

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**
Appellant

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

MEMORANDUM OF COUNSEL FOR MERIDIAN ENERGY LIMITED TOPIC B
TRANCHE 3 – PREFERRED WORDING OF DISPUTED PROVISIONS

11 APRIL 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

MAY IT PLEASE THE COURT

- 1 This memorandum is filed in response to the Court's direction¹ to Meridian Energy and Ngā Runanga to confirm whether they are seeking amended relief as per memoranda filed in December 2022. Counsel infers that the memoranda referred to by the Court are dated 8 December 2022.
- 2 In relation to Policy 26 Meridian Energy has noted the scope question raised in Mr McCallum-Clark's supplementary evidence dated 9 December 2022. Mr McCallum-Clark's question concerns the introduction of "avoid" in relation to reverse sensitivity effects. While "avoid" is used in a qualified way in NPSREG Policy D² it is not included in the version of Policy 26 agreed between Meridian Energy, Ngā Runanga and the Council prior to the commencement of the Tranche 3 hearing. Meridian Energy considers that while there may be scope for the inclusion of "avoid" terminology in Policy 26, in the circumstances it would not oppose that term being removed from the policy wording. An amended version of the wording of Policy 26 supported in the 8 December 2022 memorandum is attached (changes in underline and ~~strikeout~~). Meridian Energy supports this amended version.
- 3 Meridian Energy confirms that the relief it seeks in relation to Rule 52A remains as advised in the memorandum filed on 8 December 2022. For convenience that wording is also attached.



Stephen Christensen

Counsel for Meridian Energy Limited

11 April 2023

¹ Directions by email dated 6 April 2023

² "POLICY D

Decision-makers shall, to the extent reasonably possible, manage activities to avoid reverse sensitivity effects on consented and on existing renewable electricity generation activities."

Meridian Energy – Preferred Wording

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 benefits of renewable electricity generation activities and the practical constraints associated with its development, operation, maintenance and upgrading:

When:

- a allocating surface water for abstraction, damming, diversion and use;
- b considering all resource consent applications for surface water abstractions, damming, diversion and use;
- c ~~managing activities to avoid~~ **considering** reverse sensitivity effects on renewable electricity generation activities (including the Manapōuri hydro-electric generation scheme). In relation to the Manapōuri hydro-electric generation scheme manage reverse sensitivity effects of the following activities:
 - 1. taking of surface water or hydrologically connected groundwater that exceeds an allocation regime, take limit or limit on resource use;
 - 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 or new or increased discharge of contaminants exceeding a limit on resource use, that outside of zone of reasonable mixing, may affect the quality of the water available for the generation of electricity above the Manapōuri Lake Control structure or within the Mararoa River; and
 - 4. use of the beds of lakes and rivers or new or increased discharge of contaminants exceeding a limit on resource use, occurring below the Manapōuri Lake Control structure that could affect the ability of Meridian to meet its consent obligations for the existing Manapōuri hydro-electric generation scheme.

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 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 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 of water greater than provided within the limits set in the Plan

is a non-complying activity.