

**BEFORE THE HEARING PANEL
CONSTITUTED BY THE OTAGO REGIONAL COUNCIL**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of submissions on the Proposed Otago
Regional Policy Statement 2021,
constituting part of the freshwater
planning instrument

AND

IN THE MATTER of submissions and further submissions
by Meridian Energy, FP1-016-FSP1012

**MEMORANDUM OF MERIDIAN ENERGY LIMITED RESPONDING
TO THE FRESHWATER HEARING PANEL'S MINUTE 7
CONCERNING IMPLICATIONS OF THE NPSIB
DATED 18 AUGUST 2023**

Instructing counsel:

Humphrey Tapper
In-house counsel
287/293 Durham Street North
Christchurch Central
Christchurch 8013
Ph: 03 357 9767
Email: humphrey.tapper@meridianenergy.co.nz

Counsel acting:

John Maassen
— BARRISTER —

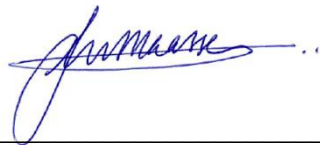
✉ john@johnmaassen.com
🌐 johnmaassen.com
☎ 04 914 1050
📠 04 473 3179

MAY IT PLEASE THE PANEL:

- [1] Following the Freshwater Hearing Panel's Minute 7, Meridian Energy Limited (**MEL**) provides this short response.
- [2] Attached to this memorandum, as Attachment 1, is a response from MEL's consultant planner, Ms Ruston, dated 18 August 2023, addressing Otago Regional Council's (**ORC**) memorandum on the implications of the National Policy Statement for Indigenous Biodiversity (**NPSIB**) and the evidence of Ms Felicity Boyd (of 11 August 2023).
- [3] The critical question for MEL is not how the NPSIB applies to the Freshwater and Non-Freshwater elements of the Proposed Otago Regional Policy Statement (**pORPS**) in terms of substantive content (although that is important), but how the design and scope of that national direction provides clues to resolve the important contest between energy generators and ORC concerning the planning treatment of renewable electricity generation (**REG**) activities in the pORPS. This contest runs across both Non-Freshwater and Freshwater components of the pORPS. Accordingly, this memorandum signals for both elements of the pORPS the significance of the NPSIB for that contest.
- [4] As detailed in submissions for MEL, the ORC approach is to address matters such as biodiversity as part of the policy smorgasbord in multiple chapters of resource priorities that will impact REG activities. Whereas, the energy generators see REG has a distinct environmental priority requiring well-ordered policy direction that provides clearer policy 'containers' to enable reliable direction in the development of future regional and district planning instruments governing REG. Ms Ruston addresses that contest well, building on her earlier evidence.
- [5] The submission is that the NPSIB excludes REG activities precisely because traditional hierarchies of values appropriately applicable to most activities will have unintended and inappropriate implications for REG and achieving the ambitious national aims for reducing carbon emissions in the

face of environmental and other constraints.¹ Thus, the NPSIB reinforces the need for discrete provisions for REG, as a national prescription loosely relying on Part 2 hierarchies will not work. The attention to addressing the tensions relevant to REG activities by well-ordered policy is the only way the directions in the RMA s 32 can be achieved in a way that respects national policy across all domains that the pORPS governs. Importantly, the NPSIB implicitly recognises that investment confidence is only instilled when regulators recognise the need for well-ordered and clear REG planning.

- [6] This memorandum recognises that the themes discussed run across both the Non-Freshwater and Freshwater components of the pORPS. For avoidance of doubt MEL will respond separately on legal submissions and evidence introduced to the Panel on the Non-Freshwater part of the pORPS when that occurs in September 2023.



J W Maassen
Counsel for Meridian Energy Limited

¹ For relevant background analysis see <https://www.bcg.com/publications/2022/climate-change-in-new-zealand> and <https://www.transpower.co.nz/about-us/our-strategy/whakamana-i-te-mauri-hiko-empowering-our-energy-future>.

ATTACHMENT 1:**RESPONSE OF SUSAN RUSTON TO ORC'S MEMORANDUM ON THE IMPLICATIONS OF THE NPSIB AND EVIDENCE OF MS FELICITY BOYD DATED 11 AUGUST 2023*****Name, Qualifications, and Experience***

- [1] My full name is Susan Clare Ruston.
- [2] I am a resource management and planning consultant. I am currently employed by PPM Consulting Limited, where I am a Director and majority shareholder.
- [3] For over 30 years, I have provided resource management and planning services to a range of sectors, for example, agriculture, forestry, horticulture, energy generation, aggregate extraction, waste management, hazardous substances, irrigation, roading, tourism, property development, and central and local government (with PPM Consulting Ltd 2020-2022, Enspire Consulting Ltd 2017-2020, Pure Savvy Ltd 2008-2009, Meritec Limited 1998 to 2002, and PF Olsen and Company Ltd 1994 to 1997).
- [4] I have led policy development in resource management reform, environmental risk, hazardous substances and genetic modification and new organisms at the Ministry for the Environment (during the periods 2002 to 2005 and 2009 to 2012). I have provided resource management policy and risk management expertise to large private sector organisations such as Fonterra Co-operative Group Ltd (as Environmental Policy Manager for the South Island from 2013 to 2017).
- [5] Core areas of my expertise include policy development and design of regulatory frameworks, evaluation of planning documents, preparation and evaluation of resource consent applications, and the preparation of expert planning evidence for council and Court hearings.
- [6] I hold a Bachelor of Forestry Science Degree (Hon) and an Executive Masters in Public Administration. I am a member of the Resource

Management Law Association, the New Zealand Planning Institute, and the Resolution Institute.

Code of Conduct

- [1] I have read the Code of Conduct for Expert Witnesses issued as Section 9 of the Environment Court of New Zealand's Practice Note 2023. I agree to comply with the Code of Conduct. I am satisfied that the matters addressed in this response are within my expertise. I am unaware of any material facts that have either been omitted or might alter or detract from the opinions expressed in this response.

Scope of Response

- [2] I have been asked by Meridian Energy Limited (**Meridian**) to consider the implications of the National Policy Statement for Indigenous Biodiversity (**NPSIB**) for the freshwater provisions of the Proposed Otago Regional Policy Statement (**pORPS**) that address potential renewable electricity generation (**REG**) activities and to respond to Otago Regional Council's Memorandum on the Implications of the NPSIB (**the ORC Memo**) and the evidence of Ms Felicity Boyd dated 11 August 2023.

NPSIB Does Not Apply to REG Activities

- [3] As identified in the ORC Memo² and Ms Boyd's evidence³, clause 1.3(3) of the NPSIB explicitly states that nothing in the NPSIB applies to the development, operation, maintenance and upgrade of renewable electricity generation assets and activities. That, in my opinion, is an unambiguous policy directive from the Government that recognises and reinforces the national significance of REG activities in avoiding, reducing or displacing energy sources that emit greenhouse gases, as is set out in the National Policy Statement for Renewable Electricity Generation (**NPSREG**). This policy directive responds to growing evidence that the effects of climate change are profoundly impacting the environment (including biodiversity)

² ORC Memo, paragraph 11

³ Evidence of Felicity Ann Boyd, FPI – Implications of the NPSIB, 11 August 2023, paragraph 26

and communities, locally, nationally, and globally and that increased renewable electricity generation is a key part of the Government's response to climate change.

Ms Boyd's Recommended Amendments in Response to the NPSIB

- [4] Ms Boyd has advised that the pORPS gives effect to the NPSIB.⁴
- [5] At the same time, Ms Boyd has advised that there is a policy gap in the pORPS concerning the management of wetlands that are not 'natural inland wetlands' based on the vegetation cover present. To address the 'gap', Ms Boyd has recommended the following:
- a) Amending the pORPS to introduce the NPSFM definition of 'natural inland wetland' and a related amendment to the notified definition of 'natural wetland'; and
 - b) Amending LF-FW-P8 and LF-FW-P13A so that they are limited to applying to natural inland wetlands following clause 3.23 of the NPSFM; and
 - c) Amending LF-FW-P9 to prevent activities that would result in irreversible damage to natural wetlands and to clarify direction applying to natural inland wetlands under the NPSFM.⁵
- [6] Putting aside that Ms Boyd's recommended amendments do not appear to result from the NPSIB coming into force, I consider that there is a gap in her assessment concerning the impacts of her recommendations, particularly the changes to LF-FW-P9, on REG activities.
- [7] As set out in Table 1 of the Memorandum of Meridian Energy Limited Responding to the IHP Minute 4 Concerning Relevant Evidence and Submissions Dated 28 June 2023, I understand that the role of a regional policy statement is to move the higher-order policies along with increasing

⁴ Evidence of Felicity Ann Boyd, FPI – Implications of the NPSIB, 11 August 2023, paragraph 77

⁵ Evidence of Felicity Ann Boyd, FPI – Implications of the NPSIB, 11 August 2023, paragraph 81

detail to reflect the opportunities and constraints within the region and provide a clearer picture of how to achieve the Act's purpose.

- [8] There are now three national policy statements that recognise and provide for the national significance of REG. The 2011 NPSREG directs that the national significance of REG activities is recognised and that the development, operation, maintenance and upgrading of REG activities are provided for so that the Government's national target for REG is met. Policy 4 of the National Policy Statement for Freshwater Management February 2023 (**NPSFM**) requires that freshwater is managed as part of New Zealand's integrated response to climate change. Clause 3.31 of the NPSFM allows for target attribute states to be set below national bottom lines in Freshwater Management Units that are affected by the Clutha Hydro-electricity Generation Scheme (amongst other schemes); and, as previously discussed, clause 1.3(3) of the NPSIB explicitly states that nothing in the NPSIB applies to the development, operation, maintenance and upgrade of renewable electricity generation assets and activities.
- [9] Ms Boyd has not assessed the consistency of her recommended changes with the NPSREG or Policy 4 of the NPSFM. In the absence of such an assessment, Ms Boyd has recommended inserting LF-FW-P9(1), which reads "preventing activities that will, or are likely to, result in irreversible damage to a natural wetland", where the definition amended by Ms Boyd for "natural wetland" is broader than the definition of "natural inland wetland". In my opinion, this policy would prevent the development, operation, maintenance and upgrading of REG activities that may adversely impact a natural wetland (i.e. permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions, other than where the wetland is deliberately constructed or has developed in or around a deliberately constructed water body) regardless of the significance of the wetland and associated ecosystem values. Ms Boyd's recommended LF-FW-P9(1) would prevent the opportunity to consider the merits or otherwise of the proposed REG activity, including the opportunity to consider offsetting and compensation of residual effects on the 'natural wetland'. In my opinion, this would not be consistent with the NPSREG.

Providing Direction on Tensions Between RPS Provisions

- [10] My concerns with Ms Boyd's recommendations bring me back to the key points made in Attachment 1 to the Memorandum of Meridian Energy Limited Responding to the IHP Minute 4 Concerning Relevant Evidence and Submissions dated 28 June 2023. In particular, the national significance of REG activities is established in the NPSREG and NPSFM, and now in the NPSIB, and is sufficiently strategic to warrant addressing in both the SRMR and IM chapters of the pORPS. Further to this, the national significance of REG activities warrants providing direction within the IM chapter to resolve tensions that may arise between the pORPS provisions when providing for REG activities and managing the potential effects of such activities in a manner that is consistent with the higher-order policy documents.
- [11] The separation of freshwater and non-freshwater provisions for hearing purposes is necessary but somewhat artificial, particularly when considering the IM chapter of the pORPS. My evidence on the non-freshwater provisions of the pORPS (dated 23 November 2023) recommends changes to the SRMR and IM chapters to better give effect to the NPSREG that are relevant to both the freshwater and non-freshwater provisions. These include (amongst other recommendations) adopting new IM-O5, new IM-P11, and amending IM-P12 (as set out in my evidence on the non-freshwater provisions and Meridian's memo of 28 June 2023).
- [12] Further to the preceding changes, Manawa Energy Limited, Contact Energy Limited and Meridian (the *Renewable Electricity Generators*) provided a standalone package of provisions to provide for REG activities and manage their potential effects in a manner that better gives effect to the NPSREG. I have recommended (in my evidence on the non-freshwater provisions) adopting this package. Concerning the freshwater provisions, Meridian's memo dated 28 June 2023 identifies within this package that new EIT-EN-P1 Recognising and providing for renewable electricity generation, new EIT-EN-P5 Managing effects, and new EIT-EN-P6 Reverse sensitivity are relevant to the freshwater provisions.

Conclusion

- [13] The NPSIB explicitly states that nothing in the NPSIB applies to the development, operation, maintenance and upgrade of renewable electricity generation assets and activities.
- [14] Ms Boyd's assessment concludes that the pORPS gives effect to the NPSIB. I have not reviewed this assessment in detail since the NPSIB does not apply to REG activities. Instead, I have considered whether Ms Boyd's recommended changes to the pORPS's freshwater provisions are consistent with the national policy direction for REG activities.
- [15] In my opinion, Ms Boyd's recommended new LF-FW-P9(1) is not consistent with the NPSREG, and this highlights the importance of the pORPS setting clear direction in the IM chapter on how REG activities are to be provided for and managed within the pORPS, particularly when tensions arise between provisions in the pORPS.
- [16] The recommendations in my evidence on the non-freshwater provisions and Meridian's memo of 28 June 2023 address changes to the IM chapter and establish a standalone Energy chapter to provide such direction.



Susan Clare Ruston