

**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

WILL SAY STATEMENT OF MARGARET JANE WHYTE

8 November 2021

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(ENV-2018-CHC-27)

HORTICULTURE NEW ZEALAND
(ENV-2018-CHC-28)

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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

INTRODUCTION

- 1 My full name is Margaret Jane Whyte.
- 2 I hold the degrees of Bachelor of Arts and Master of Regional and Resource Planning from Otago University. I am a full member of the New Zealand Planning Institute. I am a Director of ResponsePlanning Consultants Limited. I have over 29 years planning and resource management experience.
- 3 I have prepared this statement addressing matters subject to the appeal and Section 274 notices lodged by Meridian Energy Limited (Meridian).

CODE OF CONDUCT

- 4 I have read the Environment Court's Code of Conduct for Expert Witnesses in its Environment Court Practice Note 2014 and I agree to comply with it as if these proceedings were before the Court. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

SCOPE OF WILL SAY STATEMENT

- 5 My will say statement focuses on the relief sought by Meridian in relation to its appeal and Section 274 notices. The relief sought has been provided by Meridian and is reproduced as Appendix 1 to my evidence.
 - 5.1 As directed by the Court my will say statement has focused on the relationship of the provisions with the objectives and policies in the Proposed Southland Water and Land Regional Plan (pSWLP) (with the focus on the version of provisions sought at Mediation). However, some of my rationale relating to the provisions and appropriateness or otherwise to the objectives and policies in the Proposed Southland Land and Water Regional Plan is derived from other statutory documents. In these circumstances I have briefly identified these other provisions in my will say statement. These include:
 - 5.2 As relevant the key objectives, policies and provisions in the National Policy Statement for Renewable Electricity Generation (NPS-REG) and the National Policy Statement Freshwater (NPS-FM)
 - 5.3 As relevant the key provisions in the National Environment Standard Freshwater (NESF)
 - 5.4 As relevant the key objectives and policies in the Southland Regional Policy Statement (RPS).

PROVISIONS RELEVANT TO MERIDIAN

Policy 13

- 6 I understand the wording of Policy 13 has been agreed in principle by parties at mediation. The outstanding matter relates to ensuring consistency is achieved in the

relationship between Policy 13 and Policies 15A, 15B and 15C which were not all subject to a mediated position.

- 7 I do not have a particular preference as to the wording of Policy 13 between the decision version and the mediation version. Both can achieve the relevant objectives in the pSWLP, particularly Objective 3.

Policy 15(A), 15(B) and 15(C)

- 8 Amended wording of Policies 15A and 15B has been agreed by parties as part of an extended mediation. In relation to the matters of interest to Meridian it is the relationship between Policy 15A, Policy 15B and Appendix E that is the key matter of concern. I understand that the concern of Meridian in relation to Appendix E is able to be addressed within that appendix rather than necessitating a change to the Policy. Subject to the change identified to Appendix E in relation to ancillary activities associated with the Manapouri Power Scheme I do not have any concerns with the wording of Policy 15A or Policy 15B as agreed at mediation.
- 9 I consider that the agreed wording in Policy 15A will achieve Objective 6 (being the key objective relating to water quality) and will be able to respond to Objective 7 (applying post FMU). Subject to the change to Appendix E in relation to ancillary activities associated with the Manapouri Power Scheme Policy 15A will also achieve Objective 10.
- 10 Policy 15C has not been agreed at mediation. Meridian's interest in Policy 15C is linked to the relationship of Policy 15A, Policy 15B and Policy 15C with Appendix E. I understand that the concern of Meridian in relation to Appendix E is able to be addressed within that appendix rather than necessitating a change to the Policy.
- 11 I note that while Policy 15C has a direct relationship with Objective 7 I consider that Policy 15C is not necessary and could be deleted. The FMU process that must be followed under the NPS-FM provides certainty that the matters currently addressed in Policy 15C will be specifically addressed within the FMU process, irrespective of the existence of the Policy. The FMU process itself will respond to Objective 7. However I am not concerned if Policy 15C is retained. While it may not be particularly effective it will not undermine the achievement of the Proposed Southland Water and Land Regional Plan (pSWLP) objectives, and will implement Objective 7.
- 12 The changes to Policies 15A, 15B and 15C, and the relationship with Appendix E can be achieved in a manner consistent with Objectives 1 and 2.

Appendix E

- 13 There is a strong relationship between Policies 15A, 15B and Appendix E. I consider that the changes sought by Meridian to Appendix E, relating to ancillary activities, which include matters relating to the ongoing operation and maintenance associated with the Manapouri Power Scheme are appropriate. These activities are typically minor in nature and effects associated with them are temporary. Specific consideration of ancillary activities is necessary in order to enable the consistent implementation of Policies 15A and 15B and Appendix E in a manner that is consistent with the objectives in the pSWLP, particularly Objective 3 and Objective 10.
- 14 This can be achieved in a manner consistent with Objectives 1 and 2.

Rule 51 and Rule 74 related to Wetlands

- 15 I understand the wording of Rules 51 and Rules 74 as they relate to wetlands has not been agreed at mediation.
- 16 In addressing the rules I support the status quo decision version of Rules 51 and 74 as they relate to wetlands. The regulation of wetlands has been overtaken by the regulations in the NESF that address natural wetlands. The NPS-FM provisions relating to natural inland wetlands also provide national direction for these wetlands that did not exist at the time the rules or appeals on the rules were lodged.
- 17 I consider that the appropriate response with respect to the pSWLP rules is to achieve alignment, as far as practical, with the NESF regulation. While Regional Plan wetland rules can be more stringent than the NESF regulation, this would require an evidential basis to support the position that within the Southland Region rules more onerous than the NESF are needed. In the absence of this evidence I consider the appropriate response is to where possible, align the pSWLP rules and the NESF regulation for wetlands.
- 18 While the decision version of the current rules may have issues in alignment with the NESF, I support these over rules that impose a regime more onerous than the NESF wetland regulations.
- 19 I do not consider more onerous rules than the NESF for wetlands are necessary to achieve any of the Objectives in the pSWLP.

Policy 26

- 20 I understand the wording of Policy 26 has not been agreed at mediation.
- 21 Policy 26 addresses renewable electricity generation activities, this includes both the Manapouri Power Scheme and other renewable electricity generation activities.
- 22 This policy directly implements Objective 10 which is specific to the existing Manapouri Power Scheme, Objective 9B which recognises the importance of Southland's regionally and nationally significant infrastructure (which would include renewable electricity generation other than the Manapouri Power Scheme) and Objective 3 which is that water and land are recognised as enablers of the economic, social and cultural wellbeing of the region.
- 23 The policy specifically recognises key matters within the NPS-REG being:
- 23.1 The benefits of renewable electricity generation activities (NPS-REG Objective, Policy A and Policy B)
- 23.2 The need to locate the generation activity where the renewable energy resource is available (NPS-REG Policy C1)
- 23.3 The practical constraints associated with its development, operation, maintenance and upgrading (NPS-REG Policy C1)
- 23.4 Having Regional Plan provisions that shall include objectives, policies and methods (including rules within plans) to provide for the development,

operation, maintenance, and upgrading of new and existing hydro-electricity generation activities, wind energy generation activities and renewable electricity generation activities using solar, biomass, tidal, wave and ocean current energy resources and to the extent applicable to the region or district. (NPS-REG Policy E1, Policy E2 and Policy E3).

- 24 The policy as it relates to renewable electricity and the Manapouri Power Scheme addresses Policy 4 in the NPS-FM which is that Freshwater is managed as part of New Zealand's integrated response to climate change and Policy 15 that communities are enabled to provide for their social, economic and cultural well-being in a way that is consistent with the NPS-FM. Specific to the Manapouri Power Scheme Policy 26 also responds to the recognition of the Manapouri Power Scheme as one of the five large hydro-electricity generation schemes specifically recognised in Section 3.31 of the NPS-FM. In implementing any part of the NPS-FM as it applies to an FMU or part of an FMU affected by a scheme, a regional council must have regard to the importance of the Scheme's
- (a) contribution to meeting New Zealand's greenhouse gas emission targets; and
 - (b) contribution to maintaining the security of New Zealand's electricity supply; and
 - (c) generation capacity, storage, and operational flexibility
- 25 The additional wording sought by Meridian is to recognise the importance of managing reverse sensitivity effects on renewable electricity generation. When new activities occur or existing activities are changed it is important to consider whether these will affect the operation of any existing generation activity. The inclusion of reverse sensitivity as a consideration in Policy 26 gives direct effect to Policy D in the NPS-REG which is that decision makers shall, to the extent reasonably possible manage activities to avoid reverse sensitivity effects on consented and on existing renewable electricity generation activities.
- 26 The matter of reverse sensitivity is also identified within the RPS, particularly as it relates to infrastructure, which includes renewable electricity generation. Section 15.4 Method INF.1 relating to regional plans is:
- Include objectives, policies and methods in regional plans that will:*
- (c) *ensure that adverse effects, including reverse sensitivity effects, of development and land use on existing and/or planned regionally and nationally significant infrastructure are avoided, remedied or mitigated by identifying:*
 - (i) *what activities and development may be incompatible with this infrastructure; and*
 - (ii) *how this infrastructure should be protected from such activities.*
- 27 The inclusion of reverse sensitivity within Policy 26 will give effect to the direction in the NPS-REG and RPS. It will also implement Objective 9B and 10 as they address renewable electricity generation activities.
- 28 The changes to Policy 26 can be achieved in a manner consistent with Objectives 1 and 2.

- 29 While not included in the relief sought by Meridian, I acknowledge that the structure and wording of Policy 26 could be improved by:
- 29.1 splitting Policy 26 into two separate policies - one being specific to the Manapouri Power Scheme and the other addressing other renewable electricity generation activities, or
 - 29.2 refocussing Policy 26 to address the Manapouri Power Scheme and reframing Policy 26A – Infrastructure to also address the additional matters relevant to renewable electricity generation other for the existing Manapouri Power Scheme.
- 30 The potential to redraft Policy 26 either into two separate policies or by amending policy 26 and 26A would in my view also be consistent with the NPS-FM direction for the Manapouri Power Scheme and the NPS-REG. This would also be consistent with the approach in the objectives, where objective 10 is specific to the existing Manapouri Power Scheme and Objective 9B addresses other regionally significant infrastructure. I have not developed alternative drafting at this time, but raise it as an alternative for consideration.

Rules 52A and 52B

- 31 I understand the wording of Rules 52A and 52B has not been agreed at mediation.
- 32 Rule 52A addresses the activity status for consents associated with re consenting the Manapouri Power Scheme.
- 33 The rule addresses and responds to all of the provisions I have previously identified when addressing Policy 26 and I do not repeat this consideration.
- 34 The relief Meridian is seeking is that Rule 52A have a different consenting pathway depending on whether the consents are applied for prior to or following completion of the FMU process.
- 35 The activity status for any consent prior to the completion of a FMU process for the Waiau FMU is as a discretionary activity. Discretionary activity status does not limit the matters that can be considered as part of the consent. This will enable consideration to be given to all of the relevant objectives and policies in the pSWLP, including Objectives 1, 2 and 10 within the context that exists at the time any consent is sought.
- 36 The activity status for any consent following the completion of the Waiau FMU process is as a controlled activity providing that the application lodged is for the renewal of an existing consent and the application complies with the flows or limits specified in the Regional Plan for the Waiau FMU. The matters of control enable the effects of the activity to be considered and conditions imposed in relation to avoiding, remedying or mitigating adverse effect as appropriate with the exception of requiring flows and requiring the achievement of limits different to those specified in the Regional Plan following completion of the Waiau FMU process. The combination of the national significance of the Manapouri Power Scheme (as set out in the NPS-FM, RPS and Objective 10 of the pSWLP) and the requirement for the FMU process to produce flows, levels and take limits in order to help achieve the desired outcomes in an FMU means that post the FMU process controlled activity status for the re consenting of the Manapouri Power Scheme (where it complies with the FMU's flows and allocations) is both efficient and effective.

- 37 Through the FMU process all of the relevant objectives in the pSWLP including Objectives 1, 2 and 10 will be considered. In addition the FMU process for the Waiau FMU will have to be undertaken in a manner consistent with the NPS-FM, including addressing the concept and framework of Te Mana o Te Wai, the hierarchy of obligations, the objectives and policies, the contribution of the Manapouri Power Scheme to the Government's integrated response to climate change and the relevant matters in Section 3.31 relating to large hydro-electricity generation schemes, and the need to set environmental flows and levels (Section 3.16) and take limits (Section 3.17). In addition any FMU process for the Waiau will also need to give effect to the NPS-REG.
- 38 Given this I consider that Rule 52A can be implemented in a manner consistent with the objectives of the pSWLP particularly Objectives 1, 2, 3 and 10.
- 39 With respect to Rule 52A(b) I consider that a discretionary activity status is appropriate. Discretionary activity status does not limit the matters that can be considered as part of the consent. This will enable consideration to be given to all of the relevant objectives and policies in the pSWLP, including Objectives 1, 2 and 10, and any Waiau FMU-specific provisions if they have been developed within the context that exists at the time any consent is sought.
- 40 I consider that a non-complying activity status for the re consenting of the Manapouri Power Scheme will not support the achievement of Objective 10, is inconsistent with the NPS-REG and the treatment of the Scheme under the NPS-FM, and is not appropriate.



Jane Whyte

8 November 2021

APPENDIX 1 – COPY OF MERIDIAN RELIEF PROVISIONS

“A”

Meridian Energy Limited

Relief Requested on Topic B Appeals & Section 274 Interests

Proposed Southland Water & Land Plan (PSWLP)

TOPIC B2 WATER QUALITY/DISCHARGE

Policy 13(1) Management of land use activities and discharges–Topic B2-Issue 3

Meridian requested relief:

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.

Policy 15B Improve water quality where standards are not met–Topic-B2-Issue 6

Meridian seeks retention of decisions version of Policy 15B

Policy 15C Maintaining and improving water quality after FMU process- Topic-B2-Issue 9

Meridian seeks the deletion of Policy 15C in its entirety:

~~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.~~

Appendix E-Topic B2- Issue 21

Meridian requested relief:

Appendix E – receiving Water Quality Standards

These standards apply to the effects of discharges following reasonable mixing with the receiving waters, unless otherwise stated. They do not apply to waters within artificial storage ponds such as effluent storage ponds or stock water reservoirs or to temporarily ponded rainfall.

The standard for a given parameter will not apply in a lake, river, artificial watercourse or modified watercourse or natural wetland where:

(a) due to natural causes, that parameter cannot meet the standard, or

(b) any ancillary activity associated with ~~due to the effects of the maintenance and/or operation of the Manapōuri hydro electric generation scheme that alters natural flows, that parameter cannot meet the standard~~ where the discharge results in only a temporary change to the quality of the water.

TOPIC B3 WETLANDS

Rule 51 Minor diversions of water-Topic B3-Issue 3

Meridian seeks retention of decisions version of Rule 51

Rule 74 Wetlands-Topic B3-Issue 8

Meridian seeks retention of decisions version of Rule 74

TOPIC B6 INFRASTRUCTURE

Policy 26 Renewable energy-Topic B6-Issues 1, 2, 12

Meridian requested relief:

Policy 26 – Renewable energy

Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri hydro-electric generation scheme in the Waiau catchment), the national, regional, and local benefits of renewable electricity generation activities, the need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading, when:

1. allocating surface water for abstraction, damming, diversion, and use; and
2. considering all resource consent applications for surface water abstractions, damming, diversion, and use; and

3. considering uses of land, use of the beds of lakes and rivers and discharge of contaminants or water to water or land for, or which may impact on, renewable electricity generation activities.

Rule 52A_Manapōuri Hydro-electric Generation Scheme-Topic B6-Issues 15, 17,18,19

Meridian requested relief:

Rule 52A – Manapōuri Hydro-electric Generation Scheme

(a) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme~~[s]~~, for which consent is held and which is the subject of an application for a new consent for the same activity and is:

- (i) the taking or use of water; or
- (ii) the discharge of water into water or onto or into land; or
- (iii) the discharge of contaminants into water or onto or into land; or
- (iv) the damming or diversion of water;

is a controlled activity provided the following conditions are met:

(1) the application is for the replacement of an expiring resource consent pursuant to section 124 of the Act; and

~~(2) the application complies with relevant flow and/or allocation regimes that have been established through an FMU process for the Waiau FMU; and~~

~~(3) the applicant has requested that the application be publicly notified.~~

~~(2) where the replacement consent is for the taking or use of water, the rate of take and volume is not increasing, and the use of water is not changing; and~~

~~(3) where the replacement consent is for the taking or use of water, the rate of take and volume complies with any relevant flow and level regimes set out in this Plan.~~

The ~~Southland Regional Council will reserve the exercise of its control to the following~~ matters over which control is reserved are:

- 1 ~~the volume and rate of water taken, used, diverted or discharged and the timing of any take, diversion or discharge, including how this relates to generation output~~ mitigation or remediation measures to address adverse effects on the environment, (including effects on mahinga kai, taonga species and Ngāi Tahu cultural values) except for changes or alterations to:
 - ~~(i) the controls for the take, use, damming, diversion, discharge or allocation of water set by this Plan;~~
 - ~~(ii) relevant water quality standards or limits set by this Plan; and~~
- 2 ~~any effects on river flows, wetland and lake water levels, aquatic ecosystems and water quality;~~ the collection, recording, monitoring, reporting and provision of information concerning the exercise of consent, and
- 3 ~~mitigation or remediation measures to address adverse effects on the environment~~ lapse period, duration of consent and consent review requirements; and
4. the benefits of renewable electricity generation.

~~An application for resource consent under Rule 52A(a) will be publicly notified.~~

(b) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme for which consent is held and which is the subject of an application for a new

consent for the same activity and is not a controlled activity in Rule 52A (a) is a discretionary activity
;

~~(i) the taking or use of water; or~~

~~(ii) the discharge of water into water or onto or into land; or~~

~~(iii) the discharge of contaminants into water or onto or into land; or~~

~~(iv) the damming or diversion of water;~~

~~that does not meet one or more of the conditions of Rule 52A(a) is a non-complying activity.~~