

The Hearing Commissioners

17 September 2024
9.00 am

Staff Report for Hearing

The recommendation in the staff report represents the opinion of the writer and it is not binding on the Hearing Commissioners. The report is evidence and has no greater weight than any other evidence that the Commissioners will hear and consider.

Hearing of Application – APP-20233670 Meridian Energy Limited

Compiled by Bianca Sullivan, Contracted Consents Officer

Applicant:	Meridian Energy Limited
Application Number:	APP-20233670
Location:	At and around the Manapōuri Lake Control Structure, including the Waiau Arm and Mararoa River
Activities for Consent:	See Table 1 (below). A consent term of 35 years is sought for all consents
Notification:	The application was publicly notified on Monday 18 March 2024
Hearing:	The hearing is to commence at 9.00 am on 17 September 2024 in the Council Chambers, Environment Southland, corner of Price Street and North Road, Waikiwi, Invercargill.

Table 1: Consents Sought

Consent Type	Purpose
Water Permit	<ul style="list-style-type: none"> 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 To permanently divert surface water into the parallel channel.
Discharge Permit	<ul style="list-style-type: none"> 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.

1. Introduction

1.1 Status and purpose of this report

- 1.1.1 This report has been prepared under Section 42A of the Resource Management Act 1991 (RMA or Act) to assist the Hearing Commissioners in the hearing of the application for resource consent made by Meridian Energy Limited. Section 42A allows local authorities to require the preparation of such a report on an application for resource consent and allows the report to be considered at any hearing conducted by the local authority.
- 1.1.2 In accordance with s42A (1A) and (1B), material contained within the application documentation is largely referenced rather than repeated where it is efficient to do so.

1.2 About the author

- 1.2.1 My name is Bianca Jane Sullivan. I am a Director and Environmental Planner at Environment Matters Limited. I have over 25 years' experience in resource management and environmental planning, much of this spent preparing, processing and deciding a variety of applications for resource consent.
- 1.2.2 I hold the qualifications of BSc (Microbiology) from the University of Canterbury and MAppISc (Hons) (Environmental Management) from Lincoln University.
- 1.2.3 I have been involved with this application since it was lodged and received by Council. I have also visited the site and surrounds with Meridian staff and Council experts on 3 May 2024, and attended the first of the pre-hearing meetings on 19 June 2024.

1.3 Information relied on in preparation of this report

- 1.3.1 In preparation of this report I have had regard to the following documents:
- The resource consent application and assessment of environmental effects, prepared by Tonkin and Taylor Limited and dated December 2023;
 - A post lodgement information response dated 15 March (provided following a workshop with Meridian and ES experts),
 - Further information requested under Section 92(1) of the RMA, prepared by the applicant and dated 4 June 2024;
 - Additional information provided by the applicant for the pre-hearing meetings;
 - The submissions on the application;
 - Technical reviews provided by:
 - Ramon Strong, Technical Director Water Resources, Pattle Delamore Partners;
 - Dr Mike Thorsen, Principal Ecologist and Director, Whirika;
 - Dr Greg Burrell, Director, Instream Ecology;
 - Relevant statutory instruments including:
 - Resource Management Act 1991 (RMA or Act);
 - National Policy Statement on Freshwater Management 2020 (NPS-FM);
 - National Policy Statement for Renewable Electricity Generation (NPS-REG);
 - Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F);

- Southland Regional Policy Statement 2017 (RPS);
- Regional Water Plan for Southland, 2010 (RWPS);
- Proposed Southland Water and Land Plan (pSWLP);
- Environment Court Decisions on the Proposed Southland Water and Land Plan;
- Te Tangi a Tauria (Iwi Management Plan) 2008.

1.4 Attachments

1.4.1 The following attachments form part of this report:

- Attachment 1: Technical report of Ramon Strong
- Attachment 2: Technical report of Dr Mike Thorsen
- Attachment 3: Technical report of Dr Greg Burrell
- Attachment 4: Reports of pre-hearing meeting 1 on 19 June 2024 (sessions 1 and 2) and pre-hearing meeting 2 on 24 July 2024, along with supporting information from Meridian
- Attachment 5: Further information provided by Meridian dated 15 March 2024 and 4 June 2024, including revised proposed consent conditions
- Attachment 6: Submissions received

2. The application and procedural matters

2.1 The proposed activities

2.1.1 Consents have been sought as follows:

Applicant: Meridian Energy Limited

Application Number: APP-20233670

Legal description: Section 1 Survey Office Plan 12223 (364070)

Map Reference: E1186068, N4935096

Consents sought: **Water Permit:**
 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
 To permanently divert surface water into the parallel channel.

Discharge Permit:
 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.

2.2 Summary of the Proposal

- 2.2.1 The proposed activities are detailed in section 5 of the AEE. A brief background and summary of the proposed activities are provided below.
- 2.2.2 Meridian Energy Limited (Meridian or the applicant) owns and operates the Manapōuri Power Scheme (MPS), which includes the largest hydroelectric power station in New Zealand. Water is sourced from the catchments of lakes Te Anau and Manapōuri, with additional water diverted into Lake Manapōuri from the Mararoa River catchment at the Manapōuri Lake Control structure (MLC). Water is then directed to an underground power station located at the edge of Lake Manapōuri's West Arm in Fiordland National Park.
- 2.2.3 The MPS became fully operational in 1972 and is managed through the Manapōuri Te Anau Development Act 1963 (MTADA) in conjunction with the RMA. Section 4(1) of MTADA authorises Meridian (as the operator of the MPS) to “...erect, construct, provide, use, and operate all works, appliances, and conveniences which may be necessary or requisite...” to operate the MPS. MTADA establishes the Operating Guidelines for Lakes Manapōuri and Te Anau (the Guidelines) through s.4A which, among other things, sets operating levels for the two lakes.
- 2.2.4 There's a chance that may just be a rounding artefact, or the way different systems apportion volumes across time boundaries (e.g. splitting a daily volume reporting at midday, across midnight). Meridian holds resource consents for water takes, diversions and discharges associated with the MPS. These consents set flow requirements to the Lower Waiau River, including flood flows, recreational flows, and flushing flows to assist in the management of periphyton growths. These flows are released through the MLC. Condition 7 of Auth-206156-V4 requires a Protocol for supplementary flow releases¹.
- 2.2.5 Meridian has had difficulty delivering these flows, particularly flushing flows, that are required by the Protocol and have identified physical constraints in the Waiau Arm immediately upstream of the MLC as the primary reason. Specifically, bed material and gravel has accumulated in the Waiau Arm and the current channel depth and alignment is considered to hinder the release of flushing flows.
- 2.2.6 To resolve this, Meridian proposes to construct a new, deeper channel upstream of the MLC structure and parallel to the existing Waiau Arm. The new channel will be constructed outside of the permanent active bed and channel, with upstream and downstream cuts then connecting the new channel to the current permanent bed and channel. The excavated gravel and bed material will be disposed of on Meridian-owned land near the new channel, with approximately 225,000 m³ of material expected to be excavated. Figure 1 below shows the site location and Figure 2 shows the proposed channel and spoil deposition area.

¹ Protocol for: Controlled Releases of Voluntary Supplementary Flows from the Manapōuri Lake Control (MLC) Structure to the Lower Waiau River, Final 9 April 2013, Amended 7 November 2014, Amended 12 February 2016, Amended 16 November 2018.



Figure 1: Site location plan (Source: Figure 4.1 of the AEE)

- 2.2.7 As part of the construction activities, Meridian propose to abstract water for dewatering purposes and dust suppression. The out-of-channel works are expected to take 10 weeks, with the works to remove the ‘plugs’ and connect the channels expected to take up to five weeks, assuming the upstream and downstream works are undertaken simultaneously. Overall and including establishment, disestablishment and rehabilitation, the works are expected to take four to five months. They would be undertaken in a window between January and October. The stages of the work are discussed in detail in section 5.4 of the AEE.
- 2.2.8 The proposal also includes periodic maintenance of the proposed new channel to ensure that it can continue to pass flows. Meridian anticipates that maintenance works would be required every 5-10 years.

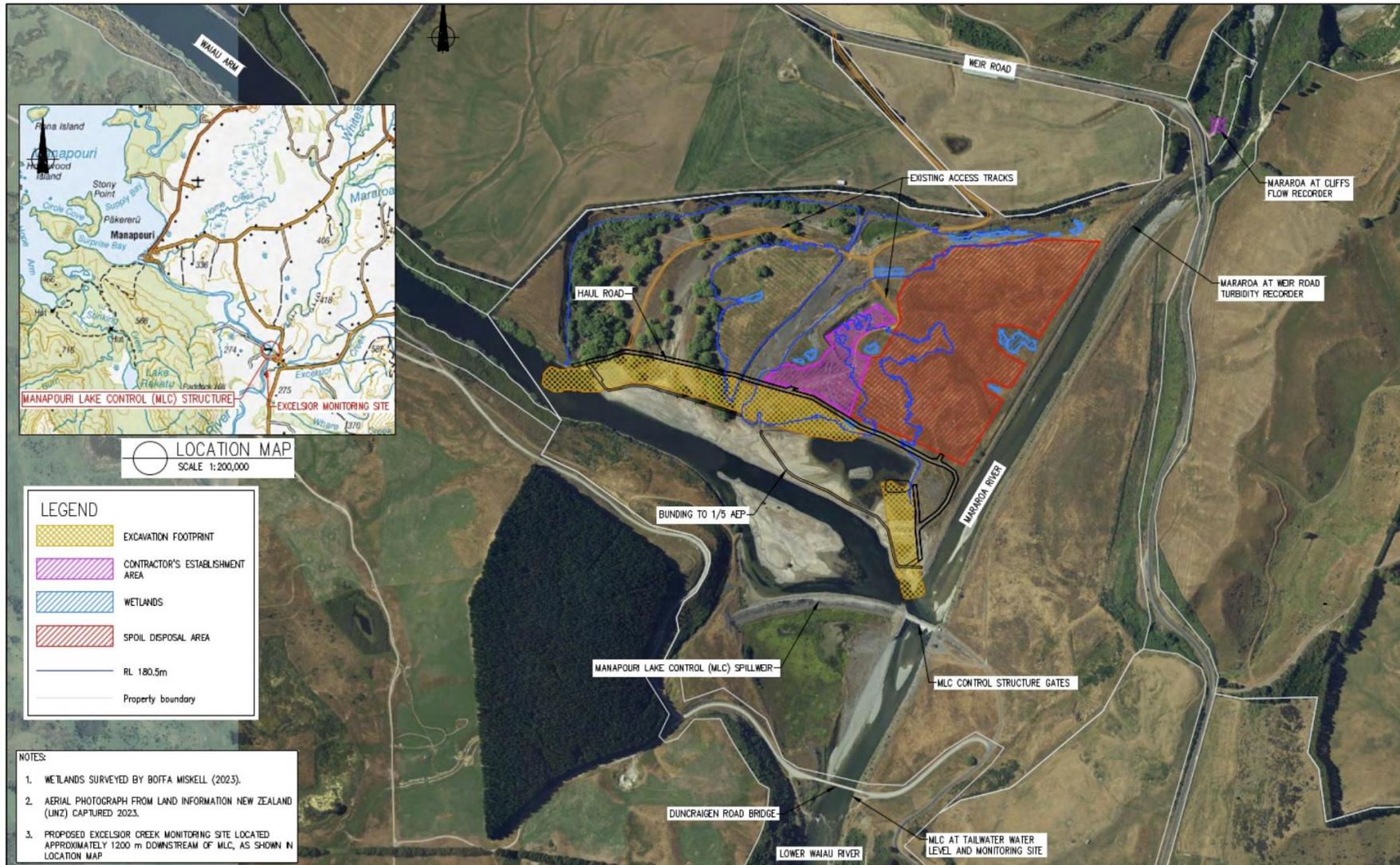


Figure 2: Site location plan (Source: Figure 1.1 of the AEE)

2.3 Regional Planning Framework

2.3.1 The resource consent requirements for the proposed activities are discussed in section 6 of Meridian’s AEE. I am in general agreement with the rule identification and assessment.

2.3.2 Resource consent requirements for the proposed activities are determined under the pSWLP, the Southland Regional Air Plan 2016 (SRAP), the Southland District Plan (SDP) and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F). The AEE concludes that all relevant rules in the pSWLP are to be considered operative under s.86F of the RMA and therefore rules in the operative RWP do not apply. I agree with this conclusion.

2.3.3 The AEE states that activities under ss. 9, 13, 15(2) or 15(2A) of the RMA are authorised by MTADA and that resource consents are not required for these activities. ES and Meridian are in agreement² on this matter and I also agree.

2.3.4 This MTADA authorisation applies to the following activities governed by the SDP and SRAP, as well as s.13 activities under the pSWLP:

- a. Construction related noise, vibration and lighting, land disturbance and earthworks, and vegetation clearance (s.9);
- b. Excavation, disturbance, reclamation, deposition of material, placement of culverts and wetland removal (s.13); and
- c. Discharges of dust to air (ss. 15(2) or (2A)).

These activities are not discussed further in this report.

2.3.5 This leaves activities under s.14 and ss.15(1)(a) and (b) to which the pSWLP and/or the NES-F applies. The rule classifications for these activities are summarised in Table 2 below.

Table 2: Activity status of consents sought

Activity	Relevant rule or regulation	Activity status
Temporary discharge of suspended sediment and water during construction and maintenance of the parallel channel	<p>pSWLP Rule 5, the exception in the preamble to the Appendix E water quality standards states that the standards do not apply where <i>“an ancillary activity associated with the maintenance of the Manapōuri hydro-electric generation scheme is proposed. This exception only applies where the activity requires a resource consent pursuant to a rule in this plan and will only result in a temporary change in the state of the water.”</i></p> <p>Given that the proposal will result in a permanent change, rather than maintenance, I consider that the Appendix E standards would apply. The AEE states that the proposal may not meet these standards after mixing at all times, making the discharge a non-complying activity</p>	Discretionary (Rule 5) Non-complying (Rule 6)

² Processing activities pursuant to the Manapōuri Te Anau Development Act 1963 and the Resource Management Act 1991. Agreement between Environment Southland and Meridian Energy dated August 2017.

	<p>under Rule 6. If the Panel accepts that this proposal is 'maintenance' the activity would be discretionary under Rule 5.</p>	
<p>Permanent, partial diversion of water to a parallel channel; temporary taking of water for dewatering purposes; temporary take for dust suppression</p>	<p>pSWLP Rule 52(b)</p>	<p>Non-complying activity</p>
<p>Vegetation clearance, earthworks and diversion and discharge of water within a natural inland wetland for the maintenance and operation of 'specified infrastructure' (the MPS and MLC)</p>	<p>NES-F Regulation 47</p>	<p>Restricted discretionary activity</p>

2.3.6 The matters for discretion for Regulation 47 are set out in Regulation 56 of the NES-F. These are as follows:

- (a) *the extent to which the nature, scale, timing, intensity, and location of the activity may have adverse effects on—*
 - (i) *the existing and potential values of the natural inland wetland, its catchment, and the coastal environment; and*
 - (ii) *the extent of the natural inland wetland; and*
 - (iii) *the seasonal and annual hydrological regime of the natural inland wetland; and*
 - (iv) *the passage of fish in the natural inland wetland or another water body:*
- (b) *whether there are practicable alternatives to undertaking the activity that would avoid those adverse effects:*
- (c) *the extent to which those adverse effects will be managed to avoid the loss of the extent of the natural inland wetland and its values:*
- (d) *other measures to minimise or remedy those adverse effects:*
- (e) *how any of those adverse effects that are more than minor may be offset or compensated for if they cannot be avoided, minimised, or remedied:*
- (ea) *the extent to which the effects of the activity will be managed through applying the effects management hierarchy:*
- (f) *the risk of flooding upstream or downstream of the natural inland wetland, and the measures to avoid, minimise, or remedy that risk:*
- (g) *the social, economic, environmental, and cultural benefits (if any) that are likely to result from the proposed activity (including the extent to which the activity may protect, maintain, or enhance ecosystems).*

2.3.7 As the applications are bundled, the overall activity status is non-complying.

2.3.8 When considering a non-complying activity, the Council may only, in accordance with s.104D, grant a resource consent for the activity if it is satisfied that the adverse effects of the activity are minor, or the application is for an activity that will not be contrary to the objectives and

policies of the relevant plan or proposed plan. If the application passes one or both “gateway tests” in s.104D, under s.104B the Council may grant or refuse consent for a non-complying activity, and if it grants the application, may impose conditions under s.108 of the RMA.

2.4 Further information request

2.4.1 A workshop was held on 16 February 2024 between the Meridian application team and ES processing team. The ES processing team circulated key issues and questions prior to the workshop and these topics formed the basis for the workshop discussion. Following the workshop, Meridian provided a written response to the ES experts’ queries on 15 March 2024 (see Attachment 5).

2.4.2 Following the close of submissions (as discussed in section 2.5 below), further information was requested from the applicant under section 92(1) of the RMA on 13 May 2024. The requested information included:

- a. Whether the proposed activities would affect coastal erosion at Bluecliffs and, if so, whether this is considered within the scope of these consent applications.
- b. The basis for the assessment of effects on At Risk and Threatened native fish, given the lack of recent fish records in the area, the acknowledged significant values present, and the sensitivity of these species to sediment effects.
- c. Further assessment on the effects on indigenous bird species, including on those species that occupy the sediment deposition sites and wider affected area.

2.4.3 The above information was provided by the applicant on 4 June 2024 (provided in Attachment 5).

2.5 Notification and Submissions

2.5.1 The application was publicly notified on Monday 18 March 2024.

2.5.2 The decision to publicly notify the application was made under s95A(2) of the RMA in response to Meridian requesting public notification.

2.5.3 Fourteen submissions were received. These are included as Attachment 6 and are summarised in Table 3 below.

Table 3: Summary of Submissions

Submitter	Oppose/Support	Reasons	Decision Sought
Agnew, Richard and Isobel	Oppose	Submission in support of the Bluecliffs Beach Landowners’ Group submission.	To decline the application
Bluecliffs Beach Landowners Group	Oppose	That the altered flow regime facilitated by the proposed activities will result in accelerated coastal erosion at Bluecliffs beach settlement, located at the mouth of the Waiau River.	To decline the application

Director-General of Conservation	Neutral	Inadequate assessment of the effects of the proposed activity on indigenous biodiversity, and inadequate conditions proposed to avoid, mitigate or reduce adverse effects on indigenous biodiversity. A 15 year consent duration is sought.	Without additional information, the application should be declined
Guardians of Lakes Manapōuri, Monowai and Te Anau	Neutral	Consider that the proposal will not fully address the shortfall in flushing flows to the lower Waiau River and request that reducing the MLC sill height be investigated; request amendments to monitoring and limits for turbidity, deposited fine sediment and phytoplankton blooms; request fish salvage programmes for longfin eels and kaakahi, and additional mitigation for Buchanan’s sedge and stonecrop. The Guardians also seek a consent expiry of December 2031 to align with the existing MPS consents.	Seek information and amendments to address their concerns
Landcorp Farming Limited	Oppose	The proposed works will create dust and noise effects on the neighbouring Landcorp properties.	That dust and noise management plans be prepared by Meridian and agreed to by Landcorp
Puna, Glenn	Oppose	As for the Bluecliffs Beach Landowners’ Group.	Decline
Real Journeys Limited	Neutral	Real Journeys have consent to use the land at the western end of the project area as a temporary slipway for inspection and maintenance of their catamarans. Meridian have incorporated an alternative slipway location in the design and the submitter wishes to see this authorised should consent be granted.	That any consent granted includes the alternative slipway ramp.
Redpath, Ian and Joan	Oppose	As for the Bluecliffs Beach Landowners’ Group.	Decline
Sirch, Uli	Oppose	As for the Bluecliffs Beach Landowners’ Group. They request that the effects on coastal erosion at the river mouth is considered when water is released from the MLC structure.	Decline, or grant with a shorter duration and better consideration of effects on coastal erosion.
Te Ao Marama Inc. on behalf of Oraka Aparima Rūnaka	Neutral	Limited engagement has limited Rūnaka’s ability to assess the effects on cultural values, rights and interests.	Seek further engagement
Waiau Fisheries and Wildlife Habitat Enhancement Trust	Support	Supports the intent of the proposal but requests additional monitoring during and post-construction, additional islands for bird habitat, and an expanded fish and kaakahi trap and transfer programme during construction. The Trust seeks a consent expiry of December 2031 to align with the existing MPS consents.	Grant subject to requested conditions and duration
Waiau Rivercare Group	Support	Consider that the proposal will not fully address the shortfall in flushing flows to the lower Waiau River and request that reducing the MLC sill height be investigated. Request that a higher flow be released through the MLC when the	Grant subject to requested conditions and duration

		Mararoa River is turbid. Supports the Waiau Working Party’s submission to expand the flushing flow regime and monitor the risks of phytoplankton blooms. The Group seeks a consent expiry of December 2031 to align with the existing MPS consents.	
Waiau Working Party	Support	Supports the intent of the proposal but requests more information. Considers that lowering the sill height may be a better option than an alternative channel; requests an expanded fish and kaakahi trap and transfer programme, additional islands for bird habitat, monitoring for phytoplankton blooms, relocation of affected Buchanan’s sedge plants, and control of stonecrop. Also seeks a consent expiry of December 2031 to align with the existing MPS consents.	Grant subject to requested conditions and duration
Wood, Christopher	Oppose	As for the Bluecliffs Beach Landowners’ Group.	Decline

2.5.4 All parties indicated in their submissions that they wish to be heard at the hearing. Following the pre-hearing meetings, discussed in the following section, the following submitters have withdrawn their right to be heard:

- Bluecliffs Beach Landowners Group;
- Waiau Rivercare Group;
- Guardians of Lakes Manapōuri, Monowai and Te Anau; and
- Agnew, Richard and Isobel.

2.5.5 At the time of writing this report, there are 10 submitters seeking to be heard.

2.6 Section 99 pre-hearing meeting

2.6.1 Two pre-hearing meetings were held for the application, both independently chaired by Ms Louise Taylor (Taylor Planning). Ms Taylor’s reports, as per Section 99(5) are provided as Attachment 4.

2.6.2 The first pre-hearing meeting was held on 19 June 2024 and was conducted over two sessions. The first session addressed matters relating to the effects of constructing and operating the proposed new channel in and around the MLC, while the second session discussed matters relating to coastal erosion at Bluecliffs.

2.6.3 The second pre-hearing meeting was held on 24 July 2024 and followed on from session 1 of the first pre-hearing meeting. At the pre-hearing meetings the following key conclusions were reached between the applicant, submitters and the Council:

- a. Consent duration: submitters still do not support a 35-year consent duration that is sought by Meridian, with Rūnaka seeking no more than 25-years, and the Waiau submitters seeking less than 35-years (but no longer seeking alignment with MPS consents). The Director-General of Conservation no longer seeks a 15-year duration, considering that this is no longer an issue.

- b. Bluecliffs coastal erosion: Coastal erosion was acknowledged as significant for the Bluecliffs community, however Meridian maintains that the flow regime is managed through existing consents and is outside the scope of this application. I agreed with this position, however some Bluecliffs submitters consider that this proposal will provide Meridian with more control over flow releases and that this effect should be considered.
- c. Consideration of flushing flow regime: Meridian and I agreed that this is not within the scope of this application, however the Waiau submitters³ seek a condition requiring a review of the flushing flow protocol that is part of the existing consents (consents issued 2010, with the protocol updated in 2018).
- d. Additional bird islands: the Waiau submitters still seek an additional island(s) habitat for black-billed gulls, but Meridian and Council experts consider that there is no need for this.
- e. Additional monitoring conditions: Meridian presented additional information and amendments to proposed conditions. The Director-General was comfortable with monitoring conditions, while the Waiau submitters wished to seek expert comment before confirming their position.
- f. Sediment issues above the MLC: the Waiau submitters still consider that turbid water from the Mararoa River is more likely to enter the Lower Waiau River upstream of the MLC. Meridian is confident that it will be able to comply with the turbidity limits in the existing consent conditions. Meridian will address this issue through evidence.
- g. Sediment issues below the MLC are still an outstanding issue for the Waiau submitters.
- h. There was agreement between the Waiau submitters and Meridian that rock lining of the channel wouldn't be necessary.
- i. MLC sill height reduction: there was agreement that this is not within the scope of the current application.
- j. Draft amended conditions were prepared for managing phytoplankton blooms, restoring Buchanan's sedge and remediating wetland 1.
- k. The Director-General is no longer pursuing matters other than a reviewed Freshwater Management Plan (condition 8 of proposed conditions).

3. Assessment

3.1 Statutory Considerations

3.1.1 Section 104 of the RMA sets out the matters to be considered when assessing an application for a resource consent. Section 104(1) of the RMA states:

- (1) *When considering an application for a resource consent and any submission received, the consent authority must, subject to Part 2, have regard to:*

³ The Waiau Fisheries and Wildlife Habitat Enhancement Trust, Waiau Working Party and Waiau Rivercare Group whose representatives participated in both pre-hearing meetings.

- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (b) *any relevant provisions of:*
 - (i) *a national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*
 - (v) *a regional or proposed regional policy statement;*
 - (vi) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

3.1.2 Those matters which are relevant for this application are discussed in the following sections as follows:

- description of the receiving environment;
- assessment of the actual and potential effect of the activity on the environment;
- relevant provisions of the regional plans;
- relevant provisions of the Southland Regional Policy Statement;
- relevant provisions of the National Policy Statements and National Environmental Standards;
- Ngāi Tahu ki Murihiku Natural Resource and Environmental Management Plan 2008 (also known as Te Tangi a Taura – The Cry of the People) and the Ngāi Tahu Freshwater Policy Statement;
- Part 2 of the RMA.

3.1.3 Section 108 provides for consent to be granted subject to conditions and set out the kind of conditions that may be imposed.

3.2 Description of the affected environment

3.2.1 Section 4 of the AEE describes the environmental setting for the proposed activities. The further information provided on 15 March 2024 and 4 June 2024 provides additional relevant information, particularly in relation to birds, fish and coastal processes.

3.2.2 The key aspects of the receiving environment are summarised below:

- a. The project site is defined as that area affected by the temporary and permanent works, and includes the Waiau Arm, the land that will become the parallel channel, access and haul roads, the spoil disposal area, contractors' establishment area, and areas for other temporary activities. The project site area is approximately 127 ha. All land is owned by Meridian and is considered 'core land' for the MPS (refer to Figure 4.2 of the AEE).
- b. Access to the project site is via Weir Road. Fiordland National Park is, at its closest, 2.8 km to the west of the project site.
- c. The surrounding land use is predominantly rural, with a number of dwellings and farm buildings nearby. The closest buildings are located approximately 1 km to the north (at 567 Weir Road) and approximately 430 m to the west (at 164 Duncraigen Road). The land around the MLC is generally flat but is surrounded by river terraces and hill country.

- d. The affected area has been highly modified for the construction, operation and maintenance of the MLC.
- e. The cultural values of Lake Manapōuri (or Moturau) and the Waiau River are recognised by the statutory acknowledgement under the Ngāi Tahu Claims Settlement Act 1998. Prior to the MPS, the Waiau River had the second highest flow of any river in New Zealand with significant mahinga kai values. Historically, the river provided a major travel route.
- f. The Waiau Arm is an approximately 10 km section of the Waiau River between Lake Manapouri and the MLC. The MLC means that the Waiau Arm, with flows from the Mararoa River, effectively forms part of Lake Manapōuri. Flows are either released through the MLC into the Lower Waiau River or flow upstream into Lake Manapōuri. Meridian's operating requirements contain flow requirements through the MLC and turbidity thresholds to protect the Lake Manapōuri from turbid water from the Mararoa River.
- g. The existing resource consents for the MPS provide for the release of flows to the lower Waiau River, including flood flows, flushing flows and recreational flows.
- h. Terrestrial vegetation and wetlands are described in the Boffa Miskell report attached to the AEE as Appendix F. A number of wetlands are within the project area, including some that are within the maximum operating range of Lake Manapōuri (RL 180.5). These wetlands are classified as lake bed in the RMA and the potentially-relevant NES-F regulations therefore do not apply. The wetland identified in Appendix F as Wetland 1 is proposed to be permanently removed. This is further discussed in the following 'actual and potential effects' section.
- i. The freshwater environment is described in the NIWA reports appended to the AEE as Appendix D (freshwater ecology), Appendix E (risk of phytoplankton blooms) and Appendix F (wetland assessment report). Periphyton blooms are frequent in summer months in the lower Waiau River, with didymo now prevalent and managed through the release of flushing flows. There are low numbers of kākahi (freshwater mussels) in the Waiau Arm upstream of the project site, with the macrophyte community adjacent to the project area dominated by the native mud snail *Potomopyrgus*. Macroinvertebrate communities in the lower Waiau River are generally of moderate to low quality.
- j. Fish species are described in Appendix D to the AEE, and the results of an additional fish survey in June 2024 were provided in advance of the second pre-hearing meeting⁴. At least 15 native fish species have been recorded in the Waiau Arm and lower Waiau River. Most notably, these include juvenile kanakana (lamprey, Threatened – Nationally Vulnerable) in the project area, longfin eels (At Risk – Declining) in the Waiau Arm and lower Waiau River, and the non-migratory southern flathead galaxias and Gollum galaxias (both Threatened – Nationally Vulnerable). In addition to native fish, the area supports trout and salmon which are valued as a recreational fishery.
- k. The freshwater and terrestrial bird species recorded in and around the site are summarised in the BlueGreen Ecology memo, dated 16 July 2024 and attached as Appendix E to the information provided in advance of the second pre-hearing meeting. Notable birds recorded in and around the project area include black-fronted tern (At Risk)

⁴ NIWA memo titled "Manapōuri Lake Control Improvement Project – RFI Native fish" dated 4 June 2024 [Appendix B to the Meridian letter of the same date provided as supporting information for the second pre-hearing meeting].

– Declining), black-billed gull (At Risk – Declining), banded dotterel (At Risk – Declining), NZ pipit (At Risk – Declining) and the South Island pied oystercatcher (At Risk – Declining).

3.2.3 Overall, I consider that the receiving environment has moderate to low sensitivity to the proposed activities, primarily due to the highly modified nature of the site as part of the MPS.

3.3 Actual and potential effects

3.2.4 The proposed activities will have a range of effects on the environment, including some that are authorised by MTADA and others that are considered under this consent application. The AEE considers the full range of effects for the proposed activity in section 7, with additional information provided in the responses dated 15 March 2024 and 4 June 2024. For the effects discussion below, I have used the same headings as in section 7 of the AEE.

3.2.5 To recap, the following effects that are considered under sections 9, 12, 13, 15(1)(c) and (d), and 15(2A) are regulated under MTADA and not the RMA:

- a. Effects on landscape and visual values
- b. Effects on recreation
- c. Effects on amenity, including noise and vibration.

3.2.6 For completeness, these effects are considered in the AEE and my understanding is that Meridian is taking the approach of avoiding, remedying or mitigating them. As they cannot be considered under this consent application, I have not considered them below.

3.2.7 Submitters raised concerns about the potential effects on coastal erosion at the mouth of the lower Waiau River, where the Bluecliffs settlement is located. The proposed parallel channel is intended to allow more frequent flushing flows, which will enable Meridian to better comply with the Protocol established under condition 7 of consent Auth-206156-V4. Submitters consider that these additional flows may exacerbate coastal erosion.

3.2.8 Meridian’s RFI response dated 4 June 2024 considers the matter of coastal erosion to be outside the scope of this consent application. The flushing flows are a requirement of the MPS’s operational consents and this application is seeking to undertake works to enable Meridian to better comply with those requirements. The consent application being considered here is not to revisit those flushing flows. I agree with Meridian’s position and do not further consider the effects on the Bluecliffs community.

3.2.9 The following effects, regulated under s.14 and s.15(1)(a) and (b), are considered relevant here under section 104(1)(a) and are discussed below:

- a. Effects on cultural values.
- b. Effects on hydrology and water quality.
- c. Effects on geology and hydrogeology.
- d. Effects on ecology.
- e. Positive effects.

Effects on cultural values

3.2.10 A neutral submission was received from Te Ao Marama Inc. on behalf of Oraka Aparima Rūnaka. At the time of finalising this report, it is my understanding that Rūnaka are preparing

a Cultural Impact Statement and are continuing discussions with Meridian. This will likely be addressed through evidence and presentations to the panel, by Rūnaka and/or Meridian.

Effects on hydrology and water quality

- 3.2.11 Effects on hydrology and water quality are assessed in the NIWA report attached as Appendix D to the AEE. These include effects on flows and flow variability, and effects on suspended sediment and deposited fine sediment. Meridian’s assessment of the physical effects has been audited for the Council by Ramon Strong, whose report is provided as Attachment 1, while Meridian’s assessment on water quality has been audited by Dr Greg Burrell. Dr Burrell’s report is provided as Attachment 3.
- 3.2.12 During the project works period, Meridian intends to manage the flows in the Waiau Arm and lower Waiau River both to meet their flow obligations (i.e., minimum flows, recreational flows, spill flow to achieve lake levels, and supplementary flows to manage nuisance periphyton growths) and to ensure that the level in the Waiau Arm will remain suitable for excavation work. To prevent suspended sediment from reaching Lake Manapōuri, Meridian proposes to restrict upstream flows in the Waiau Arm from the project area towards Lake Manapōuri. There is a possibility that lake levels may rise above the maximum control level, in which case the excavation works would be unable to progress. This would be due to climatic factors and be largely out of Meridian’s control.
- 3.2.13 Probably the key adverse effect from the proposed activity results from increased turbidity and fine sediment deposition from the construction activities. The release of suspended sediment will primarily be limited to the 3-5 week period when the ‘plugs’ are removed and the new channel breaks through into the flowing Waiau Arm. Increased turbidity and deposited fine sediment (DFS, sediment <2 mm diameter) can reduce visual amenity values and have a wide range of effects on aquatic ecosystems. The latter are discussed further in below in the ‘Effects on ecology’ section.
- 3.2.14 Meridian proposes turbidity limits which have been benchmarked against historical monitoring data. The intention is that ecosystems will be adapted to withstand these values, although Dr Burrell observes that, *“as written, it appears that the proposed turbidity limits could result in more than double the historic measured values. For example, if 150 FNU was measured upstream, the consent would allow for an increase in 150 FNU, giving a total of 300 FNU, for a long period (504 hours maximum)”*.⁵
- 3.2.15 While this appears to be significant, the works will be short term and, in Dr Burrell’s experience, *“it is very difficult to avoid large turbidity increases during in-river works in larger rivers”*.⁶ He suggests that the key way to mitigate such effects would be to limit both the amount of time that in-river works can occur, and the number of consecutive days that work can occur. Meridian has applied for consent to undertake works 24 hours a day, seven days a week and has expressed a strong preference to reduce the period of the works to reduce the risk of hydrological conditions and adverse weather events requiring the temporary abandonment and reestablishment of the works. It is also relevant to consider whether the additional time that would be required to open the ‘plugs’ could result in prolonged exposure to elevated turbidity, albeit at a potentially lower level.

⁵ Paragraph 22 of the s.42A report of Dr Greg Burrell.

⁶ *ibid*

- 3.2.16 Overall, while Dr Burrell expresses concerns about the complexity of the proposed turbidity and DFS limits, he considers *“that the “long term gain” of increased flushing flow frequency outweighs the “short term pain” of increased turbidity and DFS downstream”*.⁷ It is relevant to note that the proposed construction methodology of largely out-of-stream channel construction, with connection via the removal of plugs, will have reduced effects compared to the alternative of in-stream construction.
- 3.2.17 Effects due to the discharge of sediment will also result from maintenance activities following construction. Meridian estimates that the required maintenance works will be at a much smaller scale. A more restricted turbidity threshold is proposed to reflect this, which only allows for short-term increases over 160 FNU. Dr Burrell suggests a condition that only allows for maintenance activities if the channel is achieving its objective of providing for increased frequency of flushing flows. I see merit in such a condition – if the channel is not achieving its purpose, the effects of maintenance activities should not occur.
- 3.2.18 One other matter that is relevant here is the proposed mixing zone. Meridian proposes a reasonably large mixing zone in the lower Waiau River downstream to Excelsior Creek (refer Figure 3). The justification is that, prior to the confluence with Excelsior Creek there are no tributaries of sufficient size to enable mixing. The confluence with Excelsior Creek is also an accessible location with existing monitoring data available. I acknowledge that this is an unusual situation where all of the water released through the MLC is the turbid water that comprises the discharge. An external water source is required to enable mixing and I agree that the proposed mixing zone is appropriate.

⁷ Paragraph 21 of the s.42A report of Dr Greg Burrell.

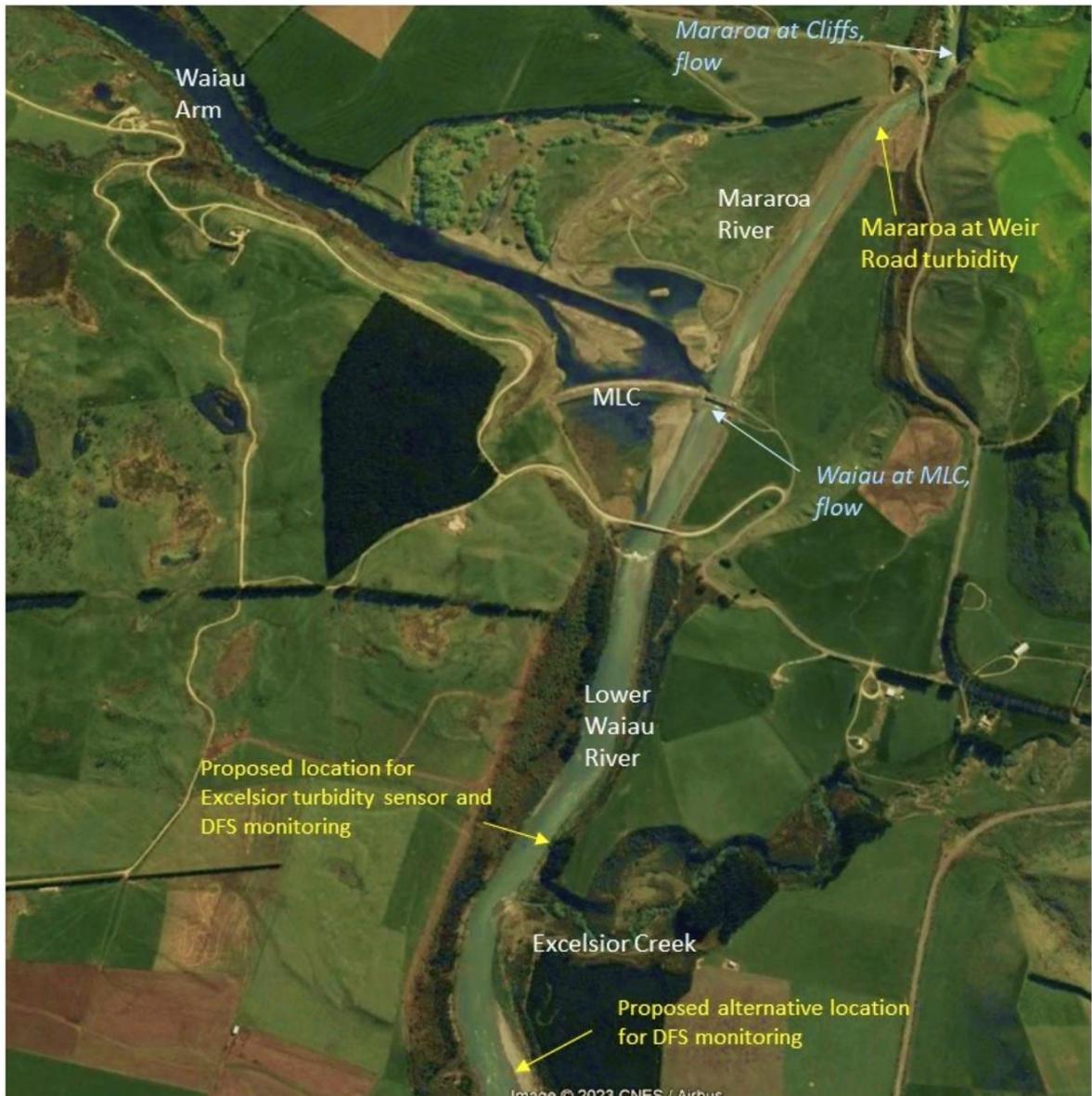


Figure 3: Key location for turbidity monitoring (Source: Figure 5.5 of the AEE)

Effects on geology and hydrogeology

- 3.2.19 These effects are assessed in detail in the Damwatch report appended to the AEE as Appendix C. This has been reviewed by Mr Strong and his findings are in his report provided as **Attachment 1**.
- 3.2.20 Mr Strong identified two key effects. Firstly, there is the potential for the excavated channel to be impacted by flood flow breakout from the lower reach of the Mararoa River. This would be most pronounced at low lake levels and could occur via an old river channel on the true right of the Mararoa River immediately downstream of Weir Road.
- 3.2.21 Following discussions with Meridian’s experts and review of the modelling information, Mr Strong concluded that *“the likelihood of an extreme event in the Mararoa River occurring when lake levels were low was unlikely given the nature of the respective catchments”*. He goes on to state that *“contouring of the fill deposition area could address this matter definitively but, in my opinion, the particular set of circumstances required have a sufficiently low probability*

*and consequential impacts sufficiently small for this to be discounted as a consideration with the application”.*⁸

- 3.2.22 The second issue raised by Mr Strong was the potential for the excavated material to be different in nature to that proposed. This could potentially change the nature of the sediment discharges as well as affect the stability of the cut slopes of the channel. Meridian experts responded to Mr Strong’s concerns, stating that considerable variation was unlikely and that the stock pile area had sufficient capacity to cater for variances. Mr Strong considered these to be reasonable assumptions based on his knowledge of the site.
- 3.2.23 Some submitters considered that, as an alternative to the proposed new channel, Meridian should lower the sill height of the MLC as a means for achieving improved conveyance of flushing flows at low lake levels. This matter was covered at the first pre-hearing meeting, with Meridian experts maintaining that conveyance between the lake and the MLC is the critical consideration and that matters related to sill height are secondary. Mr Strong agrees with this view.
- 3.2.24 In conclusion, Mr Strong considers that the approach proposed is justified and that the *“potential physical effects are both relatively limited and small scale”*.⁹

Effects on ecology

- 3.2.25 Ecological effects include effects on terrestrial ecology, primarily wetlands, effects on freshwater ecology, and effects on birds. The effects on wetlands are assessed for Meridian by Boffa Miskell (see their report in Appendix F of the AEE) and have been reviewed for the Council by Dr Thorsen. Freshwater ecosystem effects are addressed for Meridian in two reports by NIWA, included as Appendix D (construction effects) and Appendix E (operational effects). These were reviewed for the Council by Dr Burrell.
- 3.2.26 Turning first to effects on terrestrial ecology, the proposal requires disturbance and vegetation removal within the construction footprint. While most of this vegetation has minimal values, comprising exotic grasses and crack willow, a small number of Buchanan’s sedge plants (At Risk – Declining) were identified. Meridian has proposed a consent condition requiring the transplanting of these plants to a suitable area of lacustrine wetland habitat within the project site but outside of the construction footprint. Following pre-hearing discussions, this condition was strengthened to also require seed collection, the raising up a minimum of 100 plants, and the planting of these plants within the project area following completion of the works. Dr Thorsen considers this mitigation to be appropriate.
- 3.2.27 The application documents identify twelve affected wetlands in the spoil deposition area, one wetland in the channel excavation area, and seven potentially affected wetlands downstream between the MLC and Monowai River confluence. Dr Thorsen agrees with Boffa Miskell’s assessment that most of the wetlands in the spoil deposition area are recently-created, with few indigenous plant species and low ecological values. Other wetlands are within the maximum operating level of the lake.
- 3.2.28 One wetland (Wetland 1 in the AEE) will be irreversibly lost, with others to be protected from spoil deposition by a constructed bund. In response to submissions, Meridian proposed a new condition requiring wetland remediation to achieve no net loss of indigenous *Juncus* rushland.

⁸ Paragraphs 23 and 24 of the s42A report of Ramon Strong

⁹ Paragraph 34 of the s42A report of Ramon Strong

This approach is supported by Dr Thorsen who had initial concerns about the loss of wetland values resulting from the proposed activities. Following further information and additional proposed mitigation, including the ‘no net loss’ conditions, he is satisfied that the *“non-trivial effects can be managed by way of the proposed consent conditions”*.¹⁰

- 3.2.29 Turning to the effects on freshwater ecology, these largely relate to the turbidity and deposited fine sediment effects discussed above, along with the direct effects from construction activities.
- 3.2.30 Meridian has proposed a condition requiring a Freshwater Fauna Management Plan (FFMP) as a key way to manage the effects of channel construction. This proposed condition was strengthened in response to discussions at the pre-hearing meeting. The FFMP would be prepared prior to construction works occurring in water and would identify best practice survey methods and the approach to relocating freshwater fauna. Dr Burrell considers that the *“proposed condition would result in a FFMP sufficiently robust to minimise harm to freshwater fish and other fauna”*.¹¹
- 3.2.31 The intention of the proposed new channel is to provide for additional flushing flows. If successful, this would improve the ecological health of the lower Waiau River by removing fine sediment and periphyton. A key consideration for Dr Burrell is whether the potential positive effects resulting from improved flushing will outweigh the negative effects. He agrees with the findings of the Meridian experts *“that there will be an overall positive effect, provided various mitigation measures are put in place”*.¹² This includes mitigation to manage turbidity and DFS levels and the preparation of the FFMP.
- 3.2.32 Meridian’s assessment on avifauna was initially found lacking by Dr Thorsen. Meridian provided additional information in the RFI and in a memo by Dr Leigh Bull, Bluegreen Ecology, dated 16 July 2024 and attached to the information provided in advance of the second pre-hearing meeting. Several threatened and at-risk indigenous bird species are present at the project site, including black-fronted tern (At Risk – Declining), black-billed gull (At Risk – Declining), banded dotterel (At Risk – Declining), NZ pipit (At Risk – Declining) and the South Island pied oystercatcher (At Risk – Declining).
- 3.2.33 As mitigation, Meridian has proposed a consent condition requiring surveying of the construction footprint in advance of any works undertaken between 15 September and 31 January. The survey is to determine if any black-fronted tern, banded dotterel, black-fronted dotterel or NZ pipit are nesting within the footprint. No works are to be undertaken within 50 m of these bird species if/while they are nesting. Dr Thorsen supports the inclusion of this consent condition.
- 3.2.34 Dr Bull has used the Environmental Institute of Australia and New Zealand (EIANZ) ecological impact assessment guidelines to assess the effects of the proposal on avifauna. She concludes that, while species with high to very high ecological value are present at the site, the level of effects are assessed as low for black-fronted tern and very low for other recorded species. Dr Thorsen has reviewed this assessment and agrees with the approach and findings.

¹⁰ Paragraph 31 of the s.42A report of Dr Mike Thorsen.

¹¹ Paragraph 16 of Dr Burrell’s s42A report.

¹² Paragraph 10 of Dr Burrell’s s42A report.

Positive effects

- 3.2.35 Meridian’s assessment of positive effects centres around the proposed works improving the conveyance and reliability of flow releases via the MLC into the lower Waiau River. This will enable better management of nuisance periphyton growths and the associated benefits for freshwater ecosystems and recreation.
- 3.2.36 Mr Strong has considered whether the proposed alternative channel will achieve the objective of increased flow releases. He considers that there is no alternative to achieving this objective and that the proposal will be viable. On this basis I accept Meridian’s assessment and consider that the positive effects will be significant for the health of the lower Waiau River.

Summary of effects

- 3.2.37 While the Council’s processing team had some initial concerns with the proposal, these have mostly been resolved through further information and additional mitigation offered through the pre-hearing meeting processes. We are continuing to work with Meridian to ensure that the proposed consent conditions are sufficiently robust.
- 3.2.38 The key effects are associated with the release of sediment from opening the channel to flowing water. These effects are temporary but are difficult to manage. Mitigations such as fish translocation, no net loss of *Juncus* rushland, and the transplanting and cultivation of *Buchanan’s* sedge are all supported. In conclusion, it is likely that the positive effects of providing additional flushing flows to the lower Waiau River will outweigh the largely temporary effects of the channel construction and maintenance.

3.4 Relevant provisions of the regional plans (Section 104(1)(b)(vi))

- 3.4.1 Meridian’s AEE contains an assessment of the project against the relevant regional plan objectives and policies in Appendix J to the AEE. I have reviewed this planning assessment and consider that it identifies the relevant objectives and policies in the pSWLP and RWP. The pSWLP is partially operative although all appeals are yet to be resolved through the Environment Court. The provisions subject to appeal relate to groundwater takes, weed and sediment removal for drainage maintenance, and incidental contaminant discharges from agricultural land use. None of these matters relate to Meridian’s proposed activity, so the relevant provisions are considered operative.
- 3.4.2 I refer the Panel to Appendix J of the AEE for a comprehensive list of the relevant objectives and policies of the pSWLP and have not replicated these provisions below. Objective 6 of the pSWLP is particularly relevant, being to improve water quality where it is degraded, or maintain water quality where it is not degraded. Objective 17 is to “*Preserve the natural character values of wetlands, rivers and lakes ... from inappropriate use and development*”. These are primarily implemented through Policy 28 – Structures and bed disturbance activities of rivers (including modified watercourses) and lakes, which requires adverse effects to be avoided where reasonably practicable, or otherwise remedied or mitigated.
- 3.4.3 I concluded above that, while there will be effects from the construction activities, the long term effects of improved flushing flows will likely outweigh the short-term negative effects from construction. The proposed primarily out-of-stream construction method will have less adverse effects than the instream construction alternative, and the measures proposed to reduce construction effects are appropriate.

3.4.4 In conclusion, I consider that the proposal is consistent with the relevant provisions of the regional plans.

3.5 Relevant provisions of the Southland Regional Policy Statement (Section 104(1)(b)(v))

3.5.1 The Southland Regional Policy Statement (RPS) became operative on 9 October 2017. Appendix J to Meridian’s AEE also includes an assessment of the proposal against the objectives and policies of the RPS. I agree that the relevant provisions are considered in this assessment and do not replicate the provisions below.

3.5.2 As with my discussion above for regional plans, and given my conclusions about the environmental effects of the proposal, I consider that the proposed activity is consistent with the relevant provisions of the RPS.

3.6 Relevant provisions of National Policy Statements (Section 104(1)(b)(iii))

3.6.1 Two national policy statements are relevant to this proposal: the National Policy Statement for Freshwater Management (NPS-FM) 2020 and the National Policy Statement for Renewable Electricity Generation (NPS-REG) 2011. I agree with the AEE that the National Policy Statement for Indigenous Biodiversity 2023 is not relevant to this application. This is because clause 1.3(3) of the NPS-IB states:

Nothing in the National Policy Statement applies to the development, operation, maintenance or upgrade or renewable electricity generation assets and activities...”

3.6.2 The NPS-FM and NPS-REG are assessed in the AEE in sections 9.3.1 and 9.3.2 respectively. The NPS-FM supports improved freshwater management in New Zealand. It does this by directing regional councils to establish objectives and set limits for fresh water in their regional plans. Its provisions are high level and cannot be readily applied to individual activities. Rather, they are expected to be given effect to through regional plans.

3.6.3 The NPS-FM’s fundamental concept of Te Mana o te Wai is established through a hierarchy of obligations and six principles (refer to clause 1.3). The hierarchy of obligations forms the sole objective, prioritising the health and well-being of water bodies and freshwater ecosystems over the health needs of people and, thirdly, *“the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future”*. Policy 1 of the NPS-FM is to give effect to Te Mana o te Wai, with the remaining high level policies further clarifying how this is to be achieved.

3.6.4 Given the above conclusion on the environmental effects, I consider that the proposed activity will be consistent with the hierarchy of obligations. The health and well-being of the lower Waiau River would be prioritised through enabling the provision of additional flushing flows, while the proposed mitigation ensures that the short term effects will be avoided, remedied or mitigated.

3.6.5 The NPS-REG recognises the national significance of renewable electricity generation activities and provides for the operation, maintenance and upgrading of the MPS. The NPS-REG is given effect to through the RPS and pSWLP. I agree with the AEE’s conclusion that the proposed activity will be consistent with the provisions of the NPS-REG.

3.8 Relevant provisions of National Environmental Standards and other regulations (Section 104(1)(b)(i) and (ii))

3.8.1 The NES-F is the only national environmental standard relevant to this application. Resource consents requirements under the NES-F were discussed above in section 2.3 and are not discussed further here.

3.9 Any other matters considered relevant and reasonably necessary to determine the application (Section 104(1)(c))

3.9.1 Te Tangi a Tauria / The Cry of the People is the Iwi Management Plan for Southland and is a relevant consideration under s.104(1)(c) of the RMA. Also relevant is the Ngāi Tahu Freshwater Policy Statement. These documents are assessed in section 9.8 of the AEE and are also addressed in the submission of Te Ao Marama, lodged on behalf of Oraka Aparima Rūnaka.

3.9.2 Policies in section 3.3.1.1 of Te Tangi a Tauria recognise the previous impacts of the MPS on the West Arm and lower Waiau River. The high cultural significance of the Waiau River to Ngāi Tahu is reflected in the provisions of Te Tangi a Tauria and also through the river's status as a Statutory Acknowledgement. Consistent with Te Tangi a Tauria, Rūnaka seek a consent duration of no more than 25 years.

3.9.3 I have not assessed the proposed activity against the provisions of these two documents, as this is a matter for Rūnaka to address at the hearing should they choose to present. Rūnaka representatives participated in the pre-hearing meetings and there has been continuing engagement between Meridian and Rūnaka representatives to resolve outstanding issues. I have not been party to these discussions. At the time of writing, Rūnaka are still wishing to be heard.

3.10 Section 105 matters relevant to discharge or coastal permits

3.10.1 Section 105(1) matters need to be considered as the application is for a discharge that would contravene s.15. Under s.105(1), the consent authority must also have regard to:

- (a) *the nature of the discharge and the sensitivity of the receiving environment to adverse effects;*
- (b) *the applicant's reasons for the proposed choice; and*
- (c) *any possible alternative methods of discharge, including discharge into any other receiving environment.*

3.10.2 The nature of the discharge and sensitivity of the receiving environment have been addressed in section 3.2 of this report. Meridian's reasons for the proposal are outlined in both the AEE and in this report but are driven by the need to comply with their flushing flow requirements. Alternative methods of discharge are addressed in section 3 of the AEE and throughout this report. I have concluded that the method of discharge is appropriate when compared to the main alternative, being in-water construction of the channel.

3.11 Section 107 restriction on grant of certain discharge permits

- 3.11.1 The potential for the effects listed under s.107(1) of the RMA are discussed in section 9.7 of the AEE. Section 107(1) states that a discharge permit should not be approved if, after reasonable mixing, the contaminant is likely to give rise to adverse effects.
- 3.11.2 The extent of the mixing and justification for the mixing zone has been discussed in the effects section above, where I concluded that the mixing zone is appropriate in the circumstances. Given the proposed mitigation and construction methodology, the proposed sediment discharge should not give rise to the effects on surface water listed in s.107(1).
- 3.11.3 If any of the effects were to arise beyond the mixing zone, notably “*any conspicuous change in the colour or visual clarity*” (s. 107(1)(d) or “*any significant adverse effects on aquatic life*”, I note that s.107(2)(b) provides for a consent authority to grant a discharge permit if the discharge is of a temporary nature. I consider that the proposed discharge is of a temporary nature.
- 3.11.4 Meridian considers that s.107(2)(a) also applies, being “*that exceptional circumstances justify granting the permit*”. Those exceptional circumstances are that the activity is associated with renewable energy infrastructure of national significance which will deliver positive environmental outcomes. I consider that this position is justified, with the significance of the infrastructure being clear from the NPS-REG and this report supporting the finding of positive effects.
- 3.11.5 In conclusion, I do not consider that s.107 would restrict the granting of this application.

3.12 Part 2 of the Resource Management Act 1991

- 3.12.1 All considerations are subject to Part 2 of the RMA, which sets out the purpose and principles that guide this legislation. This means that the matters in Part 2 prevail over other provisions of the RMA or provisions in planning instruments in the event of a conflict. Section 5 states the purpose of the RMA and sections 6, 7 and 8 are principles intended to provide additional guidance as to the way in which the purpose is to be achieved.
- 3.12.2 The application of s.5 involves an overall broad judgement of whether a proposal will promote the sustainable management of natural and physical resources. The enabling and managing functions found in s.5(2) should be considered of equal importance and taken as a whole. Sections 6, 7 and 8 provide further context and guidance to the constraints found in s.5(2)(a), (b) and (c). The commencing words to these sections differ, thereby establishing the relative weight to be given to each section.
- 3.12.3 In relation to the matters outlined in s.5 it is considered that this application is consistent with the purpose and the principles of the Act, as set out in s.5. This is the promotion of the sustainable management of natural and physical resources. The proposed activities will have no more than minor adverse effects on the ability of the receiving environment to meet the reasonably foreseeable needs of future generations, or on the life-supporting capacity of the land or any ecosystem associated with it. Proposed consent conditions will ensure that any potential adverse effects of the activities will be avoided, remedied or mitigated.

- 3.12.4 All of the s.6 matters have been covered within the various Council planning instruments, of which the application is generally consistent with.
- 3.12.5 In relation to the considerations under s.7, it is considered that the activity would result in the maintenance and enhancement of the quality of the environment (s.7(f)) and the efficient use and development of resources (s.7(b)). It is considered that, as with the various Council planning documents the application is generally consistent with the s.7 matters.
- 3.12.6 With regard to s.8 of the RMA, the principles of the Treaty of Waitangi have been taken into account. This is through the consideration of Te Tangi a Tauira and the relevant policies in other planning documents. While I have reviewed and considered these matters, I have not discussed them in detail in this report. Instead, I am leaving Rūnaka to speak to their position on the application.
- 3.12.7 Overall, the application is considered to meet the relevant provisions of Part 2 of the RMA as the proposal achieves the purpose of the RMA which is the sustainable management of natural and physical resources.

4. Recommendations

4.1 Whether to grant

- 4.1.1 The activities applied for have been considered together, and as such the highest consent test applies. The application is therefore considered as a **non-complying activity**. Under s.104D the Council may grant consent if it is satisfied that either the adverse effects will be minor or the application will not be contrary to the objectives and policies of the relevant proposed and operative plans. If it grants the application, it may impose conditions under s.108 of the RMA. Because the effects of the activities have been assessed as having a no more than minor effect on the environment the application meets one of the gateway tests for non-complying activities as set out in s.104D (1)(a) of the RMA. The activities are also consistent with the relevant planning documents, therefore also meeting the gateway test in s.104(1)(b) of the RMA.
- 4.1.2 While the receiving environment is moderately sensitive to the proposed activity, the proposed mitigation has been found to be appropriate, the adverse effects temporary and minor and the long term effects positive. For these reasons, the proposed activity has been assessed to be consistent with the relevant statutory documents, including the RMA.
- 4.1.3 Subject to new or contrary evidence being presented at the hearing I recommend that under Sections 104, 104B, 104D, 105 and 107 of the RMA that consent is granted. The reasons for this recommendation are:
- in regards to Section 104(1)(a) of the RMA the activity will bring about adverse effects which are likely to be minor in the short term and positive in the long term;
 - the adverse effects can be adequately avoided, remedied or mitigated through consent conditions;
 - in regards to Section 104(1)(b) the activity is consistent with the relevant provisions of the pSWLP, RPS, NPS-FM, NPS-REG;
 - the application is considered to meet the relevant provisions of Part 2 of the RMA.

4.2 Consent duration

4.2.1 The applicant has requested a consent duration of 35 years. They justify this based on the significant investment required to construct the channel, the short-term nature of the initial construction effects, the long-term positive effects associated with the ongoing partial diversion, and the need to be able to maintain the channel into the future.

4.2.2 Policy 40 of the pSWLP provides the matters to be considered when determining consent duration. Considering policy 40, the following clauses are relevant:

- There is not sufficient uncertainty as to the nature, scale, duration or frequency of adverse effects from the activity or the capacity of the resource to limit the duration (clause 1);
- I'm not qualified to comment on relevant tangata whenua and Ngāi Tahu indicators of health, but note that the intention of the proposal is to increase the health of the lower Waiau River (clause 2);
- The duration sought by Meridian and its reasoning is discussed in the previous paragraph;
- Turning to the permanence and economic life of any capital investment (clause 4), the proposed channel is a multi-million dollar investment that, with appropriate maintenance, is intended to have a lifespan beyond 35 years.

4.2.3 The Waiau submitters initially requested an expiry date of 31 December 2031, being that date that the existing MPS consents expire, while the Director-General requested 15 years and Rūnaka no more than 25 years. Both the Waiau submitters and the Director-General indicated that they no longer pursue these requested durations, although the Waiau submitters express a preference for a duration less than 35 years.

4.2.4 Considering the above, I consider that a consent duration of 25 years is appropriate. This would likely provide Meridian the certainty to proceed with the investment while allowing for any changes to the environment over time to be accounted for via a replacement consent application. These could include the impacts of climate change or the further accumulation of gravel and sediment in the Waiau Arm.

4.3 Draft Consent Conditions

4.3.1 Meridian proposed consent conditions in section 8 of the AEE. These were subsequently amended following pre-hearing meetings discussions, with this set of conditions included in Attachment 4. As discussed in the effects section above, many of the key mitigation conditions are appropriate and supported. These include the wetland mitigation, FFMP, erosion and sediment control, and water quality monitoring conditions.

4.3.2 I consider that the conditions as proposed do not adequately describe the nature and extent of the proposed activities, instead relying on "in general accordance with" type conditions. The current proposed conditions also do not adequately distinguish between different operational controls through the different stages of building and maintaining the diversion. I also consider that the content of the management plans could be better defined.

4.3.3 Constructive discussions are continuing with Meridian to strengthen the proposed consent conditions and a revised set of conditions will be presented at the hearing, with an indication of agreement or otherwise.



Bianca Sullivan
Contracted Consents Officer



Reviewed and Approved for release
Lacey Bragg
Consents Manager

RECOMMENDATIONS IN COUNCIL REPORTS ARE NOT TO BE CONSTRUED
AS COUNCIL POLICY UNLESS ADOPTED BY COUNCIL