

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

ENV-2018-CHC-26 to 50

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of appeals under clause
14 of Schedule 1 to the
Act relating to the
proposed Southland
Water and Land Plan

BETWEEN **WAIHOPAI RŪNAKA,
HOKONUI RŪNAKA,
TE RŪNANGA O
AWARUA, TE
RŪNANGA O ORAKA
APARIMA, and TE
RŪNANGA O NGĀI
TAHU (collectively
NGĀ RŪNANGA)**

**Appellants in ENV-
2018-CHC-47**

AND **SOUTHLAND
REGIONAL COUNCIL**

Respondent

**MEMORANDUM OF COUNSEL FOR NGĀ RŪNANGA ATTACHING TRANCHE 3
PROVISIONS PURSUED BY NGĀ RŪNANGA**

31 October 2022

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MAY IT PLEASE THE COURT

1. This memorandum of counsel is filed on behalf of Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu (collectively **Ngā Rūnanga**).
2. This memorandum is filed in accordance with the Court's directions in its minute dated 27 October 2022.
3. **Appendix A** to this memorandum contains the version of Tranche 3 provisions Ngā Rūnanga intends to pursue.

DATED this 31st day of October 2022



J G A Winchester / S K Lennon
Counsel for Ngā Rūnanga

Appendix A

Tranche 3 provisions Ngā Rūnanga intends to pursue

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
 - 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.

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~~

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

Ngā Rūnanga has not addressed the drafting of the other matters of discretion.

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) (ii) water quality standards or limits that are more limiting for the consent holder than those specified in the Plan for the Waiau FMU.

~~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 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.~~

Ngā Rūnanga equally supports:

~~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.

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.