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

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

(Continued next page)

SUPPLEMENTARY STATEMENT OF EVIDENCE OF MATTHEW MCCALLUM-CLARK ON BEHALF OF SOUTHLAND REGIONAL COUNCIL

TOPIC B6 - INFRASTRUCTURE - TRANCHE 3 - WAIAU - PLANNING
09 DECEMBER 2022

Judicial Officer: Judge Borthwick

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WYNN WILLIAMS

WILKINS FARMING CO
(ENV-2018-CHC-30)

GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT COUNCIL & INVERCARGILL CITY 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
(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, KODANSHA TREEFARM NEW ZEALAND LIMITED, SOUTHLAND PLANTATION FOREST COMPANY OF NEW ZEALAND
(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

Introduction, qualifications and experience

1 My name is Matthew Eaton Arthur McCallum-Clark. My qualifications and experience are set out in full in my statement of evidence dated 22 October 2021.

2 I have been involved in the appeal processes in relation to the proposed Southland Water and Land Plan (**pSWLP** or **Plan**) for both Topics A and B.

3 I have prepared a statement of evidence dated 7 September 2022 in relation to this topic (Topic B6 – Infrastructure - Waiau). This statement of evidence responds to the Joint Witness Statement filed on 30 November 2022 (the **JWS**). In responding to this JWS, I also acknowledge where issues raised in my Evidence in Chief require some reconsideration given the questioning and evidence during the first week of the hearing of this topic. For the avoidance of doubt, I reconfirm that I have been asked by the Southland Regional Council (the **Council**) to provide this independent planning evidence.

Code of Conduct

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.

Scope of this Evidence

7 As noted above, my evidence addresses the revision of Policy 26 and Rule 52A, and the reasoning for those revisions, set out in the JWS filed

on 30 November 2022. I confirm that I was not a participant in the planning conferencing resulting in the JWS.

Policy 26

8 I have considered the versions of Policy 26 set out in the JWS. Other than in relation to reverse sensitivity, I support the improved clarity resulting from the revised structure of the Policy. I have a slight preference for the first of the two options put forward in the JWS, as I consider it results in a more cohesive policy, with all parts relating back to the chapeau.

9 Under the JWS options, reverse sensitivity is managed under clause (c) of the Combined Version of Policy 26 and clause B of the Separate Version. The wording of the Policy before the Court at the commencement of the hearing, which I understood to be agreed in principle by most parties, read:

Recognise and provide for:

…

2. the national and regional significance… when… considering all resource consent applications for surface water abstractions, damming, diversion and use; 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.

10 I recognise that this Policy, particularly the addition of what purports to be reverse sensitivity components to the end, is not well drafted. However, I am concerned that the revision of this part of the Policy in the JWS versions notably change the expectations, primarily with respect to the use of “avoid”. I consider this will place the Council in a difficult position when administering the Plan and may even create a misalignment with a range of permitted activities that are provided for in the Plan, such as activities that are permitted in the beds of lakes and rivers or the range of minor water takes that are permitted. There does not appear to be any particular reason for this change identified in the JWS. In particular, I am concerned about the new outcome statement at the beginning of clause (c), which reads:

c. managing activities to avoid reverse sensitivity effects on renewable electricity generation activities (including the Manapōuri hydro-electric generation scheme).

11 In my opinion, the use of a simple avoid statement is problematic. This implies that any activity that could have an effect, even if that effect was unlikely or nearing negligible proportions, would still need to be avoided. In my opinion that may not be an appropriate response, and does not appear to reflect the nuance in the higher-level policy direction in the National Policy Statement for Renewable Energy Generation[1] or the Regional Policy Statement.[2]

12 Further, while the scope of the appeal is a legal question, the 'avoid' outcome statement that has been added does appear to be a step further than that sought at paragraph 20 of Meridian's notice of appeal

13 If there is scope for this outcome statement to be maintained, it draws into sharper focus the expectations raised for subclauses 1 to 4 of clause (c). In terms of the subclauses, I note that:

(a) Sub-clause 1, in my opinion, is only marginally necessary. On my understanding there is clear and unequivocal policy guidance regarding not creating or increasing overallocation in the National Policy Statement for Freshwater Management. However, in the absence of a clear statement in the pSWLP, it may be helpful in the interim.

(b) Sub-clause 2 is appropriate and I support it.

(c) Sub-clause 3, in my opinion, has a degree of uncertainty, particularly in that I do not understand what "…may affect the quality of the water available for the generation of electricity…" may mean, or what the appropriate thresholds of the required

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1 National Policy Statement for Renewable Energy Generation Policy D reads:

Decision-makers shall, to the extent reasonably possible, manage activities to avoid reverse sensitivity effects on consented and on existing renewable electricity generation activities.

2 Southland Regional Policy Statement Explanation of Policy ENG.2 – Benefits of renewable energy reads:

In recognising and providing for these benefits:

…

- *consented and existing renewable electricity generation activities should, to a reasonably practicable extent, be protected against future reverse sensitivity issues by managing the effects of development and land use to avoid such issues;*

quality are. I consider this will create uncertainty as to expectations around this clause.

(d) Sub-clause 4, in my opinion, again raises some uncertainties, particularly in relation to "…the ability of Meridian to meets its consent obligations…". This is potentially very broad, and I am uncertain as to what those consent obligations are or how this clause could be interpreted.

14 I note that the reasoning in the JWS[3] identifies that new clause (d) (clause C of the separate version) is not supported. In my opinion the wording arrived at is somewhat redundant, particularly as the environmental outcomes referred to in the clause are required to be included in the Plan as objectives.[4] This clause effectively says that the consent process is to achieve the Plan's objectives. If the Court wished to maintain a clause of this nature, it may be more helpful to reference the target attribute states as opposed to environmental outcomes. Overall, I do not consider that this clause adds valuable direction.

Rule 52A

15 At the outset, I note that it is my expectation that the Waiau FMU process will lead to a flow and allocation regime that provides clarity and certainty to all parties. However, I reiterate my concern expressed in my Evidence in Chief, that it is my experience that matters of finer detail are often unresolved at the plan development stage and are left to the resource consent process. In this respect, I note the recognition, at paragraphs 12 and 13 of the JWS, that changes to the provisions that are the subject of this hearing may occur through the Plan Change Tuatahi process. In my opinion, that is almost certain to happen to some degree.

16 I note that the participants of the planning conference have put forward a preferred version of Rule 52A, an alternative way of expressing the matters of discretion and an alternative, less preferred, discretionary activity rule. In my opinion there are a number of improvements in the wording. However, in some respects uncertainties and interpretation

[3] Paragraphs 8-10 of the JWS.
[4] NPS-FM clause 3.9(4).

difficulties remain. Where possible, I have suggested solutions for the issues I raise. For some I do not have a solution, particularly where I do not understand some of the implications of the changes proposed. With respect to the Preferred Version of Rule 52A:

(a) The wording of Rule 52A(a)(2) is inconsistent with the wording of the non-complying activity Rule 52A(c). While not a critical issue, consistency of wording may reduce future uncertainties. Rule 52A(a)(2) could be amended to:

(2) where the replacement consent is for the taking or use of water, the total volume, total rate or both a total volume and total rate of take is not increasing, and the use of water is not changing; and

(b) Matter of Discretion 1(a) – In my opinion, there is uncertainty introduced through a lack of certainty as to whether a "matter" is "considered".

(c) Matter of Discretion 1(b) – This matter of discretion appears to have similar uncertainty as to where or how such a "matter" will be "identified". I presume that this part of the Rule would be changed through the FMU process to do this identification, or delete the clause, in order to provide future certainty.

(d) Matter of Discretion 2 – This is a new matter, with little context provided in the reasoning in the JWS. I note, with respect to both matters of discretion 1 and 2, that "measures" is used at the commencement. I am unclear as to what this means. It this could include both resource consent conditions in relation to target attribute states, or actions, potentially secured through consent conditions, to achieve target attribute states in the case of matter of discretion 2. In my opinion, this reference to achieving target attribute states potentially results in a very broad matter of discretion, that could encompass flows and levels, depending on how the target attribute states are expressed. However, at this time I do not know what the target attribute states are going to address or how they will be expressed (other than for the compulsory values).

(e) Matters of Discretion 3, 4 and 5 – Each of these matters of discretion commence with the words "In accordance with matter of

discretion 1…". I have closely considered what "In accordance with" means in this context, and if I am understanding it correctly, it is intended to be a constraint on matters of discretion 3, 4 and 5. If this is the case, then it may be clearer and more certain to commence with "Subject to matter of discretion 1…".

(f) Matters of Discretion 6 and 8 – Given that it has been identified that this Rule commences with the phrase "Despite any other rules in this Plan…" and therefore Rule 3 does not apply, I support the inclusion of these matters of discretion.

17 I suggest that two minor editorial changes are needed to Rule 52A(b):

(b) Despite any other rules in this Plan, any activity provided for in Rule 52A(a) that does not meet one or more of the conditions of Rule 52A(a) ~~or~~ and is not a non-complying activity in Rule 52A(c) is a discretionary activity.

18 In my opinion, the non-complying activity part of the rule, Rule 52A(c), has a minor uncertainty in clause (i), which refers to "currently consented". I acknowledge that this is a phrase that has been used by all parties to date, and is not a change made in this JWS. The uncertainty arises as it could be argued that it applies to a wider range of consents than those held by Meridian. In my opinion it would be clearer if this referred back to the list of resource consents in Rule 52A(a), such as:

(i) prior to take limits being established through a FMU process for the Waiau FMU under the NPSFM 2020 being made operative seeks a total volume, total rate or both a total volume and total rate of water greater than that ~~currently consented~~ authorised under the consents listed in Rule 52A(a); or

19 While the above uncertainties and adjustments have been noted in relation to the Preferred Version of the Rule, they largely equally apply to the alternative way of expressing the matters of discretion shown on pages 13-14 of the JWS. I do note that there are differences in the wording of the limits on the Council's discretion listed toward the middle of page 14 of the JWS. The wording of the limits on Council's discretion appear to be a little more detailed than in the matters of discretion of the Preferred Version. I am unsure if this is intentional or not.

20 While I have no particular comments on the wording of the alternative discretionary activity rule set out on pages 14-15 of the JWS, I do note its relative simplicity and certainty. In this I also acknowledge that it is an interim rule, which would be replaced with a new provision in Plan Change Tuatahi.

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Matthew McCallum-Clark

09 December 2022