

BEFORE THE ENVIRONMENT COURT

I MUA I TE KOOTI TAIAO O AOTEAROA

UNDER the Resource Management 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)

(Continued next page)

**STATEMENT OF EVIDENCE OF CLAIRE JORDAN ON
BEHALF OF ARATIATIA LIVESTOCK LIMITED**

15 February 2018

Judicial Officer: Judge Borthwick and Judge Hassan

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL DISTRICT 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 Act 1991
(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, SOUTHLAND
PLANTATION FOREST COMPANY OF NZ,**

SOUTHWOOD EXPORT LIMITED
(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

Introduction

1. My full name is Claire Louise Marshall Jordan.
2. I live at 1066 Lillburn-Monowai Road, located on the property owned by Aratiatia Livestock Limited (Aratiatia). The majority shareholder of Aratiatia is the Marshall Family Trust. The property is immediately adjacent to both the Waiau River and the Dean Burn, a tributary of the Waiau River. I am a discretionary beneficiary of the Marshall Family Trust and a shareholder of Totara Agricultural Limited, which contracts to Aratiatia. Paul and Juanita Marshall, the directors of Aratiatia, are my parents.
3. I am also a committee member of the Waiau Rivercare Group Inc. I have assisted both the Waiau Rivercare Group Inc and the Waiau River Liaison Committee in their part in these proceedings.
4. I hold a Bachelor of Science with Honours (first class) from the University of Canterbury in 2010, majoring in chemistry (undergraduate major) and environmental science (honours major). I am currently undertaking a Master of Resource and Environmental Planning Degree through Massey University.
5. Prior to starting my Masters, I was a Senior Policy Planner at Environment Southland. I have worked as a Policy Analyst and an Environmental Scientist for six years, within Central and Regional Government and as a consultant.
6. While employed by Environment Southland I was involved in preparing the proposed Southland Water and Land Plan (pSWLP). I was one of the authors of both the Section 32 Report and the Section 42A Report. I was not involved in the Section 42A Reply Report or the hearing process as I was on maternity leave during this time.
7. Shortly after my return to Environment Southland in February 2018, I left Environment Southland's employment.
8. I have prepared evidence for these proceedings on behalf of Aratiatia and am authorised to give evidence on Aratiatia's behalf.

9. My evidence is not presented as expert evidence, as I acknowledge that my connection to Aratiatia renders me too close to the matter to be considered independent in this instance. However, I do have some expertise in planning and the development of the pSWLP, which has informed the preparation of my evidence.

Scope

10. This evidence addresses the Topic A provisions of Aratiatia's appeal and in particular Objective 10.
11. This evidence does not address proposed amendments to Objective 10 sought by other appellants and nor does it address any other provisions against which Aratiatia lodged s274 notices. My understanding is that the evidence exchange timetable for Topic A provides for evidence on those matters to be exchanged at a later date.
12. In preparing this evidence, I have read and considered the following documents:
 - (a) The pSWLP (notification and decisions versions);
 - (b) Section 32 Report;
 - (c) Section 42A Hearing Report and Reply Report;
 - (d) The Council's Decision Report;
 - (e) Aratiatia's Appeal;
 - (f) The Initial Planning Statement;
 - (g) The evidence prepared for the Council by Mr McCallum-Clark, Mr Hodson, Mr Ward, Dr Snelder, Ms Robertson, Mr Rodway and Dr Lloyd;
 - (h) The evidence prepared for Aratiatia by Paul Marshall;
 - (i) The National Policy Statement for Freshwater Management 2014 (as amended 2017) (**NPSFM**)

(j) The National Policy Statement for Renewable Energy Generation 2011 (**NPSREG**)

(k) The Southland Regional Policy Statement 2017 (**RPS**).

Background

13. Aratiatia was a submitter on the notified version of the proposed Water and Land Plan (Notified Version). Aratiatia lodged further submissions on the submissions of Meridian Energy Limited and the Southland Fish and Game Council.
14. Aratiatia lodged an appeal to the Environment Court on the decisions version of the proposed Water and Land Plan (Decisions Version). Of the provisions appealed, only Objective 10 is part of Topic A.
15. Objective 10 concerns the Manapouri Power Scheme (MPS). Aratiatia did not oppose the notified wording of Objective 10 but does oppose the revised version introduced in the Decisions Version. Aratiatia's primary concern with Objective 10 relates to the explicit incorporation of the MPS structures into the existing environment through Objective 10.
16. There are a number of other Objectives under appeal which form part of Topic A against which Aratiatia has lodged s274 notices. These include Objectives 2, 6, 9B, 13 and 18, and Meridian's proposed Objective X.
17. The policies under appeal which form part of Topic A, against which Aratiatia has lodged s274 notices are Policies 4, 5, 6, 7, 8, 9, 10, 11, 12, and 45. The provisions against which Aratiatia has lodged s274 notices are not addressed in this evidence.
18. I have read Paul Marshall's evidence, and I agree with his evidence to the extent of my knowledge and rely on his conclusions. Similarly to Mr Marshall, mine and my family's long association with the Lower Waiau River: swimming and fishing in it, rafting down it, living next to it; has engendered a desire to protect and enhance the River. In my opinion, regulation that enables a full assessment of the environmental effects of the MPS on the Lower Waiau River is necessary to enable sustainable management of the River.

Wording of Objective 10

19. Objective 10 in the Notified Version read:

The national importance of the existing Manapōuri Power Scheme in the Waiau catchment is provided for, and recognised in any resulting flow and level regime.

20. The Reporting Officers recommended that Objective 10 be retained as notified.¹ Aratiatia did not oppose that version of Objective 10.

21. Objective 10 in the Decisions Version reads:

The national importance of existing hydro-electric generation schemes, including the Manapōuri hydro-electric generation scheme in the Waiau catchment, is provided for, recognised in any resulting flow and level regime, and their structures are considered as part of the existing environment.

22. In its appeal, Aratiatia seeks the reinstatement of the notified version of Objective 10.

23. Aratiatia is concerned that a consequence of the wording change to Objective 10 is that the MPS structures will be treated as a permanent feature in the environment when the consents in respect of the MPS expire in 2031 and replacement consents are sought. That will reduce the Council's ability to consider the adverse environmental effects associated with the structures and will increase the likelihood that the existing structures are retained unchanged. In contrast, Aratiatia considers that Objective 10 in the Notified Version, whilst recognising the national importance of the MPS, would allow a more comprehensive assessment of its adverse effects when the consents for the MPS are revisited.

24. By way of explanation:
-

- (a) I consider that Objective 10 as notified was an appropriate response to the presence of the MPS in the catchment. I accept, that the MPS is a nationally important piece of infrastructure as a consequence of its scale and the percentage of New Zealand's electricity generated by it. However, the MPS generates significant impacts on the natural environment and the Waiau catchment and has done so for 50 years. As notified, Objective 10 allowed for due consideration of the environmental effects of the MPS upon consenting, while recognising its national importance. I agree with the s42A author that the notified version of Objective 10 is consistent with the NPSREG².
- (b) I consider the Objective 10 in the Decisions Version is problematic, primarily because the MPS structures would be considered as part of the existing environment in the context of any future resource consent application. I am concerned that, if the MPS structures are treated as part of the existing environment, the adverse effects generated by and as a consequence of those structures will be deemed to be irrelevant and will be disregarded when applications for the renewal of the resource consents for the MPS are being assessed.
- (c) Objective 10 in the Decisions Version could disincentivise exploration of more efficient or environmentally appropriate methods of renewable energy generation in that location, as to do so may adversely affect the structures of the MPS, and hence the existing environment. One example might be reducing the height of the sill of the Manapouri Lake Control Structure to facilitate fish passage or allow greater minimum flows down the Waiau River when Lake Manapouri is at the bottom of its operating range. If the structures are considered to be part of the existing environment then any such changes to their physical form could be characterised by the operator of the MPS as an adverse effect on that part of the environment and hence contrary to the objective.

² S42A Report, para. 5.126.

- (d) In contrast, Objective 10 in the Notified Version, while recognising the importance of the MPS, does not give an elevated status to its component structures. That approach seems to me to enable a broader assessment when renewing the MPS consents with regard to its effects on the environment, the physical characteristics of the MPS structures and the flow and level regime with which it should comply.
25. As a matter of semantics, I'm not sure how it can be an objective to consider the structures as part of the existing environment. That appears to me to be more like a method by which adverse effects of those existing structures could be disregarded, rather than an objective.
26. Further, the revised Objective expands its focus from the MPS to all existing hydroelectric generation schemes. While I note that the NPSREG recognises the national importance of renewable energy generation, in my opinion, it does not necessarily follow that every component of every existing hydro-electric generation scheme (eg: individual wind turbines or components of a hydro electric scheme) is nationally important. I consider that Objective 10 should be limited to the MPS to reflect its unique scale and electricity generation output in the Region.

Council Reports and Decisions

27. During the Council hearing Meridian Energy argued for the inclusion of the entire MPS (including the water take) as part of the existing environment. In response, the Hearing Commissioners concluded that it was inappropriate to include the MPS water take, use, diversion and discharge as part of the existing environment through Objective 10³. I agree with this assessment, and the rationale provided by Mr McCallum-Clark in his evidence in chief at Paragraph 131.
28. The Hearing Commissioners did however recommend Objective 10 be amended to include the structures of the MPS in the existing environment to give better effect to the NPSREG and the RPS. Further explanation was not provided in the Report and Recommendations of the Panel⁴.

³ Report and Recommendations of the Panel, para. 143.

⁴ Report and Recommendations of the Panel, para. 143.

29. I disagree that including of the structures of the MPS as part of the existing environment better gives effect to the RPS and NPSREG. My expectation is that the interrelationship between the RPS and the NPSREG will be addressed in legal submissions. Nevertheless, I make the following brief observations.

30. Regarding the NPSREG:

(a) The preamble to the NPSREG acknowledges that there is at times a conflict between encouraging renewable energy generation and the environmental effects of renewable energy generation. The relevant passage from the preamble reads:

“In some instances the benefits of renewable electricity generation can compete with matters of national importance as set out in section 6 of the Act, and with matters to which decision makers are required to have particular regard under section 7 of the Act. In particular, the natural resources from which electricity is generated can coincide with areas of significant natural character, significant amenity values, historic heritage, outstanding natural features and landscapes, significant indigenous vegetation and significant habitats of indigenous fauna. There can also be potential conflicts with the relationship of Maori with their taonga and the role of kaitiaki. The New Zealand Coastal Policy Statement 2010 also addresses these issues in the coastal environment. Increased national consistency in addressing the competing values associated with the development of New Zealand’s renewable energy resources will provide greater certainty to decision-makers, applicants and the wider community.”

(b) I do not understand the NPSREG to be overriding those section 6 and section 7 issues. Instead it provides additional guidance regarding factors relating to renewable energy generation that can be weighed up by decision makers faced with acknowledging and managing the potential conflict between the environmental effects of renewable energy generation (including section 6 and section 7

issues) and the national importance of renewable energy generation.

- (c) I do not consider that Objective 10 in the Decisions Version better acknowledges and manages the potential conflict between the environmental effects of the MPS and the national importance of the MPS than does the Objective 10 in the Notified Version. Instead, for the reasons set out above, I consider that Objective 10 in the Decisions Version reduces the consideration of environmental effects caused by the structures when new consents are sought for the MPS while elevating the importance of individual existing structures that may no longer be necessary or desirable.
- (d) In my opinion, acknowledging and managing the potential conflict between the environmental effects of renewable energy generation and the national importance of renewable energy generation, as identified in the NPSREG preamble, does not necessitate or justify including the structures in the existing environment. I consider that Objective 10 in the Notified Version strikes an appropriate balance between these factors.

31. Regarding the RPS:

- (a) It is unclear from the Report and Recommendations of the Panel which RPS provisions the inclusion of the structures of the MPS in the existing environment is designed to give better effect to. However, there are three chapters of the RPS I consider are particularly relevant to the MPS, Chapter 4B – Water Quantity, Chapter 15 – Infrastructure/Transport, and Chapter 16 – Energy.
- (b) The water quantity provisions of the RPS that are specific to the Manapouri Power Scheme address water allocation in the Waiau Catchment, rather than the structures of the MPS, so are not directly relevant to the question of including or excluding the structures in the existing environment.

- (c) Chapter 15 of the RPS requires regional plans to recognise and provide for nationally and regionally significant and critical infrastructure. These provisions are addressed by Objective 9B of the pSWLP, rather than Objective 10.
- (d) Renewable energy generation is addressed in Chapter 16 of the RPS, with relevant objectives highlighting the national significance of renewable energy and the benefits of renewable energy. The subordinate methods require regional plans to recognise and provide for the national significance of renewable energy generation. I do not consider that recognising and providing for the national significance of renewable energy generation requires or justifies including the existing MPS structures as part of the existing environment. I note that Objective 9B does not include a definition of the existing environment in relation to nationally significant infrastructure.

Conclusion

- 32. My concern is that how the existing environment is defined will impact on the consideration of environmental effects when new consents are sought for the MPS.
- 33. It seems to me that including the MPS structures as part of the existing environment seeks to protect for the life of the pSWLP the physical structures relating to a particular (50-year-old) example of renewable energy generation. Those structures were installed as part of the MPS and they remain, in essence, tools for the generation of electricity. They have no utility beyond that function and in the future may no longer be the most appropriate or efficient way to provide for and support that electricity generation. The structures may well warrant modification or even replacement in the future to increase the efficiency of power generation or to reduce adverse effects on the environment (eg: if section 6 and 7 issues warrant doing so). Defining the structures as part of the existing environment risks creating a disincentive and barrier to altering the structures to improve environmental outcomes in the future.

34. I consider that a thorough, site-specific assessment of how the existing environment should be defined should form part of the assessment of any applications for consents relating to the MPS. The most appropriate time to undertake such an assessment is when new consents for the MPS are sought (eg: when consents expire in 2031). By then there may be much more information available regarding the state of the existing structures, their suitability for generating electricity and the effect that they are having on the environment. Reinstating the notified version of Objective 10 would provide for this whilst still recognising the importance of the MPS.

DATED this 14TH day of February 2019
Claire Jordan