BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

I MUA I TE KOOTI TAIAO O AOTEAROA
KI OTAUTAHI

UNDER	the Resource Management 1991
IN THE MATTER	of appeals under Clause 14 of the First Schedule of the Act
BETWEEN	**ARATIATIA LIVESTOCK LIMITED** (ENV-2018-CHC-29)
	FONTERRA CO-OPERATIVE GROUP (ENV-2018-CHC-27)
	HORTICULTURE NEW ZEALAND (ENV-2018-CHC-28)
	TRANSPOWER NEW ZEALAND LIMITED (ENV-2018-CHC-26)
	WILKINS FARMING CO (ENV-2018-CHC-30)

(Continued next page)

SUPPLEMENTARY STATEMENT OF EVIDENCE OF CLAIRE JORDAN ON BEHALF OF ARATIATIA LIVESTOCK LIMITED
TRANCHE 3 – MANAPOURI HYDRO-ELECTRIC GENERATION SCHEME

9 December 2022

Judicial Officer: Judge Borthwick

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GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT COUNCIL & INVERCARGILL DISTRICT 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 Act 1991
(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, SOUTHLAND PLANTATION FOREST COMPANY OF NZ, SOUTHWOOD EXPORT LIMITED
(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. Introduction

1.1 My name is Claire Louise Marshall Jordan. I have the experience and qualifications outlined in my evidence dated 29 July 2022.

1.2 This evidence responds to the Planning JWS filed on 30 November 2022 and prepared by Jane White and Treena Davidson ("**November JWS**"). In particular it addresses the relief proposed in relation to Policy 26 and Rule 52A. The evidence also briefly addresses the version of Policy 26 that I now support, being the wording set out in the memorandum for Southland Fish & Game dated 8 December and referred to in the memorandum for Aratiatia dated 9 December. That preferred version of Policy 26 is set out in the **Attachment** to this statement.

1.3 I confirm that this evidence is given on the same basis as my earlier statements, including with reference to the Code of Conduct in the Environment Court's Practice Note.

1.4 I record for completeness that I am the deputy chair of the Waiau Working Party and am a planning contractor to the Waiau Fisheries and Wildlife Habitat Enhancement Trust. While neither of these organisations are directly involved in these proceedings, both were discussed in the section 274 RMA evidence of other witnesses, after I had filed my previous briefs of evidence.

1.5 I also note that at the time my section 274 RMA evidence was filed it was unclear whether I would be able to participate in expert conferencing. Subsequently the Court confirmed that I was able to participate in the September planning expert conferencing session, which I did.

2. Policy 26

2.1 I will address the following four issues regarding Policy 26:

(a) My preference for the "*Policy 26 Separate*" approach over the "*Policy 26 Combined*" approach discussed in the November JWS.

(b) How to address reverse sensitivity.

(c) Whether to add a clause to specifically address reconsenting of the Manapouri Power Scheme ("**the Scheme**").

(d) My preferred version of Policy 26.

A "combined" vs a "separate" approach

2.2 In my opinion, it is preferable to address the Scheme separately from other power schemes, rather than the '*combined'* approach, as it provides the opportunity to provide policy support specific to Rule 52A, which only applies to the Manapouri Power Scheme.

2.3 However, I note that the "*separate*" approach detailed in the November JWS renders subclauses a. and b. only applicable in the context of the Scheme, rather than renewable energy more generally. It is my understanding that no party sought this change through an appeal.

2.4 The version of Policy 26 I now support addresses this issue, providing both the necessary focus on the Manapouri Power Scheme, without limiting the consideration of a. and b. in relation to other power schemes.

Reverse sensitivity

2.5 I outlined my understanding of the concept of reverse sensitivity at paragraph 141 of my evidence dated 29 July 2022.

2.6 I do not consider that the activities listed as items B.1-4 in the "*separate*" version of Policy 26 from the November JWS (and listed as items c.1-4 in the "*combined*" version of Policy 26) are likely to cause such reverse sensitivity effects.

2.7 Item B.1/c.1 refers to the taking of surface water or hydrologically connected groundwater that exceeds an allocation regime, take limit or limit on resource use. This item is not expressly limited to water takes from upstream of the MLC:

(a) If it is intended to apply only to such upstream water takes, then it is in essence concerned with the potential for other takes to derogate from Meridian's take. That is a question of allocation and prioritisation of freshwater, and in my opinion is already addressed, in Meridian's favour, through subclause A.2.b ("*separate*" version) and subclause b ("*combined*" version) of Policy 26. I consider that an application that exceeds such a limit is likely to be declined consent in terms of the higher order planning instruments and the RMA consent process.

(b) If the item is intended to also apply to takes throughout the catchment (including downstream of the MLC) then, again, I consider it is concerned with allocation issues and not reverse sensitivity effects. It seems most unlikely to me that a downstream water take could impact adversely on the operation of the Scheme.

2.8 Item B.2/c.2 refers to, "*the use of beds of lakes or rivers or any activity that may affect the stability or functioning of any structures associated with*" the Scheme. That phrase addresses the risk that neighbouring activities may generate adverse effects on the structures that comprise the Scheme. That is a direct effect on the Scheme from the incoming activity. In contrast, I understand that a reverse sensitivity effect may arise if effects generated by the Scheme on an incoming "*sensitive*" activity generate complaints that, in turn, result in constraints on the Scheme.

2.9 Item B.3/c.3 refers to a range of activities that, "*may affect the quality of the water available for the generation of electricity above*" the MLC or within the Mararoa River. Again, I consider that to be a direct effect on the Scheme from the incoming activity, not a reverse sensitivity effect.

2.10 Item B.4/c.4 refers to, "*use of the beds of lakes and rivers or new or increased discharge of contaminants exceeding a limit on resource use, occurring below the Manapōuri Lake Control structure that could affect the ability of Meridian to meets its consent obligations for the existing Manapōuri hydro-electric generation scheme*". I am unclear what, if any, activities would fall under B.4/c.4 for two reasons:

(a) Firstly, it is unclear to me which lake beds downstream of the MLC are of concern.

(b) Secondly, it is not clear to me how any bed disturbance activities or discharge activities downstream of the MLC could impinge on Meridian's ability to meet the conditions of its consents for the MPS.

2.11 I acknowledge the attempts that have been made in the November JWS to specify the activities of concern in relation to the Scheme. In my opinion however, the proposed provisions do not identify any reverse sensitivity effects. That suggests that reverse sensitivity is not an issue in relation to the Scheme. In that context, I consider that it is appropriate in terms of

Policy D of the NPS REG and Method INF.1 of the RPS for the pSWLP to be silent on reverse sensitivity.

2.12 In my opinion, subclause B in the "*separate*" version of Policy 26 and subclause c. in the "*combined*" version should be deleted.

2.13 I note that the version of Policy 26 I now support does not include an explicit reverse sensitivity clause. I consider that subclauses 1.(a) and (b) of the Policy 26 version I support apply to consideration of water allocation and resource consent applications for water use, diversion and damming generally, not just in the context of renewable energy generation.

Whether to add a clause specifically addressing reconsenting of the Scheme

2.14 Proposed clause C of the "*separate*" version of Policy 26 in the November JWS reads, "*On considering an application for replacement consents for the operation of the existing Manapōuri hydro-electric generation scheme consents that are granted are to be consistent with the attainment of the environmental outcomes established for values in the Waiau FMU via the National Objectives Framework*." Subclause d in the "*combined*" version has similar wording.

2.15 I consider that providing guidance in Policy 26 regarding the exercise of the discretion in Rule 52A, combined with a (full) discretionary activity rule, would be preferrable to either of the RDA rules proposed in the November JWS. I do not consider the proposed addition to Policy 26 necessary or helpful, however:

(a) Such a statement suggests that the Council should implement its Regional Plan. That is, in essence, a restatement of the requirements of the RMA so is unnecessary.

(b) Including such a passage in Policy 26 but omitting it elsewhere creates a risk that parties dealing with activities to which Policy 26 does not apply will conclude that greater flexibility exists to allow inconsistency with the Plan (because no corresponding statement has been included in the policy that is relevant to their proposal).

2.16 I note that my preferred version of Policy 26 (discussed below) provides policy guidance on the exercise of discretion in subclause 2. This is

specific to considering resource consents for the Manapouri Power Scheme and provides clear policy guidance to support Rule 52A.

My preferred version of Policy 26

2.17 Having read the November JWS and further reflecting on the version of Policy 26 set out in my evidence, I consider that some further refinement would be useful. My preferred wording of Policy 26 (set out in the **Attachment**) is as proposed in the Southland Fish & Game memorandum of 8 December and supported in memoranda from Aratiatia and others.

2.18 I consider that there remains justification to safeguard and protect the mauri and ecosystem health of the Waiau River and to reverse its degradation within Policy 26. Further, I have reflected on the evidence of Nga Runanga, in particular the desire to have the following clearly articulated in relation to the Manapouri Power Scheme:

> *"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."*

In my opinion, this could be achieved through Policy 26 instead of through Rule 52A.

2.19 Beyond that, the differences between the version I proposed in my evidence and the evidence now supported are relatively minor. The revised Policy 26:

(a) Reintroduces a. and b. into subclause 1 for the reason outlined in paragraph 2.3 above;

(b) Includes the words "*have particular regard to*" in relation to subclause 2, an omission acknowledged in Aratiatia's opening legal submissions;

(c) Inserts an additional consideration into subclause 2, being, "*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*"; and

(d) Removes the repetition of subclause 1 wording in subclause 2.

2.20 My assessment of the version of Policy 26 that I now support in terms of section 32AA RMA is as follows:

(a) The revised version of Policy 26, when combined with a fully discretionary Rule 52A, is similar in terms of efficiency and effectiveness to the wording proposed in my previous evidence.

(b) I consider that the incorporation of an additional consideration into subclause 2 to specifically address cultural interests improves the effectiveness of Policy 26 in implementing the objectives of the pSWLP.

(c) I consider that a version of Policy 26 that does not require explicit consideration of the mauri and ecosystem health of the Waiau River and reducing and reversing its degradation would be less effective that the version I support. In my opinion, these matters are not adequately addressed elsewhere in the policies of the Plan in relation to the Waiau River, despite being signalled by the objectives of the Plan.

(d) As such, I consider the version of Policy 26 I now support, combined with a discretionary activity classification is the most appropriate way to achieve the objectives of the Plan.

3. Rule 52A

3.1 I remain of the view that limiting the discretion of the Council in the way sought by Meridian is inappropriate at this time. This is an issue best addressed through and as part of the FMU process.

3.2 Two quite different RDA rules are proposed in the November JWS. I address each in turn below. However, before doing so, I want to highlight my concern about the use of the phrase, "*total rate*" within both the RDA rules and the discretionary rule proposed.

"Total Rate"

3.3 It appears that the phrase "*total rate*" has been taken from the NPSFM, where it is used in the context of an FMU or a part of an FMU. The way it is used in the NPSFM suggests that if there were, for example, three activities in an FMU taking five cumecs of water each, those rates of take could be tallied to produce a "*total rate*" of 15 cumecs for the FMU. In the

context of Rule 52A, which applies only to the Scheme and involves a single water take, the term "*total rate*" makes little sense in my view. To suggest that a "t*otal rate*" can be determined in relation to the Scheme is, in my opinion, confusing and creates uncertainty.

3.4 In my opinion this issue reinforces the difference in scale and intent between an FMU process (e.g.: Plan Change Tuatahi) and a resource consent process for a particular activity within an FMU. In my opinion, the two are quite different in nature, are subject to different tests, and need to be addressed separately. I am concerned that the Meridian proposals tend in practice to merge or conflate the two processes.

3.5 Meridian's desire to constrain the resource consent process appears to be driven by an anxiety that, under a discretionary activity classification, the Council would be able to set aside the environmental flows, levels and limits set through Plan Change Tuatahi and start again with a blank sheet of paper. I do not consider this to be a real risk:

(a) A plan change identifies the bounds within which applications will be assessed. It does not and cannot substitute for the focussed consideration of a particular proposal.

(b) Section 104 RMA requires decision makers on resource consent applications to "*have regard*" to plan provisions and my expectation is that the allocation regime to be introduced via Plan Change Tuatahi will form a key part of the assessment of any application to renew the Scheme consents.

(c) The key characteristic of a resource consent application process is that it enables a focused consideration of the circumstances relating to the proposal and hence a more refined and nuanced flow regime than is likely to be incorporated through a plan change process.

3.6 I also note that the RDA rules proposed in the November JWS would be the only rules in the Plan which only apply post the FMU process. That approach appears inconsistent with the Plan architecture.

The RDA rules considered in the November JWS

3.7 I turn now to the specifics of the two RDA rules proposed in the November JWS.

3.8 Re the first form of RDA wording for Rule 52A in the November JWS (the "*preferred version*"):

(a) I consider that in practice this wording is likely to function in a manner similar to a controlled activity rule. The matters of discretion are concerned with measures to address effects rather than the effects themselves and it is unclear on what basis consent could be declined.

(b) Of particular concern to me is the phrase, "*a matter has not been considered*" in matter of discretion 1a.

(i) I am concerned this phrase could create a barrier to meaningful community participation as any uncertainty as to whether a matter has been "*considered*" may need to be argued through a hearing process, adding cost and inefficiency to the consent process. It also creates a burden on the Regional Council to record exactly what is and is not discussed through Plan Change Tuatahi, as neither plans nor hearing panel decision reports typically list every point that arose during discussions.

(ii) Further, it is unclear to me what this phrase will mean in practice or how Council and members of the public will deal with the different levels of detail and specificity dealt with in resource consent applications compared to a regional plan.

(c) I am concerned that this version of Rule 52A risks pre-empting Plan Change Tuatahi. The assumptions in the matters of discretion about the way matters will be articulated through Plan Change Tuatahi establishes an expectation which may influence the way Plan Change Tuatahi is drafted. I do not consider it appropriate for Rule 52A to set such an expectation.

(d) I consider the phrase, "*in accordance with matter of discretion 1*", which appears at the beginning of proposed matters of discretion

3, 4, and 5, problematic.

(i) Matter of discretion 1 commences with, "*measures to achieve environmental flows and levels and limits established through the FMU process for the Waiau FMU*…" (emphasis added). Arguably then, matters of discretion 3, 4, and 5 require consistency not with the environmental flows and levels and limits themselves, but with measures to achieve them. I consider this could prove confusing to implement in practice.

(ii) I suspect that by "*in accordance with matter of discretion 1*", the authors of the November JWS were intending to state that the matters listed in matters of discretion 3, 4 and 5 are to be considered only to the extent that they come within the exceptions in either 1a or 1b. In that case, however, provided the Council "*considers*" the cultural matters set out in matter 4 when processing Plan Change Tuatahi (which I would expect to be the case given the text of the NPSFM), no further (more refined or nuanced) constraints on flows will be able to be introduced through conditions on the renewed Meridian consents, even if the evidence is clear that such improvements are required.

3.9 I consider the second version of the RDA wording of Rule 52A (the "*alternative version*") is equally problematic.

(a) While I prefer the way the matters of discretion have been articulated in the second RDA rule, it contains a direction on the approach that the Council should take when "*exercising its discretion*".

(b) I consider that preventing the Council from placing conditions on consent that are "*more restrictive*" than plan provisions is inconsistent with Te Mana o Te Wai and could unduly constrain the Council when drafting consent conditions, which are typically at a greater level of detail than that contained in a Regional Plan and may therefore be more restrictive.

Full Discretionary Activity status

3.10 The third form of Rule 52A in the November JWS relates to a full discretionary activity status.

3.11 In my view a discretionary activity classification for Rule 52A is the most appropriate. I continue to support the relief proposed by Aratiatia in the combined relief circulated at the beginning of the Tranche 3 hearing.

9 December 2022
Claire Jordan

ATTACHMENT

Revised 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 their 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 their ~~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.
2. In addition to 1 above, when considering resource consent applications in relation to the Manapōuri hydro-electric generation scheme for surface water abstractions, damming, diversion and use within the Waiau Catchment, decision makers shall have particular regard to:
    a. Safeguarding the mauri and ecosystem health of the Waiau River, including reversing or reducing the degradation of the Waiau River; and
    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.