

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

**AT CHRISTCHURCH
KI ŌTAUTAHI**

IN THE MATTER of the Resource Management Act 1991
AND of appeals under clause 14 of the First Schedule of the Act

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

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

**WAIHOPAI RŪNAKA, HOKONUI RŪNAKA, TE RŪNANGA O
AWARUA, TE RŪNANGA O ORAKA APARIMA, and TE
RŪNANGA O NGĀI TAHU** (collectively **Ngā Rūnanga**)
(ENV-2018-CHC-47)
Appellants

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

**Memorandum for the Director-General of Conservation Tumuaki Ahurei re
Wording now sought on Topic B Tranche 3 provisions, dated 8 December 2022**

Department of Conservation
Planning, Permissions and Land
RMA Shared Services
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Phone Waea: 027 408 3324
Solicitor Rōia: Pene Williams

May it please the Court,

The following matters are submitted on behalf of the Director-General of Conservation Tumuaki Ahurei (Director-General):

1. This memorandum is filed on behalf of the Director-General in response to the Court's directions dated 6 December 2022 that:

"[p]arties were to file and serve memoranda advising whether they seek a Restricted Discretionary Rule or Discretionary Rule classification and secondly, attach the final wording of the provisions they support by Thursday 8 December 2022."
2. I advise the Director-General continues to support and seek a Restricted Discretionary Rule classification for Rule 52A, as set out in her Opening Legal Submissions¹.
3. The final wording sought by the Director-General on Rule 52A is set out in the attached Appendix. Ms Linda Kirk is to file supplementary evidence tomorrow responding to the Joint Witness Statement – Topic B6 – Waiau – Planning², and in that evidence she will set out her expert opinion on the various options for Rule 52A.
4. For completeness, I note that as an independent expert Ms Kirk may also comment on Policy 26. As the Director-General is not a party to appeals concerning Policy 26, I have not included any wording for this provision in the Appendix.



P D Williams, Counsel Rōia for the Director-General

¹ Opening Submissions for Director-General of Conservation Tumuaki Ahurei re Topic B Tranche 3, dated 15 November 2022, at 26.

² Dated 30 November 2022

Appendix – Director-General’s Preferred wording on Rule 52A

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 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 total volume and total rate ~~of take~~ at which water is taken, used, diverted or discharged, is not increasing, and the use of water is not changing; and*
- (3) *the application is lodged after environmental flows and levels, limits and target attribute states established through a FMU process for the Waiau FMU under the NPSFM 2020 has been made operative.*
- (4) *the application complies with any applicable environmental flows and levels and limits made operative through an FMU process for the Waiau FMU under the NPSFM 2020; and*
- (5) *the applicant has requested that the application be publicly notified.*

The Southland Regional Council will restrict its discretion to the following matters:

- 1 *Measures to achieve environmental flows and levels and limits established through the FMU process for the Waiau FMU under the NPSFM 2020 or alternative environmental flows and levels and/or limits where:*
 - a. *a matter has not been considered when identifying environmental outcomes and setting environmental flows and levels and limits in the Waiau FMU; or*
 - b. *the environmental flow and/or limit is identified as a matter to be addressed in a resource consent process;*

- 2 *Measures to achieve target attribute states set through the FMU process;*
 - 3 *In accordance with matter of discretion 1 the total volume, total rate or both a total volume and total rate at which water is taken, used, diverted or discharged and the timing of any take, diversion or discharge of water, including how this relates to generation output;*
 - 4 *In accordance with matter of discretion 1 the 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, including measures to avoid, remedy or mitigate adverse effects;*
 - 5 *In accordance with matter of discretion 1 the adverse effects on the environment, including measures to avoid, remedy or mitigate adverse effects that are not addressed under Matter of Discretion 4;*
 - 6 *the collection, recording, monitoring, reporting and provision of information concerning the exercise of consent;*
 7. *Environmental flows and levels or limits that are more restrictive than matter of discretion 1 where these are proffered by the applicant;*
 - 8 *lapse period, duration of consent and consent review requirements; and*
 - 9 *the benefits of renewable electricity generation.*
- (b) *Despite any other rules in this Plan, any activity provided for in Rule 52A that does not meet one or more of the conditions of Rule 52A(a), or is not a non-complying activity in Rule 52A(c), 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 in Rule 52A which:*
- (i) *prior to take limits being established through a FMU process for the Waiau FMU under the NPSFM 2020 being made operative seeks a total volume, total rate or both a total volume and total rate at which water is taken, used, diverted or discharged of water greater than that currently consented; or*
 - (ii) *once a limit has been established through a FMU process for the Waiau FMU being made operative seeks a total volume, total rate or both a total volume and total rate at which water is taken, used, diverted or discharged of water greater than provided within the limits set in the Plan*
- is a non-complying activity.*