aratiatia) Sitarz equally preferred option (Forest and Bird) and Kirk preferred option (Director-General of Conservation):

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.
- (b) ~~Despite any other rules in this Plan, any activity that is for the taking of water for the generation of electricity from the Manapōuri hydro-electric generation scheme which seeks a quantity of water greater than that currently consented is a non-complying activity.~~

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

Whyte (Meridian), Sitarz (Forest and Bird), Davidson (Ngā Rūnanga), Kirk (Director-General of Conservation), Farrell (Fish and Game), McCallum-Clark (Southland Regional Council), and Jordan equally supported option (Aratiatia):

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 not** result in a **temporary 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.

Jordan equally supported option (Aratiatia):

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....~~