

IN THE ENVIRONMENT COURT OF NEW ZEALAND
I MUA I TE KŌTI TAIAO O AOTEAROA

ENV-2024-CHC-

IN THE MATTER of the Resource Management Act
1991 ("Act")

AND

IN THE MATTER of an appeal under clause 14 Schedule
1 of the Act concerning the **Proposed
Otago Regional Policy Statement
2021**

BETWEEN **MERIDIAN ENERGY LIMITED**

Appellant

AND

OTAGO REGIONAL COUNCIL

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST
DECISION BY OTAGO REGIONAL COUNCIL ON
PROPOSED OTAGO REGIONAL POLICY STATEMENT 2021
DATED 14 MAY 2024**

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**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST
DECISION BY OTAGO REGIONAL COUNCIL ON
PROPOSED OTAGO REGIONAL POLICY STATEMENT 2021**

To: The Registrar
Environment Court
Christchurch

- [1] I, **MERIDIAN ENERGY LIMITED** ("the Appellant" and the "Submitter"), appeal Otago Regional Council's Decision on the Proposed Otago Regional Policy Statement.
- [2] I submitted the Proposed Otago Regional Policy Statement.
- [3] I am not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
- [4] I am directly affected by an effect of the subject of the appeal that—
- (a) adversely affects the environment and
 - (b) does not relate to trade competition or the effects of trade competition.
- [5] I received notice of the final decision on the Proposed Otago Regional Policy Statement by the Otago Regional Council on 28 March 2024.
- [6] A Panel made recommendations (the Panel's Recommendations) in a report dated March 2024 and the Decision of the Otago Regional Council dated 27 March 2024 (collectively *the Decision*).
- [7] The parts of the Decision that I am appealing against are summarised in the table in **Attachment 1**. These areas of appeal relate to the adequacy of the Decision to address climate change and decarbonisation by appropriately recognising and providing for renewable electricity generation.

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- [8] The reasons for the appeal are:
- (a) Summarised in Column D Table 1 in **Attachment 1**; and
 - (b) Include that the Decision does not implement the NPS-REG and other national direction.
- [9] I seek the following relief:
- (a) The relief in **Attachment 1 Column C** and related amendments, where they flow from the relief requested as ancillary changes.
 - (b) Such other alternative or consequential relief is necessary or appropriate to address the substance of the matters addressed in the appeal, to achieve the outcomes in my submission and further submission, or to implement NPS REG.
- [10] This appeal will be emailed to all people who submitted on the Proposed Otago Regional Policy Statement and the Otago Regional Council.
- [11] I attach the following documents to this notice:
- (a) **Attachment 1** – Table of matters appealed, relief and reasons;
 - (b) **Attachment 2** – the Appellant’s submission on the Proposed Otago Regional Policy Statement dated 3 September 2021;
 - (c) **Attachment 3** – the Appellant’s further submission on the Proposed Otago Regional Policy Statement dated 11 November 2021; and
 - (d) **Attachment 4** – the Panel’s Recommendations and the Decision, which are the subject of this appeal.



Eleanor Taffs:

Senior Legal Counsel – RMA, Meridian Energy Limited

This document is filed by Eleanor Taffs, In-House Counsel for the Appellant. The Appellant's address for service is 287/293 Durham Street North, Christchurch Central.

Documents for service on the Appellant may be left at that address for service or may be:

- (a) Posted to Meridian Energy Limited 287 -293 Durham Street North Christchurch 8140: marked for the attention of Eleanor Taffs, Senior Legal Counsel - RMA; or
- (b) Sent by email to ellie.taffs@meridianenergy.co.nz and to andrew.feierabend@meridianenergy.co.nz, provided that any documents served on the Appellant by email should also be served on the Appellant's counsel, Mr John Maassen, at john@johnmaassen.com

Advice to recipients of a copy of the notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Act.

You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (see form 38).

The copy of this notice served on you does not have attached a copy of the Decision appealed or the submissions by Meridian Energy Limited. This documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Attachment 1: Table for Meridian Energy Ltd appeal on Proposed Otago Regional Policy Statement 2021 non-freshwater provisions

Column A	Column B	Column C	Column D
Relevant parts of Otago Regional Council’s decision	Description of relevant parts of Otago Regional Council’s decision	Relief sought by Appellant	Reasons for relief
SRMR-I11	<p>SRMR-I11 addresses the need to anticipate and minimise cumulative environmental impacts before they reach a tipping point beyond which systems can no longer properly function.</p> <p>The <i>Impact Snapshot</i> section of this <i>Significant resource management issue</i> refers to increasing pressures on the environment, typically as a result of human activities, having an adverse cumulative effect, including the potential for climate change to “<i>seriously challenge ecosystem adaptive capacity</i>”.</p>	<p>The Appellant seeks amendments to the <i>Impact snapshot</i> section of SRMR-I11 to directly refer to the relationship between human activities resulting in greenhouse gas emissions and climate change; and to highlight the importance of decarbonising activities to mitigate the scale of climate change and the associated ecological, economic and social disruption that can result.</p> <p>To achieve this, the Appellant seeks the following amendments to SRMR-I11, or amendments of similar effect:</p> <p><i>Impact snapshot</i></p> <p><i>Environmental</i></p> <p><i>While many ecosystems have a degree of resilience, increasing pressures on the environment, typically as a result of human activities (for example economic</i></p>	<p>Generally, the Appellant considers that the Council’s decisions on the Otago Regional Policy Statement adequately address the need to adapt to the effects of climate change. However, they do not go far enough to recognise and provide for the national significance of renewable electricity generation activities and their role in increasing electrification of the economy, reducing greenhouse gas emissions and reducing the need to adapt to climate change. This is reflected in the package of matters addressed in this table.</p> <p>Concerning the SRMR issues identified in the Otago Regional Policy Statement, the need to adapt to the effects of climate change is recognised, but a key gap is the need to mitigate the potential scale of climate change adaption by increasing electrification and decarbonising the</p>

		<p>development), can have an adverse cumulative effect.</p> <p><i><u>A key tipping point is the effects of climate change resulting from greenhouse emissions. Climate change also has the potential to seriously challenge ecosystem adaptive capacity and the location and functioning of business and communities. Key to reducing greenhouse gas emissions is increasing renewable electricity generation. Much work is being undertaken to address this challenge, but it is still possible that permanent changes may occur (tipping point).</u></i></p>	<p>economy, and the fundamental role of renewable electricity generation in achieving this.</p> <p>The Applicant considers that, in the first instance, this issue needs to be identified in the SRMR section of the policy statement, and then it needs to be addressed in the IM section and later parts of the policy statement.</p>
IM Objectives	<p>The four objectives in the IM section address the following matters:</p> <p>O1 – the long-term vision for the region;</p> <p>O2 – embracing ki uta ki tai;</p> <p>O3 – sustainable management; and</p> <p>O4 – understanding and responding to climate change.</p> <p>There is no objective addressing the integrated management of resources to provide for the national significance of renewable electricity generation activities and their role in displacing greenhouse gas</p>	<p>The Appellant seeks insertion of an objective in the IM section that provides direction to the integrated management of resources so that the national significance of renewable electricity generation activities is recognised and provided for.</p> <p>To achieve this, the Appellant seeks insertion of the following new objective, or words of similar effect:</p> <p><i><u>IM-O5 – Renewable electricity generation</u></i></p> <p><i><u>The management of natural and physical resources in Otago recognises and provides for</u></i></p>	<p>Integrated management of resources is critical to the generation of renewable electricity.</p> <p>The National Policy Statement for Renewable Electricity Generation 2011 (NPSREG) requires that decision-makers recognise and provide for the national significance of renewable electricity generation activities. To ensure that this requirement is given effect to, the Appellant considers that direction in the Otago Regional Policy Statement is needed in the objectives and policies of the IM section.</p>

	emissions through electrification of the economy..	<u><i>the national significance of renewable electricity generation activities.</i></u>	IM-O4 predominantly focuses on responding to climate change effects. While IM-O4(2) refers to “ <i>responses to climate change in the region (including climate change adaptation and climate change mitigation)... assist with achieving the national target for emissions reduction, including by having a highly renewable energy system</i> ”, this objective does not “ <i>recognise and provide for the national significance of renewable electricity generation activities?</i> ” (Policy A of the NPSREG), and therefore does not go as far as is needed to give effect to the NPSREG.
IM Policies	<p>The IM policies address the following matters:</p> <p>P1 – how the decision makers are to give effect to the IM objectives and policies;</p> <p>P3 - providing for mana whenua cultural values in achieving integrated management;</p> <p>P4 - managing ecosystem health;</p> <p>P5 - managing interconnected resources;</p> <p>P6 - managing uncertainties in information;</p> <p>P7 - managing cross boundary matters;</p>	<p>The Appellant seeks insertion of a new policy so that the national significance of renewable electricity generation, including the associated national, regional and local benefits are recognised by decision makers and provided for in the integrated management of resources in the region.</p> <p>To achieve this, the Appellant seeks insertion of the following new objective, or words of similar effect:</p> <p><u><i>IM-P15 – Renewable electricity generation</i></u></p> <p><u><i>Recognise and provide for the national significance of renewable electricity generation activities including their contribution to the displacement of greenhouse gas emissions.</i></u></p>	<p>IM-P8 is limited to addressing how the effects of climate change are to be recognised and provided for, and IM-P10 is limited to identifying and implementing climate change adaptation and climate change mitigation methods.</p> <p>While IM-P10(5) refers to methods for protecting Otago’s existing renewable electricity facilities and providing for the development of new renewable electricity generation and infrastructure, the Appellant considers this policy does not go as far as directing decision makers, when considering the need for integrated resource management, to recognise and provide for the national significance of renewable</p>

	<p>P8 - recognising and providing for the effects of climate change;</p> <p>P10 - climate change adaptation and mitigation methods;</p> <p>P12 - contravening limits for climate change mitigation and climate change adaptation</p> <p>P13 - managing cumulative effects;</p> <p>P14 - sustainably managing opportunities for future generations.</p>	<p><u>increasing electricity generation capacity and security of supply, and avoiding reliance on finite resources and imported fuels.</u></p>	<p>electricity generation. This contrasts with IM-P3 which requires that the relationship of Kāi Tahu with natural resources is recognised and provided for; and contrasts with IM-P8 which requires that the effects of climate change are recognised and provided for.</p> <p>To address these shortfalls and inconsistencies, the Appellant considers that a new IM Policy is needed to ensure that the NPSREG is given effect to.</p>
<p>Definition of “<i>the effects management hierarchy (in relation to indigenous biodiversity)</i>”</p> <p>EIT-EN-P6(1)</p> <p>EIT-INF-P13</p> <p>ECO-P4</p> <p>ECO-P6</p> <p>HCV-WT-P2</p>	<p>EIT-EN-P6(1) applies EIT-INF-P13 when managing adverse effects of REG activities.</p> <p>EIT-INF-P13 leads to the application of ECO-P4 and ECO-P6 where an REG activity is proposed in a significant natural area.</p> <p>ECO-P4 requires that the sequential steps in the “<i>the effects management hierarchy (in relation to indigenous biodiversity)</i>” be followed when making decisions on plans, applications for resource consent or notices of requirement for the development, operation, maintenance or upgrade of specified infrastructure (which includes REG activities) that provides significant</p>	<p>The Appellant seeks to amend EIT-EN-P6 to ensure that the effects management hierarchy that applies to renewable electricity generation activities includes provisions for avoiding, remedy and mitigating adverse effects and for offsetting and compensating for residual adverse effects. With this, the Appellant seeks an effects management hierarchy that enables consideration of the national, regional and local benefits of the activity relative to any residual effects that may remain.</p> <p>To achieve this, the Appellant seeks the following amendment to EIT-EN-P6, and/or other amendments to provisions that would apply to renewable electricity</p>	<p>In combination, the impact of EIT-EN-P6, EIT-INF-P13, ECO-P4, ECO-P6, HCV-WT-P2 and the definition of “<i>the effects management hierarchy (in relation to indigenous biodiversity)</i>” leads to a range of different effects management hierarchies applying to renewable electricity generation activities, each of which do not give effect to the NPSREG. This is because some of these provisions exclude offsetting and compensation as a means to manage residual adverse effects, and some of these provisions effectively prevent consideration of whether the benefits of the renewable electricity generation activity outweigh the residual adverse effects.</p>

	<p>national or regional public benefit that has a functional need or operational need to locate within the significant natural area or where they may adversely affect indigenous species or ecosystems that are taoka, and there are no practicable alternative locations.</p> <p>The definition of “<i>effects management hierarchy (in relation to indigenous biodiversity)</i>” provides sequential steps that at their end requires that activities must be avoided if the residual adverse effects are significant.</p> <p>Amongst other matters, ECO-P6 requires that outside the coastal environment and excluding areas protected under ECO-P3, adverse effects on indigenous biodiversity resulting from renewable electricity generation activities must be avoided, remedied or mitigated to the extent practicable.</p> <p>EIT-INF-P13 also leads to the application of HCV-WT-P2 where an REG activity is proposed “<i>in relation to wāhi tūpuna</i>”. HCV-WT-P2 requires that significant effects on cultural values of identified wāhi tūpuna are avoided, and where the effects are not significant, they are avoided as a first priority and where the effects cannot be</p>	<p>generation activities and have the same effect.</p> <p><i>EIT-EN-P6 – Managing <u>adverse</u> effects</i></p> <p><u><i>Despite any other provisions within this regional policy statement, except where they address the coastal environment, manage manage the adverse effects of renewable electricity generation activities by:</i></u></p> <p>(1) <u><i>applying EIT-INF-P13, the following effects management hierarchy:</i></u></p> <p><u><i>(a) Firstly, avoiding adverse effects where practicable,</i></u></p> <p><u><i>(b) Where adverse effects cannot be practicably avoided, they are remedied or mitigated to the extent practicable,</i></u></p> <p><u><i>(c) Where significant residual adverse effects cannot be practicably remedied or mitigated regard shall be had to offsetting measures or environmental compensation, and</i></u></p> <p>(2) <i>having particular regard to:</i></p> <p><i>(a) the functional need to locate renewable electricity generation activities where resources are available,</i></p>	<p>The Appellant seeks that the management of potential adverse effects resulting from renewable electricity generation activities gives effect to Policy C2 of the NPSREG and gives effect to the exception provided in clause 1.3(3) of the National Policy Statement for Indigenous Biodiversity 2023 (NPSIB).</p> <p>Policy C2 of the NPSREG states that:</p> <p><i>“When considering any residual environmental effects of renewable electricity generation activities that cannot be avoided, remedied or mitigated, decision-makers shall have regard to offsetting measures or environmental compensation including measures or compensation which benefit the local environment and community affected.”</i></p> <p>Clause 1.3(3) of the NPSIB states that:</p> <p><i>“Nothing in this National Policy Statement applies to the development, operation, maintenance or upgrade of renewable electricity generation assets and activities and electricity transmission network assets and activities. For the avoidance of doubt, renewable electricity generation assets and activities, and electricity transmission network assets and activities, are not “specified infrastructure” for the purposes of this National Policy Statement.”</i></p>
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	<p>avoided, they are remedied or mitigated “in a manner that maintains the values of the wāhi tūpuna”.</p>	<p>(b) the operational need to locate where it is possible to connect to the National Grid or electricity sub-transmission infrastructure, and</p> <p>(3) having regard to the extent and magnitude of adverse effects on the environment and the degree to which unavoidable adverse effects can be remedied or mitigated, or significant residual adverse effects are offset or compensated for; and</p> <p>(4) requiring consideration of alternative sites, methods and designs, and offsetting or compensation measures (in accordance with any specific requirements for their use in this RPS), where adverse effects are potentially significant or irreversible.</p> <p>The Appellant also seeks that consequential amendments be made to reflect the changes sought to EIT-EN-P6, for example deleting ECO-P6(3).</p>	
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**Attachment 2: Meridian's submission on the Proposed Otago
Regional Policy Statement dated 3 September 2021**

**Attachment 3: Meridian's further submission on the Proposed
Otago Regional Policy Statement dated 11 November 2021**

**Attachment 4 – the Panel’s Recommendations and the Decision
on the Proposed Otago Regional Policy Statement – Non
Freshwater Planning Instrument Part**