

BEFORE THE MACKENZIE DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Submissions and Further Submissions
lodged by **Meridian Energy Limited** to the
Proposed Plan Change 19 to the Mackenzie
District Plan

STATEMENT OF EVIDENCE OF ANDREW CONRAD FEIERABEND

FOR

MERIDIAN ENERGY LIMITED

20 November 2018

1 QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Andrew Feierabend. I hold the qualification of a Bachelor of Regional Planning from Massey University. I have approximately 33 years of experience in planning and resource management matters, almost all of which have been gained within the local government sector and electricity industry.
- 1.2 I have been employed at Meridian Energy Limited (Meridian) for eight years. In my current role as Statutory and Compliance Strategy Manager I am responsible for managing and responding to statutory plans prepared under the Resource Management Act that fall within areas where Meridian has either: (a) existing assets, or (b) an interest in developing new assets.
- 1.3 I am also responsible for the overall management of Meridian's compliance obligations associated with the consents and authorisations it holds for its various consented activities and development options across New Zealand.
- 1.4 Prior to joining Meridian, I was employed in a range of roles with the Hurunui District Council. I was the District Planner from 1986 until 1991. From 1991 until 2010 I was employed as divisional manager of the Environmental Services Group. In that role I was responsible for delivering and managing all the Council's regulatory functions including those relating to resource management. I have also been involved in several national initiatives associated with improving resource management practice.
- 1.5 I have read the Environment Court of New Zealand Practice Note 2014 and confirm I have complied with it when preparing and presenting my evidence in relation to Meridian's submission however please note this is not a statement of evidence as a planning expert, rather this statement is made in the context of my position with Meridian and is factual rather than opinion. That is, the primary purpose of my statement is to assist the Panel in understanding the operational consequences of Plan Change 19 in the context of the operations of the Waitaki Power Scheme (WPS). Independent expert planning evidence for Meridian is prepared by Ms Jane Whyte who will also attend the hearing.
- 1.6 I am authorised to present this evidence as a representative of Meridian and on behalf of the Company.

2 MERIDIAN ENERGY AND THE WAITAKI POWER SCHEME

- 2.1 Meridian is a mixed ownership model company, that is dual-listed on the New Zealand Stock Exchange and the Australian Securities Exchange, with 51% owned by the New Zealand Government, and generates electricity, exclusively from renewable sources.
- 2.2 Meridian's core business is the generation, marketing, trading and retailing of electricity and the management of associated assets and ancillary structures in New Zealand. As well as being New

Zealand's largest generator of electricity, Meridian is also the country's largest generator of renewable energy.

- 2.3 The WPS is divided into two parts: the first part includes the Tekapo A and Tekapo B hydro-generation assets and associated canal network which are owned and operated by Genesis Energy Limited; the balance of the WPS includes the Pūkaki high dam, Ohau A, B and C, Benmore, Aviemore and Waitaki Power Stations and associated canal networks and structures, which are owned and operated by Meridian.
- 2.4 A schematic and aerial outline of the WPS is pictorially represented in Figure 1 and Figure 2 below showing the WPS and its operational parts, associated storage and operational output.

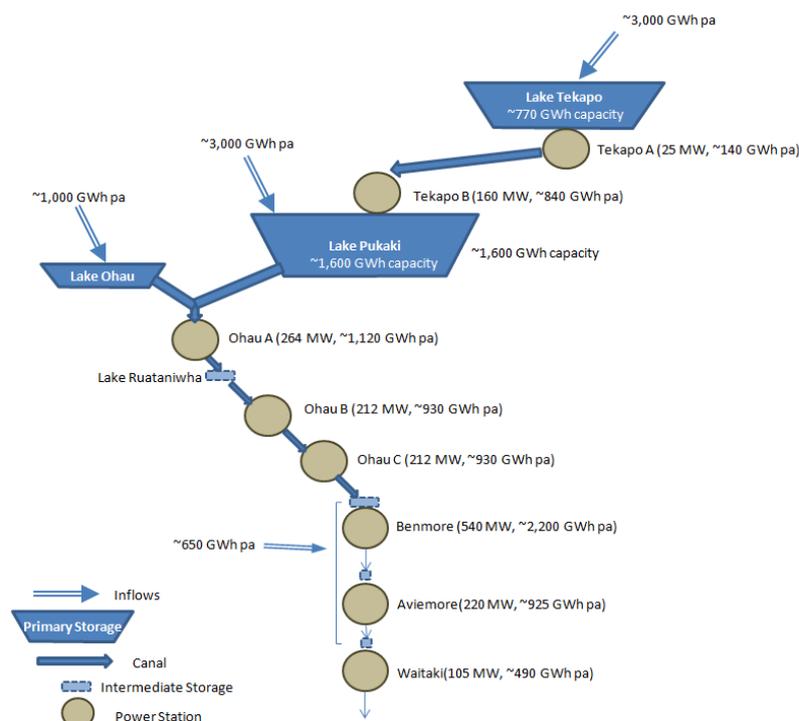


Figure 1 – Schematic Diagram of the Waitaki Power Scheme



Figure 2 – Pictorial Representation of the Waitaki Power Scheme

- 2.5 Flexible and controllable generation technologies that are able to respond to continuously changing electricity demand are critical to maintaining a secure electricity system, both regionally and nationally.
- 2.6 Generally speaking, this flexibility can only be provided by hydro generation with storage, or thermal power stations with flexible fuel arrangements. Given its size, flexibility and energy storage capability, the WPS is a critical contributor to security of electricity supply at both a regional and national level in New Zealand.
- 2.7 The WPS provides on average around 18% of NZ's annual electricity generation requirements – enough energy to meet all of Canterbury's annual requirements and to help meet demand in other regions.

- 2.8 Further, the WPS plays an important role in national electricity supply by being able to alter its generation output as national demand changes throughout the day, at times contributing significantly more (around 24% of total generation) to help meet peak demand. The scheme can also respond quickly to changes in supply, a function that will become increasingly more important in enabling greater levels of inflexible and/or intermittent renewable generation (eg, solar and wind generation) to be added to the electricity system over time.
- 2.9 The WPS holds around 60% of national hydro storage capacity. This helps to smooth out seasonal variations in hydro inflows, and hence assists in security of supply, reducing thermal generation requirements, and associated carbon emissions, during the winter when demand is higher but inflows lower.
- 2.10 Given all the above, it is critically important that the WPS contribution to New Zealand's electricity infrastructure and associated activities is appropriately provided for and enabled from an operational and management perspective in regional and district planning documents in Canterbury.
- 2.11 It is also just as important that undue constraints are not placed on the WPS via the above instruments. It is in this context that Meridian has significant reservations in the context and the scope of the objective policy and rule framework of Proposed Plan Change 19 to the Mackenzie District Plan.

3 MERIDIAN'S INTEREST AND SUBMISSIONS ON THE PROPOSED PLAN CHANGE 19 OF THE MACKENZIE DISTRICT PLAN

- 3.1 As expressed above, Meridian has significant concerns relating to the scope of Plan Change 19 and the potential effect of the provisions as originally drafted. In particular:
- (a) the scope of Plan Change 19 is unclear and as such could inappropriately regulate Meridian's activities
 - (b) as notified, Meridian believes its and its contractors' activities are regulated as a commercial activity.
- 3.2 Although Patricia Harte's (Planning Consultant for Mackenzie District Council) section 42A report, which provides an assessment of the submissions received on the plan change, reaches out to deal with some of the issues raised by Meridian, it does not deal with the core concerns raised in Meridian's submissions. Jane Whyte's planning evidence identifies the issues and provides a series of drafting solutions that can address the concerns.
- 3.3 The original draft of the plan change did not expressly provide for the day-to-day operation of the WPS or the need for boat access to operate and manage the scheme, particularly on Lake Pūkaki, as a permitted activity.

- 3.4 For example, the activities associated with the operation and use of the WPS, which can require the use of a boat, are lakeshore inspection of shoreline erosion, establishment and maintenance of boat booms and buoys, inspection of bridges and structures, removal of debris and detritus from in front of structures, scientific sampling or investigations, bathymetric surveys, dive inspections of underwater structures, and instrumentation checks.
- 3.5 I note that six-monthly Lake Pūkaki shoreline erosion inspections are a specific undertaking made in the Agreements entered into between Meridian, the New Zealand Transport Association and Mackenzie District Council that support Meridian's consents to operate Lake Pūkaki as a hydro storage lake. The use of motorised water craft is an important and efficient tool to achieve this.
- 3.6 The Section 42A report has partially addressed boat access and use and Meridian supports the nature of these proposed Plan amendments. However, a greater issue exists within Plan Change 19 that has not been addressed satisfactorily by the Section 42A report. This issue relates to the purported scope and degree of application of Plan Change 19.
- 3.7 The current draft of the Plan Change addresses structures in and on the surface of water and all commercial and non-commercial activities. The potential consequence of this proposition is that the change goes to the use of all structures and activities associated with the WPS rather than dealing with structures and activities associated with boating, jetties and boat ramps and the use of the surface of water.
- 3.8 This matter is explored from a legal perspective in a memorandum dated 19 November 2018 (attached as Appendix 1) to the Panel from John Maassen, Meridian's Legal Counsel on this matter. The implication of the scope of Plan Change 19 from an operational perspective is significant for the reasons outlined by Mr Maassen and creates significant uncertainty in how Plan Change 19 would be applied to the WPS from the perspective of its operational needs.
- 3.9 The above case would be an unacceptable outcome from Plan Change 19 from Meridian's perspective as it would create significant hurdles to enabling a recognised regionally and nationally important part of New Zealand's electricity infrastructure.

4 DISTRICT PLAN REVIEW AND ITS RELATIONSHIP TO PLAN CHANGE 19

- 4.1 Mackenzie District Council is reviewing its District Plan in parts. This is a choice for it to make.
- 4.2 I have been in direct discussions with Council staff on the importance of providing for the integrated management of the WPS within the District Plan. The approach that I have been advocating on behalf of Meridian is that the reviewed District Plan should provide for the management of the WPS in a single integrated set of provisions, building on the present District Plan approach. I have gone as far as providing plan drafting approaches to achieve this.

- 4.3 To date, Council staff have indicated that they are not averse to this approach but have made no commitment towards it and probably could not in any regards. The reality is that, by virtue of the order in which the Council has chosen to notify reviewed parts of the District Plan, such a solution cannot be achieved at this point in time.
- 4.4 Whenever a plan change is notified that affects the operation of the WPS, Meridian must ensure that the framework adequately responds to the needs of this nationally crucial infrastructure. I recognise that the consequence of this is that the WPS will need to be addressed multiple times in the reviewed District Plan. This is not Meridian's ideal outcome. Nevertheless, Meridian cannot rely upon a future plan review process for which the outcome is unknown.

5 CONCLUSIONS

- 5.1 Meridian notes the position of the Section 42A report on this matter. Meridian does not accept the proposal set out in this report about how the matters raised should be dealt with and the residual uncertainty this would potentially create on operations and future consenting considerations.
- 5.2 Meridian's view is that any drafting solution to the issues identified in Mr Maassen's legal advice must be addressed within Plan Change 19.
- 5.3 Ms Whyte has provided the drafting solution in her evidence which is recommended to the Panel through appropriate amendments to the objectives, policies and rules of Plan Change 19 to address the matters raised by Mr Maassen.

Andrew Feierabend



Statutory and Compliance Strategy Manager
Meridian Energy

BEFORE THE COMMISSIONERS
APPOINTED BY THE MACKENZIE DISTRICT COUNCIL

IN THE MATTER OF

Schedule 1 of the Resource Management Act 1991

AND

IN THE MATTER OF

Plan Change 19 and a submission and further
submission by Meridian Energy Limited

MEMORANDUM BY COUNSEL FOR MERIDIAN ENERGY LIMITED

19 November 2018

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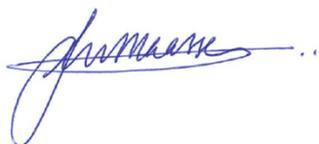
1. My name is John Maassen. I am engaged by Meridian Energy Limited (“MEL”) on Plan Change 19 (“PC 19”) as legal counsel. I am unavailable to attend the hearing because I am acting as a Commissioner for the Invercargill City Council at the time scheduled for the hearing of PC 19. The purpose of this memorandum is to set out the legal basis for the inclusion of plan provisions recommended by MEL’s planner, Jane Whyte.
2. MEL’s position that I support is:
 - (a) PC 19 is aimed at managing activities on or within water bodies in the Rural Zone controlled by Part 3, s 9 RMA.
 - (b) The scope of PC 19 is the sustainable management of the surface of water bodies and therefore must consider the use, management and protection of the surface resource in an integrated way.
 - (c) As a consequence, it is essential that the plan change recognise and provide for the Waitaki Electric Power Scheme (“WEPS”). Not merely because of the NPSREG but because electricity generation is fundamental to the issue of the sustainable management of the surface water resource and some water bodies such as Lake Pukaki have features that are influenced significantly by WEPS. The amenities afforded by Lake Pukaki that are appropriated by the community are acknowledged, but they cannot be considered in isolation.
3. Ms Harte in her report has incorrectly assumed that Rule 13 in the Rural Zone that applies to certain scheduled activities of WEPS is sufficient even when it does not apply to all of the surfaces of water bodies. It refers to limited locations and is a dated provision not made under contemporary higher order instruments. Ms Harte says at page 22 the following:

“The wider issues relating to how hydro generation activities within the Mackenzie District are provided for in the District Plan are best addressed as part of the full review of the District Plan rather than being dealt with in a piecemeal way. This review would include consideration of whether a special purpose zone should be created, whether the control should fall within the utilities chapter or whether the control should be in the Rural zone”.
4. A significant impetus for PC 19 was the impact of commercial boating operations and the impacts of other motorised and non-motorised activities on waterways. However, PC 19 is not limited to addressing these activities. Instead, there is a suite of changes in the cascade of provisions from objectives to rules in respect to the entire surface of water

resources in the Rural Zone. A table is **attached** that references the key parts of the plan change material relevant to scope.

5. Mackenzie District Council has, with respect, a tendency to produce plan changes that have wide scope concerning the resources or issues but then focus on a limited number of activities. The most egregious example was, the now famous, Plan Change 13. The impetus for that Plan Change was rural residential development, but the Plan Change scope was the landscape values and the significance of the Mackenzie Basin landscape. Because the impetus was the rural residential activity the assessment of the landscape and the consideration the natural and physical resources including the WEPS was limited. That led the Commissioners into a difficulty. That then resulted in a process before the Environment Court that was very extensive to remedy the consequences of the limited optics of the Council.
6. Similarly here, the surface water bodies is a resource being considered, but little attention is paid to the significance of the values associated with the WEPS and the requirements for activities related to that scheme.
7. The RMA is directed at the sustainable management of natural and physical resources, and the spatially identified resource under consideration primarily defines the scope of a plan change. I make that assessment based on the case law **attached**. To sustainably manage the surface of water bodies, one has to understand the values, characteristics and potential effects of all actual and potential activities (or resource demands) on that resource in a comprehensive way. That is essential to discharging the territorial authority's functions under RMA s 31 and also carrying out a credible assessment under RMA s 32. I, therefore, consider that MEL is right to insist in the PC 19 process that the relevant objectives, policies and rules appropriately recognise and provide for the WEPS and the associated functional requirements to use the surface of water bodies. That includes the need to protect physical resources of the scheme on the surface of water bodies and to enable the maintenance and upgrading of existing and new infrastructure where the surface of the water is used.
8. It is not a correct planning assessment for Ms Harte to say that management of this surface water resource for one particular activity (in this case the WEPS) should be left to another day. That is so because:
 - (a) If a single resource is managed such as the surface water of water bodies, then it needs to be managed in an integrated way having regard to all of its values and all of the activities that may arise. WEPS is also not a trivial matter.

- (b) The analysis that s 32 RMA demands cannot be carried out unless that holistic and integrated assessment is undertaken.
 - (c) The possibility that planning issues will be possibly dealt with later and in a particular way is not a statutorily mandated basis for assessment.
9. In conclusion, I consider there is scope to address the matters recommended by MEL's planner. It is also my opinion that there is a statutory obligation to address these matters. Not least because there is a direction under s 74(1) RMA to prepare a change to the Plan under NPSREG that provides essential guidance on aspects of Part 2 including s 7(i) and(j).



John Maassen

Barrister and counsel for MEL

TABLE CONCERNING SCOPE OF PLAN CHANGE 19

Source	Text (Quotes in Italics)	Comment
Plan Change 19 Scoping Report published with Plan Change 19	<i>The Council is currently reviewing the District Plan, including a review of the approach to visitor related activities such as outdoor recreation and visitor accommodation. In undertaking this review, it became apparent that a Plan Change focused specifically on controlling activities on or within water bodies was needed to manage activities such as possible to avoid long-lasting effects. Plan Change 19 is, therefore, part of the first phase of review the District Plan.</i>	That is an unqualified statement as to the scope of the Plan Change as governing all activities on or within water bodies.
As above.	Rural Objective 8 is amended.	The entire Objective is amended. The Objective applies to the surface of waterways and is therefore applied across all surface water resources in the Rural Zone. That has always been its function.
As above.	New rural policy 8A is describing the values of water bodies.	That is an attempt to describe the values of surface water bodies in their Rural zone. A values assessment is always an assessment that requires an integrated assessment of all values.
As above.	Introduce new policy Rural 8B governing Lake Pukaki as a single resource and describing its amenity and landscape features.	Again, a policy relating to all of Lake Pukaki and not limited to particular activities.
As above section B of the Plan.	Rural Zone rules are changed providing a comprehensive cascade of rules governing the use of the surface of water bodies.	Again, a comprehensive consideration of the rules governing activities over the single resource.
Section 32 Evaluation Report	The overview and purpose statement reads:	A statement of the evaluation of provisions and a plan relating to a single resource.

	<i>This evaluation has been undertaken and conforming with section 32 of the Resource Management Act 1991 the subject matter being evaluated is four new policies and replacement rules relating to activities on or within water bodies within the Rural zone of the Mackenzie District Plan.</i>	It ignores that an objective is also changed.
As above.	In the Background section, it refers to concern about commercial boating operations. However, this merely has caused the Council to bring <i>into focus the adequacy of District Plan provisions controlling activities on water bodies</i> . Importantly the concerns or resource management issues include <i>whether there needs to be the different management of water bodies based on their sensitivity relating to cultural and natural values, landscape and high country values and wildlife and fisheries values</i> .	The commercial boating operation issue is simply a prompt to look at the adequacy of the management of activities on or within water bodies. Significant cultural value is the Waitaki Electric Power Scheme that receives no consideration in the section 32 analysis.
As above.	The resource management issue is identified in section 7 and says: <i>The primary issue that has been addressed by the party's Plan Change is how to manage activities in the surface of the water that limit adverse effects on the natural environment and impacts on the human experience enjoyment of the area.</i>	This suggests that the issue of managing activities affecting the surface of the water is the scope of the plan change, but impacts cannot be isolated to those in the natural environment or human experience given the scope of effects that the Act requires the Council to consider when managing the use, protection or development of resources.

TABLE OF CASES

Name	Reference
<i>Albany North Landowners' Group v. Auckland Council</i>	[2016] NZHC 138
<i>Clearwater Resort Limited v. Christchurch City Council</i>	HC Christchurch AP 34/02, 14 March 2003
<i>Palmerston North City Council v. Motor Machinists Limited</i>	[2013] NZHC 12 90