

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

IN THE MATTER

of the Resource Management Act 1991

AND

of appeals under Clause 14 of the First Schedule of  
the Act

BETWEEN

ARATIATIA LIVESTOCK LIMITED  
(ENV-2018-CHC-29)  
MERIDIAN ENERGY LIMITED  
(ENV-2018-CHC-38)  
FEDERATED FARMERS OF NEW ZEALAND  
(ENV-2018-CHC-40)  
TE RUNANGA O NGAI TAHU, HOKONUI  
RUNAKA, WAIHOPAI RUNAKA, TE  
RUNANGA O AWARUA & TE RUNANGA O  
ORAKA APARIMA  
(ENV-2018-CHC-47)

(Continued on next page)

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**AFFIDAVIT OF PETER HORRELL IN SUPPORT OF S274 NOTICES LODGED  
(WAI AU RIVER LIAISON COMMITTEE)  
31 AUGUST 2018**

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Judicial Officers: Judge Hassan and Judge Borthwick

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*PJ A APPA.*

ROYAL FOREST AND BIRD PROTECTION  
SOCIETY OF NZ  
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

*Pf # 2018*

I, Peter James Horrell, Tuatapere, Farmer, swear:

### **Introduction**

1. I have lived in the Tuatapere area all my life and farmed there for 34 years.
2. I have been a member of the Waiau River Liaison Committee (the **Liaison Committee**) for almost 20 years and chairperson for approximately eight (8) of those years.
3. I am authorised to swear this affidavit on behalf of the Liaison Committee.
4. I have read the Memorandum on behalf of the Respondent dated 17 July 2018, challenging the standing of the Liaison Committee (and the Waiau Rivercare Group) and wish to provide further detail about the background to and operation of the Liaison Committee.

### **Summary**

5. The Liaison Committee was established as a result of an agreement between Meridian, Federated Farmers and the Southland Regional Council in 1996 (the **Waiau Agreement**), arising out of operation of the Manapouri Power Scheme (the **Power Scheme**) and the Electricity Corporation of New Zealand (**ECNZ**) seeking resource consents for the same in 1996. The Waiau Agreement recognised, amongst other things, the likely existence of adverse effects on landowners in the Waiau catchment arising from the use of the Lower Waiau River for the Power Scheme and the importance of the mitigation of those adverse effects for farmers and other landowners in the Waiau catchment. It also recognised the loss of stock access to water as a result of the need to fence river berms as a result of lowering of the Waiau River.
6. Through the Waiau Agreement, Meridian provide annual funding for the Liaison Committee to carry out, as a minimum, maintenance of an effective flood channel in the Waiau riverbed from the Mararoa Weir to the river's mouth; maintenance of fences erected as a consequence of the Power Scheme and maintenance of the fence areas free of weeds. Any surplus of funds is accrued and retained by the Liaison Committee for a disaster relief fund or other lawful purposes.

7. The Waiau Agreement also provided for a special rating district to be established, along with the formation of Waiau River Liaison Committee (from a group of local landowners), to complete the process of necessary actions to fulfil the Waiau Agreement with ECNZ in connection with its consent application for the Power Scheme.
8. The Liaison Committee considers it has an interest greater than the public generally given the reasons for its formation (to represent farmers and landowners adjacent to the Lower Waiau adversely affected by the operation of the Power Scheme) and its current specific operation and role, all of which arose as a direct result of the exercise of the consents granted under the Resource Management Act (**RMA**) for operation of the Power Scheme.
9. If unable to participate in the appeals it seeks to join, the Liaison Committee (and members and interests it was established to fulfil) will be disadvantaged including:
  - (a) If the activity status for renewal of consents for Meridian is a controlled activity and the Waiau Agreement is not renewed, the landowners the Liaison Committee was established to protect and benefit could potentially suffer great disadvantage if there is no replacement agreement and no or limited ability for consent conditions to be imposed to avoid, remedy or mitigate adverse effects of the operation of the Manapouri Power Scheme (**the Power Scheme**) on the Lower Waiau River (and the adjoining landowners);
  - (b) If Meridian's appeal is successful, the situation will be even more disadvantageous, as it appears Meridian are seeking to have the controlled status extend to an increased take, not just the current take, and want the current water take included as part of the existing environment, in which case I understand all the effects suffered to date, which are ongoing, will essentially be disregarded.
10. If however the activity status under Rule 52A is discretionary, I understand the Council could consider any adverse effects of the Power Scheme on the Lower Waiau River and impose consent conditions around erosion, fencing and weed control, and the Liaison Committee could meaningfully participate in and potentially influence the outcome of the consent process.

## **Background**

11. The matters I cover in this affidavit are:

- (a) Background to formation of the Waiau River Liaison Committee, resulting from consenting of the Manapouri Power Scheme in 1996;
- (b) The terms of the Waiau Agreement 1996 (between ECNZ, Federated Farmers Southland Inc and the Southland Regional Council);
- (c) Establishment of the Waiau Special Rating District (as per the Waiau Agreement);
- (d) The current role, operation and scope of the Liaison Committee;
- (e) Expanding role of the Liaison Committee;
- (f) The River Liaison Committees Terms of Reference;
- (g) The reason the Liaison Committee didn't submit on the Proposed Plan provisions relating to Meridian's operation of the Manapouri Power Scheme;
- (h) The reasons why the Liaison Committee has an interest greater than the public generally;
- (i) The disadvantages to the Liaison Committee if not involved in these appeals.

### **Background to formation of the Waiau River Liaison Committee**

12. The history relating to the role of the Liaison Committee dates back to the early 1970's, not long after the Power Scheme became operational. As a result of adverse effects along the Lower Waiau River arising from initial operation of the Scheme, the Waiau Agreement 1973 was signed between ECNZ and the then Southland Catchment Board (now the Southland Regional Council, Environment Southland).
13. In spite of the above Agreement, there were issues with operation of the Power Scheme on the Lower Waiau and the early 1980's, the Waiau Action Group lobbied hard for weed and erosion control, and maintenance of the fence along the riverside of the Lower Waiau River. The fence was installed by ECNZ alongside the Lower Waiau when

ECNZ diverted the river through Deep Cove. The river in essence disappeared, leaving no barrier between farms. This was a contentious issue as it required constant repairs to the flood zone/spillway. The work was years in arrears with the Southland Catchment Board asking ECNZ for maintenance, which they hadn't budgeted for. Given the lack of funds, the work was done in an ad hoc manner.

14. The above came to a head in the 1980's after El Nino floods year after year, when as a result of the 1984 flood in Tuatapere township and general widespread erosion (because of the changing river flows as a result of operation of the Power Scheme), ECNZ cleared the flood way of willows, repaired bank erosion and bought the worst areas affected.
15. These events resulted in farmer representation on the Waiiau Working Party, a stakeholder group set up by ECNZ as part of its process of applying for consents under the RMA for operation of the Power Scheme.

#### **Waiiau Agreement 1996**

16. After six years of negotiations, from 1990-1996, all members of the Waiiau Working Party signed a joint submission supporting and approving ECNZ's application for resource consents in respect of the Manapouri Power Station, submitted on 10 September 1996.
17. The agreed proposed consent conditions included one that sought to prevent erosion, or remedy damage from erosion, which occurs or may occur as a result of the exercise of the permit to dam and divert waters of Lake Manapouri and the Waiiau and Mararoa Rivers by means of a structure known as the Manapouri Lake Control Structure. For reasons unknown, this condition was not included in the final consent.
18. Appended to the proposed conditions were various "Heads of Agreement" the respective parties had reached (appended as Schedule 2 to the proposed conditions). The Joint Working Party recommended that the Southland Regional Council adopt the conditions proposed and "take into account, in assessing ECNZ's applications under s104 of the RMA, the Agreements reached with members of the Waiiau Working Party, as mitigation of the adverse effects identified by them."<sup>1</sup>

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<sup>1</sup> Clause I, Schedule 3, Waiiau Working Party joint submission, submitted 10 September 1996.

19. One of the agreements was between ECNZ, Federated Farmers NZ Limited and the Southland Regional Council (**the Waiau Agreement**), formalised on 8 November 1996 (copy attached as ~~Appendix 1~~ <sup>Exhibit A</sup>) and stated, amongst other things, that (I have added the bolding for emphasis):

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“there are some values, opportunities and concerns identified by **Federated Farmers Southland Inc, representing the adjoining landholders in the lower part of the Waiau River**, which the Farmers and ECNZ have agreed are better addressed by the provisions of this Agreement than by measures which could be incorporated formally as conditions of resource consents... **Those agreements recognise the importance of the use of the Waiau catchment resource for the generation of electricity, and the mitigation of effects arising from that use for farmers and other landowners in the Waiau catchment.**”

20. Clause 6 of the agreement provided that ECNZ should:

- (a) Fund the reasonable costs of the Council in carrying out an agreed programme of annual spraying of vegetation growth in the Waiau River flood channel from below the Mararoa Weir to the mouth of the river for the purpose of maintaining the efficiency of the flood channel in passing floodwater;
- (b) Maintain or fund the maintenance of the fences between the Mararoa Weir and the mouth of the Waiau River erected as a consequence of the Manapouri Power project<sup>2</sup> in stock proof condition, and will repair those fences when damages by flooding, slips or trees falling; and
- (c) Ensure the Agreed Programme<sup>3</sup>, and the work needed to maintain the fences, shall be detailed in a three-year rolling plan to be agreed by the parties.

<sup>2</sup> The Agreement notes approximately 100km of fencing was erected as a consequence of the Manapouri Power Project, clause 6.2.

<sup>3</sup> Defined in the Agreement to mean an annual programme of river flood channel and berm fence line vegetation spraying to be agreed each year by the parties. The Program shall require hand spraying of vegetation along fence lines where the use of other methods would unreasonably interfere with the farmer concerned normal farming practice, page 4.

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LPA

21. The Agreement provided the parties intended it (the Agreement) and the erosion control condition proposed for the resource consents would replace an earlier agreement (the Waiau Agreement 1973) and continue to have effect until the consents expired<sup>4</sup>.
22. If consents in substitution are granted under the RMA the Waiau Agreement provides the parties will negotiate in good faith the extension of terms of the agreement on such terms as are then appropriate<sup>5</sup>.
23. The Waiau Agreement stipulated that if a special rating district was established for purposes including (I have added the bolding for emphasis):
- (a) The maintenance of an effective flood channel in the Waiau riverbed from the Mararoa Weir to the river's mouth;
  - (b) The maintenance as defined in the Agreement of the fences as erected as a consequence of the Manapouri power project; and
  - (c) The maintenance of the corridor through which fences pass in a state free of undesirable plants;
- and once rating income from landowners exceeds \$10,000 per annum, then ECNZ would pay to the Council **on behalf of the land occupiers represented by the farmers:**
- (d) The sum of \$200,000 a year annually (to be adjusted as provided in clause 7.5 of the Agreement); and
  - (e) An additional sum at the rate of \$1 for every dollar of rates collected from ratepayers in the special rating district<sup>6</sup>.
24. The Waiau Agreement also stipulated that Council has an obligation to expend funds for the purposes stated above but allows that any surplus may be accrued as capital fund

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<sup>4</sup> Clause 13 (Background) of the Waiau Agreement

<sup>5</sup> Clause 7.1 of the Waiau Agreement

<sup>6</sup> Clause 7.3 of the Waiau Agreement.



for disaster relief in the Waiau Catchment or for such other lawful purposes as the special rating district notice may allow<sup>7</sup>.

25. The Agreement sets out that the obligations of parties are suspended if a special rating district for the Waiau catchment is established for the purposes of discharging the obligations of ECNZ under the Waiau Agreement<sup>8</sup>.
26. Finally, the Agreement provides that where land of any farmer contiguous with the Waiau River or one of its tributaries or the profitability of the farm formed by such land is detrimentally affected by erosion caused by the exercise of resource consents held by ECNZ, then ECNZ undertakes to negotiate in good faith with the landowner to find measures to mitigate and compensate the effects of such erosion on that farm<sup>9</sup>.

#### Waiau Special Rating district

- P/ # JPA
27. To implement the above, a special rating district for the Waiau Catchment (**the Waiau Rating District**) was established to take effect on 1 July 1998 (see notice attached as **Exhibit B Appendix 2**), established pursuant to section 41 and Part V (Differential Rating) of the Rating Powers Act 1998.
  28. In proposing to adopt a differential system of rating, the Council took into account the following<sup>10</sup>:
    - (a) The documents dated 8 November 1996 between ECNZ, Federated Farmers Southland Incorporates and the Southland Regional Council (i.e. the Waiau Agreement);
    - (b) Considered the benefits likely to accrue to properties within the District directly or indirectly, are flood protection, improved drainage, noxious plant control, stock fencing on main channel, erosion control, maintenance of high quality water resource and protection of community assets;
    - (c) Rates levied on the land value system of rating;

<sup>7</sup> Clause 7.4 of the Waiau Agreement.

<sup>8</sup> Clause 7.2 of the Waiau Agreement.

<sup>9</sup> Clause 10 of the Waiau Agreement

<sup>10</sup> Specified in the Special Rating District Notice, Appendix 2 - Exhibit B

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(d) Has decided the rate be based predominantly on benefit directly or indirectly to properties in the District...In proposing the different rate the Council took account as far as direct benefit was concerned:

(i) The likelihood, frequency, depth; and

A. Severity of flooding and erosion;

B. Extent of damage to land and the improvements to the land; and

(ii) The improvement of drainage; and

(iii) The need for water management generally – in relation to the actual and potential uses of the land and by reference to the advantages accruing from the works concerned and the responsibility for their care and maintenance.

29. The report accompanying the item at a special meeting convened for the purpose on 5 August 1998 noted that ECNZ had been advised of the progress for the rating district, provided with copies of the Special Order and its obligations regarding funding once the rating district was confirmed by Council.

30. A public meeting was held on 14 December 1998 to form the Waiiau Catchment Liaison Committee, the notes of which record<sup>11</sup>:

"The formation of the Committee completes the process of establishment of the Waiiau Catchment Rating District, undertaken to fulfil the agreement with ECNZ in its application for consents for operation of the Manapouri Power Scheme."

### **Current role, operation and scope of Liaison Committee**

31. The full Liaison Committee meets annually, but there is a sub-committee that can meet more frequently than this to scope out and plan work for each financial year as needed. The Liaison Committee puts forward the projects it wishes to expend funds on each year, after discussions with relevant Environment Southland staff. Meridian are a

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<sup>11</sup> See agenda item to the Regional Services Committee 3 February 1999 regarding establishment of the Committee, plus attached minutes of the meeting, Appendix 3.

Liaison Committee member, are always consulted and as a Committee member they have a vote on any particular project or issue, along with other Committee members.

32. Once the budget is approved by the Liaison Committee, the Liaison Committee carries out the work (by contracting 3<sup>rd</sup> parties or through Council staff).

### **Expanding role of Liaison Committee**

33. As a result of significant progress being made in achieving the three main objectives of the Waiau Agreement, in 2008 Meridian advised it was:

“an opportune time to initiate works of a more environmental nature than straight river control for farming purposes... the works programme for the 2008-9 financial year should include the development and maintenance of a nesting area specifically for Black-Billed Gulls and Black Fronted Terns. These birds are reported as historically utilising locations within the Waiau Bed for colony sites, but recent reports suggest that vegetation encroachment has significantly restricted the viability of sites.”<sup>12</sup>

34. As a result of the above, the Liaison Committee trialled spraying areas for bird habitat.
35. Further to the above, currently, the Liaison Committee is funding a scientific study of E.coli in the Orauea (Orawia) River (a tributary of the Waiau) and a social history documentary about the Waiau catchment, all with the approval of Meridian and the Respondent.

### **River Liaison Committees Terms of Reference**

36. The Waiau River Liaison Committee is one of eight (8) River Liaison Committees in Southland.
37. I had never seen the Liaison Committees Terms of Reference (referred to in the Respondent’s Memorandum to the Court on 17 July 2018<sup>13</sup>), until they were provided to the Liaison Committee’s lawyer, in mid-August this year (attached as Appendix 3).

8/8 JPA  
Exhibit C

<sup>12</sup> Letter from Meridian to Environment Southland dated 11 December 2008.

<sup>13</sup> Paragraph 28.

38. The terms of reference are very general in nature and apply to all eight (8) river liaison committees.
39. Contrary to the assertion of Environment Southland in its Memorandum to the Court challenging the standing of the Liaison Committee<sup>14</sup>, as a consequence of the specific provisions of the Waiau Agreement and the Waiau Special Rating District, I do not consider the Terms of Reference provide any guidance or limits for the Liaison Committee.
40. Rather, the label of “Liaison Committee” appears to be more of a vehicle by which the more specific, legal requirements of the Waiau Agreement (along with the provisions in the Special Rating District) can be fulfilled. This is compared to what is a more general, informal Council committee (i.e. the other River Liaison Committees) facilitating communication with a particular community (in accordance with the very general, informal Terms of Reference relied on by the Respondent as being relevant to the ability of the Liaison Committee to be a s274 party).
41. Further contrary to the assertions of Environment Southland<sup>15</sup>, especially in light of the background information on the history, purpose and role of the Liaison Committee, the Liaison Committee:
- a. does have responsibilities (under the Waiau Agreement and the terms of the Special Rating District) which could be affected by the proposed changes to the Proposed Plan by Meridian; and
  - b. although technically a committee of Council, is a body that is representing specific members (the farmers and landowners adjacent to the Lower Waiau river) of one of the parties to the Waiau Agreement, Federated Farmers;
  - c. as a representative of a party to the Waiau Agreement, has a specific purpose which would qualify it as having an interest greater than the public generally.<sup>16</sup>

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<sup>14</sup> Refer to paragraphs 27 and 28 Memorandum of Counsel for Southland Regional Council dated 17 July 2018.

<sup>15</sup> In paragraphs 28 and 28.

<sup>16</sup> And see further below at paragraphs 46-48

## **Submission on Proposed Plan**

42. With the assistance of Environment Southland staff, the River Liaison Committees collectively made a joint submission on the Proposed Plan, however only on issues common to all Committees.
43. At no stage did Environment Southland staff advise it was not within the power of the Liaison Committees to make a submission. We were encouraged to do so – all the Committees were called together by the Council. There was a focus on our general roles and best practice, rather than specific detail relating to a particular catchment.
44. I admit I and my fellow committee members are not that familiar with the RMA submission process and assumed (naively) that as the activity status for renewal of Meridian consents for the Power Scheme was notified as a discretionary activity, we did not need to submit on that, as we agreed with that stance. We understood from that, that when the Meridian consents came up for renewal, we could participate in the process and all relevant matters of concern to the Liaison Committee would be considered then as part of the consenting process.
45. Even when the Council Decision on the Proposed Plan came out and the discretionary activity status had changed to a controlled activity, I didn't appreciate the significance of it until someone familiar with RMA terminology explained it to me.
46. Once the Liaison Committee realised the significance of the change to activity status for Meridian's consents, the Liaison Committee decided to lodge s274 notices on five appeals<sup>17</sup> relating to the Meridian Power Scheme, which it did on, July 13<sup>th</sup>, 2018.

## **Interest greater than the public generally**

47. It is important for the Committee to be involved in any decisions about activity status of consents and other issues relating to the Power Scheme, as the current Waiau Agreement with Meridian expires when the consents expire. The Committee is

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<sup>17</sup> Meridian Energy Ltd, ENV-2018-CHC-000038; Federated Farmers of New Zealand, ENV-2018-CHC-000040; Royal Forest and Bird Protection Society of New Zealand Incorporated, ENV-2018-CHC-000050; Te Runanga o Ngai Tahu ENV-2018-CHC-000047; and Aratiatia Livestock Limited ENV-2018-CHC-000029.

uncertain about whether the Agreement will continue if at all, and consider it vitally important to be involved in any reconsenting process.

48. Further, there are matters not included in the current consents the Liaison Committee consider could be included in any future consent i.e. fencing and weed control, along with measure to avoid, remedy or mitigate erosion on the Lower Waiau that occurs as a result of operation of the Manapouri Scheme.
49. Although Meridian's existing consents can continue until they expire in 2031, in its appeal notice, Meridian indicates (not necessarily as an intention) that an application could be made under Rule 52A at any time (by Meridian) – either before or after the Respondent has established surface water flow and level regimes in the Waiau catchment as part of Freshwater Management Unit limit setting<sup>18</sup>. So, depending on what Meridian decides, the Waiau Agreement could expire any time before 2031 if Meridian obtains replacement consents.

#### **Consequences of inability to participate in Proposed Plan proceeding**

50. If the activity status for renewal of consents for Meridian is a controlled activity and the Waiau Agreement is not renewed, the landowners the Liaison Committee was established to protect and benefit could potentially suffer great disadvantage if there is no replacement agreement and no or limited ability for consent conditions to be imposed to avoid, remedy or mitigate adverse effects of the operation of the Power Scheme on the Lower Waiau River (and the adjoining landowners).
51. If the activity status under Rule 52A is discretionary, I understand the Council could consider any adverse effects of the Power Scheme on the Lower Waiau River and impose consent conditions around erosion, fencing and weed control. In that case, the Liaison Committee could meaningfully participate in and potentially influence the outcome of the consent process.
52. Further, if Meridian's appeal is successful, the situation will be even more disadvantageous, as it appears Meridian are seeking to have the controlled status extend to an increased take, not just the current take, and want the current water take included

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<sup>18</sup> As required under the National Policy Statement for Freshwater Management 2017

as part of the existing environment, in which case I understand all the effects suffered to date, which are ongoing, will essentially be disregarded.

SWORN at Invercargill )  
by Peter Horrell on behalf of the )  
Waiau River Liaison Committee this )  
31<sup>st</sup> day of August 2018 before me: )

*Pf Horrell*

*Lyn Holland*  
**Barrister and Solicitor of the High Court/Deputy Registrar/Justice of the Peace**

**LYN HOLLAND  
DEPUTY REGISTRAR**

Appendix 3 to the affidavit of Peter James Horrell dated 31 August 2018

Liaison Committees

- 1.1 That the Council encourage the formation and maintenance of liaison committees consisting of ratepayers evenly distributed throughout the major river catchments.
- 1.2 That the purpose of liaison committees be to assist the Council to maintain better communications between the Council and ratepayers generally.
- 1.3 That the Council meet formally with each liaison committee on at least an annual basis to receive expressions of opinion and give such explanations as may be requested.
- 1.4 That complaints or other matters pertaining to individual ratepayers not be considered by liaison committees but redirected to the Council.
- 1.5 That liaison committees not make decisions on the Council's behalf, as such decisions must rest with the Council in terms of its statutory authority.
- 1.6 That all liaison committees hold an annual general meeting of ratepayers at an appropriate time, the meeting to be publicly advertised and an election by ratepayers be held to confirm membership of the committees.

17/07/91

**EXHIBIT NOTE:**

This is the annexure marked ..... 'C' ..... referred to  
in the within affidavit of ..... Peter James Horrell .....  
and sworn/affirmed at ..... Tauranga ..... this  
..... 31 ..... day of ..... August ..... 2018  
before me:

Signature.....  .....  
Deputy Registrar/Justice of the Peace/Solicitor of the High Court



*Jerry*

THIS AGREEMENT dated 8 November 1996

**PARTIES:**

1. **ELECTRICITY CORPORATION OF NEW ZEALAND LIMITED** a duly incorporated company having its registered office at Wellington ("ECNZ")
2. **FEDERATED FARMERS SOUTHLAND INCORPORATED** (with its successors and assigns called "the Farmers")
3. **THE SOUTHLAND REGIONAL COUNCIL** (with its successors and assigns called "the Council")

(together called "the parties")

**BACKGROUND:**

1. ECNZ operates the Manapouri Power Station under the provisions of the Manapouri Te Anau Development Act 1963 ("MTADA"), and the Resource Management Act 1991 ("RMA").
2. Section 4(1)(a)(i) MTADA provides that ECNZ shall have full power and authority to erect, construct, provide, use and operate all works, appliances and conveniences which may be necessary or requisite for or in relation to the utilisation of water power from the water resources of Lakes Manapouri and Te Anau, and the Waiiau and Mararoa rivers and their tributaries.
3. In addition, ECNZ has the power to raise or lower the levels of Lakes Manapouri and Te Anau and the Waiiau and Mararoa Rivers and their tributaries which are deemed consents to take and use water under the RMA, subject to operating guidelines, which are deemed conditions of these consents.
4. Subject to the provisos in sections 4A(2) and (5) of the MTADA, this Act allows ECNZ to carry out activities which would otherwise require resource consents under the RMA. However, the RMA deems ECNZ's uses of water to be water, coastal and discharge permits which expire on 1 October 2001. The RMA requires that the application for the permits to continue these uses of water consider inter alia the avoidance, remediation or mitigation of adverse effects on the environment.
5. ECNZ is of the view that, for the renewal of permits of the scope and significance of these, a broad consultation programme is not only appropriate, but essential.
6. To that end, ECNZ initiated the establishment of the Waiiau Working Party in April 1990 to study the effects of hydro-electric power generation on the environment.

1\jkg\docs\236(F)  
29 July 1996

**EXHIBIT NOTE:**

This is the annexure marked 'A' referred to in the within affidavit of Peter James Horrell and sworn/affirmed at Invercargill this 31st day of August 2018 before me:

Signature *[Signature]*  
Deputy Registrar/Justice of the Peace/Solicitor of the High Court

7. For a period of almost six years, the parties and other members of the Waiau Working Party have held meetings and commissioned a number of reports to consider the environmental, recreational, social, cultural and economic values and opportunities of the Waiau River catchment resource.
8. The Waiau Working Party has identified a series of provisions and conditions which they believe, if applied to the ECNZ's resource consents as conditions where legally possible and others incorporated into binding agreements ("the Agreements"), will provide recognition of the various values and opportunities and mitigate the adverse effects of ECNZ's operations and represent an acceptable outcome by retaining or enhancing the values identified while recognising the importance of the use of the resource for the generation of electricity.
9. By a Heads of Agreement dated the 16th day of July 1996 ("Heads of Agreement") those members of the Waiau Working Party consultation process who sign the document record the conditions they think should attach to ECNZ's resource consents when granted. Those conditions will then be included in a joint submission made by its signatories to the Council when it advertises the applications. The joint submission will ask the Council to adopt the agreed conditions and impose them as conditions on the grant of ECNZ's resource consents.
10. The Waiau Working Party's agreed conditions include one that seeks to prevent erosion, or remedy damage from erosion, which occurs or may occur as a result of the exercise of the permit to dam and divert the waters of Lake Manapouri and the Waiau and Mararoa Rivers by means of a structure known as the "Manapouri Lake Control Structure", as follows:
  - 004.11        Erosion

The Consent Holder shall:

    - (a) take such precautionary measures which the General Manager, Council, may direct to prevent damage from erosion which is reasonably likely to occur as a result of the exercise of this permit;
    - (b) make such remedial repairs which the General Manager, Council, may require to remedy damage from erosion which occurs as a result of the exercise of this permit.
11. 11.1 By an Agreement dated 9 March 1973 the New Zealand Electricity Department (now ECNZ) and the Southland Catchment Board (now the Southland Regional Council) ("the Waiau Agreement") the Council is required, at ECNZ's expense:

- a. to conduct regular surveys and take aerial photographs to identify and evaluate channel alterations which have occurred since work on the Manapouri Power Scheme commenced; and
  - b. at the request of ECNZ, any landowner, any local body, or on the Council's own initiative, to investigate and assess any matter arising from fluctuations in river flow, and identify possible remedial actions and their cost.
- 11.2 If ECNZ approves an action recommended by the Council through the mechanism described in 11.1.b of this Agreement, then ECNZ meets the full cost of that work unless the Agreement provides to the contrary.
- 11.3 If the Agreement does not require ECNZ to meet the full cost of work suggested through the mechanism described in 11.1.b then a sharing of the cost between landowners represented by the Council and ECNZ may occur, with disputes being referred to arbitration.
- 11.4 In discharge of its obligations under the Waiau Agreement, and as a result of other agreements entered into from time to time with landowners affected by changes in the Waiau River caused by the Manapouri Power Project, ECNZ has funded the costs of the Council in carrying out an agreed annual programme of vegetation control in the Waiau River floodway.
12. There are some values, opportunities and concerns identified by Federated Farmers Southland Inc, representing the adjoining landholders in the lower part of the Waiau River which the Farmers and ECNZ have agreed are better addressed by the provisions of this Agreement than by measures which could be incorporated formally as conditions of the resource consents. This Agreement records those matters, and the agreements reached between ECNZ and the Farmers. Those agreements recognise the importance of the use of the Waiau catchment resource for the generation of electricity, and the mitigation of effects arising from that use for farmers and other landowners in the Waiau catchment.
13. The parties intend that this Agreement and the erosion condition proposed for the resource consents as recorded in clause 10 of the background will:
- a. replace the Waiau Agreement, the Council and ECNZ as successors to the signatories of it declare that it will now be cancelled in terms of operative clause 8 of this Agreement; and
  - b. continue to have effect (subject to clause 7.2) for a term ending on the date on which the resource consents proposed in the joint submission expire.
14. The New Zealand Electricity Department, and latterly, ECNZ, has accepted

responsibility for the loss of stock access to water occasioned by the need to fence river berms as a result of the lowering of the Waiau River.

**THE PARTIES AGREE:**

1. **Definitions**

"**Adequate condition**" means a fence that provides an effective barrier to stock at every point along its length.

"**Agreed Programme**" means an annual programme of river flood channel and berm fenceline vegetation spraying to be agreed each year by the parties. The programme shall require handspraying of vegetation along fencelines where the use of other methods would unreasonably interfere with the farmer concerned's normal farming practice.

"**Fence**" means a fence erected as a sheep and cattle stock barrier, whether or not continuous, and extending along the whole boundary of land contiguous to the Waiau River, and which separates the bed of the Waiau River from the land of adjoining rural land occupiers.

"**Repair**" means maintaining in an adequate condition and includes the obligation to progressively replace parts of fences as required.

2. The Farmers will join with other members of the Waiau Working Party in making a joint submission to the Council, consenting as effected parties, to the grant of ECNZ's resource consent applications numbers 001 to 007 (inclusive) subject to:
  - 2.1 the conditions proposed for adoption by the Southland Regional Council on the grant of the consents as detailed in Schedule 1 to the joint submission; and
  - 2.2 the terms of this Agreement.
3. ECNZ will ask the Council to grant its resource consent applications numbers 001 to 007 (inclusive) subject to:
  - 3.1 the conditions agreed and listed in Schedule 1 of the joint submission; and
  - 3.2 the terms of this Agreement.
4. This Agreement is subject to and conditional upon the Heads of Agreement not being avoided by any of the parties to that Agreement in terms of clauses 5 or 7 thereto.

5. If the Heads of Agreement are avoided pursuant to clause 5 or clause 7 of that Agreement, then:

5.1 this Agreement shall be at an end and be of no effect;

5.2 the parties shall be relieved of further performance of the obligations undertaken by them under this Agreement;

5.3 none of the parties shall have any claim against any of the others arising from any action taken in anticipation of this Agreement enduring; and

5.4 the Waiau Agreement shall be revived and shall continue to have effect between ECNZ and the Council according to its terms.

6. **Further Agreements**

6.1 ECNZ shall, provided the Heads of Agreement are not avoided by any of the parties to that Agreement in terms of clauses 5 or 7 thereto and the consents sought are granted:

a. fund the reasonable costs of the Council in carrying out an agreed programme of annual spraying of vegetation growth in the Waiau River flood channel from below the Mararoa Weir to the mouth of the river for the purpose of maintaining the efficiency of the flood channel in passing floodwater;

b. maintain, or fund the maintenance of the fences between the Mararoa Weir and the mouth of the Waiau River erected as a consequence of the Manapouri Power Project in a stock proof condition, and will repair those fences when damaged by flooding, slips or trees falling; and

c. ensure the Agreed Programme, and the work needed to maintain the fences, shall be detailed in a three year rolling plan to be agreed by the parties. The plan will require that any work not undertaken in any year shall be performed in the following year and financial provision for the same shall be carried forward and added to that succeeding year's work programme.

6.2 The parties record to avoid doubt that approximately 100 kilometres of fencing was erected as a consequence of the Manapouri Power Project; and

6.3 For the avoidance of doubt, nothing in clause 6 shall require ECNZ to maintain berm fencing on land owned by it (unless the maintenance of any particular length of fence has been specifically agreed in an annual

programme under this Agreement) or on the Tuatapere town floodbank.

7. 7.1 This agreement will continue in force for a term expiring on the date the resource consents referred to in the joint submission expire. If consents in substitution are granted under the Resource Management Act 1991 then the parties will negotiate in good faith the extension of the terms of this agreement on such terms as are then appropriate and the dispute resolution provisions of clauses 9.1 and 9.2 shall apply to the negotiation of such an extension of term.
- 7.2 The obligations of the parties under this Agreement shall be suspended if a special rating district for the Waiau catchment is established for the purpose of discharging the obligations of ECNZ under this Agreement.
- 7.3 If a special rating district is established for purposes including:
- a. the maintenance of an effective flood channel in the Waiau riverbed from the Maroroa Weir to the river's mouth; and
  - b. the maintenance as defined in this Agreement of the fences erected as consequence of the Manapouri power project; and
  - c. the maintenance of the corridor through which the fences pass in a state free of undesirable plants;
- and once rating income from landowners exceeds \$10,000.00 per annum then ECNZ shall pay to the Council on behalf of the land occupiers represented by the farmers:
- d. the sum of \$200,000.00 a year annually (to be adjusted as provided in clause 7.5 of this Agreement); and
  - e. an additional sum at the rate of \$1.00 for every dollar of rates collected from ratepayers in the special rating district.
- 7.4 The Council shall ensure that any money received under this agreement, after payment of all usual administration expenses and lawful charges, is first applied for the purposes set out in clause 7.3 above. Any surplus may be accrued as a capital fund for disaster relief in the Waiau catchment or for such other lawful purposes as the special rating district notice may allow.
- 7.5 All the sums payable under this Agreement shall be increased from year to year by the multiplier the Works Construction Cost Index published from time to time by Works Consultancy Services Limited declares is needed to maintain the purchasing power of money in 1996 dollars. The Index will

take effect from 1 July 1996. If Works Consultancy Services Limited ceases to calculate and publish the Works Construction Cost Index then such alternative index shall be used as Works Consultancy Services Limited shall nominate.

8. This Agreement shall be in substitution for the Waiau Agreement which shall cease to have force and effect from the date upon which this agreement comes into force as a result of the grant of the resource consents, upon which event both the Council and ECNZ shall be relieved of further performance of their obligations under the Waiau agreement, and neither party shall have any claim against the other.
9. 9.1 In the event of any dispute arising between the parties in respect of or in connection with this Agreement, the parties shall, without prejudice to any other right or entitlement they may have under this Agreement or otherwise, explore whether the dispute can be resolved by use of the alternative dispute resolution technique of mediation. The rules governing such techniques shall be agreed between the parties or as recommended by the New Zealand Law Society or as selected by the Chairman of the New Zealand Chapter of LEADR (Lawyers Engaged in Alternative Dispute Resolution).
- 9.2 In the event the dispute is not resolved within twenty eight days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration under the provisions of the Arbitration Act 1908 or any Act passed in substitution therefore. The arbitrator shall be agreed between the parties within 10 days of written notice of the referral by the referring party to the other or failing agreement appointed by the President of the New Zealand Law Society. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.
10. Where the land of any farmer contiguous with the Waiau River or one of its tributaries or the profitability of the farm formed by such land is detrimentally affected by erosion caused by the exercise of resource consents held by ECNZ then ECNZ undertakes to negotiate in good faith with the landowner to find measures to mitigate and compensate the effects of such erosion on that farm.
11. Any notice given under this Agreement shall be in writing and delivered or transmitted as follows:

The Company Secretary  
Electricity Corporation of New Zealand Limited  
Rutherford House  
23 Lambton Quay  
P O Box 930  
Wellington  
Telephone: 04 472 3550

Facsimile: 04 473 7091

The Secretary  
Federated Farmers Southland Incorporated  
70 Forth Street  
P O Box 176  
Invercargill  
Telephone: 03 218 2869  
Facsimile: 03 218 2868

Southland Regional Council  
Regional House  
Cnr Price Street & North Road  
Private Bag 90116  
Invercargill  
Facsimile: 64 3 215 8081



SIGNED by the parties on the date set out above.

SIGNED for and on behalf of  
**ELECTRICITY CORPORATION OF  
NEW ZEALAND LIMITED**

by:

) X *[Signature]* Director  
)  
)  
) X *[Signature]* Director/Authorised Person

Witness: X *[Signature]*

Name: MARGARET J. FRANCE  
Policy Analyst

Occupation: Wellington

Address: \_\_\_\_\_

(Witness required only if deed signed other than by two directors)

SIGNED for and on behalf of  
**FEDERATED FARMERS  
SOUTHLAND INCORPORATED**

by:

) X  Director  
)  
)  
) X \_\_\_\_\_ Director/Authorised Person

Witness: X \_\_\_\_\_

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

(Witness required only if deed signed other than by two directors)

**SIGNED** for and on behalf of  
**THE SOUTHLAND REGIONAL  
COUNCIL**

by:

- ) X \_\_\_\_\_
- ) \_\_\_\_\_
- ) \_\_\_\_\_
- ) X \_\_\_\_\_



Witness: X \_\_\_\_\_

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

(Witness required only if deed signed other than by two directors)

Special Meeting of Council – 5 August 1998

**Item 1 Rating Amendments and New Rating District Special Order Procedure**

Compiled by David Fraser, Senior Administration Officer

**Summary**

This Special Meeting is necessary to confirm the Special Orders adopted by Council at a Special Meeting held at 1.15 pm on Wednesday, 3 June 1998.

Rating District Amendments

- 1.1 Aparima Rating District
- 1.2 Upper Waihopai Drainage District
- 1.3 Upper Waikawa River Rating District

New Rating District

- 1.4 Waiau Rating District

**Recommendation**

It is recommended that Council proceed to confirm the Special Orders adopted by Council at a Special Meeting held at 1.15 pm on 3 June 1998 to:

- confirm the amendments to the
  - Aparima Rating District
  - Upper Waihopai Drainage District
  - Upper Waikawa River Rating District
- confirm the introduction of the Waiau Rating District
- confirm the Special Orders to take effect as from 1 July 1998.

⇒ **Item 1.4 – Waiau Rating District – 507/1/1**

*Resolved:*

Moved Cr Broad, seconded Cr Falconer that:

- (1) Council proceed to make a Special Order to adopt the Waiau Rating District;
- (2) the Waiau Rating District take effect as from 1 July 1998.

**Special Order – Waiau Rating District**

Pursuant to the Rating Powers Act 1988 the Council resolves to make and levy the Waiau Rating District separate rate on a differential basis coming into force on the first day of July 1998.

**EXHIBIT NOTE:**

This is the annexure marked 'B' referred to  
in the within affidavit of Peter James Horrell  
and sworn/affirmed at Invercargill this  
31st day of August 2018  
before me:

Signature [Signature]  
Deputy Registrar/Justice of the Peace/Solicitor of the High Court

**Special Meeting of Council – 5 August 1998**

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In accordance with the Rating Powers Act 1988, Section 41, and Part V (Differential Rating) in proposing to adopt a differential system of rating in the Waiau Rating District the Council has taken the following matters into account:

- the document agreement dated 8 November 1996 between the following parties:
  - Electricity Corporation of NZ Ltd
  - Federated Farmers Southland Incorporated
  - Southland Regional Council
  - legal opinions dated 10 June 1997 and 19 June 1997 from Messrs Anderson Lloyd
- considered the benefits likely to accrue to properties within the District directly or indirectly are flood protection, improved drainage, noxious plant control, stock fencing on main channel, erosion control, maintenance of high quality water resource and protection of community assets.
- rates levied on the land value system of rating.
- has decided that the rate be based predominantly on benefit directly or indirectly to properties in the District. Except to the extent reflected in land values no account has been taken of the use of any property or any actions of the occupier. In proposing the differential rate the Council has taken into account as far as direct benefit is concerned:
  - (i) the likelihood, frequency, depth and severity of flooding and erosion; and
  - (ii) the likelihood, frequency, depth and extent of damage to land and the improvements to the land; and
  - (iii) the improvement of drainage; and
  - (iv) the need for water management generally – in relation to the actual and potential uses of the land and by reference to the advantages accruing from the works concerned and the responsibility for their care and maintenance.

As far as indirect benefit is concerned, the Council has taken into account:

- (i) the establishment or preservation of economic units of land; and
- (ii) the protection or establishment of water, sewage, drainage, electrical, gas and other services and or works, services and amenities to which rates from the land may be applied; and
- (iii) the protection or establishment of communications and of any other property, service or amenity within or benefiting the land.

## Special Meeting of Council – 5 August 1998

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The proposed types of groups of property for differential rating in the Waiau Rating District are:

Class A not used

Class B not used

Class C

C 1 not used

C 2 not used

C 3 not used

C 4 Sharpridge drainage system

Class D

D 1 Lillburn willow control

D 2 Orawia willow control

Class E

E 1 Riverside benefiting land

E 2 Tuatapere town

Class F

F 1 Waiau catchment

F 2 Coastal catchments – western area

F 3 Orawia catchment

Class G non-rateable – outside catchment areas.

To summarise, Class C, D and E are direct benefits reflecting various work functions and Class F identifies the indirect benefit areas.

The proposed system of differential rating has the object of establishing and preserving as far as practical the following relationship between the proceeds of the total rates received from the stated groups of properties.

The relationship is:

Class A	-
Class B	-
Class C 1	-
Class C 2	-
Class C 3	-
Class C 4	200
Class D 1	150
Class D 2	500
Class E 1	10
Class E 2	50
Class F 1	1

Special Meeting of Council – 5 August 1998

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F 2 0.5  
F 3 1

The general effect of the relationship referred to above is to more equitably distribute the rating incidence throughout the various groups of property within the Waiau Rating District according to the type and value of work carried out and location of property.

After the Waiau Rating District is confirmed as a formal rating system, steps will be taken to discontinue the following existing annual maintenance rating systems:

Scheme 718 Orawia River Willow Control  
Scheme 728 Sharpridge Stream Drainage maintenance  
Scheme 833 Lillburn Willow control

And that the proposal for differential rating be open for inspection by the public at the offices of the Southland Regional Council, corner Price Street and North Road, Invercargill, during normal office hours without fee.

Any ratepayer may at any time after the confirmation of the special order, object to the Southland Regional Council in accordance with Section 116 of the Rating Powers Act 1988 against the allocation of a property to a particular type or group of property.

The Special Order will be submitted to Council for confirmation at a meeting in the Council Chamber scheduled for 5 August 1998.

Carried

### Report

There has been no public response from those ratepayers whose properties have been amended in the Aparima, Upper Waihopai and Upper Waikawa Rating Districts. This is mostly due to previous staff contact during the consultation process to determine the requirements of the service provided by the Council.

All ratepayers in the Waiau Rating District were circulated by mail and an explanatory note and the estimated rate levy on each property enclosed. Only 13 enquiries have been made, some of which were to notify address changes and some for clarification.

Two statutory public notices advising of the Council's intentions were published in The Southland Times on Saturday, 27 June and Saturday, 25 July 1998, as required by the Rating Powers Act 1988.

In addition, ECNZ has been advised of the progress of the rating district, provided with copies of the Special Order and its obligation regarding funding once the rating district is confirmed by Council.

## Special Meeting of Council – 5 August 1998

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Enquiries can continue up until the Council meeting, and at this stage there is nothing to indicate any possible problems.

### ⇒ Item 1 – Rating Amendments and New Rating District Special Order Procedure

This item required Council to confirm the Special Orders adopted by Council at a Special Meeting held on Wednesday 3 June 1998, at 1.15 pm.

***Resolved:***

**Moved Cr Wilson, seconded Cr Wards, that Council proceed to confirm the Special Orders adopted by Council at a Special Meeting held at 1.15 pm on 3 June 1998 to:**

- **confirm the amendments to the**
  - **Aparima Rating District**
  - **Upper Waihopai Drainage District**
  - **Upper Waikawa River Rating District**
- **confirm the introduction of the Waiau Rating District**
- **confirm the Special Orders to take effect as from 1 July 1998.**

**Carried**

