

19 April 2024

Southland Regional Council

c/o Bianca Sullivan

Post: corner of Price Street and North Road, Waikiwi, Invercargill

Email: resourceconsents@es.govt.nz.

Address for service: Meridian Energy Ltd

c/o Kate Berkett

Post: PO Box 4146, Christchurch 8140,

Email: kate.berkett@meridianenergy.co.nz

Dear Southland Regional Council,

**Meridian Energy Ltd – Manapōuri Lake Control Structure
Publicly Notified Consent Application 20233670**

I refer to the applications for a water permit, discharge permit, and permits as required under regulation 47 of the National Environmental Standards for Freshwater, by Meridian Energy Ltd in respect of the Manapōuri Lake Control Structure in and around the Waiau Arm at the confluence of the Waiau Arm and Mararoa River.

Please find enclosed a submission by the Director-General of Conservation in respect of these applications. The submission seeks that the applications as currently proposed be declined unless adequate information is obtained as to i) the effects on indigenous biodiversity, and ii) the conditions proposed (and content of any draft management plans, and any offsetting or mitigation proposals) to avoid, mitigate, or reduce adverse effects on indigenous biodiversity. The submission identifies the Director-General's concerns in greater detail.

DOC does not oppose the activity in principle, however, does oppose the application in its current form and seeks robust conditions if the consent is granted. Please contact Trevor Ellis (RM Regulatory Delivery Manager) in the first instance if you wish to discuss any of the matters raised in this submission (e-mail: trellis@dov.govt.nz).

Yours sincerely,



John Lucas

Operations Manager – Te Anau

Department of Conservation / *Te Papa Atawhai*

Department of Conservation *Te Papa Atawhai*

RMA Shared Services

Private Bag 3072, Hamilton 3240, New Zealand

www.doc.govt.nz

Form 13: Submission on application concerning resource consent

Resource Management Act 1991

To: Southland Regional Council (the **Council**)

Name of submitter: Penny Nelson, Director-General of Conservation (the **Director-General**)

Applicant: Meridian Energy Ltd (the **Applicant**)

Location: At and around the Manapōuri Lake Control Structure, including the Waiau Arm at the confluence of the Waiau Arm and Mararoa River.

Description of activity: The application is for the following activities (reference APP-20233670):

A water permit under section 14 of the RMA to:

Temporarily take, divert and use water to facilitate construction and maintenance activities, including within and in proximity to wetlands and for dewatering, dust suppression, and erosion and sediment control activities; and permanently divert surface water into the parallel channel.

A discharge permit under section 15 of the RMA to:

Temporarily discharge water and suspended sediment to land and water (the Waiau Arm, Mararoa River and Lower Waiau River) for the purposes of facilitating construction and maintenance activities, including within and in proximity to wetlands and for dewatering, dust suppression, and erosion and sediment control activities.

Permits as required under regulation 47 of the National Environmental Standards for Freshwater (NES-F) for activities under sections 14 and 15 of the RMA, including those associated with:

Vegetation clearance, earthworks and land disturbance, and the take, use, diversion and discharge of water, in and/or near a natural inland wetland.

Trade competition: I am not a trade competitor for the purposes of section 308B of the Resource Management Act 1991

My submission relates to: The whole application.

My submission is: In principle, I am neutral in respect of the **proposal**, however there is currently inadequate information in the application as to: i) the effects on indigenous biodiversity, and ii) the proposed conditions (and content of any draft management plans, and any offsetting or mitigation proposals) that seek to avoid, mitigate, or reduce adverse effects on indigenous biodiversity. My submission is that **without adequate information** the **application** should be declined in accordance with s 104(6) of the Resource Management Act 1991. I reserve the right to alter my position once adequate information has been obtained.

The Director-General's interest in the Application:

1. The Director-General of Conservation (the **Director-General**) has all the powers reasonably necessary to enable the Department of Conservation (**DOC**) to perform its functions.¹ The Conservation Act 1987 (the **CA**) sets out DOC's functions which include (amongst other things) management of land and natural and historic resources for conservation purposes, preservation so far as is practicable of all indigenous freshwater fisheries, protection of recreational freshwater fisheries and freshwater fish habitats and advocacy for the conservation of natural resources and historic heritage.² Section 2 of the CA defines 'conservation' to mean *'the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generation'*.
2. DOC is also the authority responsible for processing applications under the Wildlife Act 1953 and the Freshwater Fisheries Regulations 1983. I understand that approvals under the Freshwater Fisheries Regulation 1983 will be required for the Proposal and must be obtained before any works commence.

Reasons for the Director-General's submission:

¹ Refer section 53 Conservation Act 1987

² Conservation Act 1987, section 6.

3. The Proposal is likely to have **adverse effects** on the environment with terrestrial and freshwater habitats being adversely impacted, with one wetland being permanently lost, and others altered and de-vegetated.
4. The Proposal outlined in the Application is likely to create **significant risk** to native species.
5. I consider that the site is likely to contain **significant values** and that the Application does not contain enough information on the extent of significant values within the site.
6. I am not convinced that assessment of effects is sufficient. Further, there is **inadequate information** as to the conditions (and content of any management plans) that the Applicant proposes in order avoid, remedy, or mitigate the adverse effects of the activity, or in relation to any measure/s the Applicant proposes to offset or compensate for the adverse effects on the environment that will result from the activity.
7. The decisions sought in my submission are required to ensure that, the decision-maker:
 - a. recognises and provides for the matters of national importance listed in Section 6 of the Resource Management Act 1991 (the **Act**); and
 - b. has particular regard to the intrinsic values of ecosystems as required in Section 7(d) of the Act.
 - c. has particular regard to the National Policy Statement for Indigenous Biodiversity 2023, National Policy Statement for Freshwater Management 2020 (as amended), Southland Regional Policy Statement 2017, Southland Regional Water Plan 2010, and the proposed Southland Water and Land Plan.

Without being limited to such matters, the Director-General notes the following with respect to the Application:

8. The Applicant has provided insufficient information, and I am concerned that the proposal does not adequately:
 - a. Identify and address the potential adverse effects on (including but not limited to):
 - i. **Threatened and at-risk indigenous freshwater fish** including: Longfin eel (at risk – declining), lamprey (threatened-nationally vulnerable), Southern Flathead Galaxias (threatened – nationally vulnerable), Gollum galaxias (threatened – nationally vulnerable), torrentfish (at risk – declining), inanga (at risk- declining), giant kōkopu (at risk – declining), in addition to other indigenous species that are not endangered (for example, banded kokopu, redfin bully, upland bully, common bully). Freshwater fish of most concern for this activity are lamprey (based on threat status and known proximity to site), southern flathead and Gollum galaxias (based on threat status,

sensitivity to impacts of sediment and potential proximity to site) and longfin eel (known to be found within project footprint, and due to impacts of turbidity and on instream habitat quality).

- ii. **Threatened and at-risk indigenous freshwater invertebrates** including: Kākahi, likely *Echridella menziesii* (at-risk – declining) within the footprint of the site.
 - iii. **Threatened and at-risk indigenous terrestrial biodiversity** including: black fronted terns (threatened - nationally endangered), black-billed gulls (at-risk - declining), and banded dotterel (at-risk - declining).
 - iv. **Threatened and at-risk indigenous flora** including: Buchanan’s sedge (at-risk – declining) and indigenous vegetation in lacustrine channel areas.
 - v. **Wetlands**, in the project site and downstream of the site.
 - vi. **Instream habitat**, including the removal of gravel and alteration of habitat for spawning and larva.
 - vii. **Water quality**, during the construction phase, including the impacts on suspended sediment and deposited fine sediment, and consequent effects on the health, habitat, feeding, behaviour and spawning (etc.) of threatened and at-risk indigenous biodiversity.
- b. Identify how the proposal will avoid, remedy, or mitigate potential adverse effects (including through appropriate and robust conditions, draft management plans, and provisions for offsetting and compensation).

In particular, the Director-General notes that further information and details as to proposed conditions are required in relation to the following issues:

9. **Presence of freshwater fish:** There is inadequate information in the Application in relation to the presence of freshwater fish above and around the Manapoūri Lake Control Structure, especially in the Waiau Arm and the tributaries where activities are proposed to be carried out. Fish records in relation to these areas are extremely limited and / or out-of-date. In particular, there is inadequate information in respect of lamprey and non-migratory galaxiids.

Adequate and current baseline information should be obtained as to the presence of threatened and at-risk species in the area impacted, in order to properly evaluate the effects of the Proposal.

10. **Water Quality:** Proposed turbidity and exceedance levels are set at a high level (especially with regards to turbidity levels 3, 4, and 5 (160 FNU-1000 FNU)) and are set in accordance with impacts on salmonids not threatened and at-risk indigenous species present in the area. The proposed levels would set exceedances in turbidity that are naturally seen in the river for only 0% to c. 1.5% of the time.

The recommendations contained in the report prepared by NIWA should provide a basis for conditions in relation to water quality. However,

- a. turbidity level should be re-set to protect the threatened and at-risk indigenous freshwater fauna that will be impacted;*
- b. and / or other conditions imposed to avoid, remedy, or mitigate adverse effects, on indigenous fish species;*
- c. conditions should address what actions must occur in the event that turbidity levels, and deposited fine sediment levels, are exceeded.*

11. The Applicant's modelling shows that there is an increased risk of phytoplankton blooms due to lower velocities in the new parallel channel (compared to the existing main and south channel) once the work is completed.

The risk of phytoplankton blooms in the new channel should be mitigated by a regime set out in conditions for managed flow releases.

12. **Fish entrainment and impacts on fish passage:** There is the potential for fish strandings during dewatering and / or the crushing and entrainment of fish into pumps during works. The Applicant should specify how these adverse effects will be avoided, remedied, or mitigated. Further, the Applicant proposes to install a permanent culvert, but there is no confirmation that New Zealand Fish Passage Guidelines best practice will be followed, or that ongoing maintenance (in accordance with best practice) will be carried out to ensure fish passage.

Adverse impacts on threatened and at-risk fish and kākahi should be avoided, by salvaging these species during construction. In the event that salvage is not possible for all individuals in threatened and at-risk taxa, other conditions should be imposed to avoid, remedy, or mitigate adverse effects on these species, including appropriate offsetting where possible and compensation measures. Monitoring and reporting of fish salvage should occur, in addition to continuing monitoring and reporting of freshwater fauna in the impacted areas, before, during and post-construction.

Conditions should ensure that New Zealand Fish Passage Guidelines best practice is followed in the design and construction of any culvert, and ongoing and appropriate best practice maintenance carried out to ensure fish passage.

13. **Disturbance:** The Application states that construction activities will continue for 24 hours a day, seven days per week without cessation. Such activities will require artificial lighting and create noise and, without any daily and weekly cessation in activities, could impact upon the behaviour of threatened and at-risk birds and fish, including potential impacts on predation/feeding, and migratory cues (etc.).

Provision should be made in conditions for daily and weekly breaks from construction activities to provide respite for threatened and at-risk species in order to minimise impacts on their behaviour, predation, and migratory cues (etc.).

14. **Spawning periods:** there is no information and / or proposal from the Applicant as to whether it will avoid construction activities and sediment disturbance, during spawning periods for threatened and at-risk species including non-migratory galaxiid and lamprey.

Construction should be avoided during spawning periods for threatened and at-risk species, including non-migratory galaxiid and lamprey due to impacts of disturbance and sediment.

15. **Habitat loss:** The proposal will result in the permanent loss of one wetland and impact at least 12 other areas of palustrine marsh, that support some indigenous wetland species. The proposal will alter and /or de-vegetate instream and wetland areas. In particular, there is inadequate baseline information as to the ecological values of the area where the Applicant proposes to dump spoil.

The Applicant should provide offsetting and / or compensation for the loss of a wetland, and the alteration / de-vegetation of other wetlands, that includes site rehabilitation and / or creating new or enhancing existing wetland areas. The recommendations from the Wetland Assessment report obtained by Boffa Miskell should be included in and / or form the basis for any conditions to avoid, remedy, or mitigate such effects.

16. The Applicant proposes that much of the detail as to how it will manage adverse effects will be contained in various **management plans** (including a freshwater fish management, sediment and erosion control plan, and vegetation / flora management plan). However, there are no draft management plans in the Application. As the Environment Court has now made clear:

We consider the time has passed when conditions of consent can be based on statements of intent as to what will be done at some time in the future. We will require greater certainty of what will occur, by when, what outcomes are to be achieved, who will be responsible and what enforcement mechanisms will be available (*Port of Tauranga Ltd v Bay of Plenty Regional Council* [2023] NZEnvC 270, [26] per Chief Environment Court Judge and Commissioners Hodges, Leijnen and Paine).

Accordingly, draft management plans should be available for review by submitters and the consent authority before any consents are granted.

17. Section 6(c) of the Act requires that all persons exercising functions and powers under it shall recognise and provide for the *protection* of areas of significant indigenous vegetation and significant habitats of indigenous fauna. As the Application does not provide sufficient information to assess the ecological values of the site, or to avoid, remedy or mitigate effects, it fails to give effect to Section 6(c) of the Act.
18. Section 7(d) of the Act requires that all persons exercising functions and powers under it shall have particular regard to the intrinsic value of ecosystems. The failure of the Application to assess potential effects on indigenous biodiversity means that the applicant is not giving effect to Section 7.
19. The Director-General's concerns have been identified following a review of the information that has been provided to date. The Director-General's submission relates to the whole Application. Additional and/or more specific concerns with respect to the Application may be identified once more adequate information has been made available to the Director-General.

Decision sought:

20. I seek the following decision from the Council:
 - a) That **without adequate information** being provided as to (i) the **effects** of the proposal on indigenous biodiversity and ecosystems -including adequate ecological baseline assessments to accurately identify the values being impacted and their ecological significance- and (ii) the proposed **conditions** that will be sufficiently robust to avoid, remedy or mitigate effects on indigenous biodiversity and ecosystems, the consent authority **declines the application** in accordance with s 104(6) of the RMA;
 - b) If adequate information is received and the consent authority is minded to grant the application, that it imposes **appropriate and robust conditions** to:
 - a. reflect the conditions sought in this submission, and address my concerns to protect significant indigenous biodiversity and ecosystems;
 - b. include any appropriate offsetting and / or compensation to address the permanent loss of habitat, wetlands, and any flora or fauna;
 - c. reflect a precautionary-approach;
 - d. avoid, remedy or mitigate any adverse effects of the proposal.
 - c) That the terms of consents granted are reduced from the proposed 35 year-period to 15 years, to ensure that any renewals of the consents and conditions can take into account the impacts of climate change and biodiversity depletion.

I also seek such alternative and/or additional relief as may be necessary and appropriate to address my concerns.

I do wish to be heard in support of my submission.

If others make a similar submission, I will consider presenting a joint case with them at a hearing.

John Lucas



Operations Manager - Te Anau

Department of Conservation *Te Papa Atawhai*

Acting pursuant to delegated authority on behalf of Penny Nelson, Director-General of Conservation

Date: 19th April 2024

Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18/32 Manners Street, Wellington 6011

Address for service:

Attn: Trevor Ellis, RM Regulatory Delivery Manager

Department of Conservation

RMA Shared Services

Private Bag 4715

Christchurch Mail Centre

Christchurch 8140

Email: trellis@doc.govt.nz