

BEFORE THE MANAWATU- WANGANUI REGIONAL 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 Manawatu-Wanganui Regional Council on the Proposed Horizons One Plan – Chapters 6, 13 15, and 16 (referred to as the ‘Water’ Chapters by the Hearings Panel.).

**STATEMENT OF EVIDENCE OF CATHERINE MARY CLARKE
FOR
MERIDIAN ENERGY LIMITED**

1.0 Introduction

1.1 My full name is Catherine Mary Clarke. I am a planner and senior principal of Boffa Miskell Limited, a national firm of consulting planners, ecologists and landscape architects. I hold the qualification of Bachelor of Regional Planning (1st Class Honours) from Massey University. I am a full member of the New Zealand Planning Institute and a past president of the Auckland branch (1998-2000).

1.2 I have approximately twenty years experience in planning and resource management. My professional experience includes approximately three years in district planning, nine years with the Auckland Regional Council (‘ARC’) and most recently eight years in private consultancy.

1.3 I have had a range of experience in the development and implementation of regional planning documents prepared under the Resource Management Act (‘RMA’). Details of my previous experience are outlined in earlier statements of evidence that I have presented to the One Plan Hearings Panel.

1.4 While this matter is not before the Environment Court, I have read the Code of Conduct for expert witnesses in the Environment Court Practice Notes and I agree to comply with this it. I am also satisfied that the evidence in this statement is within my area of expertise, except where I state that I am relying on the evidence of another

person. I am also not aware of any material facts that I have omitted that might alter or detract from the opinions that I express in this evidence.

2.0 Scope of Evidence

2.1 I have been engaged by Meridian Energy Limited ('Meridian') to provide a planning analysis of Chapters 6 – Water, Chapter 13 – Discharges to Land and Water, Chapter 15 – Takes, Uses and Diversion of Water and Bores, Chapter 16 – Structure and Activities involving the Bed of Rivers, Lakes and Artificial Watercourses and the corresponding Schedules of the Proposed Horizons One Plan ('the Plan').

2.2 The purpose of my statement of evidence is to comment on the main findings of this analysis and the matters of concern to Meridian, as raised in the submissions and further submissions which the Company lodged in relation to Chapters 6, 13, 15 and 16 of the Plan.

2.3 My evidence will provide comment on a range of concerns raised by Meridian with respect to the provisions in Chapters 6, 13, 15 and 16 of the Plan including;

§ An overall concern that the water management framework in the Plan, particularly the objectives and policies in Chapter 6 appear focused on providing for, and specifying a level of protection for instream values. However, the Plan has not provided sufficient guidance on how out-of-stream values/ uses, including activities associated with hydro-electricity generation, that also compete for the allocation and use of surface water resources, are to be provided for in the overall water management framework for the Region;

§ The lack of the recognition of the use of freshwater for the generation of renewable energy in the policy directives and planning controls that form part of the water management framework for the Region set out in Chapters 6, 13, 15 and 16 in the Plan;

§ Concerns with the provisions directing common expiry dates to be imposed in resource consents particularly in Policy 15-5;

§ Concerns regarding Policy 15-5(b) which directs how water allocation will be prioritised within the Water Management Zones;

§ Policy 6-19 and water allocation during periods of low flow;

- § No policy provisions specifically recognising it may be appropriate in some circumstances to establish alternative minimum flows to those specified in the Plan;
- § Inadequate recognition given to the concept of ‘mixing zones’ in the water quality provisions particularly in Chapter 6;
- § Non-complying activity status of Rule 13-23 regulating discharges to Natural State Water Management Zones, Sites of Significance – Aquatic and Lakes and Rivers;
- § The management of activities occurring in river and lake beds in particular Objective 6-4 and Policies 6-27 and 6-31.

2.4 In preparing this statement of evidence, I have had particular regard to:

- § Submissions and further submissions on the Proposed One Plan lodged by Meridian; and
- § The range of Section 42A reports prepared in relation to the provisions in Chapters 6, 13, 15 and 16.

At this point I also wish to acknowledge the considerable amount of effort that has obviously been expended by the Council in preparing all the supporting Section 42A reports that have presented. Where I refer to the Section 42A reports, in this statement of evidence, I make mention of the specific Section 42A reports to which I have referred.

2.5 I also note some Section 42A reports (particularly the Planning Evidence and Recommendations Report) state further supplementary (Section 42A) reports will be prepared following the receipt of evidence. Further, the Council proposes to talk further with Meridian and other submitters on a number of issues raised in submissions prior to the hearings. Meridian would welcome the opportunity to meet with, and discuss the matters raised in submissions and in this statement of evidence with Council’s officers and consultants, prior to appearing before the Hearings Panel. It should be noted this evidence has been prepared prior to any discussions or pre-hearing meetings with the Council having taken place, on any of the matters raised in this evidence.

3.0 Need for Improved Recognition of ‘Out-Of-Stream’ Uses including the Use of Fresh Water Resources for the Renewable Energy Generation in the Water Management Framework of the Plan

3.1 In a general submission on Chapter 6, Meridian raised the issue that the Plan does not provide clear direction in the water management framework developed on how the potential conflict between competing instream values and water allocation / use values is to be resolved across the Region. Further, Meridian’s submission noted that the provisions in Chapters 6, 13, 15 and 16 of the Plan do not explicitly recognise and provide for the positive effects arising from potential new takes, uses, damming, diversions and discharge activities associated with the generation of electricity from renewable energy.

3.2 In summary, Meridian has sought that new provisions be added to the Plan that provide a policy framework that specifically provides for takes, uses, damming and diversion activities associated with hydro electricity. In particular, the policies need to recognise that:

- (i) the take and use of water for hydro electricity is an essential take;
- (ii) the use of water for hydro electricity is regionally and nationally significant;
- (iii) hydro electricity can involve the damming (including storage of water) and / or diversion of water;
- (iv) water allocated or stored for hydro electricity generation purposes should not be adversely affected by other abstractions or activities; and
- (v) the potential benefits that the use of water for hydro electricity can have, including the generation of energy using renewable resources and the ability to store water for generation at a future point in time..

3.3 It is recognised that the Council has undertaken a considerable amount of work in developing a water management framework for the Plan. Spatially this framework delineates the Region’s fresh water bodies into a series of Water Management Zones and Sub-Zones with recognised values, principally using the nationally recognised NIWA River Environment Classification (REC) system. As a planner, I am not querying the development of this spatially based water management framework, but

rather the policy provisions and planning controls that also form part of water management framework in the Plan.

- 3.4** In my opinion, the water management framework in the Plan needs to provide policy direction on what promotes “*sustainable management*” of the water resources of the Region in accordance with Section 5 of the RMA. In particular, this involves resolving how to provide for “*use, development and protection*” “*while*” ensuring the requirements of Sections 5(a),(b) and (c), 6, 7 and 8 of the RMA, are met. Fundamental to making any decision as to what promotes sustainable management of the fresh water resources of the Region is the need to identify the values (importantly both instream and out-of-stream uses) which the water bodies of the Region support and make a determination as to extent to which these values are to be provided for. Importantly, this often requires making a determination on how competing values of the river resource are going to be managed.
- 3.5** Therefore, I consider that the policy framework in Chapters 6, 13, 15 and 16 should provide some clear guidance on how both instream and out-of-stream/ use values are to be provided for, and also importantly provide guidance on any how conflict between competing values is to be resolved. If regional guidance and direction is not provided through the objective and policy framework in the Plan, decision makers on individual resource consent applications will have no guidance on how to resolve these tensions.
- 3.6** In my opinion, the water management framework in the Plan, particularly in Chapter 6, has not given sufficient regard to, or provided guidance on how out-of-stream or the use values of the region’s water resources are to be provided for. Further, many of the objective and policy provisions contain broad general statements, that would provide little guidance to resource management decision makers on how to resolve the competing demands of both in-stream and out-of-stream/ use values. For example, the provisions in Objective 6-3 and other supporting policy provisions, which I will discuss in more detail.
- 3.7** It is noted the Section 42A report of Mr G J Carlyon states “*Today, hydroelectric power generation remains the largest user of water in the region, with draw-off that occurs all year round¹.*” I note although the management of existing and potential hydro-electricity generation is a significant resource management issue for the Region, there is limited mention or any clear direction in the policy framework

¹ Refer Paragraph 70, Page 23, Section 42A Report by Mr G J Carlyon, August 2009.

(objectives and policies) particularly in Chapter 6 regarding how this significant out-of-stream use of the freshwater resources of the region, is to be recognised and provided for, in the water management framework in the Plan.

- 3.8** As detailed in previous statements of evidence that I have submitted to the Hearings Panel (particularly in relation to Chapter 3 of the Plan), Section 5 and Part 2 of the RMA (including the inclusion of Section 7(j) introduced by the RMA (Energy and Climate Change) Amendment Act 2004) and a number of national policy and strategy documents (including the Proposed National Policy Statement on Renewable Electricity Generation) lend strong weight to the argument that the use and development of renewable energy generation (including hydro-electric power generation) is a matter of national and regional importance.
- 3.9** Despite these national directives on renewable energy generation, the reporting officer preparing the Section 42A report, Planning Evidence and Recommendation Report on Chapters 6, 13, 15 and 16 has stated in a number of instances that it is not understood why hydro-electricity generation should be given any special recognition over any other industry that seeks to take, use or discharge into fresh water². For the reasons that I have already outlined above and in previous statements of evidence I have presented to the Hearings Panel on the One Plan, I do not agree with this approach recommended by reporting officer. Instead I consider the Council needs to specifically recognise the use of fresh water for hydro-electricity generation as a significant use of the Region's water resources and further needs to provide clear guidance in Chapters 6, 13, 15 and 16 of the Plan, directing how the use of the freshwater resources for the generation of renewable energy is to be recognised and provided for in the Region in a manner consistent with Section 5 and Part 2 including Section 7(j) of the RMA.
- 3.10** I also do not agree with a number of general comments made by the reporting officer³, that there is no need to make particular mention in Chapters 6, 13, 15 and 16 of the Plan regarding the use of the freshwater for the generation of renewable energy, as the Chapter 3 of the Plan already provides a policy framework that recognises and provides for renewable energy generation in the Region.
- 3.11** As noted above, the existing and potential use of freshwater for renewable energy generation is a significant out-of-stream value of the freshwater resources of the

² Refer Page 63, Section 42A, Planning Evidence and Recommendations Report, dated August 2009.

³ For example, refer Pages 257 and 258, Section 42A, Planning Evidence and Recommendations Report, dated August 2009.

Region. Further, I consider the policy provisions and directives in Chapters 6, 13, 15 and 16 that set out the overall water management framework for the Region should provide some clear guidance on how both instream and out-of-stream/ use values (including the existing and potential use of freshwater for renewable energy generation) are to be provided for within the overall water management framework for the Region. Importantly, this should also provide guidance on any how conflict between competing values is to be resolved. Accordingly I consider the existing and potential use of freshwater for renewable energy generation needs to be specifically considered in the policy provisions and planning controls in Chapters 6, 13, 15 and 16 that set out the overall water management framework for the Region. Simply relying on cross-references to the provisions in Chapter 3 is not appropriate.

3.12 Another related concern I have is that officers noted in the Supplementary Report on Chapter 3 (May 2009) that the definition of “*operation*” in the Plan was not intended to include resource use (e.g. the take and use of water for hydro-electricity generation). If this restrictive definition of “*operation*” is adopted by the Council, then it becomes even more imperative that hydro-electricity generation is specifically recognised and provided for, in the policy provisions and planning controls in Chapters 6, 13, 15 and 16 of the Plan.

3.13 These general concerns regarding the lack of recognition of out-of-stream values, including the use of the fresh water resources of the Region for hydro-electricity generation, are now discussed further, in relation to the specific provisions in the Plan.

Objective 6-3: Water Quantity and Allocation

3.14 Meridian’s submission on Objective 6-3 sought in part that a new objective be included in Chapter 6 that specifically provides direction on how the Council proposes to provide for takes, uses, damming and diversions of freshwater for renewable energy generation.⁴ The Section 42A report – Planning Evidence and Recommendations Report recommend the submission be rejected. Further, the report questions “*why reference is required specifically to electricity generation. The Objective sets out matters in general terms without specifically targeting a particular industry or other activity.*”⁵

⁴Refer Meridian Submission No. 363/ 64 and X522 /142

⁵ Refer Page 63, Section 42A, Planning Evidence and Recommendations Report, dated August 2009.

- 3.15** I share the concern of Meridian that Objective 6-3, being the overarching objective on water quantity and allocation in the Plan, makes no specific reference as to how surface water allocation for renewable energy generation is to be considered, This is especially of concern, as Objective 6.3 sets up the framework from which all subsequent policies and planning controls on water quantity and allocation in Chapters 6 and also 15 of the One Plan are derived.
- 3.16** Objectives should be clearly- targeted or positively worded statements of outcomes to be achieved or directions to be taken in relation to issues to be addressed. In my opinion Objective 6-3 should not be “*set out matters in general terms*” as proposed by the reporting officer. Such an approach does little to guide resource management decision makers using the Plan, on the in-stream and out-of-stream values of significance and how to resolve water allocation issues between competing values and uses. For example, Objective 6-3 (changed as a result of the Section 42A report)states in clause (a)(i) “*minimum flows and allocation regimes are set for the purpose of maintaining or enhancing the existing life-supporting capacity of water bodies and providing for other identified values of water bodies.*”. It is unclear what these “*other identified values of water bodies*” are? Are these other values intended to include, but not be limited to the matters listed in Table 6-2 of the Plan? It is also noted that there is no specific reference to the use of fresh water for renewable energy generation in Objective 6-3 and Table 6-2. Further, the objective provides no direction on how to resolve any conflict between in-stream values and out-of-stream values competing for the water allocation that may arise.
- 3.17** I also consider that given the significance of the hydro-electric power generation in the region (being the largest user of water in the region) and national directives in particular Section 7(j) of the RMA, that Objective 6-3 needs to provide some specific direction as to how takes or uses for water hydro-electricity generation will be managed in the Region.

Recommended relief

- 3.18** For the reasons outlined above, I support the submission lodged by Meridian, and consider that either Objective 6-3 should be amended or a new objective be included in Chapter 6, that provides specific direction on how the take, use damming and diversion of water for hydro-electricity is to be managed in the Region.

Policy 6-1: Water Management Zones and Values

3.19 Meridian opposed in part Policy 6-1⁶ stating “*the water management values and purposes listed in Table 6.2 do not appear to include all the values that the Council is required to have regard to*” including the use of freshwater for renewable energy generation. Further as noted above, there is no specific reference to hydro-electricity generation in Table 6-2.

3.20 The Section 42A report recommends in accepting this submission in part and intends to return to this matter later in a supplementary report. In this respect, the reporting officer states:

“I consider that Industrial Abstraction (IA in Table 6-2) would provide for infrastructure activities including hydro electricity generation. I will however, return to this matter after discussing it with the submitter”⁷”

3.21 However, the reporting officer proposes no changes to Policy 6-1 or Table 6-2 to address this matter, at this time.

3.22 I support Meridian and consider that Policy 6-1 and supporting Table 6.2 needs to include reference to hydro-electricity generation. Hydro-electricity generation facilities are significant user of the fresh water resources of the Region, and are a use which should be given specific regard to in this policy in order to give effect to Section 7(j) of the RMA. I consider that it would be appropriate for the Plan to be amended to make it explicit that hydro electricity generation is included within the Industrial Abstraction (IA) Management Value in Policy 6.1 and Table 6.2.

Recommended relief

3.23 That the Plan to be amended to make it explicit that hydro electricity generation is included within the Industrial Abstraction (IA) Management Value in Policy 6.1 and Table 6.2. I look forward to the changes that the reporting officer proposes in the supplementary report to address these concerns with Policy 6-1.

Policy 6-8: Point source discharges to water

3.24 Meridian’s submission raised concerns with Policy 6-8, as this policy does not specifically recognise the benefits (including national, regional or local benefits) or

⁶ Refer Meridian Submission No 363/70

⁷ Refer Page 76 Section 42A Report , Planning Evidence and Recommendations Report ,August 2009

positive effects that may arise from a discharge activity, as matters to which regard should be had when managing point source discharges into water. Further Meridian sought a new clause (b)(v) be added, being “the local, regional and national benefits of the proposal outweigh the adverse effects.”

3.25 The Section 42A report rejects the submission from Meridian and states that “*This is a matter that must be considered in terms of Part 2 of the Act through the resource consent application process. I do not consider it appropriate for inclusion within the Policy*”⁸

3.26 I agree with the submission lodged by Meridian, that in setting out the matters that regard should be had to when considering point source discharges to water, that it is entirely appropriate to include specific consideration of the benefits (including national, regional or local benefits) or positive effects of the activity. These factors are relevant when assessing any proposed discharge and not only discharges associated with hydro-electricity generation. While I agree with the reporting officer that these are matters that must be considered in term of Section 5 and Part 2 of the RMA, when assessing any resource consent application, I also consider that it would greatly assist decision – makers. and improve the guidance provided by the policy if provisions requiring specific consideration of the benefits (including national, regional or local benefits) or positive effects of the activity, were explicitly recognised in the policy.

Recommended relief

3.27 That Policy 6-8(a) be amended to include consideration of the positive effects and the local, regional and national benefits of the activity when assessing the effects of point source discharges to water, and that a new clause (b)(v) be added, being “the local, regional and national benefits of the proposal outweigh the adverse effects.”

Policy 6-12: Reasonable and justifiable need for water

3.28 Meridian opposed Policy 6-12 on the grounds that it does not provide any direction on what is considered to be the reasonable and justifiable use of surface water for hydro electricity generation facilities. In response the reporting officer in the Section 42A report states : “*I consider the term industrial use is broad enough to cover hydro*

⁸ Refer Page 97, Section 42A, Planning Evidence and Recommendations Report, dated August 2009.

*electric power generation. To that end I do not consider it necessary to make the changes being sought.”*⁹ and recommends that the submission be rejected.

- 3.29** Again, I do not consider that an implicit reference in the term “*industrial use*” in clause (b) of Policy 6-12 is an appropriate manner to refer hydro-electricity generation. I support Meridian in seeking that a new clause be added to Policy 6-12, that provides specific direction on the matters that should be taken into account when assessing what is a reasonable and justifiable amount of water to be taken, providing for the use of water for hydro-electricity generation.

Recommended relief

- 3.30** That Policy 6-12 provide specific direction on the matters that should be taken into account when assessing what is a reasonable and justifiable amount of water to be taken, when providing for the use of water for hydro-electricity generation in the Region.

Policy 15- 1: Consent decision-making for takes and uses of surface water and groundwater

- 3.31** Policy 15-1 requires any decision making on takes and uses of surface water and groundwater to “*recognise and provide for*” the provisions of Chapter 6, while decision makes are directed to only “*have regard to*” (being a lower threshold) to the matters in Chapter 3 (Infrastructure, Renewable Energy and Waste).
- 3.32** Meridian’s submission¹⁰ opposed Policy 15-1 seeking that clause (c) instead state “*that particular regard*” will be given to the policies in Chapter 3. In addition, Meridian sought that new clauses (d) and (e) be included as follows: “*(d) enable non-consumptive uses of water including the use and recycling of water*” and “*(e) recognise and provide for people and communities to benefit from the use and development of natural and physical resources at a local, regional and national level*”.
- 3.33** The Section 42A recommends rejecting the submission by Meridian stating “*the reference within clause (c) to Chapter 3 provides for a link to those objectives and*

⁹ Refer Page 110, Section 42A, Planning Evidence and Recommendations Report, dated August 2009.

¹⁰ Refer Meridian’s Submission 363/167

*policies and is adequate and appropriate.*¹¹ I do not believe that a mere reference to “a link” to the policy provisions in Chapter 3 is sufficient, given that presently there is no specific reference to providing for the use of fresh water by the hydro-electricity generation in the policy provisions in Chapters 6 and 15 of the Plan. I therefore support Meridian’s submission that instead requires that “*particular regard*” be had to the provisions in Chapter 3.

3.34 With regard to the additional clauses that Meridian sought be included, the Section 42A report states “*As a result of the reorganisation of the Policy framework that will be included in my Supplementary Report some of the concerns raised by the submitter may be met e.g. the Policy 6-31 which deal with Essential and Beneficial Activities would then be contained within Part II of the Plan.*” It is therefore difficult to meaningfully comment on the Policy 15-1 at this time. However, I would reiterate that the issue of cross-referencing and in particular the strengthening of the linkages between Chapter 3 and Chapters 6 and 15 of the Plan is a matter that needs to be specifically considered and improved in any reorganisation of the policy framework being proposed by the reporting officer.

Recommended relief

3.35 I therefore recommend at this time, that Policy 15-1, clause (c) be amended as follows:

Policy 15-1: Consent decision-making for takes and uses of surface water and groundwater

When making decisions on *resource consent* applications, and setting consent *conditions*[^], for takes and uses of surface water and groundwater, the Regional Council will: ...

- (c) ~~have particular regard to the objectives and policies of Chapters 2 and 3~~ have particular regard to have regard to the objectives and policies of Chapters 2 and 3 and 7 to the extent that they are relevant to the activity.

Policy 15-2: Consent decision –making for takes and uses of surface water and groundwater

3.36 Meridian’s submission¹² also sought amendments to Policy 15-2 to “*have particular regard*” to the objectives and policies in Chapter 3, and another new clause recognising the benefits from the use and development of natural and physical

¹¹ Refer Pages 257 and 258, Section 42A, Planning Evidence and Recommendations Report, dated August 2009.

¹²Refer Meridian Submission 363/168

resources at a local, regional and national level. The Section 42A report recommends accepting in part this submission and that “*the reorganisation of the Policy framework within the Supplementary Report, will go some way to meeting concerns. Within this reorganisation I will provide a consistent approach to dealing with cross referencing and consider the matter of cumulative effects.*” Again it is difficult to meaningfully comment on the Policy 15-2 at this time, but I will address this matter as supplementary evidence if appropriate.

Recommended relief

3.37 I therefore recommend at this time, that Policy 15-1 be amended to include a new clause (f) as follows:

Policy 15-2: Consent decision-making for diversions and drainage

When making decisions on *resource consent* applications, and setting consent *conditions*, for the diversion of *water*, including diversions associated with drainage, the *Regional Council* will: ...

(f) have particular regard to Chapter 3 to the extent relevant to the activity.

Policy 16-1: Consent decision making for activities in rivers, and lakes (including modified watercourses).

Policy 16-2: Consent decision making for activities in the beds of artificial watercourses and artificial lakes.

3.38 Policies 16-1 and 16-2 raise similar concerns with no reference in these provisions in the Plan as notified in relation to matters in Chapter 3. Again, Meridian¹³ sought the inclusion of provisions that recognise and have particular regard to the renewable energy objectives and policies in Chapter 3 in these policies.

3.39 The Section 42A report recommends rejecting both of Meridian’s submissions stating “*I am of the view that cross referencing is always a helpful tool but I appreciate that in considering an application for resource consent all the relevant provisions of Part 1 (of the One Plan) will be taken into account and therefore I do not recommend the cross references be included.*”¹⁴”

¹³ Refer Meridian Submissions 363/173 and 363/174.

¹⁴ Refer Page 537, Section 42A, Planning Evidence and Recommendations Report, dated August 2009.

3.40 It is unclear why the reporting officer stated in relation to Policies 15-1 and 15-2, that cross referencing is an issue that needs to be addressed by a reorganisation of the policy framework, but in relation to Policies 16-1 and 16-2, that no cross reference provisions particularly to Chapter 3 should be included. In my opinion these comments lend further weight to the need for the Council to re-consider the cross-referencing provisions between chapters and particularly the provisions that direct decision-makers to have particular regard to the provisions in Chapter 3 that refer to providing for renewable energy generation facilities in the Region.

Recommended relief

3.41 I therefore recommend at this time, that Policies 16-1 and 16-21 be amended as follows:

Policy 16-1: Consent decision-making for activities in the beds of rivers[^] and lakes beds (including modified watercourses but excluding artificial watercourses and artificial lakes)

When making decisions on *resource consent[^]* applications and setting consent *conditions[^]*, for activities in, on, under or over the *bed[^]* of a *river[^]* or *lake[^]* the Regional Council will: ...

(g) _____ have particular regard to Chapter 3 to the extent relevant to the activity.

Policy 16-2: Consent decision-making for activities in the *beds* of artificial watercourses and artificial lakes

When making decisions on *resource consent[^]* applications, and setting consent *conditions[^]*, for activities in, on, under or over the *bed[^]* of an artificial watercourse (including farm drainage canals and canals for the supply of *water[^]* for electricity power generation) or artificial *lake[^]* the *Regional Council* will: ...

(e) _____ have particular regard to Chapter 3 to the extent relevant to the activity.

4.0 Provisions Allowing For Alternative Minimum Flows and Policy 6-17

4.1 Meridian sought new provisions in the objective or policy provisions of Chapter 6 that would allow alternative allocation and minimum flow regimes from those specified in Schedule B, to be developed by applicants for resource consent. In particular, Meridian sought that wording as set out below or similar be included in objective or policy provisions in the Plan:

“To consider granting an application for a resource consent to take water from a river or stream, subject to an in-stream minimum flow that is an alternative to that specified in Schedule B on a case by case basis, where:

- (i) *The applicant has proposed an appropriate in-stream minimum flow requirement based on new or improved scientific knowledge; and*
- (ii) *The adverse effect on aquatic ecosystems is no more than minor; and*
- (iii) *The adverse effect on significant landscape, recreational and Maori customary and traditional heritage values is no more than minor; and*
- (iv) *The adverse effects of the take on existing downstream users, including non-consumptive uses are no more than minor”.*

4.2 This wording sought by Meridian is consistent with that adopted by Environment Bay of Plenty in Policy 68 of their, Operative Bay of Plenty Regional Water and Land Plan (December 2008).

4.3 Meridian also raised the issue of providing for alternative minimum flows in relation to Policy 6-17¹⁵, where by Meridian sought the relief that clause (b) of Policy 6-17. be reworded to include *“It is recognised that more detailed studies may show that minimum flows lower than that scheduled in Schedule B may be appropriate in particular situations.”*

4.4 The reporting officer recommends rejecting both of these submissions, stating it is *“unclear how the additional provision would help as an applicant can and would be able to outline what they consider might be an appropriate minimum flow for their consent at the time of making an application.”* and also states they wish to discuss this matter further with Meridian. ¹⁶

4.5 I support the relief sought by Meridian. While I acknowledge the minimum flows set out in Schedule B of the Plan have, in some instances, been developed from comprehensive data records, it is noted that some minimum flows are set simply as a percentage of Mean Annual Low Flow (MALF). Further abstractions that do not meet the core allocations specified in Schedule B are required to be assessed as non-

¹⁵ Refer Meridian Submission No. 363/89

¹⁶ Refer Page 63, Section 42A, Planning Evidence and Recommendations Report, dated August 2009.

complying activities in accordance with Rule 15-6 of the Plan. Given the potentially arbitrary nature of some minimum flows specified in Schedule B, particularly those based on MALF, I believe it is reasonable and appropriate to strengthen the objective and policy framework in Chapter 6 to make explicit to that in some identified circumstances, alternative flows to those specified in Schedule B may be considered appropriate, when assessing resource consent to take water from water bodies in the Region. Further it would assist decision-makers if particular guidance was provided on the circumstances when alternative flows may be appropriate.

Recommended relief

- 4.6** That the objective or policy provisions be included in Chapter 6 including Policy 6-17 that would allow for alternative minimum flows to be developed, that depart from those specified in Schedule B, in appropriate circumstances.

5.0 Apportioning of Water Takes During Times of Low Flow

- 5.1** Meridian lodged further submissions¹⁷ which supported in part, submissions seeking that hydro-electricity generation be either specifically provided for or exempt from Policy 6-19, in order to allow takes and use of water to continue in times of low flow. The reporting officer recommends rejecting these submissions, and states: “*I consider that hydro electricity generation is an industry and would and should be subject to the same restrictions as other takes. I have also outlined earlier that I will discuss these matters further with the submitters.*” They go on to state that they will address this matter further in their supplementary report.

- 5.2** This statement by the reporting officer infers that the reference to “*the operation of industries*” in Policy 6-19(b)(iii) includes hydro-electricity generation. However, nowhere in the policy or in the plan is this made specific. Another concern that I have with Policy 6-19(b)(iii), is it’s reference to the “*operation*” of industries. As discussed in the supplementary report on Chapter 3 – Infrastructure, Energy and Waste (May 2009), officers have previously stated that the definition of “*operation*” in the Plan does not include resource use, e.g. the take and use of water use for hydro-electricity generation. This definition of operation was opposed by Meridian in supplementary evidence (dated June 2009). Therefore, I note that if the restrictive definition of operation is adopted by the Council, then the reference to the “*operation of*

¹⁷ Refer Meridian Further Submission No’s X522/159, X522/160, and X522/ 161

industries” in Policy 6-19(b)(iii), could lead to the non-sensible interpretation that the “*operation of industries*” does not include the taking and use of a water resource by industry.

- 5.3** As stated above, the take and use of water for hydro-electric power generation provides for the social and economic well-being of people and communities.
- 5.4** I support the further submissions by Meridian and consider that Policy 6-19 should explicitly refer to the taking and of water for hydro-electric power generation as an essential take in Policy 6-19 in times of low flows.

Recommended relief

- 5.5** That Policy 6-19 be to amended to specifically refer to the take and use of water for hydro-electric power generation an essential take provides for the social and economic well-being of people and communities, and that provisions be made in the policy to allow hydro-electric power to continue to take water for power generation purposes, down to the minimum flow during times of low flows.

6.0 Consent Duration And Common Expiry Dates For Resource Consents

- 6.1** Meridian lodged further submissions supporting a number of submissions which opposed Policy 15-¹⁸. Like a number of other submitters, Meridian has significant concerns with Policy 15-5 and Table 11.2 which specify common expiry dates for resource consents. Meridian seeks that Policy 15-5 be deleted. The reporting officer recommends that Meridian’s further submissions be rejected.

- 6.2** The legality of common expiry dates, and the provisions in Sections 123 and 124 of the RMA will be addressed in legal submissions to be presented to the Water Hearings Panel by the Counsel for Meridian. However as a planner, I also share Meridian’s concerns regarding the imposition of policy provisions in the Plan directing decision makers on resource consents to impose common expiry dates on resource consents for water takes.

- 6.3** I recognise that the issue of common expiry dates has already been considered by the Hearings Panel in relation to Policies 2-2 and 11-4 (proposed as a new Policy 11A-5 – Consent Durations in the Section 42A report, dated March 2009) and Table 11.2

¹⁸ Refer Meridian Further Submission Numbers X552/333, X552/334, X552/335, X552/337 and X522/338

(now Table 11.1A in the Section 42A report dated March 2009). Further in the same report, the reporting officer stated in her opinion the function of “*Common catchment expiry dates are a mechanism by which the effects of the activities can be assessed holistically i.e. when consents expire at a common date the cumulative effects can be assessed together.*”¹⁹.

- 6.4** In addition, I am aware that Council officers are now recommending considerable changes to the general policy provisions in Chapter 11 -Introduction to Rules regarding consent durations and common expiry dates. I also acknowledge the Hearings Panel is yet to release a determination on these provisions.
- 6.5** These proposed changes by the officers, include significant changes to Policy 2.2 (as notified, now Policy 11A-5) which making it explicit that common catchment expiry shall only apply to activities seeking resource consents under Sections 13, 14 and 15 of the RMA.
- 6.6** Policy 15-5 addresses common catchment expiry dates for resource consents to take water as required under Section 14, RMA. As an aside, there appears to be no similar policy provisions in Chapters 13 and 16 of the One Plan that deal with common catchment expiry for resource consents required Sections 13 and 15, RMA, though Policy 11A-5 states these activities will also be subject to common expiry dates.
- 6.7** In relation to Policy 15-5, the reporting officer is now recommending the policy be amended to direct all water takes to generally expire on the dates set out in Table 11.1, except municipal takes which will be subject instead to review.
- 6.8** The Section 42A report by Mr J Roygard also discusses the function of common catchment expiry dates from his perspective, stating “*Common catchment expiry or review dates have been recommended as part of the overall water management framework to provide for more coordinated decision-making at the catchment level. In practise, the use of common catchment expiry dates has been in place within resource consents issued by Horizons for a number of years. Common catchment expiry dates provide for a structured mechanism to address resource management issues within the spatial framework of the POP. The dates should provide for more consistency between decisions and the resultant consent requirements. The more sporadic approach to consent expiry that has historically occurred in the Region has naturally resulted in cases where decisions have been made at different times. ... The*

¹⁹ Refer Page 218 of Section 42A report on Chapter 11- Introduction to Rules, dated March 2009

common catchment expiry date framework provides a structured set of dates to work to, in terms of compiling information and recommendations for the management of resources within a catchment.”²⁰

- 6.9** It appears from is Section 42A report by My Roygard, that he considers common resource consent expiry dates have been included in the Plan for a different purpose to that of the officer reporting on Meridian’s submission. That purpose being principally to provide the Council with the opportunity to apply consistency between decisions and the resultant resource consent requirements when issuing new resource consents. This appears to be a more administrative purpose.
- 6.10** I share the concerns raised by Meridian regarding policy provisions in the Plan specifying common expiry dates for all water abstractions particularly if the purpose of the common expiry dates is for the Council to potentially ‘pick winners’ and reallocate the water resource when the consents expire within each Water Management Subzone as is indicated by clauses (a) and (b) of Policy 15-5 and the Section 42A Planning Evidence and Recommendations Report, dated August 2009.
- 6.11** I consider that provisions in the Plan directing the imposition of common resource consent expiry dates restricts the discretion afforded to decision makers under Section 123 of the RMA. In particular, Policy 15.5 directs a decision-maker to grant resource consents for a term consistent with Table 11.1, while Section 123 of the RMA gives the decision maker the ability to grant a resource consent for a term that they are satisfied meets the overarching principal of the RMA, being to promote sustainable management. Section 123 of the RMA is effectively being overruled by a Policy 15.5 which has no regard to the individual circumstances that apply in every applications for resource consents to take, use and divert water.
- 6.12** In my opinion, an application should generally be is entitled to as much security of term as is consistent with sustainable management. Accordingly the policy provisions in Chapter 15 need to recognise that in some circumstances it will entirely appropriate for consents for water allocation to be granted for longer terms than that specified in Table 11.1A. For example, the plan needs to provide decision makers with the opportunity to consider the high level of investment that is often associated with activities using water that has been allocated, whereby the finite terms set for

²⁰ Refer Section 3.5 of Section 42A report by Dr J.K.F Roygard, dated August 2009

resource consents in Table 11.1A, may in many circumstances be much shorter than the life of the investment.

6.13 Relevant factors in considering the term of consent duration may include, for example:

- whether an application is for a new or to replace and existing consent;
- the national, regional and local significance of the activity for which consent is sought;
- the economic effects of a consent holder of a particular consent term;
- the magnitude of the adverse or positive effects;
- any matters of uncertainty in the effects assessment;
- the compliance record of the applicant;
- monitoring regime that may be proposed by the applicant..

6.14 Policy 15.5 ignores all such factors and assumes that the expiry dates in Table 11.1A are suitable for all applications for water allocation. In my opinion it would more appropriate if the Plan provided decision makers with policy direction on the matters to be considered when making an assessment of the consent duration and an assessment under Section 123 of the RMA as set out in now proposed Policy 11A-5, Clause (c).

6.15 In summary, I consider Policy 15.5 and Table 11.1A 1 are is an extremely blunt instrument with no regard to individual circumstances which may be mean that it is it will entirely appropriate for consents for water allocation to be granted for longer terns than that specified in Table 11.1A. Further Policy 15.5 and Table 11.1A 1 also removes the decision-makers discretion to make a judgement under Section 123 of the RMA.

Recommended relief

6.16 For the reasons above, I recommend that Policy 15-5 referring to common expiry dates for resource consents to take water in the Plan, be deleted.

7.0 Priority Order Provisions for Water Allocation

- 7.1 In summary Policy 15-5(b) sets out the order of priority by which water resources shall be re-allocated within each Water Management Sub-Zone, when resource consents expire on the dates specified in Table 11.1A. Meridian lodged further submissions supporting in part a number of submissions which opposed and sought changes to Policy 15-5(b).²¹
- 7.2 The reporting officer recommends rejecting Meridian's further submissions and states: *"(some) submitters want clause (b) (of Policy 15-5) amended to specifically include existing and new resource consents for hydro electric generation as items two and three in the list. I have recommended that these submissions be rejected. Hydro electricity takes are not listed as an essential take under Policy 6-19 (Apportioning, restricting and suspending takes in times of low flow), and it is unclear why they should be singled out and given special treatment over any other infrastructure or industrial activity."*²²
- 7.3 Legal submissions by Meridian to the Hearings Panel will discuss the matter of priority of allocation, however as a planner, I also have concerns regarding the consent processing issues created by the priority approach in Policy 15-5(b).
- 7.4 Firstly, I note the reporting officer has stated that that Policy 6-19 provides the framework for water allocation in the Region. For example: *"This Policy (6-19) sets out how water takes can be managed during periods of low flow and provides support to the other Policies which establish the framework for water allocation."*²³ I agree that Policy 6-19 is explicit about managing takes through periods of low flows but I am aware of nowhere that the Plan, states Policy 6-19 sets up the priority order by which all water will be allocated within each Water Management Zone across the Region.
- 7.5 I also consider as a planner that the proposed approach to water allocation set out in Policy 15-5(b) would be complex and extremely difficult for council officers and decision makers to administer and interpret. For example, Policy 15-5(b) will require council officers and decision makers to make determinations on how water will be allocated between competing users, both between categories (i) to (v) as well as within categories (i) to (v). For example, within category (ia), resource management

²¹ Refer Meridian Further Submissions No's X522/333, X522/355 and X522/337.

²² Refer Page 264 and 265, Section 42A, Planning Evidence and Recommendations Report, dated August 2009.

²³ Refer Page 127, Section 42A, Planning Evidence and Recommendations Report, dated August 2009.

decision-makers would need to make a determination on how water will be apportioned between competing takes for “*public water supplies that are predominantly for domestic use*”. It should also be noted that there are no policy provisions in the Plan that would support decision-makers making a comparative assessment of any such competing applications to take water.

7.6 From my analysis of the provisions in the Plan, I am also unaware of any issues or objectives or detailed analysis that supports the order of priority that has been set out in Policy 15-5(b), by which water will be allocated within each Water Management Zone across the Region.

7.7 I note however, that if the common expiry date provisions in Policy 15-5 were deleted, as requested above, then the application of the Policy 15-5, clause (b) would be redundant. This is, if there are no common expiry dates by which to reassess all resource consent applications to water takes in a water management zone at the same time, then applications will continue to be heard on a first in first served basis, as per the general presumption of the RMA.

Recommended relief

7.8 For the reasons outlined above, Policy 15-5 (b) which sets an order of priority by which water resources shall be allocated within each Water Management Sub-Zone, at the time when resource consents expire on the dates specified in Table 11.1A, be deleted.

8.0 Recognition of Mixing Zones in Policies 6-3, 6-4 and 6-5

8.1 Meridian lodged submission raising concerns about the lack of recognition in Policies 6-3, 6-4 and 6-5 of the “*zone of reasonable mixing*” when assessing compliance with water quality standards in the Plan.

8.2 I consider that it is important that reasonable mixing is specifically recognised in all policy provisions regarding water quality standards in Chapter 6. The RMA specifically requires in setting of rules for discharges (refer Sections 69 and 70) in plans, that any effects on water quality shall be considered “*after reasonable mixing*”. While it is recognised that Policies 6-3, 6-4 and 6-5 are policies (not rules) I consider the concept of reasonable mixing still needs to be specifically included in these policy

provisions, as these are some of the policies, that subsequent the rules managing discharges are derived.

8.3 I note that the inclusion of reference to the zone of reasonable mixing (or a zone of non compliance) in policy provisions regarding water quality is consistent with the approach taken by other Councils. For example, Policy WQL1 (2) of the Proposed Canterbury Natural Resources Regional Plan refers to a 'zone of non compliance'. Further, Environment Southland includes "zone of reasonable mixing" at both an objective and policy level in Objective 2, Policy 2, Policy 3 of its Proposed Regional Water Plan for Southland Appeals Version, September 2009.

8.4 It is also considered that the inclusion of provisions referring to the zone of reasonable mixing in Policies 6-3, 6-4 and 6-5 would also provide greater clarity on how these policies are to be interpreted in the Plan. In note there appears to be confusion even by the reporting officer in the Section 42A report on how these policies are to be interpreted. In the discussion on Policy 6-3 of the Section 42A Report, the reporting officer²⁴ states: "*Meridian Energy wants amendments to be made to Policy 6-3(b) to clarify that activities will only need to ensure that existing water quality is met beyond the zone of 'reasonable mixing'. I would like the opportunity to work through this issue further with the submitter and return to this matter in the Supplementary Report. I understand the issues raised and I think there is scope to consider clarification within the Policy but I need to assess the impacts on the overall policy framework.*" Then later in the same Section 42A report, the officers states in relation to at Policies 6-4 and 6-5 and the inclusion of reference to the zone of reasonable mixing, as sought in the submissions by Meridian, "*The issue of the zone of reasonable mixing is one that is assessed through the resource consent process and condition of consent imposed. I do not consider it is necessary to amend the policy to deal with this matter.*"²⁵ This differs from the earlier statement on the same issue made in relation to Policy 6-3 above.

8.5 Importantly I also note that Policy 6-8 - Point sources discharges to Water, states "*point source discharges into water shall recognise and provide for the strategies for surface water management set out in Policies 6-3, 6-4 and 6-5 after 'reasonable mixing'*". In my opinion Policy 6-8 clearly directs that the test of 'reasonable mixing' shall be applied in interpreting Policies 6-3, 6-4 and 6-5, though this has not been recognised by the reporting officer in the Section 42A reports referred to above.

²⁴ Refer Page 79 of the Section 42A Report, Planning Report and Recommendations

²⁵ Refer Page 83, Section 42A, Planning Evidence and Recommendations Report, dated August 2009.

8.6 Therefore, I support Meridian’s submission and consider that Policies 6-3, 6-4 and 6-5 should be amended to refer explicitly to the zone of reasonable mixing, when assessing compliance with water quality standards in the Plan.

Recommended relief

8.7 That Policies 6-3, 6-4 and 6-5 be amended to explicitly refer to applying a zone of reasonable mixing when assessing compliance with water quality standards in the Plan.

9.0 Policy 6-2, Water Quality Standards

9.1 Meridian sought the deletion of Policy 6-2. The reporting officer agrees that policy does not signal any policy intent and therefore adds little to the overall policy framework and should be deleted.²⁶

Recommended relief

9.2 I support this conclusion of the reporting officer in relation to Policy 6-2 of the Plan (as notified) and consider this policy should be deleted.

10.0 Rule 13-23, Non Complying Activity Status of Discharges to Land and Water – Natural State Water Management Zones, Sites of Significance – Aquatic and Lakes and Wetlands.

10.1 Meridian opposed Rule 13-23 requiring all discharges to Natural State Water Management, Sites of Significance – Aquatic and lakes and wetlands to be assessed as non-complying activities. Meridian considers the non-complying activity status is overly restrictive and not the most appropriate way of implementing the RMA. The reporting officer recommends rejecting Meridian’s submission stating: *“Given the significance of the values that are set out in the Plan around these activities and the potential adverse effects of discharges of contaminants on those values I consider it appropriate to retain the Non-Complying Activity status.”*²⁷

10.2 I share the concerns raised by Meridian regarding the non-complying status of Rule 13-23 for a number of reasons. Firstly, I am aware of River Environment Classification System (REC) developed by NIWA and used by Council to develop

²⁶ Refer Page 78, Section 42A, Planning Evidence and Recommendations Report, dated August 2009.

²⁷ Refer Page 246 of Section 42A Report Planning Evidence and Recommendations Report, dated August 2009.

the Water Management Zones including the Natural State and Sites of Significance – Aquatic Zones.²⁸ I have reviewed the Section 42A Report by Ms M E Clark for the Council, on the use of the REC and the methodology used to define the water bodies identified for their Natural State Value and as Sites of Significance – Aquatic in the Plan.²⁹ In summary, the Natural State and Sites of Significance – Aquatic Zones were developed using the REC model whereby GIS layering was used to predict areas of significance from available databases, and then modified as necessary. It is my understanding there was no field based ground-truthing of the results.

10.3 In my view, the REC is a valid and recognised method for developing a water management framework and signalling where values of significance may occur in water bodies and when the effects of the activity within such area require assessment and determination by the Council by way of a resource consent. However I also consider the inherent limitations and level of uncertainty of the REC model in defining the Natural State and Sites of Significance – Aquatic Zones needs to be recognised in rules managing activities in these Zones. In that regard, I consider that the non complying activity status in Rule 13-23 is overly onerous given the inherent limitations and uncertainty in the use of the REC model to determine Natural State Water Management Zones and Sites of Significance – Aquatic.

10.4 I consider that analogies can be drawn between Rule 13-23 and Rule 12-9 (Non Complying Activity Status for Activities with-in rare and threatened habitats including wetlands) in the Plan. Rule 12-9 (as notified) requires land disturbance and vegetation clearance activities within “*rare, threatened and at-risk habitats.*” to be assessed as non-complying. As raised in my Supplementary Evidence on Chapters 7 and 12, Biodiversity (dated 1 December 2008) while I acknowledge the validity of method used by Council to identify (in that case), rare, threatened and at-risk habitats in the Plan, I also noted that the method used in this case, was a predictive model that used satellite imagery data to predict rare, threatened and at-risk habitats, with no field based ground-truthing of the results. Again I considered that the level of uncertainty inherent in the method used to identify these rare, threatened and at-risk habitats needed to be reflected in the rules. Therefore I recommended that the activity status of Rule 12-9 (“Activities with-in rare and threatened habitats including wetlands), be changed to a discretionary. I note the Provisional Determination by the Hearings Panel on Chapters 7 and 12³⁰, appears to agree with this recommendation, whereby the Panel is recommending that in new Rule 12-6 - Activities within rare

²⁸ Refer Page 13 of Section 42A Report by Ms M E Clark, dated August 2009.

²⁹ Refer Pages 49 to 51 of Section 42A Report by Ms M E Clark, dated August 2009.

³⁰ Proposed One Plan, Provisional Determination of Biodiversity and Heritage Hearing Panel, dated 22 June 2009

habitats, threatened habitats and at-risk habitats to be assessed as discretionary activities (and not non complying in the Plan, as notified). I consider that a consistent determination should be made by the Hearings Panel in relation to Rule 13-23, whereby the activity status of this rule should also be changed from non complying to discretionary.

10.5 I also note that Rule 16-4 regulating “Structures and disturbances involving water bodies valued as Natural State, Sites of Significance – Aquatic, and Sites of Significance – Cultural” assesses these activities as discretionary activities. In short, the erection of structures and disturbances in water bodies valued as Natural State and Sites of Significance – Aquatic are assessed as discretionary activities, while any discharges into these same water bodies are assessed as non-complying in the Plan. Therefore, for reasons of consistency, I consider it appropriate to change the activity status of Rule 13-23 from non-complying to discretionary.

10.6 Further, I also consider requiring every discharges to Natural State and Sites of Significance – Aquatic Zones to be assessed as non-complying activities is overly onerous, recognising that in some cases there may be minor or temporary discharges including discharges of water into water, that do no result in significant adverse effects. I consider the adoption of the discretionary status in Rule 13-23 signals that in some circumstances discharges may be appropriate in water bodies with these values, however it will not undermine the overall aims of the Council regarding the protection of the values of the Natural State Water Management Zones and Sites of Significance – Aquatic and still allows potential adverse effects to be assessed as part of an assessment of any application for resource consent.

10.7 For these reasons, I support Meridian’s submission that the activities in Rule 13-23 be assessed as discretionary activities.

Recommended relief

10.8 That Rule 13-23 be amended to provide for discharges to Natural State Water Management, Sites of Significance – Aquatic and lakes and wetlands to be assessed as Discretionary Activities.

11.0 Objective 6-4, River and Lake Beds

11.1 Meridian's submission³¹ opposed in part Objective 6-4, and sought changes to the objective that more clearly defines the specific values the objective is to manage, for example ecological or natural character values. The reporting officer recommends rejecting Meridian's submission and instead proposes to expand the scope of Objective 6-4 as follows:

Objective 6-4: River and lake beds

All ~~significant~~ values of *the beds of rivers and lakes beds* are recognised and provided for, including enabling future use and development of the beds of rivers and lakes ~~beds~~, provided other values of the river[^] or lake[^] are not compromised.

11.2 As stated previously, I consider that an objective in a plan should be a clearly worded statement that articulates outcomes to be achieved or directions to be taken in relation to a particular resource management issue.

11.3 In my opinion, Objective 6-4 as now proposed by the reporting officer, is extremely broad and is poorly drafted. I can not see how it would provide any direction or assistance to those assessing applications or making determinations under the plan in relation to activities that may affect the values of the beds of lakes and rivers.

Recommended relief

11.4 For the reasons outlined above, I agree with Meridian that Objective 6-4 should be significantly redrafted to explicitly state the values the objective is seeking to manage, including the values associated with the use and development of the of the beds of lakes and rivers. Further the objective should also provide some direction on how these values are to be managed.

12.0 Policy 6-27, General Management of River and Lake Beds

12.1 Meridian also raised concerns with parts of Policy 6-27, in particular clauses (f) and (g). These policy provisions require activities in, on, under or over the beds of rivers and lakes to be generally managed in a manner which: "*(f) provides for the safe passage of fish both upstream and downstream.*" and "*(g) ensures that the existing nature and extent of navigation of the water body are not obstructed.*"

12.2 With respect to clause (f) Meridian specifically sought the clause (f) should only apply where the fish passage presently exists in that stretch of the river. Further that

³¹ Refer Meridian Submission No.363/37.

fish passes including in the form of ‘trap and transfer’ should also be explicitly recognised in this policy as methods of providing for the safe of fish. The reporting officer states “*I do not consider it necessary to refer to fish passes as the wording in clause (f) states provides for safe passage which can include fish passes.* In my opinion, policies should be clear and unambiguous statements setting out the courses of action to be followed to give effect to the Plan. In that respect, I agree with Meridian that Policy 6-27 (f) should be amended to refer clearly and explicitly refer to the use of fish passes including in the form of ‘trap and transfer’ recognised methods of providing for the safe of fish.

- 12.3** I also have concerns with the Policy 6-27(g). This policy imposes a very high test of requiring the existing navigation of a water body is “*not obstructed*” I agree with Meridian that clause (g) could be deleted, and that any effects on navigation would be considered when assessing the overall effect of an activity requiring resource consent under Section 13 of the RMA.

Recommended relief

- 12.4** It is recommended at this time, that Policy 6-27 be amended as follows:

Policy 6-27: General management of *river*[^] and *lake*[^] beds[^]

Activities in, on, under or over the *beds*[^] of *river*[^] and *lakes*[^] shall generally be managed in a manner which:

- (a) recognises and provides for the values identified in Schedule D ~~Ba~~ for the ~~W~~*water Management Ssub-zone(s)*^{*1} in which the activity takes place, in the manner described in Policies 6-28, 6-29 and 6-30;
- (b) avoids or mitigates the risk of flood hazards arising from any significant reduction in ability of a *river*[^] to convey flood flows, or significant impedance to the passage of floating debris
- (c) avoids or mitigates any significant adverse *effects*[^] on the stability and function of existing *structures*[^] including flood and erosion control *structures*[^]
- (d) avoids any significant reduction in the habitat diversity, including the morphological diversity, of the *water body*[^] and its bed[^]
- (e) manages *effects*[^] on natural character and public access in accordance with the relevant policies in Chapter 7
- (f) provides for the safe passage of fish both upstream and downstream where fish passage presently exists and includes use of fish passages.
- ~~(g) ensures that the existing nature and extent of navigation of the *water body*[^] are not obstructed~~
- (h) ensures that access required for the *maintenance*^{*}, *upgrade*^{*} and operation of essential works and services *infrastructure* is not obstructed.

13.0 Policy 6-31, Essential and Beneficial Activities In, On Under or Over the Beds of Rivers and Lakes

13.1 Meridian opposed in part Policy 6-31³² and sought that the policy expressly list “*the use and maintenance of structures associated with hydro electricity generation facilities.*” as “*essential (activities) or (activities) that result in an environmental benefit.*”, in, on under or over the beds of rivers and lakes whereby the policy directs that these activities shall generally be allowed.

13.2 The reporting officer recommends rejecting this submission. Further the reporting officer states “... *as a consequence of considering the intent of the Policy, consider(s) the wording could be clearer if “essential” activities were replaced with the term “existing” activities*³³.” From my review of the relevant Section 42A report and the summary of submissions and further submissions lodged, I can not identify any submission that has sought in their relief that the word “*essential*” be replaced with the word “*existing*”. I consider that this change proposed by the reporting officer is a significant change in the policy direction of Policy 6-31 and in my opinion is not a minor or consequential amendment as intimated in the Section 42A report. Accordingly I do not support this significant change to Policy 6-31 as proposed by the reporting officer.

13.3 I do however agree with the statement by the reporting officer that “*there is potential for the Policy to be misinterpreted*” and that Policy 6-31 is unclear. For example what activities are considered to be “*essential*” under in this policy ?.

13.4 I support the relief sought by Meridian which seeks the policy more clearly articulate the activities in, on, under or over the beds of lakes and rivers that are considered to be “*essential or that result in an environmental benefit*” and shall generally be allowed by virtue of this policy. Further for the reasons already outlined above, I consider that hydro-electricity generation facilities should be included amongst the list of essential and environmentally beneficial activities identified in Policy 6-31.

Recommended relief

13.5 For the reasons outlined above, I consider that Policy 6-31 should be redrafted to make it clearer as to what activities are considered to be essential or environmentally beneficial in the policy. Further that the list of such activities in Policy 6-31, include

³² Refer Meridian Submission 363/98

³³ Refer Page 152, Section 42A, Planning Evidence and Recommendations Report, dated August 2009.

the use and maintenance of structures associated with hydro-electricity generation facilities.

14.0 Conclusion

14.1 In conclusion, I wish to acknowledge the significant amount of work undertaken by the Council in the preparation of the Section 42A reports dealing with water management in the region. However despite all this work, I consider there are still some significant changes that need to be made to the provisions, particularly in Chapter 6, and the subsequent Chapters 13, 15 and 16, in order to appropriately recognise and provide for the management of existing and potential hydro-electricity generation in the water management framework of the Plan.



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19 October 2009