

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

Decision No. [2025] NZEnvC 296

IN THE MATTER of the Resource Management Act 1991

AND appeals under clause 14 of the First
Schedule to the Act

BETWEEN MERIDIAN ENERGY LIMITED
(and seven other appellants as set out
in Schedule One to this Order)

(ENV-2024-CHC-22)

Appellants

AND OTAGO REGIONAL COUNCIL

Respondent

AND DIRECTOR-GENERAL OF
CONSERVATION (and 12 other
parties as set out in Schedule One to
this Order)

Section 274 parties

Environment Judge P A Steven – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 9 September 2025



CONSENT ORDER

A: Under s279(1)(b) RMA,¹ the Environment Court, by consent, orders that:

(1) the following appeal points are allowed subject to amendment of the provisions in the ‘Integrated Management – IM’ chapter of the proposed Otago Regional Policy Statement (Non-freshwater) 2021 as set out in Annexure 1, attached to and forming part of this Order:

- (a) Meridian Energy Limited’s appeal points in relation to:
- (i) IM-O1 – Long term vision;
 - (ii) IM-O2 – Ki uta ki tai;
 - (iii) IM-O3 – Sustainable impact;
 - (iv) IM-O4 – Climate change;
 - (v) IM-OX – New objective;
 - (vi) IM-P1 – Integrated approach to decision-making;
 - (vii) IM-P3 – Providing for mana whenua cultural values in achieving integrated management;
 - (viii) IM-P4 – Setting a strategic approach to ecosystem health;
 - (ix) IM-P5 – Managing environmental interconnections;
 - (x) IM-P6 – Managing uncertainties;
 - (xi) IM-P7 – Cross boundary management;
 - (xii) IM-P8 – Effects of climate change;
 - (xiii) IM-P10 – Climate change adaptation and climate change mitigation;
 - (xiv) IM-P11(deleted in the Decisions Version);
 - (xv) IM-P12 – Contravening limits for climate change mitigation and climate change adaptation;
 - (xvi) IM-P13 – Managing cumulative effects;
 - (xvii) IM-P14 – Sustaining resource potential; and
 - (xviii) IM-P15 – Renewable electricity generation.

¹ Resource Management 1991.

- (b) Royal Forest and Bird Protection Society of New Zealand Incorporated's appeal points in relation to:
 - (i) IM-O4;
 - (ii) IM-P10; and
 - (iii) IM-P12.
- (c) Oceana Gold NZ Limited's appeal point in relation to:
 - (i) IM-P1.
- (d) Transpower NZ Limited's appeal points in relation to:
 - (i) IM-P1;
 - (ii) IM-P2 – Decision Priorities; and
 - (iii) IM-P14.
- (e) Kāi Tahu's appeal points in relation to:
 - (i) IM-O3;
 - (ii) IM-P1;
 - (iii) IM-P2;
 - (iv) IM-P6;
 - (v) IM-P10;
 - (vi) IM-P12; and
 - (vii) IM-P14.
- (f) New Zealand Transport Agency's appeal points in relation to:
 - (i) IM-O3; and
 - (ii) IM-OX.
- (g) Environmental Defence Society's appeal points in relation to:
 - (i) IM-O4;
 - (ii) IM-P10; and
 - (iii) IM-P12.
- (h) Queenstown Airport Corporation's appeal point in relation to:
 - (i) IM-P14.

- (2) all other appeal points in relation to the IM chapter of the PORPS are otherwise dismissed.

B: Under s285 RMA, there is no order as to costs.

REASONS

Introduction

[1] These proceedings concern appeals by Meridian Energy Limited (Meridian), Royal Forest and Bird Protection Society of New Zealand Inc (Forest & Bird), Oceana Gold (New Zealand) Limited (OGL), Transpower New Zealand Limited (Transpower), New Zealand Transport Agency (NZTA), Environmental Defence Society (EDS), Queenstown Airport Corporation (QAC), and Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga, Te Ao Marama Incorporated on behalf of Waihopai Rūnaka, Te Rūnanga o Ōraka Aparima, Te Rūnanga o Awarua and Te Rūnanga o Ngāi Tahu (Kāi Tahu) against parts of the decisions by Otago Regional Council (ORC) on the proposed Otago Regional Policy Statement (Non-freshwater) 2021 (PORPS) in relation to provisions in the ‘Integrated Management – IM’ chapter (IM chapter).

[2] The IM chapter is located in the Part 2 – Resource Management Overview section of the PORPS. The IM chapter provides direction on integrated management across the region and contains objectives and policies on climate change adaptation.

IM-O3 – Sustainable impact

[3] Objective IM-O3 was appealed by NZTA and Kāi Tahu.

NZTA

[4] NZTA’s appeal sought amendments to remove reference to restoration of environmental integrity, form, functioning and resilience to “balance” the objective. NZTA’s position was that the objectives of the integrated management chapter prioritised the natural environment and ecosystems over enabling provisions which seek sustainable management of natural and physical resources.

[5] The following persons gave notice of an intention to join this part of NZTA’s appeal under s274 RMA:

- (a) Aurora Energy Limited, Network Waitaki Limited and PowerNet Limited – electricity distribution businesses (EDBs);
- (b) Rayonier Matariki Forests, City Forests Limited, Ernslaw One Limited and Port Blakely NZ Limited (forestry appellants);
- (c) Director-General of Conservation (DGC);
- (d) Federated Farmers of New Zealand (Federated Farmers);
- (e) Beef + Lamb New Zealand Limited (Beef + Lamb);
- (f) Otago and Central South Island Fish and Game Councils (Fish & Game);
- (g) Forest & Bird;
- (h) Kāi Tahu; and
- (i) Port Otago Ltd (POL).

Kāi Tahu

[6] Kāi Tahu’s appeal sought that the text “sustainably managed”, as it relates to the life-supporting capacity of air, water, soils and ecosystems, be replaced with “safeguarded”. Kāi Tahu’s position was that the objective was not in accordance with the purpose of sustainable management and s5(b) RMA, which requires that the life-supporting capacity of air, water, soils and ecosystems be safeguarded, not sustainably managed.

[7] The following persons gave notice of an intention to join this part of Kāi Tahu's appeal under s274 RMA:

- (a) Cain Whānau;
- (b) Forest & Bird;
- (c) DGC;
- (d) Fish & Game;
- (e) EDBs;
- (f) Beef + Lamb;
- (g) Falls Dam Irrigation Company Limited (Falls Dam);
- (h) Maniototo Irrigation Company Limited (MIC);
- (i) Waitaki Irrigators Collective Limited (WIC);
- (j) Otago Water Resource Users Group (OWRUG);
- (k) Dunedin City Council (DCC);
- (l) Federated Farmers;
- (m) QAC;
- (n) OGL;
- (o) Meridian; and
- (p) Forestry appellants.

Resolution

[8] The parties have agreed that IM-O3 can be amended as follows (amendments henceforth show additions in underline and deletions in strikethrough):

IM-O3 –Sustainable impact

Otago's communities provide for their social, economic, and cultural well-being by using, developing or protecting natural and physical resources in ways that support or restore ~~environmental integrity, form, functioning, and resilience, so that~~ the life-supporting capacities of air, water, soil, and ecosystems ~~are sustainably managed,~~ for future generations.

[9] The parties consider that the agreed amendments better reflect s5 RMA. Removing reference to “environmental integrity, form, functioning, and resilience”, and instead referring to use, development and protection creates more “balance” within the objective, as sought by NZTA.

[10] The parties advised that the removal of “sustainably managed” responds to Kāi Tahu’s appeal point. The parties agreed that safeguarding the life-supporting capacity of air, water, soil, and ecosystems is one of the ways in which sustainable management is achieved, rather than life-supporting capacity being something which is required to be sustainably managed itself.

[11] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5 and 7(f).

IM-O4 – Climate change

[12] Objective IM-O4 was appealed by EDS and Forest & Bird.

EDS

[13] EDS’ appeal sought amendments to include reference to “budgets and plans” for emission reduction. EDS’ position was that responses to climate change in Otago should be consistent with achieving national targets and budgets and the Emissions Reduction Plan (i.e. the national pathway to achieve those targets and budgets).

[14] The following persons gave notice of an intention to join this part of EDS’ appeal under s274 RMA:

- (a) Forest & Bird;
- (b) Forestry appellants;
- (c) the DGC;
- (d) the EDBs;

- (e) Beef + Lamb;
- (f) Meridian;
- (g) OWRUG; and
- (h) POL.

Forest & Bird

[15] Forest & Bird's appeal sought amendments to strengthen the policy direction in the objective. Forest & Bird's position was that it should be strengthened to recognise that mitigation action could be stronger than required by national direction.

[16] The following persons gave notice of an intention to join this part of Forest & Bird's appeal under s274 RMA:

- (a) Forestry appellants;
- (b) Falls Dam;
- (c) Federated Farmers;
- (d) MIC;
- (e) WIC;
- (f) the DGC;
- (g) the EDBs;
- (h) Beef + Lamb;
- (i) Meridian;
- (j) OWRUG;
- (k) OGL; and
- (l) POL.

Resolution

[17] The parties have agreed that IM-O4 can be amended as follows:

IM-O4 – Climate Change

Otago’s communities, including Kāi Tahu, understand what climate change means for their future, and responses to climate change in the region (including climate change adaptation and climate change mitigation):

- (1) are aligned with national level climate change responses,
- (2) assist with achieving the national emissions reduction targets for ~~emissions reduction and plans~~, including by having a highly renewable energy system, and
- (3) are recognised as integral to achieving the outcomes sought by this RPS.

[18] The parties advised that the agreed amendments to clause (2) respond to EDS’ appeal point and incorporate emission reduction plans as sought. They advised Forest & Bird’s appeal point was also resolved on the basis of the agreed amendments to clause (2).

[19] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss5, and 7(i).

IM-P1 – Integrated approach to decision making

[20] Policy IM-P1 was appealed by Transpower, Kāi Tahu and OGL.

[21] All three appellants sought the deletion of IM-P1 for differing reasons.

[22] In the Decisions Version of the PORPS, IM-P2 was deleted and replaced with IM-P1. OGL and Kāi Tahu appealed the deletion of IM-P2.

Transpower

[23] Transpower’s position was that IM-P1 would apply where there were irreconcilable conflicts between not only provisions of the PORPS, but also between provisions of the PORPS and provisions of a national policy statement, which was considered to not comply with the RMA’s requirement that the PORPS give effect to a national policy statement.

[24] The following persons gave notice of an intention to join this part of Transpower’s appeal under s274 RMA:

- (a) Forestry appellants;
- (b) the DGC;
- (c) the EDBs;
- (d) Beef + Lamb;
- (e) Meridian;
- (f) Fish & Game;
- (g) Forest & Bird;
- (h) NZTA;
- (i) Manawa Energy Limited (Manawa Energy);
- (j) OGL; and
- (k) EDS.

Kāi Tahu

[25] Kai Tāhu’s appeal sought that the policy be deleted and replaced with a policy that prioritised the life-supporting capacity and mauri of air, water, soil and ecosystems and the health and safety of people and communities, as recommended by ORC in its Reply Version of the PORPS and broadly consistent with the approach to the hierarchy of obligations in the National Policy Statement for Freshwater Management (NPS-FM). Kāi Tahu’s position was that the shift away from prioritisation to a “structured analysis” misinterpreted the underlying case law, was unclear, and was likely to lead to ongoing debate as to how the PORPS should be interpreted and applied.

[26] The following parties gave notice of an intention to join this part of Kāi Tahu’s appeal under s274 RMA:

- (a) Forestry appellants;
- (b) Cain Whānau;
- (c) the DGC;

- (d) Fish & Game;
- (e) Forest & Bird;
- (f) Meridian Energy;
- (g) the EDBs;
- (h) Beef + Lamb;
- (i) DCC;
- (j) Falls Dam;
- (k) Federated Farmers;
- (l) MIC;
- (m) WIC;
- (n) Manawa Energy;
- (o) OGL;
- (p) OWRUG;
- (q) POL;
- (r) QAC; and
- (s) Transpower.

OGL

[27] OGL's position was that it is preferable if the individual objectives and policies clearly address conflicts and priorities, rather than leaving it to IM-P1. OGL considered that the Decisions Version wording did not promote integrated decision-making or clarify decision priorities, and instead of focusing on weighing competing considerations, the new IM-P1 gave decision-makers an additional layer of "veto", even if there are objectives and policies enabling and promoting that activity.

[28] The following persons gave notice of an intention to join this part of OGL's appeal under s274 RMA:

- (a) Forestry appellants;
- (b) the DGC;

- (c) Meridian;
- (d) OWRUG;
- (e) QLDC;
- (f) QAC;
- (g) Transpower;
- (h) Forest & Bird;
- (i) Beef + Lamb;
- (j) Fish & Game;
- (k) Manawa Energy;
- (l) Waterfall Park Developments Limited (WPDL); and
- (m) EDS.

Resolution

[29] The parties have agreed that IM-P1 can be amended as follows:

~~IM-P1—Integrated approach to decision-making~~

~~Giving effect to the integrated package of objectives and policies in this RPS and other relevant statutory provisions requires decision-makers to:~~

- ~~(1) consider all provisions relevant to an issue or decision and apply them purposively according to the terms in which they are expressed and~~
- ~~(2) if after (1) there is an irreconcilable conflict between any of the relevant RPS and/or statutory provisions which apply to an activity, only consider the activity if:~~
 - ~~(a) the activity is necessary to give effect to a relevant policy or statutory provision and not merely desirable, and~~
 - ~~(b) all options for the activity have been considered and evaluated, and~~
 - ~~(c) if possible, the chosen option will not breach any other relevant policy or statutory provision, and~~
 - ~~(d) if (c) is not possible, any breach is only to the extent required to give effect to the policy or statutory provision providing for the activity, and~~
- ~~(3) if 2(d) applies, evaluate all relevant factors in a structured analysis to decide which of the conflicting policies or statutory provisions should prevail, or the extent to which any relevant policy or statutory provision should prevail,~~

~~and~~
~~(4) in the analysis under (1), (2) or the structured analysis under (3), assess the nature of the activity against the values inherent in the relevant policies or statutory provisions in the particular circumstances.~~

[30] The parties advised that the policy was intended to reflect the principles from *Port Otago Ltd v Environmental Defence Society Inc*² as to how to resolve any irreconcilable differences between PORPS provisions. The parties have agreed that the policy went beyond those principles, created potential confusion and could be read as attempting to resolve irreconcilable conflicts with higher order documents rather than just within the PORPS itself.

[31] The parties agreed the policy should be deleted to remove the confusion, uncertainties, and potential unlawfulness identified. Instead, the objectives and policies in the PORPS will be read together in the usual way, with close attention being paid to the way provisions are expressed.³

[32] The deletion of IM-P1 also resolves OGL's appeal point on IM-P2.

[33] The parties further agreed that Kāi Tahu's appeal points on IM-P1 and IM-P2 would be better addressed by amendments to 'IM-P14 – Sustaining resource potential'. Those amendments are discussed at paragraphs [77] to [82] of this Order and resolve Kāi Tahu's appeal points on IM-P1 and IM-P2.

IM-P6 – Managing uncertainties

[34] Policy IM-P6 was appealed by Kāi Tahu.

[35] Kāi Tahu's appeal sought amendments to ensure that adaptive management was used only in appropriate circumstances to manage risk. Kāi Tahu's position

² *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZLR 205.

³ *Environmental Defence v New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [129]. See also *Port Otago Limited v Environmental Defence Society* [2023] NZSC 112, [2023] 1 NZLR 205 at [60]-[63].

was that as drafted, the policy infers that an adaptive management approach is appropriate in all circumstances as part of a precautionary approach. Kāi Tahu considered that was inconsistent with case law, which requires thresholds to be met before adaptive management can be considered as part of a precautionary approach.⁴

[36] The following persons gave notice of an intention to join this part of Kāi Tahu's appeal under s274 RMA:

- (a) Cain Whānau;
- (b) the DGC;
- (c) Beef + Lamb;
- (d) DCC;
- (e) Falls Dam;
- (f) Forestry appellants;
- (g) MIC;
- (h) Meridian;
- (i) OWRUG;
- (j) WIC; and
- (k) QAC.

Resolution

[37] The parties have agreed that IM-P6 can be amended as follows:

IM-P6 – Managing uncertainties

In resource management decision-making, manage uncertainties by using the best information available at the time, including scientific data and mātauraka Māori, and:

- (1) taking all practicable steps to reduce uncertainty, and
 - (a) in the absence of complete and scientifically robust data, using

⁴ *Sustain our Sounds Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 40, [2014] 1 NZLR 673.

information obtained from modelling, reliable partial data, and local knowledge, with preference for sources of information that provide the greatest level of certainty, and

- (b) avoiding unreasonable delays in making decisions because of uncertainty about the quality or quantity of the information available, and
- (2) adopting a precautionary approach, ~~including through use of adaptive management,~~ towards activities whose effects are uncertain, unknown, or a little understood, but potentially significantly adverse, which may include the use of adaptive management where appropriate.

[38] The parties have agreed to amend the policy as sought by Kāi Tahu. The parties consider that the agreed amendments are consistent with the case law mentioned above and will ensure that adaptive management will only be used where appropriate.

[39] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss5, and 7(b).

IM-P10 – Climate change adaptation and mitigation

[40] Policy IM-P10 was appealed by EDS, Forest & Bird, and Kāi Tahu.

The Societies

[41] In their respective appeals, both Forest & Bird and EDS (the Societies) sought that clause (2) of the Notified Version of IM-P10 be reinstated, which read:

- (2) prioritise avoiding the establishment of new activities in areas subject to risk from the effects of climate change, unless those activities reduce, or are resilient to, those risks.

[42] EDS' position was that new activities should not exacerbate risk.

[43] The following persons gave notice of an intention to join this part of EDS' appeal under s274 RMA:

- (a) Forest & Bird;
- (b) Forestry appellants;
- (c) the DGC;
- (d) the EDBs;
- (e) Beef + Lamb;
- (f) Meridian;
- (g) OWRUG;
- (h) POL; and
- (i) Fish & Game.

[44] Forest & Bird's position was that the NZCPS, including Policy 25, discourages infrastructure in areas subject to natural hazards therefore clause (2) should be reinstated.

[45] The following persons gave notice of an intention to join this part of Forest & Bird's appeal under s274 RMA:

- (a) the DGC;
- (b) the EDBs;
- (c) Beef + Lamb;
- (d) Falls Dam;
- (e) Federated Farmers;
- (f) Forestry appellants;
- (g) MIC;
- (h) Meridian;
- (i) OGL;
- (j) OWRUG;
- (k) POL;
- (l) WIC; and
- (m) Fish & Game.

Kāi Tahu

[46] Kāi Tahu’s appeal sought amendments to IM-P10 to ensure that the policy could not be read as “locking in” existing activities which may no longer be appropriate in a given area. Kāi Tahu’s position was that while accepting that the effects of climate change on existing activities need to be managed, it would not always be appropriate to minimise such effects, which could be seen as affording priority to the protection of existing activities.

[47] The following persons gave notice of an intention to join this part of Kāi Tahu’s appeal under s274 RMA:

- (a) Cain Whānau;
- (b) the DGC;
- (c) Forest & Bird;
- (d) Meridian;
- (e) QLDC;
- (f) POL;
- (g) the EDBs;
- (h) Beef + Lamb;
- (i) Falls Dam;
- (j) MIC;
- (k) WIC;
- (l) OGL;
- (m) OWRUG;
- (n) QAC; and
- (o) DCC.

Resolution

[48] The parties have agreed that IM-P10 can be amended as follows:

IM-P10 – Climate change adaptation and climate change mitigation

Identify and implement climate change adaptation and climate change mitigation methods for Otago that:

- (1) ~~minimise~~ manage the effects of climate change ~~on~~ to existing activities and the wider environment, and
- (2) manage the establishment of new activities in areas subject to natural hazard risk from the effects of climate change in accordance with the HAZ-NH chapter, and
- (3) provide Otago's communities, including Kāi Tahu, with the best chance to thrive, and
- (4) enhance environmental, social, economic, and cultural resilience to the adverse effects of climate change, including by ~~facilitating~~ enabling activities that reduce those effects, and
- (5) ~~protects~~ Otago's existing renewable electricity facilities and provides for the development of new renewable electricity generation and infrastructure.

[49] The amendments to clauses (4) and (5) are grammatical only.

[50] The parties advised that the agreed amendments in clause (1) respond to Kāi Tahu's appeal point. The parties have agreed that "manage" is more appropriate term than "minimise" and would not exclude "minimising" effects if that was considered appropriate by communities in the particular circumstances of an activity.

[51] The parties advised that inclusion of new clause (2) responds to the Societies' respective appeal points. They consider that the agreed amendment provides a clear link for the establishment of new activities within areas subject to natural hazard risk to the 'HAZ-NH – Natural hazards' sub-chapter within the 'HAZ – Hazards and risks' chapter, resolving the concerns raised by the Societies while avoiding duplication.

[52] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss5, 6(h), 7(b) and 7(i).

IM-P12 – Contravening limits for climate change mitigation and climate change adaptation

[53] Policy IM-P12 was appealed by EDS, Forest & Bird and Kāi Tahu.

The Societies

[54] In their respective appeals, EDS and Forest & Bird sought identical relief to IM-P12 to require proposals to demonstrate that:

- (a) it provides an enduring regionally or nationally significant climate change mitigation or climate change adaptation with commensurate benefits;
- (b) the activity will not contravene any relevant limits, policies, or ecological bottom lines; and
- (c) there is no alternative location, site or method for the activity.

[55] EDS' position was that climate change and biodiversity loss needed to be addressed synergistically and not at the expense of the other.

[56] The following persons gave notice of an intention to join this part of EDS' appeal under s274 RMA:

- (a) the DGC;
- (b) Forest & Bird;
- (c) Kāi Tahu;
- (d) the EDBs;
- (e) Beef + Lamb;
- (f) Federated Farmers;
- (g) Forestry appellants;
- (h) Manawa Energy;
- (i) Meridian;
- (j) NZTA;

- (k) OGL;
- (l) OWRUG;
- (m) POL; and
- (n) Fish & Game.

[57] Forest & Bird’s position was that IM-P12 needed to be carefully constrained to ensure it did not result in perverse outcomes, such as ecologically irresponsible consent applications presented as “climate change mitigation” and/or “climate change adaptation”. Forest & Bird raised a further concern that IM-P12 failed to give effect to environmental bottom lines and limits contained within the various national policy statements.

[58] The following persons gave notice of an intention to join this part of Forest & Bird’s appeal under s274 RMA:

- (a) the DGC;
- (b) Kāi Tahu;
- (c) the EDBs;
- (d) Beef + Lamb;
- (e) Falls Dam;
- (f) Federated Farmers;
- (g) Forestry appellants;
- (h) Manawa Energy;
- (i) MIC;
- (j) Meridian;
- (k) NZTA;
- (l) POL;
- (m) WIC; and
- (n) Fish & Game.

Kāi Tahu

[59] Kāi Tahu’s appeal sought amendments to remove reference to climate

change adaptation so that the policy applied only to climate change mitigation activities (as in the Notified Version of the PORPS) and to ensure consistency with and coordination with other regional and national climate change mitigation activities. Kāi Tahu's position was that the policy as broadened in the Decisions Version had significant potential to undermine the objectives of the PORPS.

[60] The following persons gave notice of an intention to join this part of Kāi Tahu's appeal under s274 RMA:

- (a) Cain Whā nau;
- (b) the DGC;
- (c) Fish & Game;
- (d) Forest & Bird;
- (e) Forestry appellants;
- (f) QLDC;
- (g) EDBs;
- (h) Beef + Lamb;
- (i) DCC;
- (j) Falls Dam;
- (k) Federated Farmers;
- (l) MIC;
- (m) Meridian;
- (n) Manawa Energy;
- (o) OGL;
- (p) OWRUG;
- (q) QAC;
- (r) WIC; and
- (s) POL.

Resolution

[61] The parties agreed that IM-P12 can be amended as follows:

IM-P12 – Contravening limits for climate change mitigation and climate change adaptation

If a proposed activity demonstrates it provides or will provide enduring regionally or nationally significant climate change mitigation or climate change adaptation ~~with~~ and commensurate benefits for the well-being of people and communities and the wider environment, decision makers may allow non-compliance with limits set in, or resulting from, any policy or method of this RPS unless those provisions give effect to national direction if they are satisfied that:

- (2) the activity contributes to achieving the objectives or targets of the national emissions reduction plan or national adaptation plan prepared under the Climate Change Response Act 2002,
- (3) adverse effects on the environment are avoided, remedied, or mitigated so that they are minimised to the extent reasonably practicable; and, if applicable, any significant more than minor residual adverse effects are offset, or compensated for, and
- ~~(5) the activity will not contravene a national policy statement or national environmental standard.~~
- (4) there is no reasonably practicable alternative location or site for the activity.

[62] The parties consider that the inclusion of “demonstrates” in relation to a proposed activity and “if they are satisfied that ...” in relation to decision-makers in the chapeau makes the policy more robust and reduces the risk of perverse consenting outcomes. They advised that this addresses the relief sought by the Societies.

[63] The parties advised that new clause (2) responds to Kāi Tahu’s appeal point. The parties have agreed that the amendment is appropriate to ensure consistency with and coordination with other regional and national climate change mitigation activities.

[64] The parties consider that deletion of clause (5) and inclusion of the text “unless those provisions give effect to national direction” in the chapeau responds to the Societies’ concern that that the policy may be read as failing to give effect to environmental bottom lines in national direction. It also removes uncertainty

as to what was meant by the words “contravene a national policy statement”.

[65] They consider that new clause (4) creates better balance as between protecting biodiversity and providing for climate change as sought by the Societies.

[66] Further to the agreed amendments to the policy discussed above, for additional clarity the parties also agree to include a new definition for “limit” in relation to IM-P12 as follows:

Limit (in relation to IM-P12) means:

- (1) minimum acceptable state of an aspect of the natural environment, or
- (2) maximum amount of acceptable harm or pressure on the natural environment.

[67] The interested parties to the appellants’ relief on IM-P12 concern as to the uncertainty of what “limit” meant in the policy.

[68] “Limit” is used with varying meanings in the PORPS. Because the term is used in more than one context, it is defined twice in the Decisions Version of the PORPS, with the context in which the term is defined included – as required by the National Planning Standards 2019.⁵

[69] Those definitions and context do not capture what “limit” means in IM-P12. The parties have therefore agreed that as “limit” is being used in a different context in IM-P12, it too requires a definition.

[70] The parties have agreed that the inclusion of a definition of “limit” in relation to IM-P12 provides clarity for readers and decision-makers.

⁵ Standard 14. Definition Standard, clause 6.

[71] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss5, 6(h), 7(b) and 7(i).

IM-P14 – Sustaining resource potential

[72] Policy IM-P14 was appealed by Transpower, QAC and Kāi Tahu.

Transpower

[73] Transpower’s appeal sought to delete IM-P14. Transpower’s position was that imposing “limits” could be inconsistent with the National Policy Statement for Electricity Transmission (NPS-ET), for example where the NPS-ET requires an activity (the National Grid) be enabled or provided for.

[74] The following persons gave notice of an intention to join this part of Transpower’s appeal under s274 RMA:

- (a) Forestry appellants;
- (b) Forest & Bird;
- (c) Kāi Tahu;
- (d) the DGC;
- (e) the EDBs;
- (f) Beef + Lamb;
- (g) Fish & Game; and
- (h) EDS.

QAC

[75] QAC’s appeal sought the deletion of IM-P14. QAC’s position was that as drafted, policy IM-P14 could potentially constrain the development and ongoing operation, use and development of nationally and regionally significant infrastructure throughout the region.

[76] The following persons gave notice of an intention to join this part of QAC’s appeal under s274 RMA:

- (a) the DGC;
- (b) Forest & Bird;
- (c) Kāi Tahu;
- (d) QLDC;
- (e) the EDBs;
- (f) Beef + Lamb; and
- (g) Fish & Game.

Kāi Tahu

[77] Kāi Tahu’s appeal sought that “sustainably manage” be replaced with “safeguard”. Kāi Tahu’s position was the policy as drafted was not consistent with the purpose of sustainable management and s5(b) RMA, which requires the life-supporting capacity of air, water, soils and ecosystems to be safeguarded, not sustainably managed.

[78] The following persons gave notice of an intention to join this part of Kāi Tahu’s appeal under s274 RMA:

- (a) Cain Whānau;
- (b) the DGC;
- (c) Fish & Game;
- (d) Forest & Bird;
- (e) the EDBs;
- (f) Beef + Lamb;
- (g) DCC;
- (h) Falls Dam;
- (i) Federated Farmers;
- (j) Forestry appellants;
- (k) MIC;

- (l) WIC;
- (m) QAC;
- (n) OWRUG; and
- (o) Meridian.

Resolution

[79] The parties have agreed that IM-P14 can be amended as follows:

IM-P14 – Sustaining resource potential and life-supporting capacity

When preparing regional plans and district plans, ~~sustainably manage opportunities for~~ sustain the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations and safeguard the life-supporting capacity of the natural environment by:

- (1) ~~where necessary to achieve the objectives of this RPS, identifying limits beyond which the environment will be degraded, considering whether it is necessary to set limits or thresholds, and~~
- (2) encouraging ~~requiring that~~ activities to be ~~are~~ established in places, and carried out in ways, that ~~are within those limits and~~ are compatible with the natural capabilities and capacities of the resources they rely on, and
- (3) regularly assessing and adjusting ~~limits and~~ the way activities are managed over time in light of the actual and potential environmental impacts, including those related to climate change, and
- (4) providing for activities that reduce, mitigate, or avoid adverse effects on the environment.

[80] Kāi Tahu raised similar concerns in relation to safeguarding the life-supporting capacity of air, water, soils and ecosystems in their appeal on IM-P1. The parties agreed that IM-P1 was to be deleted, and that Kāi Tahu's concern would be addressed by further amendments to IM-P14.

[81] The parties advised that amendments to the title and chapeau respond to Kāi Tahu's appeal point. The parties have agreed that as amended, IM-P14 better expresses the purpose of sustainable management, and provides more balance to the IM chapter, particularly in light of the new Policy IM-P15 discussed below.

[82] They consider that the amendments to clauses (1) and (2) provide greater discretion to local authorities to consider the circumstances in which it may be appropriate to set limits (and, conversely, where it may not be appropriate to do so, e.g. where the setting of a limit would place an inappropriate constraint on regionally or nationally significant infrastructure as raised by QAC).

[83] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss5, 6(h), 7(b) and 7(i).

New objectives and/or policy

[84] Meridian's appeal sought a new objective and policy to recognise and provide for the significance of renewable electricity generation when considering the need for integrated resource management.

[85] The following persons gave notice of an intention to join this part of Meridian's appeal under s274 RMA:

- (a) Manawa Energy;
- (b) the DGC;
- (c) Forest & Bird;
- (d) Kāi Tahu;
- (e) QLDC;
- (f) Fish & Game; and
- (g) EDS.

[86] Similarly, NZTA's appeal also sought a new objective to provide for regionally and nationally significant infrastructure in the context of integrated management. NZTA's position was that the objectives of the integrated management chapter prioritised the natural environment and ecosystems, over enabling provisions which seek sustainable management of natural and physical resources.

[87] The following persons gave notice of an intention to join this part of NZTA's appeal under s274 RMA:

- (a) Ara Poutama;
- (b) the EDBs;
- (c) Federated Farmers;
- (d) Manawa Energy;
- (e) Meridian;
- (f) POL;
- (g) QAC;
- (h) the Fuel Companies;
- (i) Transpower;
- (j) Beef + Lamb;
- (k) the DGC;
- (l) Forest & Bird; and
- (m) Fish & Game.

Resolution

[88] The parties have agreed to the inclusion of a new policy as follows:

IM-P15 – Management of natural and physical resources

When preparing regional plans and district plans, recognise and provide for the role and use of natural and physical resources in a way or at a rate that supports the social, cultural and economic well-being of Otago's communities now and in the future.

[89] The parties consider that the new policy reflects s5 of the Act and creates more "balance" within the IM chapter between protection on the one hand and use and development on the other, as sought by Meridian and NZTA.

[90] The inclusion of new policy IM-P15 resolves Meridian's and NZTA's respective appeal points seeking a new objective.

[91] The parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 5, 6(h), 7(b) and 7(i).

Other relevant matters

[92] No appeals on the non-freshwater planning instrument parts of the PORPS are fully resolved as a result of this Order.

[93] The parties advise that there are no outstanding appeals points on the IM chapter as a result of this Order.

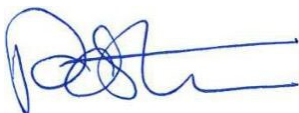
Consideration

[94] I have read and considered the consent memorandum of the parties dated 29 August 2025 which proposes to resolve the appeal points in relation to the provisions in the IM chapter of the PORPS, as set out in 'A:(1)' at the commencement of this Order.

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

Outcome

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



P A Steven
Environment Judge



SCHEDULE ONE

Appeals

1. ENV-2024-CHC-22 Meridian Energy Limited v ORC
2. ENV-2024-CHC-26 Royal Forest and Bird Protection Society of New Zealand Inc v ORC
3. ENV-2024-CHC-29 Oceana Gold NZ Ltd v ORC
4. ENV-2024-CHC-35 Transpower New Zealand Ltd v ORC
5. ENV-2024-CHC-36 Te Rūnanga o Moeraki & ors (Kāi Tahu) v ORC
6. ENV-2024-CHC-38 New Zealand Transport Agency v ORC
7. ENV-2024-CHC-39 Environmental Defence Society v ORC
8. ENV-2024-CHC-40 Queenstown Airport Corporation v ORC

Section 274 parties

1. Director-General of Conservation
2. Federated Farmers of New Zealand Inc
3. Otago and Central South Island Fish & Game Councils
4. Waitaki Irrigators Collective Limited
5. Maniototo Irrigation Company Limited
6. Falls Dam Irrigation Company Limited
7. Manawa Energy Limited
8. Rayonier Matariki Forests Limited, City Forests Limited, Ernslaw One Limited, and Port Blakely NZ Limited (Forestry appellants)
9. Aurora Energy Limited, Network Waitaki Limited and PowerNet Limited (EDBs)
10. Dunedin City Council
11. Otago Water Resources Users Group
12. Queenstown Lakes District Council
13. Port Otago Limited

Annexure 1

Amend definition:

| | |
|--------------------------------------|---|
| Limit (in relation to IM-P12) | means: <u>(1) minimum acceptable state of an aspect of the natural environment, or</u> <u>(2) maximum amount of acceptable harm or pressure on the natural environment.</u> |
|--------------------------------------|---|

Amend objectives:

IM-O3 –Sustainable impact

Otago's communities provide for their social, economic, and cultural well-being by using, developing or protecting *natural and physical resources* in ways that support or restore ~~environmental integrity, form, functioning, and resilience~~, so that the life-supporting capacities of air, *water*, soil, and ecosystems ~~are sustainably managed~~, for future generations.

IM-O4 – Climate change

Otago's communities, including Kāi Tahu, understand what *climate change* means for their future, and responses to *climate change* in the region (including *climate change adaptation* and *climate change mitigation*):

- (1) are aligned with national level *climate change* responses,
- (2) assist with achieving the national emissions reduction targets for emissions reduction and plans, including by having a highly renewable energy system, and
- (3) are recognised as integral to achieving the outcomes sought by this RPS.

Amend policies:

IM-P1 – Integrated approach to decision-making

Giving effect to the integrated package of objectives and policies in this RPS and other relevant statutory provisions requires decision-makers to:

- (1) — consider all provisions relevant to an issue or decision and apply them purposively according to the terms in which they are expressed and
- (2) — if after (1) there is an irreconcilable conflict between any of the relevant RPS and/or statutory provisions which apply to an activity, only consider the activity if:
 - (a) — the activity is necessary to give effect to a relevant policy or statutory provision and not merely desirable, and
 - (b) — all options for the activity have been considered and evaluated, and
 - (c) — if possible, the chosen option will not breach any other relevant policy or statutory provision, and
 - (d) — if (c) is not possible, any breach is only to the extent required to give effect to the policy or statutory provision providing for the activity, and
- (3) — if 2(d) applies, evaluate all relevant factors in a structured analysis to decide which of the conflicting policies or statutory provisions should prevail, or the extent to which any relevant policy or statutory provision should prevail, and
- (4) — in the analysis under (1), (2) or the structured analysis under (3), assess the nature of the activity against the values inherent in the relevant policies or statutory provisions in the particular circumstances.

IM-P6 – Managing uncertainties

In resource management decision-making, manage uncertainties by using the best information available at the time, including scientific data and mātauraka Māori, and:

- (1) taking all practicable steps to reduce uncertainty, and
 - (a) in the absence of complete and scientifically robust data, using information obtained from modelling, reliable partial data, and local knowledge, with preference for sources of information that provide the greatest level of certainty, and
 - (b) avoiding unreasonable delays in making decisions because of uncertainty about the quality or quantity of the information available, and

- (2) adopting a precautionary approach, ~~including through use of adaptive management,~~ towards activities whose *effects* are uncertain, unknown, or a little understood, but potentially significantly adverse, which may include the use of adaptive management where appropriate.

IM-P10 – *Climate change adaptation and climate change mitigation*

Identify and implement *climate change adaptation* and *climate change mitigation* methods for Otago that:

- (1) ~~minimise~~ manage the *effects* of *climate change* on to existing activities and the wider *environment*, and
- (2) manage the establishment of new activities in areas subject to *natural hazard risk* from the *effects* of *climate change* in accordance with the HAZ-NH chapter, and
- (3) provide Otago's communities, including Kāi Tahu, with the best chance to thrive, and
- (4) enhance environmental, social, economic, and cultural *resilience* to the adverse *effects* of *climate change*, including by facilitating en activities that reduce those *effects*, and
- (5) protects Otago's existing renewable electricity facilities and provides for the development of new *renewable electricity generation* and *infrastructure*.

IM-P12 – Contravening limits for *climate change mitigation* and *climate change adaptation*

If a proposed activity demonstrates it provides or will provide enduring regionally or nationally significant *climate change mitigation* or *climate change adaptation* ~~with~~ and commensurate benefits for the well-being of people and communities and the wider *environment*, decision makers may allow non-compliance with limits set in, or resulting from, any policy or method of this RPS unless those provisions give effect to national direction if they are satisfied that:

- (2) the activity contributes to achieving the objectives or targets of the national emissions reduction plan or national adaptation plan prepared under the Climate Change Response Act 2002.
- (3) adverse *effects* on the *environment* are avoided, remedied, or mitigated so that they are minimised to the extent reasonably practicable, and, if applicable, any significant more than minor residual adverse *effects* are offset, or compensated for, and
- (5) ~~the activity will not contravene a national policy statement or national environmental standard.~~
- (4) there is no reasonably practicable alternative location or site for the

activity.

IM-P14 – Sustaining resource potential and life-supporting capacity

When preparing *regional plans* and *district plans*, ~~sustainably manage opportunities for~~ sustain the potential of *natural and physical resources* (excluding *minerals*) to meet the reasonably foreseeable needs of future generations and safeguard the life-supporting capacity of the natural environment by:

- (1) ~~where necessary to achieve the objectives of this RPS, identifying limits beyond which the environment will be degraded, considering whether it is necessary to set limits or thresholds, and~~
- (2) encouraging ~~requiring that~~ activities ~~to be~~ are established in places, and carried out in ways, that ~~are within those limits and are~~ compatible with the natural capabilities and capacities of the resources they rely on, and
- (3) regularly assessing and adjusting ~~limits and~~ the way activities are managed over time in light of the actual and potential environmental impacts, including those related to *climate change*, and
- (4) providing for activities that reduce, mitigate, or avoid adverse *effects* on the *environment*.

IM-P15 – Management of *natural and physical resources*

When preparing *regional plans* and *district plans*, recognise and provide for the role and use of *natural and physical resources* in a way or at a rate that supports the social, cultural and economic well-being of Otago's communities now and in the future.

