

IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI

Decision No. [2023] NZEnvC 128

IN THE MATTER

of the Resource Management Act 1991

AND

appeals under Clause 14 of Schedule 1  
to the Act

BETWEEN

ARATIATIA LIVESTOCK  
LIMITED

(ENV-2018-CHC-029)

MERIDIAN ENERGY LIMITED

(ENV-2018-CHC-038)

FEDERATED FARMERS OF NEW  
ZEALAND (SOUTHLAND  
PROVINCE)

(ENV-2018-CHC-040)

WAIHOPAI RŪNAKA, HOKONUI  
RŪNAKA, TE RŪNANGA O  
AWARUA, TE RŪNANGA O  
ORAKA APARIMA, & TE  
RŪNANGA O NGĀI TAHU  
(COLLECTIVELY – NGĀ  
RŪNANGA)

(ENV-2018-CHC-047)

ROYAL FOREST AND BIRD  
PROTECTION SOCIETY OF NEW  
ZEALAND INC

(ENV-2018-CHC-050)

Appellants



AND

SOUTHLAND REGIONAL  
COUNCIL

Respondent

Environment Judge J E Borthwick – sitting alone under s 279 of the Act

In Chambers at Christchurch

Date of Consent Order: 22 June 2023

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**CONSENT ORDER**

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A: Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed subject to the amendments shown in Annexure A attached to and forming part of this order;
- (2) the appeals, as they relate to Policy 26, Rule 52A and Appendix E (in part) are otherwise dismissed.

B: Under s 285 of the Resource Management Act 1991, there is no order as to costs in relation to this order.

**REASONS**

**Introduction**

[1] This application for consent orders was filed following a two-week hearing into the proposed policy and methods of relevance to the Manapōuri Power Scheme.

[2] These proceedings are a reminder that environmental issues can become wicked problems about which everything is controversial and oftentimes those controversies are structural and foundational. That said, the court would like to

acknowledge the parties' constructive approach in reaching this accord; this has been a hard endeavour. The court is grateful for the parties' efforts to reach resolution and to Ms J Whyte who carefully documents their agreement in an affidavit.

[3] The court has read and considered the joint memorandum of the parties dated 15 May 2023, which proposes to resolve the appeals that relate to:

- (a) Policy 26;
- (b) Rule 52A; and
- (c) Appendix E (in part).

[4] The court has also read and considered the affidavit of Margaret Jane Whyte dated 12 May 2023, which provides an analysis of the changes proposed by the parties in terms of s 32AA of the Resource Management Act 1991 ('the Act').

#### **Other relevant matters**

[5] The following persons gave notice of their intention to become parties under s 274 of the Act and have signed the joint memorandum of the parties:<sup>1</sup>

- (a) Aratiatia Livestock Ltd;
- (b) The Director-General of Conservation;
- (c) Federated Farmers of New Zealand (Southland Province);
- (d) Southland Fish & Game Council;
- (e) Royal Forest & Bird Protection Society Inc;
- (f) Hamish English;
- (g) Meridian Energy Ltd;
- (h) Ngā Rūnanga; and
- (i) Waiau Rivercare Group.

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<sup>1</sup> Grant and Rachel Cockburn and Owen Buckingham gave notice of an intention to become parties under s 274, but subsequently withdrew their interests.

[6] Robert Kempthorne and Murray & Tania Willans gave notice of an intention to become parties, but did not sign the joint memorandum. They have advised that they do not oppose the making of this consent order.

[7] The parties advise that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.<sup>2</sup>

### **Outcome**

[8] All parties to the proceeding have executed the memorandum requesting the orders. On the information provided to the court, I am satisfied that the orders will promote the purpose of the Act so I will make the orders sought.

Jane S.



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**J E Borthwick**  
Environment Judge

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<sup>2</sup> Joint memorandum in support of consent order dated 15 May 2023 at [53].

## ANNEXURE A

### Tranche 3 – Agreed changes to provisions

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

#### Policy 26 – Renewable energy

1. 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), including the benefits of renewable electricity generation activities, ~~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.a.~~ allocating surface water for abstraction, damming, diversion and use; and
  - ~~2.b.~~ considering all resource consent applications for surface water abstractions, damming, diversion and use; and
  - c. considering adverse effects on the Manapōuri hydro-electric generation scheme of the following activities:
    1. taking of surface water or hydraulically connected groundwater that exceeds an allocation limit in this Plan;
    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 resulting in or new or increased discharge of sediment above the Manapōuri Lake Control structure or within the Mararoa River, which exceeds a water quality standard in this Plan, that may affect the quality of



the water available for the generation of electricity;  
and

4. use of the beds of lakes and rivers below the Manapōuri Lake Control structure and any associated discharge of sediment, that interferes with water quality monitoring equipment or bed and bank transect monitoring sites for the Manapōuri hydro-electric generation scheme.

2. In addition to 1 above, when applying Rule 52A, decision makers shall have particular regard to:

- a. the mauri and ecosystem health of the Waiau River;
- b. providing for 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.

#### **Policy 26AA – Waiau FMU considerations for Plan Change Tuatahi**

As an interim measure the replacement of the existing consents for the Manapouri Power Scheme shall be managed under Rule 52A of this Plan. As part of the implementation of the National Objectives Framework for the Waiau FMU in accordance with the NPSFM 2020, a rule framework for the replacement of the existing Manapouri Power Scheme consents should be developed, consistent with the outcomes of the National Objectives Framework implementation process.

#### **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 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 volume and rate of take is not increasing, and the use of water is not changing; and

(3) the applicant has requested that the application be publicly notified.

(b) 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

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

Advice Note: This Rule is to be interpreted taking into account Policy 26AA.

## Appendix E – Receiving Water Quality Standards

These standards apply to the effects of discharges following reasonable mixing with the receiving waters, unless otherwise stated. They do not apply to waters within artificial storage ponds such as effluent storage ponds or stock water reservoirs or to temporarily ponded rainfall.

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 an ancillary activity associated with the maintenance of the Manapōuri hydro-electric generation scheme that alters natural flows, is proposed. This exception only applies where the activity requires a resource consent pursuant to a rule in this plan and will only result in a temporary change in the state of the water, that parameter cannot meet the standard. Nothing in this exception precludes consideration of the effects of the proposed activity on water quality through a resource consent process.