

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

UNDER The Resource Management Act 1991
(RMA)

IN THE MATTER Appeals under clause 14(1) of the First
Schedule of the Act in relation to the
Proposed Southland Water and Land Plan

BETWEEN **MERIDIAN ENERGY LIMITED**
Appellants

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

STATEMENT OF EVIDENCE OF ANDREW BAZEL CONRAD FEIERABEND

FOR

MERIDIAN ENERGY LIMITED

15 February 2019

Judicial Officers: Judge Borthwick and Judge Hassan

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(ENV-2018-CHC-50)

Appellants

AND SOUTHLAND REGIONAL COUNCIL

Respondent

QUALIFICATIONS AND EXPERIENCE

- 1 My name is Andrew Bazel Conrad Feierabend.
- 2 I hold the qualification of a Bachelor of Regional Planning from Massey University. I have approximately 32 years of experience in planning and resource management matters all of which have been gained within the local government sector and electricity industry.
- 3 Since being employed by Meridian Energy Limited (**Meridian**) in 2010 I have been responsible for managing and responding to multiple statutory plans relevant to Meridian's hydro and wind assets and renewable development options within New Zealand.
- 4 In Southland this has included responding to the development of the Proposed Southland Regional Policy Statement and changes to the operative Southland Regional Plan, changes to the operative Southland Regional Coastal Plan and input into the development of the Southland District Plan.
- 5 I assisted in the coordination and application for a declaration before the High Court to establish the relationship between the enabling provisions of the Manapouri Te Anau Development Act 1963 (**MTADA**) and the controls on land use in section 9 of the RMA as it applies to district council functions.
- 6 I have read the Environment Court of New Zealand Practice Note 2014 and confirm I have complied with it when preparing my evidence in relation to Meridian's appeal. This statement is made in the context of my position with Meridian and is factual in nature rather than an expression of expert opinion.
- 7 The primary purpose of my statement is to assist the Court in understanding the authorisations Meridian holds to operate the Manapouri Power Scheme (**MPS**), their interface with the planning process currently under review and the relationship of this process to the requirements of MTADA.
- 8 In presenting this evidence I have also read the evidence prepared on behalf of Meridian by Mr Guy Waipara, Meridian's General Manager Generation & Natural Resources, Dr Jennifer Purdie, Meridian's Energy and Fuels Advisor, and the expert planning evidence of Ms Jane Whyte.

- 9 I am authorised to present this evidence as a representative of Meridian and on behalf of the Company.

SCOPE OF THIS EVIDENCE

10 In my statement I:

- (a) Provide an overview of Meridian's interest in the Proposed Southland Water and Land Plan (**PSWLP**).
- (b) Provide a description of the MPS and an overview of the hydrology of the Waiau Catchment.
- (c) Provide a description of the various diversions and discharges associated with the MPS including the components that make it up.
- (d) Provide a description of the development of the MPS under the MTADA and the interface of this legislation with the Resource Management Act 1991.
- (e) Describe the development and purpose of the Lake Manapouri and Lake Te Anau Lake Operating Guidelines (the Guidelines), and how they apply to the management of the MPS including the way they influence the discharges and diversions associated with the MPS.
- (f) Provide a description of the process that led to the issuing of the key operating consents attached to the MPS under the Resource Management Act 1991 and the various mitigation measures resulting from the consenting process.
- (g) Describe the relationship of the Guidelines to the existing operating consents issued under the Resource Management Act 1991.
- (h) Describe why the existing water takes, diversions, uses and discharges of water for the purposes of the MPS are an integral part of the existing MPS, and why it is unrealistic to assume an environment where these do not exist.
- (i) Describe why it is necessary that enhancement opportunities must be provided for within the PSWLP policy framework.

MERIDIAN'S INTEREST IN THE PROVISIONS OF THE PSWLP

- 11 Meridian is seeking to ensure the PSWLP provides an appropriate regulatory environment for the retention and enhancement of existing renewable energy generation in Southland, and for the development of new renewable electricity generation. The focus of my evidence is on the operations of the MPS given its national significance in the context of New Zealand electricity network, and its potential contribution to New Zealand meeting its carbon reduction commitments with respect to climate change as outlined in Mr Waipara's evidence¹. It is also Meridian's desire to ensure that the PSWLP provides for and enables the activities required to operate the Scheme efficiently and effectively for its designed purposes.
- 12 Meridian also has an interest in ensuring the PSWLP gives effect to the National Policy Statement on Renewable Electricity Generation 2011 (NPSREG) and the Operative Regional Policy Statement as set out in Ms Whyte's evidence².

MERIDIAN ENERGY LIMITED – THE MANAPOURI POWER SCHEME**Background and History**

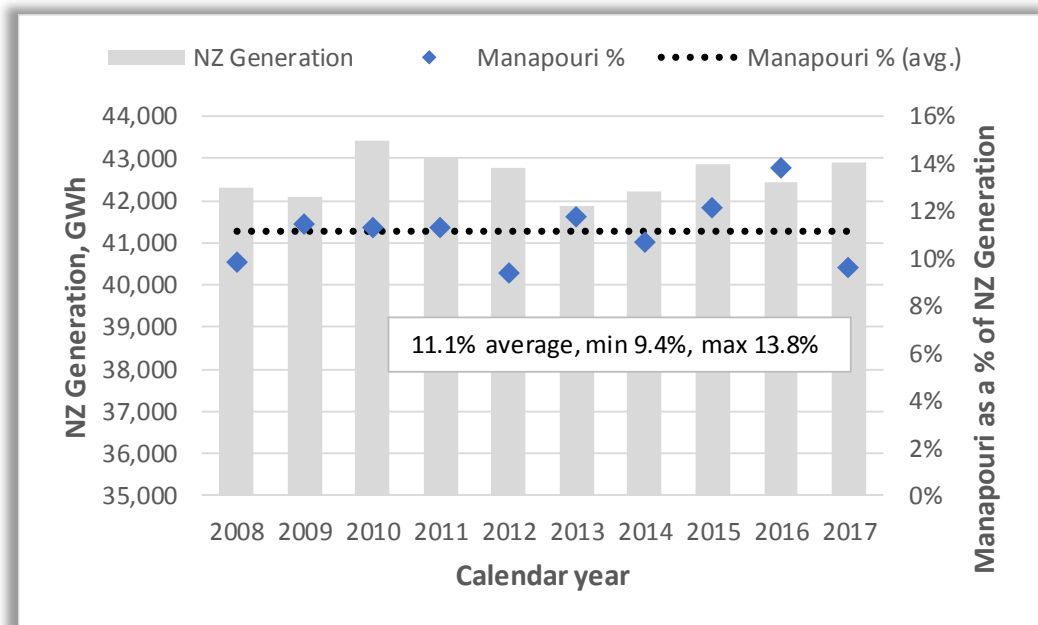
- 13 The MPS is located in the Southland Region in the Waiiau Catchment and Fiordland. The MPS is the largest single hydro generation station in the country and its average annual generation contribution to the national grid over the past 10 years equates to 11.1% of the country's total electricity output. The average annual production of the MPS for the calendar years from 2008 to 2017 was 4738 GWh. Figure 1 describes the range of generation contribution to the national network over the past ten years. The MPS's significance and contribution to the national electricity network is described in Mr Waipara's evidence³.

¹ Evidence of Mr Waipara Paragraphs 61–66

² Evidence of Ms Whyte Appendix 4

³ Evidence of Mr Waipara Paragraphs 37–45

Figure 1 – Actual Generation Contribution of MPS to the National System 2008–2017⁴



- 14 The hydroelectricity generation potential of Lakes Manapouri and Te Anau, and the Waiau Catchment was first recognised as early as 1904 but was not seriously considered for development until 1960. This followed a feasibility assessment of the generation potential and an agreement signed by the New Zealand Government and Consolidated Zinc Pty Limited that provided the company exclusive rights for 100 years to maximise the water potential of Lakes Te Anau and Manapouri to generate electricity for an aluminium smelter to be built at Tiwai Point near Invercargill.
- 15 The final form of the agreement with the Government in 1963 saw the Government construct the power station and hold the water rights. Construction and operation of the MPS was authorised by an Act of Parliament, the Manapouri Te Anau Development Act 1963 (MTADA). Construction commenced in 1963 with the first power being generated in 1969. The power station becoming fully operational in mid-1973.
- 16 Meridian acquired the full beneficial ownership, possession and control of the MPS and associated structures, plant, equipment and machinery and the land on which it is located by way of the Crown transferring all rights to the Electricity Corporation of New Zealand (ECNZ) in accordance with the State Owned Enterprises Act 1986 and by deeds dated 31 March 1988 and

⁴ Sources: Electricity Authority for the Manapouri generation data – https://www.emi.ea.govt.nz/Wholesale/Datasets/Generation/Generation_MD/; and MBIE for the NZ Generation data – <https://www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/energy-statistics-and-modelling/energy-statistics/electricity-statistics/>

31 March 1989. Those rights held by ECNZ were then transferred to Meridian by an agreement and deed dated 22 December 1998. This included all water rights which were provided for under Section 4 of MTADA.

- 17 Under the Resource Management Act 1991 the above rights to the use water for electricity generation became deemed permits and had to be replaced before 1 October 2001 when they expired. ECNZ subsequently applied to the Southland Regional Council in 1996 for the required resource consents via a process described in more detail later in my evidence. The MPS water takes and discharges were subsequently approved subject to a range of operating conditions and mitigation agreements with key stakeholders.

Overview of the Manapouri Power Scheme & the Waiau Catchment Hydrology

- 18 The MPS utilises rainfall and a relatively small amount of snow melt that falls in the Te Anau and Manapouri lake catchments and the Mararoa River catchment.
- 19 The MPS is required to operate in accordance with the Guidelines promulgated pursuant to section 4A of MTADA.
- 20 The Guidelines and the physical design of the lake control structures determine the ability and degree to which Meridian can raise and lower lake levels. The operation of the MPS in accordance with the resource consents issued under the Resource Management Act and the Guidelines are described in more detail later in this evidence.
- 21 The flow in the Lower Waiau River is affected by the diversion at the power station in the West Arm of Lake Manapouri and the diversion and discharge at the Manapouri Lake Control structure at the top of the Lower Waiau River. The control structures of Lakes Te Anau and Manapouri allow the management of those lakes to comply with the Guidelines. This provides short-run storage of water for electricity generation while also protecting the vulnerable shorelines of the lakes. The extent of this storage can best be demonstrated by comparing the combined storage ranges of Lake Te Anau at 3.44 metres combined (1.2 metres in the main operating range) and Lake Manapouri at 4.64 metres combined (1.8 metres in the main operating range), compared with Lake Pukaki in the Waitaki Scheme which has 14.5 metres of largely unconstrained storage and lake level range.

- 22 The MPS takes and diverts water from the Waiau Catchment and discharges this through the power station at West Arm into Deep Cove in Doubtful Sound. The MPS is represented diagrammatically in Figure 2, visually in Figure 3 below, and its physical location is shown in Figure 4.

Figure 2 – Schematic Diagram of the Manapouri Power Scheme and its Constituent Parts

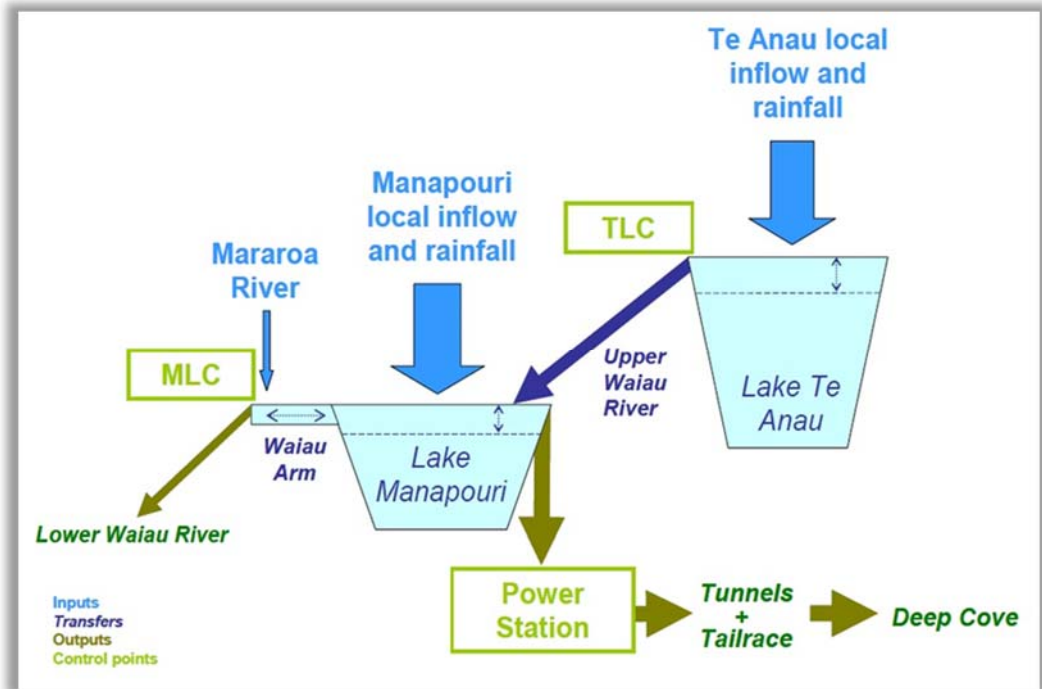


Figure 3 – Visual representation of Manapouri Power Scheme and its Constituent Parts

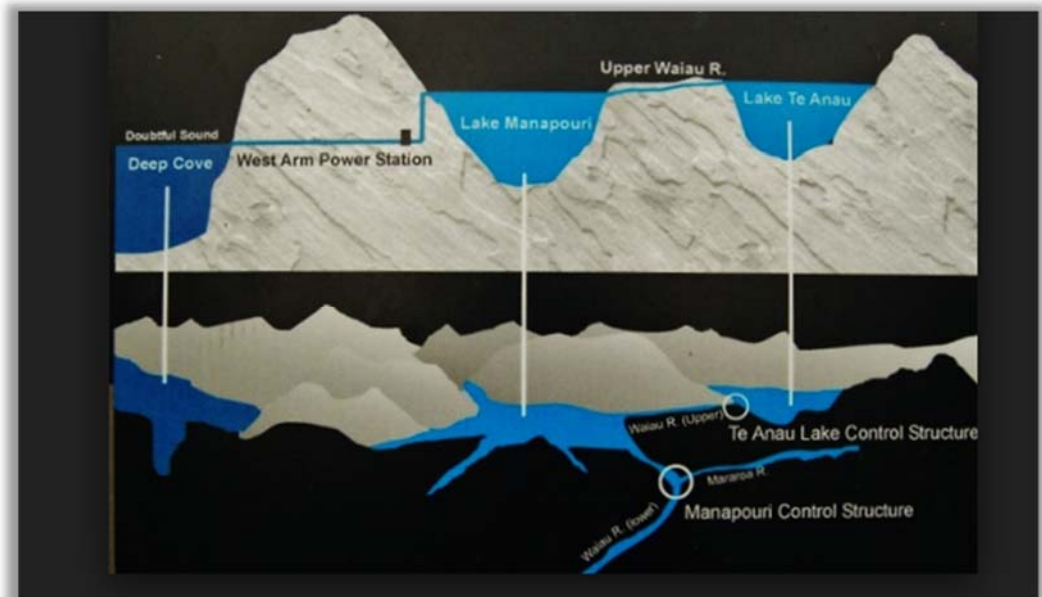


Figure 4 – Geographical Location of the Manapouri Power Scheme and its Constituent Parts



- 23 The key MPS structures that affect flows within the Waiau River Catchment and the levels of Lakes Te Anau and Manapouri are:
- (a) The Manapouri Power Station itself, which is located in West Arm of Lake Manapouri (see Image 1 in Appendix 1), and takes and diverts water for the generation of electricity.
 - (b) Two 10-kilometre long tailrace discharge tunnels that discharge flows from Lake Manapouri through the Manapouri Power Station into the head of Deep Cove in Doubtful Sound;
 - (c) A lake level control structure at the outlet from Lake Te Anau, that is at the top of the Upper Waiau River (see Image 2 in Appendix 1);

- (d) A control structure at the downstream end of the Waiau Arm of Lake Manapouri immediately below the confluence of the Mararoa and Waiau Rivers which controls:
- flows from the Mararoa River by allowing them to either pass through the control structure into the Lower Waiau River or to be diverted into the Waiau Arm of Lake Manapouri, and
 - flows out of Lake Manapouri to the Lower Waiau River (see Image 3 in Appendix 1).

Overview of the Waiau Catchment's Hydrology – Generation and Lower Waiau River Flow

- 24 The total mean inflow into Lake Manapouri since the construction of the MPS and its progressive upgrades (1969–2018) has remained in a relatively constant range of between 427 and 457 cumecs (i.e. within 30 cumecs). The majority of the inflow is received out of Lake Te Anau (64%), with the remainder comprising tributary runoff into Lake Manapouri (29%) together with a relatively small contribution from the Mararoa River (7%).
- 25 For the same period the mean flow discharged via the tailrace and used for energy production has ranged from 368 cumecs to 392 cumecs. The mean flow in the lower Waiau River below the Manapouri Lake Control structure for the same period has ranged from 59 cumecs to 74 cumecs⁵.
- 26 During this period there have been four operational stages associated with developing the MPS production capability. Stage 1 saw the initial construction of the power station and commissioning of it in 1969 through to December 1996. At this time no minimum flow was required to the Lower Waiau River. Stage 2 of the development phase related to the consenting of MPS under the Resource Management Act in 1996, which saw the establishment of a minimum flow regime for the Lower Waiau River. Stage 3 saw the construction of a second discharge tailrace to enable the 1996 consented discharge of 510 cumecs to be realised from 2002. Stage 4 related to the approval of the increased Manapouri Discharge to 550 cumecs under the MPS consenting framework and the commissioning of this in October 2012.
- 27 Figure 5 below provides a pictorial representation of the analysis discussed in paragraphs 24 and 25 within each of the operational stages of the MPS

⁵ Source: Meridian Power Archive

described in paragraph 26. Figure 6 plots the distribution of flows in the Lower Waiau River for the same periods:

- (a) Pre-Minimum Flow and before the enactment and consenting of the MPS under the Resource Management Act 1991 (From 1 June 1977 to 20 December 1996). The start date is limited to the start and availability of the Lower Waiau flow data as opposed to the start date of generation from the MPS.
- (b) Post-Minimum Flow under the Resource consents issued for the MPS but prior to the establishment of the second tailrace (2MTT) (From 20 December 1996 to 5 May 2002).
- (c) Post the commissioning of the 2MTT but prior to the implementation of the increased maximum tailrace discharge from 510 cumecs to 550 cumecs (Manapouri Tailrace Amended Discharge or MTAD) (From 5 May 2002 to 23 October 2012).
- (d) Post MTAD (From 23 October 2012 to 18 July 2018).

Figure 5 – Mean Inflows to Lake Manapouri Over Time including Mean Generation, Mean Tailrace Discharge and Mean Minimum Flow Outcomes to the Lower Waiau River

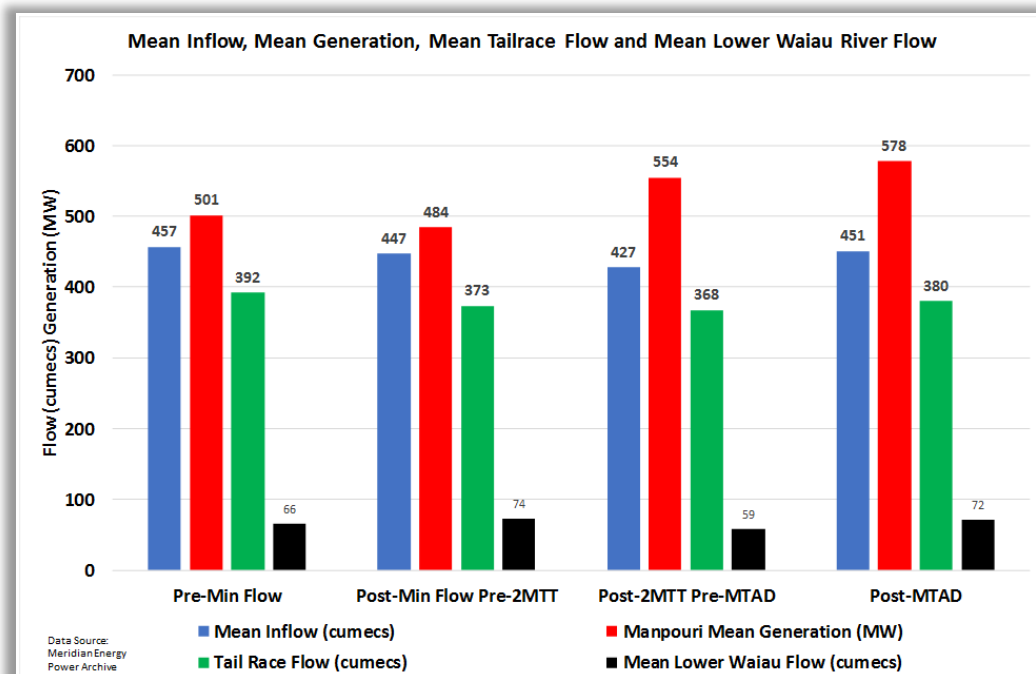
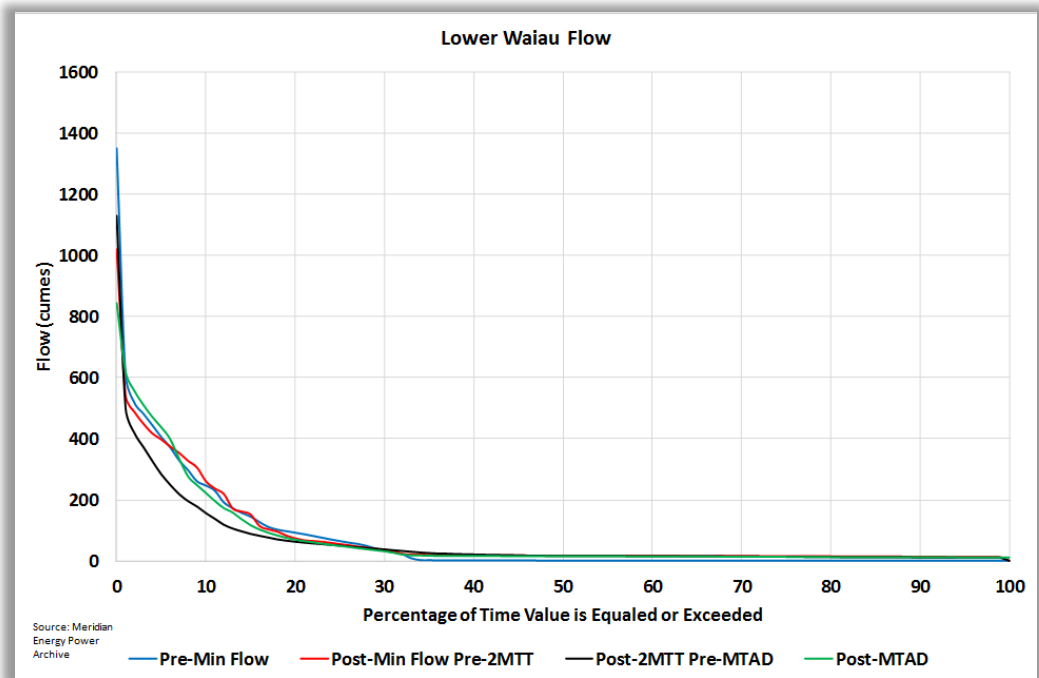


Figure 6 – Distribution Curve of the Lower Waiau River Flow 1977–2018 Comparison of Flows at Each Operational Phase of the MPS



- 28 The importance of this analysis is twofold. First it demonstrates the relative consistency in the hydrology associated with the catchment and the generation outcome associated with the MPS. Secondly, it demonstrates that even though there have been changes to the MPS operations through investment and optimisation that provide for improved generation outcomes, the long term mean flow to the Lower Waiau River has remained relatively consistent. The exception to that period is between 2002 and 2012. This coincides with a series of hydrologically dry years and an associated reduction in spill.

MANAPOURI POWER SCHEME – AUTHORISATION TO OPERATE – MANAPOURI TE ANAU DEVELOPMENT ACT 1963 (MTADA)

- 29 The MPS is authorised to operate under the MTADA and the RMA. The key MTADA authorisation is contained in Sections 4 and 4A of the of MTADA, which are attached to this evidence as Appendix 2. This Appendix also contains a copy of the current Guidelines promulgated under MTADA and a pictorial representation of the same.
- 30 MTADA provides for the development and operation of the MPS. This legislation was enacted as a result of a Government decision to enter into an agreement for the development of the Tiwai Aluminium Smelter and the need to provide a power source to enable this. From the outset the wider

contribution the MPS could make to New Zealand's electricity supply was recognised and MTADA also provided for electricity not required for the smelter to be used elsewhere via the national transmission grid.

- 31 Section 4 of MTADA authorises the operator of the MPS to "...erect, construct, provide, use, and operate all works, appliances, and conveniences which may be necessary or requisite..." to the operation of the MPS. MTADA still applies to the operation of the MPS. This section is reproduced in Appendix 2.
- 32 In addition to this the Guidelines were first developed in 1973 and subsequently legislatively mandated under MTADA and promulgated by way of Gazette Notice. Section 4A of MTADA identifies that the purpose of the Guidelines is: "... to protect the existing patterns, ecological stability, and recreational values of [Lakes Te Anau and Manapouri's] vulnerable shorelines and to optimise the energy output of the Manapouri power station."
- 33 Meridian is required to operate the MPS in accordance with the Guidelines. Oversight of Meridian's application and adherence to the Guidelines is undertaken by the Guardians of Lakes Manapouri Monowai and Te Anau (**Guardians**). The Guardians are mandated to undertake this task by section 6X of the Conservation Act 1987. A copy of this section is attached as Appendix 3 to this evidence.
- 34 Any departure from the Guidelines is required to be reported by Meridian to the Minister of Energy and Minister of Conservation at the time of occurrence. In turn this is required to be reported in the Annual Report of the Department of Conservation as the Department responsible for the administration of MTADA.
- 35 In my term of employment with Meridian (since November 2010) there have been no recorded instances where the Guidelines have been breached. I have identified 15 occasions when events associated with the Guidelines were reported on according to the information contained in reports prepared by the Guardians in the period from 1975 to 2010. These are briefly described in Table 1 as follows.

Table 1 – Summary of Guideline Events Reported on as Extracted from Lakes Guardians Reports from 1974–2018

Guideline Events Recorded		
Year	Guideline Value	Event Cause
1975	Lake Manapouri 'operated outside the Guardians' Guidelines for Lake Level Operation by Ministerial consent	Dry hydrology
1976	High level operating guidelines exceeded in both Lakes on several occasions in the year	Very wet hydrology
1980	High level operating guidelines for Lake Te Anau exceeded for 18 days	"Abnormally high inflows..."
1982/83	High level operating guidelines exceeded in both Lakes on several occasions in the year	"Record high flood flows equal to the previously recorded maximum in 1928
1984	High level operating guidelines exceeded in both Lakes in January/February	"..the result of an exceptionally severe storm.."
1985	High level operating guidelines exceeded in Lake Te Anau	High inflows into both Lakes resulting in large spill flows through the MLC
1987	Draw down rates for Lake Manapouri exceeded	Discrepancy between West Arm and Supply Bay water level sites
	Five year running mean for Lake Te Anau was outside the specified range of 201.8–202.2m	Not explained
1988	High level operating guidelines exceeded in Lake Te Anau	"Exceptional rainfall..."
1989	High level operating guidelines exceeded in both Lakes over Sept–Nov	Extended period of high rainfall
1991	High level operating guidelines exceeded in Lake Te Anau	'...relatively minor excision, attributed to an error of judgement'
1998	Draw down rates for Lake Manapouri exceeded	Differences in interpretation of a "four-day" period between the actual and official records
	High level operating guidelines exceeded in Lake Te Anau	Sustained high inflows

Guideline Events Recorded		
Year	Guideline Value	Event Cause
2000	High level operating guidelines exceeded in Lake Te Anau	Very high intensity of rainfall that produced sustained inflows t Lake Te Anau
2010	High level operating guidelines exceeded in Lake Te Anau in April/May	Record level inflows and regional flooding

- 36 The important point to note from Table 1 is that events associated with compliance with the Guidelines is relatively rare. Further, from my analysis it appears that the above events generally occurred as a consequence of exceptional natural hydrological conditions rather than poor performance by Meridian or its predecessor ECNZ.
- 37 In relation to exceptional hydrological conditions it is worth noting that the Guidelines require compliance with the High and Low lake level ranges on a 'best endeavours' basis. Furthermore, the Guidelines also record that extreme hydrological events have occurred naturally which have been outside the maximum and minimum lake ranges set by the Guidelines prior to the construction of the MPS.
- 38 I understand this 'best endeavours' obligation is included in the Guidelines rather than an absolute and inflexible compliance obligation in recognition of the fact that from time to time exceptional hydrological conditions will occur, and that these cannot be predicted. Without a 'best endeavours' recognition the lake levels would need to be operated so conservatively that significant generation output and flexibility would be lost, thereby defeating one of the purposes of the Guidelines.
- 39 Meridian and the Southland District Council sought confirmation of the relationship between MTADA and the RMA in 2014. The High Court in *Meridian Energy Limited v Southland District Council* [2014] NZHC 3178 held that MTDA still applied; and the provisions of section 9(3) of the RMA do not apply to land uses necessary or requisite to the operation of the MPS.
- 40 Subsequent to that declaratory judgement Meridian was involved in discussions with the Respondent about the relationship between MTADA and the various resource consent activity types managed by regional councils under the RMA. This has resulted in agreement between Meridian

and the Respondent as to the extent of the RMA controls that can be placed on activities associated with the MPS.

- 41 The Respondent and Meridian agree that because of MTADA the following sections of the RMA do not apply to the MPS operations where the works are necessary or requisite to the operation of the MPS:
- (a) Section 9 – Restrictions on the use of land;
 - (b) Section 12 – Restrictions on use of coastal marine area (only as it applies to temporary activities that do not include occupation);
 - (c) Section 13 – Restriction on certain use of beds of lakes and rivers; and
 - (d) Sections 15(1)(c) and (d), 15(2), and 15(2A) – Discharge of contaminants to the environment.
- 42 On this basis the existing structures associated with the MPS in the Waiau Catchment are regulated under MTADA rather than the requirements of the RMA. These are the Te Anau Lake Control Structure, the Power Station at West Arm (inclusive of the tailraces used as part of the primary discharge) and the Manapouri Lake Control Structure.
- 43 While aspects of the MPS operations are authorised under MTADA, Meridian proceeds on a prudent basis that it is required to meet the general duty set out in section 17 of the RMA with respect to avoiding, remedying and mitigating any unforeseen adverse effects arising from the result of the MPS operations.

MANAPOURI POWER SCHEME – AUTHORISATION TO OPERATE UNDER THE RESOURCE MANAGEMENT ACT 1991

- 44 If an activity is not necessary or requisite to the operation of the MPS, or is an activity controlled by the Respondent and not covered by MTADA, then Meridian must comply with the relevant regional plan provisions and rules developed under the RMA.
- 45 In the context of the MPS it is an accepted position as between Meridian and the Respondent that the RMA and plans made under it regulate the following activities:
- (a) Section 12 – Restrictions on use of coastal marine area (other than in relation to temporary activities that do not include occupation);

- (b) Section 14 – Restrictions relating to water; and
 - (c) Section 15 Discharges (other than section 15(1)(c) and (d), 15(2) and 15(2A).
- 46 Meridian's resource consents issued by the Respondent are consistent with this approach. The primary resource consents for the MPS operations authorise the following activities:
- (a) To take and use for the purposes of the MPS the waters of Lake Manapouri, through intake gates at the Manapouri Power Station at West Arm;
 - (b) To discharge up to 550 cumecs of water at the Manapouri Power Station into Deep Cove at Doubtful Sound;
 - (c) Damming and diverting water from Lake Te Anau by means of a control structure at the lake outlet and to discharge the waters of Lake Te Anau to the bed of the Upper Waiau River immediately downstream of the Lake Te Anau Lake Control Structure; and
 - (d) Damming and diverting the waters of Lake Manapouri and the Waiau and Mararoa Rivers by means of a control structure, and to dam and divert the water from the Mararoa to an artificial diversion channel and to discharge the waters of Lake Manapouri and the Waiau and Mararoa Rivers to the bed of the Waiau River below the Manapouri Lake Control Structure (MLC).
- 47 The resource consents for a 510 cumec tailrace discharge under the Resource Management Act were granted in 1996. The consent application and a set of agreed consent conditions were developed via a collaborative stakeholder process over a period of 6 years. All stakeholders with an interest in the Waiau Catchment were brought together into a single forum sponsored by ECNZ, the then owner of the MPS.
- 48 The stakeholder forum was known as the Waiau Working Party (**WWP**). Through a process of investigation, the WWP formulated a range of recommendations to the consent authority to consider as part of its consenting process. The "Heads of Agreement" and associated mitigation arrangements associated with that process are attached as Appendix 4.
- 49 The recommendations of the WWP process agreed to= the establishment of the following key consent conditions and mitigation responses (in some

cases embodied outside the consent process) to address the actual or potential effects of the diversion for generation purposes of water that would otherwise have been discharged from Lake Manapouri and the Mararoa River to the Lower Waiau River:

- (a) A range of minimum flows between 12 and 16 cumecs to the Lower Waiau River for river health purposes. The amount of minimum flow is tied to specific times of the year.
- (b) Monitoring programmes associated with identifying any unintended adverse effects associated with the operation of the MPS on the coastal marine environment at Doubtful Sound, the Lake Te Anau and Manapouri environments and both the Upper and Lower Waiau River.
- (c) Recreational flows and migratory fish flows in specified circumstances and/or times.
- (d) An ongoing role for the WWP under the 1996 consents to make recommendations to the Respondent to review conditions under section 128 of the Resource Management Act where any unexpected or unforeseen adverse effects were identified from the exercising of the primary consents relating to the MPS.
- (e) The establishment of the Te Waiau Mahika Kai Trust to mitigate effects on cultural values including eel migration.
- (f) The establishment of the Tuatapere Amenities Trust to address effects on recreational and amenity values of the township of Tuatapere and its immediate surrounds.
- (g) The establishment of the Waiau Fisheries and Wildlife Habitat Enhancement Trust to mitigate the effects on sports and native fish.
- (h) The provision of funding to assist with upgrading the Tuatapere town water supply.
- (i) The provision of an annual funding stream to the Respondent via an agreement with the Southland Branch of Federated Farmers to manage the maintenance of the Lower Waiau River fairway and flood management and erosion control associated with the operations of the MPS.

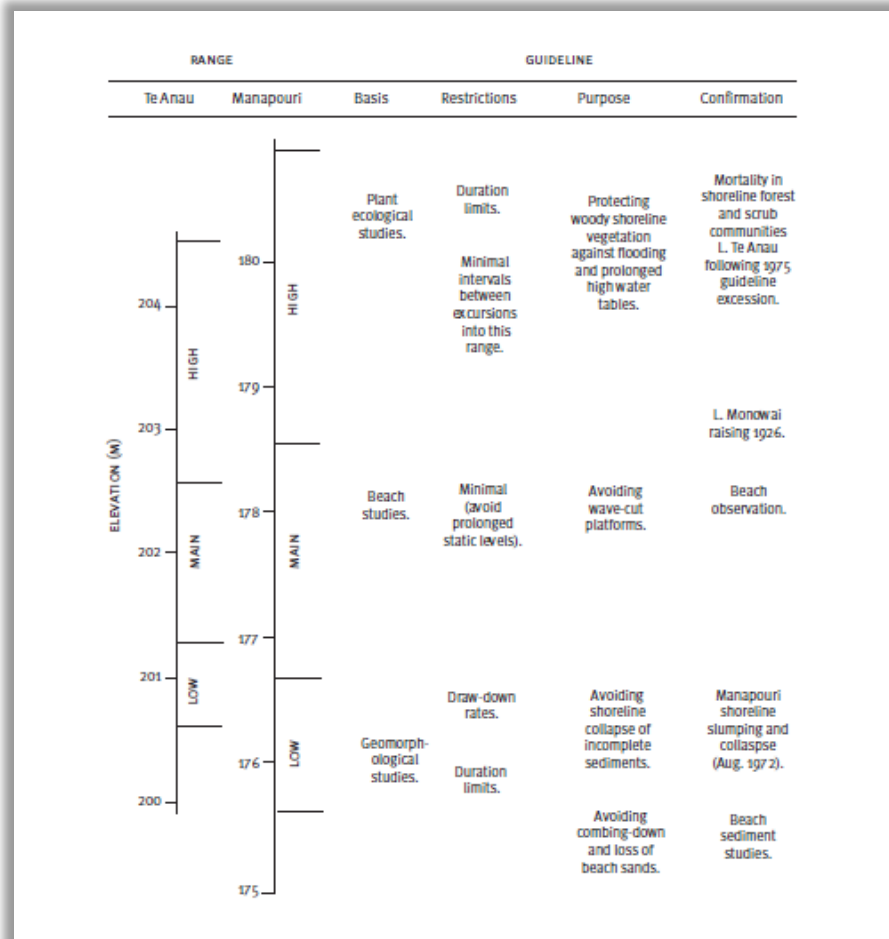
- 50 In 2010 Meridian applied for and was granted by the Respondent a suite of additional consents that enabled the discharge of water to Doubtful Sound to be increased to a maximum of 550 cumecs. The consent conditions relating to the increased discharge by and large mirror the consents issued in 1996 although they did require an additional suite of monitoring to be undertaken to ensure no unforeseen effects would arise from the discharge of additional water. The consents also provide for the establishment and implementation of a sustainable longfin eel management plan and a further payment (outside the consent process) for additional upgrading to the Tuatapere water supply was made. A detailed summary of each operating resource consent for the MPS is attached to this evidence as Appendix 5.
- 51 The extensive monitoring required by the consents for the MPS has not identified any significant unforeseen adverse effect with the MPS's operation. I note that the Respondent has not found it necessary to initiate a review of any conditions applying to the consents for the MPS under section 128 of the RMA since authorising the MPS was authorised in 1996, either on the recommendation of the WWP or at its own instigation.

MANAPOURI POWER SCHEME – RECOGNITION OF EXISTING TAKES FLOWS DIVERSIONS AND DISCHARGES

- 52 As discussed above the structures and operations of the MPS (other than activities covered by sections 14 and 15 of the RMA, and some activities covered by section 12) are authorised by MTADA. The specified aim of the Operating Guidelines for Levels of Lakes Manapouri and Te Anau as provided for under MTADA is to "...protect the existing patterns, ecological stability, and recreational values of their lakes vulnerable shorelines and to optimise the energy output of the Manapouri power station (my emphasis)."
- 53 The dual objective of the Guidelines establishes a lake management regime which is centred on meeting environmental and recreational outcomes **and** optimising electricity generation within the parameters set out within this instrument.
- 54 The Guidelines were developed in the early 1970s and have been in place ever since with minor amendments in 1981, 1990, 1993 and 2002. The Guidelines provide a robust operating regime for the MPS. The skeleton on which the Guidelines are hung is based on Lake Manapouri and Lake Te Anau each having three operational ranges, being a High, Main and Low Operating Range, each with its own set of operating requirements

established to protect the values identified in the Guidelines. These values and the operational requirements to protect them are described in Figure 7 below as extracted from “The Lake Manager’s Handbook” (2002) produced by the Ministry for the Environment:

Figure 7 – Description of Values and Management Interventions Required for Environmental Protection within the Lakes Operating Guidelines for Lakes Manapouri and Te Anau



- 55 In simple terms the Main Operating Range requires continuous variation while achieving annual mean lake levels within that range. The High Operating Range and Low Operating Range each have set maximum duration and interval ratios which need to be complied with to protect both aquatic and terrestrial vegetation. The Low Operating Range in addition sets maximum daily drawdown rates (for the purpose of maintaining a stable shoreline), and absolute minimum lake levels (including specialised lake minimums that operate for set equinoxial periods of the year when higher wind speeds are likely to result in increased wave action). As discussed above, the Guidelines require Meridian to meet these standards on a “best endeavours basis” in the High and Low Operating Ranges. In

- the Main Operating Range Meridian must “endeavour” and aim to achieve the lake level variations and means set out in this range.
- 56 The primary operating consents issued for the MPS for damming and diversions are subject to conditions requiring compliance with the Guidelines (ie, Consent Numbers 96020, 96022, 96024, 206156 and 206157). The discharge permits at the Lake Te Anau Lake Control Structure and the Lake Manapouri Lake Control Structure are subject to flood rules which are also a requirement of the Guidelines (Consent Numbers 96021 and 96023). Both control structures have consent requirements relating to minimum flow.
- 57 The Coastal Discharge Permits for the MPS providing for the discharge of freshwater to Doubtful Sound, (Consent Numbers 96019 and 206158) create a maximum of 550 cumecs that can be used for generation at any time. The above permits are constrained by the parameters set by the Guidelines, the hydrology of the catchment and the requirements of the other operating resource consents.
- 58 The resource consents relating to the operation and management of the MPS have been and are operated on the basis that no significant unexpected effects have been identified resulting from the exercise of the consent. This matter was last examined during the MTAD process in 2010 when the maximum tailrace discharge was increased from 510 cumecs per second to 550 cumecs per second.
- 59 The 1996 and 2010 resource consents associated the MPS have extensive requirements for ongoing monitoring throughout the Waiiau Catchment. The primary water takes and discharge consents requiring ongoing monitoring are CN96019; CN96020, CN96022 and CN96023 and CN206156, CN206157 and CN206158. The key monitoring obligations are set out in schedules attached to the consents as Appendix 1 for 1996 authorisations and Appendix A for the 2010 authorisations. The purpose of these programmes is to determine the ongoing state of the various environments (lake, river and marine) impacted by the MPS. Where unexpected adverse effects are identified the consents provide an opportunity to manage or reverse those effects through intervention by both the regulator and/or the scheme operator.
- 60 The programmes set out in the consent schedules require:

- (a) Physical, biological, recreational and tourism monitoring in the Doubtful Sound marine environment;
 - (b) Monitoring in Lake Manapouri and Lake Te Anau for lake macrophytes, lakeshore vegetation, lakeshore sediments and Waiau arm water quality
 - (c) Lower Waiau River monitoring including interactions between river flow and groundwater, wetland levels and river bed sediment transport.
- 61 Since the inception of these programmes and the reporting associated with them no unexpected significant effects have been identified. A summary of the programmes and reporting associated with them is attached as Appendix 6. In addition to these monitoring programmes a number of other programmes are or have been required to be undertaken in conjunction with the above consents. Examples include the extensive trap and transfer programme associated with managing long fin eel migration in the catchment and nuisance perhyton management in the Lower Waiau River. An extensive reporting programme is associated with these programmes.
- 62 The purpose of the discussion above is to demonstrate the interrelationship between MTADA, the Guidelines and the main operating consents issued under the Resource Management Act. The consents granted under the RMA require Meridian to operate the MPS in accordance with the Guidelines. The purpose of the Guidelines is to achieve both the protection of the vulnerable lake shorelines and the optimisation of generation output. This is enshrined within the resource consents which are exercised so as to promote the sustainable management purpose of the RMA. It also demonstrates that when considering the future takes and discharges associated with the MPS, it will be necessary to take into account the existence and requirements of MTADA, the Guidelines, and the various agreements and obligations that exist alongside the existing consents.
- 63 It can therefore be seen that the operation of the MPS is based on an integrated and interdependent framework of authorisations comprising MTADA, the Guidelines, stakeholder agreements and resource consents issued under the RMA. These all work together in such a way as to ensure the management and mitigation of any adverse effects associated with the operations of the MPS while also providing for the optimisation of generation output.

- 64 In my view it is important that as part of the PSWLP plan making processes these relationships are recognised and provided for when considering the content and direction of the objective, policy and rule provisions that apply to the existing MPS and its associated takes and discharges.

FUTURE SCHEME OPTIMISATION

- 65 The decision version of the PSWLP makes the taking, damming, diversion or use of water from the Waiau catchment at a rate of take or volume greater than currently authorised a non-complying activity under the Plan.
- 66 Objective 10 of Plan as amended by Council decision provides for “The national importance of existing hydro electric generation schemes, including the Manapouri 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” (my emphasis). Meridian has requested in its appeal that Objective 10 be expanded to provide for enhancements as described in Ms Whyte’s evidence⁶.
- 67 My concern is that the decision version of Objective 10 could potentially “freeze” the operations of the MPS in time given its focus on “existing generation schemes”. Meridian does not have any current proposals to change its operating consents or any of the conditions attached to those authorisations. However, it does regularly review these to ensure they are fit for purpose and provide the best outcome in terms of generation taking into account environmental effects. Dr Purdie explains in her evidence that, over the next several decades, we are likely to encounter changing hydrological conditions as a result of climate change⁷. Mr Waipara explains in his evidence that there will be new demands on hydro generation flexibility as New Zealand seeks to accommodate additional renewable generation⁸. Meridian needs to be able to respond to these changes in circumstances.
- 68 It would be inappropriate for the Plan to foreclose or leave uncertain from a policy perspective the opportunity to analyse and apply for alternate proposals that provide for more effective or efficient use of water for electricity production within the current consented maximum rates of

⁶ Ms Whyte’s evidence Paragraphs 29–41

⁷ Dr Purdie’s evidence Paragraphs 27–31

⁸ Mr Waipara’s evidence Paragraphs 55–66

taking, use and discharge. This could by way of example include yet unidentified ways the Te Anau and Manapouri Lake Control structures and the discharges associated with them are managed, or the timing of generation takes and discharges through the power station.

- 69 Ms Whyte's planning evidence assesses the amendment required to Objective 10 to appropriately provide for optimisation initiatives associated with the MPS⁹.

CONCLUSIONS

- 70 The evidence of Mr Waipara and Dr Purdie describe the current importance of the MPS to the national electricity network and its importance in the future as New Zealand addresses its renewable energy targets and climate change obligations.
- 71 My evidence describes how the MPS is operationally managed in the context of the physical structures that make up the scheme and how these need to be operated so that Meridian meets its obligations under both MTADA, the Guidelines and the RMA.
- 72 The MPS is a critical component of New Zealand's national infrastructure contributing a significant component of national generation. In the ten-year period 2008 to 2017, electricity production this has ranged from 9.4% to 13.8% of New Zealand's entire electricity output.
- 73 The operation of the MPS is reliant on the hydrology of the Waiau Catchment which, since the Scheme's construction, has remained relatively consistent along with generation outcomes.
- 74 Since 1996 when a minimum flow was restored to the Lower Waiau River mean flows of this river have remained relatively consistent, although this was subject to variability in periods of dry hydrology. The variability of river flows is an outcome of how wet or dry the catchment is and is closely related to the management of lake levels in accordance with the Guidelines which seek both the protection of the vulnerable lake shores and the optimisation of electricity generation.
- 75 The MPS is authorised to operate under two sets of legislation; MTADA (which directly authorises some activities and which establishes the Guidelines with which Meridian must comply) and the RMA (which

⁹ Ms Whyte's evidence Paragraphs 29–41

establishes the consenting framework under which the MPS operates). The two pieces of legislation and the regulations and consents that sit under the statutes are interrelated and work together to provide for the protection of environmental and social values while also ensuring the MPS is optimised for generation of electricity in the national interest. Where optimisation of the scheme has occurred, generation has been increased while the effects have remained the same or similar to those anticipated in the authorisations to operate the MPS.

- 76 Since the MPS was constructed and subsequently authorised under the RMA in 1996 there has been extensive monitoring undertaken to identify any unforeseen effects associated with the Scheme's operation. The monitoring undertaken to date has not identified any such effects and no action has been undertaken by the Respondent by way of consent review to address new or unforeseen effects or for any other purpose.
- 77 It is critical that the PSWLP does not unintentionally freeze the operations of the MPS in time given: the potential for enhancement opportunities, the prospect of different catchment hydrology, and the increasing importance of the MPS as part of New Zealand's hydro generation portfolio as New Zealand builds new renewable generation options. It is therefore important that the PSWLP recognises and provides for enhancement opportunities.



Andrew Feierabend

Statutory and Compliance Strategy Manager, Meridian Energy

15 February 2019

Appendix 1 – Figures and Images of the Key Infrastructural Components of the Manapouri Power Scheme

Image 1 – Manapouri Power Station – West Arm Lake Manapouri



Image 2 – Te Anau Lake Control Structure – Lake Te Anau Outlet

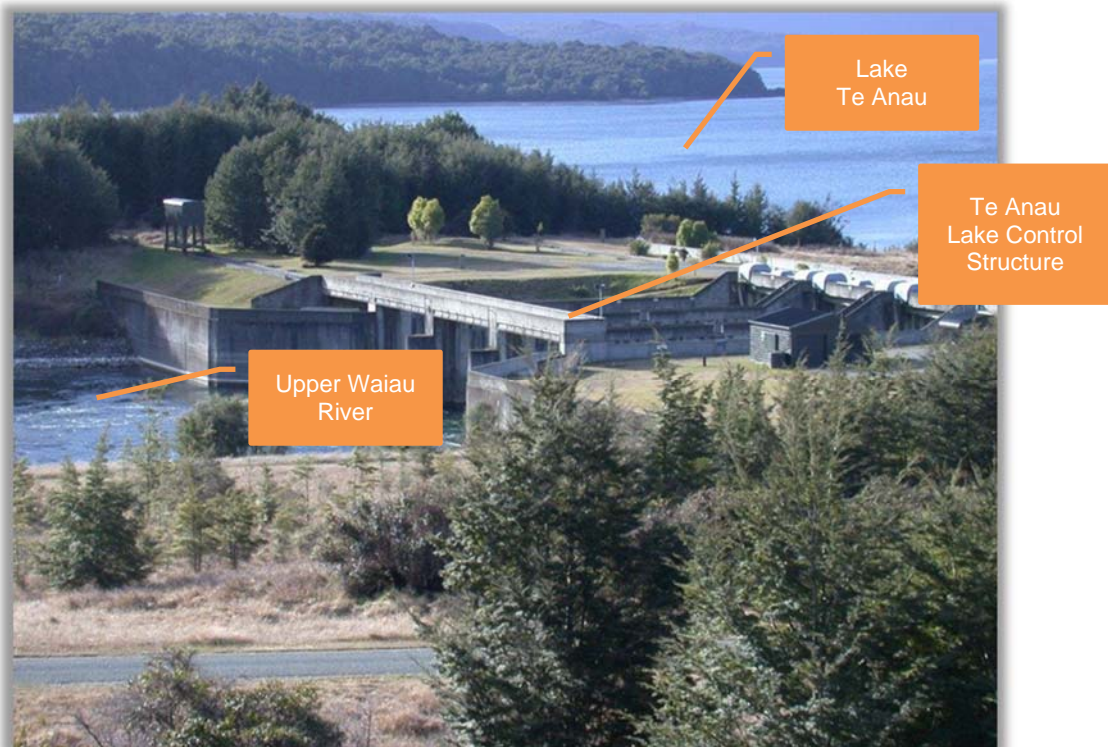
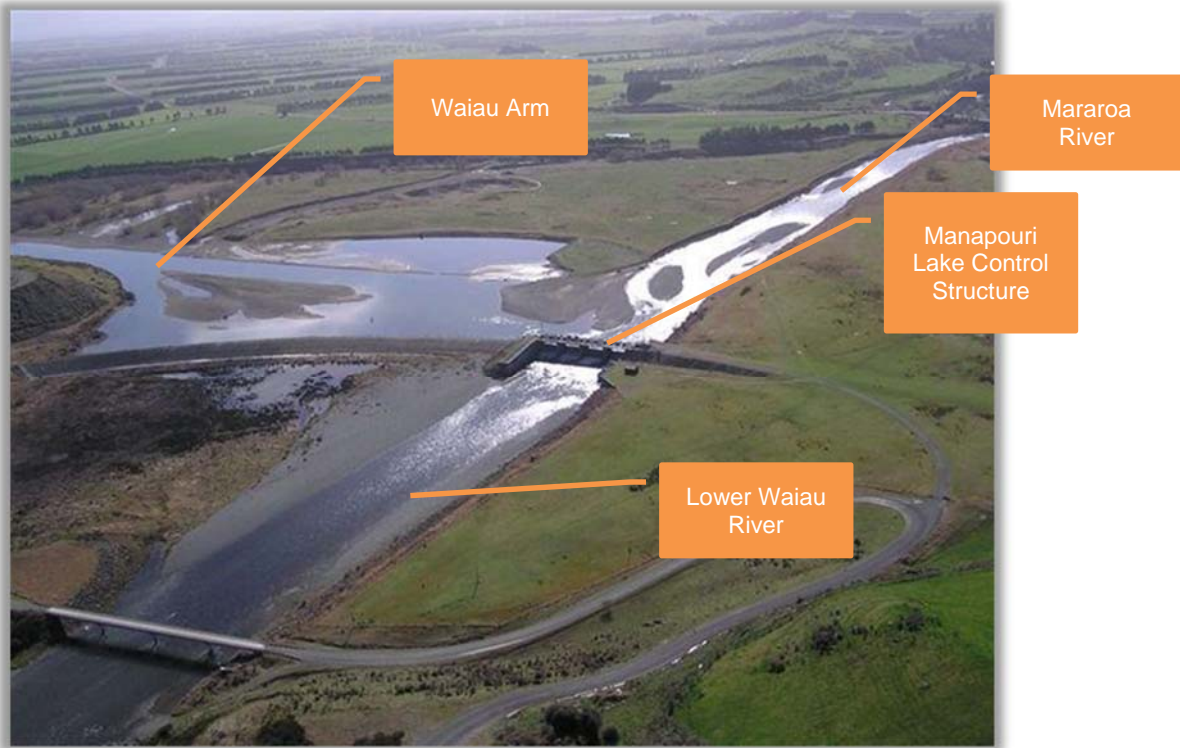


Image 3 – Manapouri Lake Control Structure Lower Waiau River – Waiau Arm of Lake Manapouri – Mararoa River Confluence



Appendix 2 – Manapouri Te Anau Development Act – Key Provisions and Lake Operating Guidelines

Extract from Manapouri Te Anau Development Act 1963, Section 4 and Section 4A

4 Authorising corporation to construct and use works

- (1) The corporation shall have, and shall be deemed since the making of the agreement to have had, full power and authority—
- (a) to erect, construct, provide, use, and operate all works, appliances, and conveniences which may be necessary or requisite for or in relation to—
 - (i) the utilisation of water power from the said water resources for the generation of electrical power; and
 - (ii) the generation, transmission, use, supply, and sale of electrical power required from time to time to be supplied pursuant to the agreement; and
 - (iii) the transmission, use, supply, and sale of any other electrical power generated from the said water resources:
 - (b) to use electrical power when so generated in the construction, working, or maintenance of any public work:
 - (c) to raise or lower the levels of—
 - (i) Lakes Manapouri and Te Anau; and
 - (ii) the Waiau and Mararoa Rivers and their tributaries; and
 - (iii) all other rivers flowing into the said lakes and their tributaries; and
 - (iv) such other rivers and streams as the Governor-General may from time to time specify for the purposes of this paragraph by Order in Council made pursuant to section 311 of the Public Works Act 1928:
 - (d) for the purposes of this Act, to construct tunnels under private land, or aqueducts and flumes over the same, and to erect electric lines as defined in section 319 of the Public Works Act 1928 over or along any such land, without being bound to acquire the same, and with right of way to and along any such works and erections:
 - (e) to supply and sell electrical power generated from the said water resources, and recover money due for the same.
- (2) *[Repealed]*
- (3) Except as otherwise provided in this Act or in the agreement all the provisions of the Public Works Act 1928 shall operate as if the powers conferred on the corporation by this section were conferred on it by an Order in Council made under section 311 of that Act.

Section 4 heading: amended, on 14 May 1999, pursuant to section 100 of the Electricity Industry Reform Act 1998 (1998 No 88).

Section 4(1): amended, on 14 May 1999, by section 100 of the Electricity Industry Reform Act 1998 (1998 No 88).

Section 4(1)(c) proviso: repealed, on 23 October 1981, by section 2(2) of the Manapouri–Te Anau Development Amendment Act 1981 (1981 No 129).

Section 4(2): repealed, on 23 October 1981, by section 2(2) of the Manapouri–Te Anau Development Amendment Act 1981 (1981 No 129).

Section 4(3): amended, on 14 May 1999, by section 100 of the Electricity Industry Reform Act 1998 (1998 No 88).

4A Operating guidelines for levels of Lakes Manapouri and Te Anau

- (1) The Minister shall from time to time promulgate, by notice in the *Gazette*, operating guidelines, based on recommendations submitted to him or her by the Guardians of Lakes Manapouri and Te Anau and the corporation, for the levels of those lakes aimed to protect the existing patterns, ecological stability, and recreational values of their vulnerable shorelines and to optimise the energy output of the Manapouri power station.
- (2) Notwithstanding anything in [section 4](#), anything operated, used, constructed, or provided pursuant to that section shall, except in exceptional natural circumstances or where life or structures are endangered, comply with the operating guidelines promulgated by the Minister under subsection (1).
- (3) Details of any departure from the operating guidelines shall be reported as soon as practicable to the Minister and the Minister of Conservation, and shall be included in the annual report of the department of State for the time being responsible for the administration of this Act made under [section 43](#) of the Public Finance Act 1989.

Section 4A: inserted, on 23 October 1981, by section 2(1) of the Manapouri–Te Anau Development Amendment Act 1981 (1981 No 129).

Section 4A(1): amended, on 14 May 1999, by [section 100](#) of the Electricity Industry Reform Act 1998 (1998 No 88).

Section 4A(1): amended, on 1 January 1988, by [section 3\(4\)\(b\)](#) of the Electricity Operators Act 1987 (1987 No 109).

Section 4A(3): replaced, on 2 January 1990, by [section 5](#) of the Energy (Fuels, Levies, and References) Act 1989 (1989 No 140).

Section 4A(3): amended, on 25 January 2005, by [section 37\(1\)](#) of the Public Finance Amendment Act 2004 (2004 No 113).

Manapouri Power Scheme Lake Manapouri and Lake Te Anau Gazetted Operating Guidelines 2002

Extract from *New Zealand Gazette*, 21/11/2002, No. 168, p. 4227

Operating Guidelines for Levels of Lakes Manapouri and Te Anau

Pursuant to section 4A of the Manapouri-Te Anau Development Act 1963, I, Pete Hodgson, Minister of Energy, based upon the recommendations of the Guardians of Lakes Manapouri and Te Anau and of Meridian Energy Limited, hereby give the following notice of the operating guidelines for the levels of Lakes Manapouri and Te Anau aimed to protect the existing patterns, ecological stability, and recreational values of their vulnerable shorelines and to optimise the energy output of Manapouri power station.

Notice

1. Title and commencement—(1) This notice may be cited as the Manapouri-Te Anau Development Act (Operating Guidelines) Notice 2002.

(2) This notice shall come into force on its publication in the *New Zealand Gazette*.

2. Application and interpretation—(1) This notice applies to Lakes Manapouri and Te Anau.

(2) In this notice, unless the context otherwise requires:

“Duration” means the number of continuous days any of the Lakes were within a particular range of level specified within the High or Low Operating Ranges.

“High Operating Ranges” are those set out in clause 5 of this notice.

“Interval” means, in relation to either of the Lakes, the number of continuous days that a Lake was below a particular range of level specified for the High Operating Ranges for that Lake.

“Lakes” means Lakes Manapouri and Te Anau.

“Level” means height, in metres, above mean sea level.

“Low Operating Ranges” are those set out in clause 6 of this notice.

“Main Operating Ranges” are those set out in clause 4 of this notice.

“Maximum duration” means, in relation to any of the Lakes, the number of continuous days that a Lake may be within a particular range of level specified for the High or Low Operating Ranges, and in relation to the High Operating Ranges, subject to the specified minimum interval.

“Minimum interval” means the number of continuous days that should elapse from either of the Lakes moving below a particular range of level, until that Lake returns within that range of level.

“Parties” means the Guardians of the Lakes and Meridian Energy Limited.

“Specified ratio” means the ratio derived from dividing the minimum interval by the maximum duration, and applies only to the High Operating Ranges.

3. Lakes management—The parties recognise three separate operating ranges of levels for each of the Lakes within which Meridian Energy Limited may operate, being Main, High and Low, as set out in clauses 4, 5 and 6 of this notice.

4. The Main Operating Ranges—(1) The Main Operating Ranges, within which Meridian Energy Limited shall endeavour to maintain continuous variation, are:

- (a) for Lake Manapouri, levels from 176.8m to 178.6m; and
- (b) for Lake Te Anau, levels from 201.5m to 202.7m.

(2) Meridian Energy Limited shall, for each of the lakes, aim to achieve annual mean levels within the applicable Main Operating Ranges as specified in this notice.

5. The High Operating Ranges—(1) Meridian Energy Limited shall use its best endeavours to:

- (a) not exceed the maximum durations; and
- (b) achieve the specified ratio in relation to the ranges of level set out in subclause (2) of this clause, where the actual interval (in days) between the Lake moving below a particular range of level and returning to within that range of level is divided by the actual duration (in days) that the Lake was originally within that range of level.

(2) Subject to subclause (3) of this clause, the High Operating Ranges are:

- (a) for Lake Manapouri, above 178.6m, in accordance with the following maximum durations, minimum intervals, and specified ratios for the ranges of level set out:

Level (m)	Maximum Duration	Minimum Interval	Specified Ratio
At 180.5	1	100	100.00
Above 180.4	3	100	33.33
Above 180.1	9	100	11.11
Above 179.8	22	80	3.64
Above 179.5	35	40	1.14
Above 179.2	44	40	0.91
Above 178.9	99	20	0.20
Above 178.6	119	20	0.17

- (b) for Lake Te Anau, above 202.7m, in accordance with the following maximum durations, minimum intervals, and specified ratios for the ranges of levels set out:

Level (m)	Maximum Duration	Minimum Interval	Specified Ratio
At 204.3	7	100	14.29
Above 204.2	10	100	10.00
Above 203.9	15	60	4.00
Above 203.6	22	30	1.36
Above 203.3	39	30	0.77
Above 203.0	65	30	0.46
Above 202.7	125	20	0.16

(3) Where the ratio derived from dividing the interval between the lake level moving below a particular range of level and returning to that range of level by the duration that the lake was in that range of level immediately prior to the interval:

- (a) results in a ratio greater than or equal to the specified ratio, then the guidelines are deemed to be complied with.
- (b) results in a ratio less than the specified ratio, then subject to subclause (4) of this clause, the interval occurring after a particular duration shall be added to that duration along with the duration occurring after that interval, in order to determine the duration for which the specified ratio must be achieved.

(4) The period of duration within any range of level, including accumulations as provided for in paragraph (b) of subclause (3) of this clause, shall not exceed the relevant maximum duration.

(5) The parties record that:

- (a) High Operating Range guidelines were reviewed in 2001 and are based on the mean of the three extreme events during the period of natural and synthetic record from 1933 to 2000.

- (b) the 1988 flood was excluded from this review because of its damaging high levels and extended duration. Extreme natural floods have occurred historically, e.g. 1988: Lake Te Anau 205.41m, Lake Manapouri 182.15m. It is accepted that guideline breaches may occur on rare occasions despite the best endeavours of the power station operator.

6. The Low Operating Ranges—(1) Subject to subclause (2) of this clause, the Low Operating Ranges are:

- (a) for Lake Manapouri levels from 175.86m to 176.8m, with an absolute minimum level of 175.86:

Level (m)	Maximum Duration
Below 176.8	107
Below 176.5	66
Below 176.2	20
At or below 175.9	5

- (b) for Lake Te Anau from 200.86m to 201.5m, with an absolute minimum level of 200.86m:

Level (m)	Maximum Duration
Below 201.5	88
Below 201.3	46
Below 201.1	21

(2) For the purposes of the Low Operating Ranges outlined in subclause (1) of this clause, Meridian Energy Limited shall use its best endeavours to:

- not exceed the maximum durations for the individual ranges of levels specified;
- avoid lake levels below 201.1m for Lake Te Anau and below 176.2m for Lake Manapouri during the equinoctial periods (March, April, October and November);
- not exceed, in any continuous period of 365 days, twice the maximum duration specified for any particular range of level; and
- ensure the rates of drawdown do not exceed the natural rates of drawdown averaged over four days, being 0.05m per day for Lake Manapouri and 0.03m per day for Lake Te Anau.

(3) The parties record that:

- in the period of natural record, the level of Lake Manapouri has been below the absolute minimum level of 175.86m; and
- these guidelines are based on the mean of three extreme events during the period of natural record and may result in low ranges of level being experienced more often than would have occurred naturally.

7. Gate opening and closing procedures—(1) The Parties have agreed upon and adopted gate opening and closing procedures which are designed amongst other things:

- in the case of the Lake Te Anau Control structure, to reduce or eliminate scour action on the upper Waiau River banks, to facilitate repair following periods of extremely high flow, and to facilitate the successful spawning of salmonids; and
- in the case of the Lake Manapouri Control structure, to reduce potentially dangerous increases in river flow downstream of the gates, and to bypass flood flows from the Mararoa River in such a manner as to prevent dirty debris-laden water from entering Lake Manapouri.

(2) It should be noted that the procedures referred to in subclause (1) of this clause are modified from time to time by agreement between the Parties.

8. Benchmarks—For the purposes of this notice:

- the level of Lake Te Anau at any time shall be determined by reference to the Land Information New Zealand Benchmark Z58, New Zealand map grid co-ordinates (5518335) metres north (2096815) metres east, which is adjacent to the lake water level recorder and staff gauge, which benchmark shall be deemed to represent a height 205.161 metres above mean sea level; and

- the level of Lake Manapouri at any time shall be determined by reference to the Land Information New Zealand Benchmark Z47, New Zealand map grid co-ordinates (5506094) metres north (2091334) metres east which benchmark shall be deemed to represent a height of 208.910 metres above mean sea level.

9. Consequential revocation—The notice entitled "Manapouri-Te Anau Development Act 1963" dated 14 April 1993 and published in the *New Zealand Gazette*, 29 April 1993, page 1084, is hereby consequentially revoked. Signed at Wellington this 12th day of November 2002.

P. HODGSON, Minister of Energy.

Note: The Guardians and Meridian Energy Limited may review these guidelines from time to time with a view to recommending that the Minister promulgate new guidelines.

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Manapouri Power Scheme Lake Manapouri and Lake Te Anau Gazetted Operating Guidelines 2002 Diagrammatically Represented Figure 1 (A) Figure 1 (B)

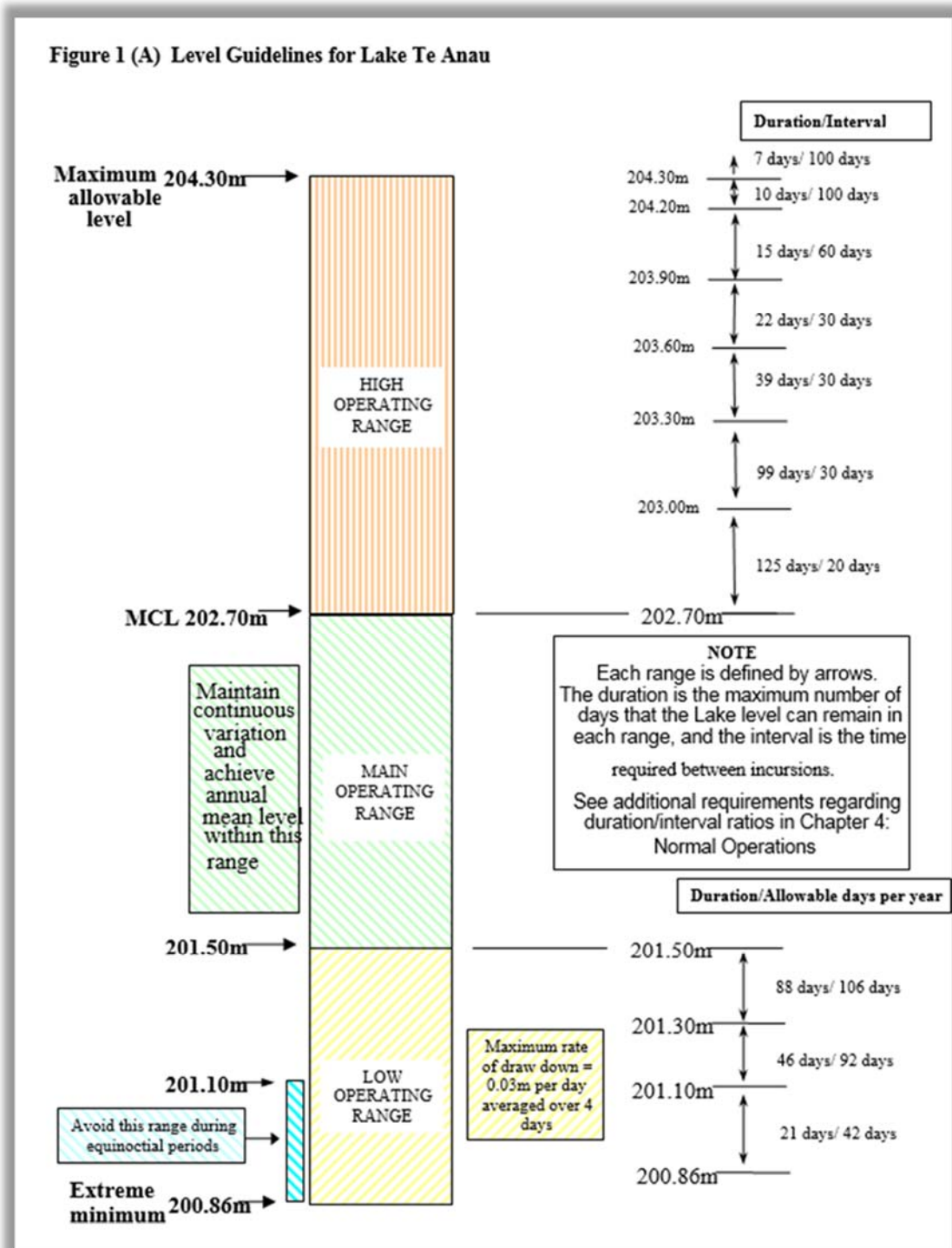
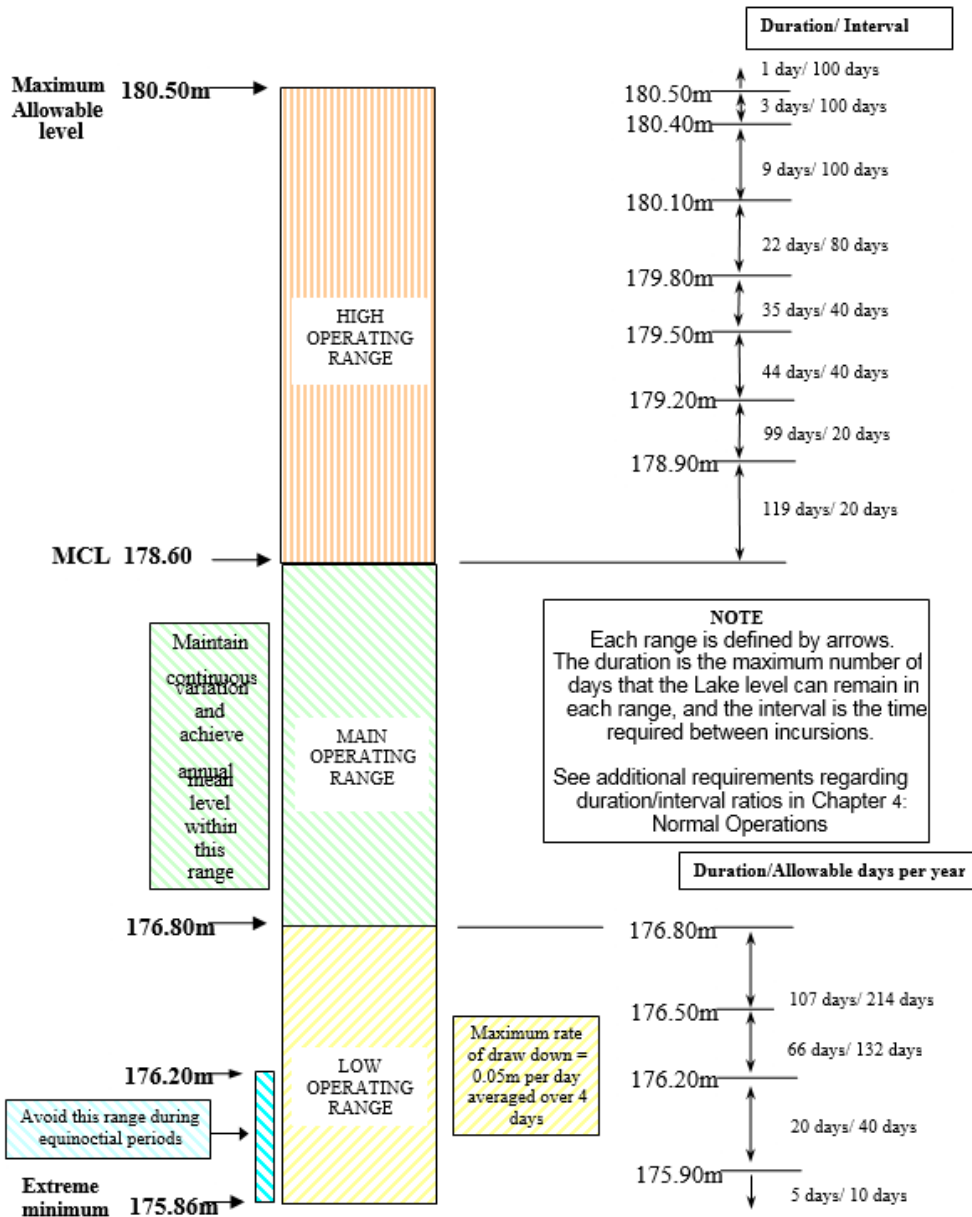


Figure 1 (B) Level Guidelines for Lake Manapouri



Appendix 3 – Extract Section 6X of the Conservation Act 1987

Part 2B**Guardians of Lakes Manapouri, Monowai, and Te Anau**

Part 2B: inserted, on 10 April 1990, by [section 5](#) of the Conservation Law Reform Act 1990 (1990 No 31).

6X Guardians of Lakes Manapouri, Monowai, and Te Anau

- (1) The Minister may, on such terms and conditions as the Minister may from time to time specify, appoint suitable persons to be the Guardians of Lakes Manapouri, Monowai, and Te Anau.
- (1A) The persons appointed to be Guardians must include at least 1 person nominated by Te Rūnanga o Ngāi Tahu (as established by [Te Runanga o Ngai Tahu Act 1996](#)).
- (2) The functions of the Guardians shall be—
 - (a) to make recommendations to the Minister on any matters arising from the environmental, ecological, and social effects of the operation of the Manapouri-Te Anau hydroelectric power scheme on the townships of Manapouri and Te Anau, Lakes Manapouri and Te Anau and their shorelines, and on the rivers flowing in and out of those lakes, having particular regard to the effects of the operation on social values, conservation, recreation, tourism, and related activities and amenities:
 - (b) to make recommendations to the Minister on any matters arising from the environmental, ecological, and social effects of the operation of the Monowai Power Scheme on Lake Monowai, its shoreline, and on the rivers flowing in and out of Lake Monowai, having particular regard to the effects of the operation on social values, conservation, recreation, tourism, and related activities and amenities:
 - (c) to make to the Minister, and to the Minister responsible for the administration of the [Manapouri-Te Anau Development Act 1963](#), recommendations on the operating guidelines for the levels of Lakes Manapouri and Te Anau, for the purposes of [section 4A](#) of that Act.
- (3) The Guardians shall in each year make a report to the Minister on their meetings and recommendations.
- (4) Except as otherwise expressly provided, every reference in any other Act to the Guardians of Lakes Manapouri and Te Anau shall be read as a reference to the Guardians appointed under subsection (1).

Section 6X: inserted, on 10 April 1990, by [section 5](#) of the Conservation Law Reform Act 1990 (1990 No 31).

Section 6X(1): amended, on 22 October 1998, by [section 274\(1\)](#) of the Ngāi Tahu Claims Settlement Act 1998 (1998 No 97).

Section 6X(1A): inserted, on 22 October 1998, by [section 274\(2\)](#) of the Ngāi Tahu Claims Settlement Act 1998 (1998 No 97).

**Appendix 4 – Waiau Working Party Heads of Agreement and Side Agreements to 1996
MPS Consenting Process**

Waiau Working Party Heads of Agreement

Te Waiau Mahika Kai Trust Deed 1997

Waiau Fisheries and Wildlife Trust Deed 1997

Tuatapere Amenities Trust Deed 1996

Southland District Council – ECNZ Agreement 1996

Federated Farmers – Environment Southland ECNZ Agreement 1996

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WAIAU WORKING PARTY AND ECNZ HEADS OF AGREEMENT

This Agreement is dated the 16th day of July 1996

- BETWEEN ELECTRICITY CORPORATION OF NEW ZEALAND LIMITED, a duly incorporated company having its registered office at Wellington ("ECNZ").
- AND MINISTER OF CONSERVATION
- AND DIRECTOR-GENERAL OF CONSERVATION
- AND FEDERATED FARMERS SOUTHLAND INCORPORATED
- AND FIORDLAND PROMOTION ASSOCIATION
- AND GUARDIANS OF LAKES MANAPOURI MONOWAI AND TE ANAU
- AND NEW ZEALAND JET BOATS ASSOCIATION INCORPORATED
- AND TE RUNANGA o NGAI TAHU
- AND SECRETARY FOR THE ENVIRONMENT
- AND ROYAL FOREST AND BIRD PROTECTION SOCIETY INCORPORATED
- AND SOUTHLAND CONSERVATION BOARD
- AND SOUTHLAND ELECTRIC POWER SUPPLY
- AND SOUTHLAND FISH AND GAME COUNCIL
- AND SOUTHLAND RESOURCE MONITOR GROUP
- AND SOUTHLAND DISTRICT COUNCIL ON BEHALF OF THE TE ANAU COMMUNITY BOARD AND TUATAPERE COMMUNITY BOARD
- AND TE ANAU ROD AND GUN CLUB
- AND TUATAPERE AND DISTRICT PROMOTIONS INCORPORATED
- AND WAIAU RIVER ACTION GROUP
- AND WAITAHA KATIMAMOE KAI TAHU O MURIHIKU

[Members of the Waiau Working Party (the "WWP")] (together with ECNZ called "the Parties")

original
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BACKGROUND

- A. ECNZ operates the Manapouri Power Station under the provisions of the Manapouri Te Anau Development Act 1963 ("MTADA").
- B. Section 4(1)(a)(i) MTADA provides that ECNZ shall have full power and authority to erect, construct, provide, use and operate all works, appliances and conveniences which may be necessary or requisite for or in relation to the utilisation of water power from the water resources of Lakes Manapouri and Te Anau, the Waiau and Mararoa rivers and their tributaries for the generation of electrical power.
- C. In addition, there is the power to raise or lower the levels of Lakes Manapouri and Te Anau and the Waiau and Mararoa Rivers and their tributaries, which are deemed consents to take and use water under the Resource Management Act 1991, subject to operating guidelines, which are deemed conditions of these consents.
- D. Subject to the provisions of sections 4A(2) and (3) of the MTADA, section 4(1) of the MTADA allows ECNZ to carry out activities which would otherwise require resource consents under the Resource Management Act 1991 ("RMA-91"). The RMA-91 deems the existing authorities to be coastal, water and discharge permits which expire on 1 October 2001. The RMA-91 requires that a consent authority in considering an application for the permits to continue these uses of water consider, inter alia, the provisions of Part II and in particular the "avoiding remedying, or mitigating any adverse effects of activities on the environment".
- E. ECNZ is of the view that, for the replacement of permits of the scope and significance of these, a broad consultation programme is not only appropriate, but essential.
- F. To that end, the ECNZ initiated the establishment of the Waiau Working Party in April 1990 to study the effects of hydro-electric power generation on the environment.
- G. For a period of almost six years, the members of the Waiau Working Party have held meetings and commissioned a number of reports to consider the environmental, recreational, social, cultural and economic values and opportunities of the Waiau River catchment resource.
- H. The Waiau Working Party has identified a series of provisions and conditions which they believe, if applied to ECNZ's resource consents as conditions where legally possible and otherwise incorporated into binding agreements ("the Agreements"), will provide recognition of the various values and opportunities and mitigate the adverse effects of ECNZ's operations and represent an acceptable outcome by retaining or enhancing the values identified while recognising the importance of the use of the resource for the generation of

electricity.

- I. It is intended that this document, which records the series of agreements between all the parties, will form part of a joint submission to the Southland Regional Council. The joint submission will be forwarded to the Southland Regional Council as a recommendation which will ask the Southland Regional Council to adopt the conditions set out in Schedule 1 to this document and as per Schedule 1 to the Joint Submission as the conditions of ECNZ's resource consents, and to take into account, in assessing ECNZ's applications under section 104 RMA, the Agreements reached with members of the Waiiau Working Party, as mitigation of the adverse effects identified by them.

WAIIAU WORKING PARTY

- J. The expression "Waiiau Working Party" includes the signatories to this Agreement and any person or body corporate having a special interest beyond that of the New Zealand public generally in the matters the Waiiau Working Party considers and who has been received as a member of the Waiiau Working Party by the existing membership.
- K. The Southland District Council shall be the secretary of the Waiiau Working Party for the first twelve months following the signing of this Agreement. Thereafter the members shall appoint one of their number to be the secretary for each further twelve month period.
- L. The secretary from time to time shall be responsible for:
- a calling a meeting of the Working Party at at least annual intervals and more frequently if required;
 - b maintaining a list of members, contact addresses and in the case of bodies corporate or informal organisations, the person within that body with whom communication should be maintained;
 - c the addition of new members to the Working Party. It is recorded that any person or body corporate having a special interest beyond that of the New Zealand public generally in the matters the Working Party considers shall be entitled to be received as a member without further formality;
 - d the co-ordination of the preparation and delivery to the Southland Regional Council of a report of the Working Party if required by consent conditions numbers 004.4 and 007.6.

SPECIAL POSITION OF THE MINISTER OF CONSERVATION

- M. In terms of section 28 of RMA-91 the Minister of Conservation has the following functions:

- a the preparation and recommendation of New Zealand coastal policy statements under section 57;
- b the approval or regional coastal plans in accordance with the First Schedule;
- c the making of decisions on applications for coastal permits in relation to restricted coastal activities;
- d the monitoring of the effect and implementation of New Zealand coastal policy statements and coastal permits granted by the Minister of Conservation.

These statutory functions preclude the Minister of Conservation from fettering his discretions in any way or from being a party to any submission in respect of any application for a coastal permit. The parties to this Agreement therefore acknowledge that the Minister of Conservation is signing this Heads of Agreement and the joint submission only in respect of resource consent applications 001 to 006 for water and discharge permits. In respect of resource consent application 007 for a coastal permit, the Director-General of Conservation is signing the Heads of Agreement as joint submitter.

In the event of the application being dealt with as a restricted coastal activity the Director-General of Conservation acknowledges that in carrying out his constitutional role of giving advice to the Minister of Conservation he will not, on the basis of information presently available, and having regard to the terms of the joint submission agreed upon advise the Minister of Conservation to impose any additional conditions or advocate or call evidence seeking additional conditions in respect of resource consent application 007 for a coastal permit PROVIDED HOWEVER that should new evidence or information become available at any time prior to the grant of the coastal permit which would require the Minister of Conservation acting as consent authority to impose new and additional conditions, the Director-General shall not be constrained from advising the Minister of Conservation to impose any appropriate new conditions.

OPERATIVE PART

IN CONSIDERATION of the parties hereto consenting to the grant of the resource consent applications No.s 001 to 007 inclusive filed with the Southland Regional Council by ECNZ, and in consideration of ECNZ consenting to the various conditions on its resource consents recorded in the Schedule 1 hereto, and in further consideration of the various additional agreements and undertakings entered into between the parties hereto, IT IS AGREED between the parties:

- (i) Their interests and the interest of each of them would be provided for by the Southland Regional Council (or the Minister of Conservation in respect to application 007) granting ECNZ the resource consents applied for under

application No.s 001 to 007 inclusive subject to the conditions set out in Schedule 1 and by the five separate agreements listed and summarised in Appendix 1.

- (ii) The parties therefore consent to the grant of all consents applied for in Applications No.s 001 to 007 inclusive, subject to the conditions set out in Schedule 1.
- (iii) That the parties jointly request the Southland Regional Council to adopt the conditions set out in Schedule 1, as the conditions to apply to Resource Consents No.s 001 to 007 inclusive.
- (iv) This agreement is subject to and conditional upon the separate agreements set out in Appendix 1 being executed by the relevant parties by the date of the hearing of resource consent applications No.s 001 to 007 inclusive and the grant by the Southland Regional Council or the Minister of Conservation of the applications.

Further Terms of Agreement

1. The application for Resource Consents and conditions will be determined by the Southland Regional Council or the Minister of Conservation. This agreement records the parties' consent to the grant of the resource consents subject to the conditions set out in Schedule 1, but does not in any way purport to be a determination of that issue.
2. Any notice given under this agreement shall be in writing and delivered or transmitted as follows:

Electricity Corporation of New Zealand Limited
P O Box 930
Wellington

Minister of Conservation
% Department of Conservation
P O Box 10-420
Wellington

Director-General of Conservation
Department of Conservation
P O Box 10-420
Wellington

Federated Farmers Southland Incorporated
P O Box 176
Invercargill

Fiordland Promotion Association

Guardians of Lakes Manapouri Monowai and Te Anau
% Secretary
Department of Conservation
P O Box 743
Invercargill

New Zealand Jet Boating Association Incorporated
Secretary
Pauline Jones
35 Whitbrook Crescent
Christchurch

Te Runanga o Ngai Tahu
P O Box 13-046
Christchurch

Secretary for the Environment
% Ministry for the Environment
P O Box 10-362
Wellington

Royal Forest and Bird Protection Society Incorporated
172 Taranaki Street
Wellington

Southland Conservation Board
P O Box 173
Invercargill

Southland Electric Power Supply

Southland Fish and Game Council
P O Box 159
Invercargill

Southland District Council on behalf of the Te Anau Community Board and
Tuatapere Community Board
Forth Street
Invercargill

Te Anau Rod and Gun Club

Tuatapere and District Promotions Incorporated
 "Beaufort Downes"
 Waihoaka RD1
 Riverton
 Southland

Waiau River Action Group

Waitaha Katimamoe Kai Tahu o Murihiku
 26 Lockerbie Street
 Invercargill

or to such other address as either party shall notify to the other.

A notice given under this agreement shall be properly given and received:

- (a) When delivered by hand;
 - (b) Three days after being posted by mail with prepaid "FASTPOST" postage;
 - (c) On completion of transmission when sent by facsimile.
3. In the event of any dispute arising between the parties in respect of or in connection with this Agreement or the other agreements reached between them, the parties shall, without prejudice to any other right or entitlement they may have under this agreement or otherwise, explore whether the dispute can be resolved by use of the alternative dispute resolution technique of mediation. The rules governing such technique shall be as agreed between the parties or as recommended by the New Zealand Law Society or as selected by the Chairman of the New Zealand Chapter of LEADR (Lawyers Engaged in Alternative Dispute Resolution).

In the event the dispute is not resolved within 28 days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration under the provisions of the Arbitration Act 1908. The arbitrator shall be agreed between the parties within 10 days of written notice of the referral by the referring party to the other or failing agreement appointed by the President of the New Zealand Law Society. In either case, the arbitrator shall not be a person who

has participated in any informal dispute resolution procedure in respect of the dispute.

4. If the decision of the Southland Regional Council or the Minister of Conservation on Resource Consent Application numbers 001 to 007 inclusive includes substantially the rights and conditions in Schedule 1 and does not contain any other material conditions or restrictions then no party will appeal.
5. If the decision of the Southland Regional Council or the Minister of Conservation on the resource consent applications does not include substantially the rights and conditions in Schedule 1 or includes conditions and/or restrictions which are materially different from those set out in Schedule 1, then the parties may renegotiate this Agreement, but failing agreement within three months from the final date for lodging an appeal then this agreement is voidable at the option of any party by giving 14 days notice to all the parties.
6. If the Southland Regional Council or the Minister of Conservation grants ECNZ's application and issues resource consents substantially in terms of this Agreement then all parties to this Agreement will support the decision of the Council on appeal.
7. If the decision of the Planning Tribunal on the appeal referred to in Clause 5 above does not include substantially the rights and conditions in Schedule 1 or includes conditions and/or restrictions which are materially different from those set out in that Schedule, then the parties may renegotiate this Agreement, but failing agreement within three months from the final date for lodging an appeal against the Planning Tribunal decision, then this agreement is voidable at the option of any of the parties, by giving 14 days notice in writing to all of the parties.
8. In relation to every condition that this contract is expressed to be subject to the following shall apply unless otherwise expressly provided:
 - (1) The condition shall be a condition subsequent.
 - (2) If the condition is not fulfilled by the date for fulfilment either party may at any time before the condition is fulfilled or waived avoid this contract by giving notice in writing to the other and upon avoidance of the contract, no party shall have any right or claim against any other.
 - (3) The time for fulfilment of any condition may be extended by agreement between the parties.
9. Nothing in these Heads of Agreement nor in the subsidiary documents referred to is intended to derogate in any way from the legal rights of the parties in respect of any proposed variation of the resource consents whether that proposed variation arises by reason of an application by ECNZ or by the Southland Regional Council acting under its statutory authority.

10. Any of the signatories to this Agreement shall be entitled to assign all or any of its rights under this Agreement.
11. Additional parties may become party to this Agreement by signing pursuant to this clause after the date of this Agreement.
12. This Heads of Agreement may be executed in any number of counterparts (including facsimile copies) and provided that a party has executed a counterpart, that party will be bound by the agreement provided that it is executed by ECNZ and notwithstanding that any other party intended to sign this Heads of Agreement has not done so.

EXECUTED this 16th day of July 1996

1. SIGNED by and on behalf of
ELECTRICITY CORPORATION
OF NEW ZEALAND LIMITED
by:)
)
)
)
)

2. SIGNED by and on behalf of
MINISTER OF CONSERVATION
by: ALAN EDMONDS Deputy Director-
General of Conservation acting
under delegated authority.)

Alan Edmonds

3. SIGNED by and on behalf of
DIRECTOR-GENERAL OF
CONSERVATION by: ALAN EDMONDS
Deputy Director-General of
Conservation acting under
delegated authority.)

Alan Edmonds

4. SIGNED by and on behalf of
FEDERATED FARMERS
SOUTHLAND INCORPORATED
by:)
)
)
)
)

5. SIGNED by and on behalf of
FIORDLAND PROMOTION
ASSOCIATION
by:)
)
)
)
)

6. SIGNED by and on behalf of
GUARDIANS OF LAKES MANAPOURI
MONOWAI AND TE ANAU
by:)
)
)
)
)

7. SIGNED by and on behalf of ^{WGM}
NEW ZEALAND JET BOATING
ASSOCIATION INCORPORATED
by:

W. V. Kirby

8. SIGNED by and on behalf of
TE RUNANGA o NGAI TAHU
by:

9. SIGNED by ~~and on behalf of~~ ^{or}
SECRETARY FOR THE
ENVIRONMENT
~~by: or~~

Dorset. Cur

10. SIGNED by and on behalf of
ROYAL FOREST AND BIRD
PROTECTION SOCIETY
INCORPORATED
by:

11. SIGNED by and on behalf of
SOUTHLAND CONSERVATION
BOARD
by:

12. SIGNED by and on behalf of
SOUTHLAND ELECTRIC POWER
SUPPLY
by:

13. SIGNED by and on behalf of)
SOUTHLAND FISH AND GAME)
COUNCIL)
by:)
)
)

14. SIGNED by and on behalf of)
SOUTHLAND RESOURCE)
MONITOR GROUP)
by:)
)
)

15. SIGNED by and on behalf of)
SOUTHLAND DISTRICT COUNCIL)
ON BEHALF OF THE TE ANAU)
COMMUNITY BOARD AND)
TUATAPERE COMMUNITY BOARD)
by:)
)
)

16. SIGNED by and on behalf of)
TE ANAU ROD AND GUN CLUB)
by:)
)
)

17. SIGNED by and on behalf of)
TUATAPERE AND DISTRICT)
PROMOTIONS INCORPORATED)
by:)
)
)

18. SIGNED by and on behalf of)
WAIAMU RIVER ACTION GROUP)
by:)
)
)

19. SIGNED by and on behalf of)
WAITAHA KATIMAMOE KAI TAHU)
O MURHIKU)
by:)
)
)

SCHEDULE 1 TO HEADS OF AGREEMENTPROPOSED CONDITIONSLake Te Anau Control Structure

- 001 A water permit pursuant to Section 14 of the Resource Management Act 1991 for a term of 35 years from the date of grant of the consent to dam and divert the waters of Lake Te Anau by means of a control structure with a crest level of 208.8 metres above m.s.l. at the lake outlet, at or about Map Reference D43 944 163 NZMS 260.

Conditions001.1 Lake Levels

The Consent Holder shall comply with Guidelines for the Operation of Lake Te Anau contained in the Manapouri-Te Anau Development Act ("Operating Guidelines") Notice 1992 notified in the New Zealand Gazette dated 29 April 1993 or any subsequent amendment thereof or substitution thereof (the "Gazetted Guidelines"), except in exceptional natural circumstances or where life or structures are endangered as provided for in section 4(A)(2) of the Manapouri-Te Anau Development Act 1963.

- 001.2 The Consent Holder shall maintain in the river downstream of the Structure a flow not less than 115 cubic metres per second (cumecs) as measured at Queens Reach flow recorder.

001.2.1 If, due to low inflows into Lake Te Anau the Consent Holder considers that flows lower than 115 cumecs are necessary to be maintained in order to comply with the Gazetted Guidelines the Consent Holder may reduce flows below 115 cumecs with the prior agreement of the Chairman of the Guardians of Lakes Manapouri, Monowai and Te Anau and after consultation with the Manager, Southland Fish and Game Council and the nominee of the Chairperson of Ngai Tahu Maori Trust Board. The Consent Holder shall advise the General Manager, Southland Regional Council, prior to reducing flows below 115 cumecs.

001.2.2 The Consent Holder shall not, in any event, reduce flows below 80 cumecs, provided that, on receipt of a requirement in writing from the General Manager, Southland Regional Council, the Consent Holder shall, within the time specified in the requirement, reduce the flows in accordance with that requirement.

001.3 Native Fish Pass

The Consent Holder shall, within two years of the date of grant of this permit, on the control structure, install, operate and maintain a native fish pass designed and constructed following consultation with the Director-General of Conservation and Trustees of Te Waiiau Mahika Kai Trust.

001.4 Records

The Consent Holder shall measure and record the lake water level, relative to mean sea level Deep Cove, at a frequency not less than once every 60 minutes, and shall supply a copy of the records to the Southland Regional Council annually.

001.5 Monitoring

The Consent Holder shall implement the monitoring programme agreed with the Southland Regional Council and attached as Appendix 1, and shall supply a copy of the results to the Southland Regional Council annually.

002 "Upper" Waiiau River

A discharge permit pursuant to Section 15 of the Resource Management Act 1991 for a term of 35 years from the date of grant of the consent to discharge the waters of Lake Te Anau to the bed of the Waiiau River immediately downstream of the Lake Control Structure.

Conditions002.1 Rates of Change of Flow (for lake levels below 203.30 m. a.m.s.l.):

- (a) Subject to (b) and (c) below, the maximum rate of change of flow shall be limited to 20 cubic metres per second (cumecs) per hour.
- (b) For flows below 400 cumecs and above 180 cumecs, the total reduction in flow in any calendar day shall not exceed 30 per cent of the mean flow for the previous calendar day.
- (c) For flows below 180 cumecs, the total reduction in flow in any calendar day shall not exceed 20 per cent of the mean flow for the previous calendar day.

002.2 Flow Fluctuations

In any event the Consent Holder shall not both increase and decrease flows during the same calendar day unless unforeseen hydrological conditions require such changes to comply with the operating guidelines.

002.3 Review Clause

The Southland Regional Council may within 6 months of receiving a report from the Waiau Working Party, serve notice that it intends to review Conditions 002.1 and 002.2 of this consent in accordance with the section 128(1)(a) of the Resource Management Act 1991 for the purpose of preventing or minimising any significant adverse effect on the environment arising from the exercise of this permit which was not foreseen or reasonably foreseeable at the time of this decision and which it is appropriate to deal with at the time of the report.

002.4 Flood Rules

For lake levels above 203.3 m.a.m.s.l. the Consent Holder shall have flood rules that record the operating procedures for the structure in the event of floods. The Consent Holder shall provide the Southland Regional Council with a copy of such flood rules within six months of the date of grant of this consent.

002.5 Records

The Consent Holder shall record the rate at which water is discharged at a frequency of not less than once every 60 minutes, and shall supply a copy of such records to the Southland Regional Council annually.

002.6 Monitoring

The Consent Holder shall implement the monitoring programme agreed with the Southland Regional Council and attached as Appendix 1 and shall supply a copy of the results to the Southland Regional Council annually.

Mararoa River

- 003 A water permit pursuant to Section 14 of the Resource Management Act 1991 to dam and divert the waters of the Mararoa River for a term of 35 years from the date of grant of the consent to an artificial diversion channel at or about Map Reference D44 964 974 NZMS 260.

Manapouri Lake Control Structure

- 004 A water permit pursuant to Section 14 of the Resource Management Act 1991 for a term of 35 years from the date of grant of the consent to dam and divert the waters of Lake Manapouri and the Waiau and Mararoa Rivers by means of a structure (with a crest level of 179.2 metres above m.s.l.) near the confluence of the Waiau and Mararoa Rivers at or about Map Reference D44-960 969 NZMS 260.

Conditions

004.1 Operating Guidelines

The Consent Holder shall comply with Guidelines for the operation of Lake Manapouri contained in the Manapouri-Te Anau Development Act (Operating Guidelines) Notice 1992 gazetted in the New Zealand Gazette dated 29 April or any subsequent amendment thereof or substitution therefore (the "Gazetted Guidelines"), except in exceptional natural circumstances or where life or structures are endangered as provided for in section 4(A)(2) of the Manapouri-Te Anau Development Act 1963.

004.2 Minimum Flow

Except as provided in conditions 004.3.1 and 004.3.2 the Consent Holder shall maintain in the river downstream of the structure a flow not less than 12 cubic metres per second (cumecs) between 1 May and 30 September, not less than 14 cumecs during October and April and not less than 16 cumecs at all other times, as measured at the flow recorder downstream of the structure.

004.3 Exceptions to Minimum Flow condition

004.3.1 During the first twenty four months following the date of grant of consent, the Consent Holder shall not be obliged to comply with condition 004.2 but shall, subject to condition 004.3.2 provide the flows in condition 004.2 to the extent possible within the constraints imposed by the existing gate sill level, the Manapouri lake levels, and the flow in the Mararoa River.

004.3.2 During the first twelve months following the date of grant of the consent, the Consent Holder shall not be obliged to comply with conditions 004.2 and/or 004.3.1 for such period or periods as are necessary or requisite in order to carry out such works within the stilling basin downstream of the gates as are necessary to enable compliance with the conditions of this consent.

004.4 Review Clause

The Southland Regional Council may within six months of receiving a report from the Waiau Working Party recommending a review, serve notice that it intends to review condition 004.2 in accordance with Section 128(1)(a) of the Resource Management Act 1991, for the purposes of preventing or minimising any significant adverse effect on the environment arising from the exercise of this permit which was not foreseen or reasonably foreseeable at the time of this decision and which it is appropriate to deal with at the time of the report.

004.5 Mararoa Turbid Water

Whenever water in the Mararoa River has a turbidity greater than 30 NTU at the site referred to in condition 004.7 the Consent Holder shall discharge from the lake control structure a flow no less than the flow in the Mararoa River measured at the same site.

004.6 Native Fish Pass

The Consent Holder shall, within two years of the date of grant of this permit, on the Manapouri Lake structure, install, operate and maintain a native fish pass designed and constructed following consultation with the Director-General of Conservation and Trustees of Te Waiou Mahika Kai Trust.

004.7 Records

Within three months of the date of grant of consent, the consent holder shall measure and record the turbidity levels and flow of the Mararoa River at "Cliffs" (or such other suitable site as is agreed with the General Manager, Southland Regional Council), at a frequency of not less than once every 60 minutes and shall supply the correlated records to the Southland Regional Council annually.

004.8 Recreational Flows

The Consent Holder shall release a flow of not less than 35 cumecs for a period of 24 hours, on the fourth Sunday of each month between October and April inclusive or such alternative dates as are agreed with the Southland Regional Council, into the river below the Manapouri Lake Control Structure for recreational purposes provided that any of these two flows may be increased to not less than 45 cumecs as required by the New Zealand Jet Boat Association Southland Branch for specific events.

004.9 Other Flows

The Consent Holder shall release the following additional flows immediately below the Mararoa Weir, as follows:

- (a) Two flows per year of not less than 35 cumecs of 24 hours duration released during the months of June and August.
- (b) One flow per year of not less than 150 cumecs of 24 hours duration during the period March to May inclusive and one further such flow during the period September to November inclusive each year. These flows will be released only if necessary to ensure the mouth of the Waiou river is in the opinion of the General Manager, Southland Regional Council, sufficiently open to enable the passage of migratory fish during these periods and the Gazetted Guidelines can be complied with by the release of such flows.

004.10 Mararoa Trout/Fish Pass:

The Consent Holder shall design, in consultation with the Southland Fish and Game Council, and within three years of the date of grant of the consent, install, operate and maintain, a Borland fish pass at the Manapouri Lake Control Structure in general compliance with, and at the location on, the drawing 7/452/38 5704 sheet 1 attached as Appendix 2.

004.11 Erosion:

The Consent Holder shall:

- (a) take such precautionary measures which the General Manager, Southland Regional Council may require to prevent damage from erosion which is likely to occur as a result of the exercise of this permit; and
- (b) make such remedial repairs which the General Manager, Southland Regional Council may require to remedy damage from erosion which occurs as a result of the exercise of this permit.

004.12 Monitoring

The Consent Holder shall implement the monitoring programme agreed with the Southland Regional Council and attached as Appendix 1 and shall supply a copy of the results to the Council annually.

005 "Lower" Waiau River

A discharge permit pursuant to Section 15 of the Resource Management Act 1991 for a term of 35 years from the date of grant of the consent to discharge the waters of Lake Manapouri and the Waiau and Mararoa Rivers to the bed of the Waiau River below the Manapouri Lake Control structure.

Conditions005.1 Records

Within three months of the date of grant of the consent, the Consent Holder shall record the rate at which water is discharged at a frequency not less than every 60 minutes and supply a copy of such records to the Southland Regional Council annually.

005.2 Flood Rules

The Consent Holder shall have flood rules that record the appropriate releases from the structure in the event of floods. The Consent Holder shall provide the Southland Regional Council with a copy of such flood rules within six months of the issue of this permit.

005.3 Warning Signs

The Consent Holder shall erect and maintain signs warning of the danger of the fluctuations in the river level at points of public access to the river nominated by the General Manager, Southland Regional Council within six months of receipt of such notification.

Manapouri Power Station

- 006 A water permit pursuant to Section 14 of the Resource Management Act 1991 for a term of 35 years from the date of grant of the consent to take and use for the purposes of the Manapouri Power Scheme the waters of Lake Manapouri through intake gates at the Manapouri Power Station at West Arm at or about Map Reference S148-393 053 NZMS1.

Conditions006.1 Operating Guidelines

The Consent Holder shall comply with Guidelines for the operation of Lake Manapouri contained in the Manapouri-Te Anau Development Act (Operating Guidelines) Notice 1992 gazetted in the New Zealand Gazette dated 29 April 1993 or any subsequent amendment thereof or substitution thereof (the "Gazetted Guidelines"), except in exceptional natural circumstances or where life or structures are endangered as provided for in section 4(A)(2) of the Manapouri-Te Anau Development Act 1963.

006.2 Records

The Consent Holder shall measure and record the lake water levels relative to mean sea level Deep Cove at a frequency not less than every 60 minutes and shall supply a copy of the records to the Southland Regional Council annually.

Manapouri Tailrace and contaminants

- 007 Coastal permit pursuant to Section 15 of the Resource Management Act 1991 for a term of 35 years from the date of grant of the consent to discharge fresh water to the waters of Doubtful Sound at Deep Cove at or about Map Reference S148-291 116 NZMS1 by means of the artificial discharge channel. *W. R. Richs.*

Conditions007.1 Discharge Flow Limit

The Consent Holder shall not discharge freshwater to the waters of Doubtful Sound at Deep Cove at flows greater than 510 cumecs.

007.2 Records

Within three months of the date of grant of the consent, the Consent Holder shall measure and record the flow in cubic metres per second, at which water is discharged from the Tailrace at a frequency of not less than every 60 minutes and supply a copy of the records to the Southland Regional Council annually.

007.3 Monitoring Programme - General

The Consent Holder shall implement the monitoring programme annexed hereto as Appendix 1 and shall forward a copy of the results of that monitoring programme to the Council annually.

007.4 Quality of Water Discharged to Receiving Waters

"The receiving waters" means the waters of Deep Cove beyond the end of the tailrace berms.

The quality of the tailrace waters discharged to the receiving waters shall comply with the following water quality specification:

- 007.4.1 No sediment with a particle size greater than 0.063mm shall be discharged to the receiving waters.
- 007.4.2 The concentration of total petroleum hydrocarbons in discharges into the tailrace waters shall not exceed 15ppm.
- 007.4.3 At times other than provided for in conditions 007.4.4 and 007.5:
- (a) For a Q/q (dilution) ratio of < 100 ; the visual clarity of the tailrace water discharged shall not be less than 3.79 metres.
 - (b) For a Q/q (dilution) ratio of > 100 ; the visual clarity of the tailrace water discharged shall not be less than 4.54 metres.

Where:

- (i) Q = The tailrace flow in cumecs discharged to the receiving waters but excluding the effluent contribution, q .
- (ii) q = The effluent flow in cumecs discharged to the tailrace excluding any natural flows into which the treated effluent discharges prior to entering the tailrace.
- (iii) The visual clarity (y_{bd}) of any waters shall be that measured by the black disk method as outlined in Appendix A.2 of MfE Resource Management Water Quality Guidelines dated June 1994 No 2.

007.4.4 At times when the visual clarity of the Lyvia River in any previous and/or following 12 hour period is naturally less than 4.54 metres, the visual clarity of waters in the tailrace at that time shall not be less than that lesser visual clarity of the Lyvia River.

007.5 Quality of Water Discharged to Receiving Waters Following Station Outages

Condition 007.4 shall not apply for a period of 24 hours from the start up of the power station after an outage, provided however that the Consent Holder shall take all prior reasonable steps to avoid the discharge of any sediment during this period.

007.6 Review Clause

The Southland Regional Council may:

- a. within six months of receiving a report from the Waiiau Working Party,
or
- b. at the request of the Director-General of Conservation in the event of his failing to reach agreement with ECNZ on issues arising as a result of clause 3.2 of the monitoring programme referred to in condition 007.3

serve notice that it intends to review Conditions 007.1, 007.3, 007.4 and 007.5 of this consent in accordance with the section 128(1)(a) of the Resource Management Act 1991 for the purpose of preventing or minimising any significant adverse effect on the environment arising from the exercise of this permit which was not foreseen or reasonably foreseeable at the time of this decision and which it is appropriate to deal with at the time of the report.

007.7 Variation by Consent Holder

The Consent Holder may apply to the Southland Regional Council for a change or cancellation of condition 007.1 and 007.4, by giving notice of its intention to do so pursuant to Section 127(1) of the Resource Management Act 1991 at not less than yearly intervals from the date of grant of the consent.

APPENDIX 1 TO HEADS OF AGREEMENT

RESUME OF AGREEMENTS

1. Te Waiau Mahika Kai Trust

The objects of this Trust are:

To be expended on projects within the Waiau River catchment in recognition of the effects of the Manapouri Power Station, *primarily* for the benefit of Ngai Tahu:

- (a) To provide an accessible Mahika Kai resource within the Waiau catchment by acquisition, restoration and creation of habitats suitable for this purpose.
- (b) To act to promote, restore and enhance the social, cultural and economic relationship of Ngai Tahu with the Mahika Kai resources of the Waiau Catchment.
- (c) To undertake any research that furthers the objects of the Trust, including (but not limited to):
 - study of the migration habits of spawning adult eels (heke) in the Waiau catchment and Lake Manapouri, and appropriate means of mitigating any loss that might be found to occur;
 - study of the habitat requirements, breeding habits and appropriate harvesting methods of native fisheries, Mahika Kai plants and wildlife;
 - study of the traditional and contemporary relationship between Ngai Tahu and Mahika Kai resources of the Waiau catchment, and appropriate means of promoting, restoring and enhancing this relationship.
- (d) To identify and evaluate areas of the Waiau catchment worthy of protection, restoration, improvement, creation, or procurement primarily as fisheries, Mahika Kai plant and wildlife habitat.
- (e) To negotiate, where appropriate, the protection, restoration, improvement, creation or procurement of Mahika Kai plant, fisheries and wildlife habitat with landowners.
- (f) To disburse by way of grants such proportion of its funds each year as it considers in its sole discretion appropriate for the purpose of carrying out its functions.
- (g) To fund such measures as may be needed to sustain native fisheries, Mahika Kai plant and wildlife species and habitat, including (but not limited to) funding the implementation of any trapping and transporting measures found

necessary to sustain the eel fishery.

2. The Waiau Fisheries and Wildlife Habitat Enhancement Trust

This Trust has eight objects:

To be expended on projects within the Waiau River catchment which, together with the minimum flow regime in the conditions of consent for the Manapouri Power Scheme, will create, enhance *and maintain* habitat for *freshwater fish, and wildlife* to at least the quantity and quality which studies carried out for the Waiau Working Party have identified as being the maximum achievable, by flows of up to 30 cumecs from the Manapouri Lake Control Structure, and to facilitate public access to the enhanced Waiau River, including:

- (i) To identify and evaluate areas of the Waiau catchment worthy of protection, restoration, improvement, creation, or procurement (primarily as fisheries and wildlife habitat) and to create habitat within the Waiau catchment.
- (ii) In order to carry out the first purpose to negotiate, where appropriate, the protection, restoration, improvement, creation or procurement of fisheries and wildlife habitat with landowners and to ensure the best possible public access to fisheries and wildlife resources.
- (iii) To provide and maintain two access tracks for anglers' access in the vicinity of the Whare Creek and Redcliff Stream confluences such that advantage can be taken of the fishery.
- (iv) In accordance with the first and second purposes, to provide for the creation of additional areas of whitebait habitat on land owned by ECNZ *or held by the Minister* of Conservation adjacent to the Waiau Lagoon as identified by studies carried out for the Waiau Working Party as necessary.
- (v) To provide for any rearrangement and ongoing maintenance of the rock weir immediately below the Duncraigen Bridge identified in studies carried out by the Waiau Working Party as necessary to enhance habitat for fish and the aesthetic sense of landscape values of the river between the weir and Manapouri Lake Control at minimum flows.
- (vi) To provide for a study over 5 years of fish in Lakes Manapouri and Te Anau to determine the present state of the trout fishery and any trends.
- (vii) To provide information or facilities to enhance the understanding of the public of the values for which the Trust was established.
- (viii) Such further or other measures which, in the opinion of the Trustees, will better provide for the matters set out in sections 5(2)(a), 5(2)(c), 6(a), 6(c), 6(d), 7(a), 7(c), 7(f) and 7(h) of the Resource Management Act 1991.

3. The Tuatapere Amenities Trust

The objects of this Trust are:

In recognition of the effects of the Manapouri Power Station for the benefit of the inhabitants of the Tuatapere Community, to mitigate the perceived loss of general amenity values resulting from the reduction in flows of the Waiau River, and to provide for the creation maintenance and enhancement of amenities for the long term betterment and advantage of the people of the Tuatapere community to enable them to provide for their social, economic and cultural wellbeing, and for their health and safety.

4. The Waiau Amenities Agreement

This agreement with the Southland District Council has five main provisions:

- to mitigate the lost boat access to the lakes and upper and lower parts of the Waiau River at low levels. It is intended this be provided by undertaking such lengthening, reconstruction or relocation of existing ramps and provision of new ramps such that acceptable access is provided at all times.

The specific sites identified, in consultation with the local community, where remedial work or the provision of new ramps is needed are:

Lakes and Upper Waiau River Ramps

- | | | |
|-----|-----------------------------------------|------------------------------------|
| (a) | Te Anau Downs | Partly Reconstruct & Lengthen |
| (b) | Te Anau Public | Partly Reconstruct & Lengthen |
| (c) | Te Anau Camping Ground
(Steamer Bay) | Partly Reconstruct & Lengthen |
| (d) | Pearl Harbour Public Ramp | Lengthen |
| (e) | Queens Reach | Relocate to new site & Reconstruct |

Lower Waiau River Ramps

- | | | |
|-----|------------------|--------------------|
| (f) | Monowai | Construct new ramp |
| (g) | Tuatapere Domain | Construct new ramp |
| (h) | Te Waewae Lagoon | Lengthen |
- to provide for 2 field toilets in association with the ramp at Te Waewae Lagoon.

- to mitigate degradation of the Tuatapere water supply due to the increased turbidity of the river that has occurred with reduced flows providing less dilution of turbid tributary waters. It is intended this be achieved by providing alternative sources of supply.
- to provide for Manapouri community works which have either some past or current association with the Manapouri Power Scheme and which ECNZ considers it proper to contribute to as a good community member. Works in this category specifically identified in consultation with the local community are:
 - (a) Reconstruction of the Retaining Wall at Pearl Harbour. This was originally constructed by community groups to protect the left bank of the lower Waiau River at Pearl Harbour.
 - (b) Repainting of the Manapouri Community Hall. This was relocated from the original construction village and donated to the community by the predecessor of ECNZ.

Ongoing maintenance of the above facilities is to be provided for by the Southland District Council.

However surplus monies that might eventuate by carrying out the above works at a lesser cost may be retained by the Council for use in providing other suitable amenities in the Waiau catchment provided that this does not have the effect of reducing rates.

Provided the Heads of Agreement is not avoided by any party, ECNZ will donate the sums provided in the Trusts and Agreements for their operation.

5. Agreement between Electricity Corporation of New Zealand Limited and Federated Farmers of New Zealand Limited and the Southland Regional Council

This Agreement has the following provisions:

- fund the reasonable costs of the Council in carrying out an agreed programme of annual spraying of vegetation growth in the Waiau River flood channel from below the Mararoa Weir to the mouth of the river for the purposes of maintaining the efficiency of the flood channel in passing floodwater
- maintain or fund the maintenance of the fences between the Mararoa Weir and the mouth of the Waiau River erected as a consequence of the Manapouri Power Project in a stock proof condition, and will rebuild or repair those fences when damaged by flooding, slips or trees falling; and
- ensure the annual spraying programme, and the work needed to maintain the fences, shall be detailed in a three year rolling plan to be agreed by the parties. The plan will require that any work not undertaken in any year shall be

performed in the following year and financial provision for the same shall be carried forward and added to that succeeding year's work programme.

This Agreement will continue in force for the term of the resource consents unless a special rating district for the Waiau Catchment is established. Should the rating district come into force this Agreement shall be suspended.

The special rating district is to be established for:

- the maintenance of an effective flood channel in the Waiau riverbed from the Maroroa Weir to the river's mouth; and
- the maintenance of the fences erected as consequence of the Manapouri power project; and
- the maintenance of the corridor through which the fences pass in a vegetation free state

If the special rating district is established, then ECNZ shall pay to the Council on behalf of the land occupiers represented by the farmers:

- the sum of \$200,000.00 a year annually; and
- an additional sum at the rate of \$1.00 for every dollar collected from ratepayers in the special rating district other than ECNZ; and
- any surplus funds are to be accrued as a capital fund for disaster relief in the Waiau Catchment.

APPENDIX 1 TO PROPOSED CONDITIONS

Manapouri Power Scheme Resource Consents Monitoring Program

A. Lakes Te Anau and Manapouri

Guidelines for lake level management are overseen by the Guardians of Lakes Manapouri, Te Anau and Monowai. These guidelines are derived by monitoring aspects of the shoreline vegetation and beach morphology. Ongoing monitoring of these is necessary to allow the Guardians to continue their assessment and refinement of the guidelines.

1. Shoreline vegetation.

Objective: *To assess the effects of the lake level management regime on the shoreline vegetation of Lakes Manapouri and Te Anau.*

Methods: Monitoring will use the vegetation transects and photopoint sites established by the Guardians. Shoreline vegetation transect monitoring methods are described in Johnson (1972). Photopoints have also been installed along the lake shorelines for community comparisons over time. Shoreline transects have been established at Lake Hauroko, which acts as a "control" area for comparison between managed lake levels and natural lake levels. The monitoring transects established by these earlier surveys are a suitable baseline for ongoing monitoring.

Re-measurement of selected transects in Lakes Manapouri, Te Anau and Hauroko will occur within 5 years after grant of consents, and at 5 year intervals thereafter. Re-measurement of selected transects will also occur if the high-level lake operating guidelines are exceeded ("event-driven" monitoring).

For "event-driven" monitoring surveys of the shoreline vegetation of the lakes, the number of transects and/or photopoints may vary, at the recommendation of the Guardians, depending on the nature and extent of the "event".

Reference: Johnson, P.N. 1972. Applied ecological studies of shoreline vegetation at Lakes Manapouri and Te Anau, Fiordland. Part 1: Vegetation of Lake Manapouri shoreline. Proceedings of the New Zealand Ecological Society 19: 120-142.

2. Beach sediments

Objective: *To assess the effects of the lake level management regime on the beach stability of Lakes Manapouri and Te Anau.*

Methods: Beach sediment monitoring has been carried out using 89 shoreline monitoring sites established by Pickrill (1976). Ongoing monitoring will utilise these sites, but the number of sites may be refined down to those which are most likely to reveal trends in beach

sediment movement and beach stability. Dr R.M. Kirk (pers comm) has recommended that approximately 40 of the 89 sites would be appropriate to identify and quantify long-term trends in shoreline change. Concurrent monitoring of selected sites in Lake Hauroko will also occur if deemed necessary by the Guardians. Monitoring will be supplemented with photographic records made at the time of each survey.

Re-measurement of the selected shoreline monitoring sites in Lakes Manapouri and Te Anau and Hauroko will occur within 5 years after grant of consents, and at 5 year intervals thereafter. Re-measurement of selected monitoring sites will also occur if the lake operating guidelines have been exceeded ("event-driven" monitoring).

For "event-driven" monitoring surveys the number of shoreline monitoring sites may vary, at the recommendation of the Guardians, depending on the nature and extent of the "event".

Reference: Pickrill, R.A. 1976. Lacustrine geomorphology of Lakes Manapouri and Te Anau. Unpublished PhD thesis, University of Canterbury. 402pp.

3. Littoral macrophytes

Objective: *To assess the effects of the lake level management regime on the aquatic macrophytes of Lakes Manapouri and Te Anau.*

Methods: There are 30 established macrophyte transects on Lake Manapouri, and 33 on Lake Te Anau. These transects, or an appropriate sample of them (as recommended by the expert engaged) will be re-measured within 5 years after grant of consents, and at 5 year intervals thereafter.

Re-measurement of selected transects will also occur if the low-level guidelines have been exceeded ("event-driven" monitoring). For "event-driven" monitoring surveys the number of transects may vary, at the recommendation of the Guardians, depending on the nature and extent of the "event". Assessments will include species diversity, cover frequencies and biomass. As a control measure, each 5 year and "event driven" monitoring survey will include concurrent monitoring of established transects in Lake Hauroko.

B. Control Structures

1. Fish passage

Objective: *To monitor the numbers of native and introduced fish passing upstream through installed fishpasses.*

Methods: Structures will be installed on the Mararoa weir for upstream native and introduced fish passage. A native fishpass will be installed on the Te Anau Control Structure. Provision for counting fish will be included in the design. In the event that monitoring demonstrates that adequate fish passage has not been achieved then ECNZ and the parties will discuss and implement other remedial measures.

2. Eel recruitment

Objective: *To monitor eel recruitment in the Upper Waiau catchment (ie above the Mararoa weir).*

Methods: Elvers returning from the sea have difficulty in negotiating the Mararoa weir. Consequently, most eels found upstream of it are older than the structure itself. A monitoring baseline assessing the age structure of eels above and below the weir has been established by Mitchell and Davis-Te Maire (1994). The age structure of eels will be reassessed within 5 years after grant of consents, and at 5-yearly intervals thereafter. This would require capture of younger aged eels from riffle areas of the Mararoa river, and a comparison with eels caught from riffle areas in Excelsior reach of the Lower Waiau, using electric fishing. Aging of young eels can be done by sectioning otoliths and counting their annual rings. Liaison with Kai Tahu and commercial eels fishermen may assist with gaining samples of young eels.

Reference: Mitchell, C.P.; Davis-Te Maire, K.T.A. 1994. Mahingakai values of the Waiau river.

Report to ECNZ, 1994.

3. Upper Waiau River periphyton and macrophytes

Objective: *To assess the effects of the refined flow regime on periphyton and macrophytes in the Upper Waiau River.*

Methods: For periphyton and macrophyte monitoring, up to 5 transects will be selected in different habitat types (as recommended by the expert engaged, and with agreement with the Southland Regional Council). Transects will be reassessed within 5 years after grant of consents, and at 5-year intervals thereafter. Re-measurement of transects may also occur after 7 consecutive days with flows of less than 115 cumecs ("event-driven" monitoring).

For macrophytes, assessments of species diversity, cover frequencies and biomass may be made. Periphyton analysis may include ash-free dry weight, chlorophyll-a and species composition.

C. Lower Waiau River

1. Trout

Objective: *To monitor trout densities in the Lower Waiau River, upstream of the Monowai confluence, when the new flow regime has been established.*

Methods: Annual drift diving assessments of trout abundance have been made along the three transects in the Lower Waiau river, as established by Jowett (1993). A further transect, established at Sunnyside will also be remeasured. These will be used as a baseline for ongoing monitoring for the next 5 years. The transects for drift diving will therefore be: (i) Excelsior reach (ii) Redcliffs reach (iii) Blackmount reach (iv) Sunnyside.

There will also be angler surveys carried out on the Lower Waiau River to assess catch rates, species composition and qualitative measures such as "the angling experience".

Reference: Jowett, I.G. 1993. Minimum Flow Requirements for Instream Habitat in the Waiau river, Southland, from the Mararoa Weir to the Borland Burn.
Report to the Waiau River Working Party, Southland Regional Council, Invercargill.

2. Native fish

Objective: *To monitor native fish densities in the Lower Waiau River, upstream of the Monowai confluence, when the new flow regime has been established.*

Methods: Suitable sampling sites, representative of native fish habitats in the river, will be established on the advice of a suitable specialist, and agreed with the Southland Regional Council. These sites will be sampled at annual intervals for 5 years. Electric fishing and/or seine netting methods could be used.

3. Periphyton and macroinvertebrates

Objective: *To monitor periphyton and macroinvertebrates in the Lower Waiau River, upstream of the Monowai confluence, when the new flow regime has been established.*

Methods: Periphyton sampling has been carried out on the Lower Waiau river by NIWA (Biggs 1993). It is envisaged that the transects and methods used by Biggs (1993) would be used as a baseline for periphyton and macroinvertebrate monitoring. An extra monitoring transect will be installed near the Duncraigen bridge, to assess the "lake outlet" characteristics expected to be exhibited at this site. All sites will be re-measured annually for the next 5 years. Re-measures will occur during the same time of year (February) as Biggs (1993). Periphyton analyses may include ash-free dry weight, chlorophyll-a and species composition. For macroinvertebrates, monitoring sites and methods will be selected by the expert engaged, and agreed with the Southland Regional Council. Analyses may include species composition, numbers and biomass.

Reference: Biggs, B.J.F. 1993. Report on Periphyton and invertebrate communities in the Waiau River, February 1993.
Report to the Waiau River Working Party, Southland Regional Council, Invercargill.

4. Birds

Objective: *To assess the riverine bird density and distribution in the Lower Waiau river after the new flow regime has been established.*

Methods: A baseline survey of birds associated with the Lower Waiau river has been undertaken by Sagar (1994). Monitoring of riverine birds in the Lower Waiau will continue, during the same season (the breeding season, October-December), post-breeding (March-April), and Winter (June-July) seasons, using the same sites and methods used by Sagar (1994). This will be done annually for 5 years, and then reviewed.

Reference: Sagar, P.M. 1994. Aquatic birds of the Waiau river November 1993 and March 1994.

Report to the Waiau River Working Party, Southland Regional Council, Invercargill.

D. Channel morphology

1. Upper Waiau River

Objective: *To continue to measure the amount of riverbank erosion in the Upper Waiau river, after establishment of the refined flow regime.*

Methods: Two "peglines" were installed in the Upper Waiau river in 1983. These were at Rainbow Reach and "Village Pond". Re-establishment of the Rainbow Reach pegline will be necessary. Offset measurements of the peglines will enable the magnitude of erosion to be assessed annually, and after flows in excess of 800 cumecs (approximately 10 year return period).

2. Mararoa confluence and Home Creek delta

Objective: *To periodically survey the Mararoa and Home Creek deltas.*

Methods: For the Home Creek delta, Mills and Freestone (1992) recommended that cross section numbers 43, 44 and 45 be re-surveyed. For the Mararoa river confluence the recommended cross sections are numbers 1 to 13, and then the even numbered sections from 14 to 42.

These cross section transects will be reassessed within 5 years after grant of consents, and at 5-year intervals thereafter.

Reference: Mills, G.W.; Freestone, H.J. 1992. Manapouri lake control. April 1992 cross section survey.
Works Consultancy Services report.

3. Lower Waiau River

Objective: *To continue to measure changes in erosion and accretion in the Lower Waiau River after the establishment of the new flow regime.*

Methods: The monitoring program will require an initial resurvey of the 11 existing transects installed by Duffil Watts and King in the Te Waewae reach of the Waiau river below Tuatapere, and the establishment of two additional transects immediately downstream of the Wairaki and Lillburn confluences respectively. The survey will be a topographical resurvey of the channel and the immediate margins of the river fairway where changes in bed level have been seen to occur. A photographic record will provide a comparison with the previous photographic baseline taken. For the new transects, installation will include:

- (i) Permanent marking of transects.
- (ii) Survey of the transects to establish a baseline.
- (iii) Provision of a photographic record.

Future re-surveys will occur within 5 years after grant of consents, and at 5-year intervals thereafter. Re-surveys will also be undertaken after flows of greater than 1200 cumecs, as

measured at the Mararoa weir. These are considered by Brierley (1994) to be channel-forming flows.

4. Aerial photography

Objective: *To monitor the channel morphology in the Lower Waiau River and its response to the new flow regime.*

Methods: The existing aerial photographic survey of the Lower Waiau river channel will be updated within 5 years after grant of consents, and at 5-year intervals thereafter. Re-surveys will also be undertaken after flows of greater than 1200 cumecs, as measured at the Mararoa weir. These are considered by Brierley (1994) to be channel-forming flows. Tracings of the main tributary confluences and the lowland plain will be taken to record any changes.

Reference: Brierley, G.J. 1994. Channel adjustments along the Waiau River, 1946-1992: Assessment of the impacts of flow regulation. Report to the Waiau Working Party, Southland Regional Council, Invercargill.

Monitoring the Marine Environment of the Doubtful Sound System

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Report prepared for:
Electricity Corporation of New Zealand

Information contained in this report should not be used without prior consent of the client

1.0 Introduction

- 1.1 The purpose of this report is to describe the plan for monitoring the marine environment of the Doubtful-Thompson-Bradshaw Sounds system (the Doubtful Sound System) in order to meet ECNZ's obligations in terms of the proposed consent conditions for the ongoing operation of the Manapouri Power Station. The monitoring programme is designed to meet these obligations by (i) gathering sufficient information to confirm and, where appropriate, establish the current environmental condition of the Doubtful Sound system and a reference fiord (Milford Sound), and (ii) monitoring the environmental condition of the Doubtful Sound system and the reference fiord over the term of the resource consents and reporting any changes in the marine environment of Doubtful Sound system resulting from the ongoing operation of the Manapouri Power Station.
- 1.2 The monitoring programme covers the initial period of seven years from the grant of consents. Any change or extension to this programme will be in accordance with the provisions of consent condition 7.6.

2.0 Monitoring Objectives and Techniques

2.1 Monitoring Key Physical Parameters

2.1.1 Objectives

The objectives of this aspect of monitoring are to:

- (i) Improve our understanding of how the (Low Salinity Layer) LSL of Doubtful Sound and the reference fiord responds spatially and temporally to changes in freshwater input from rainfall and, in the case of Doubtful Sound, Power Station discharge.
- (ii) Generate a database of physical characteristics of the LSL which, together with the data collected as part of the biological monitoring (see section 2.2), can be used to assess the effect of continued Power Station discharge on the biological communities of Doubtful Sound.

2.1.2 Basic methodology

To meet these objectives monitoring will involve:

- (i) Recording continuously key physical parameters of the LSL at four sites in the Doubtful Sound system and one site in the reference fiord.
- (ii) Conducting periodic synoptic surveys (i.e., surveys that provide a large-scale overview) of LSL characteristics of both the Doubtful Sound system and the reference fiord.
- (iii) Conducting a series of synoptic surveys of LSL characteristics of the Doubtful

Sound system as soon as practicable after a storm event equivalent to or greater than a five year return period storm event.

- (iv) Collecting time series of rainfall, air temperature, wind speed and direction for the Doubtful Sound system and the reference fiord over the period of continuous monitoring.

2.1.3 Continuous monitoring

- (i) Instrumented moorings will be deployed at five sites:
 - Deep Cove
 - a central site in Doubtful Sound
 - a central site in Thompson Sound
 - a central site in First Arm
 - a central site in the reference fiord
- (ii) All moorings will be equipped with Temperature-Conductivity (T-C) chains which will record temperature and salinity at twelve discrete depths in the upper 25 m. Additionally, at the Deep Cove site, current speed and direction will be recorded at 4 and 25 m depths with current meters and light levels will be recorded at 3 and 24 m depths with submarine light sensors. All sampling will be at intervals of not more than one hour.
- (iii) At the commencement of the monitoring programme all instrumented moorings will be deployed. During monitoring the instruments will be recovered, serviced and all data downloaded at periods not greater than three months.
- (iv) The outcome of continuous monitoring of physical parameters will be a detailed, long-term database of the physical characteristics of the LSL at specific sites in the Doubtful Sound system and the reference fiord that can be related to weather events and Power Station discharge, as well as to information from biological monitoring.

2.1.4 Synoptic surveys

- (i) The spatial variability of the LSL will be assessed in conjunction with the servicing of the moored instruments by measuring temperature, salinity and light levels using a CTD and submarine light meter between the surface and 50 m depth at six sites in Doubtful Sound, one site in each of First Arm, Crooked Arm and Hall Arm, four sites in Thompson Sound and one site in Bradshaw Sound. These parameters will also be measured at four sites along the length of the reference fiord.
- (ii) The outcome of the synoptic surveys of physical parameters will be a long-term series of seasonal overviews of the Doubtful Sound system and the reference fiord that can be used to more fully characterise the physical state of the LSL throughout these fiords over a period of many years.

2.1.5 Post-storm surveys

- (i) A daily series of synoptic surveys of the temperature, salinity, and light levels of the LSL using a CTD and submarine light meter will be carried out at the 14 sites in the Doubtful Sound system used for the synoptic surveys (see section 2.1.4) as soon as practicable after the commencement of a storm event equivalent to or greater than a five year return period storm. No more than one post-storm survey will be conducted per annum. If a post-storm survey is not initiated during the first three years of monitoring, then such a survey will be initiated after a storm of a lesser magnitude.
- (ii) The outcome of post-storm synoptic surveys of physical parameters of the Doubtful Sound system will be a database leading to a better understanding of the influence of major storm events on the physical features of the LSL.

2.1.6 Weather monitoring

A continuous time series of hourly rainfall, air temperature and wind speed and direction recorded at the permanent weather stations on Secretary Island, Doubtful Sound and at Milford Sound airport will be obtained. Freshwater discharge rates from Manapouri Power Station will be acquired from ECNZ.

2.2 Monitoring Key Biological Parameters

2.2.1 Objectives

The objectives of this aspect of monitoring are to:

- (i) Obtain quantitative baseline information on the present distribution and species composition of the intertidal and shallow subtidal encrusting rock wall communities in the Doubtful Sound system and the reference fiord.
- (ii) Generate a database of information on the long-term health and status of black coral colonies in the Doubtful Sound system and the reference fiord.
- (iii) Generate a database of information on spatial and temporal variation in primary production in the Doubtful Sound system and the reference fiord.
- (iv) Show experimentally that the observed patterns of species distribution of the encrusting rock wall communities, as determined during monitoring, are linked to long-term fluctuations of the LSL, and to provide data on biologically relevant salinities for fiord communities.

2.2.2 Basic methodology

To meet these objectives monitoring will involve:

- (i) Conducting an annual quantitative survey of intertidal communities in the Doubtful Sound system and the reference fiord.

- (ii) Conducting an annual quantitative survey of encrusting rock wall subtidal communities in the Doubtful Sound system and the reference fiord.
- (iii) Monitoring annually the status of tagged black coral colonies in the Doubtful Sound system and the reference fiord.
- (iv) Conducting a synoptic survey of chlorophyll a levels and distribution in both the Doubtful Sound system and the reference fiord in conjunction with servicing of the moored instruments.
- (v) Monitoring at the same time as the post-storm survey of physical parameters the status of black coral colonies and other biota in the Doubtful Sound system to capture the immediate effects of severe flood events on fiord biota.
- (vi) Conducting a controlled transplantation experiment at four sites in Doubtful Sound, together with a companion laboratory experiment, in the first year of the monitoring programme.

2.2.3 Monitoring the intertidal community

- (i) The intertidal communities at 10 permanently marked sites in the the Doubtful Sound system and at four permanently marked sites in the reference fiord will be monitored. These sites will be located in close proximity to sites where periodic monitoring of physical parameters takes place.
- (ii) The sites will be surveyed quantitatively once a year in February at spring low tides using a video camera in an underwater housing and a stratified random design.
- (iii) The outcome of intertidal monitoring will be a long-term database that can be used to characterise intertidal communities in the Doubtful Sound system and the reference fiord, detect any changes in the structure of these communities over time, and relate these to any changes in the physical aspects of the LSL.

2.2.4 Monitoring the encrusting rock wall subtidal community

- (i) The subtidal communities will be monitored quantitatively once a year in February in the Doubtful Sound system and the reference fiord at the same sites as where intertidal monitoring will be conducted. At each site the biota in a strip along seven randomly allocated vertical transects will be recorded using an underwater video camera from the surface to a depth of 20m.
- (ii) The outcome of subtidal monitoring will be a long-term database that can be used to characterise the structure of subtidal encrusting rock wall communities in the Doubtful Sound system and the reference fiord, detect any changes in the structure of these communities over time, and relate these to any changes in the physical aspects of the LSL.

2.2.5 Periodic monitoring of black coral colonies

- (i) The health of black coral colonies will be monitored at each of the sites used for intertidal and subtidal monitoring. Ten black coral colonies over a range of sizes (lower limit of 100 mm in height) will be tagged at each site using plastic cable ties and labels. Thus a total of 100 colonies will be tagged in the Doubtful Sound system and 40 in the reference fiord. At each site, the shallowest colonies observed will be tagged. Once a year in February the height of each colony will be measured using a flexible tape, following the curves of the major branch axis, and distinguishing features of each colony will be recorded (eg, general appearance or "health", presence of encrusting organisms, presence of symbiotic snake stars). A video image of each colony will also be recorded.
- (ii) The outcome of black coral monitoring will be a long-term database on the status of a large number of individual black coral colonies in both the Doubtful Sound system and the reference fiord that can be related to the physical aspects of the LSL.

2.2.6 Synoptic survey of pelagic primary production

- (i) The spatial variability of chlorophyll a levels between the surface and 50 m depth will be assessed in conjunction with the servicing of the moored instruments using a pigment sensor mounted on a CTD at the same sites to be used for the synoptic survey of physical characteristics of the LSL (see section 2.1.4).
- (ii) The outcome of the synoptic surveys of chlorophyll a will be a long-term series of seasonal overviews of pelagic primary production in the Doubtful Sound system and the entire reference fiord that can be related to physical aspects of the LSL.

2.2.7 Post-storm survey

- (i) In conjunction with the post-storm surveys of the LSL (see section 2.1.5), a representative sample of the tagged black coral colonies in the Doubtful Sound system will be examined, noting information on their general appearance and recording a video image of each colony. In addition, incidental information will be gathered on other coral colonies observed during the course of this work, as well as on the distribution and health of other representative biota.
- (ii) The outcome of post-storm surveys of biota will be a database leading to a better understanding of the influence of major storm events on the health and distribution of black corals and other organisms.

2.2.8 Controlled transplantation and laboratory experiment

Two representative species of the stenohaline fiord rock wall community (the brachiopods *Magasella sanguinea* and *Neothyris lenticularis*) will be exposed to fluctuations in the LSL by controlled transplantation at four sites in Doubtful Sound. Paired sites (one on either side of the fiord) will be located as close as

possible to moored instrument arrays so that the data from the arrays can be used to determine the salinities to which the experimental animals were exposed. Individuals of each species will be placed in a random stratified design down the rock wall at each site at depths from 0-20m. Individuals will also be placed back at the depth from which they were collected as controls. The transplanted animals will be monitored after 2, 4, 12, 25 and 56 weeks. It is expected that those individuals transplanted to the shallowest depths will survive for only a short period of time whereas the length of survival of those at deeper depths will depend on the frequency of LSL incursions to those depths. A companion laboratory experiment will control for the possible confounding effects of depth with salinity. Individuals of the same two species will be subjected to a range of salinity regimes in the laboratory and their survival monitored. Survival in full-strength seawater will mean that depth *per se* has no effect. The salinities at which death occurs in the laboratory will be correlated with data from the field experiments and moored instruments.

3.0 Reporting and Analysis

- 3.1 An annual report will be prepared each year. This report will present the data collected as part of the monitoring programme and a summary of the results in achieving the objectives of the programme.
- 3.2 At the end of the first year of the programme, a power analysis will be undertaken to determine the sensitivity of the biological monitoring work then completed. The results of the power analysis, together with any suggestions for modifications or refinement of the work, if any seem necessary, will be reported to the Department of Conservation and ECNZ. If agreement is not reached on the significance of the power analysis and the utility of the suggestions made for change, the Southland Regional Council may serve notice that it intends to consider the need for any change or variation in consent conditions pursuant to the power proposed for it under proposed condition 007.6.
- 3.3 The first two annual reports will concentrate on presenting the data gathered and relevant observations. The third and subsequent reports will present the data and provide sound interpretation. The results of the controlled transplantation and laboratory experiments will be presented in the second annual report.
- 3.4 Data from physical monitoring will be used to formulate an empirically derived relationship between rainfall, Power Station discharge and depth and mean salinity of the LSL in the Doubtful Sound system and the reference fiord.
- 3.5 For each video image obtained during intertidal and subtidal monitoring the number of species and the percent coverage of dominant species will be determined. Species abundance and species diversity within each depth stratum will be calculated and patterns of species diversity contoured and related to information on the physical nature of the LSL. A time series of observations and video images obtained from black coral monitoring will be assembled and any changes in the status and health of black coral colonies related to changes in the physical nature of the LSL.
- 3.6 All data and images will be quality controlled and archived permanently on computer

or video tape in the Department of Marine Science to allow for future analysis and, in the case of images, direct visual comparisons.

DATED 8 January

1997

PARTIES

1. ELECTRICITY CORPORATION OF NEW ZEALAND LIMITED

("Settlor")

2. MARK JOSEPH FRANCE
MICHAEL ROY KEDIAN
EDWARD GEORGE RYAN
MURRAY LOUIS ACKER
JANE RUBY KARINA DAVIS

("Trustees")

TE WAI AU MAHIKA KAI TRUST

ANN CALLAGHAN
SOLICITOR
WELLINGTON

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PARTICULARS

Definitions

Unless the context otherwise requires, in this Trust Deed:

- A "consensus" means a process whereby the parties, before voting on the resolution, are required to thoroughly discuss the issue and try and obtain an indication as to whether there will be an agreement or not to the resolution between the resolution is formally put.
- B "the Trustees" means the Trustees appointed hereunder and their successors in office for the time being and "the Board" shall have a corresponding meaning;
- C "the Trustee" also means the member of the Board;
- D "the trust fund" means and includes the funds and moneys and investments for the time being representing the same which funds, moneys and investments together with all or any property real or personal and all other assets which are paid assured, set over or transferred to the Trustees at the time of constitution of this Trust and all moneys and other assets received subsequently by the Trustees and the income derived from their investment.
- E Words importing the singular number shall include plural and the masculine gender and feminine or neuter and vice versa and words importing persons shall include companies. Any covenants or agreements on the part of two or more persons shall be deemed to bind them jointly and severally.

1. THE TRUST NAMETE WAIAMAU MAHIKA KAI TRUST2. THE TRUST DATE 8 January 19973. THE SETTLORELECTRICITY CORPORATION OF NEW ZEALAND LIMITED a duly incorporated company having its registered office at Wellington4. THE FIRST TRUSTEES

- | | | |
|---|------------------------------------------|-----------------------------------------------------------------------------|
| 1 | MARK JOSEPH FRANCE
MICHAEL ROY KEDIAN | the nominees of the Electricity
Corporation of New Zealand Limited |
| 2 | EDWARD GEORGE RYAN
MURRAY LOUIS ACKER | the nominees of Te Runanga o Ngai
Tahu |
| 3 | JANE RUBY KARINA
DAVIS | the nominee of Te Runanga o Ngai
Tahu who shall be the first Chairperson |

BACKGROUND

1. The Electricity Corporation of New Zealand Limited operates the Manapouri Power Station under the provisions of the Manapouri Te Anau Development Act 1963 ("MTADA").
2. Section 4(1)(a)(i) MTADA provides that the Electricity Corporation of New Zealand Limited shall have full power and authority to erect, construct, provide, use and operate all works, appliances and conveniences which may be necessary or requisite for or in relation to the utilisation of water power from the water resources of Lakes Manapouri and Te Anau the Waiau and Mararoa rivers and their tributaries.
3. In addition, there is the power to raise or lower the levels of Lakes Manapouri and Te Anau, and the Waiau and Mararoa Rivers and their tributaries which are deemed consents to take and use water under the Resource Management Act 1991, subject to operating guidelines, which are deemed conditions of these consents.
4. Subject to the provisos in sections 4A(2) and (5) of the MTADA, this Act allows the Electricity Corporation of New Zealand Limited to carry out activities which would otherwise require resource consents under the Resource Management Act 1991 ("RMA"). However, the RMA deems ECNZ's uses of water to be water coastal and discharge permits which expire on 1 October 2001. The RMA requires that the application for the permits to continue these uses of water consider inter alia the avoidance, remedying or mitigation of adverse effects on the environment.
5. ECNZ is of the view that, for the renewal of permits of the scope and significance of these, a broad consultation programme is not only appropriate, but essential.
6. To that end, the Electricity Corporation of New Zealand Limited initiated the establishment of the Waiau Working Party in April 1990 to study the effects of hydro-electric power generation on the environment.
7. For a period of almost six years, the parties and other members of the Waiau Working Party have held meetings and commissioned a number of reports to consider the environmental, recreational, social, cultural and economic values and opportunities of the Waiau River catchment resource.
8. The Parties have identified a series of provisions and conditions for ECNZ's resource consents which they believe provide acceptable recognition of the various values and opportunities and mitigate the adverse effects of ECNZ's operations and represent an acceptable outcome by retaining or enhancing the values identified while recognising the importance of the use of the resource for the operation of electricity.

9. The matters which all parties to the Waiau Working Party consultation process have agreed should be conditions on the resource consents have been included in a Heads of Agreement dated the 16th day of July 1996 ("Heads of Agreement") and will be included in a joint submission. This will be forwarded to the Southland Regional Council as a recommendation which will ask the Southland Regional Council to adopt these conditions for ECNZ's resource consents.
10. Ngai Tahu members of the Waiau Working Party have identified as concerns:-
- (i) effects on Mauri of the Waiau River;
 - (ii) impeded access for the eel population of the Waiau catchment because of the Manapouri Power scheme, for both upstream and downstream migration;
 - (iii) a general reduction in Mahika Kai areas and opportunities in the lower part of the Waiau River due to changes in land use and reduction of flows.

It is intended to remedy (i) and (ii) above through the joint submission, by providing for restoration of flow and provision of fish passage as conditions of consent. Te Runanga o Ngai Tahu and ECNZ have agreed that the general Mahika Kai concerns in (iii) above are better addressed by the establishment of this trust than by measures which could be incorporated formally as conditions of the resource consents.

11. Therefore, the Electricity Corporation of New Zealand Limited and Te Runanga o Ngai Tahu have agreed that to remedy these concerns ECNZ will, provided water coastal and discharge permits are granted in accordance with the joint submission of the Waiau Working Party, and clauses 5 and 7 of the Heads of Agreement are not avoided by any party thereto, settle a capital sum on trust with the objects of providing an accessible Mahika Kai resource by acquiring, restoring, protecting and enhancing suitable mahinga kai sites within the Waiau Catchment, and to study the migration habits of spawning adult eels (heke) in Lake Manapouri and subsequently to fund the trapping and transporting of adult eels where necessary to sustain the eel fishery.
12. It is desirable that for the purpose of administering such Trust a Board of Trustees be created with powers, authorities and discretions appropriate to the purpose.
13. ECNZ and the Trustees who have signed this deed have agreed to enter into this deed specifying the objects of the Trust and providing for its control and government.

1.0 THE TRUST

1.1 Date

This Deed of Trust is made on the trust date between the Settlor and the Trustees.

1.2 Definition

The terms defined or details given in the particulars shall have that meaning throughout this Deed of Trust.

1.3 Initial Amount Settled

The Settlor wishes to create a trust ("the Trust") and has paid to the Trustees the sum of ten dollars (\$10.00) to constitute the initial Trust Fund.

2.0 TRUST FUND

2.1 Receipt

The Trustees acknowledge receipt of the sum of ten dollars (\$10.00) paid by the Settlor.

2.2 Declaration of Trust

The Trustees declare that they hold the sum of ten dollars (\$10.00) together with all other property and investments which may be added to it by way of capital or income ("the Trust Fund") upon the trusts set out in this Trust Deed.

3.0 OBJECTS OF TRUST

3.1 The Settlor directs and the Trustees declare that the Trustees hold the Trust Fund upon the following trust to be used to further the following charitable purposes and objects with the intent that the Trust Fund shall be expended on projects within the Waiau River catchment in recognition of the effects of the Manapouri Power Station:

- (a) To provide an accessible Mahika Kai resource within the Waiau catchment by acquisition, restoration and creation of habitats suitable for this purpose.
- (b) To act to promote, restore and enhance the social, cultural and economic relationship of Ngai Tahu with the Mahika Kai resources of the Waiau Catchment.

- (c) To undertake any research that furthers the objects of the Trust, including (but not limited to):
- study of the migration habits of spawning adult eels (heke) in the Waiau catchment and Lake Manapouri, and appropriate means of mitigating any loss that might be found to occur;
 - study of the habitat requirements, breeding habits and appropriate harvesting methods of native fisheries, Mahika Kai plants and wildlife;
 - study of the traditional and contemporary relationship between Ngai Tahu and Mahika Kai resources of the Waiau catchment, and appropriate means of promoting, restoring and enhancing this relationship.
- (d) To identify and evaluate areas of the Waiau catchment worthy of protection, restoration, improvement, creation, or procurement primarily as fisheries, Mahika Kai plant and wildlife habitat.
- (e) To negotiate, where appropriate, the protection, restoration, improvement, creation or procurement of Mahika Kai plant, fisheries and wildlife habitat with landowners.
- (f) To disburse by way of grants such proportion of its funds each year as it considers in its sole discretion appropriate for the purpose of carrying out its functions.
- (g) To fund such measures as may be needed to sustain native fisheries, Mahika Kai plant and wildlife species and habitat, including (but not limited to) funding the implementation of any trapping and transporting measures found necessary to sustain the eel fishery.
- 3.2 The objects or purposes of this Trust are or shall be charitable as approved by the Commissioner of Inland Revenue and shall be deemed not to include or extend to any matter or thing which is or shall be held or determined to be non-charitable and the powers and purposes of the Board and trusts hereby created shall be so restricted.
- 4.0 NAME OF TRUST
- 4.1 The name of the Trust shall be the TE WAI AU MAHIKA KAI TRUST.
- 5.0 INCORPORATION
- 5.1 The Trustees shall as soon as practicable apply for incorporation of the trustees as a board under the Charitable Trusts Act 1957.

6.0 TRUSTEES

- 6.1 The Board of Trustees ("the Board") shall consist of not less than five nor more than seven Trustees.
- 6.2 The five persons who have executed this Deed as Trustees shall be deemed to have been nominated by the above nominating bodies to be the initial Trustees and members of the Board, and Chairperson respectively appointed for an initial term of three years.
- 6.3 Unless otherwise specified in this deed each member of the Board shall hold for office for a term which he or she is appointed or until she or he dies or is declared bankrupt or is subject to a property order made under section 30 or 31 of the Protection of Personal and Property Rights Act 1988 or an order is made under Part II Mental Health Compulsory Assessment and Treatment Act 1993 or indicates in writing that she or he wishes to resign from the Board or their appointment is terminated in accordance with clause 6.7. Any retiring member shall be eligible for re-appointment. All Trustees shall remain in office (except as set out above) until their successor is appointed.
- 6.4 The following bodies shall have the power to appoint Trustees and the Chairperson after the initial term of three years, as follows:
- 6.4.1 Two Trustees nominated and appointed by Te Runanga o Ngai Tahu or its successor for a term of three years;
- 6.4.2 Two Trustees nominated and appointed by ECNZ or its successor for a term of three years.
- 6.4.3 From among the Trustees appointed by Te Runanga o Ngai Tahu at the same time under 6.4.1, a chairperson nominated and appointed by the same Board or its successor for a term of three years.
- The above shall continue to have a right of nomination subject to any other provision to the contrary in this deed for further periods of three years each.
- 6.5 The bodies specified in clause 6.4 shall be known in this Trust Deed as the "nominating bodies".
- 6.6 In selecting a Trustee or Trustees as the case may be each nominating body shall have regard to that person's knowledge, experience and understanding in one or more of the following areas:
- (i) habitat restoration;
 - (ii) mahika kai;
 - (iii) Ngai Tahu resource management practice and tikanga;
 - (iv) environmental management;
 - (v) water quality;
 - (vi) native freshwater fisheries;

- (vii) education and social development;
 - (viii) financial management;
 - (ix) strategic planning.
- 6.7 Each nominating body may at any time and from time to time by notice in writing to the other Trustees terminate the appointment of any Trustee it has nominated and appoint another person to be a Trustee.
- 6.8 If any of the nominating bodies listed in clause 6.4 or nominated under clause 6.9 shall cease to exist or be dissolved and a person or body succeeds to their assets duties and responsibilities, then the right to nominate a Trustee shall pass to the person or body who succeeds to the majority of their assets, duties and responsibilities, provided however that if no such succession occurs then the Settlor shall appoint a replacement Nominating Body.
- 6.9 The Trustees shall have the power to appoint for any reason they see fit another nominating body which shall have the same powers in respect of Trustees as if it had been listed as a nominating body in clause 6.4.
- 6.10 The filling of vacancies on the Board shall be in the case of retirement or termination of the appointment of the members of the Board appointed by nominating bodies, by appointment by the same nominating bodies.
- 6.11 A Trustee of the Board holding office under clause 6.3 or 6.4 may with the consent in writing of their nominating body by notice in writing given to the Secretary of the Board appoint another person to act as proxy either for a particular meeting or for a particular period and any such appointment by notice in writing to the Board may be revoked at any time PROVIDED HOWEVER that the proxy of the Trustee appointed in place of the Trustee holding office under clause 6.3 or 6.4 shall always be a member of that nominating body.
- 6.12 If any one such appointment shall be held by the same Trustees for any one period of three (3) years then the Trustee's nominating body shall be required to reconfirm such appointment within a period of six (6) calendar months after the expiration of each such period or periods.
- 6.13 In recognition that the provisions of this Trust are one element of a series of agreements and trusts which all parties to the Waiiau Working Party consultation process have agreed, provide for the mitigation of the effects on the environment of the Manapouri Power Station, the Trustees, in exercising their powers in accordance with the objects of the Trust, shall avoid unnecessary duplication or conflict with the exercise of powers under the Tuatapere Amenities, and Waiiau Fisheries and Wildlife Habitat Enhancement Trusts. To this end, the Trustees shall consult at least annually with the Trustees of these trusts and provide a copy of the minutes of their Board meetings to them, within one month of the date of each meeting.

7.0 FUNDING

- 7.1 ECNZ covenants that provided that the Heads of Agreement is not avoided by any of the parties thereto in terms of clauses 5 or 7 thereto and the consents sought are granted it will forthwith increase the Trust Fund by payment to the Trustees of the sum of \$1 million, under Deed of Gift on the condition that the Trustees apply the sum to capital expenditure and/or ongoing maintenance costs in accordance with the objects of the Trust.
- 7.2 If the Heads of Agreement is avoided pursuant to either clause 5 or clause 7 of that Agreement, then ECNZ shall be relieved of the promise to pay the sum of \$1 million, but the Trust will continue in respect of the initial \$10 Trust fund, and none of the parties shall have any claim against any of the others.

8.0 ANNUAL REPORT AND ACCOUNTS

- 8.1 The Trustees shall keep true and fair accounts of all money received and expended.
- 8.2 The financial year for the Trust shall end on 31 March in each year.
- 8.3 The Trustees shall within three months of the end of each financial year publish an Annual Report and Financial Statement giving details of the operations and activities of the Trust during the financial year, complete audited financial statements in accordance with accepted accounting standards, details of proposals and policies for the future operation of the Trust and such other matters as the Trustees may determine.
- 8.4 Copies of the Annual Report and Financial Statements shall as soon as they are published be forwarded to each of the nominated organisations and to the Settlor and shall be made available to any other person or Organisation requesting one free of charge or at a fee which shall not exceed the reasonable printing and distribution cost of each Report and Financial Statement.

9.0 VARIATION OF TRUST

- 9.1 The Board may pursuant to a motion decided by a two thirds majority of votes or more of the member's votes, by supplemental deed make alterations or additions to the terms and provisions of this deed provided that no such alteration or addition shall:
- (a) detract from the exclusively charitable nature of the trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable; or
 - (b) be made to clause 1.1 of Schedule One unless it is first approved in writing by the Department of Inland Revenue.

(c) be made unless prior written approval of the Settlor is obtained.

9.2 Every such approved addition or alteration shall be registered as required by the Charitable Trusts Act 1957 or corresponding enactment.

10.0 WINDING UP OF TRUST

10.1 If in the opinion of the Board it shall become no longer possible or feasible to carry out the objects of the Trust then the Board may by resolution wind up the Trust. No resolution dissolving the Trust shall take effect unless it has been passed by a majority of not less than two-thirds of the members of the Board and only after three months notice of intention to move such resolution has been given, and providing that the prior approval of the Settlor has been obtained in writing.

10.2 Such dissolution shall not take effect unless at a subsequent meeting of the Board called for that purpose. (Such meeting to be held not earlier than 28 days and not later than 42 days after the date of the meeting declaring such dissolution). Such dissolution is confirmed by resolution to that effect carried by a simple majority of those members present and entitled to vote.

10.3 Should the Trust be dissolved then any moneys and property remaining after the due settlement of the affairs of the Trust and the payment of all just debts and claims shall be handed to such charitable society, association, institution, organisation or corporation as in the sole and absolute opinion of the Trustees has objects similar to those of this trust or more than one as may be specified in the said resolution for general charitable uses and purposes in New Zealand as approved by the Commissioner of Inland Revenue and in the event that agreement by resolution cannot be obtained, then or as directed by the High Court of New Zealand.

11.0 TRUSTEES POWERS

11.1 The Board shall manage the affairs of the Trust and control and direct its operations so that the purpose and objects of the Trust shall be most effectively achieved and the same shall have power in addition to the powers conferred on Trustees by law pursuant to the provisions of the Charitable Trusts Act 1957 or otherwise to do and perform any of the acts and things set out in Schedule 1 hereto.

11.2 For the purposes of Section 19 of the Charitable Trusts Act 1957 it is hereby declared that where the Section authorises a Board to enter into contracts required by law to be in writing by the signing on behalf of the Board by any person acting under its authority express or implied, any such contract when entered into by the Board may be signed on behalf of the Trust Board by any Trustee for the time being but by no other person PROVIDED HOWEVER that no such contract shall be entered into by a Trustee on behalf of the Trust

Board except with the authority of a resolution passed at a meeting of the Trust Board at a properly constituted meeting.

- 11.3 All acts done by any meetings of the Trust Board or by any person acting as a Trustee of the Trust shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of continuance in office of any Trustee of the Trust or any person acting as aforesaid or that they or any of them were disqualified, be as valid as if every person had been duly appointed or had duly continued in office and was qualified to be a Trustee of the Trust.

12.0 PROCEEDINGS OF THE BOARD

- 12.1 The Board shall meet at such times and places as it determines, and shall elect a Secretary and Treasurer from amongst its members at its first meeting and at every subsequent annual general meeting.
- 12.2 The Chairperson shall preside at all meetings of the Board at which she or he is present. In the absence of the Chairperson from any meeting, the members present shall appoint one of their number to preside at that meeting.
- 12.3 At any meeting of the Board of Trustees one half of the members shall form a quorum if the number is even and a majority if the number is uneven and no business shall be transacted unless a quorum is present.
- 12.4 The Board of Trustees shall, before voting on any issue, make best endeavours to agree by consensus to the resolution to be considered.
- 12.5 However, where a decision cannot be reached on a question to a motion by a two thirds majority or more of members' votes, it shall, unless otherwise specified in this deed, be put as a motion to be decided by a majority of votes. Each Trustee, and the Chairperson shall have one vote, except that if the voting is tied, then the Chairperson shall have a casting or additional vote.
- 12.6 Where any procedural requirement contained in this clause shall be found not to have been complied with, any subsequent meeting of the Trust Board may ratify and confirm any earlier action purported to have been taken or done by the Trust Board or any committee thereof by a resolution supported by not less than three fourths of the Trustees present and voting at the meeting of the Trust Board when the resolution ratifying such earlier action is proposed.
- 12.7 The Trustees may delegate such powers of the Secretary and Treasurer to a duly appointed Administrator as they shall see fit, who shall be responsible to the Secretary and Treasurer duly appointed.

13.0 DELEGATION OF POWERS

- 13.1 Any committee or person appointed by the Board as a delegate, may without confirmation by the Board exercise or perform the delegated powers or duties in like manner and with the same effect as the Board could itself have exercised or performed them.
- 13.2 Any committee or person to whom the Board has delegated powers or duties shall be bound by the charitable terms of the trust.
- 13.3 Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the board.
- 13.4 It shall not be necessary that any person who is appointed to be a member of any such committee, or to whom any such delegation is made, be a member of the Board.

14.0 COMMON SEAL

- 14.1 The Board of Trustees shall have a Common Seal which shall be kept in the custody of the Secretary, or such other officer as shall be appointed by the Board and shall be used only as directed by the Board. It shall be affixed to documents only in the presence of and accompanied by the signature of two members of the Board.

15.0 LIABILITY OF TRUSTEES

- 15.1 No Trustee shall be liable for:
- (a) any loss not attributable to dishonesty of the Trustee or to the wilful commission by the Trustee of an act known to the Trustee to be a breach of trust.
 - (b) the neglect or default of any solicitor, bank, accountant, auditor, stockbroker, investment advisor or other agent employed in good faith by the Trustee.
- 15.2 No Trustee shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.

16.0 ALTERNATIVE DISPUTE RESOLUTION

In the event of any dispute arising between the Trustees in respect of or in connection with this Trust, the Trustees shall, without prejudice to any other right or entitlement they may have under this agreement or otherwise, explore whether the dispute can be resolved by use of the alternative dispute resolution technique of mediation. The rules governing such technique shall

be as agreed between the Trustees or as recommended by the New Zealand Law Society or as selected by the Chairman of the New Zealand Chapter of LEADR (Lawyers Engaged in Alternative Dispute Resolution).

In the event the dispute is not resolved within 28 days of written notice by one Trustee to the others of the dispute (or such further period agreed in writing between the Trustees), any Trustee may refer the dispute to arbitration under the provisions of the Arbitration Act 1908. The arbitrator shall be agreed between the Trustees within 10 days of written notice of the referral by the referring Trustee to the others or failing agreement appointed by the President of the New Zealand Law Society. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.

SCHEDULE ONE

POWERS OF THE TRUSTEES

- 1.1 To pay, apply, transfer or distribute, after payment therefrom of all costs, charges and expenses of the Trust Board or incidental to the establishment, management and administration of the Trust property, the whole or any part of the Trust property to, for or towards the furtherance of any of the objects of the Trust as the Trustees in their absolute discretion shall determine PROVIDED THAT it is declared that in the carrying on of any business under these presents and in the exercise of any power:
- 1.1.1 Authorising the remuneration of trustees no benefit or advantage whether or not convertible into money or any income of any kind, shall be afforded to or received, gained, achieved or derived by any of the persons specified in Paragraphs (a) to (d) of the second proviso to Section CB4(1)(e) of the Income Tax Act 1994 or any enactment in amendment thereof, or in substitution therefor where that person is able by virtue of that capacity as such person specified therein in any way (whether directly or indirectly) to determine or to materially influence in any way, the determination of the nature or the amount of that benefit or advantage, or that income, or the circumstances in which it is or is to be so received, gained, achieved, afforded or derived except as specifically exempted by that section.
- 1.1.2 Any income, benefit or advantage shall be applied to the charitable purposes set out in clause 3.0 only.
- 1.1.3 No member or person associated with a member of the Trust shall derive any income, benefit or advantage from the organisation where they can materially influence the payment of the income, benefit or advantage except where that income, benefit or advantage is derived from:
- (a) professional services to the organisation rendered in the course of business charged at no greater rate than current market rates; or
 - (b) interest on money lent at no greater rate than current market rates.
- 1.1.4 The Trust Board shall be under no obligation to distribute any part of the Trust property in any year.

- 1.1.5 Notwithstanding anything to the contrary herein contained, the provisions and effect of this clause shall not be removed from this deed, and shall be included and implied into any deed amending, altering or replacing this deed.
- 1.2 In accordance with Section 13 of the Charitable Trusts Act 1957, shall be capable of holding real and personal property of whatsoever nature and wheresoever situated in New Zealand or elsewhere, and of suing and being sued and of doing and suffering all such acts and things as bodies corporate may lawfully do, and suffer and shall be entitled to do all such things and exercise all such powers and authorities as it shall consider necessary or desirable in its absolute discretion for the attainment of any of the objects set forth in clause 3.0 only.
- 1.3 To improve, manage, develop and maintain or lease, let, underlet, surrender, mortgage, charge or otherwise deal with and turn to account all or any property, real or personal, of the Trust or any interest therein wheresoever situate, and to erect, construct, alter, renovate and maintain any buildings or chattels and to retain, use and occupy or deal with the properties or assets of the Trust or any thereof, for all such purposes and in such manner as the Trustees may deem fit for the attainment of any of the objects set forth in clause 3.0 of this deed.
- 1.4 To expend money as the Trustees shall think fit in the improvement and development and otherwise for the benefit of the Trust property.
- 1.5 To sell, dispose of or exchange all real and personal property held by them at any time and whether or not such property has been acquired since the date hereof under the powers of trusts hereof, in such manner and subject to such terms and conditions as the Trustees shall in their discretion think fit PROVIDED HOWEVER that the Trustees shall hold all moneys received by them under this power for the purposes of and with the objects and subject to the trusts hereof.
- 1.6 To receive and take any gift of property, real or personal, for any of the purposes or objects of the Trust whether subject to any special trust or not but so that the Trustees may nevertheless decline and refuse to accept any gift or donation.
- 1.7 To borrow in such manner as the Board shall think fit any moneys which may be required to effect or complete the purchase of any asset which the Board is hereby authorised to acquire and hold as an investment of the trust funds or for the conversion of any leasehold land held by the Board into freehold tenure or for the erection of any buildings or effecting any improvements to any real or personal property acquired by the Board and for the purposes of paying off any moneys owing on any asset acquired by the Board or for the rearranging of any loan or loans obtained by the Board or for the purpose of any business carried on by the Board or in which it may have an interest, but

so that no lender shall be concerned to inquire as to the necessity, regularity or propriety of the exercise of any power or to see to the application of the moneys advanced and so that the exercise of any such power shall be conclusive evidence of the powers of the Board to raise such moneys and to give the security executed.

- 1.8 To employ experts to investigate and examine the conditions, prospects, value, character and circumstances of any business concerns and undertakings and generally of any assets, property or rights of the Trust or which the Trust Board may wish to acquire.
- 1.9 To invest the trust funds:
 - 1.9.1 In any of the forms of investment authorised by law.
 - 1.9.2 On loan to any person or persons, Company or institution or Building Society upon such security at such rate of interest and upon such terms as to repayment as the Board shall think fit.
 - 1.9.3 In the acquisition of any freehold or leasehold land or any other interest in land in New Zealand.
 - 1.9.4 In the acquisition of chattels and personal property of every kind and description.
 - 1.9.5 To invest and to vary the investments of any moneys in the hands of the Trustees in terms of these presents in such modes of investment, including the acquisition of any policy of life insurance and/or in such security or securities and whether in New Zealand or elsewhere, including investment both official and unofficial in money markets (notwithstanding that such mode or modes of security or securities may not be such as are for the time being authorised by law for the investment of trust funds) as the Trustees shall think fit. To invest all or any part of the Trust Fund in the acquisition by original subscription, purchase or otherwise of shares (of whatever nature and whether fully paid up or partly contributory) or upon debentures or debenture stock of any company or corporation and approved by the Trustees or upon deposit at call or otherwise with any such company (and without express limitation as to country) in New Zealand, Australia or the United Kingdom.
 - 1.9.6 Without prejudice to the generality of the foregoing if at any time any company in which the Trustees hold shares shall be reconstructed or re-arranged or shall create a further issue of capital or shall carry into effect any scheme for capitalisation of its profits or for merger with any other company, then and in every such case the Trustees (in addition to any statutory or other powers vested in them) may take up further shares in such company or in any new company which may be formed

in connection with such reconstruction, re-arrangement or merger as the Trustees in their absolute discretion shall think fit, whether such shares so taken up be wholly paid up or partly contributory and may agree to such reconstruction, re-arrangement, further issue of capital capitalisation or profits or merger on such terms and conditions as the Trustees may think fit and may execute any deed, agreement or other document relating thereto.

- 1.9.7 In addition to the powers otherwise conferred by these presents or by law to promote, form or concur in any steps or proceedings which may be taken to form a company for the purpose of purchasing or acquiring any undertaking, business and/or assets which, or any interest, in which forms part of the trust fund or the undertaking, business and/or assets of any company in which the Trustees may hold shares and to sell and transfer such undertaking, business and/or assets to any company or the Trustees for any company proposed to be formed and to carry out and complete any scheme or arrangement for the amalgamation of the said undertaking business and/or assets with the undertaking, business and assets of any company or companies on such terms as to the price or consideration being received in cash or in shares (ordinary preferred or deferred) or in debentures or debenture stock of the purchasing company or party in one way and partly in another, and generally upon such terms and conditions as the Trustees shall think fit with power to allow time for payment of the whole or part, of any cash or other consideration, whether with or without taking security therefore AND the Trustees may take shares in or debentures of any company representing the consideration or part of the consideration of any such transfer, sale or amalgamation, having such rights, privileges and subject to such obligation as the Trustees may think fit AND the Trustees shall have the widest authority and discretion to effect any such sale of amalgamation on such terms and conditions in every respect as they could do if they were the absolute and beneficial owners of the trust fund.
- 1.9.8 To provide out of the trust property further capital for any company in which the Trustees may hold shares, either directly or indirectly or which may have acquired or proposes to acquire any business, undertaking and/or assets which, or an interest in which, forms part of the trust fund and to do so either by way of advances, loans, guarantees or taking up shares or further shares in such company or in such other manner and upon such terms and conditions as the Trustees may think proper.
- 1.9.9 To enter into partnership or any arrangement for sharing of profits, union of interest, joint adventure or otherwise with any person or persons or company.

- 1.10 To carry on, manage and work any farm for any period they think fit and for that purpose they have all those powers and authorities as are incidental to and those they in their discretion deem necessary for its proper carrying on, management and working, and those which are usually exercised by persons carrying on, managing, or working similar properties provided further and without, in any way limiting or restricting the foregoing general power, the Trustees may:
- 1.10.1 Sell and purchase sheep and other livestock.
 - 1.10.2 Purchase stores, feed for stock, machinery, vehicles and other implements and things.
 - 1.10.3 Borrow money upon bank overdraft, or by mortgage (with power of sale) of the farm property, or by any other security, so that no person lending money to the Trustees need enquire as to the purpose of borrowing or see to the application of the proceeds, or see that no more is borrowed than is required.
 - 1.10.4 Leave the entire management of the farm to a manager without the Trustees needing to attend personally to the management further than requiring the manager to render such periodic accounts of his or her management as are reasonable and without being in any way answerable or accountable for any dishonest or other wrongful act of the manager.
 - 1.10.5 Use and apply for the purpose of the farm any money representing other parts of the trust fund which the Trustees think fit.
 - 1.10.6 Apply for and accept new leases and licences; amalgamate, surrender, convert and change tenures of leases and licences; agree upon values of improvements; appear before any Courts; be represented by solicitors and Counsel; and generally act in relation to any land held under the Land Acts as if the Trustees were the beneficial owners of any leases or licences forming part of the trust fund.
- 1.11 To retain as authorised investments any investments which may be transferred to the Trust by any person.
- 1.12 To arrange for the raising and collecting of funds to control the expenditure of funds collected and to invest surplus as may be determined from time to time.
- 1.13 To indemnify and secure any company, firm or person against debt or liability whether incurred or undertaken on behalf of the Trust or not and against any costs, losses or expenses whether in connection with the affairs of the Trust or not and in connection with the foregoing to charge the assets of the Trust PROVIDED THAT no benefit or advantage from the Trust of a kind

described in this clause shall be derived either directly or indirectly by any Trustee of the Trust.

- 1.14 To lend and advance money, to give credit to any person or company, to guarantee and give guarantees for the payment of money or the performance of contracts or obligations by any person or company and otherwise to assist any persons or company; such loans or advances to be made with provision for the payment of interest at commercial rates unless given to a charitable organisation or other organisation established for the benefit of the community or any particular community PROVIDED THAT no benefit or advantage from the Trust of a kind described in this clause shall be derived either directly or indirectly by any Trustee of the Trust.
- 1.15 To appoint and employ agents, overseers, managers, officers, assistants, servants, stockpersons, shepherds, workers and others whether honorary or otherwise and upon such terms and conditions as the Board shall think fit.
- 1.16 To employ such employees, staff, consultants or advisers as may from time to time be considered necessary by the Trust Board and to remunerate any person, firm or company for services rendered to the Trust and to make provision for payment of any expenses incurred by any employee of the Trust or for the retirement or superannuation of any such employee.
- 1.17 To adopt such means as the Board shall think fit of publicising the objects of the Trust, the decisions of the Board, the manner in which moneys are being raised and expended and any other aspect of the affairs of the Trust.
- 1.18 To pay out of trust funds all expenses incurred in the operation of the Trust or any of its activities.
- 1.19 To enter into any arrangements with any Government or authority, supreme, municipal, local or otherwise that may seem conducive to the Trust's objects or any of them and to obtain from such Government or authority any rights, privileges and concessions which the Trustees may think it desirable to obtain, and to carry out exercise and comply with any such arrangements, rights, privileges and concessions.
- 1.20 To apply for, secure, acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege which any government or authority or any corporation or other public body may be empowered to grant, and to pay for, aid in and contribute towards, carrying the same into effect.
- 1.21 To apply for, obtain, renew or make submissions in respect of any town planning, local body building, health, fire or police requirement of any kind in respect of any premises with which the Trust may purchase, own, build, make alterations to, remove, sell or destroy.

- 1.22 To pay any Trustee of these presents who may be an Accountant or Solicitor out of the Trust fund for all business done by him or her in relation to the Trust fund in like manner as he or she would have been entitled to charge the Trustees or Trustee of these presents for the same if not being himself a Trustee he or she or his or her firm had been employed by them, her or him to do such business as their, her or his Accountant or Solicitor.
- 1.23 To reimburse the Trustees for their expenses in accordance with the provisions of the Fees and Travelling Allowance Act 1951 as if the Trust Board were a statutory Board within the meaning of that Act or in accordance with any enactment which replaces that Act.
- 1.24 To remunerate for their services those Trustees who are employed by the Trust Board as full time or part time employees by means of a fair and reasonable salary PROVIDED THAT the quantum of any such remuneration shall be determined solely by a firm of Chartered Accountants selected by the New Zealand Society of Accountants AND PROVIDED FURTHER that no Trustee is associated with the firm of Chartered Accountants so selected so as to be able in any way (whether directly or indirectly) to determine, or to materially influence the determination of the nature or the amount of the remuneration of any Trustee.
- 1.25 To carry on any business of any kind whatsoever.
- 1.26 Subject to the provisions of the Charitable Trusts Act 1957 to do, perform, carry out and execute all such incidental or necessary acts or deeds and things as are requisite for or conducive to the attainment of the objects of the Trust.
- 1.27 To appoint a Custodial Trustee or Trustees to act as their custodial trustee in respect of investments to be made or properly held or hold on the Trustees' behalf all securities and other documents of title relating to such investments or property. The custodial Trustee or Trustees appointed shall only act on the direct instructions of the Board and shall hold all investments and property in the name of the Custodial Trustee for the account of Te Waiiau Mahika Kai Trust. The appointment of a Custodial Trustee shall be limited to persons or organisations recognised as having the expertise and services to provide Custodial Trustee duties.
2. The objects and powers set forth in any clause or sub-clause of this Schedule shall not, except where the context expressly requires, be in any way limited or restricted by reference to, or any inference from, the terms of any other clause or sub-clause. None of such clauses or sub-clauses or the objects therein specified or the powers thereby conferred shall be deemed subsidiary or ancillary to any other clause, sub-clause or objects, but the Board shall have the full power to exercise all or any of the objects and powers set out herein independently, or any other of its objects and powers.

3. The Trustees shall have all power to the fullest extent as the law provides to generally do each and every act both convenient and advantageous and necessarily expedient for the proper carrying out and accomplishment of the objects consistent with this Trust provided in clause 3.0.

4. This deed shall in its interpretation of the objects in clause 3.0 be given its widest possible expression provided that no such interpretation shall alter the charitable nature of the deed pursuant to the Charitable Trusts Act 1957 or Act in substitution.

EXECUTED the 8th day of January 1998

1. SIGNED for and on behalf of)
ELECTRICITY CORPORATION)
OF NEW ZEALAND LIMITED) Director
as Settlor)
in the presence of: *M. France*) *M. Haumann*
MARGARET J. FRANCE) Authorized Person
Policy Analyst)
Wellington)

2. SIGNED by) *E.G. Ryan*
EDWARD GEORGE RYAN)
as Trustee) *E.G. Ryan*
in the presence of: *C. Anderson*) *S.T. Tapa*
M. Anderson)
M. Anderson)

3. SIGNED by) *M. Acker*
MURRAY LOUIS ACKER-)
as Trustee)
in the presence of: *P. Puffer*)
Accountant)
Lawyer)

4. SIGNED by)
MARK JOSEPH FRANCE)
as Trustee)
in the presence of: *M. France*
John Callaghan)
Solicitor)
Wellington)

5. SIGNED by) *M. Kedian*
MICHAEL ROY KEDIAN)
as Trustee)
in the presence of:)
Chris Odell)
Personal Assistant)
Twizel)

6. SIGNED by JANE) *J. Davis*
RUBY KARINA DAVIS)
as Trustee and the)
first Chairperson)
in the presence of:)
C. Anderson)
M. Anderson)
M. Anderson)

DATED 13

January

1997

PARTIES

1. ELECTRICITY CORPORATION OF NEW ZEALAND LIMITED

("Settlor")

2. ALAISTER CHARLES MCDUGALL
IAN CHARLES HORRAX
ROBERT BOUD
ROGER ROBERTSON SUTTON
JOHN WHITEHEAD
PETER ATHOL LOW
ALASTAIR HUGH MCLEES

("Trustees")

**THE WAI AU FISHERIES AND WILDLIFE HABITAT ENHANCEMENT
TRUST**

ANN CALLAGHAN
SOLICITOR
WELLINGTON

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PARTICULARS

Definitions

Unless the context otherwise requires, in this Trust Deed:

- A. "Consensus" means a process whereby the Trustees, before voting on the resolution, are required to discuss thoroughly the issue and endeavour to obtain an indication as to whether there will be an agreement or not to the resolution before the resolution is formally put.
- B. "Freshwater fish" means all those species of finfish of the Classes Agnatha and Osteichthyes, and all shellfish of the Classes Mollusca and Crustacea, that must, at any time in the life history of the species, inhabit freshwater; and includes any part thereof and such finfish and shellfish that seasonally migrate into or out of freshwater that are present in the Waiau River Catchment at the date of this deed;
- C. "The Trustees" means the Trustees appointed hereunder and their successors in office for the time being and "the Board" shall have a corresponding meaning;
- D. "The Trustee" also means the member of the Board;
- E. "The trust fund" means and includes the funds and moneys and investments for the time being representing the same which funds, moneys and investments together with all or any property real or personal and all other assets which are paid assured, set over or transferred to the Trustees at the time of constitution of this Trust and all moneys and other assets received subsequently by the Trustees and the income derived from their investment;
- F. Words importing the singular number shall include plural and the masculine gender and feminine or neuter and vice versa and words importing persons shall include companies. Any covenants or agreements on the part of two or more persons shall be deemed to bind them jointly and severally.

1. THE TRUST NAME

THE WAIAU FISHERIES AND WILDLIFE HABITAT
ENHANCEMENT TRUST

2. THE TRUST DATE 13 January 1997

3. THE SETTLOR

ELECTRICITY CORPORATION OF NEW ZEALAND LIMITED a
duly incorporated company having its registered office at Wellington

4. THE FIRST TRUSTEES

ALAISTER CHARLES } the nominee of the Electricity
MCDUGALL } Corporation of New Zealand Limited

IAN CHARLES HORRAX } the two nominees of the
ROBERT BOUD } Southland Fish and Game
Council

ROGER ROBERTSON } the two nominees of the
SUTTON } Minister of Conservation

JOHN WHITEHEAD }

PETER ATHOL LOW } the joint nominee
} of the Minister of
} Conservation and the Southland
} Fish & Game Council. This
} trustee shall be the first
} chairperson of the Trust

ALASTAIR HUGH } the joint nominee of the
MCLEES } Minister of Conservation
} and the Southland Fish & Game
} Council. This trustee shall
} represent the rural community in
} the Waiau Catchment

BACKGROUND

1. The Electricity Corporation of New Zealand Limited ("ECNZ") operates the Manapouri Power Station under the provisions of the Manapouri Te Anau Development Act 1963 ("MTADA").
2. Section 4 (1)(a)(i) MTADA provides that ECNZ shall have full power and authority to erect, construct, provide, use and operate all works, appliances and conveniences which may be necessary or requisite for or in relation to the utilisation of water power from the water resources of Lakes Manapouri and Te Anau, the Waiau and Mararoa rivers and their tributaries.
3. In addition, there is the power to raise or lower the levels of Lakes Manapouri and Te Anau and the Waiau and Mararoa Rivers and their tributaries, which are deemed consents to take and use water under the Resource Management Act 1991, subject to operating guidelines, which are deemed conditions of these consents.
4. Subject to the provisos in sections 4A(2) and (5) of the MTADA, this Act allows ECNZ to carry out activities which would otherwise require resource consents under the Resource Management Act 1991 ("RMA"). However, the RMA deems ECNZ's uses of water to be water coastal and discharge permits which expire on 1 October 2001. The RMA requires that the application for the permits to continue these uses of water consider inter alia the avoidance, remedying or mitigation of adverse effects on the environment.
5. ECNZ is of the view that, for the renewal of permits of the scope and significance of these, a broad consultation programme is not only appropriate, but essential.
6. To that end, ECNZ initiated the establishment of the Waiau Working Party in April 1990 to study the effects of hydro-electric power generation on the environment within the Waiau catchment.
7. For a period of almost six years, the parties and other members of the Waiau Working Party have held meetings and commissioned a number of reports to consider the environmental, recreational, social, cultural and economic values and opportunities of the Waiau River catchment resource.

8. The Parties have identified a series of provisions and conditions for ECNZ's resource consents which they believe provide acceptable recognition of the various values and opportunities and mitigate the adverse effects of ECNZ's operations and represent an acceptable outcome by retaining or enhancing the values identified while recognising the importance of the use of the resource for the generation of electricity.
 9. The matters which all parties to the Waiau Working Party consultation process have agreed should be conditions on the resource consents have been included in a Heads of Agreement dated the 16th day of July 1996 ("Heads of Agreement") and will be included in a joint submission. This will be forwarded to the Southland Regional Council as a recommendation which will ask the Southland Regional Council to adopt these conditions for ECNZ's resource consents.
 10. There are however some values, opportunities and concerns identified which the Southland Fish and Game Council and the Minister of Conservation and ECNZ have agreed upon which are better addressed by the establishment of this Trust than by measures which could be incorporated formally as conditions of the resource consents.
 11. Therefore, the Electricity Corporation of New Zealand Limited and the Minister of Conservation and the Southland Fish and Game Council have agreed that to remedy these concerns and to safeguard the life supporting capacity of the Waiau River and avoid, remedy or mitigate any adverse effects which may occur, ECNZ will, provided water coastal and discharge permits are granted in accordance with the joint submission of the Waiau Working Party, and clauses 5 and 7 of the Heads of Agreement are not avoided by any party thereto, settle a capital sum on trust with the objects of restoring, protecting and enhancing fisheries and wildlife resources, habitats, amenity values and opportunities within the Waiau Catchment.
 12. It is desirable that for the purpose of administering such Trust a Board of Trustees be created with powers, authorities and discretions appropriate to the purpose.
-
13. ECNZ and the Trustees have agreed to enter into this deed specifying the objects of the Trust and providing for its control and government.

1.0 THE TRUST

1.1 Date

This Deed of Trust is made on the trust date between the Settlor and the Trustees.

1.2 Definition

The terms defined or details given in the particulars shall have that meaning throughout this Deed of Trust.

1.3 Initial Amount Settled

The Settlor wishes to create a trust ("the Trust") and has paid to the Trustees the sum of ten dollars (\$10.00) to constitute the initial Trust Fund.

2.0 TRUST FUND

2.1 Receipt

The Trustees acknowledge receipt of the sum of ten dollars (\$10.00) paid by the Settlor.

2.2 Declaration of Trust

The Trustees declare that they hold the sum of ten dollars (\$10.00) together with all other property and investments which may be added to it by way of capital or income ("the Trust Fund") upon the trusts set out in this Trust Deed.

3.0 OBJECTS OF TRUST

3.1 The Settlor directs and the Trustees declare that the Trustees hold the Trust Fund upon the following trust, to be used to further the following charitable purposes and objects with the intent that the Trust Fund shall be expended on projects within the Waiau River catchment which, together with the minimum flow regime in the conditions of consent for the Manapouri Power Scheme, will create, enhance and maintain habitat for freshwater fish, and wildlife to at least the quantity and quality which studies carried out for the Waiau Working Party have identified

as being the maximum achievable, by flows of up to 30 cumecs from the Manapouri Lake Control Structure, and to facilitate public access to the enhanced Waiau River, including:

- (i) To identify and evaluate areas of the Waiau catchment worthy of protection, restoration, improvement, creation, or procurement (primarily as fisheries and wildlife habitat) and to create habitat within the Waiau catchment.
- (ii) In order to carry out the first purpose to negotiate, where appropriate, the protection, restoration, improvement, creation or procurement of fisheries and wildlife habitat with landowners and to ensure the best possible public access to fisheries and wildlife resources.
- (iii) To provide and maintain two access tracks for anglers' access in the vicinity of the Whare Creek and Redcliff Stream confluences such that advantage can be taken of the fishery.
- (iv) In accordance with the first and second purposes, to provide for the creation of additional areas of whitebait habitat on land owned by ECNZ or held by the Minister of Conservation adjacent to the Waiau Lagoon as identified by studies carried out for the Waiau Working Party as necessary.
- (v) To provide for any rearrangement and ongoing maintenance of the rock weir immediately below the Duncraigen Bridge identified in studies carried out by ECNZ as necessary to enhance habitat for fish and the aesthetic sense of landscape values of the river between the weir and Manapouri Lake Control at minimum flows.
- (vi) To provide for a study over 5 years of freshwater fish in Lakes Manapouri and Te Anau to determine the present state of the fisheries and present trends.
- (vii) To provide or assist with provision of information or facilities to enhance the understanding of the public of the values for which the Trust was established.
- (viii) Such further or other measures which, in the opinion of the Trustees, will better provide for the matters set out in sections 5(2)(a), 5(2)(c), 6(a), 6(c), 6(d), 7(a), 7(c), 7(f) and 7(h) of the Resource Management Act 1991.

3.2 The objects or purposes of this Trust are or shall be charitable as approved by the Commissioner of Inland Revenue and shall be deemed not to include or extend to any matter or thing which is or shall be held or determined to be non-charitable and the powers and purposes of the Board and trusts hereby created shall be so restricted.

4.0 NAME OF TRUST

4.1 The name of the Trust shall be the WAIAMU FISHERIES AND WILDLIFE HABITAT ENHANCEMENT TRUST.

5.0 INCORPORATION

5.1 The Trustees shall as soon as practicable apply for incorporation of the trustees as a board under the Charitable Trusts Act 1957.

6.0 TRUSTEES

6.1 The Board of Trustees ("the Board") shall consist of not less than seven nor more than eight Trustees.

6.2 Unless otherwise specified in this deed each member of the Board shall hold for office for a term which he or she is appointed or until she or he dies or is declared bankrupt or is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988 or an order is made under Part II Mental Health Compulsory Assessment and Treatment Act 1993 or indicates in writing that she or he wishes to resign from the Board or their nomination is terminated in accordance with clause 6.7. Any retiring member shall be eligible for re-appointment. All Trustees shall remain in office (except as set out above) until their successor is appointed.

6.3 The Electricity Corporation shall have the right to nominate one Trustee. The Southland Fish & Game Council shall have the right to nominate two Trustees. The Minister of Conservation shall have the right to nominate two trustees. The Minister of Conservation and the Southland Fish and Game Council shall have the right jointly to nominate one trustee, who shall as act as the Chairperson of the Trust and one other trustee who shall represent the rural community in the Waiau catchment. Each trustee shall be nominated and appointed hereunder for a term of three years. The nominating bodies subject to any other

provisions to the contrary contained in this deed may appoint for further periods of three years each.

- 6.4 The bodies specified in clause 6.3 shall be known in this Trust Deed as the "nominating bodies".
- 6.5 In selecting a Trustee or Trustees as the case may be each nominating body shall have regard to that person's knowledge, experience and understanding of fisheries and wildlife management and of local conditions and issues in the Waiiau and neighbouring catchments.
- 6.6 The persons who have executed this Deed as Trustees shall be deemed to have been nominated by the above nominating bodies to be the first Trustees appointed for an initial term of three years from the date of execution.
- 6.7 Each nominating body may at any time and from time to time by notice in writing to the Board terminate the appointment of any Trustee it has appointed and appoint another person to be a Trustee, provided that in the case of the Chairperson and the trustee to represent the rural community in the Waiiau Catchment, the appointment and termination must be made jointly by the Minister of Conservation and the Southland Fish and Game Council, or their respective successors, as the case may be.
- 6.8 If any one such appointment shall be held by the same Trustees for any one period of three (3) years and successive periods of 3 years subject to clause 6.7 then the Trustee's nominating body shall be required to reconfirm such appointment within a period of six (6) calendar months after the expiration of each such period or periods.
- 6.9 If any of the nominating bodies listed in clause 6.3 or nominated under clause 6.9 shall cease to exist or cease to have any interest in fisheries and conservation in the Waiiau Catchment and in the event of legislative change removing the Southland Fish & Game Council, the Electricity Corporation of New Zealand Limited, and the Department of Conservation, then the right to nominate a Trustee shall pass to the person or body who succeeds to the majority of their assets, duties and responsibilities pursuant to that legislative change, however if no such succession occurs then the Settlor shall appoint a replacement Nominating Body.
- 6.10 The Trustees shall by a resolution carried by a majority of two thirds or more of Trustees have the power to appoint for any reason they see fit

another nominating body to appoint such trustees as such resolution specifies which shall have the same powers in respect of such Trustees as if it had been listed as a nominating body in clause 6.3.

- 6.11 The filling of vacancies on the Board shall be carried out in the case of retirement or termination of the appointment of the members of the Board appointed by nominating bodies, by appointment by the same nominating bodies.
- 6.12 A Trustee of the Board holding office under clause 6.2 may with the consent in writing of their nominating body by notice in writing given to the Secretary of the Board appoint another person to act as a proxy either for a particular meeting or for a particular period and any such appointment by notice in writing to the Board may be revoked at any time PROVIDED HOWEVER that a proxy holding office under clause 6.2 shall always be a member of that nominating body.
- 6.13 In recognition that the provisions of this Trust are one element of a series of agreements and trusts which all parties to the Waiiau Working Party consultation process have agreed, provide for the mitigation of the effects on the environment of the Manapouri Power Station, the Trustees, in exercising their powers in accordance with the objects of the Trust, shall avoid unnecessary duplication of conflict with the exercise of powers in accordance with the objects of the Trust, shall make best endeavours to work in harmony with the exercise of powers under Te Waiiau Mahika Kai Trust, and the Tuatapere Amenities Trust. To this end, the Trustees shall consult at least annually with the Trustees of these trusts and provide them with a copy of the minutes of their Board meetings within one month of the date of each meeting. [In this clause "a series of agreements and trusts means the agreements and trusts appended to and included in the Joint Submission of the members of the Waiiau Working Party to ECNZ's application for resource consents in respect of the Manapouri Power Station.]
- 6.14 In carrying out the objects of this trust the Trustees shall recognise and have regard to the traditional relationship of the tangata whenua with the resources of the Waiiau River and in particular their interest in the native fishery.
- 7.0 FUNDING
- 7.1 ECNZ covenants that provided that the Heads of Agreement is not avoided by any of the parties thereto in terms of clauses 5 or 7 thereto and the consents sought are granted it will forthwith increase the Trust

Fund by payment to the Trustees of the sum of \$5 million, under Deed of Gift on the condition that the Trustees apply the sum to capital expenditure and/or ongoing maintenance costs in accordance with the objects of the Trust.

- 7.2 If the Heads of Agreement is avoided pursuant to either clause 5 or clause 7 of that Agreement, then ECNZ shall be relieved of the promise to pay the sum of \$5 million but the Trust will continue in respect of the initial \$10 Trust fund, and none of the parties shall have any claim against any other.

8.0 ANNUAL REPORT AND ACCOUNTS

- 8.1 The Trustees shall keep true and fair accounts of all money received and expended.

- 8.2 The financial year for the Trust shall end on 31 March in each year.

- 8.3 The Trustees shall within three months of the end of each financial year publish an Annual Report and Financial Statement giving details of the operations and activities of the Trust during the financial year, complete audited financial statements in accordance with accepted accounting standards, details of proposals and policies for the future operation of the Trust and such other matters as the Trustees may determine.

- 8.4 Copies of the Annual Report and Financial Statements shall as soon as they are published be forwarded to each of the nominated organisations and to the Settlor and shall be made available to any other person or Organisation requesting one free of charge or at a fee which shall not exceed the reasonable printing and distribution cost of each Report and Financial Statement.

9.0 VARIATION OF TRUST

- 9.1 The Board may pursuant to a motion decided by a two thirds majority or more of the members' votes, by supplemental deed make alterations or additions to the terms and provisions of this deed provided that no such alteration or addition shall:

- (a) detract from the exclusively charitable nature of the trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable; or

(b) be made to clause 1.1 of Schedule One unless it is first approved in writing by the Department of Inland Revenue.

9.2 Every such approved alteration or addition shall be registered as required by the Charitable Trusts Act 1957 or corresponding enactment.

10.0 WINDING UP OF TRUST

10.1 If in the opinion of the Board it shall become no longer possible or feasible to carry out the objects of the Trust then the Board may by resolution wind up the Trust. No resolution dissolving the Trust shall take effect unless it has been passed by a majority of not less than two-thirds of the members of the Board and only after three months notice of intention to move such resolution has been given, and providing that the prior approval of the Settlor has been obtained in writing.

10.2 Such dissolution shall not take effect unless at a subsequent meeting of the Board called for that purpose. (Such meeting to be held not earlier than 28 days and not later than 42 days after the date of the meeting declaring such dissolution). Such dissolution is confirmed by resolution to that effect carried by a simple majority of those members present and entitled to vote.

10.3 Should the Trust be dissolved then any moneys and property remaining after the due settlement of the affairs of the Trust and the payment of all just debts and claims shall be handed to such charitable society, association, institution, organisation or corporation as in the sole and absolute opinion of the Trustees has objects similar to those of this Trust or more than one as may be specified in the said resolution for general charitable uses and purposes in the Waiau River Catchment as approved by the Commissioner of Inland Revenue and in the event that agreement by resolution cannot be obtained, then as directed by the High Court of New Zealand.

11.0 TRUSTEES POWERS

11.1 The Board shall manage the affairs of the Trust and control and direct its operations so that the purpose and objects of the Trust shall be most effectively achieved and the same shall have power in addition to the powers conferred on Trustees by law pursuant to the provisions of the Charitable Trusts Act 1957 or otherwise to do and perform any of the

acts and things set out in Schedule 1 hereto to the intent that the Trustees shall exercise their powers to apply the Trust Fund for purposes within the Waiau catchment.

- 11.2 For the purposes of Section 19 of the Charitable Trusts Act 1957 it is hereby declared that where the Section authorises a Board to enter into contracts required by law to be in writing by the signing on behalf of the Board by any person acting under its authority express or implied, any such contract when entered into by the Board may be signed on behalf of the Trust Board by any Trustee for the time being but by no other person PROVIDED HOWEVER that no such contract shall be entered into by a Trustee on behalf of the Trust Board except with the authority of a resolution passed at a meeting of the Trust Board at a properly constituted meeting.
- 11.3 All acts done by any meetings of the Trust Board or by any person acting as a Trustee of the Trust shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of continuance in office of any Trustee of the Trust or any person acting as aforesaid or that they or any of them were disqualified, be as valid as if every person had been duly appointed or had duly continued in office and was qualified to be a Trustee of the Trust.

12.0 PROCEEDINGS OF THE BOARD OF TRUSTEES

- 12.1 The Trustees shall meet at such times and places as they determine, and shall elect a Secretary and Treasurer from amongst their members at their first meeting and at every subsequent annual general meeting. The Treasurer and Secretarial services may be delegated to the Southland Fish and Game Council for such terms as the Trustees think fit which shall be paid for at an agreed annual rate at the beginning of each year at which the Council agrees to so act.
- 12.2 The Chairperson shall preside at all meetings of the Board at which she or he is present. In the absence of the Chairperson from any meeting, the members present shall appoint one of their number to preside at that meeting.
- 12.3 The Board shall before voting on any issue, make best endeavours to agree by consensus to the resolution to be considered.
- 12.4 However, where a decision cannot be reached on a question to a motion by a two thirds majority or more of members votes it shall unless

otherwise specified in this deed, be put as a motion to be decided by a majority of votes. Each Trustee, and the Chairperson shall have one vote, except that if the voting is tied, then the Chairperson shall have a casting or additional vote.

12.5 Where any procedural requirement contained in this clause shall be found not to have been complied with, any subsequent meeting of the Trust Board may ratify and confirm any earlier action purported have been taken or done by the Trust Board or any committee thereof by a resolution supported by not less than two thirds of the Trustees present and voting at the meeting of the Trust Board when the resolution ratifying such earlier action is proposed.

12.6 At any meeting of the Board of Trustees one half of the members shall form a quorum if the number is even and a majority if the number is uneven, and no business shall be transacted unless a quorum is present.

13.0 DELEGATION OF POWERS

13.1 Any committee or person appointed as a delegate by a resolution passed at a meeting of the Board, may without confirmation by the Board exercise or perform the delegated powers or duties in like manner and with the same effect as the board could itself have exercised or performed them.

13.2 Any committee or person to whom the Board has delegated powers or duties shall be bound by the charitable terms of the trust.

13.3 Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the board.

13.4 It shall not be necessary that any person who is appointed to be a member of any such committee, or to whom any such delegation is made, be a member of the Board.

14.0 COMMON SEAL

14.1 The Board shall have a Common Seal which shall be kept in the custody of the Secretary, or such other officer as shall be appointed by the Board and shall be used only as directed by the Board. It shall be affixed to documents only in the presence of and accompanied by the signature of two members of the Board.

15.0 LIABILITY OF TRUSTEES

15.1 No Trustee shall be liable for:

- (a) any loss not attributable to dishonesty of the Trustee or to the wilful commission by the Trustee of an act known to the Trustee to be a breach of trust; or
- (b) the neglect or default of any solicitor, bank, accountant, auditor, stockbroker, investment advisor or other agent employed in good faith by the Trustee.

15.2 No Trustee shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.

SCHEDULE ONE

POWERS OF THE TRUSTEES

- 1.1 To pay, apply, transfer or distribute, after payment therefrom of all costs, charges and expenses of the Trust Board or incidental to the establishment, management and administration of the Trust property, the whole or any part of the Trust property to, for or towards the furtherance of any of the objects of the Trust as the Trustees in their absolute discretion shall determine PROVIDED THAT it is declared that in the carrying on of any business under these presents and in the exercise of any power:
- 1.1.1 Authorising the remuneration of trustees no benefit or advantage whether or not convertible into money or any income of any kind, shall be afforded to or received, gained, achieved or derived by any of the persons specified in Paragraphs (a) to (d) of the second proviso to Section CB 4(1)(e) of the Income Tax Act 1994 or any enactment in amendment thereof, or in substitution therefor where that person is able by virtue of that capacity as such person specified therein in any way (whether directly or indirectly) to determine or to materially influence in any way, the determination of the nature or the amount of that benefit or advantage, or that income, or the circumstances in which it is or is to be so received, gained, achieved, afforded or derived except as specifically exempted by that section.
- 1.1.2 Any income, benefit or advantage shall be applied to the charitable purposes set out in clause 3.0 only.
- 1.1.3 No member or person associated with a member of the Trust shall derive any income, benefit or advantage from the organisation where they can materially influence the payment of the income, benefit or advantage except where that income, benefit or advantage is derived from:
- (a) professional services to the organisation rendered in the course of business charged at no greater rate than current market rates; or

(b) interest on money lent at no greater rate than current market rates.

1.1.4 The Trust Board shall be under no obligation to distribute any part of the Trust property in any year.

1.1.5 Notwithstanding anything to the contrary herein contained, the provisions and effect of this clause shall not be removed from this deed, and shall be included and implied into any deed amending, altering or replacing this deed.

1.2 In accordance with Section 13 of the Charitable Trusts Act 1957, shall be capable of holding real and personal property of whatsoever nature and wheresoever situated in New Zealand or elsewhere, and of suing and being sued and of doing and suffering all such acts and things as bodies corporate may lawfully do, and suffer and shall be entitled to do all such things and exercise all such powers and authorities as it shall consider necessary or desirable in its absolute discretion for the attainment of any of the objects set forth in clause 3.0 only.

1.3 To improve, manage, develop and maintain or lease, let, underlet, surrender, mortgage, charge or otherwise deal with and turn to account all or any property, real or personal, of the Trust or any interest therein wheresoever situate, and to erect, construct, alter, renovate and maintain any buildings or chattels and to retain, use and occupy or deal with the properties or assets of the Trust or any thereof, for all such purposes and in such manner as the Trustees may deem fit, for the attainment of any of the objects set forth in clause 3.0 of this deed.

1.4 To expend money as the Trustees shall think fit in the improvement and development and otherwise for the benefit of the Trust property.

1.5 To sell, dispose of or exchange all real and personal property held by them at any time and whether or not such property has been acquired since the date hereof under the powers of trusts hereof, in such manner and subject to such terms and conditions as the Trustees shall in their discretion think fit PROVIDED HOWEVER that the Trustees shall hold all moneys received by them under this power for the purposes of and with the objects and subject to the trusts of this deed.

1.6 To receive and take any gift of property, real or personal, for any of the purposes or objects of the Trust whether subject to any special trust or not but so that the Trustees may nevertheless decline and refuse to accept any gift or donation.

- 1.7 To borrow in such manner as the Board shall think fit any moneys which may be required to effect or complete the purchase of any asset which the Board is hereby authorised to acquire and hold as an investment of the trust funds or for the conversion of any leasehold land held by the Board into freehold tenure or for the erection of any buildings or effecting any improvements to any real or personal property acquired by the Board and for the purposes of paying off any moneys owing on any asset acquired by the Board or for the rearranging of any loan or loans obtained by the Board or for the purpose of any business carried on by the Board or in which it may have an interest, but so that no lender shall be concerned to inquire as to the necessity, regularity or propriety of the exercise of any power or to see to the application of the moneys advanced and so that the exercise of any such power shall be conclusive evidence of the powers of the Board to raise such moneys and to give the security executed.
- 1.8 To employ experts to investigate and examine the conditions, prospects, value, character and circumstances of any business concerns and undertakings and generally of any assets, property or rights of the Trust or which the Trust Board may wish to acquire. (To employ such experts, professional advisers, agents, officers and staff to assist the Trustees as appears necessary or expedient.)
- 1.9 To invest the trust funds:
 - 1.9.1 In any of the forms of investment authorised by law.
 - 1.9.2 On loan to any person or persons, Company or institution or Building Society upon such security at such rate of interest and upon such terms as to repayment as the Board shall think fit.
 - 1.9.3 In the acquisition of any freehold or leasehold land or any other interest in land in New Zealand.
 - 1.9.4 In the acquisition of chattels and personal property of every kind and description.
 - 1.9.5 To invest and to vary the investments of any moneys in the hands of the Trustees in terms of these presents in such modes of investment, including the acquisition of any policy of life insurance and/or in such security or securities and whether in New Zealand or elsewhere, including investment both official and unofficial in money markets (notwithstanding that such mode or

modes of security or securities may not be such as are for the time being authorised by law for the investment of trust funds) as the Trustees shall think fit. To invest all or any part of the Trust Fund in the acquisition by original subscription, purchase or otherwise of shares (of whatever nature and whether fully paid up or partly contributory) or upon debentures or debenture stock of any company or corporation and approved by the Trustees or upon deposit at call or otherwise with any such company (and without express limitation as to country) in New Zealand, Australia or the United Kingdom.

- 1.9.6 Without prejudice to the generality of the foregoing if at any time any company in which the Trustees hold shares shall be reconstructed or re-arranged or shall create a further issue of capital or shall carry into effect any scheme for capitalisation of its profits or for merger with any other company, then and in every such case the Trustees (in addition to any statutory or other powers vested in them) may take up further shares in such company or in any new company which may be formed in connection with such reconstruction, re-arrangement or merger as the Trustees in their absolute discretion shall think fit, whether such shares so taken up be wholly paid up or partly contributory and may agree to such reconstruction, re-arrangement, further issue of capital capitalisation or profits or merger on such terms and conditions as the Trustees may think fit and may execute any deed, agreement or other document relating thereto.
- 1.9.7 In addition to the powers otherwise conferred by these presents or by law to promote, form or concur in any steps or proceedings which may be taken to form a company for the purpose of purchasing or acquiring any undertaking, business and/or assets which, or any interest, in which forms part of the trust fund or the undertaking, business and/or assets of any company in which the Trustees may hold shares and to sell and transfer such undertaking, business and/or assets to any company or the Trustees for any company proposed to be formed and to carry out and complete any scheme or arrangement for the amalgamation of the said undertaking business and/or assets with the undertaking, business and assets of any company or companies on such terms as to the price or consideration being received in cash or in shares (ordinary preferred or deferred) or in debentures or debenture stock of the purchasing company or party in one way and partly in another, and generally upon such terms and conditions as the Trustees shall think fit with power to allow time

for payment of the whole or part, of any cash or other consideration, whether with or without taking security therefore AND the Trustees may take shares in or debentures of any company representing the consideration or part of the consideration of any such transfer, sale or amalgamation, having such rights, privileges and subject to such obligation as the Trustees may think fit AND the Trustees shall have the widest authority and discretion to effect any such sale of amalgamation on such terms and conditions in every respect as they could do if they were the absolute and beneficial owners of the trust fund.

- 1.9.8 To provide out of the trust property further capital for any company in which the Trustees may hold shares, either directly or indirectly or which may have acquired or proposes to acquire any business, undertaking and/or assets which, or an interest in which, forms part of the trust fund and to do so either by way of advances, loans, guarantees or taking up shares or further shares in such company or in such other manner and upon such terms and conditions as the Trustees may think proper.
- 1.9.9 To enter into partnership or any arrangement for sharing of profits, union of interest, joint adventure or otherwise with any person or persons or company.
- 1.10 To carry on, manage and work any farm for any period they think fit and for that purpose they have all those powers and authorities as are incidental to and those they in their discretion deem necessary for its proper carrying on, management and working, and those which are usually exercised by persons carrying on, managing, or working similar properties provided further and without, in any way limiting or restricting the foregoing general power, the Trustees may:
 - 1.10.1 Sell and purchase sheep and other livestock.
 - 1.10.2 Purchase stores, feed for stock, machinery, vehicles and other implements and things.
 - 1.10.3 Borrow money upon bank overdraft, or by mortgage (with power of sale) of the farm property, or by any other security, so that no person lending money to the Trustees need enquire as to the purpose of borrowing or see to the application of the proceeds, or see that no more is borrowed than is required.

- 1.10.4 Leave the entire management of the farm to a manager without the Trustees needing to attend personally to the management further than requiring the manager to render such periodic accounts of his or her management as are reasonable and without being in any way answerable or accountable for any dishonest or other wrongful act of the manager.
- 1.10.5 Use and apply for the purpose of the farm any money representing other parts of the trust fund which the Trustees think fit.
- 1.10.6 Apply for and accept new leases and licences; amalgamate, surrender, convert and change tenures of leases and licences; agree upon values of improvements; appear before any Courts; be represented by solicitors and Counsel; and generally act in relation to any land held under the Land Acts as if the Trustees were the beneficial owners of any leases or licences forming part of the trust fund.
- 1.11 To retain as authorised investments any investments which may be transferred to the Trust by any person.
- 1.12 To arrange for the raising and collecting of funds to control the expenditure of funds collected and to invest surplus as may be determined from time to time.
- 1.13 To indemnify and secure any company, firm or person against debt or liability whether incurred or undertaken on behalf of the Trust or not and against any costs, losses or expenses whether in connection with the affairs of the Trust or not and in connection with the foregoing to charge the assets of the Trust PROVIDED THAT no benefit or advantage from the Trust of a kind described in this clause shall be derived either directly or indirectly by any Trustee of the Trust.
- 1.14 To lend and advance money, to give credit to any person or company, to guarantee and give guarantees for the payment of money or the performance of contracts or obligations by any person or company and otherwise to assist any persons or company; such loans or advances to be made with provision for the payment of interest at commercial rates unless given to a charitable organisation or other organisation established for the benefit of the community or any particular community PROVIDED THAT no benefit or advantage from the Trust of a kind described in this clause shall be derived either directly or indirectly by any Trustee of the Trust.

- 1.15 To appoint and employ agents, overseers, managers, officers, assistants, servants, stockpersons, shepherds, workers and others whether honorary or otherwise and upon such terms and conditions as the Board shall think fit.
- 1.16 To employ such employees, staff, consultants or advisers as may from time to time be considered necessary by the Trust Board and to remunerate any person, firm or company for services rendered to the Trust and to make provision for payment of any expenses incurred by any employee of the Trust or for the retirement or superannuation of any such employee.
- 1.17 To adopt such means as the Board shall think fit of publicising the objects of the Trust, the decisions of the Board, the manner in which moneys are being raised and expended and any other aspect of the affairs of the Trust.
- 1.18 To pay out of trust funds all expenses incurred in the operation of the Trust or any of its activities.
- 1.19 To enter into any arrangements with any Government or authority, supreme, municipal, local or otherwise that may seem conducive to the Trust's objects or any of them and to obtain from such Government or authority any rights, privileges and concessions which the Trustees may think it desirable to obtain, and to carry out exercise and comply with any such arrangements, rights, privileges and concessions.
- 1.20 To apply for, secure, acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege which any government or authority or any corporation or other public body may be empowered to grant, and to pay for, aid in and contribute towards, carrying the same into effect.
- 1.21 To apply for, obtain, renew or make submissions in respect of any town planning, local body building, health, fire or police requirement of any kind in respect of any premises with which the Trust may purchase, own, build, make alterations to, remove, sell or destroy.
- 1.22 To pay any Trustee of these presents who may be an Accountant or Solicitor out of the Trust fund for all business done by him or her in relation to the Trust fund in like manner as he or she would have been entitled to charge the Trustees or Trustee of these presents for the same

if not being himself a Trustee he or she or his or her firm had been employed by them, her or him to do such business as their, her or his Accountant or Solicitor.

- 1.23 To reimburse the Trustees for their expenses in accordance with the provisions of the Fees and Travelling Allowance Act 1951 as if the Trust Board were a statutory Board within the meaning of that Act or in accordance with any enactment which replaces that Act.
- 1.24 To remunerate for their services those Trustees who are employed by the Trust Board as full time or part time employees by means of a fair and reasonable salary PROVIDED THAT the quantum of any such remuneration shall be determined solely by a firm of Chartered Accountants selected by the New Zealand Society of Accountants AND PROVIDED FURTHER that no Trustee is associated with the firm of Chartered Accountants so selected so as to be able in any way (whether directly or indirectly) to determine, or to materially influence the determination of the nature or the amount of the remuneration of any Trustee.
- 1.25 To carry on any business of any kind whatsoever.
- 1.26 Subject to the provisions of the Charitable Trusts Act 1957 to do, perform, carry out and execute all such incidental or necessary acts or deeds and things as are requisite for or conducive to the attainment of the objects of the Trust.
- 1.27 To appoint a custodial trustee or trustees to act as their custodial trustee in respect of investments to be made or properly held to hold on the trustees' behalf all securities and other documents of title relating to such investments or property. The custodial trustee or trustees appointed shall only act on the direct instructions of the Board and shall hold all investments and property in the name of the custodial trustee for the account of The Waiau Fisheries and Wildlife Habitat Enhancement Trust. The appointment of a custodial trustee shall be limited to persons or organisations recognised as having the expertise and services to provide custodial trustee duties.
2. The objects and powers set forth in any clause or sub-clause of this Schedule shall not, except where the context expressly requires, be in any way limited or restricted by reference to, or any inference from, the terms of any other clause or sub-clause. None of such clauses or sub-clauses or the objects therein specified or the powers thereby conferred shall be deemed subsidiary or ancillary to any other clause, sub-clause

or objects, but the Board shall have the full power to exercise all or any of the objects and powers set out herein independently, or any other of its objects and powers.

3. The Trustees shall have all power to the fullest extent as the law provides to generally do each and every act both convenient and advantageous and necessarily expedient for the proper carrying out and accomplishment of the objects consistent with this Trust provided in clause 3.0.
4. This deed shall in its interpretation of the objects in clause 3.0 be given its widest possible expression provided that no such interpretation shall alter the charitable nature of the deed pursuant to the Charitable Trusts Act 1957 or Act in substitution.

EXECUTED this 13th day of January 1997

1. SIGNED for and on behalf of)
ELECTRICITY CORPORATION)
OF NEW ZEALAND LIMITED)
as Settlor)

[Signature]
G. Baumann
authorized person

in the presence of:- *[Signature]*)
MARGARET J. FRANCE)
Policy Analyst)

2. SIGNED by ALAISTER)
CHARLES MCDUGALL)
as Trustee)
in the presence of:-)

[Signature]
A. McDougall

[Signature]
BRIAN HEATH
ECM

3. SIGNED by IAN CHARLES)
HORRAX)
as Trustee)

[Signature]
I. Horrax

in the presence of:-)
[Signature])
[Signature])
Monapouri)

4. SIGNED by ROBERT BOUD)
as Trustee)
in the presence of:-)

[Signature]
R. Boud

[Signature])
[Signature])
Wellington)

5. SIGNED by ROGER)
ROBERTSON SUTTON)
as Trustee)
in the presence of:-)

[Signature]
R. R. Sutton

[Signature])
Monapouri)

6. SIGNED by JOHN
WHITEHEAD
as Trustee
in the presence of:

John Whitehead

7. SIGNED by PETER
ATHOL LOW
as Trustee and First Chairperson
of the trust
in the presence of:

Peter Athol Low

8. SIGNED by ALASTAIR
HUGH MCLEES
as Trustee
in the presence of:-

Alastair Hugh McLees

*In witness whereof
I, the Trustee
John Whitehead*



DATED

18th December

1996

PARTIES

1. ELECTRICITY CORPORATION OF NEW
ZEALAND LIMITED

("Settlor")

2. NGARITA HELEN DIXON
ALISTAIR HUGH MCLEES
ANNE ELIZABETH MCCRACKEN
JOHN HENRY KNOWLER

("Trustees")

THE TUATAPERE AMENITIES TRUST

ANN CALLAGHAN
SOLICITOR
WELLINGTON

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- SCHEDULE 1 Powers of the Trustees

YMO.
AKM
AG M
JMS

PARTICULARS

Definitions

Unless the context otherwise requires, in this Trust Deed:

- A. "Amenity Values" means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes;
- B. "Consensus" means a process whereby the parties, before voting on the resolution, are required to thoroughly discuss the issue and try and obtain an indication as to whether there will be an agreement or not to the resolution before the resolution is formally put;
- C. "The Trustees" means the Trustees appointed hereunder and their successors in office for the time being and "the Board" shall have a corresponding meaning;
- D. "The Trustee" also means the member of the Board;
- E. "The trust fund" means and includes the funds and moneys and investments for the time being representing the same which funds, moneys and investments together with all or any property real or personal and all other assets which are paid assured, set over or transferred to the Trustees at the time of constitution of this Trust and all moneys and other assets received subsequently by the Trustees and the income derived from their investment;
- F. "Tuatapere community" means the people resident within the Tuatapere Urban Resource Area as defined from time to time in the Southland District Plan.
- G. Words importing the singular number shall include plural and the masculine gender and feminine or neuter and vice versa and words importing persons shall include companies. Any covenants or agreements on the part of two or more persons shall be deemed to bind them jointly and severally.

4110
A. K. M.
A.E. M. C.
J. K.

1. THE TRUST NAME

THE TUATAPERE AMENITIES TRUST

2. THE TRUST DATE 18th December 1996

3. THE SETTLOR

ELECTRICITY CORPORATION OF NEW ZEALAND LIMITED a duly incorporated company having its registered office at Wellington

4. The initial trustees are as nominated and appointed under clause 6.2.1 of this deed

JMB
AKM
AC-W
JH

BACKGROUND

1. The Electricity Corporation of New Zealand Limited ("ECNZ") operates the Manapouri Power Station under the provisions of the Manapouri Te Anau Development Act 1963 ("MTADA").
2. Section 4 (1)(a)(i) MTADA provides that ECNZ shall have full power and authority to erect, construct, provide, use and operate all works, appliances and conveniences which may be necessary or requisite for or in relation to the utilisation of water power from the water resources of Lakes Manapouri, Te Anau, the Waiau and Mararoa Rivers and their tributaries.
3. In addition, ECNZ has the power to raise or lower the levels of Lakes Manapouri and Te Anau and the Waiau and Mararoa Rivers and their tributaries which are deemed consents to take and use water under the Resource Management Act 1991, subject to operating guidelines, which are deemed conditions of these consents.
4. Subject to the provisos in sections 4A(2) and (5) of the MTADA, this Act allows ECNZ to carry out activities which would otherwise require resource consents under the Resource Management Act 1991 ("RMA"). However, the RMA deems ECNZ's uses of water to be water coastal and discharge permits which expire on 1 October 2001. The RMA requires that the application for the permits to continue these uses of water consider inter alia the avoidance, remediation or mitigation of adverse effects on the environment.
5. ECNZ is of the view that, for the renewal of permits of the scope and significance of these, a broad consultation programme is not only appropriate, but essential.
6. To that end, ECNZ initiated the establishment of the Waiau Working Party in April 1990 to study the effects of hydro-electric power generation on the environment.
7. For a period of almost six years, the parties and other members of the Waiau Working Party have held meetings and commissioned a number of reports to consider the environmental, recreational, social, cultural and economic values and opportunities of the Waiau River catchment resource.
8. The Parties have identified a series of provisions and conditions for ECNZ's resource consents which they believe provide recognition of the various values and opportunities and mitigate the adverse effects of ECNZ's operations and represent an acceptable outcome by retaining or enhancing the values identified while recognising the importance of the use of the resource for the generation of electricity.

9. The matters which all parties to the Waiiau Working Party consultation process have agreed should be conditions on the resource consents have been included in a Heads of Agreement dated the 16th day of July 1996 (Heads of Agreement) and will be included in a joint submission. This will be forwarded to the Southland Regional Council as a recommendation which will ask the Southland Regional Council to adopt these conditions for ECNZ's resource consents.
10. There are however some values, opportunities and concerns identified by the Communities of Te Anau, Manapouri and Tuatapere ("the Communities") which the Southland District Council and ECNZ have agreed are better addressed by the establishment of this trust than by measures which could be incorporated formally as conditions of the resource consents.
11. The Communities have recorded their concerns about the following issues:
 - (i) Boating access to Lakes Te Anau and Manapouri at low levels and to the Upper and Lower Waiiau River.
 - (ii) Repair and upgrade of certain amenities at Manapouri.
 - (iii) Improved reliability of Tuatapere water supply independent of the use of the Waiiau River.
 - (iv) General reduction of amenity value of the Waiiau River at Tuatapere.
12. To meet these concerns ECNZ and the Southland District Council have agreed that ECNZ will, once suitable consents have been granted, enter into an agreement with the Council whereunder ECNZ will provide a capital sum for a series of works to remedy the concerns outlined in (i) to (iii) of clause 11 of the preamble.
13. It has been agreed that the concerns expressed in clause 11 (iv) will be addressed by vesting a sum in an Amenities Trust Fund for the Tuatapere community.
14. It is desirable that for the purpose of administering such Trust a Board of Trustees be created with powers, authorities and discretions appropriate to the purpose.
15. ECNZ and the Trustees who have signed this deed have agreed to enter into this deed specifying the objects of the Trust and providing for its control and government.

1.0 THE TRUST

1.1 Date

This Deed of Trust is made on the trust date between the Settlor and the Trustees.

1.2 Definition

The terms defined or details given in the particulars shall have that meaning throughout this Deed of Trust.

1.3 Initial Amount Settled

The Settlor wishes to create a trust ("the Trust") and has paid to the Trustees the sum of ten dollars (\$10.00) to constitute the initial Trust Fund.

2.0 TRUST FUND

2.1 Receipt

The Trustees acknowledge receipt of the sum of ten dollars (\$10.00) paid by the Settlor.

2.2 Declaration of Trust

The Trustees declare that they hold the sum of ten dollars (\$10.00) together with all other property and investments which may be added to it by way of capital or income ("the Trust Fund") upon the trusts set out in this Trust Deed.

3.0 OBJECTS OF TRUST

3.1 The Settlor directs and the Trustees declare that the Trustees hold the Trust Fund upon the following trusts to be used to further the following charitable purposes and objects within the Tuatapere community, in recognition of the effects of the Manapouri Power Station for the benefit of the inhabitants of the Tuatapere Community:

3.1.1 To mitigate the perceived loss of general amenity values resulting from the reduction in flows of the Waiiau River, and to provide for the creation maintenance and enhancement of amenities for the long term betterment and advantage of the people of the Tuatapere community to enable them to provide for their social, economic and cultural wellbeing, and for their health and safety.

Y.H.H.
J.H.
AC
10/10/96 09:20 AM
AC-

3.1.2 The objects or purposes of this Trust are or shall be charitable as approved by the Commissioner of Inland Revenue and shall be deemed not to include or extend to any matter or thing which is or shall be held or determined to be non-charitable and the powers and purposes of the Board and trusts hereby created shall be so restricted.

4.0 NAME OF TRUST

4.1 The name of the Trust shall be the TUATAPERE AMENITIES TRUST.

5.0 INCORPORATION

5.1 The Trustees shall as soon as practicable apply for incorporation of the trustees as a board under the Charitable Trusts Act 1957.

6.0 TRUSTEES

6.1 The Board of Trustees ("the Board") shall consist of not less than five nor more than eight Trustees. The signatories to this deed shall be the first Trustees and members of the Board are appointed for an initial term of three years from the date of signing this deed.

6.2.1 The Settlor nominates and appoints as the initial trustees the following four members of the Waiau Working Party:

- | | | |
|---|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Ngarita Helen
Dixon of Tuatapere,
Clerk | to represent the Tuatapere
Community Board a Board
Incorporated under the Local
Government Act 1974 |
| 2 | Alistair Hugh
McLees of
Eastern Brush,
Farmer | to represent the Tuatapere District
Promotion Society Incorporated
a Society incorporated under the
Incorporated Societies Act 1908 |
| 3 | Anne Elizabeth
McCracken of
Waihoalea,
Secretary/Nurse | to represent the Tuatapere Ward
of the Southland District Council |
| 4 | John Henry
Knowler of Clifden,
Farmer | to represent the Lower Waiau
Farmers |

- 6.2.2 In addition, the Settlor shall, following the date of grant of the consents, (Background 12), appoint one other initial trustee as its representative.
- 6.2.3 The above Trustees shall hold office subject to clause 6.11(c) until new Trustees shall take office under clause 6.3.
- 6.3 The following bodies shall have the power to appoint Trustees after the initial term of three years, as follows:
- 6.3.1 One Trustee nominated and appointed by the Tuatapere Community Board or its successor for a term of three years;
- 6.3.2 One Trustee nominated and appointed by the Tuatapere District Promotion Society Incorporated or its successor for a term of three years;
- 6.3.3 One Trustee nominated and appointed by the Tuatapere Ward of the Southland District Council or its successor for a term of three years;
- 6.3.4 One Trustee nominated and appointed by ECNZ or its successor for a term of three years.
- 6.3.5 The above shall continue to have a right of nomination subject to any other provision to the contrary in this deed for further periods of three years each.
- 6.4 The bodies specified in clause 6.3 shall be known in this Trust Deed as the "nominating bodies".
- 6.5 Unless otherwise specified in this deed each member of the Board shall hold for office for a term which he or she is appointed or until she or he dies or is declared bankrupt or is subject to a property order under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988 or an order is made under Part II Mental Health Compulsory Assessment and Treatment Act 1993 or indicates in writing that she or he wishes to resign from the Board. Any retiring member shall be eligible for re-appointment. All Trustees shall remain in office (except as set out above) until their successor is nominated.
- 6.6 Three (3) further Trustees shall be appointed by the Board after the initial three year term [6.3] within six (6) months of the commencement of each term by calling for nominations and appointing those whom the Board deems appropriate after considering the following criteria:
- (i) skills required by the Board;
 - (ii) the geographical representation of the Board;
 - (iii) the need to represent the Lower Waiau Farmers.

If such appointments are not made at the expiration of the period of six months then the Settlor shall be entitled to give seven days' notice to the Board and if an appointment is not made at the expiration of the period of notice then the Settlor in its absolute discretion shall be entitled to make the appointments.

- 6.7 If any one such appointment shall be held by the same Trustee for any one period of three (3) years then the Trustee's nominating body shall be required to reconfirm such appointment within a period of six (6) calendar months after the expiration of each such period or periods.
- 6.8 Each nominating body may at any time and from time to time by notice in writing to the Board terminate the appointment of any Trustee it has nominated and appoint another person to be a Trustee.
- 6.9 The Trustees appointed by the nominating bodies may terminate by unanimous resolution of those Trustees the membership of a Board member appointed under clause 6.6 if they believe that such action is in the best interest of the trust.
- 6.10 If any of the nominating bodies listed in clause 6.3 shall cease to exist or be dissolved and a person or body succeeds to their assets duties or responsibilities then the right to nominate a Trustee shall pass to the person or body who succeeds to their assets, duties and responsibilities provided however if no such succession occurs then the Settlor shall appoint a replacement Nominating Body.
- 6.11 The filling of vacancies on the Board shall be carried out as follows:
- (a) in the case of retirement or termination of the appointment of the members of the Board appointed by nominating bodies, by appointment by the same nominating bodies; and
 - (b) in the case of retirement or termination of the appointment of other members of the Board, by an appointment by the Board in accordance with clause 6.6; and
 - (c) in the case of the retirement of one of the initial trustees the Settlor shall nominate and appoint a replacement trustee.

If any of the nominating bodies listed in clause 6.3 shall cease to exist or be dissolved and a person or body succeeds to their assets, duties or responsibilities in whole or in part then the right to nominate a Trustee shall pass to the person or body who succeeds to their assets, duties and responsibilities provided however if no such succession occurs or there is a dispute as to the body which is entitled to exercise the successor rights of appointment then the Settlor shall determine the successor or appoint a replacement nominating body.

- 6.12 A Trustee of the Board holding office under clause 6.2 or 6.3 may with the consent in writing of their nominating body by notice in writing given to the Secretary of the Board appoint another person to act as a proxy either for a particular meeting or for a particular period and any such appointment by notice in writing to the Board may be revoked at any time PROVIDED HOWEVER that the proxy of the Trustee holding office under clause 6.3 shall always be a member of the nominating body.
- 6.13 A Trustee of the Board holding office under Clause 6.6 may with the consent in writing of the Board appoint a proxy in his or her place either for a particular meeting or for a particular period and any such appointment may by notice in writing to the Secretary of the Board be revoked at any time.
- 6.14 In recognition that the provisions of this Trust are one element of a series of agreements and trusts which all parties to the Waiau Working Party consultation process have agreed, provide for the mitigation of the effects on the environment of the Manapouri Power Station, the Trustees, in exercising their powers in accordance with the objects of the Trust, shall make best endeavours to work in harmony with the exercise of powers under the Waiau Fisheries and Wildlife Habitat Enhancement Trust and Te Waiau Mahika Kai Trust, but are not of the view that they will, in every instance, be able to avoid that situation. To this end, the Trustees shall consult at least annually with the Trustees of these trusts and provide a copy of the minutes of their Board meetings to them, within one month of each date of the meetings.

7.0 FUNDING

- 7.1 ECNZ covenants that, provided the Heads of Agreement are not avoided by any of the parties thereto in terms of clauses 5 or 7 and the consents sought are granted it will forthwith increase the Trust Fund by a payment to the Trustees of the sum of \$800,000.00, under Deed of Gift, on the condition that the Trustees apply the sum to capital expenditure and/or ongoing maintenance costs in accordance with the objects of the Trust.
- 7.2 If the Heads of Agreement is avoided pursuant to either clause 5 or clause 7 of that Agreement, then ECNZ will be relieved of the promise to pay the sum of \$800,000, but the Trust will continue in respect of the initial \$10 Trust fund, and none of the parties shall have any claim against any of the others.

8.0 ANNUAL REPORT AND ACCOUNTS

- 8.1 The Trustees shall keep true and fair accounts of all money received and expended.
- 8.2 The financial year for the Trust shall end on 31 March in each year.

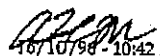
- 8.3 The Trustees shall within three months of the end of each financial year publish an Annual Report and Financial Statement giving details of the operations and activities of the Trust during the financial year, complete audited financial statements in accordance with accepted accounting standards, details of proposals and policies for the future operation of the Trust and such other matters as the Trustees may determine.
- 8.4 Copies of the Annual Report and Financial Statements shall as soon as they are published be forwarded to each of the nominating bodies and to ECNZ and shall be made available to any other person or Organisation requesting one free of charge or at a fee which shall not exceed the reasonable printing and distribution cost of each Report and Financial Statement.

9.0 VARIATION OF TRUST

- 9.1 The Board (subject to clause 12.4) may pursuant to a motion decided by a two thirds majority or more of the members' votes, by supplemental deed make alterations or additions to the terms and provisions of this deed provided that no such alteration or addition shall:
 - (a) detract from the exclusively charitable nature of the trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable; or
 - (b) be made to clause 1.1 of Schedule One unless it is first approved in writing by the Department of Inland Revenue.
 - (c) result in the Trust ceasing to be operated for the benefit of the Tuatapere community.
- 9.2 Every such approved addition or alteration shall be registered as required by the Charitable Trusts Act 1957 or corresponding enactment.

10.0 WINDING UP OF TRUST

- 10.1 If in the opinion of the Board it shall become no longer possible or feasible to carry out the objects of the Trust then the Board may by resolution wind up the Trust. No resolution dissolving the Trust shall take effect unless it has been passed by a majority of not less than two-thirds of the members of the Board and only after three months notice of intention to move such resolution has been given, and providing that the prior approval of the Settlor has been obtained in writing.
- 10.2 Such dissolution shall not take effect unless at a subsequent meeting of the Board called for that purpose. (Such meeting to be held not earlier than 28

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days and not later than 42 days after the date of the meeting declaring such dissolution). Such dissolution is confirmed by resolution to that effect carried by a simple majority of those members present and entitled to vote.

- 10.3 Should the Trust be dissolved then any moneys and property remaining after the due settlement of the affairs of the Trust and the payment of all just debts and claims shall be handed to such charitable society, association, institution, organisation or corporation or more than one as may be specified in the said resolution for general charitable uses and purposes in the Tuatapere community as approved by the Commissioner of Inland Revenue and in the event that agreement by resolution cannot be obtained, then as directed by the High Court of New Zealand.

11.0 TRUSTEES POWERS

- 11.1 The Board shall exercise their power to apply the Trust Fund for the purposes set out within the Tuatapere community but shall manage the affairs of the Trust and control and direct its operations so that the purpose and objects of the Trust shall be most effectively achieved and the same shall have power in addition to the powers conferred on Trustees by law pursuant to the provisions of the Charitable Trusts Act 1957 or otherwise to do and perform any of the acts and things set out in Schedule 1 hereto with the intent that the Trustees shall not use the Trust Fund for a purpose included in the Southland District Council's District Plan and that would result in reduction in the amount of rates payable by any person other than ECNZ to the Southland District or Southland Regional Councils. This provision does not apply to extraordinary ratepayer contributions to subsidised works undertaken by the Southland District Council. Provided further this provision will not apply where it is unanimously agreed otherwise by the Trustees.
- 11.2 For the purposes of Section 19 of the Charitable Trusts Act 1957 it is hereby declared that where that Section authorises a Board to enter into contracts required by law to be in writing by the signing on behalf of the Board by any person acting under its authority express or implied, any such contract when entered into by the Board may be signed on behalf of the Trust Board by any Trustee for the time being but by no other person PROVIDED HOWEVER that no such contract shall be entered into by a Trustee on behalf of the Trust Board except with the authority of a resolution passed at a meeting of the Trust Board at a properly constituted meeting nominating that person to sign on behalf of the Board. There shall be no capital expenditure without a two thirds majority vote of the Trustees.
- 11.3 All acts done by any meetings of the Trust Board or by any person acting as a Trustee of the Trust shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of continuance in office of any Trustee of the Trust or any person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly

appointed or had duly continued in office and was qualified to be a Trustee of the Trust.

12.0 PROCEEDINGS OF THE BOARD OF TRUSTEES

- 12.1 The Trustees shall meet at such times and places as they determine, and shall elect a Chairperson, Secretary and Treasurer from amongst their members at their first meeting and at every subsequent annual general meeting.
- 12.2 The Chairperson shall preside at all meetings of the Board at which she or he is present. In the absence of the Chairperson from any meeting, the members present shall appoint one of their number to preside at that meeting.
- 12.3 At any meeting of the Board of Trustees one half of the members shall form a quorum if the number is even and a majority if the number is uneven and no business shall be transacted unless a quorum is present.
- 12.4 The Board shall, before voting on any issue, make best endeavours to agree by consensus to the resolution to be considered.
- 12.5 However, where decision cannot be reached on a question pursuant to a motion decided by a two thirds majority or more of the members votes, it shall, unless otherwise specified in this deed, be put as a motion to be decided by a majority of votes. Each Trustee, and the Chairperson shall have one vote, except that if the voting is tied, then the Chairperson shall have a casting or additional vote.
- 12.6 Where any procedural requirement contained in this clause shall be found not to have been complied with, any subsequent meeting of the Trust Board may ratify and confirm any earlier action purported have been taken or done by the Trust Board or any committee thereof by a resolution supported by not less than three-fourths of the Trustees present and voting at the meeting of the Trust Board when the resolution ratifying such earlier action is proposed.
- 12.7 The Trustees may delegate such powers of the Secretary and Treasurer to a duly appointed Administrator as they shall see fit, who shall be responsible to the Secretary and Treasurer duly appointed.

13.0 DELEGATION OF POWERS

- 13.1 Any committee or person appointed by a resolution passed at a meeting of the Trust Board as a delegate, may without confirmation by the Board exercise or perform the delegated powers or duties in like manner and with the same effect as the Board could itself have exercised or performed them.

- 13.2 Any committee or person to whom the Board has delegated powers or duties shall be bound by the charitable terms of the trust.
- 13.3 Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the board.
- 13.4 It shall not be necessary that any person who is appointed to be a member of any such committee, or to whom any such delegation is made, be a member of the Board.

14.0 COMMON SEAL

- 14.1 The Board shall have a Common Seal which shall be kept in the custody of the Secretary, or such other officer as shall be appointed by the Board and shall be used only as directed by the Board. It shall be affixed to documents only in the presence of and accompanied by the signature of two members of the Board.

15.0 LIABILITY OF TRUSTEES

- 15.1 No Trustee shall be liable for:
- (a) any loss not attributable to dishonesty of the Trustee or to the wilful commission by the Trustee of an act known to the Trustee to be a breach of trust; or
 - (b) the neglect or default of any solicitor, bank, accountant, auditor, stockbroker, investment advisor or other agent employed in good faith by the Trustee.
- 15.2 No Trustee shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.

SCHEDULE ONE

POWERS OF THE TRUSTEES

- 1.1 To pay, apply, transfer or distribute, after payment therefrom of all costs, charges and expenses of the Trust Board or incidental to the establishment, management and administration of the Trust property, the whole or any part of the Trust property to, for or towards the furtherance of any of the objects of the Trust as the Trustees in their absolute discretion shall determine PROVIDED THAT it is declared that in the carrying on of any business under these presents and in the exercise of any power:
- 1.1.1 Authorising the remuneration of trustees no benefit or advantage whether or not convertible into money or any income of any kind, shall be afforded to or received, gained, achieved or derived by any of the persons specified in Paragraphs (a) to (d) of the second proviso to Section CB4(1)(e) of the Income Tax Act 1994 or any enactment in amendment thereof, or in substitution therefor where that person is able by virtue of that capacity as such person specified therein in any way (whether directly or indirectly) to determine or to materially influence in any way, the determination of the nature or the amount of that benefit or advantage, or that income, or the circumstances in which it is or is to be so received, gained, achieved, afforded or derived except as specifically exempted by that section.
- 1.1.2 Any income, benefit or advantage shall be applied to the charitable purposes set out in clause 3.0.
- 1.1.3 No member or person associated with a member of the Trust shall derive any income, benefit or advantage from the organisation where they can materially influence the payment of the income, benefit or advantage except where that income, benefit or advantage is derived from:
- (a) professional services to the organisation rendered in the course of business charged at no greater rate than current market rates; or
- (b) interest on money lent at no greater rate than current market rates.
- 1.1.4 The Trust Board shall be under no obligation to distribute any part of the Trust property in any year.

- 1.1.5 Notwithstanding anything to the contrary herein contained, the provisions and effect of this clause shall not be removed from this deed, and shall be included and implied into any deed amending, altering or replacing this deed.
- 1.2 In accordance with Section 13 of the Charitable Trusts Act 1957, shall be capable of holding real and personal property of whatsoever nature and wheresoever situated in New Zealand or elsewhere, and of suing and being sued and of doing and suffering all such acts and things as bodies corporate may lawfully do, and suffer and shall be entitled to do all such things and exercise all such powers and authorities as it shall consider necessary or desirable in its absolute discretion for the attainment of any of the objects set forth in clause 3.0.
- 1.3 To improve, manage, develop and maintain or lease, let, underlet, surrender, mortgage, charge or otherwise deal with and turn to account all or any property, real or personal, of the Trust or any interest therein wheresoever situate, and to erect, construct, alter, renovate and maintain any buildings or chattels and to retain, use and occupy or deal with the properties or assets of the Trust or any thereof, for all such purposes and in such manner as the Trustees may deem fit for the attainment of any of the objects set forth in clause 3.0 of this deed.
- 1.4 To expend money as the Trustees shall think fit in the improvement and development and otherwise for the benefit of the Trust property.
- 1.5 To sell, dispose of or exchange all real and personal property held by them at any time and whether or not such property has been acquired since the date hereof under the powers of trusts hereof, in such manner and subject to such terms and conditions as the Trustees shall in their discretion think fit **PROVIDED HOWEVER** that the Trustees shall hold all moneys received by them under this power for the purposes of and with the objects and subject to the trusts of this deed.
- 1.6 To receive and take any gift of property, real or personal, for any of the purposes or objects of the Trust whether subject to any special trust or not but so that the Trustees may nevertheless decline and refuse to accept any gift or donation.
- 1.7 To borrow in such manner as the Board shall think fit any moneys which may be required to effect or complete the purchase of any asset which the Board is hereby authorised to acquire and hold as an investment of the trust funds or for the conversion of any leasehold land held by the Board into freehold tenure or for the erection of any buildings or effecting any improvements to any real or personal property acquired by the Board and for the purposes of paying off any moneys owing on any asset acquired by the Board or for the rearranging of any loan or loans obtained by the Board or for the purpose of any business carried on by the Board or in which it may have an interest, but

so that no lender shall be concerned to inquire as to the necessity, regularity or propriety of the exercise of any power or to see to the application of the moneys advanced and so that the exercise of any such power shall be conclusive evidence of the powers of the Board to raise such moneys and to give the security executed.

- 1.8 To employ experts to investigate and examine the conditions, prospects, value, character and circumstances of any business concerns and undertakings and generally of any assets, property or rights of the Trust or which the Trust Board may wish to acquire.
- 1.9 To invest the trust funds:
- 1.9.1 In any of the forms of investment authorised by law.
- 1.9.2 On loan to any person or persons, Company or institution or Building Society upon such security at such rate of interest and upon such terms as to repayment as the Board shall think fit.
- 1.9.3 In the acquisition of any freehold or leasehold land or any other interest in land in New Zealand.
- 1.9.4 In the acquisition of chattels and personal property of every kind and description.
- 1.9.5 To invest and to vary the investments of any moneys in the hands of the Trustees in terms of these presents in such modes of investment, including the acquisition of any policy of life insurance and/or in such security or securities and whether in New Zealand or elsewhere, including investment both official and unofficial in money markets (notwithstanding that such mode or modes of security or securities may not be such as are for the time being authorised by law for the investment of trust funds) as the Trustees shall think fit. To invest all or any part of the Trust Fund in the acquisition by original subscription, purchase or otherwise of shares (of whatever nature and whether fully paid up or partly contributory) or upon debentures or debenture stock of any company or corporation and approved by the Trustees or upon deposit at call or otherwise with any such company (and without express limitation as to country) in New Zealand, Australia or the United Kingdom.
- 1.9.6 Without prejudice to the generality of the foregoing if at any time any company in which the Trustees hold shares shall be reconstructed or re-arranged or shall create a further issue of capital or shall carry into effect any scheme for capitalisation of its profits or for merger with any other company, then and in every such case the Trustees (in addition to any statutory or other powers vested in them) may take up further shares in such company or in any new company which may be formed

in connection with such reconstruction, re-arrangement or merger as the Trustees in their absolute discretion shall think fit, whether such shares so taken up be wholly paid up or partly contributory and may agree to such reconstruction, re-arrangement, further issue of capital capitalisation or profits or merger on such terms and conditions as the Trustees may think fit and may execute any deed, agreement or other document relating thereto.

- 1.9.7 In addition to the powers otherwise conferred by these presents or by law to promote, form or concur in any steps or proceedings which may be taken to form a company for the purpose of purchasing or acquiring any undertaking, business and/or assets which, or any interest, in which forms part of the trust fund or the undertaking, business and/or assets of any company in which the Trustees may hold shares and to sell and transfer such undertaking, business and/or assets to any company or the Trustees for any company proposed to be formed and to carry out and complete any scheme or arrangement for the amalgamation of the said undertaking business and/or assets with the undertaking, business and assets of any company or companies on such terms as to the price or consideration being received in cash or in shares (ordinary preferred or deferred) or in debentures or debenture stock of the purchasing company or party in one way and partly in another, and generally upon such terms and conditions as the Trustees shall think fit with power to allow time for payment of the whole or part, of any cash or other consideration, whether with or without taking security therefore AND the Trustees may take shares in or debentures of any company representing the consideration or part of the consideration of any such transfer, sale or amalgamation, having such rights, privileges and subject to such obligation as the Trustees may think fit AND the Trustees shall have the widest authority and discretion to effect any such sale or amalgamation on such terms and conditions in every respect as they could do if they were the absolute and beneficial owners of the trust fund.
- 1.9.8 To provide out of the trust property further capital for any company in which the Trustees may hold shares, either directly or indirectly or which may have acquired or proposes to acquire any business, undertaking and/or assets which, or an interest in which, forms part of the trust fund and to do so either by way of advances, loans, guarantees or taking up shares or further shares in such company or in such other manner and upon such terms and conditions as the Trustees may think proper.
- 1.9.9 To enter into partnership or any arrangement for sharing of profits, union of interest, joint adventure or otherwise with any person or persons or company.

- 1.10 To carry on, manage and work any farm for any period they think fit and for that purpose they have all those powers and authorities as are incidental to and those they in their discretion deem necessary for its proper carrying on, management and working, and those which are usually exercised by persons carrying on, managing, or working similar properties provided further and without, in any way limiting or restricting the foregoing general power, the Trustees may:
- 1.10.1 Sell and purchase sheep and other livestock.
- 1.10.2 Purchase stores, feed for stock, machinery, vehicles and other implements and things.
- 1.10.3 Borrow money upon bank overdraft, or by mortgage (with power of sale) of the farm property, or by any other security, so that no person lending money to the Trustees need enquire as to the purpose of borrowing or see to the application of the proceeds, or see that no more is borrowed than is required.
- 1.10.4 Leave the entire management of the farm to a manager without the Trustees needing to attend personally to the management further than requiring the manager to render such periodic accounts of his or her management as are reasonable and without being in any way answerable or accountable for any dishonest or other wrongful act of the manager.
- 1.10.5 Use and apply for the purpose of the farm any money representing other parts of the trust fund which the Trustees think fit.
- 1.10.6 Apply for and accept new leases and licences; amalgamate, surrender, convert and change tenures of leases and licences; agree upon values of improvements; appear before any Courts; be represented by solicitors and Counsel; and generally act in relation to any land held under the Land Acts as if the Trustees were the beneficial owners of any leases or licences forming part of the trust fund.
- 1.11 To retain as authorised investments any investments which may be transferred to the Trust by any person.
- 1.12 To arrange for the raising and collecting of funds to control the expenditure of funds collected and to invest surplus as may be determined from time to time.
- 1.13 To indemnify and secure any company, firm or person against debt or liability whether incurred or undertaken on behalf of the Trust or not and against any costs, losses or expenses whether in connection with the affairs of the Trust or not and in connection with the foregoing to charge the assets of the Trust **PROVIDED THAT** no benefit or advantage from the Trust of a kind

described in this clause shall be derived either directly or indirectly by any Trustee of the Trust.

- 1.14 To lend and advance money, to give credit to any person or company, to guarantee and give guarantees for the payment of money or the performance of contracts or obligations by any person or company and otherwise to assist any persons or company; such loans or advances to be made with provision for the payment of interest at commercial rates unless given to a charitable organisation or other organisation established for the benefit of the community or any particular community PROVIDED THAT no benefit or advantage from the Trust of a kind described in this clause shall be derived either directly or indirectly by any Trustee of the Trust.
- 1.15 To appoint and employ agents, overseers, managers, officers, assistants, servants, stockpersons, shepherds, workers and others whether honorary or otherwise and upon such terms and conditions as the Board shall think fit.
- 1.16 To employ such employees, staff, consultants or advisers as may from time to time be considered necessary by the Trust Board and to remunerate any person, firm or company for services rendered to the Trust and to make provision for payment of any expenses incurred by any employee of the Trust or for the retirement or superannuation of any such employee.
- 1.17 To adopt such means as the Board shall think fit of publicising the objects of the Trust, the decisions of the Board, the manner in which moneys are being raised and expended and any other aspect of the affairs of the Trust.
- 1.18 To pay out of trust funds all expenses incurred in the operation of the Trust or any of its activities.
- 1.19 To enter into any arrangements with any Government or authority, supreme, municipal, local or otherwise that may seem conducive to the Trust's objects or any of them and to obtain from such Government or authority any rights, privileges and concessions which the Trustees may think it desirable to obtain, and to carry out exercise and comply with any such arrangements, rights, privileges and concessions.
- 1.20 To apply for, secure, acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege which any government or authority or any corporation or other public body may be empowered to grant, and to pay for, aid in and contribute towards, carrying the same into effect.
- 1.21 To apply for, obtain, renew or make submissions in respect of any town planning, local body building, health, fire or police requirement of any kind in respect of any premises with which the Trust may purchase, own, build, make alterations to, remove, sell or destroy.


- 1.22 To pay any Trustee of these presents who may be an Accountant or Solicitor out of the Trust fund for all business done by him or her in relation to the Trust fund in like manner as he or she would have been entitled to charge the Trustees or Trustee of these presents for the same if not being himself a Trustee he or she or his or her firm had been employed by them, her or him to do such business as their, her or his Accountant or Solicitor.
- 1.23 To reimburse the Trustees for their expenses in accordance with the provisions of the Fees and Travelling Allowance Act 1951 as if the Trust Board were a statutory Board within the meaning of that Act or in accordance with any enactment which replaces that Act.
- 1.24 To remunerate for their services those Trustees who are employed by the Trust Board as full time or part time employees by means of a fair and reasonable salary PROVIDED THAT the quantum of any such remuneration shall be determined solely by a firm of Chartered Accountants selected by the New Zealand Society of Accountants AND PROVIDED FURTHER that no Trustee is associated with the firm of Chartered Accountants so selected so as to be able in any way (whether directly or indirectly) to determine, or to materially influence the determination of the nature or the amount of the remuneration of any Trustee.
- 1.25 To carry on any business of any kind whatsoever.
- 1.26 Subject to the provisions of the Charitable Trusts Act 1957 to do, perform, carry out and execute all such incidental or necessary acts or deeds and things as are requisite for or conducive to the attainment of the objects of the Trust.
- 1.27 To appoint a custodial trustee or trustees to act as their custodial trustee in respect of investments to be made or property held to hold on the trustees' behalf all securities and other documents of title relating to such investments or property. The custodial trustee or trustees appointed shall only act on the direct instructions of the Board and shall hold all investments and property in the name of the custodial trustee for the account of the Tuatapere Amenities Trust. The appointment of a custodial trustee shall be limited to persons or organisations recognised as having the expertise and services to provide custodial trustee duties.
2. The objects and powers set forth in any clause or sub-clause of this Schedule shall not, except where the context expressly requires, be in any way limited or restricted by reference to, or any inference from, the terms of any other clause or sub-clause. None of such clauses or sub-clauses or the objects therein specified or the powers thereby conferred shall be deemed subsidiary or ancillary to any other clause, sub-clause or objects, but the Board shall have the full power to exercise all or any of the objects and powers set out herein independently, or any other of its objects and powers.

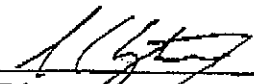
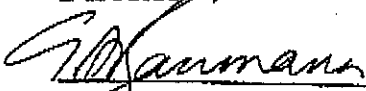
- 3. The Trustees shall have all power to the fullest extent as the law provides to generally do each and every act both convenient and advantageous and necessarily expedient for the proper carrying out and accomplishment of the objects consistent with this Trust provided in clause 3.0.

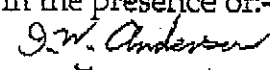
- 4. This deed shall in its interpretation of the objects in clause 3.0 be given its widest possible expression provided that no such interpretation shall alter the charitable nature of the deed pursuant to the Charitable Trusts Act 1957 or Act in substitution.

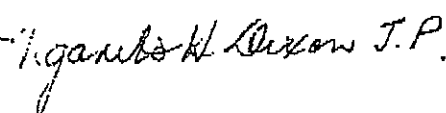
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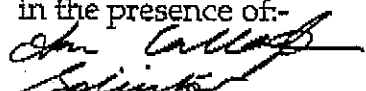
EXECUTED the 18th day of December 1996

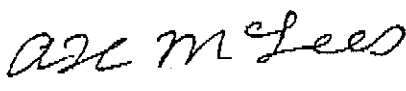
1. SIGNED for and on behalf of
ELECTRICITY CORPORATION
OF NEW ZEALAND LIMITED
 as Settlor
 in the presence of-

 MARGARET J. FRANCE
 Policy Analyst
 Wellington

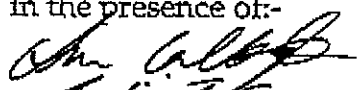

 Director

 Authorised Person

2. SIGNED by
NGARITA HELEN DIXON
 as Trustee
 in the presence of-

 J.W. Andersen
 Farmer
 Pukia

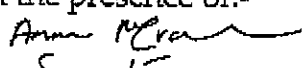

 Nganita Helen Dixon J.P.

3. SIGNED by
ALISTAIR HUGH MCLEES
 as Trustee
 in the presence of-

 Alistair Hugh McLees
 Wellington


 Alistair Hugh McLees

4. SIGNED by
ANNE ELIZABETH MCCRACKEN
 as Trustee
 in the presence of-

 Anne Elizabeth McCracken
 Wellington


 Anne Elizabeth McCracken

5. SIGNED by
JOHN HENRY KNOWLER
 as Trustee
 in the presence of-

 Anna McEwan
 Secretary
 Wairarapa


 John Henry Knowler

6. SIGNED by
CAROL MARGARET HENDERSON
 as Trustee
 in the presence of-

This Agreement is dated the day of 1996.

BETWEEN ELECTRICITY CORPORATION OF NEW ZEALAND LIMITED, a
duly incorporated company having its registered office at
Wellington ("ECNZ")

AND SOUTHLAND DISTRICT COUNCIL (with its successors and
assigns called "the Council")

(together called "the parties")

BACKGROUND

1. ECNZ operates the Manapouri Power Station under the provisions of the Manapouri Te Anau Development Act 1963 ("MTADA"), and the Resource Management Act 1991.
2. Section 4 (1)(a)(i) MTADA provides that ECNZ shall have full power and authority to erect, construct, provide, use and operate all works, appliances and conveniences which may be necessary or requisite for or in relation to the utilisation of water power from the water resources of Lakes Manapouri and Te Anau, and the Waiau and Mararoa rivers and their tributaries:
3. In addition, ECNZ has the power to raise or lower the levels of Lakes Manapouri and Te Anau and the Waiau and Mararoa Rivers and their tributaries which are deemed consents to take and use water under the Resource Management Act 1991, subject to operating guidelines, which are deemed conditions of these consents.
4. Subject to the provisos in sections 4A(2) and (5) of the MTADA, this Act allows ECNZ to carry out activities which would otherwise require resource consents under the Resource Management Act 1991 ("RMA"). However, the RMA deems ECNZ's uses of water to be water coastal and discharge permits which expire on 1 October 2001. The RMA requires that the application for the permits to continue these uses of water consider inter alia the avoidance, remediation or mitigation of adverse effects on the environment.
5. ECNZ is of the view that, for the renewal of permits of the scope and significance of these, a broad consultation programme is not only appropriate, but essential.
6. To that end, the ECNZ initiated the establishment of the Waiau Working Party in April 1990 to study the effects of hydro-electric power generation on the environment.
7. For a period of almost six years, the parties and other members of the Waiau Working Party have held meetings and commissioned a number of reports to

consider the environmental, recreational, social, cultural and economic values and opportunities of the Waiau River catchment resource.

8. The Waiau Working Party has identified a series of provisions and conditions which they believe, if applied to the Electricity Corporation's resource consents as conditions where legally possible and other incorporated into binding agreements ("the Agreements"), will provide recognition of the various values and opportunities and mitigate the adverse effects of ECNZ's operations and represent an acceptable outcome by retaining or enhancing the values identified while recognising the importance of the use of the resources for the generation of electricity.
9. The matters which all parties to the Waiau Working Party consultation process have agreed should be conditions on the resource consents have been included in a Heads of Agreement dated the 16th day of July 1996 ("Heads of Agreement") and will be included in a joint submission. This will be forwarded to the Southland Regional Council as a recommendation which will ask the Southland Regional Council to adopt these conditions for ECNZ's resource consents.
10. There are however some values, opportunities and concerns identified by the Communities of Te Anau, Manapouri and Tuatapere ("the Communities") which the Council and ECNZ have agreed are better addressed by the provisions of this agreement than by measures which could be incorporated formally as conditions of the resource consents. The purpose of this Agreement is to record those matters, and the compromise which ECNZ and the Council consider appropriate between these values and the importance of the use of the Waiau catchment resource for the generation of electricity, and which the Council considers would address the Communities concerns.
11. The Communities have recorded their concerns about the following issues:
 - (i) Boating access to Lake Te Anau Manapouri at low levels and to the Upper and Lower Waiau River.
 - (ii) Repair and upgrade of certain amenities at Manapouri.
 - (iii) Improved reliability of the Tuatapere water supply independent of the use of the Waiau River.
 - (iv) General reduction of amenity value of the Waiau River at Tuatapere.
12. It has been agreed that (i)-(iii) in clause 11 will be remedied through direct funding, and the concerns expressed in (iv) by vesting a sum in an Amenities Trust Fund.

13. To meet the concerns in (i)-(iii) of clause 11 of the preamble ECNZ and the Council have agreed that ECNZ will, once suitable consents have been granted, provide a capital sum for a series of works to remedy these concerns.
14. The Southland District Council agrees that on receipt of the sum, it will apply that sum for the purposes set out in this agreement, as has been identified by the Communities.

THIS AGREEMENT THEREFORE RECORDS:

1. The Council for itself and on behalf of the Te Anau and Tuatapere Community Boards agrees to ECNZ's resource consent Applications Nos 001 to 007 inclusive with the conditions set out in Schedule 1 to the joint submission attaching to the consents AND SUBJECT TO the additional agreements between the parties as follows:
2. ECNZ agrees to the conditions set out in Schedule 1 of the joint submission attaching to the appropriate rights as therein set out AND FURTHER agrees to the additional agreements between the parties set out below.
3. This agreement is subject to and conditional upon the Heads of Agreement not being avoided by any of the parties to that Agreement in terms of clauses 5 or 7 thereto.
4. If the Heads of Agreement is avoided pursuant to either clause 5 or clause 7 of that Agreement, then this Agreement is at an end, both parties shall be relieved of further performance of their obligations under this agreement, and neither party shall have any claim against the other.

5. ADDITIONAL AGREEMENTS

- (i) ECNZ shall, provided the Heads of Agreement is not avoided by any of the parties to that Agreement in terms of clauses 5 or 7 thereto and the consents sought are granted, pay to the Council the sum of \$450,000.00 exclusive of Goods and Services Tax, calculated as follows, in respect of the following works:

(a)	Construction of Boat Ramps for Lakes and Upper Waiau River	\$95,000.00
	Construction of Boat Ramps for Lower Waiau River	\$50,000.00
(b)	Installation of Te Waewae Lagoon Toilets	\$5,000.00
(c)	Upgrading of Tuatapere Water Supply	\$200,000.00
(d)	Pearl Harbour Retaining Wall reconstruction	\$40,000.00

(e)	Maintenance Works on Manapouri Hall Maintenance	\$10,000.00
(f)	Costs of resource consents, legal and professional services, and a sum for contingencies not included in the sums (a) to (e) above	\$50,000.00
		<hr/>
	Total	\$450,000.00

(ii) The Council shall first apply for such consents, including resource consents and building consents as are necessary to enable the works to be carried out.

(iii) The Council shall, subject to (ii) above, apply the sum to the carrying out of the works set out in A to D inclusive of this clause, in recognition of the Communities concerns as to the effects of the Manapouri Power Station:

(A) to provide better for boat access to the Lakes and "Upper" and "Lower" Waiau Rivers at low levels, the Council shall undertake such lengthening, construction, reconstruction or relocation of existing ramps and provision of new ramps as is required to provide acceptable access at all times, at the following sites identified by the Communities, where remedial work or the provision of new ramps is needed.

Lakes and Upper Waiau River Ramps

- (a) Te Anau Downs
- (b) Te Anau Public
- (c) Te Anau Camping Ground (Steamer Bay)
- (d) Pearl Harbour Public Ramp
- (e) Queens Reach

Lower Waiau River Ramps

- (f) Monowai
- (g) Tuatapere Domain
- (h) Te Waewae Lagoon

(B) to provide for 2 field toilets in association with the ramp at Te Waewae Lagoon.

(C) to provide for the following Manapouri community works which have either some past or current association with the Manapouri Power Scheme, the Council shall:

- (a) Reconstruct the retaining wall at Pearl Harbour originally constructed by community groups to protect the left bank of the lower Waiau River at Pearl Harbour.
 - (b) Repaint the Manapouri Community Hall originally donated to the community by the predecessor of ECNZ.
 - (iii) Should there be any surplus monies which eventuate from carrying out the above works at a lesser cost than the Council shall consult and take into account, the recommendations of the Te Anau and Tuatapere Community Boards and shall apply these monies in providing other suitable amenities in the Waiau catchment accordingly, provided that in no event may the monies be used for a purpose if the result would be to reduce the amount of rates payable by any ratepayer other than ECNZ.
 - (D) To mitigate degradation of the Tuatapere water supply due to the increased turbidity of the Waiau River which has occurred with reduced flows providing less dilution of turbid tributary waters, the Council shall upgrade the existing water supply to provide the Tuatapere Township with water of a drinking standard equivalent at least to a Department of Health B Grading, from reliable and sustainable sources other than the Waiau River.
6. (i) In the event of any dispute arising between the parties in respect of or in connection with this Agreement, the parties shall, without prejudice to any other right or entitlement they may have under this agreement or otherwise, explore whether the dispute can be resolved by use of the alternative dispute resolution technique of mediation. The rules governing such techniques shall be agreed between the parties or as recommended by the New Zealand Law Society or as selected by the Chairman of the New Zealand Chapter of LEADR (Lawyers Engaged in Alternative Dispute Resolution).
- (ii) In the event the dispute is not resolved within twenty eight days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration under the provisions of the Arbitration Act 1908 or any Act passed in substitution therefor. The arbitrator shall be agreed between the parties within 10 days of written notice of the referral by the referring party to the other or failing agreement appointed by the President of the New Zealand Law Society. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.
7. Any notice given under this agreement shall be in writing and delivered or transmitted as follows:

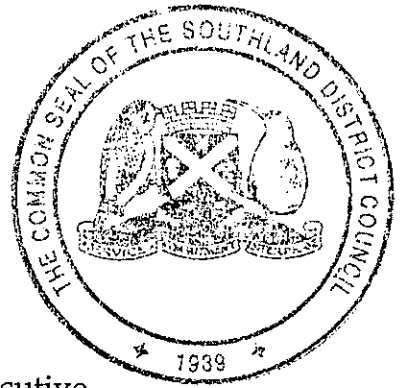
2. THE COMMON SEAL of
SOUTHLAND DISTRICT COUNCIL
was hereunto affixed in the presence of:

Harolden
[Signature]

)
)

Mayor

Chief Executive



ELECTRICITY CORPORATION OF
NEW ZEALAND LIMITED

and

FEDERATED FARMERS SOUTHLAND INCORPORATED

and

THE SOUTHLAND REGIONAL COUNCIL

AGREEMENT

ANN CALLAGHAN
SOLICITOR
P O BOX 930
WELLINGTON
NEW ZEALAND

Tel: (04) 472 3550
Fax: (04) 473 7091

PARTIES:

1. **ELECTRICITY CORPORATION OF NEW ZEALAND LIMITED** a duly incorporated company having its registered office at Wellington ("ECNZ")
2. **FEDERATED FARMERS SOUTHLAND INCORPORATED** (with its successors and assigns called "the Farmers")
3. **THE SOUTHLAND REGIONAL COUNCIL** (with its successors and assigns called "the Council")

(together called "the parties")

BACKGROUND:

1. ECNZ operates the Manapouri Power Station under the provisions of the Manapouri Te Anau Development Act 1963 ("MTADA"), and the Resource Management Act 1991 ("RMA").
2. Section 4(1)(a)(i) MTADA provides that ECNZ shall have full power and authority to erect, construct, provide, use and operate all works, appliances and conveniences which may be necessary or requisite for or in relation to the utilisation of water power from the water resources of Lakes Manapouri and Te Anau, and the Waiiau and Mararoa rivers and their tributaries.
3. In addition, ECNZ has the power to raise or lower the levels of Lakes Manapouri and Te Anau and the Waiiau and Mararoa Rivers and their tributaries which are deemed consents to take and use water under the RMA, subject to operating guidelines, which are deemed conditions of these consents.
4. Subject to the provisos in sections 4A(2) and (5) of the MTADA, this Act allows ECNZ to carry out activities which would otherwise require resource consents under the RMA. However, the RMA deems ECNZ's uses of water to be water, coastal and discharge permits which expire on 1 October 2001. The RMA requires that the application for the permits to continue these uses of water consider inter alia the avoidance, remediation or mitigation of adverse effects on the environment.
5. ECNZ is of the view that, for the renewal of permits of the scope and significance of these, a broad consultation programme is not only appropriate, but essential.
6. To that end, ECNZ initiated the establishment of the Waiiau Working Party in April 1990 to study the effects of hydro-electric power generation on the environment.

7. For a period of almost six years, the parties and other members of the Waiau Working Party have held meetings and commissioned a number of reports to consider the environmental, recreational, social, cultural and economic values and opportunities of the Waiau River catchment resource.
8. The Waiau Working Party has identified a series of provisions and conditions which they believe, if applied to the ECNZ's resource consents as conditions where legally possible and others incorporated into binding agreements ("the Agreements"), will provide recognition of the various values and opportunities and mitigate the adverse effects of ECNZ's operations and represent an acceptable outcome by retaining or enhancing the values identified while recognising the importance of the use of the resource for the generation of electricity.
9. By a Heads of Agreement dated the 16th day of July 1996 ("Heads of Agreement") those members of the Waiau Working Party consultation process who sign the document record the conditions they think should attach to ECNZ's resource consents when granted. Those conditions will then be included in a joint submission made by its signatories to the Council when it advertises the applications. The joint submission will ask the Council to adopt the agreed conditions and impose them as conditions on the grant of ECNZ's resource consents.
10. The Waiau Working Party's agreed conditions include one that seeks to prevent erosion, or remedy damage from erosion, which occurs or may occur as a result of the exercise of the permit to dam and divert the waters of Lake Manapouri and the Waiau and Mararoa Rivers by means of a structure known as the "Manapouri Lake Control Structure", as follows:
 - 004.11 Erosion

 The Consent Holder shall:
 - (a) take such precautionary measures which the General Manager, Council, may direct to prevent damage from erosion which is reasonably likely to occur as a result of the exercise of this permit;
 - (b) make such remedial repairs which the General Manager, Council, may require to remedy damage from erosion which occurs as a result of the exercise of this permit.
11. 11.1 By an Agreement dated 9 March 1973 the New Zealand Electricity Department (now ECNZ) and the Southland Catchment Board (now the Southland Regional Council) ("the Waiau Agreement") the Council is required, at ECNZ's expense:

- a. to conduct regular surveys and take aerial photographs to identify and evaluate channel alterations which have occurred since work on the Manapouri Power Scheme commenced; and
 - b. at the request of ECNZ, any landowner, any local body, or on the Council's own initiative, to investigate and assess any matter arising from fluctuations in river flow, and identify possible remedial actions and their cost.
- 11.2 If ECNZ approves an action recommended by the Council through the mechanism described in 11.1.b of this Agreement, then ECNZ meets the full cost of that work unless the Agreement provides to the contrary.
- 11.3 If the Agreement does not require ECNZ to meet the full cost of work suggested through the mechanism described in 11.1.b then a sharing of the cost between landowners represented by the Council and ECNZ may occur, with disputes being referred to arbitration.
- 11.4 In discharge of its obligations under the Waiau Agreement, and as a result of other agreements entered into from time to time with landowners affected by changes in the Waiau River caused by the Manapouri Power Project, ECNZ has funded the costs of the Council in carrying out an agreed annual programme of vegetation control in the Waiau River floodway.
12. There are some values, opportunities and concerns identified by Federated Farmers Southland Inc, representing the adjoining landholders in the lower part of the Waiau River which the Farmers and ECNZ have agreed are better addressed by the provisions of this Agreement than by measures which could be incorporated formally as conditions of the resource consents. This Agreement records those matters, and the agreements reached between ECNZ and the Farmers. Those agreements recognise the importance of the use of the Waiau catchment resource for the generation of electricity, and the mitigation of effects arising from that use for farmers and other landowners in the Waiau catchment.
13. The parties intend that this Agreement and the erosion condition proposed for the resource consents as recorded in clause 10 of the background will:
 - a. replace the Waiau Agreement, the Council and ECNZ as successors to the signatories of it declare that it will now be cancelled in terms of operative clause 8 of this Agreement; and
 - b. continue to have effect (subject to clause 7.2) for a term ending on the date on which the resource consents proposed in the joint submission expire.
14. The New Zealand Electricity Department, and latterly, ECNZ, has accepted

responsibility for the loss of stock access to water occasioned by the need to fence river berms as a result of the lowering of the Waiau River.

THE PARTIES AGREE:

1. **Definitions**

"**Adequate condition**" means a fence that provides an effective barrier to stock at every point along its length.

"**Agreed Programme**" means an annual programme of river flood channel and berm fenceline vegetation spraying to be agreed each year by the parties. The programme shall require handspraying of vegetation along fencelines where the use of other methods would unreasonably interfere with the farmer concerned's normal farming practice.

"**Fence**" means a fence erected as a sheep and cattle stock barrier, whether or not continuous, and extending along the whole boundary of land contiguous to the Waiau River, and which separates the bed of the Waiau River from the land of adjoining rural land occupiers.

"**Repair**" means maintaining in an adequate condition and includes the obligation to progressively replace parts of fences as required.

2. The Farmers will join with other members of the Waiau Working Party in making a joint submission to the Council, consenting as effected parties, to the grant of ECNZ's resource consent applications numbers 001 to 007 (inclusive) subject to:
 - 2.1 the conditions proposed for adoption by the Southland Regional Council on the grant of the consents as detailed in Schedule 1 to the joint submission; and
 - 2.2 the terms of this Agreement.
3. ECNZ will ask the Council to grant its resource consent applications numbers 001 to 007 (inclusive) subject to:
 - 3.1 the conditions agreed and listed in Schedule 1 of the joint submission; and
 - 3.2 the terms of this Agreement.
4. This Agreement is subject to and conditional upon the Heads of Agreement not being avoided by any of the parties to that Agreement in terms of clauses 5 or 7 thereto.

5. If the Heads of Agreement are avoided pursuant to clause 5 or clause 7 of that Agreement, then:
- 5.1 this Agreement shall be at an end and be of no effect;
 - 5.2 the parties shall be relieved of further performance of the obligations undertaken by them under this Agreement;
 - 5.3 none of the parties shall have any claim against any of the others arising from any action taken in anticipation of this Agreement enduring; and
 - 5.4 the Waiau Agreement shall be revived and shall continue to have effect between ECNZ and the Council according to its terms.

6. **Further Agreements**

- 6.1 ECNZ shall, provided the Heads of Agreement are not avoided by any of the parties to that Agreement in terms of clauses 5 or 7 thereto and the consents sought are granted:
- a. fund the reasonable costs of the Council in carrying out an agreed programme of annual spraying of vegetation growth in the Waiau River flood channel from below the Mararoa Weir to the mouth of the river for the purpose of maintaining the efficiency of the flood channel in passing floodwater;
 - b. maintain, or fund the maintenance of the fences between the Mararoa Weir and the mouth of the Waiau River erected as a consequence of the Manapouri Power Project in a stock proof condition, and will repair those fences when damaged by flooding, slips or trees falling; and
 - c. ensure the Agreed Programme, and the work needed to maintain the fences, shall be detailed in a three year rolling plan to be agreed by the parties. The plan will require that any work not undertaken in any year shall be performed in the following year and financial provision for the same shall be carried forward and added to that succeeding year's work programme.
- 6.2 The parties record to avoid doubt that approximately 100 kilometres of fencing was erected as a consequence of the Manapouri Power Project; and
- 6.3 For the avoidance of doubt, nothing in clause 6 shall require ECNZ to maintain berm fencing on land owned by it (unless the maintenance of any particular length of fence has been specifically agreed in an annual

programme under this Agreement) or on the Tuatapere town floodbank.

7. 7.1 This agreement will continue in force for a term expiring on the date the resource consents referred to in the joint submission expire. If consents in substitution are granted under the Resource Management Act 1991 then the parties will negotiate in good faith the extension of the terms of this agreement on such terms as are then appropriate and the dispute resolution provisions of clauses 9.1 and 9.2 shall apply to the negotiation of such an extension of term.
- 7.2 The obligations of the parties under this Agreement shall be suspended if a special rating district for the Waiau catchment is established for the purpose of discharging the obligations of ECNZ under this Agreement.
- 7.3 If a special rating district is established for purposes including:
- a. the maintenance of an effective flood channel in the Waiau riverbed from the Maroroa Weir to the river's mouth; and
 - b. the maintenance as defined in this Agreement of the fences erected as consequence of the Manapouri power project; and
 - c. the maintenance of the corridor through which the fences pass in a state free of undesirable plants;
- and once rating income from landowners exceeds \$10,000.00 per annum then ECNZ shall pay to the Council on behalf of the land occupiers represented by the farmers:
- d. the sum of \$200,000.00 a year annually (to be adjusted as provided in clause 7.5 of this Agreement); and
 - e. an additional sum at the rate of \$1.00 for every dollar of rates collected from ratepayers in the special rating district.
- 7.4 The Council shall ensure that any money received under this agreement, after payment of all usual administration expenses and lawful charges, is first applied for the purposes set out in clause 7.3 above. Any surplus may be accrued as a capital fund for disaster relief in the Waiau catchment or for such other lawful purposes as the special rating district notice may allow.
- 7.5 All the sums payable under this Agreement shall be increased from year to year by the multiplier the Works Construction Cost Index published from time to time by Works Consultancy Services Limited declares is needed to maintain the purchasing power of money in 1996 dollars. The Index will

take effect from 1 July 1996. If Works Consultancy Services Limited ceases to calculate and publish the Works Construction Cost Index then such alternative index shall be used as Works Consultancy Services Limited shall nominate.

8. This Agreement shall be in substitution for the Waiau Agreement which shall cease to have force and effect from the date upon which this agreement comes into force as a result of the grant of the resource consents, upon which event both the Council and ECNZ shall be relieved of further performance of their obligations under the Waiau agreement, and neither party shall have any claim against the other.
9.
 - 9.1 In the event of any dispute arising between the parties in respect of or in connection with this Agreement, the parties shall, without prejudice to any other right or entitlement they may have under this Agreement or otherwise, explore whether the dispute can be resolved by use of the alternative dispute resolution technique of mediation. The rules governing such techniques shall be agreed between the parties or as recommended by the New Zealand Law Society or as selected by the Chairman of the New Zealand Chapter of LEADR (Lawyers Engaged in Alternative Dispute Resolution).
 - 9.2 In the event the dispute is not resolved within twenty eight days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration under the provisions of the Arbitration Act 1908 or any Act passed in substitution therefore. The arbitrator shall be agreed between the parties within 10 days of written notice of the referral by the referring party to the other or failing agreement appointed by the President of the New Zealand Law Society. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.
10. Where the land of any farmer contiguous with the Waiau River or one of its tributaries or the profitability of the farm formed by such land is detrimentally affected by erosion caused by the exercise of resource consents held by ECNZ then ECNZ undertakes to negotiate in good faith with the landowner to find measures to mitigate and compensate the effects of such erosion on that farm.
11. Any notice given under this Agreement shall be in writing and delivered or transmitted as follows:

The Company Secretary
Electricity Corporation of New Zealand Limited
Rutherford House
23 Lambton Quay
P O Box 930
Wellington
Telephone: 04 472 3550 Facsimile: 04 473 7091

The Secretary
Federated Farmers Southland Incorporated
70 Forth Street
P O Box 176
Invercargill
Telephone: 03 218 2869
Facsimile: 03 218 2868

Southland Regional Council
Regional House
Cnr Price Street & North Road
Private Bag 90116
Invercargill
Facsimile: 64 3 215 8081

SIGNED by the parties on the date set out above.

SIGNED for) X _____ Director
ELECTRICITY CORPORATION OF)
NEW ZEALAND LIMITED)
 by:)
) X _____ Director/Authorised Person

Witness: X _____

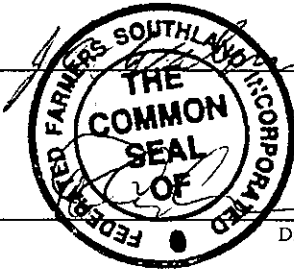
Name: _____

Occupation: _____

Address: _____

(Witness required only if deed signed other than by two directors)

SIGNED for) X _____ Director
FEDERATED FARMERS)
SOUTHLAND INCORPORATED)
 by:)
) X _____ Director/Authorised Person



Witness: X _____

Name: _____

Occupation: _____

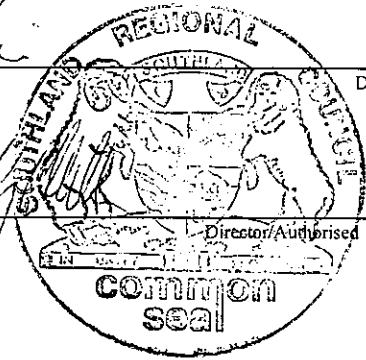
Address: _____

(Witness required only if deed signed other than by two directors)

SIGNED for
THE SOUTHLAND REGIONAL
COUNCIL

by:

) X _____
) _____
) _____
) X _____



Director

Director/Authorised Person

Witness: X _____

Name: _____

Occupation: _____

Address: _____

(Witness required only if deed signed other than by two directors)

Appendix 5 – Summary of Environment Southland Manapouri Power Scheme – RMA Resource Consents

Number	Description – Key Requirements
'1996 Operating Consents'	
96019	<p>Coastal Permit to discharge fresh water and contaminants to the waters of Doubtful Sound at Deep Cove by means of the artificial discharge channel.</p> <p>Limits tailrace discharge to 510 m³/s Flow measurement based on set point for total generator output (MW) Quarterly reporting of tailrace flow data</p> <p>Receiving water quality measured at the end of the tail race berms Appendix 1 monitoring and annual reporting</p>
96020	<p>Water Permit to dam and divert waters of Lake Te Anau by means of control structure with a crest level of 208.8 metres above m.s.l at the lake outlet, at or about Map Reference D43 944 163 NZMS 163</p> <p>Compliance with Lake Level Guidelines 115 m³/s Upper Waiau minimum flow as measured at Queens Reach Lower flows < 115 m³/s allowed to comply with Guidelines, provided agreement of Lakes Guardians and consultation with representative of Nga Tahu and Southland Fish and Game Flows less than 80 m³/s allowed only with Environment Southland approval</p> <p>Eel migrant programme – elver and migrant eel trap and transfer (in lieu of native fish pass requirement)</p> <p>Annual reporting of lake level data Appendix 1 monitoring and annual reporting</p>
96021	<p>Discharge Permit to discharge the waters of Lake Te Anau to the bed of the Waiau River immediately downstream of the Lake Control Structure.</p> <p>Specified rates of change of flow, and no increase and decrease of flow in the same calendar day unless unforeseen hydrological conditions (flow fluctuations)</p> <p>Flood rules for operating structures Annual reporting of TLC discharge flow data Appendix 1 monitoring and annual reporting</p>

Number	Description – Key Requirements
96022	<p>Water Permit to dam and divert the waters of Lake Manapouri and the Waiau and Mararoa Rivers by means of a structure (with a crest level of 179.25 metres above m.s.l.) near the confluence of the Waiau and Mararoa Rivers, and to dam and divert the waters of the Mararoa River to an artificial diversion channel.</p> <p>Compliance with Lake Level Guidelines Minimum flows at MLC:</p> <ul style="list-style-type: none"> 12 m³/s (May–Sept) 14 m³/s (Oct and April) 16 m³/s (all other times) <p>Whenever Mararoa River turbidity over 30 NTU (measured at Mararoa River at Cliffs site) lake control structure discharge shall be a flow no less than the flow in the Mararoa River at that time</p> <p>Eel migrant programme – Elver and migrant eel trap and transfer (in lieu of native fish pass requirement)</p> <p>Fish pass for brown and rainbow trout Recreational releases – 35 m³/s for 24 hrs on fourth Sunday of each month between October and April inclusive Waiau River mouth flushing flow – one flow/year not less than 150 m³/s of 24 hours during March – May, at the discretion of Council to sufficiently open the mouth to enable the passage of migratory fish (subject to compliance with Lake Level Guidelines)</p> <p>Annual reporting of discharge data. Appendix 1 monitoring and annual reporting.</p>
96023	<p>Discharge Permit to discharge the waters of Lake Manapouri and the Waiau and Mararoa Rivers to the bed of the Waiau River below the Manapouri Lake Control</p> <p>Records of the rate of discharge provided annually to Environment Southland</p> <p>Flood rules that record appropriate releases from the structure in the event of floods</p> <p>Warning signs to erected and maintained warning of the danger of the fluctuations in river level at points of public access to the river nominated by Environment Southland within 6 months of receipt of notification</p> <p>Appendix 1 monitoring and annual reporting</p>
96024	<p>Water Permit to take and use for the purposes of the Manapouri Power Scheme the waters of Lake Manapouri through intake gates at the Manapouri Power Station at West Arm at or about Map Reference S148-393 053 NZMS1.</p> <p>Compliance with Lake Guidelines Annual reporting of lake level data</p>

Number	Description – Key Requirements
2010 Manapouri Tailrace Amended Discharge (MTAD) Consents	
206156 (MTAD)	<p>Water Permit to dam and divert the waters of Lake Manapouri and the Waiau and Mararoa Rivers, for the purposes of the take and use of water for hydro-electricity generation in the Manapouri Power Scheme by means of the Manapouri Lake Control Structure. [Existing consent to which this consent and conditions refer are: 96019 and 96022.</p> <p>Exercised only when water permit 96022 is fully exercised and when additional water is being discharged at rates greater than 510 cumecs under coastal permit 96019</p> <p>Compliance with Lake Level Guidelines</p> <p>Minimum flows at MLC:</p> <ul style="list-style-type: none"> 12 m³/s (May–Sept) 14 m³/s (Oct and April) 16 m³/s (all other times) <p>Whenever Mararoa River turbidity over 30 NTU (measured at Mararoa River at Cliffs site) lake control structure discharge shall be a flow no less than the flow in the Mararoa River at that time</p> <p>Protocol for monitoring changes in Waiau Arm and water quality monitoring under Appendix A</p> <p>Lower Waiau River voluntary supplementary flows developed and implementation</p> <p>Appendix A monitoring and annual reporting</p>
206157 (MTAD)	<p>Water Permit to take and use water, for the purposes of hydro-electricity generation in the Manapouri Power Scheme, from Lake Manapouri through the intake gates at the Manapouri Power Station at West Arm. (Existing ES consents to which these conditions refer – 96019 and 96024).</p> <p>Exercised when water permit 96024 is fully exercised and when additional water is being discharged at rates greater than 510 cumecs under coastal permit 96019</p> <p>Water not taken and used at a rate greater than consented discharge under 2061548</p> <p>Compliance with Lake Level Guidelines</p> <p>Ecological study on the use of extreme low and high ranges</p> <p>Rare lakeshore plant study on the relationships between recorded threatened species and lake levels</p> <p>Annual reporting of lake level data</p> <p>Prepare an eel trap and transfer programme</p> <p>Migrant eel research programme and mitigation plan</p> <p>Appendix A monitoring and annual reporting</p>

Number	Description – Key Requirements
206158 (MTAD)	<p>Coastal Permit to discharge fresh water to the waters of Doubtful Sound at Deep Cove by means of the tailrace from the Manapouri Power Station. (Existing ES consents to which these conditions refer are 96019, 96022 and 96024.)</p> <p>Exercised when coastal permit 96019 is fully exercised (510cumecs) and when additional water is being discharged at rates greater than 510 cumecs.</p> <p>Tailrace discharge no greater than 550 m³/s</p> <p>Flow measurement based on set point for total generator output</p> <p>Quarterly reporting of tailrace flow data and contingent events > 550m³/s</p> <p>Bottlenose dolphin research programme on its own or in cooperation with other parties Receiving water quality measured at the end of the tail race berms</p> <p>Deep Cove signage to advise recreational users of tail race flow</p> <p>Consultation with Deep Cover Outdoor Education Trust on best practical option of safety of their water users and measures to improve safety (provision of an emergency rescue boat)</p> <p>On receipt of anecdotal observation surface water conditions review potential effects of MTAD discharges annually (at time of anniversary of first exercise of consent) if required and provide a summary of findings. If requested by recreational groups make appropriately qualified person available to discuss surface water conditions in relation to tail race discharge</p> <p>Appendix A monitoring</p>
MPS Ancillary Consents	
200312	<p>Land Use consent to occupy the bed of a lake with an existing jetty – West Arm, Lake Manapouri</p> <p>Maintain the jetty in good repair and no alteration or addition may be made without prior approval of Environment Southland.</p> <p>Immediately notify Environment Southland of any discharge of contaminants at the jetty and boat ramp and remedial action taken.</p> <p>Structure number is displayed on jetty.</p>

Number	Description – Key Requirements
301201	<p>Discharge Permit to discharge water and contaminants to Lake Manapouri from water blasting and re-painting of an existing wharf – West Arm Manapouri</p> <p>Authorises discharges of contaminants to lake Manapouri for cleaning and repairing the West Arm jetty as described in the application</p> <p>All construction equipment and any debris from works, including cleaning and painting residues, removed from work site on completion of works</p> <p>Remedy or mitigate effects of contaminants at the site. In the event of water course contamination other than those referred to in application, Environment Southland to be notified without undue delays</p> <p>Accidental discovery procedures and notification of Te Ao Marama and Environment Southland</p> <p>Notify Environment Southland prior to and on completion of works</p>
201284	<p>Land Use Consent to build and use a boat ramp at West Arm, Lake Manapouri.</p> <p>Maintain the ramp in good repair and no alteration or addition may be made without prior approval of Environment Southland</p> <p>Exercise of consent subject to specified matters relating to construction and maintenance</p> <p>All instreams works to be kept to a minimum, where it is necessary for machinery to enter water course all practical measures to be use to ensure any damage to the margins and beds of the watercourse is minor, avoided, or mitigated, all construction equipment and any debris from the works are removed from the work site on completion of the works, all contaminants shall be prevented from entering the watercourse and in the event of any contamination at the site Environment Southland are notified without undue delay, Accidental discovery procedures and notification of Te Ao Marama in the event of an accidental discovery, notify Environment Southland at least 48 hours prior to the works commencing.</p> <p>Structure number is displayed on the ramp.</p>
99076	<p>Land Use Consent to use the river bed for a slipway and wharf – Home Creek, Waiau River.</p> <p>Maintain the structure in good repair and no alteration or addition may be made without prior approval of Environment Southland.</p> <p>No discharge of contaminants into the river. Immediately notify Environment Southland of any discharge of contaminants such as fuel or sewage and remedial action taken.</p> <p>Structure number is displayed on the ramp.</p>

Number	Description – Key Requirements
99077	<p>Land Use Consent to occupy part of the foreshore with an existing barge ramp – Supply Bay</p> <p>Maintain the structure in good repair and no alteration or addition may be made without prior approval of Environment Southland.</p> <p>Structure number is displayed on the ramp.</p>
99078	<p>Land Use Consent to occupy part of the foreshore with an existing boat [barge] ramp – West Arm, Lake Manapouri</p> <p>Maintain the ramp in good repair and no alteration or addition may be made without prior approval of Environment Southland.</p> <p>Structure number is displayed on the ramp.</p>
99173	<p>Coastal Permit to occupy part of the coastal marine area with and existing wharf – Deep Cove Doubtful Sound</p> <p>Maintain the wharf in good repair and no alteration or addition may be made without prior approval of Environment Southland.</p> <p>Maintain public access for pedestrians, vehicles and vessels, provided this does not adversely affect the existing use by Fiordland Travel (Real Journeys)</p> <p>Public access may be restricted or prevented when required for any activities related to the operation of the Manapouri Power Station</p> <p>Erect signage advising that public access is at the sole risk of the user.</p> <p>Fuel spill contingency plan</p> <p>Ensure structure number is displayed on wharf.</p>

Number	Description – Key Requirements
205327	<p>Coastal Permit to discharge water and contaminants from Penstock Refurbishment to coastal waters</p> <p>Discharge silt and high pH contaminated water as described in the application from maintenance of penstocks</p> <p>Discharge limited to contaminants that have been through settling and/or filter process that substantially removes most of particulate matter and silt. Treatment system design approved by Environment Southland.</p> <p>Environment Southland notified prior to and on completion of the works, and provision of a timetable of the works.</p> <p>Record of when contaminants are discharged and monitoring results reported to ES in MPS annual compliance report</p> <p>Notify Environment Southland without undue delay in event of discharge of contaminants other than those described in the application or if amounts are exceeded. Report on measures taken or to be taken to avoid remedy or mitigate any adverse effects of such discharges</p> <p>Monitoring suspended and settleable solids concentrations of discharge from the treatment system as specified</p> <p>Discharge shall not contain inorganic sediment with particle size greater than 0.063mm, or any conspicuous oil films.</p> <p>No conspicuous oil film on surface of tailrace downstream of discharge</p> <p>Monitoring clarity and pH of the water in the tail race</p> <p>Visual clarity and pH of the tail race water to meet specified parameters</p> <p>People and Aquatic Life Water Standards shall apply in the waters of Deep Cove beyond the zone of reasonable mixing.</p>
207375	<p>Discharge Permit to discharge contaminants to the air from dry abrasive blasting from maintenance of the Lake Control gates (Te Anau Lake Control)</p> <p>Discharge of contaminants to air from dry abrasive blasting as generally described in the application</p> <p>No noxious, dangerous offensive or objectionable dust plume or deposition effect beyond the blasting area that is attributable to dry abrasive blasting operation</p> <p>Blasting area to be contained as much as practicable to avoid, or minimise dust deposition to water.</p> <p>Notify Environment Southland prior to and on completion of the works</p>

Number	Description – Key Requirements
207376	<p>To discharge contaminants to water from cleaning and maintenance of the Lake control structure – Lake Te Anau</p> <p>Discharge of contaminants to Lake Te Anau and Waiau River for cleaning and repainting of Te Anau Lake Control structure as described in the application</p> <p>All construction equipment and any debris from the works, including any cleaning and painting residues are removed from the work site on completion of the works</p> <p>Remedy or mitigate the effects of any contamination at the site and in event of contamination of watercourse other than those referred to in the application, notify Environment Southland without undue delay.</p> <p>Notify Environment Southland prior to and on completion of the works</p>
200956	<p>Land Use Consent and Discharge Permit to install a new river level recorder and associated pipework and to discharge contaminants (sediment) to land and water during the installation of the new river level recorder and associated pipework.</p> <p>Authorises disturbance of bed of the Mararoa River to remove and relocate materials and install and maintain a river flow recorder and associated pipework.</p> <p>Specified conditions to be met including</p> <p>All instreams works to be kept to a minimum, where it is necessary for machinery to enter water course all practical measures to be use to ensure any damage to the margins and beds of the watercourse is minor, avoided, remedied or mitigated, all construction equipment and any debris from the works are removed from the work site on completion of the works, all contaminants shall be prevented from entering the watercourse and in the event of any contamination at the site Environment Southland are notified without undue delay, Accidental discovery procedures and notification of Te Ao Marama in the event of an accidental discovery, notify Environment Southland at least 48 hours prior to the works commencing.</p>
200311	<p>Water Permit to take water from Lake Manapouri for various domestic supplies. West Arm Lake Manapouri (NZMS 260 C43:629 050)</p> <p>The rate of extraction shall not exceed 20 m3 per day</p>

Number	Description – Key Requirements
202509	<p data-bbox="391 248 1385 353">Land Use Consent to carry out bank protection and to install rock groynes to protect monitoring equipment on Mararoa River 1 km upstream Manapouri Lake Control structure</p> <p data-bbox="391 376 1353 481">Authorises the excavation of materials from the bed of the Mararoa River, repair of bank sour, establishment of two small groynes and maintaining bank protection.</p> <p data-bbox="391 504 1353 683">No in stream works to occur, only as much material is excavated as required to construct the bank protection and groynes and to maintain the works, fuel and oil prevented from entering the river during work, all construction equipment machinery plant and debris removed from site on completion of the works and no washing of equipment occurs in the river.</p> <p data-bbox="391 705 1377 810">In the event of any contamination of the water course, contaminants are removed immediately from site and Environment Southland notified without undue delay.</p> <p data-bbox="391 833 1345 902">Any stream bank disturbed or eroded during the construction works to be restored and re-sown with pasture species on completion of works</p>

Number	Description – Key Requirements
204160	<p>Land use consent, water permit and discharge permit to carry out various bed disturbance and other activities for maintenance of the Manapouri Lake Control Structure</p> <p>Authorises specified activities set out in the conditions and as described in the application</p> <p>Specified conditions to be met including</p> <p>Cement and oil are prevented from entering the river during construction, gravel extractions shall not extend into bedrock, all construction equipment, machinery, plant, and debris are removed from the site on completion of each period of active works, silt disturbance and instream works are kept to minimum, no washing of equipment occurs in the river, large rocks are placed at approximately 50m intervals on riverbed adjacent to rock rip rap revetment and groyne at the Mararoa Diversion Cut, the site is kept tidy and left in safe and aesthetically acceptable state between each period of active works</p> <p>The discharge of sediments shall not result in a reduction of water clarity of more than 20% measured by clarity tube upstream of the works and downstream of the Duncraigen Bridge expert for one hour/day or on two occasions of up to three hours during bund construction.</p> <p>Any contaminates (other than sediment) entering watercourse, shall be removed immediately and Environment Southland notified without undue delay.</p> <p>Any stream banks disturbed or eroded during construction works to be restored and re-sown or replanted preferably with native plants upon completion of the works – with the exception of gravel island construction under this consent.</p> <p>Accidental discovery procedures and notification of Te Ao Marama and Environment Southland's in the event of a discovery</p> <p>Approximately 15,000 cu metres of gravel and sediments may be excavated initially. Further excavation may occur during consent period to maintain waterway capacity of the river established by the initial excavation. A record of gravel removed kept and submitted to Environment Southland. Gravel excavation shall not occur at the weekend or public holidays. Restriction on works specified in the consent that result in the closure of the Manapouri Lake Control fish ladder shall not occur during 1 April to 30 September. Specified works shall not occur during the period 1 May to 30 September.</p> <p>The discharge of particulate matter to air shall not be noxious, offensive or objectionable at a distance of more than 50m from excavation area that has an adverse effect on environment.</p> <p>Notify Environment Southland prior to and on completion of the works</p> <p>Provision of exclusion of specified conditions to works required to make the structure operable in the event of the operation of the Manapouri Lake Control Structure being compromised as described in the application</p>

Number	Description – Key Requirements
20146996	<p data-bbox="391 248 1390 353">Discharge Permit to discharge wastewater from a sewage treatment plant to land in circumstances where it may enter water – West Arm hostel West Arm</p> <p data-bbox="391 376 1337 409">Discharge of up to 4,800 litres per day of treated sewage effluent to land</p> <p data-bbox="391 432 1177 465">Specifications of the sewage treatment and disposal system</p> <p data-bbox="391 488 1385 555">Disposal of sludges or untreated sewage or wastes collected from any point in reticulation or treatment system is not authorised</p> <p data-bbox="391 577 1361 683">Notification of specified parties in the event of an emergency or accidental discharge of sewage or partially treated sewage to land or water without undue delay</p> <p data-bbox="391 705 1345 810">Notify Environment Southland of any complaints received regarding the exercise of the consent and actions taken in response to each complaint, within 48 hours of being received.</p> <p data-bbox="391 833 1390 974">Effluent treatment and disposal system to be inspected in accordance with a maintenance schedule (attached to the consent) for the purpose of ensuring that is maintained and operating correctly and to record any noticeable effects on the environment.</p> <p data-bbox="391 996 1377 1064">A log of inspections to be maintained and a copy to Environment Southland by 30 December each year. Log to be made available on request.</p>

Appendix 6 – Summary of Key Manapouri Power Scheme Monitoring Appendix 1 and Appendix A Requirements ¹⁰

Location	Subject	Requirement	Monitoring started	Objective	Existing programme
Lakes Te Anau/ Manapouri	Shoreline vegetation	Appendix 1	Set up 1972/74. Permanent transects set up in 1997. Detailed monitoring 1997, 2000, 2005, 2010 Hauroko added in 1991. MTAD requirements are the same as Appendix 1.	<i>Objective:</i> To assess the effects of the lake level management regime on the shoreline vegetation of Lakes Manapouri and Te Anau.	Surveys of 16 sites in Manapouri, 21 in Te Anau, 8 in Lake Hauroko – vegetation along transects 5 yearly intervals, next one due 2020
	Beach sediments	Appendix 1, Appendix A – MTAD	Established 1973 Surveys and robust monitoring 1988, 1989, 1997, 2002, 2006, 2011. Changes made in 1989. MTAD baseline June 2010, annual	<i>Objective:</i> To assess the effects of the lake level management regime on the beach stability of lakes Manapouri and Te Anau.	Surveys of 40 sites 15 in Manapouri, 24 in Te Anau Every 5 yrs – next one due 2021 MTAD – annual photographic and field observations for first 5 yrs after MTAD – completed

¹⁰ Based on current Appendix 1 [CN96019, CN96020, CN96022, CN96023] & Appendix A [CN206516, CN206517, CN206518] requirements only

Location	Subject	Requirement	Monitoring started	Objective	Existing programme
			inspections started 2013		
	Littoral macrophytes	Appendix 1, Appendix A – MTAD	1993, 1997, 2002, 2007, 2012. MTAD surveys summers 2013, 2014	<i>Objective:</i> To assess the effects of the lake level management regime on the aquatic macrophytes of Lakes Manapouri and Te Anau.	Surveys every 5 yrs measuring vegetation along transects, 21 in Te Anau, 21 in Manapouri and 17 in Hauroko. Annual surveys for 2 summers after MTAD (2013, 2014 completed) and then 5 yrs again (next one due 2022)
	Waiau arm	Appendix 1, Appendix A – MTAD	Turbidity limits set 1996 (30 NTU) WQ (nutrients, clarity, chl) Te Anau since 2000 and Manapouri since 2002. Baseline data completed in 2005, WQ in Arm since 2006 fortnightly Jan–Mar as part of protocol approved by ES in 2010. MTAD surveys 2013, 2014	<i>Objective:</i> To enable the implementation of a protocol for monitoring changes in water quality and for subsequent flow management in the Waiau Arm. The purpose of the protocol will be to establish a monitoring programme and a management plan specifying the actions to occur should declining water quality and/or phytoplankton bloom be detected. The aim of the protocol will be to ensure that the flushing of the affected water in the Waiau Arm, with water derived from Lake Manapouri, occurs in an effective manner in response to the actual measured	MTAD – macrophytes along 9 transects in Arm for 2 summers (2013 and 2014) and following floods (<250 m ³ /s and >1000) – completed. Annual fortnightly water quality (temp, DO, turbidity, pH, water clarity) Jan–Mar at 3 sites in Arm and one in lake. Mararoa continuously monitoring at Bridge and at the Waiau Arm (voluntary site) sites for turbidity

Location	Subject	Requirement	Monitoring started	Objective	Existing programme
				effect and until the affected water is removed.	
	Long fin eel	MTAD	Extensive research programme carried on movement etc.	<i>Objective:</i> To identify options and potential practical solutions for the existing impact of the MPS on the migratory patterns of longfin eels, in order that the effects at the MPS are consistent with sustainable management of the longfin eel population.	As part of mitigation plan (accepted by ES) - annual monitoring of eels transferred downstream past MLC, elvers trapped and transferred upstream past MLC.
	Periphyton and macrophytes (Upper Waiau)	Appendix 1	5 yearly surveys until 2012	<i>Objective:</i> To confirm that the MPS flow regime has not resulted in any long term changes to periphyton and macrophyte growth in the Upper Waiau River.	5 yearly or if 7 days > 115 m ³ /s. Discontinued in 2012 as no changes expected as a result of MTAD.
	Periphyton and macroinvertebrates (Lower Waiau)	Appendix 1	Monthly visual assessments at Tuatapere Part of NWQMN since 1989, and annual surveys in 1997 for 5 yrs. 3 sites added 1993 and good baseline (Biggs). 1997 – annual surveys of	<i>Objective:</i> To monitor periphyton and macroinvertebrates in the Lower Waiau River, upstream of the Monowai confluence, to build upon data gathered about the effect of the flow regime on these biological values.	Annual surveys of periphyton and inverts at 3 sites in lower Waiau (Excelsior, Redcliff, Blackmount) and one in Mararoa (Station Br) – completed in 2014 Annual F&G visual observations fortnightly over summer from Nov 2006 to look at nuisance growths and as part of FMP. Sites in Mararoa – Whitestone, The Key, Station Br, Normans, Kiwiburn;

Location	Subject	Requirement	Monitoring started	Objective	Existing programme
			periphyton and inverts 2006–08 surveys to look at flows required and developed FMP. F&G visual surveys of periphyton since 2006.		Lower Waiau – Jericho, Clifden, Monowai, Excelsior, and Tuatapere. – ongoing. Flow management plan for periphyton agreed with ES in 2013.
	Periphyton nuisance growths	MTAD, FMP		Incorporated in above	
	Groundwater and wetlands	Appendix A – MTAD	Levels in Rakatu monitored since 2008 and more sites added in 2010 following MTAD.		After MTAD for minimum 2 yrs at 3 monitoring stations (1x Groundwater well and 2x wetland water level stations in Rakatu Wetlands) plus 2 other wetland sites (Rakatu Riparian and Wairaki Wetlands), plus rain gauge. Completed and monitoring ceased in 2016.
Upper Waiau River	Channel morphology	Appendix 1	Peg lines established in 1983 and measurements every 2 years and after flood events	<i>Objective:</i> To continue to measure the amount of river bank erosion in the Upper Waiau River, after establishment of the refined flow regime.	2010 changes indicate every 7 years (next one due 2023) and after flood events

Location	Subject	Requirement	Monitoring started	Objective	Existing programme
	Mararoa confluence			Combined with Lower Waiau	Now incorporated in Lower Waiau (2010 changes). Note now some x-sections every 10 yrs instead of 5 yrs
	Lower Waiau	Appendix 1, Appendix A – MTAD	11 transects set up in 1997, aerial photos 1997 and 2002, 2009	<i>Objective:</i> To assess the changes in the character and morphology of the Waiau River (downstream from Pearl harbour), and assist in determining whether flow regulation is having an impact on any such changes in the river channel and at beach in the vicinity of the mouth of the lower Waiau River.	Post floods for Geodetic survey and aerial photo vegetation etc in Nov 2010–Mar 2011. Every 7 years plus after floods. Bed material monitored at number of x-sections now plus additional sites including deltas of major rivers. Next one due 2023.
	Mararoa gravels	Agreement with ES	X-sections surveyed in Jan 2007 and Dec 2010 to measure gravel storage	To follow changes in gravel movement and storage following willow clearance.	Completed
Doubtful Sound					
	Physical and biological monitoring	Appendix 1 Some small changes for MTAD (extra salinity measurements).	Monitoring chains at 9 sites in Doubtful and Milford Sounds since 2006 (temp and salinity), comprehensive	To maintain ongoing information about the environmental condition (both physical and biological parameters) of the Doubtful–Thompson–Bradshaw Sounds system during the ongoing	Continuous monitoring of salinity and temperature at 9 sites and extensive monitoring of benthic biota every year including rock wall communities along Sound

Location	Subject	Requirement	Monitoring started	Objective	Existing programme
			biological monitoring including wall communities, corals and soft sediment.	operation of the Manapouri Power Station. To enable the identification of any long-term changes in the environmental condition (both physical and biological parameters) of the Doubtful–Thompson–Bradshaw Sounds system during the ongoing operation of the Manapouri Power Station.	and soft bottom sediment work in Deep Cove and up some Arms. Monitoring reviewed in 2017/18 and new programme developed for 2019 with only 2 moorings and reduced frequency and sites for biological surveys. Biological surveys to be undertaken every 5 years (2019, 2024) and continuous and telemetered monitoring of physical features at the 2 mooring sites.