

BEFORE THE ENVIRONMENT COURT

I MUA I TE KOOTI TAI AO O AOTEAROA

IN THE MATTER OF the Resource Management Act 1991
AND
IN THE MATTER of appeals under clause 14 of the First
Schedule to the Act
BETWEEN **ARATIATIA LIVESTOCK LIMITED**
(ENV-2018-CHC-29)
MERIDIAN ENERGY LIMITED
(ENV-2018-CHC-38)
WAIHOPAI RŪNAKA, HOKONUI RŪNAKA, TE
RŪNANGA O AWARUA, TE RŪNANGA O ORAKA
APARIMA, and TE RŪNANGA O NGĀI TAHU
(collectively NGĀI TAHU)
(ENV-2018-CHC-47)
ROYAL FOREST & BIRD PROTECTION
SOCIETY OF NZ INC
(ENV-2018-CHC-50)
Appellants

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

AND **ROYAL FOREST AND BIRD PROTECTION SOCIETY**
OF NEW ZEALAND INCORPORATED

s274 Parties

SECTION 274 STATEMENT OF EVIDENCE OF NATASHA SITARZ
ON BEHALF OF THE ROYAL FOREST AND BIRD PROTECTION SOCIETY

OF NEW ZEALAND INC

19 August 2022

(Planning)

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INTRODUCTION

1. My name is Natasha Leigh Sitarz. I provided planning evidence (EIC), on behalf of the Royal Forest and Bird Protection Society of New Zealand Incorporated (F&B) on its appeal, dated 29 July 2022.
2. In this statement, I am providing evidence for Forest & Bird as a s 274 party to the appeals by Aratiatia Livestock Ltd, Meridian Energy Ltd and Ngāi Tahu. I principally respond to the planning evidence of Ms Jane Whyte on behalf of Meridian.
3. I have considered the evidence of Ms Treena Davidson and Ms Ailsa Cain on behalf of Ngā Rūnanga with respect to iwi management plans.

QUALIFICATIONS AND EXPERIENCE

4. My qualifications, experience, and confirmation of compliance with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 are as set out in my EIC dated 29 July 2022.

EVIDENCE

5. In considering the matters raised in the following expert evidence I recognise that Ms Whyte and Ms Davidson had not had the opportunity in drafting their evidence to consider the alternative wording of Policy 26 and Rule 52A now supported by Forest & Bird and Aratiatia Livestock (F&B and AL).

POLICY 26

6. I generally agree with Ms Whyte that the separation within Policy 26 for the MPS is appropriate. In particular, I agree with Ms Whyte¹ that Policy 26 links to Objective 9B addressing infrastructure and Objective 10 addressing the Manapouri Power Scheme (MPS).

¹ Evidence of Ms Whyte dated 29 July 2022 at [32].

7. I agree with Ms Whyte² that the changes to Policy 26 in Meridian’s version may be more effective than the Decision version with respect to recognising and providing for the significance and benefits of the MPS. However, I fail to see a strong correlation between achieving Objective 10 and the additional activities added at sub-clause (b). While Ms Whyte³ has suggested this provides clarity that effects on the MPS ‘is a consideration where relevant’, In my view it is likely to result in an expectation for all resource consent applications for these activities to also determine that such a consideration is not relevant. I accept that the Council should consider reverse sensitivity effects with respect to the MPS and I consider that the Decision wording already captures the activities of most significant potential impact on the MPS.⁴
8. The additional consent considerations seem an onerous default requirement for activities which are less likely to have an effect on the MPS and for which, if the circumstance arose the Council could request the applicant to provide information on in the consenting process.
9. For the reasons above I consider that while the additional wording may be more effective with respect to Policy 9B⁵ I consider it is not more efficient in achieving other objectives. For example, it could result in reduced efficiency with respect to Objective 3 and additional consenting costs.⁶
10. For the reasons above I disagree with Ms Whyte⁷ that the Meridian changes are more effective than the Decision version with respect to Objective 1 and 10. I consider that additional consenting activities sought by Meridian in Policy 26 are not material to achieving Objective 1.

² Evidence of Ms Whyte dated 29 July 2022 at page 61 Effectiveness of Policy 26, Table of Effectiveness.

³ Evidence of Ms Whyte dated 29 July 2022 at page 46 Effectiveness of Policy 26, Table of Effectiveness.

⁴ Evidence of Mr Feierabend dated 29 July 2022 at [12] and [13].

⁵ Evidence of Ms Whyte dated 29 July 2022 at page 59, Effectiveness of Policy 26, Table of Effectiveness.

⁶ Evidence of Ms Sitarz dated 29 July 2022 at Appendix 4, Policy 26 Option 2.

⁷ Evidence of Ms Whyte dated 29 July 2022 at page 46 and 61, Effectiveness of Policy 26, Table of Effectiveness

11. Ms Whyte⁸ has set out that for a number of Objectives⁹ the Decision and Meridian versions are of similar effectiveness. This appears to be because Policy 26 does not address those objectives and not because Policy 26 is effective at achieving them. While I accept that a single policy does not need to implement all objectives, it is best practice to consider where tensions may exist and may be resolved. In my opinion the effectiveness of the Decision and Meridian versions in achieving Objective 2 is low. In my EIC I consider that these versions do not provide for achieving Objective 2 when compared to the Policy 26 option supported by F&B and AL.¹⁰

CONTROLLED ACTIVITY STATUS

12. Ms Whyte¹¹ has confirmed that Meridian is no longer seeking a controlled activity status. However, she remains of the view that it would be an appropriate activity status.¹²

13. In her s32AA Ms Whyte¹³ considers that for the controlled activity of the Decision version, that post FMU the flow and level matters of control will not give specific recognition of the FMU environmental flows levels and limits. In my view such specificity is not necessary as the council would clearly have control on those matters and those matters are the subject of objectives and policy directives¹⁴ and will be the subject of flow, level and limits set in the plan following the NOF process.

14. I agree with Ms Whyte that there is uncertainty as to whether the outcomes of the FMU process will be upheld. However, in my view this would only occur where applicant sought flow, level or limits that would not enable a decision ensuring those set for the FMU were met.

⁸ Evidence of Ms Whyte dated 29 July 2022, Effectiveness of Policy 26, Table of Effectiveness.

⁹ Objectives 2, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18 and 19.

¹⁰ Evidence of Ms Sitarz dated 29 July 2022 at Appendix 4, Policy 26.

¹¹ Evidence of Ms Whyte dated 29 July 2022 at page 75.

¹² Evidence of Ms Whyte dated 29 July 2022 at page 73 and 74.

¹³ Evidence of Ms Whyte dated 29 July 2022 at pages 46 and 48 Effectiveness of Rule 52A, Table of Effectiveness.

¹⁴ For example, Objective 10.

RESTRICTED DISCRETIONARY ACTIVITY STATUS

15. I generally agree with Ms Whyte¹⁵ that providing for a different activity status that applies pre and post the implementation of the NOF process for the Waiau FMU is reasonable and that this reflects the difficulty of being able to give full effect to both the NPSFM and the NPSREG at this time.
16. In my view, the use of different activity status may provide for greater opportunity for longevity in the rule framework as part of the proposed plan process. However, this is not without some uncertainty and risk that what is incorporated now may not be appropriate once the NOF process is completed. I have considered Ms Whyte's evidence in support of Meridian's proposed wording for restricted discretionary status which would apply following the NOF process for the Waiau FMU. I hold a different opinion with respect to the following matters:
 - a. The extent to which results of the NOF process can be relied on; and
 - b. Risk of decline

Reliance on results of the NOF process

17. Paragraphs 97 and 98 of Ms Whyte's evidence set out her planning rationale for constraining Southland Regional Council's discretion to set more restrictive water quantity and quality limits than those developed in the future NOF process for the Waiau FMU.
18. I agree that future consent applications should be made in compliance with those flows, levels and limits. However, I maintain the view set out in my EIC that the limitations supported by Ms Whyte, are inappropriate.¹⁶
19. The limitation on discretion would mean that the full allocation up to any flow, level or limit for the FMU would be available to the MPS and Council would have no discretion on that. The only options Council would have

¹⁵ Evidence of Ms Whyte dated 29 July 2022 at [76].

¹⁶ Evidence of Ms Sitarz dated 29 July 2022 at [93]-[97].

would be to grant consent or to decline consent on the basis that adverse effects on a matter of discretion cannot be addressed.

20. I consider that the Council's discretion should not be limited in a way that would prevent setting flows, levels, and limits on a consent that may be appropriate to:
 - a. ensure that when considering other lawfully established activities, the flows, levels and limits set for the Waiau FMU are met; or
 - b. achieve objectives and implement policies of the pSWLP and have regard to the NPSFM.
21. In my opinion, decision making post FMU will be guided and directed by provisions in the plan including, flows, levels and limits included in the plan as a result of the NOF process. Accordingly, any decisions on consents will be consistent with achieving the flows, levels and limits for the FMU.
22. At paragraph 139 Ms Whyte also considers there can be a high level of confidence that the levels and limits that will be set in Regional Plan Waiau FMU will achieve the objective and policies in the NPSFM and address the fundamental concept of Te Mana o te Wai. I agree with this aspect. However, a critical difference is that the environmental flows, levels and limits under the NOF process will be designed for the Regional Plan, and not for specific resource consents.
23. It is my opinion the obligations to give effect to Te Mana o te Wai and the objective and policies of the NPSFM do not cease at the completion of the NOF process. Clause 3.1(1) of the NPSFM 2020 specifically states that (my emphasis):

This Part sets out a non-exhaustive list of things that local authorities must do to give effect to the objective and policies in Part 2 of this National Policy Statement, but **nothing in Part 3 limits the general obligation under the Act to give effect to the objective and policies in Part 2 of this National Policy Statement.**

In my opinion, this suggests that the NPSFM 2020 objective and policies remain relevant at the consenting stage.

24. Further Part 3 Implementation of the NPSFM includes matters under Part 3: Implementation subpart 1 and subpart 3 in addition to the NOF process in subpart 2.
25. Ms Whyte¹⁷ is of the view that there can be a high degree of confidence that meeting the environmental flow and levels and take limits specified in the regional plan(s) will ensure that the water able to be taken for an activity complying with these rules must be considered appropriate. However, the wording of the RD rule as supported by Meridian does not ensure this because:
 - a. Environmental outcomes are set with respect each value, the MPS is unlikely to be the only value identified for the FMU.
 - b. There is no direction to resolve conflicting environmental outcomes other than as this is necessary to achieve the long term vision. That vision has yet to be described and included within the RPS.
 - c. My understanding is that the attribute states and target attributes will be set to meet bottom lines by considering all values. This provides confidence that meeting attributes is appropriate to achieve environmental outcomes. However, activities will need to be considered with respect to other existing or anticipated activities and in accordance with relevant provisions. Just because the attribute is met by an activity does not mean the activity is appropriate when considering relevant provisions. For example, meeting an attribute will not mean that the use is reasonable to a specific activity.
 - d. Flows, levels and limits are described in totals and set with respect to the FMU. There is nothing in the NPSFM to suggest that applying the

¹⁷ Evidence of Ms Whyte dated 29 July 2022 at [141].

full allocation of an FMU to a specific activity is anticipated or appropriate.

- e. The MPS is not the only activity within the Waiau FMU to be considered with respect to the management of natural and physical resources under the NPSFM

26. These matters are resolved in my view by removing the limitation on discretion included in the Meridian version of the RD rule, and including matters of discretion relating to take and flows (i.e. those previous matters of control 1 and 2).

Risk of decline

27. Part of Ms Whyte's support for RD status over discretionary status appears to be related to the risk of consent being declined. In her opinion¹⁸ the risk of declining consent is at odds with the national direction relating to renewable electricity generation and its role in responding to climate change.

28. I disagree with Ms Whyte that a full discretion would materially increase the risk of decline over an RD rule. This is because an RD rule should set out all relevant matters of discretion for council to make a decision in accordance with higher order documents and plan provisions.

29. There are specific objectives and policy direction to recognise significant infrastructure and provide for renewable energy including the MPS which I consider give a level of priority to the MPS in decision making.

30. However, in this case I consider that the RD proposed by Meridian could have a higher risk of decline than that proposed by F&B and AL or a discretionary status. This is because the limitation of Council's discretion with respect to flows, levels and limits could reduce flexibility in addressing

¹⁸ Evidence of Ms Whyte dated 29 July 2022 at page 79 Alternative C, Table 2 – Rule 52A Consideration of Costs, Benefits and Risk of Acting or Not Acting.

effects necessary for a decision to grant consent. For example, if an adverse effect on cultural values or the environment could not be adequately addressed other than by a flow, limit or take being less than that set for the FMU consent, the Council could be put in the position of having to decline consent.

31. This would not occur if Council flows, levels and limits are a matter of discretion. That would allow more flexibility for Council to find a solution which is acceptable for the MPS and for other outcomes.
32. In other respects, I am in generally agreement with Ms Whyte that an RD rule provides an appropriate rule status for the MPS to implement Policy 26 and achieve objectives 9B and 10. However for the reasons set out in the EIC, I consider that the matters of discretion should be broader to also implement other policy direction, to achieve other objectives of the pSWLP including Objective 2 and to have regard to the NPSFM.

DISCRETIONARY ACTIVITY

33. I agree with Ms Whyte¹⁹ that in advance of completing the NOF process for the Waiau FMU, discretionary activity status for re consenting the MPS is appropriate.
34. In my opinion a discretionary activity status in Rule 52A would also be appropriate to continue to apply after the NOF process. I agree with Ms Jordan²⁰ that this activity status would enable all potential adverse effects, relevant issues and up to date information to be considered.
35. In my opinion there is little difference in terms effectiveness and efficiency between the RD rule I support and Discretionary status. I do not agree with Ms Whyte²¹ that the lack of any direct link to the environmental flow and level regimes being expressed in a discretionary rule or that there is a

¹⁹ Evidence of Ms Whyte dated 29 July 2022 at [77].

²⁰ Evidence of Ms Jordan dated 29 July 2022 at [161].

²¹ Evidence of Ms Whyte dated 29 July 2022 at page 58 Effectiveness of Rule Alternatives, Table of Effectiveness.

greater risk of decline will make it less effective or efficient for achieving the objectives of the pSWLP.

IWI MANAGEMENT PLANS

36. In my evidence of 29 July 2022, I refer to Te Tangi a Tauira Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan, 2008 (Te Tangi).
37. Having now considered Te Tangi I confirm I agree with Ms Davison²² that that the policies do not discourage hydro-electric generation, but provide strong direction on what needs to be taken into account, including:²³
- a. Requiring that hydroelectric development consideration, feasibility studies, and project management in Fiordland recognises and gives effect to the principle of ki uta ki tai (mountains to sea).
 - b. Avoiding taking any more water from the Waiau River for the purposes of hydroelectric power generation.
 - c. Ensuring that Ngāi Tahu ki Murihiku are involved in the setting of consent conditions (during consultation) associated with any and all resource consents for hydro power development activities.
 - d. Avoiding mahinga kai being compromised as a result of damming, diversion or extraction of freshwater resources.

Natasha Sitarz

19 August 2022

²² Evidence of Ms Davidson dated 1 August 2022 at [23].

²³ Te Tangi, pp. 97-98.