

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

**AT CHRISTCHURCH  
KI ŌTAUTAHI**

<b>IN THE MATTER</b>	of the Resource Management Act 1991
<b>AND</b>	of appeals under clause 14 of the First Schedule of the Act
<b>BETWEEN</b>	<b>TRANSPower NEW ZEALAND LTD</b> <b>(ENV-2016-CHC-26)</b> Appellant
	<b>ARATIATIA LIVESTOCK LTD</b> (ENV-2018-CHC-29) [Continued on next page]
<b>AND</b>	<b>SOUTHLAND REGIONAL COUNCIL</b> Respondent

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**Memorandum for the Director-General of Conservation Tumuaki Ahurei  
Re Topic B Tranche 3 with revised wording now sought for Rule 52A**

**Dated 17 November 2022**

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**May it please the Court,**

1. As indicated in the Opening Legal Submissions for the Director-General<sup>1</sup>, she is now prepared to support a restricted discretionary activity status for Rule 52A(a).
2. In accordance with the Court's directions in its Minute dated 27 October 2022, the Director-General's preferred wording for Rule 52A(a) is attached in Appendix A. The Director-General now generally prefers the wording proposed by Meridian and Ngā Rūnanga, with minor amendments shown by italics and highlighting.
3. The Director-General does not express a view on the proposed constraint on the matters of discretion sought by Meridian. Nor does the Director-General express a view on the revised amendments to Rule 52A proposed by Meridian's expert planning witness Ms Whyte in her further statement of evidence dated 16 November 2022.
4. For completeness, I have retained in Appendix A the Director-General's preferred wording for Appendix E, which has not changed from that contained in the Consolidated changes sought to Waiau provisions dated 07 November 2022.



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P D Williams  
Counsel for the Director-General

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<sup>1</sup> Opening Submissions for the Director-General of Conservation Tumuaki Ahurei  
Re Topic B Tranche 3, dated 15 November 2022, at para 26  
pSWLP – TB T3 - Memo with D-G's preferred provision wording - 17.11.22 - DOC-7205473 (1)

## Appendix A

### Director-General's preferred wording of provisions as at 17 November 2022

*Ngā Rūnanga and Meridian's relief on Rule 52A now accepted by Director-General:*

#### **Rule 52A – Manapōuri Hydro-electric Generation Scheme**

(a) Despite any other rules in this Plan, an application for a new consent for an activity described in the following consents that form 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;~~
- (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 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]~~ **[being made operative]** through a FMU process for the Waiau FMU under the NPSFM 2020
- (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 that have been established 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 ~~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. 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. ~~the benefits of renewable electricity generation.~~

*The Director-General expresses no view on the following matter sought by Meridian*

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.

~~An application for resource consent under Rule 52A(a) will be publicly notified.~~

~~(b) Despite any other rules in this Plan, any activity provided for in Rule 52A 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) or is not a non-complying activity in Rule 52A(c) 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 Manapōuri hydro-electric generation scheme in Rule 52A 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 **being made operative** seeks a quantity of water greater than provided within the take limit regime

is a non-complying activity.

*The Director-General's relief on Appendix E is unchanged:*

## **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.