

**From:** [Andrew Feierabend](#)  
**To:** [Plan Hearings](#)  
**Subject:** Meridian Energy Limited - Legal Submissions - Commissioners Direction -Minute 8  
**Date:** Thursday, September 24, 2020 9:02:37 AM  
**Attachments:** [image001.png](#)  
[PC7 Submissions.pdf](#)

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Morena

In accordance with paragraph 6 of minute 8 from the Commissioners minute please find attached Meridian Energy Ltd.'s legal submissions for Plan Change 7 to the Canterbury Land and Water Plan.

Could you please acknowledge receipt of the same.

Kia pai to ra

Andrew

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**BEFORE A HEARINGS PANEL  
APPOINTED BY CANTERBURY REGIONAL COUNCIL**

**UNDER** The Resource Management Act 1991  
(RMA)

**IN THE MATTER** of the Canterbury Land and Water  
Regional Plan

**AND**

**IN THE MATTER** of Plan Change 7

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**SUBMISSIONS OF COUNSEL FOR MERIDIAN ENERGY LIMITED**

**(SUBMITTER 346)**

**24 SEPTEMBER 2020**

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## MAY IT PLEASE THE COMMISSIONERS

### *Introduction*

- 1 Meridian Energy Limited (**Meridian**) made a written submission and further submissions on Plan Change 7 to the Canterbury Land and Water Regional Plan (**PC7**).
- 2 Meridian owns and operates 6 of the 8 power stations and associated infrastructure comprising the Combined Waitaki Power Scheme (**WPS**)<sup>1</sup>.
- 3 The WPS is New Zealand's largest combined hydroelectric power scheme<sup>2</sup> and its large renewable electricity output<sup>3</sup>, storage<sup>4</sup>, and operational flexibility make it a generation asset of national significance.
- 4 The WPS operates under a suite of resource consents, and in accordance with the allocation, environmental flow and lake level regimes established in the Waitaki Catchment Water Allocation Regional Plan.
- 5 Various maintenance and asset protection activities (such as the management of pest plant species that populate some of the hydro lakes) are undertaken from time to time, and these activities will be impacted by the changes proposed in PC7.
- 6 The national significance of the WPS as part of New Zealand's response to the challenge of climate change and the need to decarbonise our energy sector has been most recently reflected in the prominence given to the WPS (along with the other 4 largest hydroelectric schemes in the country<sup>5</sup>) in the new National Policy Statement for Freshwater Management 2020 (**NPSFM**) which came into force on 3 September 2020<sup>6</sup>. Clause 3.31(1) of the NPSFM makes the WPS a **Scheme**, and clause 3.31(2) requires that:

**When implementing any part of this National Policy Statement 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

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<sup>1</sup> The WPS comprises power stations Tekapo A and B (owned and operated by Genesis Energy Ltd), Ohau A, B and C, Benmore, Aviemore and Waitaki (owned and operated by Meridian)

<sup>2</sup> The combined rated capacity of the WPS is 1,723 MW

<sup>3</sup> The WPS contributes on average around 18% of New Zealand's electricity, and at times produces as much as 30% of national demand

<sup>4</sup> Lakes Tekapo and Pukaki provide around 2,500GWh of energy storage capacity in the form of water that is available to be run through the WPS's power stations. This equals almost 60% of New Zealand's hydro storage.

<sup>5</sup> In addition to the WPS the NPSFM recognises the Waikato, Tongariro, Manapouri and Clutha Schemes

<sup>6</sup> NPSFM clause 1.2(2)

**(c) generation capacity, storage, and operational flexibility.**

- 7 The NPSFM was not in force (and its wording had not been settled) at the time PC7 was notified and submissions received, and accordingly could not be taken into account. Nevertheless, to the extent that the scope given by submissions enables the Commissioners to do so, it is my submission that every effort should be made to give effect to<sup>7</sup> this new instrument.
- 8 Most of PC7 does not impact on Meridian and the operation of the WPS. Meridian's interest in PC7 is limited to the matters PC7 addresses which have the potential to impact on the efficient operation and maintenance of the WPS.
- 9 The matters addressed in Meridian's submission/further submission, and discussed in the evidence of its witnesses are:
  - a. The mapping of Indigenous Freshwater Species Habitat (**IFSH**)<sup>8</sup>, and related policy 4.101 and rule 5.163;
  - b. Policy 4.102 concerning fish passage (recommended for deletion in the section 42A report);
  - c. Rule 5.141 concerning temporary sediment discharges;
  - d. The inappropriate identification in Schedule 6 of two bathing sites (Loch Cameron and Pond at Old Iron Bridge) that are located on Meridian land;
  - e. The correction of two map references in Schedule 17 for salmon spawning sites in the Upper and Lower Ōhau River to exclude areas that Meridian requires for asset management works.
  - f. Clarification of the relationship between *region-wide* water quality limits, and *catchment specific* water quality limits, and in particular the need to clarify that catchment specific provisions prevail over region-wide provisions;
- 10 Evidence in support of Meridian's submission has been provided by:
  - a. Mr Andrew Feierabend, Meridian's Statutory and Compliance Strategy Manager;
  - b. Dr Mark James, aquatic ecologist;
  - c. Ms Jane Whyte, planner.

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<sup>7</sup> Section 67(3)

<sup>8</sup> The section 42A report recommends that the name be changed to "Critical Habitat of Threatened Indigenous Freshwater Species"

*Indigenous Freshwater Species Habitat/Critical Habitat for Threatened Indigenous Freshwater Species*

- 11 Ms Whyte provides a summary of the matters relating to IFSH upon which Meridian has submitted at paragraph 15 and 16 of her evidence. At issue is the mapping of Lakes Benmore and Aviemore as IFSH and the wording of Policy 4.101 and Rule 5.163.
- 12 Meridian's particular concerns are with:
  - a. the suggested changes to Policy 4.101 as contained in the section 42A report which reframe the policy as an 'avoid' policy, and remove the ability to access the full suite of effects management approaches;
  - b. identification of the whole of the bed areas of Lakes Benmore and Aviemore as IFSH, and with the implications of that under Rule 5.163 for necessary pest weed removal that Meridian undertakes in those lakes. Currently these activities are permitted activities, but under the proposed changes that give effect to Policy 4.101 will become classified as restricted discretionary activities because they occur within a mapped IFSH area.
- 13 Dr James discusses the species of conservation concern that are listed in PC7 and which underpin the IFSH provisions at paragraphs 16-21 of his evidence. In summary he supports the list. He opposes the expansion of the list to include additional indigenous species as sought by some other submitters. The concern with expanding the list of identified species is reinforced by the definition of "threatened species" in the NPSFM which limits the definition to species that meet the criteria for nationally critical, nationally endangered, or nationally vulnerable in the NZTCS.
- 14 In Lakes Benmore and Aviemore Dr James notes at paragraph 27 that as far as he is aware the only species that has been identified from the list is *kakahi* or freshwater mussel – a species with wide distribution throughout New Zealand that is classified as At Risk – Declining in the NZTCS (i.e. a species that is not threatened as defined in the NPSFM).
- 15 Dr James opines at paragraph 28 that *kakahi* are not found throughout Lakes Benmore and Aviemore as the mapping suggests. Rather, he notes that their habitat comprises mud/sand in the littoral zone, generally at depths of 2-15 metres. He states that *kakahi* "are not found throughout lakes, such as Benmore and Aviemore, and would be restricted to narrow bands where there are gently sloping shallow zones and sandy sediments".

- 16 Dr James’ opinion can be contrasted with the position expressed at paragraph 5.43 of the Section 42A report as noted at paragraphs 28 and 32 of Ms Whyte’s evidence. There the report writer suggests that *kakahi* may be widely distributed throughout the lakes, and that “the approach of mapping an entire lake within which the listed species have been found (rather than a discrete area within the lake) is consistent with the habitat mapping of any other lakes in Canterbury”.
- 17 In my submission the correct starting point is to be clear what species are being managed for in each mapped waterbody. In the case of Lakes Benmore and Aviemore it appears that *kakahi* is the only listed species present. I note that the section 42A report recommends that the species being managed for in each mapped waterbody should be identified in a mapping layer that could be added to the “Canterbury Maps” and this seems a reasonable approach.
- 18 If the Commissioners accept Dr James’ evidence that *kakahi* have particular habitat requirements and are only to be found in littoral areas with suitable bed conditions, then in my submission there is no proper basis for mapping large areas of Benmore and Aviemore where it is accepted that *kakahi* are absent.
- 19 In my submission there is no adequate planning or ecological justification for extending the area of protection into places where the species to be protected – in this case a species that is not a “threatened species” as defined in the NPSFM - does not occur. The result could be to impose unnecessary consenting requirements on parties such as Meridian that need to undertake activities in different parts of the lakes. While I submit that as a matter of good plan drafting it is wrong to identify areas for protection when it is known they do not contain the values for which protection is considered necessary, provided the difficulties created by the proposed wording of policy 4.101 and rule 5.163 are addressed as set out in Meridian’s evidence, Meridian’s submission will be satisfied.
- 20 Mr Feierabend describes at paragraphs 33-40 of his evidence the aquatic weed removal activities that Meridian needs to undertake in Lakes Benmore and Aviemore. Paragraph 5.44 of the Section 42A report recommends that the planning maps be amended to include at least a 40m buffer around all hydroelectric power generation infrastructure with the intent that these areas are excluded from the IFSH provisions. That recommendation is welcomed, but it does not address what happens regarding weed management outside the buffer areas.
- 21 Meridian’s submission suggested amended wording for both Policy 4.101 and Rule 5.163. The intent of the suggested wording changes is to recognise that the management of vegetation within the hydro lakes is an important activity that needs to be provided for in

conjunction with the operation of the WPS, even if that is to occur within an area mapped as IFSH.

- 22 In her planning evidence at paragraph 51 Ms Whyte has provided two alternative versions of Policy 4.101 and Rule 5.163. The versions she provides are consistent with the relief sought in Meridian’s submission, and better address the concerns Meridian raises in its submissions.
- 23 Importantly, Ms Whyte recommends that Policy 4.101 not be expressed as an ‘avoid’ policy, and that instead the ability to use the full suite of effects management approaches is retained. In relation to Rule 5.163 she recommends either that permitted vegetation clearance be extended to include activities associated with the eradication or removal of species listed in the Canterbury Regional Pest Management Plan, or that permitted vegetation clearance be extended to activities associated with the WPS.
- 24 Meridian’s concerns in relation to the IFSH topic will be met by the adoption of either of Ms Whyte’s suggested wordings of policy 4.101 and rule 5.163. The wording suggested by Ms Whyte will appropriately give effect to the requirements of the NPSREG and the CRPS provisions relating to Energy, as Ms Whyte discusses in her evidence. Ms Whyte also opines that there is nothing in the CLWRP’s objectives (which are not being considered in PC7) that requires policy 4.101 to be written as an ‘avoid’ policy.

#### *Fish Passage – Policy 4.102*

- 25 Meridian’s concern with this policy is that it needs to recognise that for some structures, such as the major dams that comprise the WPS, there is no realistic way to construct or retrofit effective structures to facilitate the safe passage of indigenous fish, and that alternative approaches to sustaining indigenous fish populations need to be considered.
- 26 Mr Feierabend describes the situation of the WPS at paragraphs 41-44 of his evidence, and Dr James discusses the alternative “trap and transfer” approach that is being used with success in both the Waitaki and Waiau (Southland) catchments at paragraphs 39-41 of his evidence.
- 27 The section 42A report at paragraph 5.140 and 5.141 recommends that policy 4.102 be deleted.
- 28 Meridian does not oppose that outcome.
- 29 In the alternative, if the policy is retained Ms Whyte has proposed amended wording of the policy that addresses the practicality of retrofitting fish passage structures as well as

the opportunity to consider alternative means of achieving effective fish passage such as “trap and transfer”.

- 30 I note that clause 3.26 of the NPSFM now requires regional plans to include an objective relating to the maintenance and improvement of fish passage generally (not just indigenous fish)<sup>9</sup> and to develop specific policies around desirable and undesirable fish species and rivers<sup>10</sup>.
- 31 Clause 3.26(5) of the NPSFM requires regional councils to make or change regional plans to promote the remediation of existing structures and the provision of fish passage *where practicable*. In my submission, if policy 4.102 is retained, the wording proposed by Ms Whyte gives effect to this requirement in the NPSFM.

*Temporary Discharges of Sediment – Rule 5.141 condition (3)*

- 32 Meridian’s submission raised a concern with rule 5.141 condition (3) which introduced a new, more restrictive regime concerning the management of temporary sediment discharges. At paragraph 27 of his evidence Mr Feierabend discusses the various activities Meridian needs to undertake that can give rise to temporary sediment discharges, and at paragraph 42 of Dr James’ evidence he describes that provided discharges of sediment are of a short duration and in a localised area the ecosystem will recover and there will be no effect on or loss of communities.
- 33 Rule 5.141 condition (3) is discussed at paragraphs 5.146 – 5.166 of the section 42A report. The report writer recommends a change to condition (3) which Ms Whyte supports at paragraph 61 of her evidence.
- 34 The recommended change which requires that the discharge be for a limited duration and comply with the Schedule 5 visual clarity standards addresses Meridian’s concern.

*Schedule 6 Bathing Sites*

- 35 Meridian’s submission seeks the deletion of two sites from Schedule 6 – Loch Cameron and Pond at Old Iron Bridge.

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<sup>9</sup> NPSFM clause 3.26(1)

<sup>10</sup> NPSFM clause 3.26(2)



- 36 Mr Feierabend describes these two sites in his evidence at paragraphs 47 – 58. These sites are on land that Meridian owns and in relation to which there is no legal public access.
- 37 Mr Feierabend describes the sorts of activities relating to the maintenance and operation of the WPS that currently take place at these sites from time to time. He further notes that as landowner and operator of the WPS Meridian needs to be able to undertake future activities in these areas without unnecessary constraint.
- 38 While Meridian currently has no intention to restrict public use of these sites, this may not always be the case and in the future the use of these areas may need to be restricted on a temporary or even permanent basis. Because these sites are on privately-owned land and public use of them is at Meridian's pleasure I submit it is inappropriate for them to be listed in Schedule 6.
- 39 Further, paragraph 9.2 of the section 42A report describes the purpose of Schedule 6 which is to reduce the risk of poor water quality at popular bathing sites by restricting fine sediment removal from rivers and excluding farmed cattle, deer and pigs from waterbodies. My understanding is that neither of these factors are in play in relation to Loch Cameron and Pond at Old Iron Bridge, and on that basis also there is no reason for their inclusion in Schedule 6.

#### *Schedule 17 Salmon Spawning Sites*

- 40 Schedule 17 identifies salmon spawning sites in (inter alia) the Upper and Lower Ōhau River. Meridian's submission seeks changes to the map references provided for these areas so as to exclude those places in and around the existing WPS infrastructure that Meridian needs to be able to access and maintain.
- 41 The relevant areas that need to be excluded are described by Mr Feierabend at paragraph 59 and Appendix 4 of his evidence.
- 42 A discussion of Meridian's submission is provided at paragraph 10.19 of the section 42A report, and the author recommends appropriate changes to the map references to exclude the areas of concern to Meridian on the basis that this better reflects the requirements of the NPSREG. The changes recommended in the section 42A report use different wording than Meridian proposed in its submission.
- 43 Ms Whyte notes at paragraph 67 that in her opinion the recommended wording addresses Meridian's concern.

*Schedule 8 and the Relationship between Regional and Catchment Specific Freshwater Quality Limits*

- 44 Meridian’s submission seeks the addition of an explanation in Schedule 8 clarifying that where catchment specific limits are provided elsewhere in the CLWRP they are to prevail over the region-wide river, lake, and groundwater water quality limits set out in the Schedule.
- 45 This is important to Meridian because the Waitaki-specific tables in Section 15 of the CLWRP have been developed to meet the specific resource management issues and desired outcomes in that catchment, and as Dr James explains are not the same as the region-wide tables in Schedule 8.
- 46 Ms Whyte discusses this issue at paragraphs 69 – 77 of her evidence, and suggests wording which can be added under the heading in Schedule 8 to make clear that where limits have been set in Sections 6 – 15B of the CLWRP those limits are to prevail over the Schedule 8 limits.
- 47 The issue of the relationship between the region-wide and catchment specific limits is also discussed by Mr Feierabend at paragraphs 15 – 21 of his evidence. Importantly, Mr Feierabend describes the conflicting opinions that have been expressed to Meridian by Council officers on the correct interpretation of the relationship between the region-wide and catchment specific limits.
- 48 In my submission this fact provides a strong reason why the relationship needs to be made abundantly clear for all future plan readers.
- 49 The issue is addressed at paragraphs 2.81 and 2.82 of the section 42A report and the author recommends that no change is necessary because the plan already contains sufficient guidance.
- 50 In my submission that is not the case.
- 51 If the relationship was as clear as the section 42A report suggests, then how is it that Council officers have expressed contrary views?
- 52 While I agree that the region-wide policies referred to in the section 42A report (policies 4.2, 4.7, 4.14 and 4.16) are helpful and suggest the best interpretation is that catchment specific limits are to prevail, the section 42A report then goes on to reference Section 11.7.3 of the CLWRP which explains that in the Selwyn-Waihora sub-region the water quality limits in that Section prevail over the region-wide limits.

- 53 In my submission this reference to the provision in Section 11.7.3 exemplifies why an explanation needs to be included in Schedule 8. The fact that the plan includes a clear statement of the relationship between the catchment specific and region-wide water quality limits in the Selwyn-Waihora sub-region begs the question as to what the relationship is in other sub-zones, including the Waitaki, when equivalent explicit statements are not included in those other sections.
- 54 At paragraph 76 of her evidence Ms Whyte speculates that the differences in wording of the sub-regional sections may simply be a result of different drafters having been responsible for the different sections.
- 55 Whatever the reason is, the outcome is potential confusion, and this can be readily addressed by adding an explanation to Schedule 8.



Stephen Christensen

**Counsel for Meridian Energy Limited**

24 September 2020