

**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)

(Continued next page)

**MEMORANDUM OF COUNSEL FOR THE SOUTHLAND REGIONAL
COUNCIL REGARDING TRANCHE 3**

28 April 2023

Judicial Officer: Judge Borthwick

Respondent's Solicitor
PO Box 4341 CHRISTCHURCH 8140
DX WX11179
Tel +64 3 379 7622
Fax +64 3 379 2467

WYNN WILLIAMS

Solicitor: P A C Maw
(philip.maw@wynnwilliams.co.nz)

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 Memorandum of Counsel is filed on behalf of the Southland Regional Council (**Council**) regarding Tranche 3 of the appeals on the proposed Southland Water and Land Plan (**pSWLP**).
- 2 At the close of the Tranche 3 hearing on Friday 21 April, counsel advised the Court that the parties had reached an in-principle agreement on the Tranche 3 provisions, but with some further work required to finesse the drafting of the provisions.
- 3 The Council was directed to file a reporting memorandum by Friday 28 April recording whether agreement has been reached and proposing directions for the resolution of the appeals (either by consent or by resuming the hearing).

Outcome

- 4 The parties have now reached agreement on the Tranche 3 provisions. The agreed wording is set out in **Appendix A**.

Proposed directions

- 5 On the basis that agreement has been reached, counsel for the Council respectfully seeks the following directions:
 - (a) The parties are to prepare and file consent order documentation by Friday 12 May 2023.
 - (b) 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.

DATED this 28th day of April 2023



.....
P A C Maw / I F Edwards
Counsel for the Southland Regional Council

Appendix A – agreed wording for Tranche 3 provisions

Policy 26:

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.~~ 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 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:

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:**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:

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.