

**In the Environment Court  
I Mua I Te Kōti Taiao O Aotearoa  
Auckland Registry  
Tāmaki Makaurau Rohe**

**ENV-2022-AKL-**

Under the Resource Management Act 1991  
And in the matter of an appeal pursuant to Schedule 1, clause 14(1) of the Act

Between

**Meridian Energy Limited**

Appellant

and

**Waikato District Council**

Respondent

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**Notice of Appeal on behalf of Meridian Energy Limited  
against decision on the Proposed Waikato District Plan**

**1 March 2022**

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**BELL GULLY**

BARRISTERS AND SOLICITORS

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**To:** The Registrar  
Environment Court  
Auckland

1. Meridian Energy Limited (**Meridian**) appeals against parts of a decision of the Waikato District Council (the **Council**) on the Proposed Waikato District Plan (the **Proposed Plan**).
2. Meridian made a submission and a further submission on the Proposed Plan.
3. Meridian is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (the **RMA**).
4. Meridian received notice of the decision on 17 January 2022.
5. The decision was made by the Independent Hearing Panel (the **Panel**) appointed by the Council.
6. The parts of the decision that this appeal relates to are:
  - (a) Part 2: District-wide matters / Energy, Infrastructure and transport / EGEN – Electricity generation – Rules EGEN - R6 (1) and Rule EGEN - R8 (1);
  - (b) Part 2: District-wide matters / Energy, infrastructure and transport / AINF – All infrastructure – Rule AINF – R6 (1);
  - (c) Part 2: District-wide matters / Energy, infrastructure and transport / EGEN – Electricity generation – Rule EGEN-R3 (1);
  - (d) Part 2: District-wide matters / Energy, infrastructure and transport / MET – Meteorological – Rules MET-R1(1) and MET-R2(1); and
  - (e) Part 2: District-wide matters / Natural environmental values / ECO – Ecosystems and indigenous biodiversity – Policies ECO – P9 and ECO – P10.

7. The reasons for the appeal and the relief sought from the Court are set out in detail below. Amendments sought by Meridian are underlined or ~~struck through~~.

**Part 2: District-wide matters / Energy, infrastructure and transport / AINF – All infrastructure – Rule AINF – R6 (1)**

*Reasons for appeal:*

8. Meridian's submission on the Proposed Plan supported discretionary activity status for large-scale wind farms within the General Rural Zone. Meridian's further submission opposed the non-complying activity status rule assigned to large-scale wind farms in Identified Areas in the Rural Zone.
9. The decisions version of the Proposed Plan provides for large-scale wind farms in Identified Areas in the General Rural Zone and in non-rural zones as a non-complying activity.
10. As the New Zealand economy electrifies as a means to meet its greenhouse gas emission obligations, the development of renewable energy generation will be integral in supporting New Zealand's transition to a lower carbon economy. New renewable energy opportunities are being explored nationwide (including in the Waikato area) and against this context, non-complying activity status within Identified Areas of the General Rural Zone is unduly restrictive and fails to give effect to the National Policy Statement for Renewable Energy Generation 2011 (**NPS-REG**) as required by section 75(3) of the RMA. In particular, Policy E3 of the NPS-REG provides that district plans shall include rules to provide for the development, operation, maintenance and upgrading of new and existing wind generation activities to the extent applicable within the district. Non-complying activity status for large scale wind farm activities within Identified Areas in the General Rural Zone does not give effect to this policy.
11. Non-complying activity status has the potential to frustrate the enabling provisions for renewable energy generation activities contained in Part 2: District-wide matters / Energy, infrastructure and transport / AINF –

All infrastructure of the Proposed Plan. For example, Objective AINF-O5 provides for an increase in renewable electricity generation. Policy AINF-P21 seeks to “Enable the investigation, development, operation, maintenance and upgrading of renewable electricity generation activities, including domestic and community scale distributed renewable electricity generation, provided that adverse effects are avoided, remedied or mitigated.”

12. Meridian considers that non-complying activity status is too restrictive, inappropriate, and unnecessary to give effect to the purpose and principles in Part 2 of the RMA.
13. Whilst Meridian understands that the Proposed Plan seeks to ensure that there is sufficient protection of Identified Area values given the potential sensitivity of these areas, there is also a practical need to locate renewable electricity generation activities where the renewable energy resource is available.
14. Meridian considers that discretionary activity status would enable a more appropriate framework for consideration of the effects and policy implications of large-scale wind farm activities within Identified Areas in the General Rural Zone. Discretionary activity status enables all relevant matters to be considered and an application declined where the effects of the activity are such that development becomes inappropriate.
15. In addition, the non-complying activity status assigned to large scale wind farm activities is inconsistent with the activity status of other large infrastructure activities in Identified Areas of the Rural Zone which may have a functional need to locate in Identified Areas (for example, above ground reservoirs).

*Relief sought:*

16. Amend EGEN - R6 (1) as follows:

Large-scale wind farms located within the GRUZ-General Rural Zone;  
not within an Identified Area

Wind turbine noise must be measured and assessed in accordance with NZS6808:2010 Acoustics – Wind Farm Noise

17. Delete Rule EGEN - R8 (1):

~~Large scale wind farm located within any Identified Area in the GRUZ – General Rural Zone~~

~~Wind turbine noise must be measured and assessed in accordance with NZS6808:2010 Acoustics – Wind Farm Noise~~

**District-wide matters / Energy, infrastructure and transport / AINF – All infrastructure – Rule AINF – R6 (1)**

*Reasons for appeal:*

18. Meridian’s submission sought amendments to the minor upgrading permitted standards to increase the dimensions of an existing structure. The Panel accepted Meridian’s submission in part but did not increase the standards to the extent requested by Meridian.
19. Meridian considers sub-clauses (a) and (b) of the permitted activity standards remain unduly restrictive for upgrading renewable electricity generation facilities, such as wind turbines. The standards specified in Rule AINF- R6 (1) fail to recognise that wind energy facilities are often of a different scale compared to other (horizontal) forms of infrastructure. In addition, these permitted activity standards relate to existing infrastructure, and therefore issues around the general scale of these types of renewable electricity generation facilities have already been assessed through a resource consent application process and been determined to be acceptable.
20. The permitted activity standard in Rule AINF- R6 also creates an unrealistic permitted baseline that a decision-maker may choose to take into account when considering a renewable electricity generation application under the restricted discretionary rule for minor upgrades (when compliance with the permitted activity standards cannot be achieved - see Rule AINF – R6(2)).

*Relief sought:*

21. Amend Rule AINF- R6 (1) as follows:

**(1)Activity status: PER**

**Activity-specific standards:**

(a) The realignment, configuration, relocation or replacement of infrastructure and associated structures that meet all of the following standards:

- (i) Are within 100m~~5m~~ of the existing alignment or location;
- (ii) Do not increase the height of any existing pole or support structure by more than 50%~~40%~~ (to a maximum height of 20m in all zones except the GRUZ – General rural zone, GIZ – General industrial zone, HIZ – Heavy industrial zone and MSRZ – Motor sport and recreation zone);
- (iii) Do not increase the diameter (width) of any existing pole or support structure by more than 50%, or 100% increase in the case of a double pole, in all zones
- (iv) Do not increase the diameter of any existing above-ground pipe by more than 300mm; and
- (v) Do not increase the area of any existing above-ground structure by more than 25%

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22. Alternatively, insert a specific permitted activity minor upgrading rule tailored to the particular needs of renewable electricity generation as follows:

**Minor upgrading of Wind Energy Facilities**

**(1)Activity status: PER**

**Activity-specific standards:**

- (a) The realignment, configuration, relocation or replacement of **wind energy facilities** and associated structures that meet all of the following standards:
- (i) Are within 100m of the existing alignment or location;
  - (ii) Do not increase the height of any existing pole or support structure by more than 50% (to a maximum height of 20m in all zones except the GRUZ – General rural zone, GIZ – General industrial zone, HIZ – Heavy industrial zone and MSRZ – Motor sport and recreation zone);
  - (iii) Do not increase the diameter (width) of any existing pole or support structure by more than 50%; and
  - (iv) Do not increase the area of any existing above-ground structure by more than 25%.

**Part 2: District-wide matters / Energy, infrastructure and transport/ EGEN – Electricity generation – Rule EGEN – R3 (1)**

*Reason for appeal*

23. Meridian opposed the height restriction for wind investigation structures in condition (ii) of standard 14.6.1.2(a) in the notified version of the Proposed Plan. However, the Panel rejected Meridian's submission, noting that a blanket permitted height of 80 metres is not appropriate due to the potential for adverse effects in certain locations, given the open character of the zone and the 10 metre maximum height permitted for buildings.<sup>1</sup> The Panel did grant a slight increase in height in the General Rural Zone to 20 metres.
24. Meridian considers that the 20 metre height limit is unrealistically low for the type of investigation masts required to obtain meaningful data for investigations into renewable electricity generation activities. The

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<sup>1</sup> Report and Decisions of the Waikato District Plan Hearings Panel - Decision Report 13: Infrastructure at [149].

maximum height of 80 metres for wind investigation structures was sought by Meridian to enable measurements at a similar height to wind farm structures. Given this permitted activity rule is specific to renewable energy generation activities, the permitted activity standards should reflect what is realistically required for these type of investigations. In addition, the masts used for wind investigation are normally pole and wire configurations. Whilst these poles can be very tall, they are easily assimilated into the remote prospecting environments that these investigations generally take place in.

25. Wind investigation masts are designed for the purposes of investigation for renewable electricity generation activities. They are temporary structures which are in place for a relatively short period of time (up to 5 years). Meridian considers that having to obtain resource consent for these temporary investigation structures is both unduly burdensome and not enabling of renewable generation activities.

*Relief sought:*

26. Amend Rule EGEN – R3 (1) as follows:

**(1) Activity status: PER**

**Activity-specific standards:**

- (a) Research and exploratory-scale investigations for renewable electricity generation activities that comply with all of the following:
- (i) The noise limits that are applicable to the zone;
  - (ii) The height of any equipment must not exceed the building height limit of the zone in which they are located by more than 3m, ~~or~~ except within the GRUZ – General rural zone where the height must not exceed 80m~~20m~~ total height measured from the natural ground level immediately below the structure;



- (iii) The size and location of any equipment must not exceed height in relation to boundary relevant to the zone in which it is located;
- (iv) Setbacks relevant to the zone in which it is located;
- (v) Is not located within an identified area; and
- (vi) Is not located on a road, or unformed road.

**District-wide matters / Energy, infrastructure and transport / MET – Meteorological – Rules MET - R1 (1) and MET - R2 (1)**

*Reason for appeal:*

27. In its submission on the Proposed Plan, Meridian opposed the height limit for meteorological structures in permitted activity standards 14.8.1.1 (a) and 14.8.1.2 (a) in the notified version of the Proposed Plan as the proposed height limit is too low to practically obtain meaningful meteorological data for large-scale wind farms. However, the Panel rejected Meridian’s submission, noting that 80 metres was significantly higher than the permitted height of a building in any zone and a resource consent process is the most appropriate route for assessing any effects of such a structure.<sup>2</sup>
28. Similar to the discussion above in relation to Rule EGEN – R3 (1), the meteorological masts are normally pole and wire configurations that are around 80 metres in height. The nature of the structure means meteorological masts are easily assimilated into rural environments, and the activities usually undertaken within the General Rural Zone are generally less sensitive to the visual effects that may arise from this activity compared to some other zones. It is therefore appropriate that such meteorological masts are provided for as a permitted activity in the General Rural Zone.

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<sup>2</sup> Report and Decisions of the Waikato District Plan Hearings Panel - Decision Report 13: Infrastructure at [157].

29. This is consistent with the approach of other councils in New Zealand which have adopted a maximum permitted height of around 80 metres for meteorological masts in their district plans. For example, South Taranaki District Plan states that wind monitoring masts not exceeding a maximum height of 80 metres above natural ground level is a permitted activity (see Section 13: Standard 13.2.2(1) of the South Taranaki District Plan). The Auckland Unitary Plan (Operative in part) notes that for meteorological monitoring structures and devices to be a permitted activity, meteorological masts for wind research and exploration must not exceed 90m in height (see Chapter E26: Infrastructure, Standard E26.2.5.3 (12) of the Auckland Unitary Plan (Operative in part)). The Rangitikei District Plan and Ruapehu District Plan also permit wind monitoring masts up to 80 metres in height.

*Relief sought:*

30. Amend Rule MET – R1 (1) as follows:

**(1)Activity status: PER**

**Activity-specific standards:**

- (a) Meteorological enclosures and buildings, including automatic weather stations, that comply with all of the following:
- (i) The size of the structure must not exceed 30m<sup>2</sup> in gross floor area;
  - (ii) The structure complies with any relevant building height standard for the applicable zone except that, within the GRUZ – General Rural Zone, meteorological measurement masts associated with wind energy facilities must not exceed 80 metres in height;
  - (iii) Is not located within an Identified Area; and
  - (iv) Is not located on a road, or unformed road.

31. Amend Rule MET – R2 (1) as follows:

**(1) Activity status: PER**

**Activity-specific standards:**

- (a) Meteorological and air quality monitoring structures and devices that comply with all of the following:
  - (i) Do not exceed 12m in height measured from the natural ground level immediately below the structure, except that, within the GRUZ – General Rural Zone, meteorological measurement masts associated with wind energy facilities must not exceed 80 metres in height;
  - (ii) There shall be no more than one structure per site;
  - (iii) Is not located within an Identified Area;
  - (iv) Is not located on a road, or unformed road.
  - (v) Maximum area is 10m<sup>2</sup>.

**Part 2: District-wide matters / Natural environmental values / ECO – Ecosystems and indigenous biodiversity – Policies ECO – P9 and ECO – P10**

*Reasons for appeal*

- 32. Meridian opposes the insertion of new Policies ECO – P9 and ECO – P10, which provide for the management of indigenous biodiversity outside Significant Natural Areas through mitigation hierarchy and biodiversity offsetting. The new policies do not require that the indigenous biodiversity captured by these policies meets any standard of 'value' or significance. Given the RMA does not require blanket protection of all areas of indigenous biodiversity, Meridian considers that this indigenous biodiversity should not be afforded the type of protection provided for under s 6(c) of the RMA.
- 33. The Panel noted in its decision that the new policies have been inserted as an effective and efficient way of achieving Objective 3.1.1

(now ECO-O2).<sup>3</sup> However, a protection framework is too onerous when the aim of Objective ECO-O2 is that indigenous biodiversity and the life-supporting capacity of indigenous ecosystems are *maintained or enhanced*. There should be a level of flexibility as to how this objective could be met without being subject to the mitigation hierarchy. By way of example maintenance or enhancement might, depending on the circumstance, be achieved through mitigation, compensation or offsetting as opposed to avoidance.

34. In addition, Policy ECO-P2, which provides for the mitigation hierarchy approach for indigenous biodiversity within Significant Natural Areas, requires adverse effects to be avoided "...in the first instance as far as practicable". Policy ECO-P3 allows biodiversity offsetting to be considered where adverse effects have been avoided 'to the extent practicable'. The avoid requirement in the mitigation hierarchy policy ECO-P9 is therefore not consistent within the Proposed Plan, and there appears to be a disproportionate requirement for activities outside of SNA's to avoid significant adverse effects, without the 'as far as practicable' qualifier seen in Policies ECO-P2 and ECO-P3. Policy ECO – P9 also does not allow for the option of environmental compensation after considering the feasibility of biodiversity offsetting, unlike Policy ECO-P2, which does provide environmental compensation as an option.

*Relief sought:*

35. Delete Policies ECO-P9 and ECO-P10:

**~~ECO – P9 Management hierarchy.~~**

~~(1) Recognise and protect indigenous biodiversity outside Significant Natural Areas using the following hierarchy by:~~

~~(a) Avoiding the significant adverse effects of vegetation clearance and the disturbance of habitats in the first instance;~~

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<sup>3</sup> Report and Decisions of the Waikato District Plan Hearings Panel - Decision Report 9: Significant Natural Areas at [5.31]-[5.32].

~~(b) Remedying any effects that cannot be avoided; then~~

~~(c) Mitigating any effects that cannot be remedied; and~~

~~(d) After remediation or mitigation has been undertaken, offset any significant residual adverse effects in accordance with Policy ECO-P10.~~

#### ~~ECO – P10 Biodiversity offsetting.~~

~~(1) Allow for a biodiversity offset to be offered by a resource consent applicant where:~~

~~(a) An activity will result in significant residual adverse effects to indigenous vegetation or habitat outside a Significant Natural Area; and~~

~~(b) The biodiversity offset is consistent with the framework detailed in APP3 – Biodiversity offsetting.~~

#### **Relief Sought**

36. Meridian seeks the following relief from the Court:

(a) The relief specified in this notice of appeal under each heading '*relief sought*'; and/or

(b) Such further, consequential or alternative relief as may be necessary or appropriate to address the reasons for appeal or give effect to the relief sought, including as a result of changes to the plan that may arise from other appeals.

37. Meridian attaches the following documents to this notice:

(a) a copy of Meridian's submission and further submission (with a copy of the submissions opposed or supported by Meridian's further submissions) (**Appendix A**);

(b) a copy of the relevant decision (or part of the decision) (**Appendix B**);

- (c) a list of names and addresses of persons to be served with a copy of this notice (**Appendix C**).



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A J L Beatson / H G Watson  
Counsel for Meridian Energy Limited  
Dated 1 March 2022

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**Advice to recipients of copy of notice of appeal***How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

*How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submissions or the parts of the decision appealed. These documents may be obtained, on request, from the appellant.

*Advice*

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