

**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 the non-freshwater planning instruments

*AND*

*IN THE MATTER* of submissions and further submissions by Meridian Energy Limited

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**MEMORANDUM OF MERIDIAN ENERGY LIMITED RESPONDING  
TO HEARING PANEL'S MINUTE (FRESHWATER) AND MINUTE 18  
(NON-FRESHWATER) CONCERNING IMPLICATIONS OF  
DECISION OF SUPREME COURT IN  
*PORT OTAGO LIMITED v. EDS***

**DATED 4 SEPTEMBER 2023**

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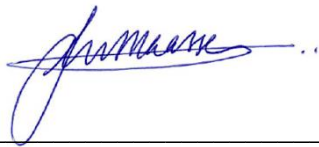
**MAY IT PLEASE THE PANEL:**

[1] Meridian Energy Limited's (MEL's) submissions, memoranda and evidence to the Panel reflected the following key principles that counsel also argued for in the *Port Otago* proceeding for Marlborough District Council. These principles are now found in the *Port Otago* decision supporting MEL arguments and evidence on the appropriate content of the pORPS:

- (a) *Principle 1:* The avoidance policies in National Policy Statements and RMA s 6(c) do not trump other policies that can be characterised as 'directive', such as national policy for critical infrastructure. That is so irrespective of the fact that:
  - (i) Avoidance policies may be expressed using stronger verbs directing action or because, on a purely textual analysis, they may appear firmer; or
  - (ii) the policies reflect RMA, s 6 matters.
- (b) *Principle 2:* Policies can be directive and forceful by requiring decision-makers to recognise and provide for certain specified *use* values and stating that achieving these use values is a necessary element of sustainable management. The NPSREG is replete with directive objectives and policies.
- (c) *Principle 3:* The fact that REG infrastructure exists (such as substantial renewable energy infrastructure like the Clyde Dam) is important and, hence, should adequately be reflected in the policy regime, including expressly providing for the operation, maintenance and upgrading of those facilities.
- (d) *Principle 4:* The RPS must address and advance the resolution of the tensions inherent in a mix of directive policies aimed at using and protecting resources according to the context and circumstances of the region. According to MEL's evidence and submissions, this is best done by confronting those tensions in a discrete section on renewable energy in the same way *Port Otago* attempted to address these tensions by a discrete RPS policy for the ports in Otago

Harbour. There are some common features to the policy regime of the electricity generators and the one recommended by the Supreme Court in *Port Otago*, recognising the differences from the distinctive national directions involved.

- [2] In the Port Otago proceeding, ORC, supporting EDS, argued for the obverse of the principles specified above with the consequence that ORC has in the pORPS given pre-eminence to indigenous biodiversity and other RMA, s6 matters and failed to confront and address the tensions between avoidance policies and the directive policy in NPSREG. The Supreme Court rejected ORC and EDS's approach to ports, and ORC's approach to NPSREG is similarly deficient. Accordingly, MEL submits that the energy generator provisions are the correct provisions for the Panel to apply for the reasons already given and because they better align with the reasoning in the *Port Otago* decision.



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