Under the Resource Management Act 1991

In the hearing of submissions and further submissions by Meridian Energy Limited on the Proposed Waitaki District Plan – Exemptions Version

Meridian Energy Limited

Submitter

Waitaki District Council

Territorial Authority

Legal Submissions on behalf of Meridian Energy Limited

17 September 2026

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Introduction

1. I appear as counsel for Meridian Energy Limited (**Meridian**) in relation to the Proposed Waitaki District Plan – Exemption Version (**pWDP-Ex**).

2. Meridian's interests arise principally from the operation and ongoing management of the Waitaki Power Scheme **(WPS)**, a nationally significant renewable electricity generation asset that is located entirely within the Canterbury Region and extends across the Waitaki and Mackenzie territorial authority boundaries.

3. Meridian relies on the evidence of:

    a. **Sue Ruston** from PPM Consulting Limited who provides planning evidence setting out Meridian's position on the s 42A authors' recommendations on provisions Meridian submitted on, with a particular focus on giving effect to the NPS-REG as amended in 2025 in the context of the WPS and Renewable Electricity Generation (**REG**) more generally; and

    b. **Andrew Feierabend**, Policy and Planning Manager at Meridian, who provides evidence on the WPS, its history, operation, strategic importance, and the practical implications of the pWDP-Ex for the ongoing operation, maintenance, upgrading and development of the Scheme, and the need for enabling provisions for REG more generally.

4. Together, the evidence of Ms Ruston and Mr Feierabend demonstrates the need for the district planning framework for REG to be a coherent and workable one that also recognises the operational requirements and enduring significance of the WPS.

5. These submissions address the following matters that are relevant to the Panel's consideration of the Energy Chapter:

    a. the uncertainty created by the exemptions process and the need for a coherent planning framework;

    b. the scope of the Panel's jurisdiction;

    c. a response to particular matters raised in legal submissions and evidence;

d. the obligation (and opportunity) to give effect to the amended NPS-REG so far as scope permits; and

e. the appropriate planning context for provisions that relate specifically to the WPS.

The Waitaki Power Scheme

6. The Waitaki Power Scheme consists of a linked hydroelectricity generation chain and contributes, on average, approximately 18% (and, at times, up to 30%) of New Zealand's electricity supply.

7. As recognised recently by the Environment Court:[1]

> There is no doubt that the WPS is both nationally and regionally significant. We accept, as counsel for Meridian expressed it, that "the large scale and flexibility of the WPS means it will continue to be a cornerstone of New Zealand's electricity system for the foreseeable future". This is emphasised in the WAP and the Land and Water Plan and underscored by the permitted activity (structures) and controlled activity (water management) status those documents afford it.
>
> These positive economic and social effects are of such scale and significance that they must, inevitably, weigh heavily in any assessment of effects.

8. The significance and complexity of the Waitaki Power Scheme is canvassed further in Mr Feierabend's evidence. Suffice it to say, there is no readily available alternative generation in New Zealand that could substitute for the scale, reliability and system contribution of the Waitaki Power Scheme.

Meridian's Position on the pWDP-Ex

9. The ongoing operation of the WPS depends on the ability to operate, maintain, upgrade and develop assets and associated infrastructure. These activities are necessary to ensure that the Scheme can continue to operate safely, efficiently and reliably, and in Meridian's submission should be recognised in the planning framework as anticipated and integral components of the Scheme.

10. The key planning outcome sought by Meridian is therefore a balanced but enabling framework that recognises the WPS's importance, manages adverse effects appropriately, and avoids

[1] *Meridian Energy Limited v Canterbury Regional Council* [2026] NZEnvC 140

reverse sensitivity effects that could compromise the WPS's contribution to New Zealand's electricity supply.

11. A clear, enabling and protective framework is also sought for renewable electricity generation activities more generally.

12. Meridian's submissions on the notified version of the proposed plan (pre-exemptions version) sought a planning framework that clearly distinguishes between the WPS and other renewable electricity generation activities, reflects the national significance of the Scheme, appropriately manages reverse sensitivity effects, and avoids unnecessary duplication or conflict with other provisions.

13. In relation to the pWDP-Ex, Meridian's position has been that the Energy Chapter should continue to provide an enabling framework for renewable electricity generation while ensuring that the strategic objectives relating to the WPS remain effective following the removal or amendment of other plan provisions as part of the plan-stop process.

14. Meridian has also sought greater clarity regarding the relationship between the Energy Chapter and the remainder of the District Plan, particularly in relation to the provisions that apply to renewable electricity generation activities and the WPS.

Concerns relating to the Exemptions Process

15. I agree with counsel for the Waitaki District Council (the **Council**) that once the Proposed Plan is beyond challenge and becomes operative, it will replace the overtaken parts of the currently operative District Plan.[2]

16. However, in Meridian's submission, there is a high degree of uncertainty for submitters in understanding which parts of the currently operative District Plan will persist, and which will be superseded. This issue has been raised by multiple submitters taking part in this process, and has been acknowledged by Ms McEwan in her Summary Statement on the s 42A Report: General Submission, where she notes that the withdrawal of significant parts of the Proposed Plan:

[2] [8] of WDC legal submissions for Hearing Stream 1; A similar statement is included in the legal submissions on behalf of Forest and Bird, with which we also agree: [19]

> In one way…has reduced the complexity of the plan by reducing the number of provisions. However, it has created perhaps a bigger issue for plan users in that they will need to navigate the remaining parts of the Operative District Plan (ODP) alongside the PDP.

17. The proposed provisions were not designed to integrate with the operative framework. As a result, it is not clear how the operative and proposed provisions are intended to interact, whether a proposed provision is intended to replace or supplement an operative provision, or how the combined framework is expected to function once the plan becomes operative.

18. Meridian acknowledges that the uncertainty is, at least in part, a product of an unusual process, and that the Proposed District Plan was prepared and notified on the assumption that it would function as a standalone integrated planning instrument, with its own architecture, chapter structure, definitions and cross-referencing.

19. Meridian accepts that there is a degree of "chicken and egg" in this issue, given that the final form of the Plan cannot be known until the hearing process has concluded and the Panel's recommendations have been made. Nevertheless, submitters are being asked to assess the merits of the proposed provisions at this stage.

20. In Meridian's view, principles of fair process and good planning practice favour providing as much clarity as reasonably practicable regarding the intended relationship between the operative and proposed provisions, so that submitters can properly understand and assess the framework ultimately proposed for the District.

21. The uncertainty at play reinforces the need for the Energy Chapter, and particularly the WPS-specific provisions, to be drafted as clearly and self-sufficiently as possible so that plan users can understand how the operative and proposed frameworks apply to renewable electricity generation activities.

Scope and jurisdiction

22. The distinction between the scope of a full replacement plan and a plan change under the RMA is significant for determining the extent of submissions and changes that may be made. Meridian agrees generally with the submissions filed for the Council at Hearing 1 on the topic of scope, but submits that this process has an unusual procedural history that must be kept in view.

23. The proposed plan was notified as a full replacement district plan. Submissions on the provisions that now remain before the Panel were therefore made in that broader replacement-plan context, rather than in response to a narrow, discrete plan change. In Meridian's submission, that context is relevant when assessing the scope of relief that may fairly and reasonably arise from submissions on the still-live provisions, including the Energy Chapter.

24. That does not mean the Panel has jurisdiction to revisit withdrawn provisions, or to introduce new policy direction for topics that are no longer being progressed. The Panel's jurisdiction remains confined by the Ministerial Exemption, the provisions that have not been withdrawn, and the ordinary requirements of scope and natural justice. The point is narrower: within the exempted provisions, and where fair notice has been given by submissions, the Panel should not approach the available relief as if it were dealing with a tightly confined plan change.

25. Meridian also agrees in part with arguments presented by counsel for the Royal Forest and Bird Protection Society of New Zealand (**Forest & Bird**) regarding the gaps in the strategic direction chapter, and would support in principle an amendment to the introductory text which makes it clear that not all key matters have been addressed in the strategic objectives. We agree that these can be characterised as consequential, and within scope of the current proceeding.

26. Meridian does not agree that there is jurisdiction to add new strategic objectives on indigenous biodiversity, as sought by Forest & Bird in its submissions. While Meridian accepts that consequential amendments may be made to ensure the Strategic Direction chapter accurately reflects the limited scope of the pWDP-Ex, there is a material distinction between clarifying that the strategic objectives are no longer comprehensive, and inserting substantive new strategic direction for indigenous biodiversity. The former is consequential on the withdrawal of plan provisions; the latter would advance a fresh policy outcome on a topic whose supporting provisions have not been progressed through this exemptions process. The Ministerial Exemption included the Strategic Direction chapter, but specified that the relevant parts of the PDP to which it applied were "Objectives to support provisions being progressed". In Meridian's view, new objectives to support now-withdrawn provisions are not part of the exemption, and would need to be included via a later, separate process.

27. Meridian supports the position set out in Mr Garbett's legal submissions and elaborated on at Hearing Stream One on this matter.

28. Forest & Bird's position conflates the merits of including additional strategic direction with the question of jurisdiction. The Panel's powers in this process are confined to the exempted provisions and the submissions validly relating to those provisions. In Meridian's view, a new or amended strategic objective on a matter that sits outside the ambit of the Ministerial Exemption would be beyond jurisdiction. Introducing such provisions would expand the limited exemption granted under the plan-stop regime and would raise natural justice concerns for submitters who have proceeded on the basis that non-exempt provisions are not within the scope of this hearing process. This risk is real, and expressed in this process in the Council's public notice of the exemptions and withdrawals under s 80Y:

> **Important note:** *Where plan provisions are withdrawn, there is no need to further submit on these.*

Response to submitter evidence

29. A particular issue of interest to Meridian was raised in the planning evidence filed on behalf of the Department of Conservation for Hearing Stream 2.[3] Mr Brass noted a concern around a perceived gap regarding s 6 matters being left in the wake of certain overlays being withdrawn, and his recommendation is to insert an additional matter for consideration in ENG-P4 and ENG-P6[4] that:

> *X. any adverse effects on values and environments provided for in section 6 of the RMA are managed in accordance with relevant national direction, regional policy statements and regional plans;...*

30. Meridian does not consider the proposed amendments necessary, and considers they could be problematic in practice.

31. The additional policy wording risks confusion without materially changing the assessment framework or environmental outcomes. If the framework recommended by Ms Ruston is applied, 'large-scale'[5] renewable electricity generation activities would be assessed through a fully discretionary activity pathway, meaning the decision-maker must in any event consider all relevant matters under the Act, including any effects on the s 6 values. Whether or not a

[3] Evidence of Murray Brass on behalf of the Director-General of Conservation / Tumuaki Ahurei – Submitter No: 194; Hearing Topic: Energy, Infrastructure, Stormwater, Transport, Earthworks, Designations, 14 September 2026
[4] Using the s 42A author's numbering
[5] Noting Ms Ruston has recommended that this term is not used, and that a catch-all rule is instead applied.

proposal locates within an area which might have been affected by a now-withdrawn overlay, s 6 matters remain capable of being fully considered through the resource consent process.

32. It is also important to recognise the extent of now-withdrawn overlays would presumably have been tested through the Schedule 1 process, if not for the plan stop. For instance, whether an area possesses the criteria for SNA identification under the relevant policy frameworks is complicated, and is a matter that is routinely subject to challenge by land owners, and competing assessments between ecologists.[6] There is risk in treating the extent of notified overlays as a settled or finally tested planning constraint.

33. Mr Brass's recommendation is stated to rely on Policy F of the amended NPS-REG. With respect, this mischaracterises the intent and effect of Policy F.

34. The policy does not require section 6 considerations to be replicated within the ENG chapter. Rather, Policy F expressly contemplates that REG will be enabled in all locations and environments and, where section 6 values are affected, that the policy will be read alongside other relevant national, regional and district planning provisions. Policy F(2) does not direct additional policy constraints where s 6 values are present; it instead treats their presence as a circumstance requiring integrated assessment. This is already implemented in the plan through the discretionary activity pathway and the operative plan provisions. In real terms where a section 6 issue is raised in a consenting context the operative plan provisions on such matters will be in play. However, Meridian agrees that the interplay between the currently operative and exemptions process provisions is not clear, and is a matter that would benefit from clarification.

35. Meridian acknowledges the concern Mr Brass expresses in relation to the standards which apply to REG activities.[7] In our view, this issue appears to have arisen because the section 42A report has effectively substituted the concept of "community-scale" renewable electricity generation from the amended NPS-REG for the notified plan's definition of "large-scale". Ms Ruston explains this in further detail in her evidence, and has made recommendations to correct this issue.

[6] For an example of this contest in a proposed plan context, see the recent decision in *Leblanc v Porirua City Council* [2025] NZEnvC 270 where an SNA on private land was successfully challenged. The Court found that the evidence did not establish, on the balance of probabilities, that the site made an important contribution to ecological networks such as connectivity and corridors for movement of indigenous fauna or provided significant buffering. The Court's overall finding was that the site did not meet any of criteria in (a) to (e) of Policy 23 of the RPS and as such did not qualify as requiring the protection of the SNA status under the PDP. The appeal was allowed, and SNA128 was deleted from the site.

[7] at paragraph 58 onwards

36. The difficulty is that 'community-scale' REG and larger REG activities are not interchangeable concepts under the amended NPS-REG. Community-scale REG describes a particular class of smaller-scale generation that may warrant a tailored enabling pathway. 'Large-scale' REG is not a term used in the NPS-REG, but would capture the balance of "grid-scale" REG activities which, because of their scale, infrastructure requirements and potential effects, may appropriately be subject to a more comprehensive consenting process. Applying community-scale thresholds to large-scale REG therefore risks distorting the NPS-REG framework and imposing controls that were not designed for that class of activity.

37. Again, if the recommended provisions in Ms Ruston's evidence are adopted, Meridian considers this issue would be resolved.

Obligation to give effect to the NPS-REG (as amended in December 2025)

38. The NPS-REG was amended in December 2025, meaning that the proposed plan provisions as notified do not give effect to the latest version of this national direction. Meridian's position is that the Panel should seek to give effect to the amended NPS-REG to the extent available within the scope of this process.[8]

39. The Supreme Court has told us that "give effect to" means 'to implement'.[9] As the Court of Appeal has more recently affirmed, this is a strong directive, creating a firm obligation on those subject to it.[10] The oft-cited Clevedon Cares decision usefully explains this obligation as follows:[11]

> the change in the test from "not inconsistent with" to "must give effect to" is significant. The former test ["not inconsistent with"] allowed a degree of neutrality. A plan change that did not offend the superior planning instrument could be acceptable. The current test ["give effect to"] requires a positive implementation of the superior instrument.

40. Given how many new and amended national policy statements have been introduced in recent years, the extent and nature of the obligation to give effect to these in an already-live process is one that decision-makers and courts have needed to consider on multiple

[8] This is consistent with the High Court's decision in *Horticulture NZ v Manawatu Wanganui Regional Council* [2013] NZHC 2492.
[9] *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 ["King Salmon"] at [77].
[10] *Muaūpoko Tribal Authority Inc v Minister for the Environment* [2023] NZCA 641 at [25], citing *Clevedon Cares Inc v Manukau City Council* [2010] NZEnvC 211 at [51]
[11] *Clevedon Cares Inc v Manukau City Council* [2010] NZEnvC 211 at [50]

occasions. It has been consistently recognised that there is a strong and immediate obligation on local authorities and decision-makers to give effect to new or amended National Policy Statements - including in planning processes that were initiated before the NPS came into force.[12]

41. The relevant statutory context is as follows:

    a. Under s 75(3)(a) of the RMA a district plan must give effect to any national policy statement;

    b. Section 74(1)(ea) of the RMA requires a territorial authority to prepare and change its district plan in accordance with a national policy statement;

    c. Section 55 of the RMA requires a local authority to amend its plans or proposed plans to give effect to any provision in an NPS, via a Schedule 1 process.[13] Such amendments need to be made "as soon as practicable", or within the time specified in the NPS (if any).

42. Clause 3.1(1) of the NPS-REG requires decision makers to give effect to the NPS-REG 'on and from the commencement date', being 13 May 2011. The 2011 version of the NPS-REG set a 24 month timeframe within which local authorities needed to give effect to the direction in their district plans or proposed plans. These provisions have been deleted from the 2025 version, with the explanatory note now advising:

> *In August 2025, the Government passed an amendment to the Act that introduced a requirement to stop most plan making under the Act, unless it was subject to an exemption. This 'plan stop' amendment suspends the requirement to review plans and policy statements and prevents notification of new plan or policy statement changes or variations until the end of 2027, when the new resource management system will be in effect.*
>
> *Due to the plan stop amendment, plans and policy statements will not be updated to give effect to this amendment (unless a relevant exemption applies).*
>
> *Emphasis added*

[12] See, for instance, the High Court's decision on the obligation to give effect to the NPS-UD in *Southern Cross Healthcare Ltd v Eden Epsom Residential Protection Society Inc* [2023] NZHC 948

[13] Except where the NPS itself directs that the amendments are required without using the Schedule 1 process.

43. Although this guidance does not have strict legal effect, it reflects an expectation that the amended NPS-REG will be given effect to in proposed plan processes which are on foot and subject to a ministerial exemption. That is, the plan stop regime does not displace the duty to give effect to the amended NPS-REG where an exempted plan process remains on foot and scope permits.

44. This duty remains subject to scope, as noted in legal submissions for the Council from Hearing 1. However, there is broad scope for the Panel to implement the amended NPS-REG in the Energy Chapter of the pWDP-Ex. The proposed plan as notified was intended to be a full replacement district plan. As such, the range and scope of submissions made on it were broad – in particular there was comprehensive challenge of the Energy provisions through submissions. Meridian's submission and further submission gave fair notice that significant changes to the notified version of the Chapter were being sought.

45. Although parts of the proposed plan have now been withdrawn as a result of the plan stop and exemptions processes, the comprehensive overhaul of 'Energy' related provisions is squarely before the Panel – there is no risk that this outcome would be considered to come out of 'left field'.

Consistency with the Mackenzie District Plan

46. Section 74(2)(c) of the RMA requires a decision maker to have regard to the extent to which a district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities. The WPS is an integrated system located across both the Mackenzie and Waitaki districts. In Meridian's submission, consistency with the Mackenzie District Plan approach to the WPS is a matter which should be given particular weight in this process, to reflect the integrated nature of the Scheme and given how recently that district's rolling plan review has taken place. Ms Ruston has made this a focus in forming her recommendations.

Regional planning framework

47. Section 75(3) of the RMA requires that a district plan gives effect to any operative regional policy statement. As the Waitaki District crosses the boundaries of both the Otago and Canterbury Regions, this requirement applies to the policy statements of both regions (being the Otago Regional Policy Statement 2021 (**Otago RPS**) and the Canterbury Regional Policy Statement (**Canterbury RPS**)).

48. However, where provisions relate to the WPS, it is the Canterbury RPS which provides the appropriate regional context. This is, of course, subject to the higher order requirement to give effect to the recently-amended NPS-REG, which neither of the relevant regional policy statements were drafted to give effect to.

49. While the WPS is located within both the Mackenzie and Waitaki districts, it is located entirely within the Canterbury Region. Meridian submits that where the Panel is considering the provisions which are specific to the WPS (e.g. Part B of the Energy Chapter), these should be framed and assessed by reference to the Canterbury RPS, where relevant, and should not seek to import or reconcile provisions from the Otago RPS.

50. Meridian acknowledges that a different position may arise in relation to Part A of the Energy Chapter, which relates more broadly to REG activities throughout the Waitaki District. Unlike the WPS-specific provisions, those provisions are intended to apply to a range of existing and future renewable electricity generation activities that may locate anywhere within the district. In that context, where there might be conflicting direction, the Panel's task is to reconcile these provisions as far as it can.

Conclusions

51. Meridian submits that the Panel should adopt the amendments recommended by Ms Ruston in her evidence.

52. Those amendments would provide a clearer, more coherent and more enabling framework for renewable electricity generation activities, and for the WPS in particular. They would also better give effect to the amended NPS-REG, recognise the Scheme's national significance and operational requirements, provide protection from reverse sensitivity effects, and ensure that WPS-specific provisions are consistent with the Mackenzie district.

Dated 17 September 2026



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