

BEFORE THE MACKENZIE DISTRICT COUNCIL

UNDER The Resource Management Act 1991

IN THE MATTER OF Proposed Plan Change 18 to the
Mackenzie District Plan

JOINT WITNESS STATEMENT

PLANNING

MERIDIAN ENERGY LIMITED AND GENESIS ENERGY LIMITED

26 FEBRUARY 2021

INTRODUCTION

1. This Joint Witness Statement (JWS):
 - a) Addresses Proposed Plan Change 18 (**PC18**) to the Mackenzie District Plan (**MDP**); and
 - b) Records the outcomes of expert conferencing between the following planning experts:
 - i. Ms Susan Ruston for Meridian Energy Limited (**Meridian**); and
 - ii. Dr Philip Mitchell for Genesis Energy Limited (**Genesis**).
2. This joint statement was convened in anticipation of the Hearing commencing on 8th of March 2021 and was conferred, without counsel or other representatives present, in order to consider what (if any) issues may be resolved, what issues may be agreed on and summarising any matters disagreed and why.
3. The conferencing took place over the period of the 19th of February 2021 to the 26th of February 2021, and only Ms Ruston and Dr Mitchell were present. Our expertise and professional qualifications may be referred to within our respective Statements filed on the 12th of February 2021.
4. We confirm we have read the 'Code of Conduct for Expert Witnesses' contained in the Environment Court Practice Note 2014, and in giving this joint statement we agree to comply with this Code of Conduct. Unless we state otherwise, this evidence is within our sphere of expertise and we have not omitted to consider material facts known to us that might alter or detract from the matters and opinions we express. We have read Appendix 3 of the Environment Court Practice Note 2014 and confirm compliance with it. In particular we acknowledge the following (as set out in paragraphs 1(a) and (b) of Appendix 3):

- a) The purpose of this JWS is to assist the decision-makers to understand where the experts agree on recommended amendments to PC18, and where they differ in their recommendations;
 - b) This JWS clearly records the issues agreed and not agreed between the experts, and the reasons for agreement or otherwise;
 - c) Expert conferencing is not a forum in which compromise or a mediated outcome between the experts is anticipated, rather, the aim is a clear identification of, and narrowing of, points of difference.
5. This JWS addresses the following provisions of PC18:
- a) Objectives 1 and 2;
 - b) Policies 1, 2, 5 and 7;
 - c) Rules 2.1.1, 2.1.2, 2.2.1 and 2.3.1; and
 - d) Definitions of Indigenous Vegetation, No Net Loss, Indigenous Biodiversity; Sites of Natural Significance.
6. The statements of evidence of Ms Ruston and Dr Mitchell do not in every case address the same provisions of PC18. In this JWS, to assist the Commissioners the experts have taken a combined approach to their recommendations, thereby presenting a package of recommendations that they both agree with.

OBJECTIVES 1 AND 2

7. Ms Ruston and Dr Mitchell agree that the concerns leading to their recommended changes for Objectives 1 and 2 are generally the same; and on this basis, that Objective 1 should be deleted and Objective 2 should be amended as follows (where the recommendations of the s42A Report are shown in red and the amendments recommended by Ms Ruston and Dr Mitchell are shown in blue):

Objective 2

Land use and development activities are managed to:

- a) ensure the maintenance of indigenous biodiversity; and
- b) ~~including the protection and, where practicable~~ or enhance ~~ment of~~ areas of significant indigenous vegetation and significant habitats of indigenous fauna and riparian areas; ~~the maintenance of natural biological and physical processes; and the retention of indigenous vegetation; and~~
- c) despite (a) and (b) to recognise and provide for the national significance of the Waitaki Power Scheme when managing effects on indigenous biodiversity from the Scheme's development, operation, maintenance, refurbishment and upgrade.

POLICY 1

8. Ms Ruston and Dr Mitchell agree that their preferred approach to the management of areas of significant indigenous vegetation and significant habitats of indigenous fauna is to have such areas clearly identified (through the Act's required plan change process) within the MDP's planning maps; and for the policies and rules to refer to these accordingly when constraining activities related to indigenous vegetation. They consider that such an approach provides the greatest opportunity for both the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and for landowner certainty (and accountability) when undertaking activities. It also provides a process of natural justice for landowners and the community to present their evidence for, or against, the inclusion of certain areas in the MDP as identified areas of significant indigenous vegetation and significant habitats of indigenous fauna.

9. Although Dr Mitchell maintains his view that the mapping should be completed before decisions on PC18 are made, Ms Ruston and Dr Mitchell agree that a pragmatic approach is for Mackenzie District Council to expedite the identification of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and to then notify a plan change that includes the resulting maps with these areas clearly identified and the planning provisions referencing them.
10. Until maps identifying the areas of significant indigenous vegetation and significant habitats of indigenous fauna are included in the MDP, Ms Ruston and Dr Mitchell agree that a regulatory framework is needed that allows for the identification and protection of such areas on an ongoing basis, and avoids the need for plan changes before such areas can be recognised as significant and thereafter be protected. On this basis, Ms Ruston and Dr Mitchell agree that Policy 1 would need to be amended.
11. Ms Ruston recommends the following amendments to Policy 1 (where the recommendations of the s42A Report are shown in red and the amendments recommended by Ms Ruston are shown in blue):

Policy 1

To identify ~~in the District Plan sites~~ areas of significant indigenous vegetation and ~~or~~ significant habitats of indigenous fauna in accordance with the criteria listed in the Canterbury Regional Policy Statement ~~and to prevent development which reduces the values of these sites.~~

12. Dr Mitchell considers that Policy 1 should be further amended as follows (where the recommendations of the s42A Report are shown in red and the amendments recommended by Dr Mitchell are shown in blue):

To identify ~~in the District Plan sites~~ areas of significant indigenous vegetation and ~~or~~ significant habitats of indigenous fauna in

accordance with the criteria listed in the Canterbury Regional Policy Statement ~~and to prevent development which reduces the values of these sites.~~ and to undertake the plan change necessary to include them in the District Plan.

POLICY 2

13. Ms Ruston and Dr Mitchell agree that the s42A Report's recommended deletions appropriately narrow the focus of the policy towards the management of indigenous biodiversity and remove matters that stray into regional council functions. At the same time, both experts agree that further amendments are needed to clearly establish a policy framework where Policy 2 addresses the management of indigenous biodiversity outside of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and Policy 3 addresses the management of indigenous biodiversity within identified areas of significant indigenous vegetation and significant habitats of indigenous fauna. On this basis, Ms Ruston and Dr Mitchell agree that Policy 2 should be amended as follows (where the recommendations of the s42A Report are shown in red and the amendments recommended by Ms Ruston and Dr Mitchell are shown in blue):

Policy 2

Outside of areas of significant indigenous vegetation and significant habitats of indigenous fauna, ~~To~~ avoid, remedy or mitigate adverse effects on ~~the natural character and~~ indigenous ~~vegetation, ecological processes, ecosystem functions and linkages between areas of significant indigenous vegetation and significant habitats of indigenous fauna as necessary to ensure that indigenous biodiversity is maintained~~ land and water ecosystems functions in the District including:

a) Landform, physical processes and hydrology

- ~~b) Remaining areas of significant indigenous vegetation and habitat, and linkages between these areas~~
- ~~c) Aquatic habitat and water quality and quantity.~~

POLICIES 7 AND 5

14. Ms Ruston and Dr Mitchell agree that the concerns leading to their recommended changes to Policy 7 are generally the same; and on this basis, that Policy 7 should be amended as follows (where the recommendations of the s42A Report are shown in red and the amendments recommended by Ms Ruston and Dr Mitchell are shown in blue):

Policy 7

To manage effects on indigenous biodiversity in a way that recognises and provides for the ~~economic and social~~ national significance importance of renewable energy generation activities and the electricity transmission network ~~consistent with objectives and policies of this Plan, to~~ and provides for their its development, operation, upgrading, and maintenance by: and enhancement.

1. Enabling indigenous vegetation clearance that is essential for the operation, ~~and~~ maintenance and refurbishment of the Waitaki Power Scheme; and

2. Providing for the upgrading and development of renewable energy generation, while managing the effects of upgrading and development on indigenous biodiversity; ~~taking into account~~ and having particular regard to:

a) ~~the~~ location of existing structures and infrastructure; and

b) the need to locate renewable energy generation activities ~~the activity~~ where the renewable energy resource is available; and

~~(ii) the wide extent and high value of significant indigenous vegetation and habitat within and associated with the Tekapo, Pūkaki and Ohāu river systems; and~~

~~c) the logistical or technical practicalities associated with the activity; and~~

~~d) the importance of maintaining and increasing the output from existing renewable electricity generation activities; and~~

~~e. In respect of Policy 6, environmental compensation which benefits the local environment affected, as an alternate, or in addition to offsetting, to address any residual environmental effects.~~

~~3. When considering any residual environmental effects of renewable electricity generation activities or electricity transmission activities that cannot be avoided, remedied or mitigated, having regard to offsetting measures or environmental compensation, including measures or compensation that benefits the local environment and community affected.~~

15. Given the preceding recommended changes to Policy 7, Ms Ruston and Dr Mitchell consider that Policy 5 should be amended as follows (where the recommendations of the s42A Report are shown in red and the amendments recommended by Ms Ruston and Dr Mitchell are shown in blue):

Policy 5

~~a) To consider a range of mechanisms for achieving securing protection of significant indigenous vegetation and significant habitats of indigenous fauna, including avoidance, remediation, mitigation or offsetting of adverse~~

effects, and to secure that protection through appropriate instruments including resource consent conditions, management agreements and covenants (if approved).

b) To manage the adverse effects of activities on significant indigenous vegetation and significant habitats of indigenous fauna by:

- avoiding the adverse effects of vegetation clearance and the disturbance of habitats as far as practicable; then*
- remedying any adverse effects that cannot be avoided; then*
- mitigating any adverse effects that cannot be remedied; and*
- where there are any significant residual adverse effects, offsetting them in accordance with Policy 6.*

c) Policies 5(a) and 5(b) do not apply to activities associated with the Waitaki Power Scheme where Policy 7 applies.

RULES 2.1.1, 2.1.2, 2.2.1 AND 2.3.1

16. Ms Ruston and Dr Mitchell hold the same concerns with respect to Rules 2.1.1, 2.1.2, 2.2.1 and 2.3.1. These concerns primarily relate to the need to design a rules framework that provides the appropriate management of indigenous biodiversity while at the same time giving effect to the National Policy Statement for Renewable Electricity Generation 2011 (NPSREG).
17. Ms Ruston and Dr Mitchell agree that PC18 should, with respect to the Waitaki Power Scheme, adopt the rules framework that is summarised in the following table:

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	Emergency events	Operating and maintaining the Scheme	Refurbishment (as defined in PC18)	New structures, works or other activities
<p>Clearance of indigenous vegetation, <u>other than in areas identified as containing significant indigenous vegetation and significant habitats of indigenous fauna</u>, in the following areas:</p> <ul style="list-style-type: none"> • The existing footprint of the Scheme • Core sites associated with the Scheme • Areas covered by an operating easement associated with the Scheme 	Permitted	Permitted	Permitted	Permitted where it meets Rule 1.1.1, otherwise discretionary
<p>Clearance of indigenous vegetation, <u>in areas identified as containing significant indigenous vegetation and significant habitats of indigenous fauna</u>, in the following areas:</p> <ul style="list-style-type: none"> • The existing footprint of the Scheme • Core sites associated with the Scheme • Areas covered by an operating easement associated with the Scheme 	Permitted	Permitted	Controlled	Discretionary
<p>Clearance of indigenous vegetation <u>outside the following areas</u>:</p> <ul style="list-style-type: none"> • The existing footprint of the Scheme • Core sites associated with the Scheme • Areas covered by an operating easement associated with the Scheme 	Permitted	Not applicable as this would be a new structure, works or other activity	Controlled	Discretionary

18. Based on the preceding table, Ms Ruston and Dr Mitchell agree that Rules 2.1.1, 2.1.2, 2.2.1 and 2.3.1 should be amended as follows (where the recommendations of the s42A Report are shown in red and the amendments recommended by Ms Ruston and Dr Mitchell are shown in blue):

Rules 2.1.1 and 2.1.2 are combined to read as follows:

“The clearance of indigenous vegetation associated with the Waitaki Power Scheme is a permitted activity where one or more of the following conditions are met

2.1.1. The clearance is a consequence of an emergency occurring on, or failure of, the Waitaki Power Scheme; *or*

2. The clearance is required for the operation and maintenance of the Waitaki Power Scheme, within one or more of the following areas;

- *The existing footprint of the Waitaki Power Scheme;*
- *Core sites associated with the Waitaki Power Scheme;*
- *Areas covered by an operating easement associated with the Waitaki Power Scheme;* *or*

3. The clearance is required for the refurbishment of the Waitaki Power Scheme, and is outside of an identified area of significant indigenous vegetation and significant habitats of indigenous fauna and, is within one or more of the following areas;

- *The existing footprint of the Waitaki Power Scheme;*
- *Core sites associated with the Waitaki Power Scheme;*
- *Areas covered by an operating easement associated with the Waitaki Power Scheme; or*

34. The clearance meets the conditions in Rule 1.1.1”

Rule 2.2 (both the PC18 version and the s42A Report's recommended version) is deleted in its entirety and replaced as follows:

"The clearance of indigenous vegetation where it is required for the refurbishment of the Waitaki Power Scheme and is within an identified area of significant indigenous vegetation and significant habitats of indigenous fauna is a controlled activity.

The Mackenzie District Council reserves control over the following matters:

- a) *Methods to avoid, remedy or mitigate potential adverse effects on areas identified as containing significant indigenous vegetation and significant habitats of indigenous fauna; and*
- b) *Methods for offsetting or environmental compensation where the potential adverse environmental effects on areas identified as containing significant indigenous vegetation and significant habitats of indigenous fauna cannot be fully avoided, remedied or mitigated, and residual environment effects remain."*

Rule 2.3

The clearance of ~~a~~Any indigenous vegetation ~~clearance~~ associated with ~~any new facility, structure or works associated with~~ the Waitaki Power Scheme ~~that is not permitted~~ provided for as a permitted activity under Rule 2.1.1, or as a controlled activity under Rule 2.2, is a discretionary activity.

19. For completeness, Ms Ruston and Dr Mitchell note that Meridian sought inclusion in PC18 of a new definition for the Waitaki Power Scheme Management Area and that this included the existing footprint of the Waitaki Power Scheme; core sites associated with the Waitaki Power Scheme; and

areas covered by an operating easement associated with the Waitaki Power Scheme. Ms Ruston and Dr Mitchell agree that adoption of this definition and its use in Rules 2.1 and 2.2 would be more efficient for readers of the plan.

DEFINITIONS

20. Based on the evidence of Mr Michael Thorsen (for Meridian) Ms Ruston and Dr Mitchell agree that the following definition of Indigenous Vegetation should be adopted in PC18:

Means a plant community in which plant species indigenous to that part of New Zealand are important in terms of coverage, structure and/or species diversity. For these purposes, coverage by indigenous species or number of indigenous species shall exceed 30% of the total vegetated area or total number of species present, where structural dominance is not attained. Where structural dominance occurs (that is indigenous species are in the tallest stratum and are visually conspicuous) coverage by indigenous species shall exceed 20% of the total area. Areas where indigenous species have been planted for the purposes of amenity, shelter, landscaping, or as part of a commercial forest, or cultivated exotic crops and pasture, are excluded from this definition.

21. Ms Ruston and Dr Mitchell agree that PC18 should adopt the Canterbury Regional Policy Statement's (CRPS) definition of No Net Loss. The experts see no reason to modify this definition for PC18, and with this they see no need to replicate the definition in PC18.
22. Ms Ruston and Dr Mitchell agree that PC18 should adopt the following definition of Biodiversity Offsetting (where the recommendations of the s42A Report are shown in red and the amendments recommended by Ms Ruston and Dr Mitchell are shown in blue):

Indigenous biodiversity offset means a measurable conservation outcome resulting from actions which are designed to compensate for significant residual adverse effects on indigenous biodiversity arising from human activities after all appropriate prevention and mitigation measures have been taken. The goal of an indigenous biodiversity offset is to achieve no net loss and preferably a net gain of indigenous biodiversity on the ground with respect to species composition, habitat structure and ecosystem function. They typically take the form of binding conditions associated with resource consents and can involve bonds, covenants financial contributions and biodiversity banking.

23. The experts note that this definition is substantively sourced from the CRPS definition of biodiversity offset, with the amendments in blue clarifying that with respect to PC18 the offsetting is for indigenous biodiversity purposes.
24. Ms Ruston and Dr Mitchell agree that the definition of Sites of Natural Significance that has been sought by the Environmental Defence Society should not be included in PC18. The experts consider that such a definition is not needed to apply the provisions of PC18.

SIGNED



Susan Ruston



Philip Mitchell