

**In the Environment Court
Wellington Registry**

ENV-2019-WGN-

Under the Resource Management Act 1991
And in the matter of an appeal pursuant to Schedule 1, clause 14(1) of the Act

Between

Meridian Energy Limited

Appellant

and

Greater Wellington Regional Council

Respondent

**Notice of Appeal on behalf of Meridian Energy Limited
against decision on the Greater Wellington Proposed
Natural Resources Plan**

18 September 2019

BELL GULLY

BARRISTERS AND SOLICITORS

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To: The Registrar
Environment Court
Wellington

1. Meridian Energy Limited (**Meridian**) appeals against parts of a decision of the Greater Wellington Regional Council (**GWRC**) on the Greater Wellington Proposed Natural Resources Plan (the **PNRP**).
2. Meridian made a submission and a further submission on the PNRP.
3. Meridian is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (the **RMA**).
4. Meridian received notice of the decision on 31 July 2019.
5. The decision was made by the Independent Hearing Panel (the **Panel**) appointed by GWRC.
6. The parts of the decision that this appeal relates to are:
 - (a) Section 2.2 - Definitions - Definition of 'Renewable energy generation activities';
 - (b) Section 2.2 - Definitions - Definitions of 'Biodiversity mitigation' and 'Biodiversity offset';
 - (c) Section 3.2 - Beneficial use and development - Objective O12;
 - (d) Section 4.4.2 - Natural character - Policies P24 and P25;
 - (e) Section 4.5 - Biodiversity, aquatic ecosystem health and mahinga kai - Policy P32 and Section 4.6.2 - Sites with significant indigenous biodiversity value - Policy P41;
 - (f) Section 4.6.5 - Natural features and landscapes - Policy P48;
 - (g) Section 5.4.4 - Earthworks and vegetation clearance - Rule R101; and
 - (h) Section 12 - Schedules - Schedules G1 and G2.

7. The reasons for the appeal and the relief sought from the Court are set out in detail below. Amendments sought by Meridian are underlined or ~~struck through~~.

Section 2.2 - Definitions - Definition of 'Renewable energy generation activities'

8. *Reason for appeal:* In its submission on the PNRP, Meridian sought an amendment to the definition of 'Renewable energy generation activities' to include all necessary ancillary supporting infrastructure, such as access tracks and roads, that are integral and essential to the operation, maintenance and development of renewable energy generation activities.
9. The relief sought by Meridian is not discussed in the Panel's decision on the PNRP. *Appendix C: Summary Table of Decisions by Hearing Stream Part 1* records that the Panel accepted Meridian's submission on this definition. However, the definition has not been amended in the decisions version of the PNRP. This appears to be an administrative error that Meridian considers should be corrected.
10. *Relief sought:* Amend the definition of 'Renewable energy generation activities' as follows:

The construction, operation and maintenance of structures and ancillary facilities (including access tracks and roads) associated with renewable energy generation, including small and community-scale distributed renewable generation activities and the system of electricity conveyance required to convey electricity to the distribution network and/or the national grid and electricity storage technologies associated with renewable electricity.

Section 2.2 - Definitions - Definitions of 'Biodiversity mitigation' and 'Biodiversity offset, Section 4.5 - Biodiversity, aquatic ecosystem health and mahinga kai - Policy P32, Section 4.6.2 - Sites with significant indigenous biodiversity value - Policy P41, and Section 12 - Schedules - Schedules G1 and G2

11. *Reason for appeal:* Meridian has an interest in the development of an appropriate policy framework for the management and maintenance of significant indigenous biodiversity given the range of renewable electricity generation assets it operates in the Greater Wellington region and potential development interests for new generation development.
12. Meridian is concerned that provisions in the PNRP do not provide for environmental compensation as a form of mitigation of adverse effects on indigenous biodiversity. Environmental compensation is a legitimate and useful form of mitigation, and is particularly relevant for large infrastructure projects, particularly renewable energy generation activities, where functional need and operational requirements limit locational choices.
13. Policy C2 of the NPS REG requires that when considering any residual environmental effects of renewable electricity generation activities that cannot be avoided, remedied or mitigated, decision-makers shall have regard to offsetting measures or environmental compensation including measures or compensation which benefit the local environment and community affected.
14. In addition, the 'mitigation hierarchies' specified in Policies P32 and P41 have replaced the term 'mitigation' (used in the publicly notified PNRP) with the term 'minimisation'. Meridian opposes the use of the word 'minimisation', which excludes use of the full range of mitigation measures that may be available to address the biodiversity values of interest in these policies. Further, these policies both anticipate the use of 'biodiversity mitigation' (stating that proposals for 'biodiversity mitigation' and 'biodiversity offsetting' will be assessed against the principles listed in Schedules G1 and G2), despite not expressly providing for the use of 'mitigation' in the bodies of the policies.

15. Meridian also considers that the options available to manage adverse effects on biodiversity values are further limited by the principle (ref Schedule G1) that requires 'Biodiversity mitigation' to occur at the same location as the activity that causes the adverse effects.
16. Meridian considers that together the definitions of 'Biodiversity mitigation' and 'biodiversity offset', Schedules G1 and G2, and Policies P32 and P41 direct that all adverse effects must be avoided or minimised at site, or remedied or offset to achieve no net loss. The resulting 'mitigation hierarchies' in Policies P32 and P41 do not give proper effect to the 'avoid, remedy or mitigate' framework of Part 2 of the RMA or to the policy direction in the NPS REG.
17. *Relief sought:* Amend the definitions of 'Biodiversity mitigation' and/or 'Biodiversity offset' and Schedules G1 and G2 and Policies P32 and P41 to enable avoidance, remediation, or mitigation of adverse effects on indigenous biodiversity as contemplated by Part 2 of the RMA and the NPS REG, including by the use of environmental compensation without constraint as to its location.

Section 3.2 - Beneficial use and development - Objective O12

18. *Reason for appeal:* The objective of the National Policy Statement for Renewable Electricity Generation 2011 (the **NPS REG**) is:

To recognise the national significance of renewable electricity generation activities *by providing for* the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation (*emphasis added*).

19. As recorded above, the NPS REG directs that regional plans recognise *and provide for* the nationally significant benefits of those activities.
20. The PNRP includes Policies P12 and P13 that recognise and provide for and protect the benefits of renewable energy generation activities. However, as currently worded, the PNRP objectives support the

recognition and protection of renewable energy generation activities, but there is an omission in respect of 'providing for' those activities. Objective O12 only recognises the benefits of regionally significant infrastructure and renewable energy generation activities.

21. Meridian considers that given the importance of regionally significant infrastructure and renewable energy generation activities, it is appropriate that the PNRP policy framework explicitly recognises and provides for this infrastructure, including at the objective level. This will ensure there is a clear nexus between Objective O12 and the policies identified in paragraph 20 of this appeal.

22. *Relief sought:* Amend Objective O12 as follows:

The social, economic, cultural and environmental benefits of **regionally significant infrastructure, renewable energy generation activities** and the utilisation of **mineral** resources are recognised and provided for.

Section 4.4.2 - Natural character - Policies P24 and P25

23. *Reason for appeal:* Meridian's further submission supported and opposed amendments requested to Policy P25 (which proposed a 'mitigation hierarchy' for addressing adverse effects on natural character). In particular, in its further submission on the PNRP, Meridian supported amendments sought by NZTA and Vector Gas seeking an 'avoid, remedy, mitigate' framework and amendments to matter (d) to refer to regionally significant infrastructure and renewable energy generation activities.

24. In response to submissions, the Panel has deleted Policy P25, amalgamating it with Policy P24, thereby amending Policy P24.

25. Meridian acknowledges and accepts that Policy 13 of the NZCPS sets a high bar for the protection of the natural character of the coastal environment, and that section 6(a) of the RMA requires decision makers to recognise and provide for the preservation of the natural character of the coastal environment (including the coastal marine

area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development.

26. Meridian agrees that natural character should be protected from *inappropriate* subdivision, use and development. However, as worded, Policy P24 (particularly clause (c)) sets a high bar for development in all areas with natural character (including those areas that have not been identified as being of outstanding or high natural character) and goes beyond what is required by the NZCPS or section 6 of the Resource Management Act.
27. In addition, unlike related Objective O17, the policy does not refer to what these areas are sought to be protected from (i.e. inappropriate use and development) and will likely preclude appropriate development (such as renewable energy generation activities) in all areas with natural character irrespective of its type and value. By amalgamating Policies P24 and P25, the relationship to use and development has been lost. Meridian considers that this issue can be addressed by reference to inappropriate use and development, consistent with Policies P12 and P13 of the PNRP.
28. *Relief sought:* Delete Policy P25 and amend Policy P24 as follows:

Policy P24: Assessing outstanding natural character

Areas of outstanding **natural character** in the coastal marine area, lakes and rivers and their margins and **natural wetlands**, will be preserved and protected from inappropriate use and development by:

- (a) identifying areas of outstanding natural and high **natural character** within the region, and
- (b) avoiding adverse effects of activities on **natural character** in areas of the coastal marine area and coastal environment with outstanding **natural character**, and

- (c) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects of activities on all other areas of **natural character** in the coastal environment, and
- (d) avoiding, remedying or mitigating other adverse effects of activities on all other areas of high natural character.

Note

Method M24(b) applies to clause (a).

- 29. In the alternative, reinstate Policy P25 so that it adequately provides for appropriate use, development and subdivision (including regionally significant infrastructure and renewable energy generation activities) in areas of natural character in the Greater Wellington region while managing adverse effects according to the hierarchy promoted under the proposed amendments to Policy P24 above.

Section 4.6.5 - Natural features and landscapes - Policy P48

- 30. *Reason for appeal:* Meridian's submission on the PNRP opposed the approach proposed by Policy P48 that all adverse effects of activities on outstanding natural features and landscapes must be avoided always. It requested amendments to focus the policy on avoiding significant adverse effects on outstanding natural features and landscapes and, otherwise, avoiding, remedying or mitigating all other adverse effects.
- 31. Meridian acknowledges and accepts that Policy 15 of the NZCPS sets a high bar for the protection of outstanding natural features and landscapes, and other natural features and landscapes, in the coastal environment. However, Meridian is concerned that Policy P48 extends beyond the coastal environment, applying to rivers, lakes and their margins and natural wetlands. Consistent with section 6(b) of the RMA, the Wellington Regional Policy Statement only requires the protection of *outstanding* natural features and landscape values from inappropriate subdivision, use or development, not all other natural features and landscapes.

32. Meridian agrees that outstanding natural features and landscapes should be protected from *inappropriate* subdivision, use and development. However, as worded, Policy P48 sets a high bar for development in all areas with natural features and landscapes, whether or not they are outstanding or in the coastal environment, and will likely preclude appropriate development (such as renewable energy generation activities) in these areas.
33. Meridian considers that the text of amended Policy P48 is also deficient in failing to identify the values of natural features and landscapes that are to be protected or the values that qualify natural features for protection under the policy.
34. *Relief sought:* Amend Policy P48 as follows:

Policy P48: Protection of natural features and landscapes

The natural features and landscapes (including seascapes) of the coastal marine area, rivers, lakes and their margins and **natural wetlands** shall be protected from inappropriate use and development by:

- (a) identifying outstanding natural features and landscapes within the region, and
- (b) avoiding adverse effects of activities on outstanding natural features and landscapes in the coastal marine area and coastal environment, and
- (c) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects of activities on all other natural features and landscapes within the coastal environment, and
- (d) avoiding, remedying or mitigating other adverse effects of activities on all other natural features and landscapes.

Note

Method M24(a) applies to clause (a).

Section 5.4.4 - Earthworks and vegetation clearance - Rule R101

35. *Reason for appeal:* The draft Natural Resources Plan proposed restricted discretionary activity status for earthworks and vegetation clearance not otherwise permitted. However, the notified and decisions versions of the PNRP provide for discretionary activity status for these activities. Meridian considers restricted discretionary activity status for these activities is more appropriate and sought a change in activity status in its submissions and evidence on the PNRP. The actual and potential effects of earthworks and vegetation clearance are identifiable, so that the restriction on Council's discretion is an appropriate and more efficient response for managing the effects of such activities.
36. *Relief sought:* Amend Rule R101 so that the activity is a restricted discretionary activity as follows:

Rule R101: Earthworks and vegetation clearance - restricted discretionary activity

The use of land and the associated discharge of sediment into water or onto or into land where it may enter water from **earthworks** not permitted by Rule R99 or **vegetation clearance** on **erosion prone land** that is not permitted by Rule R100 is a restricted discretionary activity.

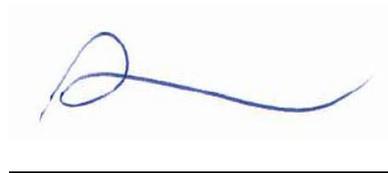
Matters for discretion

1. The impacts of sediment on any downstream receiving environments;
2. The location, duration and timing of works;
3. The area, location and volume of earthworks;
4. Methods of erosion and sediment control;
5. Methods and timeframes for stabilisation of earthworks and rehabilitation of land;

6. Measures to avoid, remedy or mitigate slope failure hazard.

Relief Sought

37. Meridian seeks the following relief from the Court:
- (a) The relief specified in this notice of appeal under each heading '*relief sought*'; and/or
 - (b) Such further, consequential or alternative relief as may be necessary or appropriate to address the reasons for appeal or give effect to the relief sought.
38. The following documents are attached to this notice of appeal:
- (a) a copy of Meridian's submission and further submission (with a copy of the submissions opposed or supported by Meridian's further submission);
 - (b) a list of names and addresses of persons to be served with a copy of this notice.



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Dated 18 September 2019

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Advice to recipients of copy of notice of appeal*How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submissions or the parts of the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.