

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

IN THE MATTER of the Resource Management Act 1991
AND appeals under clause 14 of the First
Schedule of the Act
BETWEEN MERIDIAN ENERGY LIMITED
(ENV-2018-CHC-38)
Appellant
AND SOUTHLAND REGIONAL
COUNCIL
Respondent

**MINUTE OF THE ENVIRONMENT COURT
Timetable directions – tranche 3
(22 November 2022)**

Introduction

[1] This Minute is released for the purpose of case management and responds to the Regional Council’s reporting memorandum dated 22 November 2022.

[2] The timetable directions are set out in Table 1.

Expert conferencing

[3] Consistent with the Code of Conduct for Expert Witnesses, it is open to the planners to change their view on activity status.



[4] An expert conference is not mediation; if a planner does not support an amendment proposed by others at a conference, they are to say so, giving reasons. Indeed, to be of assistance to the court it is important that the JWS be prepared in accordance with the general directions given in the 2014 Practice Note: Appendix 3 – Protocol for expert witness conference. The importance of giving reasons for the matters both agreed and disagreed cannot be over-emphasised.

[5] As requested, I will direct the planners who have hitherto supported a RDA rule classification to expert conferencing.¹

[6] As proposed, the conference is to address Policy 26 and Rule 52A. Conferencing and will not be facilitated by the court.

[7] I decline to direct the other planners to expert conferencing. They will, however, need to file supplementary evidence in response to the JWS.

Rules implement policies

[8] It is the court's preliminary view that while the reservation of discretion over cultural effects and other effects on the environment is orthodox, the direction on how the discretion is to be exercised is not. Direction on the exercise of a discretion² is usually given in the plan's policies that the rule is to implement (i.e. Policy 26).

[9] Without limiting the scope of the conference, the planners attending the conference are to consider whether the direction is a matter of policy or a matter for a rule. If their recommendation is to leave the direction for the rule only, they are to set out their reasoning for the same.

¹ Ms Whyte and Ms Davidson supported a RDA classification. Ms Kirk supported a discretionary classification, but her client – the Director-General of Conservation - supported a restricted discretionary classification. If Ms Kirk's views on activity status have changed she is to participate in expert conferencing, explaining in the JWS why her opinion as to activity status has changed.

² Rule 52A, Roman numerals (i) & (ii).

[10] The court will hear from the parties on whether the direction is a matter for a rule or a policy and all counsel are directed to respond in their closing submissions.

Policy 26

[11] Planners attending the expert conference are to consider the following matters:

- (a) whether a single policy³ is to apply to renewable electricity generation ('REG') activities, including the MPS and if so, proposing amendments to Policy 26 (DV) (if required);
- (b) whether the policy would be easier to understand if the word 'when' appeared on a separate line at the end of sub-cl (2) before (a) and (b);
and
- (c) whether the reverse sensitivity provision is to be contained in a separate sub-clause (i.e. new sub-clause (c)), noting the first part of sub-cl (b), as written, concerns MEL application(s) for resource consent but may also be applicable to all REG;
- (d) if the policy retains two parts, should it be structured and presented so that it is clear whether sub-cl (a), (b) and (c) apply to sub-cl 1 (all REG) and/or 2 (the MPS)?

Reverse sensitivity

[12] Giving reasons, the planners⁴ attending the conference are to explain the scope of the reserve sensitivity provision and explain whether (and why) the policy applies to:

³ Rather than sub-cl 1 and 2 as presently supported by the planners, there is a single policy provision as per the decision version of the policy (with or without amendment).

⁴ Ms Kirk excluded.

- (a) direct and indirect effects on the MPS; and
- (b) effects of activities above and below the Manapouri Lake Control.

[13] Additionally, the planners are to address whether the reverse sensitivity provision is to apply where the Plan for the Waiau FMU has limits on resource use to achieve target attribute states or support other environmental outcomes⁵ or secondly target limits to meet environmental flows and levels.⁶

[14] Finally, the planners will address the effectiveness of the policy if it is to apply on a case-by-case basis to the indirect effect of activities below the Manapouri Lake Control.⁷

Reconvened hearing

[15] I decline to make directions to jointly empanel the planners. There is little utility in this at the present time given their divergent opinions.

[16] The court will revisit the joint empanelment after supplementary evidence is filed.

Hearing time 2023

[17] If hearing time is required in 2023, the court may sit on **24 – 26 January 2023 (three days)**. Parties are to advise if they are unavailable on those dates by filing a memorandum by **Friday 25 November 2022**.

⁵ NPS-FM cl 3.11-cl 3.12

⁶ NPS-FM cl 3.17.

⁷ By ‘indirect’ we refer to Mr Feierabend’s view that the provision extend to activities which may result in pressure on MEL to increase flow in the Waiau River in order to mitigate adverse effects caused by activities, for example, discharging contaminant or taking of water downstream of MPS infrastructure.

Leave

[18] Leave is reserved for the parties to seek further (or other) directions.

Jane S.



J E Borthwick
Environment Judge

Issued: 22 November 2022

| Timetable | |
|---|------------------|
| Planners initially supporting a RDA rule are directed to expert conferencing. A JWS will be filed and circulated. | 30 November 2022 |
| Planners initially supporting a Discretionary Activity Rule are to file supplementary evidence in response to the above JWS. | 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. | 7 December 2022 |
| Mr Donnelly will file and serve a memorandum advising whether Waiau Rivercare Inc interests are able to be supported by another party | 8 December 2022 |