

**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 Appellant
AND	SOUTHLAND REGIONAL COUNCIL Respondent

**MEMORANDUM SETTING OUT CHANGES TO PROVISIONS BEING PURSUED
IN TOPIC B TRANCHE 1 BY MERIDIAN ENERGY LIMITED**

22 FEBRUARY 2022

Judicial Officer: Judge Borthwick

Solicitor acting:

Humphrey Tapper
In-house counsel
287–293 Durham St North
Christchurch Central
Christchurch 8013
humphrey.tapper@meridianenergy.co.nz

Counsel acting:

Stephen Christensen
Project Barrister
421 Highgate, Dunedin 9010
P 027 448 2325
stephen@projectbarrister.nz

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TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA, WAIHOPAI RUNAKA, TE RUNANGA O AWARUA AND TE RUNANGA O ORAKA APARIMA

(ENV-2018-CHC-47)

PETER CHARTRES

(ENV-2018-CHC-48)

RAYONIER NEW ZEALAND LTD

(ENV-2018-CHC-49)

ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NZ INC

(ENV-2018-CHC-50)

Appellants

AND SOUTHLAND REGIONAL COUNCIL

Respondent

MAY IT PLEASE THE COURT

- 1 The relief being pursued by Meridian Energy Limited (**Meridian**) in relation to the Topic B Tranche 1 appeal points in which it retains an interest is set out in the attached documents marked “A” and “B”. Attachment “A” lists the Tranche 1 provisions in which Meridian has an interest and sets out Meridian’s position on each provision. Attachment “B” sets out the wording Meridian seeks in relation to the provisions in which it has an interest, consistent with its position as set out in Attachment “A”.



Stephen Christensen

Counsel for Meridian Energy Limited

22 February 2022

Attachment “A” – Meridian Energy Limited – Topic B, Tranche 1 – Interest & Position

Table 1 – Tranche 1 - Meridian Interest & Position by Sub Topic

Topic	Plan Provision	Interest	Meridian Position
B1	Policy 20	S274	Agree as per draft consent order
B1	Table L.4 of Appendix L.5	S274	Agree as per draft consent order
B2	Policy 13	S274	Agree as per JWS ¹
B2	Policy 15A	S274	Agree as per the JWS
B2	Policy 15B	S274	Agree as per JWS
B2	Policy 15C	S274	Agree as per JWS
B2	Rule 5	S274	Agree as per draft consent order
B3	Policy 32	S274	Agree as per draft consent order
B3	Rule 51	S274	Agree as per JWS
B4	Policy 28	S274	Agree as per draft consent order
B4	Policy 29	S274	Agree as per draft consent order
B4	Policy 30	S274	Agree as per draft consent order
B5	Policy 16	S274	Agree as per JWS
B5	Schedule X	S274	Agree as per JWS
B5	Definition Ephemeral River	S274	Agree as per JWS

¹ Joint Witness Statement of Expert Planners dated 10 December 2021

Attachment “B” – Meridian Energy Limited Relief Requested– Topic B, Tranche 1

Topic B1

Policy 20

Manage the taking, abstraction, use, damming or diversion of surface water and groundwater so as to:

- 1A. recognise that the use and development (such as primary production) of Southland’s land and water resources, ~~including for primary production,~~ can have positive effects including enabling people and communities to provide for their social, economic and cultural wellbeing;

1. Avoid where reasonably practicable, or otherwise remedy or mitigate, adverse effects from the use and development of surface water resources on:
 - (a) the quality and quantity of aquatic habitat, including the life supporting capacity and ecosystem health and processes of water bodies;
 - (b) natural character values, natural features, and amenity, aesthetic and landscape values;
 - (c) areas of significant indigenous vegetation and significant habitats of indigenous fauna;
 - (d) recreational values;
 - (e) the spiritual and cultural values and beliefs of tangata whenua;
 - (f) water quality, including temperature and oxygen content;
 - (g) the reliability of supply for lawful existing surface water users, including those with existing, but not yet implemented, resource consents;
 - (h) groundwater quality and quantity; and
 - (i) mātaimai, taiāpure and nohoanga;

2. Avoid ~~remedy or mitigate~~ where reasonably practicable, or otherwise remedy or mitigate, significant adverse effects from the use and development of groundwater resources on:
 - (a) long-term aquifer storage volumes;

- (b) the reliability of supply for lawful existing groundwater users, including those with existing, but not yet implemented, resource consents;
 - (c) surface water flows and levels, particularly in spring-fed streams, natural wetlands, lakes, aquatic ecosystems and habitats (including life supporting capacity and ecosystem health and processes of water bodies) and their natural character; and
 - (d) water quality, including temperature and oxygen content;
3. ensure water is used efficiently and reasonably by requiring that the rate and volume of abstraction specified on water permits to take and use water are no more than reasonable for the intended end use following the criteria established in Appendix O and Appendix L.4.

Table L.4 of Appendix L.5

Table L.4 of Appendix L.5

Groundwater Zone	Primary Allocation (m ³ x 10 ⁶ /year)
...	...
Te Anau	118.25 <u>88.94</u>
...	...

Topic B2

Policy 13 – Management of land use activities and discharges

Recognise that the use and development of Southland’s land and water resources, ~~including for primary production~~, enables people and communities to provide for their social, economic, and cultural wellbeing.

2. Manage land use activities and discharges (point source and non-point source) to enable the achievement of Policies 15A, 15B and 15C.

Policy 15A – Maintain water quality where standards are met

Where existing water quality meets the Appendix E Water Quality Standards or bed sediments meet the Appendix C ANZECC sediment guidelines, maintain water quality by:

- 1. avoiding, where reasonably practicable, or otherwise remedying or mitigating any the adverse effects of ~~new~~ discharges, so that ~~beyond the zone of reasonable mixing~~, those standards or sediment guidelines will continue to be met (beyond the zone of reasonable mixing for point source discharges); and
- ~~2. Requiring any application for replacement of an expiring discharge permit to demonstrate how the adverse effects of the discharge are avoided, remedied, or mitigated, so that beyond~~

~~the zone of reasonable mixing those standards or sediment guidelines will continue to be met.~~

Policy 15B Improve water quality where standards are not met

Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, improve water quality including by:

~~1. avoiding where practicable and otherwise remedying or mitigating any adverse effects of new point source discharges to surface water on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines beyond the zone of reasonable mixing; and~~

~~1a. avoiding where reasonably practicable and otherwise remedying or mitigating any adverse effects of other new discharges on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines; and~~

2. requiring any application for replacement of an expiring discharge permit to demonstrate how and by when adverse effects will be avoided where reasonably practicable and otherwise remedied or mitigated, so that ~~beyond the zone of reasonable mixing~~ water quality will be improved to assist with meeting those standards or sediment guidelines (beyond the zone of reasonable mixing for point source discharges).

Policy 15C — Maintaining and improving water quality after FMU processes

~~Following the establishment of freshwater objectives and limits under Freshwater Management Unit processes, and including through implementation of non-regulatory methods, improve water quality where it is degraded to the point where freshwater objectives are not being met and otherwise maintain water quality where freshwater objectives are being met.~~

Rule 5 Discharges to surface waterbodies

(a) Except as provided for elsewhere in this Plan the discharge of any:

(i) contaminant, or water, into a lake, river, artificial watercourse, modified watercourse or natural wetland; or

(ii) contaminant onto or into land in circumstances where it may enter a lake, river, artificial watercourse, modified watercourse or natural wetland;

is a discretionary activity provided the following conditions are met:

1. where the water quality upstream of the discharge meets the standards set for the relevant water body in Appendix E “Water Quality Standards”, the discharge does not reduce the water quality below those standards at the downstream edge of the reasonable mixing zone; or

or

2. where the water quality upstream of the discharge does not meet the standards set for the relevant water body in Appendix E “Water Quality Standards”, the discharge must not further reduce the water quality below those standards at the downstream edge of the reasonable mixing zone; and

3. ~~except for discharges from a territorial authority reticulated stormwater or wastewater system,~~ the discharge does not contain any raw sewage;

Topic B3

Policy 32- Protect significant indigenous vegetation and habitat

Protect significant indigenous vegetation and significant habitats of indigenous fauna and maintain indigenous biodiversity associated with natural wetlands, lakes and rivers and their margins.

Rule 51 Minor Diversions of Water

- (a) Despite any other rule in this Plan, the diversion of water within a river or lake bed is a permitted activity provided the following conditions are met:
- (i) the diversion is for the purposes of undertaking a permitted activity under Rules 55 to 79, or for the purposes of habitat creation, restoration or enhancement, or hydrologic research; and is carried out in accordance with the following conditions:
 - (a1) the general conditions set out in Rule 55A other than conditions (i), (j) and (k) of that Rule;
 - (ii) the diversion is carried out completely within a river or lake bed (i.e. no water is diverted outside of the river or lake bed);
 - (iii) the water is returned to its original course after completion of the activity, no later than one month after the diversion occurs;
 - (iva) the diversion does not occur within 12 metres of a network utility structure, unless the activity is for the purpose of maintaining, upgrading or developing that network utility;
 - (iv) the diversion does not compromise the ability of any other person to exercise a resource consent or undertake an activity permitted by this Plan; and
 - (v) the diversion does not result in a net loss of water from the catchment.
- (b) Despite any other rule in this Plan, the diversion of water for the purpose of land drainage is a permitted activity provided the following conditions are met:
- (i) the diversion and associated discharge does not cause erosion or deposition;
 - (ii) the diversion does not cause flooding of downstream or adjacent properties; and
 - (iii) the diversion of water is not from a Regionally Significant Wetland or Sensitive Water Body identified in Appendix A or any natural wetland.
- (c) Notwithstanding any other rule in this Plan, the diversion of water at the mouth of:
- (i) a drain known as the North Drain on the Tiwai Peninsula, at about Map Reference NZTopo50 CG10 463 308; or
 - (ii) a drain known as the West Drain on the Tiwai Peninsula, at about Map Reference NZTopo50 CG10 457 302; or
 - (iii) a drain known as the South Drain on the Tiwai Peninsula, at about Map Reference NZTopo50 CH10 456 298
- is a permitted activity provided the following conditions are met:
- (1) the work is carried out under the direct control of the body or person responsible for the maintenance of the drain;

- (2) machinery only crosses through a drain to obtain reasonable access to the side of the drain from which the work is to be undertaken;
 - (3) the diversion is constructed at right angles to the line of the beach; 2

 - (4) any excavated spoil is removed from the site and legally disposed of or spread over non-vegetated areas adjacent to the diversion;
 - (5) the body or person responsible advises the Southland Regional Council of the details of the time and extent of the work to be undertaken, prior to the work commencing; and
 - (6) in the event of a discovery, or suspected discovery, of a site of cultural, heritage or archaeological value, the operation ceases immediately in that location and the Southland Regional Council is informed. Operations may recommence with the permission of the Southland Regional Council.
- (d) Unless controlled by any other rule in this Plan, the diversion of water for the purpose of land drainage that does not meet Rules 51(a) to (c) is a discretionary activity.
- (e) The diversion of water from a natural wetland for the purpose of land drainage is a non-complying activity.

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S. Due to the high concentration of recorded archaeological sites in the vicinity of the above sites, it is possible that works will require an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014. No work (even if permitted under the rule or authorised by resource consent) should commence without first contacting Heritage New Zealand.*

Topic B4

Policy 28 – Structures and bed disturbance activities of rivers (including modified watercourses) and lakes

- a. Except where Policy 28b applies, manage structures, bed disturbance activities and associated discharges in the beds and margins of lakes, rivers and modified watercourses, to avoid where reasonably practicable, or otherwise remedy or mitigate adverse effects on:
1. water quality and quantity;
 2. habitats, ecosystems and fish passage;
 3. indigenous biological diversity;
 5. the spiritual and cultural values and beliefs of the tangata whenua;
 6. mātaihai and taiāpure;
 7. public access (except in circumstances where public health and safety are at risk) and amenity values;
 8. natural character values and outstanding natural features;
 9. river morphology and dynamics, including erosion and sedimentation;
 10. flood risk;
 11. infrastructural assets;
 12. navigational safety; and
 13. landscape values.

- b. The loss of river extent and values is avoided, unless the Southland Regional Council is satisfied:
- (i) that there is a functional need for the activity in that location; and
 - (ii) that the effects of the activity are managed by applying the effects management hierarchy*

*As defined in the NPS-FM (2020)

Policy 29 -Provide for the extraction of gravel

Recognise the value of gravel and provide for its extraction to meet the social, economic and cultural needs of the community in a way that:

a. avoids, remedies or mitigates adverse effects on land, groundwater quality, rivers and their margins; and recreational values and;

b. for river bed based extractions:

1. ~~for river based extractions, requires the restoration of aquatic, riverine and riparian habitat~~ is restored or enhanced once the gravel extraction activity has ceased;
2. results in no long-term net loss of habitat in the river channel, bed or floodplain;
- 2a. ensures that the rate and volume of gravel extraction is sustainable;
3. ensures no degradation of flood protection and erosion control infrastructure and the integrity of physical resources;
4. does not adversely affect the Ngāi Tahu cultural values and interests associated with the land or river, including taonga species habitat, mahinga kai, mātaimai and taiāpure;³
5. ~~results in no long term adverse effects on recreational values; and~~
6. maintains public access (except in circumstances where public health and safety are at risk);
7. protects historic heritage values; and
8. protects areas of significant indigenous vegetation and significant indigenous fauna.

Policy 30 - Drainage maintenance

In recognition of the community benefits of maintaining flood conveyance capacity and land drainage, ensure that drainage maintenance activities within artificial watercourses and the beds of modified watercourses and their margins are managed in a way that either:

1. avoids, where reasonably practicable, or otherwise remedies or mitigates significant adverse effects on the aquatic environment and riparian habitat in modified watercourses and significant adverse effects on aquatic and riparian habitat in artificial watercourses; or
2. maintains or enhances habitat value, including fish passage, gravel spawning habitat and bank stability; and
3. in addition to 1 or 2, minimises the quantity of sediment released from drainage maintenance activities.

Topic B5

Tracked changes key:

Red = changes that show Council's preferred relief

Green = changes post first tranche of conferencing

Policy 16

1. **Minimising** ~~Avoid where~~ **reasonably practicable, or otherwise** ~~minimise remedy or mitigate, any the~~ adverse environmental effects (including on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes, and groundwater) from farming activities by:
 - (a) ~~discouraging avoiding the establishment of new dairy farming of cows or new intensive winter grazing activities any new, or further intensification of any existing, dairy farming of cows or intensive winter grazing activities in close proximity to Regionally Significant Wetlands and Sensitive Water bodies identified in Appendix A; and~~
 - (b) **ensuring that, for existing farming activities:**
 - (i) ~~existing farming activities minimise nitrogen, phosphorus, sediment and or microbial contaminant discharges are minimised;~~
 - (ii) ~~reduce adverse effects on water quality where the farming activity occurs within the catchment of a waterbody that requires improvement identified in Schedule X; and~~
 - (iii) ~~demonstrate how (i) and (ii) is being or will be achieved through the implementation of Farm Environmental Management Plans prepared in accordance with (c) below and in addition,~~
 - (ba) **ensuring that for (ii)** ~~—the establishment of new, or further intensification of existing, dairy farming of cows or intensive winter grazing activities:~~
 - (i) ~~does not result in an increase in nitrogen, phosphorus, sediment and or microbial contaminant discharges; and~~
 - (ii) ~~minimises nitrogen, phosphorus, sediment or microbial contaminant discharges through the implementation of farm plans prepared in accordance with (c) below; and~~
 - (iii) ~~reduces nitrogen, phosphorus, sediment or microbial contaminant discharges where is the farming activity occurs within the catchment of a degraded waterbody that requires improvement identified in Appendix Schedule X; and~~
 - (iv) ~~is avoided in close proximity to Regionally Significant Wetlands and Sensitive Water bodies identified in Appendix A; and~~
 - (v) ~~resource consent is not granted to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities where any adverse effects, including cumulatively, on the quality of groundwater, or water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes cannot be avoided [where [reasonably] practicable], or minimised otherwise remedied or mitigated; or and~~
 - (c)2- **requiring all farming activities to:**
 - (a) ~~be undertaken in accordance with implement~~ a Farm Environmental Management Plan **which:**

Schedule X – Plan to be developed identifying degraded waterbodies

Definition of Ephemeral Rivers be deleted from the Glossary