

**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)

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**JOINT MEMORANDUM IN SUPPORT OF CONSENT ORDER**

**TOPIC B6 – ISSUES 4, 5, 7 & 10  
RELATING TO  
POLICY 26A & RULE 52**

**3 February 2022**

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Judicial Officer: Judge Borthwick

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**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**

**MAY IT PLEASE THE COURT**

- 1 This joint memorandum relates to appeals against Southland Regional Council's decision on the proposed Southland Water and Land Plan (**pSWLP**), in respect of provisions relating to Topic B6 Infrastructure.
- 2 The parties participated in Court-assisted mediation on these appeals on 11 May 2021.
- 3 During Court-assisted mediation, the parties reached agreement on the resolution of the following provisions under appeal:
  - (a) Issues 4, 5 and 7 - Policy 26A; and
  - (b) Issue 10 – Rule 52.
- 4 This joint memorandum is filed in support of a draft consent order to resolve the appeals relating to provisions referred to at paragraph 3 above.
- 5 This joint memorandum has been signed by each of the Appellants, the Respondent, and each of the section 274 parties.

**The changes agreed, the rationale for the same, and draft Consent Orders**

- 6 The changes to the provision referred to in paragraph 3, as agreed between the parties, are detailed in the draft Consent Order included at **Appendix 1** to this joint memorandum.
- 7 The changes, including the rationale for the same, are also explained in more detail in the affidavit of Hannah Goslin dated 2 February 2022, attached as **Appendix 2** to this joint memorandum. This affidavit provides an evaluation of the agreed changes in terms of section 32AA of the Act and (where relevant) the higher order policy documents, including in particular the National Policy Statement for Freshwater Management 2020 (**NPSFM**).
- 8 Counsel also record at the outset, that the parties, throughout mediation and informal discussions, were cognisant of the findings in the Court's Interim Decisions<sup>1</sup> and are satisfied that all changes agreed to are consistent with those findings and/or, within the bounds of scope, bring the pSWLP closer to the direction in those decisions.

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<sup>1</sup> [2019] NZEnvC 208, [2020] NZEnvC 93, [2020] NZEnvC 110, and [2020] NZEnvC 191.

### **Details of appeals**

- 9 The sub-sections below detail the provisions that were appealed, who appealed each provision, what those appellants sought, and who joined those appeals as section 274 parties.
- 10 As the rationale for the changes agreed and an analysis in line with section 32AA has been provided in the affidavit of Hannah Goslin, such detail is not reproduced here. Rather, cross-referencing to that reasoning is provided to assist with readability of the suite of documents filed in support of orders being made by consent.

### **Issues 4, 5 and 7 - Policy 26A**

- 11 Policy 26A provides policy direction requiring the recognition and provision for the effective development, operation, maintenance and upgrading of regionally significant and critical infrastructure, in a way that avoids where practicable, or otherwise remedies or mitigates adverse effects on the environment.
- 12 Policy 26A was appealed by the Royal Forest and Bird Protection Society of New Zealand (**Forest and Bird**); and Te Runanga O Ngai Tahu, Hokonui Runaka, Waihopai Runanka, Te Runanga O Awarua & Te Runanga O Oraka Aparima (**Ngā Rūnanga**).
- 13 Forest and Bird and Ngā Rūnanga sought that Policy 26A be deleted.
- 14 The following parties joined the appeal lodged by Forest and Bird as section 274 parties in relation to Policy 26A:
- (a) Invercargill City Council Water Manager;
  - (b) Meridian Energy Limited;
  - (c) Oil Companies;<sup>2</sup>
  - (d) Gore District Council, Southland District Council and Invercargill City Council;
  - (e) Transpower New Zealand Limited; and
  - (f) Southland Fish and Game Council.

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<sup>2</sup> Noting that they have subsequently withdrawn their interest in this issue.

- 15 The following parties joined the appeal lodged by the Ngā Rūnanga as section 274 parties in relation to Policy 26A:
- (a) Director-General of Conservation;
  - (b) Invercargill City Council Water Manager;
  - (c) Meridian Energy Limited;
  - (d) Gore District Council, Southland District Council and Invercargill City Council;
  - (e) Transpower New Zealand Limited;
  - (f) Oil Companies;<sup>3</sup> and
  - (g) Southland Fish and Game Council.
- 16 Through discussions the parties agreed to amend Policy 26A as set out in the draft consent order and paragraph [16] of the affidavit of Hannah Goslin in relation to Topic B6.
- 17 The rationale for the changes agreed are also included in that affidavit at paragraphs [17] – [23].

***Issue 10 – Rule 52***

- 18 Rule 52 provides for the take, damming, diversion or use of water from the Waiau catchment as either a discretionary activity, provided conditions are met, or a non-complying activity, where that take, damming, diversion or use of water is not otherwise provided for by the rules listed in the chapeau of Rule 52.
- 19 Rule 52 of the pSWLP was appealed by Meridian Energy Limited.
- 20 Meridian Energy Limited sought that Rule 52 include reference to Rule 49(ab) as one of the exceptions in the chapeau of the Rule.
- 21 The following parties joined the appeal lodged by Meridian Energy Limited as section 274 parties in relation to Rule 52:
- (a) Aratiatia Livestock Limited;
  - (b) Royal Forest and Bird Protection Society of New Zealand; and

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<sup>3</sup> Noting that they have subsequently withdrawn their interest in this issue.

(c) Te Runanga O Ngai Tahu, Hokonui Runaka, Waihopai Runaka, Te Runanga O Awarua & Te Runanga O Oraka Aparima (**Ngā Rūnanga**).

- 22 Through discussions the parties agreed to amend Rule 52 as set out in the draft consent order and paragraph [26] of the affidavit of Hannah Goslin in relation to Topic B6.
- 23 The rationale for the changes agreed are also included in that affidavit at paragraphs [27] – [32].

### **Orders sought**

- 24 All parties are satisfied that all matters proposed for the Court's endorsement are within the scope of submissions and appeals, fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.
- 25 For the avoidance of doubt, the parties are satisfied that the amendments give effect to the National Policy Statement for Freshwater Management 2020, insofar as there is scope to do so.
- 26 The parties are also satisfied that the changes appropriately respond to the direction from the Court in its Interim Decisions.<sup>4</sup>
- 27 The parties therefore respectfully request that the Court make the orders sought in **Appendix 1** to this memorandum.
- 28 No party has any issue as to costs.
- 29 For completeness, it is noted that the order, if granted, resolves all appeals in relation to:
- (a) Policy 26A (Issues 4, 5 and 7); and

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<sup>4</sup> [2019] NZEnvC 208, [2020] NZEnvC 93, [2020] NZEnvC 110, and [2020] NZEnvC 191.

(b) Rule 52 (Issue 10).

**DATED** this 3<sup>rd</sup> day of February 2022



.....

**P A C Maw / A M Langford**

Counsel for Southland Regional Council

.....

**S Gepp**

Counsel for Forest and Bird

.....

**J Winchester / S Lennon**

Counsel for Ngā Rūnanga

.....

**M Morris**

Counsel for Invercargill City Council Water Manager



(b) Rule 52 (Issue 10).

**DATED** this 3<sup>rd</sup> day of February 2022

.....

**P A C Maw / A M Langford**

Counsel for Southland Regional Council



.....

**S Gepp**

Counsel for Forest and Bird

.....

**J Winchester / S Lennon**

Counsel for Ngā Rūnanga

.....

**M Morris**

Counsel for Invercargill City Council Water Manager

(b) Rule 52 (Issue 10).

**DATED** this 3<sup>rd</sup> day of February 2022

.....

**P A C Maw / A M Langford**

Counsel for Southland Regional Council

.....

**S Gepp**

Counsel for Forest and Bird



.....

**J Winchester / S Lennon**

Counsel for Ngā Rūnanga

.....

**M Morris**

Counsel for Invercargill City Council Water Manager

(b) Rule 52 (Issue 10).

**DATED** this 3<sup>rd</sup> day of February 2022

.....

**P A C Maw / A M Langford**

Counsel for Southland Regional Council

.....

**S Gepp**

Counsel for Forest and Bird

.....

**J Winchester / S Lennon**

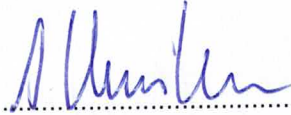
Counsel for Ngā Rūnanga



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**M Morris**

Counsel for Invercargill City Council Water Manager



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**S Christensen**

Counsel for Meridian Energy Limited

.....  
**M Garbett**

Counsel for Gore District Council, Southland District Council and Invercargill  
City Council

.....  
**N Garvan / T Crawford**

Counsel for Transpower New Zealand Limited

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**S Gepp**

Counsel for Southland Fish and Game Council

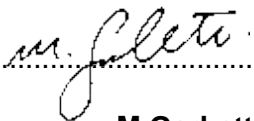
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**P Williams**

Counsel for Director-General of Conservation

.....

**S Christensen**

Counsel for Meridian Energy Limited

.....  


**M Garbett**

Counsel for Gore District Council, Southland District Council and Invercargill  
City Council

.....

**N Garvan / T Crawford**

Counsel for Transpower New Zealand Limited

.....

**S Gepp**

Counsel for Southland Fish and Game Council

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**P Williams**

Counsel for Director-General of Conservation

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**S Christensen**

Counsel for Meridian Energy Limited

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**M Garbett**

Counsel for Gore District Council, Southland District Council and Invercargill  
City Council



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**N Garvan / T Crawford**

Counsel for Transpower New Zealand Limited

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**S Gepp**

Counsel for Southland Fish and Game Council

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Counsel for Director-General of Conservation

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**S Christensen**

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**N Garvan / T Crawford**

Counsel for Transpower New Zealand Limited



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**S Gepp**

Counsel for Southland Fish and Game Council

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**P Williams**

Counsel for Director-General of Conservation

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**S Christensen**

Counsel for Meridian Energy Limited

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**M Garbett**

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**N Garvan / T Crawford**

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**S Gepp**

Counsel for Southland Fish and Game Council

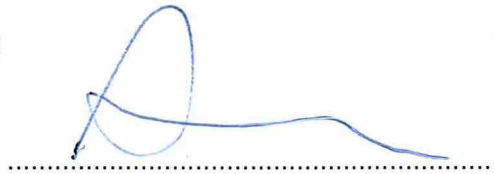
*Williams*  
.....

**P Williams**

Counsel for Director-General of Conservation



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A handwritten signature in blue ink is positioned above a horizontal dotted line. The signature consists of a large, stylized initial 'D' followed by a series of connected loops and a final horizontal stroke.

**D Allan**

Counsel for Aratiatia Livestock Limited

**Appendix 1 – Draft consent order**

**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)

**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)

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**CONSENT ORDER**

**TOPIC B6 – ISSUES 4, 5, 7 & 10  
RELATING TO  
POLICY 26A & RULE 52**

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Judicial Officer: Judge Borthwick

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**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**  
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**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**

- [A] Under section 279(1) of the Resource Management Act 1991, the Environment Court, by consent, orders that the appeal is allowed in accordance with Annexure A to this Order.
- [B] Under section 285 of the Resource Management Act 1991, there is no order as to costs.

## REASONS

### Introduction

- 1 The following parties have appealed provisions of the proposed Southland Water and Land Plan as they relate to Topic B6:<sup>1</sup>
  - (a) Meridian Energy Limited;
  - (b) Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest and Bird**); and
  - (c) Te Rūnanga o Ngāi Tahu, Hokonui Rūnaka, Waihōpai Rūnaka, Te Rūnanga o Awarua, and Te Rūnanga o Oraka Aparima (**Ngā Rūnanga**).
- 2 The Court has read and considered the joint memorandum of the parties dated 3 February 2022, which proposes to resolve the appeals that relate to:
  - (a) Policy 26A (Issues 4, 5 and 7); and
  - (b) Rule 52 (Issue 10).
- 3 The Court has also read and considered the affidavit of Hannah Goslin dated 2 February 2022, which provides an analysis of the changes proposed by the parties in terms of section 32AA of the Resource Management Act 1991 (**Act**).
- 4 The following parties gave notice of their intention to become parties under section 274 of the Act and have signed the joint memorandum of the parties dated 3 February 2022:<sup>2</sup>
  - (a) Aratiatia Livestock Limited;
  - (b) Director-General of Conservation;
  - (c) Forest and Bird;
  - (d) Gore District Council, Southland District Council and Invercargill City Council;

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<sup>1</sup> The particular provisions each party has appealed is set out in the joint memorandum of the parties dated 3 February 2022.

<sup>2</sup> The particular appeal each party has joined as a s274 party is set out in the joint memorandum of the parties dated 3 February 2022.

- (e) Invercargill City Council Water Manager;
- (f) Meridian Energy Limited;
- (g) Ngā Rūnanga;
- (h) Oil Companies;<sup>3</sup>
- (i) Transpower New Zealand Limited; and
- (j) Southland Fish and Game Council.

5 The Court is making this order under section 279(1)(b) of the Act; such order being by consent pursuant to section 297, rather than representing a decision or determination on the merits. The Court understands that for the present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the Court's endorsement are within the scope of submissions and appeals, fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Act, including in particular Part 2.

### **Order**

6 Therefore, the Court orders, by consent, that the proposed Southland Water and Land Plan be amended as set out in **Annexure A** to this Order.

7 The Order resolves the appeals as they relate to the following provisions:

- (a) Policy 26A; and
- (b) Rule 52.

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<sup>3</sup> Noting that they have subsequently withdrawn their interest on these appeals.



8 There is no order as to costs.

**DATED** this                      day of                      2022

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J E Borthwick  
Environment Judge

## ANNEXURE A

### Topic B6 – Agreed changes to provision(s)

Amended text for Policy 26A and Rule 52 (deleted text in strikeout, new text underlined):

#### Policy 26A – Infrastructure

Recognise and provide for the sustainable and effective development, operation, maintenance and upgrading of regionally significant and critical infrastructure in a way that avoids where practicable, or otherwise remedies or mitigates, adverse effects on the environment.

#### Rule 52 – Water abstraction, damming, diversion and use from the Waiau catchment

- (a) Except as provided in Rules 49(a), 49(ab), 49(b), 49(c), 50(a), 50(b), 51(a), 51(b) and, ~~52A and 52B~~ (including takes authorised by section 14(3) of the Act), any take, damming, diversion or use of water from the Waiau catchment is a discretionary activity provided the following conditions are met:
- (i) the application is for the replacement of an expiring water permit pursuant to section 124 of the Act, and the rate of take and volume is not increasing, and use of the water is not changing; or
  - (ii) the application is for a groundwater take assessed as having a Low degree of hydraulic connection following the methodology specified in Appendix L.2.
- (b) Except as provided in Rules 49(a), 49(ab), 49(b), 49(c), 50(a), 50(b), 51(a), 51(b) and, ~~52A and 52B~~ (including takes authorised by section 14(3) of the Act), any take, damming, diversion or use of water from the Waiau catchment that does not meet the conditions of Rule 52(a) is a non-complying activity.

**Appendix 2 – Affidavit of Hannah Goslin dated 2 February 2022**

**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)

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**AFFIDAVIT OF HANNAH GOSLIN**

**TOPIC B6 – ISSUES 4, 5, 7 & 10  
RELATING TO  
POLICY 25A & RULE 52**

**2 February 2022**

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Judicial Officer: Judge Borthwick

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(ENV-2018-CHC-32)

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(ENV-2018-CHC-33)

**BEEF + LAMB NEW ZEALAND**  
(ENV-2018-CHC-34 & 35)

**DIRECTOR-GENERAL OF CONSERVATION**  
(ENV-2018-CHC-36)

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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  
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**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**

I, Hannah Louise Goslin, of Christchurch, Consultant, solemnly and sincerely affirm:

- 1 I hold the qualification of Bachelor of Science from Canterbury University. I am a Resource Management Consultant from the firm Incite and I have held this position for four years. Prior to this I was a Consent Planner employed by the Canterbury Regional Council. I have been engaged by the Southland Regional Council to assist with mediation proceedings.
- 2 While this affidavit in part records the reasoning and conclusion of the experts present at mediation,<sup>1</sup> in places I express my professional opinion. For this material, I confirm that I have read and am familiar with the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2014. I agree to comply with that Code. Other than where I state that I am relying on the evidence of another person, my opinions are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 3 This affidavit provides an evaluation in terms of section 32AA of the Resource Management Act 1991 (**Act**) to accompany the draft consent order to which this affidavit relates.<sup>2</sup> Within the context of the section 32AA assessment, I have also assessed the higher order policy documents including in particular, the National Policy Statement for Freshwater Management 2020.
- 4 As with any negotiated outcome, the position arrived at by the parties does not necessarily reflect my professional opinion of what the best wording would be. In my opinion, in part, some of the wording is acceptable rather than preferred. That said, the agreed outcome was the result of considerable discussion and investment in time and thought, which I respect. I have attempted to set out below the

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<sup>1</sup> Treena Davidson and Muriel Johnstone for Ngā Rūnanga, Amelia Ching for the Director-General of Conservation, Kim Riley for Federated Farmers, Jacob Smyth for Southland Fish and Game Council, Rick Zwaan for Royal Forest and Bird Protection Society of New Zealand, Hamish English, Rebecca Eng and Ainsley McLeod for Transpower, Andrew Feierabend for Meridian Energy Limited, Peter Horrell for Waiau River Care and Claire Jordan for Aratiatia.

<sup>2</sup> Minute of the Environment Court dated 22 October 2020, at [12].

CRS  
HLS-

reasoning that the Court has required to be provided, based on my understanding and recollections of the discussion that occurred.

### Introduction

5 This affidavit relates to those issues under Topic B6 where an outcome has been agreed between the parties, namely:

- (a) Issues 4, 5 and 7 - Policy 26A; and
- (b) Issue 10 – Rule 52;

6 In this affidavit I set out the relevant legal tests under s32AA of the Act and then provide an evaluation in accordance with s32AA for each of the provisions that have been agreed.

### Section 32AA of the Act

7 Section 32AA of the Act requires:

- (1) *A further evaluation required under this Act—*
  - (a) *is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and*
  - (b) *must be undertaken in accordance with section 32(1) to (4); and*
  - (c) *must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and...*

8 The core of section 32 of the Act is in sub-section (1), which requires a decision-maker to (relevantly):

...

- (b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
  - (i) *identifying other reasonably practicable options for achieving the objectives; and*
  - (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
  - (iii) *summarising the reasons for deciding on the provisions; and*

...



- 9 Sub-section (2) specifies how the analysis under section 32(1)(b)(ii) is to be undertaken. In summary, this requires an assessment of the benefits and costs of the environmental, economic, social and cultural effects anticipated from the implementation of the provisions, and an assessment of the risk of acting or not acting if there is uncertain or insufficient information.
- 10 Section 32(3) is not relevant given the proposed Southland Water and Land Plan (**pSWLP**) is not an amending proposal, rather it is a whole new plan.
- 11 Section 32(4) may be relevant where the provision is a rule and will impose a greater or lesser restriction on an activity to which a national environmental standard applies than the existing restrictions in that standard.

**Evaluation in accordance with section 32AA for each provision where a change has been agreed**

- 12 In accordance with the requirements of sections 32(1) and 32(2), in relation to each provision where a change has been agreed I:
- (a) list the most relevant objectives;
  - (b) explain the "other reasonably practicable options" for achieving the objectives;
  - (c) summarise the reasons for the changes agreed; and
  - (d) provide an assessment of benefits, costs, and risks as required by section 32(2).

**Issues 4, 5 and 7 - Policy 26A**

- 13 Policy 26A of the pSWLP was appealed by the Royal Forest and Bird Protection Society of New Zealand; and Te Runanga O Ngai Tahu, Hokonui Runaka, Waihopai Runanka, Te Runanga O Awarua & Te Runanga O Oraka Aparima (**Ngā Rūnanga**).
- 14 The following parties joined the appeal lodged by the Royal Forest and Bird Protection Society of New Zealand as section 274 parties in relation to Policy 26A:
- (a) Invercargill City Council Water Manager;
  - (b) Meridian Energy Limited;

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- (c) Oil Companies;<sup>3</sup>
  - (d) Gore District Council, Southland District Council and Invercargill City Council;
  - (e) Transpower New Zealand Limited; and
  - (f) Southland Fish and Game Council.
- 15 The following parties joined the appeal lodged by the Ngā Rūnanga as section 274 parties in relation to Policy 26A:
- (a) Director-General of Conservation;
  - (b) Invercargill City Council Water Manager;
  - (c) Meridian Energy Limited;
  - (d) Gore District Council, Southland District Council and Invercargill City Council;
  - (e) Transpower New Zealand Limited;
  - (f) Oil Companies;<sup>4</sup> and
  - (g) Southland Fish and Game Council.
- 16 The mediated outcome for Policy 26A is (new text underlined):

**Policy 26A – Infrastructure**

Recognise and provide for the sustainable and effective development, operation, maintenance and upgrading of regionally significant and critical infrastructure in a way that avoids where practicable, or otherwise remedies or mitigates, adverse effects on the environment.

*Relevant objectives*

- 17 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Policy 26A is the most appropriate way to achieve the objectives, the most relevant objectives are Objective 1, Objective 2, Objective 3, Objective 9B and Objective 10.

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<sup>3</sup> Noting that they have subsequently withdrawn their interest in this issue.

<sup>4</sup> Noting that they have subsequently withdrawn their interest in this issue.

*Reasonably practicable options*

- 18 Section 32(1)(b)(i) requires the identification of “other reasonably practicable options” for achieving the objectives. The reasonably practicable options I have identified and considered are the Decisions Version wording, and the agreed wording set out in tracked changes in paragraph 16 above.

*Explanation and reasons for the changes agreed*

- 19 The agreed change to Policy 26A is not considered to make a substantial change to the way the policy is implemented. On this basis, pursuant to section 32AA(1)(c), my analysis in relation to the efficiency and effectiveness of the changes to Policy 26A is brief.
- 20 In my opinion, the inclusion of reference to “sustainable” in Policy 26A is unlikely to result in substantially different outcomes. However, including the term “sustainable” with “effective” follows the lead provided by Objective 9B.
- 21 Overall, the parties are cognisant that the inclusion of “sustainable” in Policy 26A would better align with the wording in Objective 9B, resulting in a cohesive and clear relationship between Objective 9B and Policy 26A. Accordingly, it is considered more efficient and effective.

*Benefits, costs and risk assessment*

- 22 With respect to the assessment of benefits, costs and risks required by section 32(2), the specific outcomes from each of the two options for the wording of this Policy are similar. The key difference is that the agreed wording better aligns with the outcome sought by Objective 9B and provides a clear and cohesive relationship between Objective 9B and Policy 26A. The inclusion of the term ensures that the development and operation of infrastructure is sustainable, and incorporated into that term is, in the case of water, an inherent acknowledgement of the requirements of the National Policy Statement for Freshwater Management 2020. I consider this to be an environmental benefit. There may be additional economic and social costs for infrastructure providers and ratepayers associated with the additional requirement to ensure that the development, operation, maintenance and upgrading of regionally significant and critical infrastructure is sustainable as well as effective.

- 23 Overall, having considered the options, the wording of the provision agreed by the parties (and set out at paragraph 16 above) is considered to be the most appropriate way to achieve the objectives of the pSWLP.

**Issue 10 – Rule 52**

- 24 Rule 52 of the pSWLP was appealed by Meridian Energy Limited.
- 25 The following parties joined the appeal lodged by Meridian Energy Limited as section 274 parties in relation to Rule 52:
- (a) Aratiatia Livestock Limited;
  - (b) Royal Forest and Bird Protection Society of New Zealand; and
  - (c) Te Runanga O Ngai Tahu, Hokonui Runaka, Waihopai Runaka, Te Runanga O Awarua & Te Runanga O Oraka Aparima (**Ngā Rūnanga**).
- 26 The mediated outcome for Rule 52 is (deleted text in ~~strikeout~~, new text underlined):

**Rule 52 – Water abstraction, damming, diversion and use from the Waiau catchment**

- (a) Except as provided in Rules 49(a), 49(ab), 49(b), 49(c), 50(a), 50(b), 51(a), 51(b) and, 52A ~~and 52B~~ (including takes authorised by section 14(3) of the Act), any take, damming, diversion or use of water from the Waiau catchment is a discretionary activity provided the following conditions are met:
  - (i) the application is for the replacement of an expiring water permit pursuant to section 124 of the Act, and the rate of take and volume is not increasing, and use of the water is not changing; or
  - (ii) the application is for a groundwater take assessed as having a Low degree of hydraulic connection following the methodology specified in Appendix L.2.
- (b) Except as provided in Rules 49(a), 49(ab), 49(b), 49(c), 50(a), 50(b), 51(a), 51(b) and, 52A ~~and 52B~~ (including takes authorised by section 14(3) of the Act), any take, damming, diversion or use of water from the Waiau catchment that does

not meet the conditions of Rule 52(a) is a non-complying activity.

*Relevant objectives*

- 27 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Policy Rule 52 is the most appropriate way to achieve the objectives, the most relevant objectives are Objective 1, Objective 2, Objective 3, Objective 9B and Objective 10.

*Reasonably practicable options*

- 28 Section 32(1)(b)(i) requires the identification of "other reasonably practicable options" for achieving the objectives. The reasonably practicable options I have identified and considered are the Decisions Version wording, and the agreed wording set out in tracked changes in paragraph 26 above.

*Explanation and reasons for the changes agreed*

- 29 In my opinion, the agreed changes remedy cross-referencing errors in the pSWLP. Rule 52 refers to all relevant parts of Rule 49, except 49(ab) which was a new part inserted by the Hearings Panel in the Decisions Version. Rule 52 also refers to Rule 52B which does not exist. I consider these amendments are likely to result in improved outcomes for plan users as the activity status classification for the take and use of surface water for the purpose of construction, maintenance, and repair within the Waiau catchment is clarified so that it will align with the activity status for all other areas of the region.
- 30 Ultimately, the agreed changes to Rule 52 are considered to improve its certainty and functionality, as it is to remedy a cross-referencing error. On this basis, pursuant to section 32AA(1)(c), my analysis in relation to the efficiency and effectiveness of the changes to Rule 52 is brief.

*Benefits, costs and risk assessment*

- 31 With respect to the assessment of benefits, costs and risks set out in section 32(2), the agreed changes to Rule 52 are not considered to make a substantial change to the way the rule is implemented. I expect there to be minor social and economic benefits deriving from the removal of a potential conflict within the pSWLP which might otherwise hamper plan users' understanding and interpretation of the plan. I also

consider there will be an economic benefit for infrastructure providers deriving from any take and use of surface water for infrastructure construction, maintenance, and repair within the Waiau catchment that is unable to comply with Rule 49(ab) and (b) being considered as a discretionary activity (rather than a non-complying activity pursuant to Rule 49(d)). I do not consider there are any costs or risks associated with this change.

32 Overall, having considered the options, the wording of the provision agreed by the parties (and set out at paragraph 26 above) is considered to be the most appropriate way to achieve the objectives of the pSWLP.



Hannah Goslin

Affirmed at Christchurch )  
this 2<sup>nd</sup> day of February )  
2022, before me: )



**Courtney Rose Smythe**  
Solicitor  
Christchurch

.....  
A Solicitor/Deputy Registrar of the High Court of New Zealand/  
Justice of the Peace