

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH  
I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI**

**Decision No. [2023] NZEnvC 273**

IN THE MATTER

of the Resource Management Act 1991

AND

appeals pursuant to clause 14 of the  
First Schedule of the Act

BETWEEN

MERIDIAN ENERGY LIMITED

(ENV-2021-CHC-091)

... (continued on separate page)

Appellants

AND

MACKENZIE DISTRICT  
COUNCIL

Respondent

Environment Judge J J M Hassan – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 14 December 2023

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**CONSENT ORDER**

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A: Under s279(1)(b) of the RMA,<sup>1</sup> the Environment Court, by consent, orders  
that:

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Resource Management Act 1991.

<sup>1</sup>C18 MACKENZIE DISTRICT PLAN



- (1) the appeals are allowed. The Mackenzie District Council is directed to amend Plan Change 18 to the Mackenzie District Plan by making the changes set out in Appendix 1 attached to and forming part of this order;
- (2) Meridian Energy Limited withdraws the remaining parts of its appeal; and
- (3) the remaining appeals otherwise remain extant.

B: Under s285 of the RMA, there is no order as to costs.

## **REASONS**

### **Introduction**

[1] These proceedings concern appeals from the decision of the Mackenzie District Council on proposed Plan Change 18 to the Mackenzie District Plan.

[2] The court has now read and considered the consent memorandum of the parties dated 1 August 2023 (filed on 6 November 2023)..

### **Other relevant matters**

[3] A number of parties gave notice of an intention to become a party under s274 of the RMA. These are listed on a separate page.

[4] The agreement reached was conditional and included:

- (a) for the court to receive the consent memorandum, but not action it until Mackenzie District Council confirms to the court in writing that it has notified a Plan Change that expressly includes in its scope the right for the public to submit on the provisions relating to new renewable electricity generation facilities, including how they relate to clearance of indigenous vegetation. In a covering email filing the

consent memorandum of the parties, counsel for Mackenzie District Council has confirmed Plan Change 26 relating to Renewable Energy Generation and Infrastructure was notified by the Council on 4 November 2023 satisfying this condition; and

- (b) the appeals are not fully resolved, and the parties are currently working on the remaining outstanding matters that address the farming related provisions.

[5] Meridian Energy Limited has filed a notice of withdrawal relating to the remaining parts of its appeal that do not relate to the provisions agreed with, to resolve this consent memorandum.

[6] There are no issues of scope or jurisdiction.

[7] The parties agree that costs should lie where they fall and accordingly no order for costs is sought.

### **Orders**

[8] The court makes this order under s279(1) RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s297. The court understands for present purposes that:

- (a) all relevant parties to the proceedings have executed the memorandum requesting this order; and
- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and conform to the

relevant requirements and objectives of the RMA including, in particular, pt 2.



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**J J M Hassan**  
**Environment Judge**



**List of appellants**

ENV-2021-CHC-092	Director-General of Conservation
ENV-2021-CHC-093	Royal Forest and Bird Protection Society of New Zealand Incorporated
ENV-2021-CHC-094	Environmental Defence Society Incorporated

**List of s274 parties**

Balmoral Station (Tekapo) Ltd  
Canterbury Regional Council  
Classic Properties Limited  
Federated Farms of NZ (Inc)  
Genesis Energy Limited  
Glen Lyon Ltd  
Glenmore Station Ltd  
Glenrock Station Ltd  
Glentanner Station Limited  
Grays Hills Station Ltd  
Haldon Station Limited  
Mackay, Anne Marie  
Mt Gerald Station  
Sawdon Station Ltd  
Simons Pass Station Limited  
Transpower New Zealand Limited  
Wolds Station Ltd

## Appendix 1

# SECTION 19 – ECOSYSTEMS AND INDIGENOUS BIODIVERSITY

Section 19 has been incorporated into the Operative Mackenzie District Plan following public notification of Plan Change 18 pursuant to Clause 10(5) of Schedule 1 of the Resource Management Act 1991. Plan Change 18 as publicly notified on 24 June 2021 is subject to appeal rights pursuant to Clause 14 of Schedule 1 of the Resource Management Act 1991.

### OBJECTIVES AND POLICIES

#### Objective

Land use and development activities are managed to:

- a) protect areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- b) maintain and enhance indigenous biodiversity outside of areas of significant indigenous vegetation and significant habitats of indigenous fauna, ~~ensure the maintenance and enhancement of indigenous biodiversity, and~~
- c) ~~despite (a) and (b),~~ recognise and provide for the national significance of the Waitaki Power Scheme and the National Grid when managing effects on indigenous biodiversity arising from the development, operation, maintenance, or refurbishment or upgrade of those utilities, while achieving (a) and (b) as far as practicable.

#### Policies

- 1 To assess and identify areas of significant indigenous vegetation and significant habitats of indigenous fauna in accordance with the criteria listed in Appendix 3 of the Canterbury Regional Policy Statement.

- 2 To protect areas of significant indigenous vegetation and significant habitats of indigenous fauna by ensuring that land use and development, agricultural conversion and pastoral intensification:
  - a) avoids the clearance of indigenous vegetation or any reduction in its extent (including through edge effects); and
  - b) avoids adverse effects on those habitats;unless permitted under Rule 1.1.1 or Rule 2.1.1 ~~or is otherwise consistent with Policy 5.~~
- 3 Outside of areas of significant indigenous vegetation and significant habitats of indigenous fauna, to ensure that indigenous biodiversity is maintained or enhanced by:
  - a) avoiding adverse effects on indigenous vegetation and habitats of indigenous fauna as far as practicable; then
  - b) remedying any adverse effects that cannot be avoided; then
  - c) mitigating any adverse effects that cannot be remedied; then
  - d) ~~offsetting any significant~~ offsetting more than minor residual adverse effects in accordance with Policy 4.
- 4 For any indigenous biodiversity offsets apply the following criteria:
  - a) ~~the offset will only compensate for significant residual adverse effects that cannot otherwise be avoided, remedied or mitigated; where an adverse effect on indigenous biodiversity is required to be avoided in accordance with Policy 2, indigenous biodiversity offsetting cannot be used;~~
  - b) ~~offsetting is not appropriate where:~~
    - i. there are more than minor residual adverse effects on the values or extent of irreplaceable or vulnerable indigenous biodiversity; or
    - ii. the effects of the proposed activity on indigenous biodiversity are uncertain, unknown or little understood, but potentially significantly adverse;
  - ~~bc)~~ the significant more than minor residual adverse effects on indigenous biodiversity are capable of being offset ~~and will be fully compensated by the offset~~ to ensure no net loss of indigenous biodiversity;
  - ~~ed)~~ where the area to be offset is identified as a national priority for protection in accordance with Policy 9.3.2 of the Canterbury Regional

Policy Statement 2013 or its successor, the offset must deliver a net gain for indigenous biodiversity;

- ~~de)~~ there is a strong likelihood that the offsets will be achieved in perpetuity;
- ~~ef)~~ where the offset involves the ongoing protection of a separate site, it will deliver no net loss, and preferably a net gain for indigenous biodiversity ~~conservation~~;
- ~~fg)~~ The offset ~~should~~ applies as close as possible to the site incurring the effect, recognising that benefits can ~~diminishing~~ with distance from the site; ~~and~~
- ~~gh)~~ The offset ~~should~~ re-establishes or protects the same type of ecosystem or habitat that is adversely affected.
- ~~i)~~ The offset is additional to what otherwise would occur in the absence of the offset, and additional to any remediation or mitigation undertaken in relation to the adverse effects of the activity on indigenous biodiversity;
- ~~j)~~ The offset describes and measures indigenous biodiversity at the impact and offset sites using calculations that allow for indigenous biodiversity losses and gains to be quantified.

5 Despite Policy 2 ~~and~~ 3, to manage effects on indigenous biodiversity in a way that recognises the national significance of the Waitaki Power Scheme, the National Grid and the Opuha Scheme renewable energy generation activities and the electricity transmission network and provides for their development, operation, upgrading, and maintenance by:

- a) Enabling ~~the clearance of~~ indigenous vegetation ~~clearance that~~ where the clearance is essential for:
  - i. Emergency works;
  - ii. ~~€~~The operation, maintenance or refurbishment of the Waitaki Power Scheme, where:
    - A. The operation, maintenance or refurbishment is within the Scheme's existing footprint or core sites;
    - B. The operation or maintenance is outside the Scheme's existing footprint or core sites but is within the Scheme's operating easement and does not include the formation of new vehicle tracks other than when necessary for erosion control works;



- C. The refurbishment is outside the Scheme's existing footprint or core sites but is within the Scheme's operating easement and the clearance is not within an area of significant indigenous vegetation or significant habitat of indigenous fauna;
- iii. The operation, maintenance or upgrade of the National Grid on its existing alignment
- iv. The operation, maintenance or refurbishment of ~~and~~ the Opuha Scheme, where the refurbishment is not within an area of significant indigenous vegetation or significant habitat of indigenous fauna; and
- b) Providing for the clearance of indigenous vegetation where the clearance is for the ~~upgrading and~~ development or refurbishment of renewable energy generation and the electricity transmission network for the Waitaki Power Scheme, National Grid and Opuha Scheme that is not otherwise provided for in a) above, while ~~managing any adverse effects on indigenous biodiversity,~~
  - i. having particular regard to:
    - A. the location of existing structures and infrastructure and the need to locate the generation activity where the renewable energy resource is available; and
    - B. the logistical, technical and operational constraints associated with the activity; and
    - C. the importance of maintaining and increasing the output from existing renewable electricity generation activities;~~and~~
    - ~~D. environmental compensation which benefits the local environment affected, as an alternate, or in addition to offsetting, to address any significant residual environmental effects.~~
  - ii) applying the following effects management hierarchy:
    - A. Avoiding adverse effects on indigenous vegetation and habitats of indigenous fauna as far as practicable, then
    - B. where adverse effects cannot be avoided they are remedied where practicable then

C. where adverse effects cannot be remedied they are mitigated where practicable

D. in relation to adverse effects that cannot be avoided, remedied or mitigated, have regard to offsetting that accords with Policy 4 and/ or biodiversity compensation that accords with Schedule Z for any more than minor residual adverse effects.

- 6 To enable land use and development at an on-farm level, through a Farm Biodiversity Plan, where comprehensive and expert identification of indigenous biodiversity is undertaken that demonstrates how that use and development will be integrated with:
  - a) the long-term protection of significant indigenous vegetation and significant habitats of indigenous fauna;
  - b) the maintenance of other indigenous biodiversity; and
  - c) opportunities for enhancement of indigenous biodiversity, where appropriate.
- 7 To consider a range of mechanisms for securing protection of significant indigenous vegetation and significant habitats of indigenous fauna, including resource consent conditions, management agreements and covenants.
- 8 To recognise and provide for activities, including voluntary initiatives, that contribute towards the protection, maintenance or enhancement of indigenous biodiversity.

## **RULES**

### **INDIGENOUS VEGETATION CLEARANCE**

Note: The rules in this chapter apply to any indigenous vegetation clearance, including clearance undertaken as part of another activity, and apply in addition to the provisions in other sections of this Plan, including Section 16.

#### **Rule 1 - Indigenous Vegetation Clearance excluding indigenous vegetation clearance associated with the Waitaki Power Scheme, the National Grid or the Opuha Scheme**

## **1.1 Permitted Activities – Indigenous Vegetation Clearance**

1.1.1 Clearance of indigenous vegetation is a permitted activity provided one or more of the following conditions are met:

1. The clearance is within 2m of, and for the purpose of:
  - a) the maintenance or repair of, existing: fence lines, vehicle tracks, roads, stock tracks, ~~stock~~ and crossings, firebreaks, drains, ponds, dams, stockyards, farm buildings, water troughs and associated reticulation piping, or airstrips; or
  - b) ~~the operation, maintenance, repair or upgrade of network utilities activities~~ activities permitted by Rule 16.1.1.(j).
2. The clearance is of indigenous vegetation which has been planted and is managed specifically for the purpose of harvesting and subsequent replanting of plantation forest within 5 years of harvest and the clearance is not within a location specified in Rule 1.3.2; or
3. The clearance is of the indigenous understorey to plantation forest, and is incidental to permitted or otherwise authorised plantation forest clearance and the clearance is not within a location specified in Rule 1.3.2; or
4. The clearance is of indigenous vegetation which has been planted and/or is managed as part of a domestic garden or has been planted for amenity purposes or as a shelterbelt ~~and the clearance is not within a location specified in Rule 1.3.2;~~ or
5. The clearance is of indigenous vegetation carried out by or on behalf of a local authority for erosion and flood control works, including within 75m of a lake, 20m of the bank of a river, or 50m of any wetland;
6. The clearance is of indigenous vegetation within a defined Farm Base Area (see Appendix R); or
7. The clearance is of indigenous vegetation within an area of improved pasture and the clearance is not within a location specified in Rule 1.3.2.

## **1.2 Restricted Discretionary Activity – Indigenous Vegetation Clearance**

1.2.1 *Intentionally blank*

1.2.2. Other than as permitted by Rule 1.1.1 the clearance of up to 5000m<sup>2</sup> of indigenous vegetation within a site, or per 100ha where a site is greater than 100ha, in any 5-year continuous period is a restricted discretionary activity provided the following conditions are met:

1. ~~The clearance is not within a location specified in Rule 1.3.2:~~
  - a) ~~an area of significant indigenous vegetation or a significant habitat of indigenous fauna;~~
  - b) ~~land above 900m in altitude;~~
  - c) ~~75m of a lake;~~
  - d) ~~20m of the bank of a river; or~~
  - e) ~~50m of any wetland; and~~
2. A Farm Biodiversity Plan is prepared in accordance with Appendix Y for the farming operation and submitted with the application for resource consent.

The Council will restrict its discretion to the following matters:

1. The adequacy of and implementation of the Farm Biodiversity Plan;
2. The area of indigenous vegetation to be cleared and the reasons for the intended clearance;
3. Managing the actual or potential adverse effects on indigenous biodiversity, species diversity, habitat availability or ecological function expected to occur as a result of the proposal, particularly the impact on values significant to Ngāi Tahu;
4. Managing edge effects;
5. Methods to avoid, remedy or mitigate adverse effects on indigenous biodiversity and offset residual significant effects on indigenous biodiversity;
6. Any technical or operational constraints on the activity necessitating the clearance of indigenous vegetation;
7. Where the clearance is within an Outstanding Natural Feature or Landscape, a geopreservation site, Area of High Visual Vulnerability or Scenic Grassland Area, managing the indigenous vegetation clearance to, as far as is practicable, avoid adversely affecting those features, landscapes, sites or areas;
8. The adequacy of monitoring and reporting;
9. The review of conditions; and
10. Consent duration.

- 1.2.3. The clearance of indigenous vegetation within 75m of a lake, 20m of the bank of a river, or 50m of any wetland, for the purpose of installing a fence to exclude stock, is a restricted discretionary activity.

The Council will restrict its discretion to the following matters:

- i. The location of the fence.
- ii. Managing the effects of the intended clearance of indigenous vegetation.

### **1.3 Non-Complying Activity – Indigenous Vegetation Clearance**

The following activities are Non-complying activities:

- 1.3.1 Any indigenous vegetation clearance not categorised as a Permitted Activity or Restricted Discretionary Activity.
- 1.3.2 Any indigenous vegetation clearance in the following locations, unless specified as a permitted activity under Rule 1.1.1.1, 1.1.1.5, or 1.1.1.6 or a restricted discretionary activity under Rule 1.2.3:
1. Within an area of significant indigenous vegetation or significant habitat of indigenous fauna.
  2. Above 900m in altitude.
  3. Within 75m of a lake, 20m of the bank of a river, or 50m of any wetland.

## **2 INDIGENOUS VEGETATION CLEARANCE ASSOCIATED WITH THE WAITAKI POWER SCHEME, THE NATIONAL GRID OR THE OPUHA SCHEME**

### **2.1 Permitted Activities – Indigenous Vegetation Clearance**

- 2.1.1. The clearance of indigenous vegetation associated with the Waitaki Power Scheme, the National Grid or the Opuha Scheme is a permitted activity where one or more of the following conditions are met:
1. The clearance is a consequence of an emergency occurring on, or failure of, the Waitaki Power Scheme, the National Grid or the Opuha Scheme;  
or
  2. The clearance meets the conditions in Rule 1.1.1, or
  3. The clearance is required for the operation, ~~or~~ or maintenance or refurbishment of the Waitaki Power Scheme within the following areas;
    - i. The existing footprint of the Waitaki Power Scheme.

- ii. On core sites associated with the Waitaki Power Scheme.
- iii. On areas covered by an operating easement associated with the Waitaki Power Scheme, but excluding:
  - A. aerial spraying within the Tekapo River, Pukaki River and lower and upper Ohau River; or
  - B. the forming of new vehicle tracks or roads, other than for vehicle access to carry out erosion control; or
- 4. The clearance is required for the refurbishment of the Waitaki Power Scheme and is located within the following areas:
  - i. The existing footprint of the Waitaki Power Scheme; or
  - ii. On core sites associated with the Waitaki Power Scheme; or
- 5. The clearance is required for the refurbishment of the Waitaki Power Scheme, and is located outside of the existing footprint or core sites but within the operating easement, and outside of significant indigenous vegetation and significant habitats of indigenous fauna; or
- ~~46.~~ The clearance is required for the operation, maintenance or refurbishment upgrade of the National Grid on its existing alignment or the Opuha Scheme; and or
- 57. The clearance is required for:
  - i. the operation or maintenance of the Opuha Scheme; or
  - ii. the refurbishment of the Opuha Scheme where it is located outside areas of significant indigenous vegetation and significant habitats of indigenous fauna identified in accordance with Policy 4.

## 2.2 Restricted Discretionary Activity – Indigenous Vegetation Clearance

2.2.1 The clearance of indigenous vegetation associated with the Waitaki Power Scheme, the National Grid or the Opuha Scheme that does not comply with ~~one or more of the conditions of~~ Rule 2.1.1 is a restricted discretionary activity.

The Council will restrict its discretion to the following matters:

- (a) Whether the works are occurring on a surface that has previously been modified by the construction, operation, maintenance or refurbishment of the Waitaki Power Scheme, the National Grid or the Opuha Scheme;

- (b) The adequacy of the identification of biodiversity values, including, but not limited to identification of areas of significant indigenous vegetation or significant habitats of indigenous fauna, and values outside of these areas that are particularly important for ecosystem connectivity, function, diversity, and integrity;
- (c) Managing the actual or potential adverse effects on indigenous biodiversity, species diversity, habitat availability or ecological functions (including connectivity, function, diversity and integrity) expected to occur as a result of the proposal, particularly the impact on values significant to Ngāi Tahu;
- (d) Methods to avoid, remedy or mitigate adverse effects on indigenous biodiversity and offset or compensate for residual-significant more than minor residual adverse effects on indigenous biodiversity;
- (e) Any technical or operational constraints associated with the proposed activity requiring vegetation clearance;
- (f) The benefits the proposed activity provides to the local community and beyond;
- (g) The adequacy of monitoring;
- (h) The review of conditions; and
- (i) Consent duration.

### **Definitions**

**Stock Tracks and Crossings:** (In relation to Section 19, Rule 1.1.1(1)) means manmade tracks or crossings constructed for use by stock but excludes tracks naturally formed by stock use.

**Indigenous Vegetation:** means a community of vascular plants, mosses and/or lichens that includes species native to the ecological district and many include exotic species. ~~For the purpose of this Plan indigenous vegetation does not include vegetation that has been planted as part of a domestic garden, for amenity purposes or as a shelterbelt, or exotic woody pest plants.~~

**Significant indigenous vegetation and significant habitats of indigenous fauna:** means areas of indigenous vegetation or habitats of indigenous fauna which:

- a) meet the criteria listed in the Canterbury Regional Policy Statement's Policy 9.3.1 and Appendix 3; or
- b) are listed in Appendix I as a Site of Natural Significance. ~~and~~
- c) ~~includes any areas that do not comprise improved pasture within the glacial derived or alluvial (depositional) outwash and moraine gravel ecosystems of the Mackenzie Basin as shown on Figure 1.~~



# APPENDIX Z – BIODIVERSITY COMPENSATION

## SCHEDULE

The following criteria must be met for an action to qualify as biodiversity compensation:

1) **Adherence to effects management hierarchy:**

Biodiversity compensation is a commitment to redress more than minor residual adverse effects and should be contemplated only after the management hierarchy steps in Policy 5 have been demonstrated to have been sequentially exhausted.

2) **When biodiversity compensation is not appropriate:**

Biodiversity compensation is not appropriate where indigenous biodiversity values are not able to be compensated for, including where:

- a. The indigenous biodiversity affected is irreplaceable or vulnerable;
- b. There are no technically feasible options by which to secure gains within acceptable timeframes; and
- c. Effects on indigenous biodiversity are uncertain, unknown or little understood, but potential effects are significantly adverse.

3) **Scale of biodiversity compensation:**

The extent or values to be lost through the activity to which the biodiversity compensation applies are addressed by positive effects on indigenous biodiversity that outweigh the adverse effects on indigenous biodiversity.

4) **Additionality:**

Biodiversity compensation achieves gains in indigenous biodiversity above and beyond gains that would have occurred in the absence of the compensation, such as gains that are additional to any remediation, mitigation or offsetting undertaken in relation to the adverse effects of the activity.

5) **Leakage:**

Biodiversity compensation design and implementation avoids displacing harm to indigenous biodiversity in other locations and existing indigenous biodiversity at the compensation site.

6) **Landscape context:**

Biodiversity compensation actions are undertaken where this will result in the best ecological outcome, preferably close to the impact site or within the same ecological district. The actions consider the landscape context of both the impact site and the compensation site, taking into account interactions between species, habitats and ecosystems, spatial connections and ecosystem function.

7) **Long-term outcomes:**

The biodiversity compensation is managed to secure outcomes of the activity that last at least as long as the effects, and preferably in perpetuity. Consideration must be given to long term issues around funding, location, management and monitoring.

8) **Time lags:**

The delay between loss of indigenous biodiversity at the impact site and the gain or maturity of indigenous biodiversity at the compensation site is minimised.

9) **Trading up:**

When trading up forms part of biodiversity compensation, the proposal demonstrates that the indigenous biodiversity values gained are demonstrably of higher indigenous biodiversity value than those lost. The proposal also shows that the values lost are not to Threatened, or At Risk species (as defined in the New Zealand Threat Classification System but excluding matagouri and manuka) or species considered vulnerable or irreplaceable.

10) **Financial contribution:**

A financial contribution is only considered if it directly funds an intended indigenous biodiversity gain or benefit that complies with the rest of these principles.

11) **Science and mātauranga Māori:**

The design and implementation of biodiversity compensation is a documented process informed by science and mātauranga Māori where available.

12) **Tangata whenua and stakeholder participation:**

Opportunity for the effective and early participation of tangata whenua and stakeholders is demonstrated when planning biodiversity compensation, including its evaluation, selection, design, implementation, and monitoring.

13) **Transparency:**

The design and implementation of biodiversity compensation, and communication of its results to the public, is undertaken in a transparent and timely manner.

