

**In the Environment Court
Christchurch Registry**

ENV-2012-CHC-

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

Otago Regional Council

Respondent

**Notice of Appeal on behalf of Meridian Energy Limited
against decision on Proposed Plan Change 2 to the
Regional Plan: Water for Otago**

25 June 2012

BELL GULLY

BARRISTERS AND SOLICITORS

AJL BEATSON

WELLINGTON LEVEL 21, HP TOWER, 171 FEATHERSTON STREET

PO BOX 1291, WELLINGTON 6140, DX SX11164, NEW ZEALAND

TEL 64 4 915 6800 FAX 64 4 915 6810

To: The Registrar
Environment Court
Christchurch

1. Meridian Energy Limited (**Meridian**) appeals against part of a decision of the Otago Regional Council (the **Council**) on the following plan change:

Plan Change 2 (Regionally Significant Wetlands) to the Regional Plan: Water for Otago

2. Meridian made a submission and further submission on that plan change.
3. Meridian is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Meridian received notice of the decision on 14 May 2012.
5. The decision was made by the Council.
6. The part of the decision that this appeal relates to is:
 - (a) Policy 10.4.1A;
 - (b) Policy 10.4.2;
 - (c) Policy 10.4.2A;
 - (d) Rule 12.1.1A.1;
 - (e) Rule 12.2.1.A.1;
 - (f) Rule 12.3.1A.1;
 - (g) Section 17.1;
 - (h) Schedule 9; and
 - (i) Map F53.

7. The reasons for the appeal and the relief sought from the Court are set out below.

Policy 10.4.1A

8. Reason for appeal: The decision to include all wetlands higher than 800 metres above sea level as a Regionally Significant Wetland is inappropriate in the absence of an assessment of their site specific values.
9. Relief sought: Amend Policy 10.4.1A as follows:

Regionally Significant Wetland is any wetland that is:

- (a) Listed in Schedule 9 and mapped in maps F1-F68; or
- (b) Within a wetland management area listed in Schedule 9 and mapped in maps F1-F68; or
- ~~(c) Higher than 800 metres above sea level.~~

Policy 10.4.2

10. Reasons for appeal: It is inappropriate to only allow remediation or mitigation of effects if an activity is nationally important and has the purpose of maintaining or enhancing a Regionally Significant Wetland or a regionally significant wetland value.
11. While a renewable energy project is likely to be nationally important, associated activities may not be considered to meet this criterion. It is also unlikely that such projects will have the purpose of maintaining or enhancing a Regionally Significant Wetland or a regionally significant wetland value.
12. Further, Meridian considers that Policy 10.4.2 does not give effect to the relevant objectives 10.3.1 or 10.3.2 and goes beyond these by unjustifiably limiting when remediation or mitigation is appropriate.

13. Relief sought: Delete Policy 10.4.2 and replace as follows:

The adverse effects of activities on Regionally Significant Wetlands shall be avoided where practicable, and otherwise remedied or mitigated.

Policy 10.4.2A

14. Reason for appeal: The policy should provide clearer guidance as to when financial contributions are required.
15. Relief sought: Amend the policy so it is clear when financial contributions will be required in respect of activities within wetlands. This should not be on the basis that all residual adverse effects that are 'more than minor' need to be addressed via financial contributions.

Rules 12.1.1A.1, 12.2.1A.1, and 12.3.1A.1

16. Reason for appeal: Meridian considers that it is inappropriate that the taking of surface water or groundwater, or the damming or diversion of water within a Regionally Significant Wetland is considered as a non-complying activity. This is on the basis that non-complying activity status is not the most effective or efficient for achieving the objectives.
17. Relief sought: Amend the activity status for Rule 12.1.1A.1, Rule 12.2.1A.1, and Rule 12.3.1A.1 so that these activities are discretionary.

Section 17.1

18. Reason for appeal: The introduction should provide an indication of when financial contributions might be required in circumstances where the effects of an activity cannot be avoided, completely remedied, or adequately mitigated. This should relate to the relationship between the activity and the location.
19. Relief sought: Amend Section 17.1 as follows:

... Works and services apply to remediation or mitigation activities, while financial contributions may apply to the offsetting of adverse effects that cannot be directly fully avoided or completely remedied or,

in the Council's opinion, adequately mitigated, due to the nature of the activity that needs to occur within the vicinity of the Regionally Significant Wetland.

Schedule 9

20. Reason for appeal: It is more effective if the Regional Plan describes the values that led to the inclusion of a wetland in Schedule 9 as a Regionally Significant Wetland instead of relying on a non-statutory inventory, which provides no certainty to users that the description of these values will not be changed.
21. Relief sought: Reinstate the descriptive information including values of each wetland in Schedule 9 instead of developing a non-statutory inventory.

Map F53

22. Reason for appeal: Meridian is concerned that the wetlands identified on Map F53 do not have sufficient values as identified in Policy 10.4 1 to be classified as 'regionally significant'. If it is established that part of the wetlands have such values then the boundaries on Map F53 should be redefined to only include those parts.
23. Relief sought: Delete the wetlands or part of the wetlands from Map F53 that do not meet the criteria for a Regionally Significant Wetland.

Meridian seeks the following relief from the Court

24. The relief specified in this notice of appeal under each heading 'relief sought'; or
25. Such further, consequential, or alternative relief as may be necessary or appropriate to give effect to the relief sought.
26. Meridian attaches the following documents to this notice:
 - (a) a copy of Meridian's submission and further submission (with a copy of the submissions supported by Meridian's further submission);

- (b) a copy of the decision; and
- (c) a list of names and addresses of persons to be served with a copy of this notice.



AJL Beatson/ N J Garvan
Counsel for Meridian Energy Limited

Dated 25 June 2012

Address for service:

Meridian Energy Ltd
C/- Bell Gully
171 Featherston Street
PO Box 1291
Wellington 6140
Attention: Natasha Garvan

Telephone: (04) 915 6796
Facsimile: (04) 915 6810
Email: natasha.garvan@bellgully.com

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 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.