

**Before the Combined Freshwater Hearing Panel and the PISI Hearing
Panel Appointed by Wellington Regional Council
to Hear Submissions on Proposed Change 1 to the Regional Policy
Statement for the Wellington Region**

In the matter of: **the Resource Management Act 1991**

And: **Submissions and Further Submissions
Lodged on Proposed RPS Change 1 Plan
by Meridian Energy Limited**

**Statement of Evidence of Christine Anne Foster
Called by Meridian Energy Limited**

**HEARING STREAM 5
FRESHWATER & TE MANA O TE WAI**

2 November 2023

1. Introduction

- 1.1. My name is Christine Anne Foster. I am a Planning Consultant and sole director of CF Consulting Services Limited, based in Wellington. My qualifications and resource management planning experience are as detailed in my statement of evidence to Hearing Stream 2 dated 29 June 2023. The context for Meridian's submission and further submissions on Proposed RPS Change 1 (PC1) is also outlined in my 29 June 2023 statement and, in relation to the climate change topics, in my statement of evidence to Hearing Stream 3 dated 14 August 2023.
- 1.2. This statement of evidence is within my area of expertise as a resource management planner, except where I state that I rely on the evidence of others or evidence presented in the Council's section 42A report. I reaffirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses set out in the Environment Court 2023 Practice Note. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

2. Scope of Evidence

- 2.1 Meridian's interest in Hearing Stream 5 is limited to Policies 40 and 41 and, within those, relates to the detailed wording of the policies.
- 2.2 In preparing this statement of evidence, I have read and considered:
 - (a) Proposed Change 1 to the Regional Policy Statement for the Wellington Region;
 - (b) The Hearing Stream 5 s. 42A Hearing Report prepared by Kate Pascall dated 20 October 2023;
 - (c) The statement of evidence of Stuart Farrant dated 30 October 2023 (noting that this evidence does not address or relate to Meridian's submission points);
 - (d) Proposed Variation 1 to RPS Change 1 (noting that the submissions period closes on 13 November 2023);
 - (e) The legal submissions of DLA Piper dated 27 October 2023 (relating to Variation 1 to RPS Change 1);
 - (f) The submission points and further submission points listed in sections 3 and 4 of this statement of evidence;
 - (g) The section 32 report accompanying proposed RPS Change 1, dated August 2022.

3. Policy 40

References:	Meridian Submission Point: S100.019 Meridian Further Submission Points: <ul style="list-style-type: none">– FS26.057 (supporting PCC S30.064)– FS26.056 (opposing in part the combined Fuel Companies submission point S157.018) Section 42A Report Paragraphs 631, 645 and 686
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3.1 Meridian’s submission point S100.19 requested the following amendments to clause (h) of Policy 40:

When considering an application for a regional resource consent, particular regard shall be given to:

(a) ...

(h) ***protecting the values of rivers and lakes that have significant indigenous ecosystems and aquatic habitats with significant indigenous biodiversity values of rivers and lakes, including those listed in Table 16 of Appendix 1; ...***

...

(m) ~~*discouraging*~~ *restricting stock access to estuaries rivers, lakes and natural wetlands; and*

(n) ~~*discouraging*~~ *avoiding the removal or destruction of indigenous wetland plants in natural wetlands.*

3.2 Powerco [S134.015] (supported by Fulton Hogan [FS11.019] and Waka Kotahi [FS3.037]) and the combined Fuel Companies [S157.018] consider the requirement to enhance as well as protect the health and wellbeing of waterbodies and freshwater ecosystems in all situations is onerous and does not recognise regionally significant infrastructure. Meridian’s further submission point FS26.056 on the combined Fuel Companies’ submission point S157.018 requested that S157.018 be allowed to the extent consistent with Meridian’s own submission. Meridian’s concern mirrored the Fuel Companies’, that protection and enhancement should not be required in all situations, but should be where appropriate.

3.3 At paragraph 686, the reporting officer agrees with Meridian’s suggested amendments to clause (h) to include reference to ‘protecting the values of rivers and lakes’ and also to ensure the policy refers to ‘natural’ wetlands, in line with the NPS-FM. However, the officer hasn’t carried through all of the references to ‘natural’ wetland in Policy 40. The officer’s recommended amendments are (in red below, replicated from the consolidated recommended amendments in Appendix 1 to the s. 42A report):

Policy 40: ~~Maintaining~~ Protecting and enhancing the health and well-being of water bodies and freshwater ecosystems aquatic ecosystem health in water bodies – consideration

*When considering an application for a regional resource consent, ***the regional council must give effect to Te Mana o te Wai and in doing so must have*** particular regard ~~shall be given to:~~*

(a) ~~*requiring that*~~ ***managing*** water quality, flows and water levels and aquatic

- habitats of surface water bodies ~~are managed~~ in a way that ~~gives effect to Te Mana o Te Wai and~~ protects and enhances the health and well-being of waterbodies and the health and wellbeing of freshwater ecosystems ~~for the purpose of safeguarding aquatic ecosystem health;~~
- (b) ~~that, requiring managing as a minimum, freshwater quality in the coastal marine area is to be managed~~ in a way that protects and enhances the health and well-being of waterbodies and the health and wellbeing of marine ecosystems receiving environments.; ~~for the purpose of maintaining or enhancing aquatic ecosystem health; and~~
- (c) ~~managing water bodies and the water quality of coastal water for other purposes identified in regional plans.~~
- (c) providing for mana whenua / tangata whenua values, including mahinga kai;
- (ca) partnering with mana whenua/tangata whenua
- (d) ~~maintaining or enhancing the functioning of ecosystems in the water body;~~
- (e) maintaining or enhancing the ecological functions of riparian margins;
- (f) minimising the effect of ~~the proposals~~ such as gravel extraction, exploratory drilling, flood protection and works in the beds of lakes and rivers on groundwater recharge areas that are connected to surface water bodies;
- (g) maintaining or enhancing the amenity and recreational values of rivers and lakes, including those with significant values listed in Table 15 of Appendix 1;
- (h) protecting the values of rivers and lakes that have significant indigenous ecosystems and habitats with significant indigenous biodiversity values of rivers and lakes, including those listed as identified in Table 16 of Appendix 1;
- (i) maintaining natural flow regimes required to support aquatic ecosystem health;
- (j) maintaining or enhancing space for rivers to undertake their natural processes;
- (k) maintaining fish passage;
- (l) protecting and reinstating riparian habitat, in particular riparian habitat that is important for fish spawning;
- (m) ~~discouraging restricting stock access to estuaries rivers, lakes and wetlands; and~~
- (n) ~~discouraging~~ avoiding the removal or destruction of indigenous wetland plants in wetlands.
- (o) avoiding the loss of river extent or values, to the extent practicable
- (p) ensuring there is no further loss of extent of natural inland wetlands, and their values are protected.
- (q) protecting the habitat of indigenous freshwater species
- (r) protecting the habitat of trout and salmon, insofar as this is consistent with clause (q).

3.4 I support the officer's recommended proposed amendments to clause (h).

3.5 I can advise that the absence of reference to 'natural' wetlands in clause (m) (stock exclusion) is of no consequence to Meridian (livestock management not being a core business activity of Meridian).

3.6 In proposed additional clause (p), the officer proposes the wording 'natural inland wetland', consistent with Part 3.22 of the NPS-FM and Meridian's requested relief and I endorse the recommended wording.

3.7 The wording of clause (n) is potentially problematic. Clause (n) requires avoidance of the removal or destruction of any indigenous wetland plants in all wetlands (including constructed wetlands). Following the lead of Parts 3.21 and 3.22 of the NPS-FM, the concern of the RPS should, in my opinion, be with the values of natural wetlands (including indigenous biodiversity values in natural wetlands) and not with constructed or artificial wetlands.

3.8 The other feature of clause (n) is that it is an 'avoid' policy that applies to all indigenous wetland plants regardless of their significance or the significance of the effect (including minor effects) and without consideration of the effects management hierarchy set out in Part 3.21 of the NPS-FM. The 3.21 effects management hierarchy applies to natural inland wetlands (as defined in part 3.21 of the NPS-FM) and requires avoidance of adverse effects where practicable, minimisation where not practicable, and contemplates that there may be residual minor effects that are not avoided or offset or compensated for:

'effects management hierarchy, in relation to natural inland wetlands and rivers, means an approach to managing the adverse effects of an activity on the extent or values of a wetland or river (including cumulative effects and loss of potential value) that requires that:

- (a) adverse effects are avoided where practicable; then*
- (b) where adverse effects cannot be avoided, they are minimised where practicable; then*
- (c) where adverse effects cannot be minimised, they are remedied where practicable; then*
- (d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible; then*
- (e) if aquatic offsetting of more than minor residual adverse effects is not possible, aquatic compensation is provided; then*
- (f) if aquatic compensation is not appropriate, the activity itself is avoided.'*

3.9 My point is that, even in relation to natural inland wetlands, the NPS-FM does not require avoidance of all (minor) effects and does not extend to protecting indigenous biodiversity in constructed wetlands. My view is that the avoidance approach in clause (n) should be made subject to or consistent with the NPS-FM effects management hierarchy. My reading of the NPS-Indigenous Biodiversity is that it also does not require the avoidance of all adverse effects on all indigenous biodiversity in all circumstances, or without regard for the significance of the biodiversity and the potential effects.

3.10 As currently worded, the policy is an absolute avoidance policy in all circumstances. I do not support that approach (from a s. 32 AA effectiveness and efficiency perspective and guided by the two relevant NPSs) particularly in relation to non-natural wetlands. I note that, at paragraph 702, the reporting officer recommends including the NPS-FM definition of 'effects management hierarchy' in the RPS. Accordingly, reference to it in clause (n) would be workable, for example, as follows:

Policy 40: ~~Maintaining~~ Protecting and enhancing the health and well-being of water bodies and freshwater ecosystems ~~aquatic ecosystem health in water bodies~~ – consideration

When considering an application for a regional resource consent, the regional council must give effect to Te Mana o te Wai and in doing so must have particular regard ~~shall be given to:~~

.....

- (n) ~~discouraging~~ avoiding the removal or destruction of indigenous wetland plants in natural wetlands, in accordance with the effects management hierarchy;
- (o) avoiding the loss of river extent or values, to the extent practicable
- (p)

3.11 I note that this approach would be consistent with the approach adopted in clause (o) of avoidance *to the extent practicable*.

3.12 Meridian also supported PCC’s submission point S30.064 seeking the deletion of clause (d) because clause (d) duplicates clauses (a) and (b). I agree with the reporting officers’ reasoning at paragraph 689 (that the policy only relates to freshwater matters within the jurisdiction of the Regional Council) and support her recommendation to not delete the specification in the opening paragraph of ‘regional council consents’.

4. Policy 41

References:	Meridian Submission Point: S100.020 Meridian Further Submission Points: <ul style="list-style-type: none">– FS26.058 (opposing Atiawa ki Whakarongotai S131.090)– FS26.059 (supporting SWDC S79.043) Section 42A Report Paragraphs 459, 464, 466 and 500
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4.1 RPS Change 1 proposes the following amendments to the wording of Policy 41:

‘When considering an application for a resource consent, ~~notice of requirement, or a change, variation or review of a regional or district plan,~~ particular regard shall be given to controlling earthworks and vegetation disturbance by to minimise:

- ~~(a) erosion; and~~
- (a) considering whether the activity will achieve environmental outcomes and target attribute states; silt and sediment runoff into water, or onto or into land that may enter water, so that healthy aquatic ecosystems are sustained; and
- (b) avoiding discharges to water bodies, and to land where it may enter a waterbody, where limits for suspended sediment are not met.’

4.2 Meridian’s submission point S100.020 (supported by Hort NZ [FS28.065] and Waka Kotahi [FS3.038]) is concerned that the amendments to Policy 41 change the approach from ‘minimise’ to ‘avoid’ without a threshold standard being specified. Meridian’s submission requested the following amendments to Policy 41, including reversion to the wording ‘minimise’ (as follows):

Policy 41: ~~Controlling Minimising Minimising~~ the effects of earthworks and vegetation disturbance – consideration

When considering an application for a resource consent, ~~notice of requirement, or a change, variation or review of a regional or district plan~~, particular regard shall be given to controlling earthworks and vegetation disturbance **to minimise by to minimise:**

~~(a) erosion; and~~

(a) **erosion; and**

(b) **considering whether the activity will achieve environmental outcomes and target attribute states; silt and sediment runoff into water, or onto or into land that may enter water, so that healthy aquatic ecosystems are sustained. ; and**

(c) **avoiding discharges to water bodies, and to land where it may enter a waterbody, where limits for suspended sediment are not met.**

4.3 Meridian opposed Te Ātiawa ki Whakarongotai's submission point S131.090 that the amendments to Policy 41 remove reference to erosion when the impacts of erosion remain significant. The submission point requested that all discharges to water are 'avoided' regardless of whether suspended sediment limits are exceeded. Ātiawa also seek the addition of a new clause requiring that these activities give effect to Te Mana o te Wai and that mana whenua values, including mana whenua relationships with their culture, traditions, ancestral lands, water, sites, wāhi tapu and other taonga are considered.

4.4 Meridian supported SWDC's submission point S79.043 that Policy 41 should apply to regional consents only. I note that the reporting officer has recommended the specification of 'regional consents' in the opening paragraph of Policy 41. I support that recommendation and agree with the officer's reasoning at paragraph 495.

4.5 The reporting officer disagrees with Meridian and others who have raised concerns about the requirement to 'avoid' discharges where suspended sediment limits are not met. The officer considers it is appropriate for discharges to be avoided where suspended sediment limits are not met because, under the NPS-FM, once a limit is met resource use/allocation must cease. The officer's view is that this is consistent with the need to 'maintain or improve' the health and wellbeing of waterbodies (Policy 5 of the NPS-FM) and the need to allocate and use freshwater efficiently, phase out over-allocation and avoid future over-allocation (NPS-FM Policy 11).

4.6 Meridian's submission was concerned that the proposed amendments converted the operative 'minimise' approach into an 'avoid' policy, without specifying the threshold standard. The proposed amendments were therefore considered to be premature and unable to be properly evaluated for the purpose of section 32 because the key input for the evaluation is missing – i.e. the value of the suspended sediment standard. The officer's response is to insert into clause (c) the proviso: **'where suspended sediment limits have been set in a regional plan, avoiding discharges....'**

4.7 The Natural Resources Plan doesn't currently have a suspended sediment limit for rivers and streams. There is a narrative standard for lakes (in Table 3.5, associated with Objective O19) but none yet for rivers and streams. On 30 October 2023, GWRC publicly notified Proposed Plan Change 1 to the Natural Resources Plan. It doesn't propose any suspended sediment limits for rivers and streams in Table 3.4. Table 8 of Appendix 2A of the NPS-FM identifies suspended sediment in rivers as an attribute for which limits must be set as rules in regional plans. At some point, GWRC will have to insert suspended sediment limits as part of its freshwater planning instrument for the region. In this respect, I accept the logic of the reporting officer's recommended amendment. The appropriateness of the suspended sediment limit will have to be addressed separately, whenever it is proposed via a change to the Natural Resources Plan.

4.8 At paragraph 515, the officer recommends the following amendments to Policy 41:

Policy 41: ~~Managing~~ Controlling ~~Minimising~~ the effects of earthworks and vegetation clearance disturbance – consideration

When considering an application for a regional resource consent, ~~notice of requirement, or a change, variation or review of a regional or district plan,~~ for earthworks or vegetation clearance particular regard shall be given to ~~controlling earthworks and vegetation disturbance by~~ to minimise:

~~(a) — erosion; and~~

(a) the extent to which the activity minimises erosion;

(b) the extent to which ~~considering whether~~ the activity will achieve any relevant environmental outcomes and target attribute states set for the FMU or part-FMU; silt and sediment runoff into water, or onto or into land that may enter water, so that healthy aquatic ecosystems are sustained; ~~and~~

(c) where suspended sediment limits have been set in a regional plan, and the activity cannot meet those limits, avoiding discharges to water bodies, and to land where it may enter a waterbody; ~~where limits for suspended sediment are not met.~~

(d) ~~in the absence of environmental outcomes, target attribute states, or limits for suspended sediment for the relevant FMU or part-FMU, the extent to which silt and sediment runoff into water, or onto or into land that may enter water, will be minimised.~~

Explanation

Policy 41 applies to regional resource consents that involve earthworks and vegetation clearance. The policy intent is to manage both rates of erosion and sediment runoff into waterbodies. The policy recognises that it may not be possible in all cases to avoid the effects of these activities, but nevertheless requires that the effects be minimised. The policy also recognises that there may be a period of time where environmental outcomes and target attribute states for a FMU have not yet been set in the regional plan, and in these cases, there remains a requirement to minimise silt and sediment runoff into water.

An area of overlapping jurisdiction between Wellington Regional Council and district and city councils is the ability to control earthworks and vegetation disturbance, including clearance. Large scale earthworks and vegetation disturbance on erosion prone land in rural areas and many small scale earthworks in urban areas—such as driveways and retaining walls—can cumulatively contribute large amounts of silt.

4.9 I support the replacement of ‘controlling’ with ‘managing’ in the opening paragraph as proposed by the reporting officer. Although it is less directive than the ‘minimising’ that Meridian requested, the ‘minimising’ direction is provided in proposed new clause (d) which I also support.

5. Consequential Amendments

References:	Meridian Submission Point: S100.029 Section 42A Report Paragraph 77
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5.1 Meridian requested amendment of the titles of the policies and methods, including in Table 4 (Chapter 4), where necessary to reflect any amendments made as a result of Meridian’s other submission points. The s. 42A report has recommended consequential amendments to the titles of policies associated with substantive amendments. I support those recommended amendments.

6. Policy 18

6.1 Hearing Stream 5 also addresses RPS Policy 18. The reporting officer has recommended amendments to clause (n) of Policy 18 to provide for the ‘functional need’ of regionally significant infrastructure in relation to stream piping (requested by PCC and others):

Policy 18: Protecting and ~~enhancing restoring ecological health~~ the health and wellbeing of water bodies and freshwater ecosystem health ~~of water bodies~~ – regional plans

Regional plans shall include policies, rules and/or methods that give effect to Te Mana o te Wai, and in doing so protect and enhance restore the ecological health health and wellbeing of water bodies and freshwater ecosystem health ~~of water bodies~~, including by:

(a) —managing freshwater in a way that gives effect to Te Mana o te Wai;

(b)

(n) discourage ~~restricting avoiding~~ the reclamation, piping, straightening or concrete lining of rivers unless:

(i) there is a functional need for the activity in that location; and

(ii) the effects of the activity are managed by applying the effects management hierarchy

(o) ...

6.2 Meridian did not make submissions or further submissions on Policy 18, but I thought it may be useful to record my understanding that Meridian supports the proposed amendment to Policy 18 clause (n).

Christine Foster

2 November 2023