

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

ENV-2018-CHC-26 to 50

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of appeals under clause
14 of Schedule 1 to the
Act relating to the
proposed Southland
Water and Land Plan

BETWEEN **WAIHOPAI RŪNAKA,
HOKONUI RŪNAKA,
TE RŪNANGA O
AWARUA, TE
RŪNANGA O ORAKA
APARIMA, and TE
RŪNANGA O NGĀI
TAHU (collectively
NGĀ RŪNANGA)**

**Appellants in ENV-
2018-CHC-47**

AND **SOUTHLAND
REGIONAL COUNCIL**

Respondent

**MEMORANDUM OF COUNSEL FOR NGĀ RŪNANGA ATTACHING FINAL
WORDING OF TRANCHE 3 PROVISIONS**

8 December 2022

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MAY IT PLEASE THE COURT

1. This memorandum of counsel is filed on behalf of Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu (collectively **Ngā Rūnanga**), in response to the following direction of the Environment Court (dated 6 December 2022):

Parties are to file and serve memoranda advising whether they seek a Restricted Discretionary or Discretionary Rule classification and secondly, attach the final wording of the provisions they support by **Thursday 8 December 2022**.

2. Ngā Rūnanga:
 - (a) continues to support a Restricted Discretionary Rule classification for Rule 52A – Manapōuri Hydro-electric Generation Scheme; and
 - (b) supports the wording for the Tranche 3 provisions set out in the Joint Witness Statement, dated 30 November 2022.¹
3. For ease of reference, the wording of the Tranche 3 provisions that is supported is set out in **Appendix A** to this memorandum. Ngā Rūnanga has no preference between the alternative wordings for Policy 26 and Rule 52A which were proposed by Ms Davidson and Ms Whyte.²
4. However, Ngā Rūnanga respectfully reserves its position on the Tranche 3 provisions pending the filing of supplementary evidence on Friday 9 December 2022. More specifically, in response to a request from counsel for the Southland Fish & Game Council, the Environment Court made the following direction on 6 December 2022:

Planners initially supporting a Discretionary Activity Rule are to file supplementary evidence in response to the 29-30 November 2022 JWS by **Friday 9 December 2022**.

1 Joint Witness Statement - Topic B6 - Waiau - Planning (29 and 30 November 2022), to which Ms Davidson and Ms Whyte are signatories.
2 For sake of clarity though, it does not support the Discretionary Activity Rule proposed on pages 14 and 15 of that statement.

5. Consequently, neither Ngā Rūnanga nor Ms Davidson have yet had the opportunity to consider any revised proposals from other planning experts regarding a Discretionary Activity Rule. Both Ngā Rūnanga and Ms Davidson will consider the supplementary evidence that is filed and if, as a result, Ngā Rūnanga wishes to change its position on the provisions, it will promptly indicate that change to the Court and parties.

DATED this 8th day of December 2022



J G A Winchester / S K Lennon
Counsel for Ngā Rūnanga

Appendix A

Tranche 3 provisions supported by Ngā Rūnanga

Policy 26 Combined Version

(As referred to paragraph 15 in the JWS)

Policy 26 – Renewable energy

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 benefits of renewable electricity generation activities and the practical constraints associated with its development, operation, maintenance and upgrading:

When:

- a. allocating surface water for abstraction, damming, diversion and use;
- b. considering all resource consent applications for surface water abstractions, damming, diversion and use;
- c. managing activities to avoid reverse sensitivity effects on renewable electricity generation activities (including the Manapōuri hydro-electric generation scheme). In relation to the Manapōuri hydro-electric generation scheme manage reverse sensitivity effects of the following activities:
 1. taking of surface water or hydrologically connected groundwater that exceeds an allocation regime, take limit or limit on resource use;
 2. use of the beds of lakes and rivers or any activity that may affect the stability or functioning of any structures associated with the existing Manapōuri hydro-electric generation scheme;
 3. use of the beds of lakes and rivers or new or increased discharge of contaminants exceeding a limit on resource use, that outside of zone of reasonable mixing, may affect the quality of the water available for the generation of electricity above the Manapōuri Lake Control structure or within the Mararoa River; and
 4. use of the beds of lakes and rivers or new or increased discharge of contaminants exceeding a limit on resource use, occurring below the Manapōuri Lake Control structure that could affect the ability of Meridian to meet its consent obligations for the existing Manapōuri hydro-electric generation scheme.

(if a clause providing policy direction on re consenting were to be included it could be inserted as follows:

- d. considering an application for replacement consents for the operation of the existing Manapōuri hydro-electric generation scheme consents that are granted are to be consistent with the attainment of the environmental outcomes established for values in the Waiau FMU via the National Objectives Framework.

Policy 26 Separate Version

(As referred to paragraph 19 in the JWS)

Policy 26 – Renewable energy

- A. Recognise and provide for:
1. the national and regional significance of renewable electricity generation activities including the practical constraints associated with its development, operation, maintenance and upgrading and the benefits of renewable electricity generation activities; and
 2. the national and regional significance of the existing Manapōuri hydro-electric generation scheme in the Waiau catchment, the benefits of renewable electricity generation activities and the practical constraints associated with its development, operation, maintenance and upgrading:
- When:
- a. allocating surface water for abstraction, damming, diversion and use;
 - b. considering all resource consent applications for surface water abstractions, damming, diversion and use;
- B. Manage activities to avoid reverse sensitivity effects on renewable electricity generation activities (including the Manapōuri hydro-electric generation scheme). In relation to the Manapōuri hydro-electric generation scheme manage reverse sensitivity effects of the following activities:
1. taking of surface water or hydrologically connected groundwater that exceeds an allocation regime, take limit or limit on resource use.
 2. use of the beds of lakes and rivers or any activity that may affect the stability or functioning of any structures associated with the existing Manapōuri hydro-electric generation scheme,
 3. use of the beds of lakes and rivers or new or increased discharge of contaminants exceeding a limit on resource use, that outside of zone of reasonable mixing, may affect the quality of the water available for the generation of electricity above the Manapōuri Lake Control structure or within the Mararoa River, and
 4. use of the beds of lakes and rivers or new or increased discharge of contaminants exceeding a limit on resource use, occurring below the Manapōuri Lake Control structure that could affect the ability of Meridian to meet its consent obligations for the existing Manapōuri hydro-electric generation scheme.
- (if a clause providing policy direction on reconsenting were to be included it could be inserted as follows:*
- C. On considering an application for replacement consents for the operation of the existing Manapōuri hydro-electric generation scheme consents that are granted are to be consistent with the attainment of the environmental outcomes established for values in the Waiau FMU via the National Objectives Framework.

Rule 52A – Preferred Version of Rule

Rule 52A – Manapōuri Hydro-electric Generation Scheme

(a) Despite any other rules in this Plan, an application for a new consent that is part of the Manapōuri hydro-electricity generation scheme and is replacing one or more of the following consents

- (i) 96020 Water Permit
- (ii) 96021 Discharge Permit
- (iii) 96022 Water Permit
- (iv) 96023 Discharge Permit
- (v) 96024 Water Permit
- (vi) 206156 Water Permit
- (vii) 206157 Water Permit

is a restricted 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 total volume and total rate of take is not increasing, and the use of water is not changing; and
- (3) the application is lodged after environmental flows and levels, limits and target attribute states established through a FMU process for the Waiau FMU under the NPSFM 2020 has been made operative.
- (4) the application complies with any applicable environmental flows and levels and limits made operative through an FMU process for the Waiau FMU under the NPSFM 2020; and
- (5) the applicant has requested that the application be publicly notified.

The Southland Regional Council will restrict its discretion to the following matters:

- 1 Measures to achieve environmental flows and levels and limits established through the FMU process for the Waiau FMU under the NPSFM 2020 or alternative environmental flows and levels and/or limits where:
 - a. a matter has not been considered when identifying environmental outcomes and setting environmental flows and levels and limits in the Waiau FMU; or
 - b. the environmental flow and/or limit is identified as a matter to be addressed in a resource consent process;
- 2 Measures to achieve target attribute states set through the FMU process;
- 3 In accordance with matter of discretion 1 the total volume, total rate or both a total volume and total rate at which water is taken, used, diverted or discharged and the timing of any take, diversion or discharge of water, including how this relates to generation output;
- 4 In accordance with matter of discretion 1 the adverse effects and any seasonal effects on: the customary use of mahinga kai and nohoanga; taonga species; and the spiritual and cultural values and beliefs of tangata whenua, including measures to avoid, remedy or mitigate adverse effects;

- 5 In accordance with matter of discretion 1 the adverse effects on the environment, including measures to avoid, remedy or mitigate adverse effects that are not addressed under Matter of Discretion 4;
 - 6 the collection, recording, monitoring, reporting and provision of information concerning the exercise of consent;
 7. Environmental flows and levels or limits that are more restrictive than matter of discretion 1 where these are proffered by the applicant;
 - 8 lapse period, duration of consent and consent review requirements; and
 - 9 the benefits of renewable electricity generation.
- (b) Despite any other rules in this Plan, any activity provided for in Rule 52A that does not meet one or more of the conditions of Rule 52A(a) or is not a non-complying activity in Rule 52A(c) is a discretionary activity-
- (c) Despite any other rules in this Plan, any activity that is for the taking of water for the generation of electricity from the Manapōuri hydro-electric generation scheme in Rule 52A which:
- (i) prior to take limits being established through a FMU process for the Waiau FMU under the NPSFM 2020 being made operative seeks a total volume, total rate or both a total volume and total rate of water greater than that currently consented or
 - (ii) once a limit has been established through a FMU process for the Waiau FMU being made operative seeks a total volume, total rate or both a total volume and total rate of water greater than provided within the limits set in the Plan
- is a non-complying activity.

Rule 52A – Alternative way of expressing matters of discretion

(As referred to paragraph in 15 in the JWS)

The Southland Regional Council will restrict its discretion to the following matters:

- 1 Measures to achieve target attribute states set through the FMU process;
- 2 The total volume, total rate or both a total volume and total rate at which water is taken, used, diverted or discharged and the timing of any take, diversion or discharge of water, including how this relates to generation output;
- 3 The adverse effects and any seasonal effects on: the customary use of mahinga kai and nohoanga; taonga species; and the spiritual and cultural values and beliefs of tangata whenua, including measures to avoid, remedy or mitigate adverse effects;

- 4 The adverse effects on the environment, including measures to avoid, remedy or mitigate adverse effects that are not addressed under Matter of Discretion 4;
- 5 the collection, recording, monitoring, reporting and provision of information concerning the exercise of consent;
- 6 lapse period, duration of consent and consent review requirements; and
- 7 the benefits of renewable electricity generation.

Provided that in exercising its discretion where environmental flows and levels and limits have been made operative through an FMU process for the Waiau FMU under the NPSFM 2020 the consent authority must not require environmental flows and levels and limits more restrictive than those set in the Plan unless:

1. The adverse effect and/or management response being addressed has not been considered as part of the FMU process for the Waiau FMU under the NPSFM 2020 when identifying environmental outcomes and/or setting environmental flows and levels and limits, or
2. The adverse effect and/or management response being addressed has been considered as part of the FMU process for the Waiau FMU under the NPSFM 2020 when setting environmental flows and levels, and limits, but it is identified in the Plan as a matter to be addressed in a resource consent process, or
3. The applicant has proffered more restrictive environmental flows and levels or limits.