

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

IN THE MATTER

of the Resource Management Act 1991

AND

of appeals under Clause 14 of the First Schedule of
the Act

BETWEEN

ARATIATIA LIVESTOCK LIMITED
(ENV-2018-CHC-29)
MERIDIAN ENERGY LIMITED
(ENV-2018-CHC-38)
FEDERATED FARMERS OF NEW ZEALAND
(ENV-2018-CHC-40)
TE RUNANGA O NGAI TAHU, HOKONUI
RUNAKA, WAIHOPAI RUNAKA, TE
RUNANGA O AWARUA & TE RUNANGA O
ORAKA APARIMA
(ENV-2018-CHC-47)

(Continued on next page)

**FURTHER MEMORANDUM ON THE ISSUE OF STANDING (WAI AU RIVER
LIAISON COMMITTEE RESPONSE TO MERIDIAN ENERGY LIMITED)
11 SEPTEMBER 2018**

Judicial Officers: Judge Hassan and Judge Borthwick

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ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NZ
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

Introduction

1. On 31 August the Waiiau River Liaison Committee (**the Liaison Committee**) filed a Memorandum of Counsel and Affidavit of Peter William Horrell in support of their lodgement of s274 notices to the appeals on the Proposed Southland Water and Land Plan (the **Proposed Plan**).
2. In directions of 20 August 2018, the Court reserved leave for any party to seek further or particular directions.
3. By separate contemporaneous Memorandum, the Liaison Committee seeks leave to file these further submissions in response to the Memorandum of Meridian Energy Limited, filed Friday 7 September 2018.

Issues raised by Meridian Energy Limited

4. Meridian Energy asserts, amongst other things, the following as relevant for the Court's consideration on the question of standing of the Liaison Committee (bolding mine):
 - a. The Liaison Committee has not demonstrated on the evidence that they stand to suffer a **sufficient** disadvantage from the resolution of the appeals on the relevant provisions of the pSWLP¹, and
 - b. The provisions in which the Liaison Committee expresses an interest and the concerns they raise in relation to those provisions are "on the table" by virtue of the participation of other parties to the appeals. **There is therefore no sense in which non-participation in the appeals by the Liaison committee will mean the issue of relevance to them will fail to be considered**².
5. It is submitted that neither of these matters are relevant factors for the Court to take into account.
6. In relation to the first matter, there is no "ladder of disadvantage" a party must climb to qualify as having a "sufficient" interest greater than the public generally. This

¹ Paragraph 5

² Paragraph 6

creates an extra burden a s274(1)(d) party must satisfy that is not required by s274 nor is there any caselaw to support this proposition. The Courts have merely said (bolding mine):

- a. The must be **some** advantage or disadvantage: such must be direct and not just emotional or intellectual³.
7. The advantage or disadvantage is only qualified by nexus, not “sufficiency”. It is submitted that the Liaison Committee has shown the relevant disadvantage and nexus.
 8. In relation to the second matter, there is nothing in s274(1)(d) to the effect that if an issue is “on the table” (in an appeal), a prospective s274 party will be disqualified if issues of relevance to them will thus already be considered. There is no case law cited to support this proposition either.
 9. In fact if what Meridian assert is the correct position, no-one could ever qualify for standing, as entry into the appeal arena as a s274 party is automatically limited to the scope of a particular appeals before the Court and issues specified. It is the aspect of these appeals of interest to a particular group, who can put forward their own reasons for supporting or opposing particular relief put forward – and more importantly engage in mediation on the basis of their particular interest (within the confines of any particular appeal) - that is the advantage offered by the section.
 10. Other matter raised by Meridian include:
 - a. **Origins of the Liaison Committee** – Meridian rely on the Liaison Committee being a “Committee of Council” and their “Terms of Reference”, stating “there is no evidence that the WRLC was established under some other terms of reference that differ from the TOR”.
 - b. As clearly set out in the affidavit of Mr Horrell and the legal submissions already filed, this Committee is unique. The label “River Liaison Committee” and Terms of Reference that apply to all river liaison committees are not determinative of either the origins or functions of this particular Committee. The Committee was established because of a contract – a side agreement

³ Citing Wallace Group limited v Auckland Council [2017] NZEnvC 106, at [25].

reached to get agreement of the relevant parties to the consent conditions put forward for applications for resource consents for the Manapouri Power Scheme. The contract was for specific purposes – set out in the Waiau Heads of Agreement. Those purposes were further cemented and expanded by establishment of the Special Rating District, established as the formal local government mechanism to receive and hold the funds (on behalf of framers and landowners i.e. on trust) that Meridian Agreed to pay in exchange for the agreement of Federated Farmers to the proposed consent conditions.

- c. It is the Waiau Heads of Agreement and the Special Rating District provisions that collectively form the equivalent of “terms of reference”, but they are more specific and binding than that, given these documents.
- d. **Privity of contract** - The Liaison Committee is not claiming privity of contract of the Waiau Agreement – it merely included that for the Court’s reference, to set out the origins and operating parameters of the Liaison Committee⁴.
- e. **Mandated function** - It is not relevant that the Liaison Committee has no stated mandated function in relation to planning processes under the RMA – it was set up as a result of planning processes under the Resource Management Act i.e. as part of the then ECNZ application for resource consent and the negotiation process.
- f. It is also not relevant (or fatal) that the Liaison Committee has no power of general competence vested in them by the Respondent. There is no quoted caselaw to support the proposition that a committee such as the Liaison Committee needs a power of general competence vested in them by the Respondent.
- g. Although there is nothing explicit, it is submitted the documentation before the Court is sufficient.

⁴ Meridian submissions, paragraph 40

- h. The Liaison Committee does not represent the Respondent – it was established to carry out functions established firstly via contract, and then via the special rating district.
- i. **Meridian as a ratepayer** - Given the background information provided, it is disingenuous to say that the issues of the Liaison Committee relate to Meridian as a ratepayer⁵.
- j. **Public notification** – public notification of an application is irrelevant, if participation is in essence meaningless i.e. via controlled activity status for a consumptive water take. It is not the public participation that provides the bounds of participation (although that is the entry point) but rather the activity status (and any conditions/limits attaching to that).
- k. **Personal submission** - It is also irrelevant that Mr Horrell was a submitter in his own right.

11. The Liaison Committee’s interests are broader than fencing and weed control.

Although the Waiiau Agreement includes these matters, it is not limiting. Further, the Special Rating District provided more detail about the reasons for a differential (special) rating system. This further detail included direct and indirect benefits likely to accrue to properties are flood protection, improved drainage, noxious plant control, stock fencing on the main channel, erosion control, maintenance of high quality water resource and protection of community assets⁶.



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Clare Lenihan
 Counsel for the Liaison Committee

11 September 2018

⁵ Meridian submissions, paragraph 41

⁶ Refer to Exhibit B to the affidavit of Peter Horrell dated 31 August 2018.