

BEFORE THE ENVIRONMENT COURT

IN THE MATTER OF appeals under clause 14 of the first schedule to
the Resource Management Act 1991

AND

IN THE MATTER OF One Plan for Horizons Manawatu-Wanganui
region.

BETWEEN Meridian Energy Limited
ENV 2010 WLG 000149

AND Mighty River Power Ltd
ENV-2010-WLG-000147

AND TrustPower Ltd
ENV-2010-WLG-000145

AND Genesis Power Ltd
Env-2010-WLG-000159

APPELLANTS

AND Manawatu-Wanganui Regional Council
RESPONDENT

**STATEMENT OF REBUTTAL EVIDENCE ON OUTSTANDING NATURAL FEATURES AND
LANDSCAPES**

**STATEMENT OF
Irene Elizabeth Clarke**

**FOR
Meridian Energy Limited**

Dated 13 March 2012

INTRODUCTION

1. My full name is Irene Elizabeth Clarke.
2. I make this statement of rebuttal evidence further to my evidence in chief (EIC) dated 17 February 2012.
3. I have the qualifications and experience set out at paragraphs 1-3 of my statement of EIC, dated 17 February 2012.
4. I repeat the confirmation given in my EIC that I have read, and agree to comply with, the Code of Conduct for Expert Witnesses in the Environment Court Practice Notes.

SCOPE OF EVIDENCE

5. This rebuttal evidence is in respect of planning matters related to:
 - Policy 7.7 of Chapter 7, with a focus on clause (aa) of Policy 7.7; and
 - Schedule F of Chapter 7 as it relates to Policy 7.7.
6. This statement responds to the evidence in chief of:
 - Robert John Schofield on behalf of Trustpower Limited;
 - Richard John Matthews on behalf of Genesis Power Limited; and
 - Richard Zane Peterson on behalf of Mighty River Power Limited.
7. I have read all of the statements of evidence provided by witnesses in relation to the landscape policies (and associated schedules). Although this statement of rebuttal evidence directly responds to the three statements of planning evidence noted in paragraph 6 above, where relevant, it also responds to evidence in chief of landscape architects which the three planners have relied on.
8. Since preparation of evidence in chief, all planning experts have attended one caucusing session on 28 February 2012.
9. The fact that this rebuttal statement does not respond to every matter raised in the evidence of planning witnesses should not be taken as acceptance of the matters raised. Rather, I rely on my EIC and this rebuttal statement to set out my opinion on what I consider to be the key planning matters for this hearing.

SUMMARY OF KEY POINTS

10. This rebuttal evidence focuses on the following matters:
 - a. Generic vs specific policies:

I confirm the difficulty described in other party's EIC with the specific outcome sought by Policy 7.7 compared to the more generic set of policies in Chapter 3.

b. Upgrades vs new development:

I acknowledge that there may be different considerations in relation to an upgrade or repowering, however this does not lead me to the conclusion that Policy 7.7 (as drafted) is appropriate for new development.

c. Schedule F:

It would assist for Policy 7.7 to clarify that the "characteristics and values" referred to in Policy 7.7 are those "characteristics and values" listed in Schedule F.

d. Appropriateness of Policy 7.7

I do not find justification to retain Policy 7.7 as drafted in the decisions version. It remains my opinion that Policy 7.7 as drafted does not appropriately achieve Objective 7.2. I consider that my recommended wording in my EIC is an appropriate response to address the key matters addressed in both my EIC and this rebuttal evidence. Refer attachment 1.

GENERIC VS SPECIFIC POLICIES

11. I concur with Robert Schofield's EIC where he refers (para 2.29) to the relevance of the decision of the Board of Inquiry of Transmission Gully Plan Change where it was found that a proposal that offends an objective or policy directed at a specific outcome may be found to be contrary to the objectives and policies of a plan overall, notwithstanding other more generic policies.
12. I concur with Mr Schofield's EIC (para 2.62-2.65 and 2.78) where he finds it may be difficult for decision-makers implementing the One Plan to recognise the enabling requirement of Policy 3.4 given the absolute nature of Policy 7.7(aa). While the assessment of objectives and policies will depend on the individual case, there is uncertainty created by a policy framework seeking very specific outcomes. If it is not the intention that Policy 7.7 override other parts of the plan (and I understand from the EIC of the Council that this is not the intention), then the Policy should be reworded now to provide clarity and to prevent a potential issue in its future implementation.
13. For the same reasons, I concur with the concern stated by Richard Matthews in his EIC (para 4.10) about the more specific direction of Policy 7.7 having precedence over more generic policies such as Policy 3.4. While I continue to support the revised wording suggested for Policy 7.7 in my EIC, I also support the wording suggested at para 4.13 of Mr Matthews EIC as an appropriate alternative wording for the Policy.

UPGRADE VS NEW DEVELOPMENT

14. I acknowledge the specific issues raised in the EIC of Robert Schofield on behalf of Trustpower about upgrades/repowering and cumulative effects.
15. I note that the related EIC of Frank Boffa for Trustpower is focused on upgrades and their effects. While he has accepted that Policy 7.7(aa) may be appropriate “at face value” for additional wind farms or the expansion of existing wind farms, he has not explicitly considered the potential problems with Policy 7.7 from a landscape architect’s perspective for new development proposals.
16. While I agree that there may be particular issues arising in respect of upgrades, and upgrading may need to be specifically addressed in the policies, I do not consider this leads to the conclusion that Policy 7.7 is appropriate for new development.

SCHEDULE F

17. I concur with the EIC of Richard Peterson (para 8) that any reference in Policy 7.7 to “characteristics and values” would benefit from clarity that those “characteristics and values” are those listed in Schedule F. Clarity in the guidance provided in Schedule F is important for its implementation into spatially defined ONFL in district plans.

APPROPRIATENESS OF POLICY 7.7

18. I note that in his EIC, Richard Peterson has changed his position on Policy 7.7. The reasons given in paragraph 7 of his evidence in chief do not, in my opinion, lead to the conclusion that Policy 7.7 is appropriate. I respond to the matters he outlines in paragraph 7 as follows:
 - (a) I concur that cumulative adverse effects on the region’s landscape values is a relevant resource management issue to be addressed in the region. However, in my opinion Policy 7.7 as drafted is not the appropriate method to provide for this issue to be addressed.
 - (b) I concur that a focus on “significant adverse cumulative effects” is more appropriate than the alternative of “any significant cumulative effects”. I refer to my EIC (para 19-22) where I acknowledge that it is appropriate for significant adverse cumulative effects to be *considered*, but it will not be possible, nor appropriate for them to be *avoided* in all cases.
 - (c) There may be an argument that an effect can be mitigated to the extent that it is no longer significant. However this is not an obvious interpretation based on the words of the policy. My view is that policy wording should be clear and say what it intends

to mean. If mitigation of significant adverse effects is an acceptable means of achieving the stated objective, then the policy should more clearly provide for this.

- (d) I concur that the wording of the policy should be as clear and certain as possible. Alternative wordings of the policy referenced are no longer being considered (eg “adverse cumulative effects that significantly undermine”).
- (e) I concur that Objective 7.2 and Policy 7.7 do not reflect the full breadth of matters that should be taken into account when determining what is inappropriate subdivision, use and development. This objective and policy may be considered alongside other parts of the One Plan (eg Chapter 3). Mr Peterson states that how competing directions are ultimately resolved should be influenced by the particular context of the district or project and policy direction provided in other resource management instruments. I concur that this case by case assessment is relevant. However as stated in my EIC (para 19-22), I am concerned that the wording of Policy 7.7 predetermines this. As outlined above in relation to generic vs specific policies, I am also concerned that unless the wording of Policy 7.7 is revised, the scenario is not one of competing directions, but a more specific direction in Policy 7.7 potentially overriding more generic direction in Chapter 3.
- (f) I do not concur with Mr Peterson that Clare Barton’s conclusions in relation to the statutory tests (appendix F of her EIC) lead to the conclusion that Policy 7.7 and Policy 7.7A are the most appropriate method to achieve Objective 7.2.

- 19. It remains my opinion that Policy 7.7 as drafted does not achieve the stated intentions for the policy (intentions stated by Clare Barton at para 65 EIC and my response at para 56 of my EIC) and does not appropriately achieve Objective 7.2. Further it fails to give effect to the NPS in the round, and is inconsistent with Part 2 of the Act. I consider that my recommended wording in attachment 1 is an appropriate response to achieve the stated intentions of Policy 7.7.



Irene Clarke
Principal Planner, GHD Limited
13 March 2012

ATTACHMENT 1: Recommended Policy 7.7

Policy 7.7: Regionally Outstanding Natural Features and Landscapes

The natural features and landscapes listed in Schedule F Table F1 must be recognised as regionally outstanding and must be spatially defined in the review and development of district plans. All subdivision, use and development directly affecting these areas must be managed in a manner which:

- ~~(aa) avoids significant adverse cumulative effects on the characteristics and values of those outstanding natural features and landscapes, and~~
- (a) ~~Except as required under (aa),~~ avoids adverse effects, including significant adverse cumulative effects, as far as reasonably practicable and where avoidance is not reasonably practicable, remedies or mitigates adverse effects on the characteristics and values of those outstanding natural features and landscapes.