

**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 Appellants
AND	SOUTHLAND REGIONAL COUNCIL Respondent

STATEMENT OF EVIDENCE OF MARGARET JANE WHYTE

FOR

MERIDIAN ENERGY LIMITED

Date 16 November 2022

Topic B6 Infrastructure – Rule 52A Drafting

Judicial Officer: Judge Borthwick

Solicitor acting:

Humphrey Tapper

In-house counsel

287–293 Durham St North

Christchurch Central

Christchurch 8013

humphrey.tapper@meridianenergy.co.nz

Counsel acting:

Stephen Christensen

Project Barrister

421 Highgate, Dunedin 9010

P 027 448 2325

stephen@projectbarrister.nz

FONTERRA CO-OPERATIVE LTD

(ENV-2018-CHC-27)

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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

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INTRODUCTION

- 1 My full name is Margaret Jane Whyte
- 2 My qualifications and experience are as set out in my Evidence in Chief dated 29 July 2022.
- 3 I have prepared this statement addressing drafting matters related to Rule 52A.
- 4 I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court's Practice Note 2014. I have complied with the practice note when preparing my written statement of evidence and will do so when I give oral evidence before the Environment Court.
- 5 The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
- 6 Unless I state otherwise, this evidence is within my knowledge and sphere of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 7 I provide the following declaration of conflict of interest. My husband is an employee of Meridian Energy. This relationship has not had any influence on my evidence and my opinion as an independent expert.

SCOPE OF EVIDENCE

- 8 In this evidence I address potential changes that could be made to the drafting of Rule 52A to address three matters that have arisen in the hearing to date. These are:

- (a) Minor amendments to clauses reinforcing that the restricted discretionary status in Rule 52A is available after any Waiau FMU provisions are operative.
 - (b) Providing the ability to address matters in conditions relating to volume of water, rate of take and timing in relation to water take, diversion and discharge consistent with the Plan, or not more limiting than take limits and environmental flows and levels specified for the Waiau FMU .
 - (c) Providing a more traditional approach to drafting by including the proposed limitation of discretion in relation take limits and environmental flows and levels, and water quality limits and targets within the clauses where effects are considered.
- 9 I address each of these matters below. In Appendix 1 I have providing amended wording to Rule 52A reflecting the drafting alternatives I have considered.

MATTER ONE

- 10 I have identified minor changes to the following Rule 52A clauses to make it clear that the ability to utilise restricted discretionary activity status is only available once the environmental flows and levels and take limits established through the Waiau FMU process are operative. This amendment is identified in clauses (a)(3), (a)(4), (c)(i) and (c)(ii).

MATTER TWO

- 11 I have noted the questioning by Mr Maw relating to the ability to address volumes, rates of take and timing matters, and that the terminology in his questions is deliberately different to the terms “take limits, environmental flows and level limits” that are currently within the version of Rule 52A both in my evidence and that version preferred by Meridian.
- 12 In considering the difference in wording of “volumes, rates of take, diversion or discharge, and timing of any take, diversion or discharge” and the wording “take limits, environmental flows and level limits” I have identified a “gap” in the current drafting in both the version of the rule in my evidence and in the Meridian preferred version. This “gap” arises as a consequence of deleting Matter 1 of the matters the Southland Regional Council will restrict its discretion to in my existing version of the rule. This

matter has been reintroduced in the version attached to this evidence (now renumbered 1A in Appendix 1)

- 13 The consequence of deleting this matter of discretion is that if matters relating to volumes, rates of take, diversion or discharge, and timing of any take, diversion or discharge are not related to adverse effects in either clause 1. or clause 2. then there is no current matter of discretion that would enable these matters to be addressed. These are matters that I would expect to be addressed in considering a consent application under Rule 52A and could be expected to be reflected in consent conditions. I have sought to address this through reintroducing an amended matter to which that the Southland Regional Council will restrict its discretion. The intent is that this will enable consideration of volumes, rates of take, diversion or discharge, and timing of any take, diversion or discharge in clause 1A, and the corresponding imposition of appropriate conditions to ensure the consent is operated in the manner envisaged in Plan Change Tuatahi.
- 14 In clause 1A I have retained the overall approach to the rule taken in my primary evidence and the Meridian preferred version of Rule 52A. The reservation of discretion in 1A enabling consideration of matters specifying volumes, rates of take, diversion or discharge, and timing of any take, diversion or discharge may not introduce a more restrictive approach than is required in the Plan, or be more limiting for the consent holder than the take limits and environmental flows and level limits set in the Waiau FMU in accordance with the NPSFM2020.

MATTER THREE

- 15 This relates to where the limitation of discretion in relation take limits and environmental flows and levels, and water quality limits and targets sits within the clauses of Rule 52A.
- 16 The drafting of the limitation of discretion and its location within Rule 52A was deliberate. However, I appreciate that the bespoke approach has resulted in uncertainty as to how and when the restriction of discretion is intended to apply. This could be exacerbated when the rule is implemented outside of the context of this hearing. To address this matter I have provided a more traditional drafting approach whereby the limitation of discretion is incorporated into each of the clauses it is intended to apply to. The intent of the restriction on discretion has not changed, but the

location has. This has resulted in the inclusion of the additional words in matters in restriction of discretion clause 1. and 2. and the deletion of the words starting “in exercising its discretion.....” below clause 5.

APPENDIX 1 – AMENDMENTS TO RULE 52A

The amendments shown below are relative to the Meridian Preferred Version of Rule 52A. The changes addressed in my evidence are shown as shaded and bold strikethrough or bold underlined.

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 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 **that have been established 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 ~~reserve its control~~ restrict its discretion to the following matters:

- 1A. **specifying** the volume and rate of water taken, used, diverted or discharged and the timing of any take, diversion or discharge **in accordance with relevant volumes, rates of take, diversion or discharge and timing of any take, diversion or discharge set in the Plan, or if relevant volumes, rates of take and timing of any take, diversion or discharge are not set in the Plan then any volume, rates of take and timing of any take, diversion or discharge required is not more limiting for the consent holder than take limits and environmental flows and level limits set in the Plan for the Waiau FMU in accordance with the NPSFM 2020. 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. **The consent authority may not require take limits, environmental flow and level limits and water quality standards and 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;~~
32. ~~mitigation or remediation measures to address adverse effects on the environment other than those identified in clause 1. **The consent authority may not require take limits, environmental flow and level limits and water quality standards and 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~~
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~~
45. ~~the benefits of renewable electricity generation.~~

~~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) 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.