

**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)

(Continued next page)

JOINT MEMORANDUM IN SUPPORT OF CONSENT ORDER

TOPIC B, TRANCHE 3

12 May 2023

Judicial Officer: Judge Borthwick

Respondent's Solicitor
PO Box 4341 CHRISTCHURCH 8140
DX WX11179
Tel +64 3 379 7622
Fax +64 3 379 2467

WYNN WILLIAMS

Solicitor: P A C Maw
(philip.maw@wynnwilliams.co.nz)

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)

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 the Topic B, Tranche 3 provisions (being Policy 26, Rule 52A, and Appendix E).
- 2 The Tranche 3 matters have been heard by the Court in hearings on 14 to 18 November 2022 and 18 to 21 April 2023.
- 3 During the resumed hearing, on 21 April 2023, the parties sought a brief adjournment of the proceedings to explore whether agreement could be reached as to the matters in dispute.
- 4 In-principle agreement was reached during this time, and the Court adjourned the hearing to allow the parties further time to explore whether full agreement could be reached.
- 5 The parties advised the Court on Friday 28 April 2023 that full agreement had been reached as between the parties on the provisions the subject of Tranche 3.¹ Directions were sought (and subsequently issued) that the parties file consent order documentation, including affidavit evidence as to section 32AA, by Friday 12 May 2023.²
- 6 Accordingly, this joint memorandum is filed in support of a draft consent order to resolve the appeals relating to the Topic B, Trance 3 provisions.
- 7 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

- 8 The changes to the provisions, as agreed between the parties, are detailed in the draft Consent Order included at **Appendix 1** to this joint memorandum.
- 9 The changes, including the rationale for the same, are also explained in more detail in the affidavit of Margaret Jane Whyte dated 12 May 2023, 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,

¹ Memorandum of Counsel for Southland Regional Council dated 28 April 2023.

² Directions of the Environment Court dated 1 May 2023.

including in particular the National Policy Statement for Freshwater Management 2020 (**NPSFM**).

- 10 Counsel also record at the outset, that the parties, throughout the negotiation process, were cognisant of the findings in the Court's Interim Decisions³ 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.

Details of appeals

- 11 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.
- 12 As the rationale for the changes agreed and an analysis in line with section 32AA has been provided in the affidavit of Margaret Jane Whyte, 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.

Policy 26

- 13 Policy 26 provides policy direction requiring the recognition and provision for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri Power Scheme (**MPS**)), the national, regional and local benefits of renewable electricity generation activities, the need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading, when:
- (a) allocating surface water for abstraction, damming, diversion, and use; and
 - (b) considering all resource consent application for surface water abstractions, damming, diversion, and use.
- 14 Policy 26 was appealed by:
- (a) Aratiatia Livestock Limited (**Aratiatia**);

³ [2019] NZEnvC 208, [2020] NZEnvC 93, [2020] NZEnvC 110, [2020] NZEnvC 191, [2022] NZEnvC 265, and [2023] NZEnvC 051.

- (b) Meridian Energy Limited (**Meridian**);
- (c) Federated Farmers of New Zealand (Southland) (**Federated Farmers**); and
- (d) Te Runanga O Ngai Tahu, Hokonui Runaka, Waihopai Runaka, Te Runanga O Awarua & Te Runanga O Oraka Aparima (**Ngā Rūnanga**).

15 Aratiatia sought that Policy 26 be amended as follows:

Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri hydro-electric generation ~~scheme facilities~~ in the Waiau catchment), and the national, regional and local benefits ~~of relevant to~~ renewable electricity generation activities, ~~the need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading,~~ when:

1. allocating surface water for abstraction, damming, diversion and use; and
2. considering all resource consent applications for surface water abstractions, damming, diversion and use.

whilst, in the context of the Manapouri hydro-electric scheme, having regard to:

3. The potential to avoid, remedy or mitigate any adverse effects on the mauri of the Waiau River system; and
4. The opportunity to reverse or reduce the damage which the operation of the scheme has caused within the catchment by increasing the minimum flow requirements at the Mararoa Weir as specified in consents relating to the scheme.

16 Meridian sought that Policy 26 be amended as follows:

Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri hydro-electric generation scheme in the Waiau

catchment), the national, regional and local benefits of renewable electricity generation activities, the need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading, when:

1. allocating surface water for abstraction, damming, diversion and use; and

2. considering all resource consent applications for surface water abstractions, damming, diversion and use-; and

3. considering uses of land, use of the beds of lakes and rivers and discharge of contaminants or water to water or land for, or which may impact on, renewable electricity generation activities.

17 Federated Farmers sought that Policy 26 be amended as follows:

Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri hydro-electric generation scheme in the Waiau catchment), the national, regional and local benefits of renewable electricity generation activities, the need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading, when:

1. allocating surface water for abstraction, damming, diversion and use; and

2. considering all resource consent applications for surface water abstractions, damming, diversion and use-

While having particular regard to:

(a) The potential to avoid, remedy or mitigate any adverse effects on the Waiau River and downstream users by increasing minimum flow provisions.

18 Ngā Rūnanga sought that Policy 26 be amended as follows:

Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri hydro-electric generation scheme in the Waiau

catchment), the national, regional and local benefits of renewable electricity generation activities, ~~the need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading~~, when:

1. allocating surface water for abstraction, damming, diversion and use; and
2. considering all resource consent applications for surface water abstractions, damming, diversion and use.

19 The following parties joined the appeal lodged by Aratiatia as section 274 parties in relation to Policy 26:

- (a) Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest & Bird**);
- (b) Robert Kempthorne;⁴
- (c) Grant & Rachel Cockburn;⁵
- (d) Waiau Rivercare Group;
- (e) Meridian;
- (f) Federated Farmers;
- (g) Hamish English; and
- (h) Southland Fish and Game Council (**Fish & Game**).

20 The following parties joined the appeal lodged by Meridian as section 274 parties in relation to Policy 26:

- (a) Waiau Rivercare Group;
- (b) Federated Farmers;
- (c) Fish & Game; and
- (d) Ngā Rūnanga.

⁴ Note that Mr Kempthorne has not formally withdrawn, nor has he participated in the proceedings. Accordingly, he has been treated as having abandoned his interest in the appeal(s) and his approval of the consent orders has not been sought.

⁵ Note that Mr & Mrs Cockburn have sought to withdraw their interest in all appeals.

- 21 The following parties joined the appeal lodged by Federated Farmers as section 274 parties in relation to Policy 26:
- (a) Forest & Bird;
 - (b) Owen Buckingham;⁶
 - (c) Grant & Rachel Cockburn;⁷
 - (d) Waiau Rivercare Group;
 - (e) Meridian;
 - (f) Hamish English; and
 - (g) Fish & Game.
- 22 The following parties joined the appeal lodged by Ngā Rūnanga as section 274 parties in relation to Policy 26:
- (a) Aratiatia;
 - (b) Waiau Rivercare Group;
 - (c) Meridian; and
 - (d) Fish & Game.
- 23 Through discussions the parties agreed to amend Policy 26 as set out in the draft consent order and paragraph [22] of the affidavit of Margaret Jane Whyte dated 12 May 2023.
- 24 The rationale for the changes agreed are also included in that affidavit at paragraphs [23] – [42].

(New) Policy 26AA

- 25 A new Policy 26AA is proposed which provides that, as an interim measure, the replacement of the existing consents for the Manapouri Power Scheme shall be managed under Rule 52A. It also provides that, as part of the implementation of the NPSFM 2020 National Objectives Framework for the Waiau FMU, a rule framework for the replacement of the existing Manapouri Power Scheme consents should be developed,

⁶ Note that Mr Buckingham has withdrawn his interest in all appeals.

⁷ Note that Mr & Mrs Cockburn have sought to withdraw their interest in all appeals.

consistent with the outcomes of the National Objectives Framework implementation process.

- 26 The wording for new Policy 26AA is set out in the draft consent order and paragraph [45] of the affidavit of Margaret Jane Whyte dated 12 May 2023.
- 27 The rationale for the changes agreed are also included in that affidavit at paragraphs [47] – [63].
- 28 In respect of scope, the parties consider that new Policy 26AA is consequential upon the agreed change to Rule 52A, and that it falls somewhere on the spectrum between the appeals of Meridian and Forest and Bird in relation to Rule 52A.
- 29 Meridian sought that Rule 52A be amended to, *inter alia*:
- (a) Remove an entry condition to the controlled activity Rule 52A(a) which required any application for a replacement consent to comply with any relevant flow and level regimes set out in the Plan.
 - (b) Insert a restriction on the matters of control reserved to the Council such that it could not consider changes or alterations to the volume and rate of water taken, used, diverted or discharged and the timing of take, where the alterations/changes were in accordance with allocation volumes and rates of take and discharge set by the pSWLP.
 - (c) Insert a restriction on the matters of control reserved to the Council such that it could not consider mitigation or remediation measures where those were changes or alterations to the relevant water quality standards or limits in the pSWLP.
- 30 In short, Meridian's appeal was intended to ensure that any application for the replacement of existing resource consents for the MPS could not have conditions applied to it which required the MPS to make any changes or alterations to its operations/consents beyond those required in any relevant surface or groundwater allocation regimes in the pSWLP.
- 31 Forest & Bird on the other hand, sought that Rule 52A be deleted and that all abstraction, damming, diversion and use of water from the Waiau

catchment be a non-complying activity, except as provided in Rules 49, 50 or 51 and the takes authorised by Section 14(3) of the Act.

Rule 52A

- 32 Rule 52A provides that any activity that is part of the MPS, for which consent is held and which is the subject of an application for a new consent for the same activity and is either the taking or use of water, the discharge of water or contaminants into water or onto or into land, or the damming or diversion of water, is a controlled activity, provided certain conditions are met. Those entry conditions require that the application is for a section 124 replacement consent, the rate of take and volume is not increasing and the use of water is not changing (where applicable), and that the rate of take and volume complies with any relevant flow and level regimes set out in the Plan. If those entry conditions are not met, the activity is a non-complying activity.
- 33 Rule 52A was appealed by Aratiatia, Federated Farmers, Ngā Rūnanga, Forest & Bird, and Meridian.
- 34 Aratiatia sought:
- (a) The deletion of Rule 52A to the effect that any applications for consent for the taking or use of water, the discharge of water or contaminants and the damming or diversion of water in relation to the MPS that would have been a controlled activity under Rule 52A require:
 - (i) Discretionary activity consent (in the event that the proposal complies with all relevant standards); or
 - (ii) Non-complying activity consent (in the event the proposal does not comply with those standards).
 - (b) The deletion of all references to Rule 52A elsewhere in the Plan.
- 35 Federated Farmers sought:
- (a) That any replacement permits associated with the Manapōuri Hydro-electric Generation Scheme be considered as a discretionary activity.
 - (b) That the relevant parts of Rule 52A read as follows:

Rule 52A – Manapōuri Hydro-electric Generation Scheme

- (a) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme, for which consent is held and which is the subject of an application for a new consent for the same activity and is:
- (i) the taking or use of water; or
 - (ii) the discharge of water into water or onto or into land; or
 - (iii) the discharge of contaminants into water or onto or into land; or
 - (iv) the damming or diversion of water;

is a ~~controlled discretionary activity~~, ~~provided the following conditions are met:~~

- ~~(1) the application is for the replacement of an expiring resource consent pursuant to section 124 of the Act;~~
- ~~(2) where the replacement consent is for the taking or use of water, the rate of take and volume is not increasing, and the use of water is not changing; and~~
- ~~(3) where the replacement consent is for the taking or use of water, the rate of take and volume complies with any relevant flow and level regimes set out in this Plan.~~

~~**The Southland Regional Council will reserve its control to the following matters:**~~

- ~~1. the volume and rate of water taken, used, diverted or discharged and the timing of any take, diversion or discharge, including how this relates to generation output;~~
- ~~2. any effects on river flows, wetland and lake water levels, aquatic ecosystems and water quality;~~

~~3. mitigation or remediation measures to address adverse effects on the environment; and~~

~~4. the benefits of renewable electricity generation.~~

~~An application for resource consent under Rule 52A(a) will be publicly notified.~~

~~(b) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme for which consent is held and which is the subject of an application for a new consent for the same activity and is:~~

~~(i) the taking or use of water; or~~

~~(ii) the discharge of water into water or onto or into land; or~~

~~(iii) the discharge of contaminants into water or onto or into land; or~~

~~(iv) the damming or diversion of water;~~

~~that does not meet one or more of the conditions of Rule 52A(a) is a non-complying activity.~~

36 Ngā Rūnanga sought that Rule 52A be redrafted so that it is a restricted discretionary activity where restriction includes consideration of:

adverse effects on mahinga kai, taonga species and the spiritual and cultural values and beliefs of the tangata whenua

37 Forest & Bird sought to:

(a) Ensure all abstraction, damming, diversion and use of water from the Waiau catchment is non-complying, except as provided in Rules 49, 50 or 51 and the takes authorised by Section 14(3) of the Act.

(b) Delete Rule 52A.

38 Meridian sought that Rule 52A be amended as follows:

Rule 52A – Manapouri and Monowai Hydro-electric Generation Schemes

(a) Despite any other rules in this Plan, any activity that is part of the Manapouri or Monowai hydro-electric generation schemes, for which consent is held and which is the subject of an application for a new consent for the same activity and is:

- (i) the taking or use of water; or
- (ii) the discharge of water into water or onto or into land; or
- (iii) the discharge of contaminants into water or onto or into land; or
- (iv) the damming or diversion of water;

is a controlled activity provided the following conditions are met:

- (1) the application is for the replacement of an expiring resource consent pursuant to section 124 of the Act; and
- (2) the applicant has requested that the application be publicly notified; ~~and,~~

~~(3) where the replacement consent is for the taking or use of water, the rate of take and volume complies with any relevant flow and level regimes set out in this Plan.~~

The Southland Regional Council will reserve the exercise of its control to the following matters over which control is reserved are:

- ~~(1.a)~~ the volume and rate of water taken, used, diverted or discharged and the timing of any take, diversion or discharge, ~~including how this relates to generation output~~ except for changes or alterations to the volume and rate of water taken and used when this is in accordance with any relevant surface or groundwater allocation volumes and rates of take and discharge set by this Plan and
- ~~2.~~ any effects on river flows, wetland and lake water levels, aquatic ecosystems and water quality;

~~(3-b)~~ mitigation or remediation measures to address adverse effects on the environment, except for changes or alterations to:

- ~~(i)~~ relevant surface or groundwater allocation volumes and maximum or minimum rates of flow set by this Plan;
- ~~(ii)~~ relevant water quality standards or limits set by this Plan; and
- ~~(c)~~ the collection, recording, monitoring, reporting and provision of information concerning the exercise of consent, and
- ~~(d)~~ lapse period, duration of consent and consent review requirements; and
- ~~(e)~~ mitigation or remediation measures necessary to ensure that any discharge is not the cause of any water quality standards or limits set by this Plan being exceeded.

~~4. the benefits of renewable electricity generation.~~

Any application made under Rule 52A(a) will be publicly notified.

~~(b) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme for which consent is held and which is the subject of an application for a new consent for the same activity and is:~~

- ~~(i) the taking or use of water; or~~
- ~~(ii) the discharge of water into water or onto or into land; or~~
- ~~(iii) the discharge of contaminants into water or onto or into land;~~
or
- ~~(iv) the damming or diversion of water;~~

~~that does not meet one or more of the conditions of Rule 52A(a) is a noncomplying activity.~~

Rule 52B

Any take, damming, diversion, use of water and the discharge of contaminants or water onto or into land in circumstances where contaminants may enter water, or into surface water, which is an activity

that is part of the Manapouri Power Scheme, for which a consent is held and is the subject of an application for a new consent for the same activity that does not meet the conditions of Rule 52A is a discretionary activity.

- 39 The following parties joined the appeal lodged by Aratiatia as section 274 parties in relation to Rule 52A:
- (a) Forest & Bird;
 - (b) Robert Kempthorne;⁸
 - (c) Murray & Tania Willans;⁹
 - (d) Grant & Rachel Cockburn;¹⁰
 - (e) Waiau Rivercare Group;
 - (f) Meridian;
 - (g) The Director-General of Conservation (**Director-General**);
 - (h) Federated Farmers;
 - (i) Hamish English; and
 - (j) Fish & Game.
- 40 The following parties joined the appeal lodged by Federated Farmers as section 274 parties in relation to Rule 52A:
- (a) Forest & Bird;
 - (b) Owen Buckingham;¹¹
 - (c) Grant & Rachel Cockburn;¹²
 - (d) Waiau Rivercare Group;
 - (e) Meridian;

⁸ Note that Mr Kempthorne has not formally withdrawn, nor has he participated in the proceedings. Accordingly, he has been treated as having abandoned his interest in the appeal(s) and his approval of the consent orders has not been sought.

⁹ Note that Mr & Mrs Willans have not formally withdrawn, nor have they participated in the proceedings. Accordingly, they have been treated as having abandoned their interest in the appeal(s) and their approval of the consent orders has not been sought.

¹⁰ Note that Mr & Mrs Cockburn have sought to withdraw their interest in all appeals.

¹¹ Note that Mr Buckingham has withdrawn his interest in all appeals.

¹² Note that Mr & Mrs Cockburn have sought to withdraw their interest in all appeals.

- (f) Director-General;
 - (g) Hamish English; and
 - (h) Fish & Game.
- 41 The following parties joined the appeal lodged by Ngā Rūnanga as section 274 parties in relation to Rule 52A:
- (a) Aratiatia;
 - (b) Waiau Rivercare Group;
 - (c) Meridian; and
 - (d) Fish & Game.
- 42 The following parties joined the appeal lodged by Forest & Bird as section 274 parties in relation to Rule 52A:
- (a) Aratiatia;
 - (b) Waiau Rivercare Group;
 - (c) Meridian;
 - (d) Federated Farmers;
 - (e) Fish & Game; and
 - (f) Ngā Rūnanga.
- 43 The following parties joined the appeal lodged by Meridian as section 274 parties in relation to Rule 52A:
- (a) Waiau Rivercare Group;
 - (b) Director-General;
 - (c) Federated Farmers;
 - (d) Fish & Game; and
 - (e) Ngā Rūnanga.
- 44 Through discussions the parties agreed to amend Rule 52A as set out in the draft consent order and paragraph [46] of the affidavit of Margaret Jane Whyte dated 12 May 2023.

- 45 The rationale for the changes agreed are also included in that affidavit at paragraphs [47] – [63].

Appendix E

- 46 Appendix E sets out the receiving water quality standards that apply to the effects of discharges following reasonable mixing with the receiving waters.

- 47 The Tranche 3 appeals relate only to the following paragraph at the commencement of the Appendix:

The standard for a given parameter will not apply in a lake, river, artificial watercourse or modified watercourse or natural wetland where:

- (a) due to natural causes, that parameter cannot meet the standard; or
- (b) due to the effects of the operation of the Manapōuri hydro-electric generation scheme that alters natural flows, that parameter cannot meet the standard.

- 48 Appendix E, insofar as it relates to Tranche 3, was appealed by Aratiatia, Alliance Group Limited (**Alliance**),¹³ and Ngā Rūnanga.

- 49 Aratiatia sought:

- (a) The deletion of the provision in Appendix E which provides that “The standard for a given parameter will not apply in a lake, river, artificial watercourse or modified watercourse or natural wetland where: ... due to the effects of the operation of the Manapōuri hydro-electric generation scheme that alters natural flows, that parameter cannot meet the standard.”
- (b) The deletion of any other provisions in the Plan to similar effect.

- 50 Ngā Rūnanga sought the deletion of the following statement from Appendix E:

¹³ Noting that Alliance has withdrawn its appeal and no party sought to take it over.

“due to the effects of the operation of the Manapōuri hydro-electric generation scheme that alters natural flows, that parameter cannot be applied”. [sic]

51 The following parties joined the appeal lodged by Aratiatia as section 274 parties in relation to Appendix E (insofar as it relates to Tranche 3):

- (a) Forest & Bird;
- (b) Robert Kempthorne;¹⁴
- (c) Grant & Rachel Cockburn;¹⁵
- (d) Waiau Rivercare Group;
- (e) Meridian;
- (f) Director-General;
- (g) Federated Farmers;
- (h) Hamish English; and
- (i) Fish & Game.

52 The following parties joined the appeal lodged by Ngā Rūnanga as section 274 parties in relation to Appendix E (insofar as it relates to Tranche 3):

- (a) Forest & Bird;
- (b) Waiau Rivercare Group;
- (c) Meridian; and
- (d) Fish & Game.

Orders sought

53 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.

¹⁴ Note that Mr Kempthorne has not formally withdrawn, nor has he participated in the proceedings. Accordingly, he has been treated as having abandoned his interest in the appeal(s) and his approval of the consent orders has not been sought.

¹⁵ Note that Mr & Mrs Cockburn have sought to withdraw their interest in all appeals.

- 54 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, the National Policy Statement for Renewable Electricity Generation 2011, and the New Zealand Coastal Policy Statement 2010.
- 55 The parties are also satisfied that the changes appropriately respond to the direction from the Court in its Interim Decisions.¹⁶
- 56 The parties therefore respectfully request that the Court make the orders sought in **Appendix 1** to this memorandum.
- 57 No party has any issue as to costs.
- 58 For completeness, it is noted that the order, if granted, resolves all appeals in relation to Policy 26 and Rule 52A, and partially resolves the appeals in relation to Appendix E (the remainder of which has been dealt with through Tranche 1).

DATED this 12th day of May 2023



.....
P A C Maw / A M Langford

Counsel for Southland Regional Council

.....
D Allan

Counsel for Aratiatia Livestock Limited

¹⁶ [2019] NZEnvC 208, [2020] NZEnvC 93, [2020] NZEnvC 110, [2020] NZEnvC 191, [2022] NZEnvC 265, and [2023] NZEnvC 051.

.....

M Campbell

Counsel for Federated Farmers of New Zealand (Southland)

.....

S Gepp

Counsel for Southland Fish and Game Council

.....

P Anderson / M Downing

Counsel for Royal Forest and Bird Protection Society of New Zealand Inc

.....

S Christensen / H Tapper

Counsel for Meridian Energy Limited

.....

J Winchester

Counsel for Ngā Rūnanga

.....

P Williams

Counsel for Director-General of Conservation

.....

K Rusher

Counsel for Hamish English

.....

R Donnelly

Counsel for Waiau Rivercare Group

Appendix 1 – Draft consent order

Appendix 2 – Affidavit of Margaret Jane Whyte dated 12 May 2023