

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

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

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

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

**HEARING STREAM 6
INDIGENOUS BIODIVERSITY**

30 January 2024

1. Introduction

- 1.1. My name is Christine Anne Foster. I am a Planning Consultant and sole director of CF Consulting Services Limited, based in Wellington. My qualifications and resource management planning experience are as detailed in my statement of evidence to Hearing Stream 2 dated 29 June 2023. The context for Meridian's submission and further submissions on Proposed RPS Change 1 (PC1) is also outlined in my 29 June 2023 statement.
- 1.2. This statement of evidence is within my area of expertise as a resource management planner, except where I state that I rely on the evidence of others or evidence presented in the Council's section 42A report. I reaffirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses set out in the Environment Court 2023 Practice Note. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 1.3. Meridian made submissions and further submissions on matters that will be addressed in Hearing Stream 6. Summarising those matters, Meridian's submissions and further submission points sought (broadly) to:
 - (a) Ensure that any provisions included in PC1 under the auspices of giving effect to the NPS-IB accurately reflect the NPS-IB as gazetted (noting that an exposure draft of the NPS-IB was published on 9 June 2022 and PC1 was publicly notified on 18 August 2022);
 - (b) Ensure that PC1 included or applied a mitigation hierarchy for renewable electricity generation (**REG**) activities affecting indigenous biodiversity in the manner intended by the exception specified in Clause 1.3 (3) of the NPS-IB;
 - (c) Remove the explicit requirement proposed in PC1's Policy 24 which required a +10% gain in biodiversity through biodiversity offsetting and compensation because that was not supported by any robust s. 32 evaluation and is not a requirement of the NPS-IB;
 - (d) Include in PC1 appropriate policy provisions recognising the benefits and important role of renewable electricity generation as intended by the NPS-REG and the NPS-IB;
 - (e) Focus protection policies on natural, rather than constructed, wetlands,
 - (f) Ensure that renewable electricity generation activities are not subject to the constraints imposed by Appendix 1A that are not supported by the higher order policy framework.

2. Scope of Evidence

2.1 I have read the s. 42A report and the recommended amendments to PC1 contained in Appendix 1 to that report. Some of the amendments requested by Meridian have been adopted in the s. 42A recommended amendments and the reporting officers have attempted to address some other matters raised in Meridian's submissions. My statement of evidence clarifies which of the reporting officers' proposed amendments Meridian supports and proposes alternative wording where disagreement remains in relation to the six matters listed in paragraph 1.3 above.

2.2 In preparing this statement of evidence, I have read and considered:

- (a) Proposed Change 1 to the Regional Policy Statement for the Wellington Region;
- (b) The s. 42A Hearing Report for Hearing Stream 6 (prepared by Pam Guest and Jerome Wyeth) dated 11 December 2023;
- (c) The legal submissions on behalf of Wellington Regional Council for Hearing Stream 6 dated 19 December 2023;
- (d) The NPSIB Implementation Assessment contained in Appendix 3 to the s. 42A report;
- (e) The statement of Technical Evidence addressing biodiversity offsetting and compensation prepared by Fleur Maseyk dated 5 December 2023;
- (f) The statement of Technical Evidence addressing limits to offsetting prepared by Philippa Crisp dated 12 December 2023;
- (g) The NPS-Indigenous Biodiversity (which came into effect on 4 August 2023);
- (h) The submissions and further submissions listed in sections 4 to 9 of this statement of evidence, to the extent the submissions address the matters summarised in paragraph 1.1 above;
- (i) The section 32 report accompanying proposed RPS Change 1, dated August 2022.

3. Context – Meridian's Interest in Indigenous Biodiversity

3.1 In my evidence to earlier PC1 hearings, I explained that many of the concerns expressed in Meridian's submission and further submissions relate to PC1's failure to confront the reality that the transition to a low-carbon or zero-carbon economy cannot be achieved without the development of substantial replacement renewable energy. My view is that the s. 32 report and the s. 42A reports focus on the Council's greenhouse gas emissions reduction goals and reduction policies and methods and do not present the complete picture of what is required to achieve the reduction goals, or the size and urgency of the challenge in developing suitable renewable energy alternatives. Related to this central concern, Meridian's submissions seek to ensure that the changes proposed by PC1 to the RPS do not introduce new or unwarranted obstacles to the development of renewable electricity generation, particularly where such obstacles are at odds with the clear direction of higher order (NPS) direction.

3.2 In this respect, it is important that the RPS gives effect to the direction intended by the NPS-IB. There is scope to amend PC1 to achieve this in the amendments requested in

submissions. For example, in submission point S113.006 by Wellington Water Limited which requests (as alternative relief) that the RPS be updated to reflect the final gazetted NPS-IB. Meridian’s further submission point on S113.006 agrees that the RPS must reflect and be consistent with the NPS-IB once that NPS is gazetted. The s. 42A report identifies in paragraphs 79 to 81 other examples of submission points that seek to align PC1 with the gazetted NPS-IB. I also identify the scope for specific amendments to better reflect the NPS-IB in the following sections of this statement of evidence.

3.3 In principle, I agree with the s. 42A recommendation (paragraph 91) that PC1 should align with and give effect to the NPS-IB provisions where practicable and where there is scope in submissions to do so.

3.4 Clause 1.1 of the NPS-IB states that it applies to indigenous biodiversity in the terrestrial environment throughout Aotearoa New Zealand. However, Clause 1.3 (3) of the NPS-IB states that:

(3) *Nothing in this National Policy Statement applies to the development, operation, maintenance or upgrade of renewable electricity generation assets and activities and electricity transmission network assets and activities. For the avoidance of doubt, renewable electricity generation assets and activities, and electricity transmission network assets and activities, are not “specified infrastructure” for the purposes of this National Policy Statement.*

3.5 This explicit exception presents, in my opinion, a clear directive to policy statements and plans in giving effect to the NPS-IB. The provisions included in policy statements and plans should apply only to the extent intended by the NPS-IB. That is, they must include exception provisions in relation to renewable electricity generation assets and activities and electricity transmission network assets and activities. I note that there is no reference included in Appendix 3 to the s. 42A report acknowledging this clear direction in Clause 1.3 (3) of the NPS-IB.

4. RPS Chapter 3.6: Introduction

PC1 Amendment:	Proposed amendments to the text of the introduction (refer pages 58 to 60 of PC1)
Meridian Submission Point:	S100.009
S. 42A Report 3.7.1:	Paragraphs 144, 157 and 158 (pages 35 and 36)

4.1 The s. 42A report agrees with Meridian’s suggestion that the expression ‘native vegetation’ should be amended to ‘indigenous vegetation’. The s. 42A report does not accept Meridian’s suggestion that the expression ‘wetland’ should be replaced by ‘natural

wetland’. The concern raised in this submission point is that the RPS protection policies ought not apply to constructed wetlands. I accept the reasoning in the s. 42A report (paragraph 157) that the PC1 objectives and policies should not be restricted to natural inland wetlands. It is important that the provisions also apply to natural wetlands in the coastal environment. However, it is my opinion that the focus should be on ‘natural’ wetlands (as opposed to constructed wetlands), consistent with the obligation in s. 6 (a) to recognise and provide for the preservation of the *natural* character of wetlands. It appears from the explanation in paragraph 157 that the sole concern is with naturally occurring wetlands. If that is not the case, it is my opinion that it ought to be. To reflect this, I consider the wording Meridian suggested to be appropriate (the insertion of ‘natural’ wetland in the introductory text).

4.2 If a definition is needed, I consider the exclusion of constructed wetlands in the definition in the Natural Resources Plan (**NRP**) is appropriate. I accept that there are differences between clause (c) of this definition and the NPS-FM in relation to the presence of exotic pasture grasses. However, that is not the part of the definition that is relevant to the point being made by Meridian. I note that GWRC has not proposed any change to the NRP definition as part of proposed Plan Change 1 to the NRP (and this plan change is intended in part as a freshwater planning instrument giving effect to the NPS-FM 2020). The relevant part of the NRP definition is highlighted in bold below:

Natural wetland: *Is a permanently or intermittently wet area, shallow water and land water margin that supports a natural ecosystem of plants and animals that are adapted to wet conditions. **Natural wetlands do not include:***

- (a) a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing former natural wetland); or***
- (b) a geothermal wetland; or***
- (c) any area of improved pasture that, at 3 September 2020, is dominated by (that is more than 50% of) exotic pasture species and is subject to temporary rain derived water pooling.***

4.3 The s. 42A report accepts Meridian’s point that the expression ‘conservation status’ in the introductory text does not accurately describe the aspiration. Ms Guest has proposed different wording to address the issue. I agree that Ms Guest’s wording better describes the aspiration.

5. RPS Chapter 3.6: Objective 16

PC1 Amendment:	Proposed amendments to Objective 16 (refer page 61 of PC1)
Meridian Submission Points:	S100.010 FS26.013 and FS26.019 on SWDC S79.009 FS26.014 on Waka Kotahi S129.021 FS26.015 on Powerco S134.003 FS26.016 on WIAL S148.039 FS26.017 on DairyNZ S136.006 FS26.020 on RFBPS S165.021
S. 42A Report 3.8:	Paragraphs 165 to 190 (pages 41 to 46)

5.1 As amended by PC1, Objective 16 reads:

Indigenous ecosystems and habitats with significant ecosystem and/or biodiversity values are ~~maintained~~ protected, enhanced, and restored to a healthy functioning state.

5.2 Meridian's submission and further submission points explain that enhancement will not be required or appropriate in all circumstances. Objective 16 will be a consideration for all applications for consent and district and regional plan changes. I do not agree with the statement in paragraph 182 of the s. 42A report that there is no regulatory requirement to carry out either the enhancement or restoration actions stated in Objective 16. As proposed, the objective can be read as imposing an expectation that enhancement and restoration must result from all consents and plan changes in all situations, regardless of practicability or functional or operational need. For example, when reading Objective 16 and Policy 47 together, Objective 16 could be read as necessitating enhancement and restoration. There is currently no consideration of functional or operational need in proposed Policies 24, 24A and 47. The NPS-IB Clause 1.3 (3) exception suggests there ought to be (and this is discussed further later in this statement of evidence). Objective 16 needs to be amended to clearly contemplate the exception provided for by NPS-IB Clause 1.3 (3).

5.3 I acknowledge the tragic loss of indigenous biodiversity described in Dr Maseyk's Technical Evidence. However, the reality for many large infrastructure project is that, while it may be practicable to avoid or otherwise protect areas that have indigenous biodiversity significance, it may not be practicable in all cases or to fully enhance them or restore them. Other land, beyond the control of the applicant may be necessary to achieve the enhancement or restoration, or the actions necessary to enhance or restore may conflict with the layout of the infrastructure that is necessary for functional or operational reasons. This may arise in the context of needing to provide for the functional or operational needs of renewable electricity generation (being a 'have particular regard to')

consideration in Policy C1 of the NPS-REG. The exclusion in Clause 1.3 (3) of the NPS-IB foreshadows exactly this situation.

5.4 I do not consider a specific exception is necessary in Objective 16 to provide for the particular circumstances of renewable electricity generation, but some acknowledgement of functional and operational needs should be included. These are defined expressions in the National Planning Standards. However, including those considerations may make the wording of the objective somewhat complicated. Alternatively, and more simply and preferably in my view, insertion of the words 'where appropriate' as suggested by Meridian is appropriate in an objective, given that the policies will define the circumstances in which enhancement and restoration may not be appropriate. It is my opinion that the proposed PC1 wording, without this refinement, conflicts with the express direction of Clause 1.3 (3) of the NPS-IB. That is because it captures all activities, including renewable electricity generation activities, and is an objective intended at least in part to give effect to the NPS-IB. This is confirmed at paragraph 179 of the s. 42A report. Without this amendment, or similar wording, Objective 16 does not provide the flexibility for the subordinate policies (e.g. Policy 24) to determine the outcomes for infrastructure projects, as suggested at paragraph 183 of the s. 42A report.

5.5 I note that Ms Guest has proposed other amendments to Objective 16. I support those amendments but also propose the following additional amendment to Objective 16 (Ms Guest's are shown in red – mine is shown in blue text):

Indigenous ecosystems and habitats with significant ecosystem functions and services and/or indigenous biodiversity values, other significant habitats of indigenous fauna, and the ecosystem functions that support these ecosystems and habitats, are ~~maintained~~ protected and, where appropriate, are enhanced, and restored to a healthy functioning state.

6. RPS Chapter 3.6: Objective 16A

PC1 Amendment:	Proposed new Objective 16A (refer page 63 of PC1)
Meridian Submission Points:	S100.011 FS26.018 on Powerco S134.004 FS26.021 on DairyNZ S136.007
S. 42A Report 3.9:	Paragraphs 192 to 208 (pages 46 to 50)

6.1 As amended by PC1, Objective 16A reads:

The region's indigenous ecosystems are maintained, enhanced, and restored to a healthy functioning state, improving their resilience to increasing environmental pressures, particularly climate change, and giving effect to Te Rito o te Harakeke.

6.2 Meridian's submission points sought a similar change to that discussed above in relation to Objective 16 (not requiring enhancement and restoration in all situations). Meridian also suggested that, because Te Rito o te Harakeke sets out how the objective is to be achieved, direction in relation to Te Rito o te Harakeke ought to sit in the policies. I note that Ms Guest agrees on this latter point and I support the amendments proposed in the s. 42A report deleting reference to Te Rito o te Harakeke¹. I also note that Mr Wyeth has proposed replacing Te Rito o te Harakeke with reference to the decision-making principles set out in Clause 1.5 of the NPS-IB. Meridian did not make a submission on Te Rito o te Harakeke but for completeness I record that I support Mr Wyeth's recommendation in this respect.

6.3 For the reasons explained in section 5 of this statement of evidence, I support the following additional amendments to Objective 16A (shown in blue):

The region's indigenous ~~biodiversity is ecosystems are~~ maintained and, where appropriate is enhanced, and restored to a healthy functioning state, improving ~~its their~~ resilience to increasing environmental pressures, particularly climate change, ~~and giving effect to the Te Rito o te Harakeke.~~

6.4 Ms Guest has also proposed inserting a new definition of 'indigenous biodiversity', matching the definition in the NPS-IB. I support the inclusion of that definition, either by replicating it as proposed by Ms Guest or by reference to the NPS-IB.

7. RPS Chapter 3.6: Objective 16C

PC1 Amendment:	Proposed new Objective 16C (refer page 63 of PC1)
Meridian Submission Point:	Further submission FS26.023 in support of South Wairarapa District Council (SWDC) S79.011
S. 42A Report 3.11:	Paragraphs 224 to 232 (pages 52 and 53)

7.1 Meridian's further submission supported SWDC's submission point 79.011 support for proposed new Objective 16C. The s. 42A report proposes no change to the wording of Objective 16C and I support that recommendation.

¹ At paragraph 205 of the s. 42A report.

8. RPS Chapter 3.6 and Appendix 1A: Policy 24 and Appendix 1A

PC1 Amendment:	Proposed amendments to Policy 24 and proposed new Appendix 1A limits to biodiversity offsetting and biodiversity compensation (refer pages 119 and 206 to 215 of PC1)
Meridian Submission Points:	S100.016 and S100.027 FS26.032 on Transpower NZ S10.002 FS26.038 on UHCC S34.075 FS26.039 on Office of the Māori Trustee S102.056 FS26.034 on HCC S115.048 FS26.035 on Powerco S134.011 FS26.031 on GWRC S137.019 FS26.040 on WIAL S148.041 FS26.033 on RFBPS S165.057 FS26.037 on Taranaki Whānui S167.088 FS26.036 on Rangitāne O Wairarapa S168.073 FS26.082 on KDCDC S16.0105 FS26.081 on Genesis S99.007 FS26.012 on WWL S113.006 FS26.011 on HCC S115.014 FS26.083 on UHCC S34.0112
S. 42A Report 3.13:	Paragraphs 262 to 208 (pages 59 to 50)

8.1 Policy 24 is a direction to district and regional plans to include policies, rules and methods to protect indigenous ecosystems and habitats with significant biodiversity values from inappropriate subdivision, use and development. Policy 24 also sets out the circumstances where biodiversity offsetting and biodiversity compensation are not to be enabled in district and regional plans. Policy 24 references Appendix 1A which sets out the specific criteria (including species) where offsetting and compensation must not be contemplated.

8.2 Meridian's submission and further submissions reflect its concern about the impact Policy 24 and Appendix 1A would have for the consenting of renewable electricity generation and upgrading activities in the Region. In particular, Meridian's submission opposed Appendix 1A in its entirety and opposed the specification of a +10% net gain outcome from biodiversity offsetting. Meridian proposed that the outcome should be no net loss and preferably a net gain of biodiversity. I note that the s. 42A report recommends splitting out the principles for biodiversity offsetting and biodiversity compensation in a new Policy 24A and, in Clause (d) of Policy 24A, proposes softening the +10% net gain outcome to read: '...require biodiversity offsetting or aquatic offsetting to achieve at least a net gain, and preferably a 10% net gain or greater, in indigenous biodiversity outcomes'. That goes some way to addressing Meridian's concerns. However, the larger issue is

whether and how Policies 24 and 24A should apply to renewable electricity generation and electricity transmission activities that are expressly exempt from the ambit of the NPS-IB (through Clause 1.3 (3) of the NPS-IB).

- 8.3 The s. 42A report acknowledges the NPS-IB Clause 1.3 (3) exclusion for renewable electricity generation and electricity transmission assets and activities (paragraph 313 of the s. 42A report). In paragraph 313 this is described as a ‘complicating factor’ and a ‘carve-out’. Rather than being a ‘complicating factor’, in my view it is simply a fact. I agree with Mr Wyeth’s analysis that the amendments to the NPS-IB (excluding renewable electricity generation and electricity transmission) were anticipated to go hand-in-hand with amendments to the national policy statements for those two activities (the NPS-REG and NPS-ET). For example, the consultation draft NPS-REG and consultation draft NPS-ET both released in March 2023 included definitions of ‘areas with significant environment values’ which includes ‘significant natural areas’ (which are defined as including areas of identified significant indigenous vegetation or significant habitat of indigenous fauna identified by a suitably qualified ecologist using ecological significance criteria). Policy 4 of the consultation draft NPS-REG states that:

‘It is recognised that REG activities may need to take place in areas with significant environment values and, where adverse effects remain after applying the effects management hierarchy, REG activities are enabled if the national significance and benefits of the REG activities outweigh those remaining adverse effects.’

- 8.4 Policy 5 of the consultation draft NPS-ET is identical (recognising electricity transmission network activities may need to take place in areas with significant environment values).
- 8.5 Policy 5 of the consultation draft NPS-REG and Policy 6 of the consultation draft NPS-ET are identical and seek to enable REG and ET activities in areas that do not have significant environment values, with an ‘avoid, remedy, mitigate’ approach:

‘In areas that are not areas with significant environment values, REG [and electricity transmission network] activities are enabled provided any adverse effects on the values of those areas, including on local amenity values, are avoided, remedied, or mitigated to the extent practicable.’

- 8.6 Clause 3.6 of the consultation NPS-REG and Clause 3.8 of the consultation draft NPS-ET set out a policy (with identical wording) that was to have been compulsorily included in all regional policy statements, regional plans and district plans. The clause requires that plan provisions allow REG or ET activities in areas with significant environmental values where there is an operational or functional need, and the REG or ET activities are nationally or regionally significant. It also requires that the effects management hierarchy is applied and provides for offsetting and compensation:

3.6 Areas with significant environment values

(1) Every regional council must include the following policy (or words to the same effect) in its regional policy statement and regional plan, and every territorial authority must include it in its district plan:

- 1) “Allow REG activities in areas with significant environmental values only if:
 - (a) there is an operational or functional need for the REG assets to be located in that area; and
 - (b) the REG activities are nationally or regionally significant; and
 - (c) the effects management hierarchy is applied.

- 2) The effects management hierarchy is as follows:
 - (a) adverse effects are avoided where practicable; then
 - (b) where adverse effects cannot be avoided, they are minimised where practicable; then
 - (c) where adverse effects cannot be minimised, they are remedied where practicable; then
 - (d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, offsetting is provided where practicable then
 - (e) if offsetting of more than minor adverse effects is not practicable, compensation is provided; then

- (f) Option 2A (same rule for all) if compensation is not appropriate to address any residual adverse effects:
 - (i) the REG activities must be avoided if the residual adverse effects are significant; but
 - (ii) if the residual adverse effects are not significant, the REG activities must be enabled if the national significance and benefits of the REG activities outweigh the residual adverse effects.

- (f) Option 2B (special rule for significant natural areas) if compensation is not appropriate to address any residual adverse effects:
 - (i) in the case of REG activities with adverse effects on a significant natural area:
 - (A) the REG activities must be avoided if the residual adverse effects are significant; but
 - (B) if the residual adverse effects are not significant, the REG activities must be enabled if the national significance and benefits of the REG activities outweigh the residual adverse effects; and
 - (ii) in all other areas with significant environment values, the REG activities must be enabled if the national significance and benefits of the REG activities outweigh the residual adverse effects.

3) *When considering offsetting and compensation, have regard to any relevant principles relating to offsetting and compensation set out in any other National Policy Statement or, if there are no relevant principles in a National Policy Statement, any other relevant nationally or internationally recognised principles.”*

8.7 The intention for the combined three national policy statements was, plainly, that significant natural areas affected by renewable electricity generation activities were to be managed in a manner differently from the more stringent approach of the NPS-IB. Notably, the effects management hierarchy set out in Clause 3.6 of the consultation draft NPS-REG differs from the effects management hierarchy included in the NPS-IB. The key difference is that Clause 3.6 allows for REG activities in areas with significant environmental values in specified circumstances. I note that the effects management hierarchies set out in the NPS-IB, NPS-FM and the consultation draft NPS-REG and NPS-ET do not include the additional limits specified in proposed PC1 Appendix 1A. There is no basis, in the NPS-IB for applying these additional limits to REG or ET activities. There is however, in NPS-IB Clause 1.3 (3), a basis for excluding REG and ET activities from the ambit of proposed Appendix 1A. The compulsory policy setting out an effects management hierarchy for REG (Clause 3.6 above) also requires regard to be had to the principles for biodiversity offsetting and compensation that are set out in Appendices 3 and 4 of the NPS-IB. I understand that Meridian is content with the requirement to have regard to these principles. These principles do not include the additional limits specified in proposed PC1 Appendix 1A.

8.8 The mooted amendments to the NPS-REG and NPS-ET have not been gazetted and may change. The only operative national policy statement direction in relation to managing the impact of REG and electricity transmission assets and activities on indigenous biodiversity is currently found in the NPS-IB. That is, the explicit exemption for REG and ET assets and activities. Mr Wyeth’s recommendation is that no change should be made to Policy 24 in relation to the Clause 1.3 (3) ‘carve-out’ at this time and, instead, any future more enabling provisions for REG and ET should be inserted following the direction in any finalised NPSs for REG and ET.

8.9 What we have is essentially, in my view, a timing issue and raises the following questions: Should the more stringent requirements proposed by PC1 be imposed on REG and ET now, in spite of the explicit intention of the NPS-IB that they be treated differently? Should the RPS be amended to include a simple exception for REG and ET as specified in the NPS-IB? Or, should a more enabling approach be included now for REG and ET, as intended by the NPS-IB, pending confirmation of exactly how that approach should be worded? Given the uncertainty around the timing of the NPS-REG and NPS-ET and the number of current plan changes and reviews currently active in the region², it is my view that the approach

² For example: Proposed Change 1 to the Natural Resources Plan, Wellington City Proposed District Plan, Proposed Wairarapa Combined District Plan – all of which are subject to submissions by Meridian.

signalled through PC1 should more accurately reflect the intention of the NPS-IB with respect to REG and ET assets and activities. The Panel must apply the NPS-IB as it is at the time you make your recommendation (as advised in paragraph 21 of the legal submissions for Hearing Stream 6). I propose amendments to Policy 24 and a new Policy 24B that reflect this intention. The amendments I propose also reflect the intention that REG activities should be subject to a separate REG-specific effects management hierarchy. My proposal is based on the consultation draft NPS-REG, while having regard to the principles for biodiversity offsetting and compensation as set out in the NPS-IB. Once the NPS-REG amendments are gazetted, any inconsistencies can be reconciled in the usual manner.

8.10 If this is not done, there will be an inconsistent approach in PC1 for REG compared with other 'specified infrastructure'. Clause 3.11 (1) of the NPS-IB creates an exception from the management obligations of Clause 3.10 for 'specified infrastructure' and other specified activities where there is a functional or operational need for the proposal in a particular location (affecting a significant natural area). The s. 42A report is recommending a less enabling approach for REG and ET, which is at odds with the national policy statement recognition of these activities.

8.11 I propose the following further amendments (shown in blue) to Mr Wyeth's proposed wording for proposed Policies 24 and 24A and a new Policy 24B specifically for REG assets and activities. I have discussed my proposed amendments with Mr Wyeth but note that he had only a brief opportunity to consider them before we met and has not indicated his support for my suggestions. I have also discussed my proposed amendments with Ms Whitney (who will be presenting evidence for Transpower in relation to electricity transmission). I am aware that Ms Whitney considers a simple exception, with no interim policy provision, is a more appropriate approach for ET. My suggested amendments attempt to provide clear policy guidance, particularly for REG, for the foreseeable future until there is certainty about the NPS-REG. I have therefore focused on REG and not included ET at this time. In the time available, and with our respective commitments, it has not been possible to hold a joint meeting with Mr Wyeth and Ms Whitney, although I expect this would be useful at some point. My suggested amendments are as follows:

Policy 24: Protecting indigenous ecosystems and habitats with significant indigenous biodiversity values (except for renewable electricity generation assets and activities) – district and regional plans

As soon as reasonably practicable and ~~by no later than 4 August 2028~~, except in relation to renewable electricity generation assets and activities, ~~By 30 June 2025~~, District and regional plans shall include policies, rules and methods to protect indigenous ecosystems and habitats with significant indigenous biodiversity values from inappropriate subdivision, use and development, including by applying:

(a) Clause 3.10 and Clause 3.11 of the National Policy Statement for Indigenous Biodiversity 2023 to manage adverse effects on significant indigenous biodiversity values in the terrestrial environment;

- (b) Policy 11 of the New Zealand Coastal Policy Statement 2010 to manage adverse effects on indigenous biodiversity values in the coastal environment; and
- (c) Policies 18A and 18B in this Regional Policy Statement to manage adverse effects on the values and extent of natural inland wetlands and rivers.

Where the policies and/or rules in district and regional plans enable the use of biodiversity offsetting or biodiversity compensation for an ecosystem or habitat with significant indigenous biodiversity values, they shall:

(a) not provide for biodiversity offsetting:

(i) where there is no appropriate site, knowledge, proven methods, expertise or mechanism available to design and implement an adequate biodiversity offset; or

(ii) when an activity is anticipated to cause residual adverse effects on an area after an offset has been implemented if the ecosystem or species is threatened or the ecosystem is naturally uncommon;

(b) not provide for biodiversity compensation where an activity is anticipated to cause residual adverse effects on an area if the ecosystem or species is threatened or the ecosystem is naturally uncommon;

(c) ecosystems and species known to meet any of the criteria in (a) or (b) are listed in Appendix 1A (Limits to biodiversity offsetting and biodiversity compensation);

(d) require that the outcome sought from the use of biodiversity offsetting is at least a 10 percent net biodiversity gain, or from biodiversity compensation is at least a 10 percent net biodiversity benefit.

Explanation

Policy 24 applies to provisions in regional and district plans. This requires the protection of significant indigenous biodiversity values in terrestrial, freshwater and coastal environments consistent with section 6(c) of the RMA. It also clarifies that the effects management provisions for significant indigenous biodiversity values in higher order national direction instruments need to be applied when giving effect to this policy in regional and district plans. Policy 24B addresses the management of the effects of renewable electricity generation assets and activities.

The policy provides clarity about the limits to, and expected outcomes from, biodiversity offsetting and biodiversity compensation for an ecosystem or habitat with significant indigenous biodiversity values. Ecosystems and species known to meet the criteria in clauses (a) and (b) are listed in Appendix 1A (Limits to biodiversity offsetting and biodiversity compensation).

Calculating a 10 percent net biodiversity gain (offsetting) or a 10 percent net biodiversity benefit (compensation) employs the same or a similar calculation methodology used to determine 'no net loss or preferably net gain' under a standard offsetting approach. The distinction between 'net gain' and 'net benefit' is to recognise that the outcomes achievable through the use of offsetting and compensation are different. An offsetting 'net biodiversity gain' outcome is expected to achieve an objectively verifiable increase in biodiversity values while a compensation 'net biodiversity benefit' outcome is more subjective and less preferable.

Policy 24A: Principles for biodiversity offsetting and biodiversity compensation (except for renewable electricity generation assets and activities)

- (a) Where district and regional plans provide for biodiversity offsetting or aquatic offsetting or biodiversity compensation or aquatic compensation as part of an effects management hierarchy for indigenous biodiversity and/or for aquatic values and extent, except in relation to renewable electricity generation assets and activities, they shall include policies and methods to:
- (i) ensure this meets the requirements of the full suite of principles for biodiversity offsetting and/or biodiversity compensation set out in Appendix 3 and 4 of the National Policy Statement for Indigenous Biodiversity 2023 or for aquatic offsetting and/or aquatic compensation set out in Appendix 6 and 7 of the National Policy Statement for Freshwater Management 2020;
 - (ii) provide further direction on where biodiversity offsetting, aquatic offsetting, biodiversity compensation, and aquatic compensation are not appropriate, in accordance with clauses (3) and (4) below;
 - (iii) provide further direction on required outcomes from biodiversity offsetting, aquatic offsetting, biodiversity compensation, and aquatic compensation, in accordance with clauses (5) and (6) below; and
 - (iv) In evaluating whether biodiversity offsetting or aquatic offsetting is inappropriate because of irreplaceability or vulnerability of the indigenous biodiversity, extent, or values affected, the feasibility to offset residual adverse effects on any threatened or naturally uncommon ecosystem or threatened species listed in Appendix 1A must be considered as a minimum; and
 - (v) In evaluating whether biodiversity compensation or aquatic compensation is inappropriate because of the irreplaceability or vulnerability of the indigenous biodiversity, extent, or values affected, recognise that it is inappropriate to use biodiversity

compensation or aquatic compensation where residual adverse effects affect an ecosystem or species that is listed in Appendix 1A as threatened or naturally uncommon; and

- (b) District and regional plans shall include policies and methods that require biodiversity offsetting or aquatic offsetting to achieve at least a net gain, ~~and preferably a 10% net gain or greater,~~ in indigenous biodiversity outcomes to address residual adverse effects on indigenous biodiversity, extent, or values. This requires demonstrating, and then achieving, net gains in the type, amount, and condition of the indigenous biodiversity, extent, or values impacted. Calculating net gain requires a like-for-like quantitative loss/ gain calculation of the indigenous biodiversity values (type, amount, and condition) affected by the proposed activity; and
- (c) District and regional plans shall include policies and method to require biodiversity compensation or aquatic compensation to achieve positive effects in indigenous biodiversity, extent, or values that outweigh residual adverse effects on affected indigenous biodiversity, extent, or values.

Explanation:

Policy 24A recognises that the outcomes achievable through the use of biodiversity or aquatic offsetting and compensation are different. A 'net gain' outcome from offsetting is expected to achieve an objectively verifiable increase in the target values, while a compensation outcome is more subjective and less preferable. This policy applies to the use of biodiversity offsetting and biodiversity compensation to address the residual adverse effects on indigenous biodiversity in the terrestrial and coastal environments and aquatic offsetting and compensation to address the loss of extent or values of natural inland wetlands and rivers. Policy 24B addresses the management of the effects of renewable electricity generation assets and activities.

Policy 24B: Managing the effects of renewable electricity generation assets and activities on indigenous ecosystems and habitats with significant indigenous biodiversity values – district and regional plans

As soon as reasonably practicable and no later than 4 August 2028, district and regional plans shall include policies, rules and methods to manage the effects of renewable electricity generation assets and activities on indigenous ecosystems and habitats with significant indigenous biodiversity values to:

- 1) Allow renewable electricity generation assets and activities in areas with significant indigenous biodiversity values only if:
 - (a) there is an operational or functional need for the assets or activities to be located in that area; and

9. RPS Chapter 3.6: Policy 47

PC1 Amendment:	Proposed amendments to Policy 47 and proposed new Appendix 1A limits to biodiversity offsetting and biodiversity compensation (refer pages 145 and 146 of PC1)
Meridian Submission Points:	S100.021 FS26.062 on UHCC S34.078 FS26.063 on WIAL S148.042 FS26.060 on RFBPS S165.074 FS26.061 on PCC S30.0127
S. 42A Report 3.14:	Paragraphs 340 to 364 (pages 80 to 87)

9.1 Whereas Policy 24 is a direction to district and regional plans to include policies, rules and methods to protect significant indigenous ecosystems and habitats, Policy 47 is the 'consideration' policy intended to apply in the interim until plans include those provisions. It references Policy 24 in the list of matters to which regard must be had. The issues arising are also similar. If the amendments to Policies 24 and 24A I suggest above are made and new Policy 24B is inserted, my view is that the only further amendment required to Policy 47 to give effect to the NPS-IB in relation to REG is to also reference new Policy 24B.

9.2 Meridian requested specification of 'natural' wetlands in Policy 47. I discuss above my reasons why this is appropriate, noting that Ms Guest has repeated for Policy 47 her opposition to insertion of that expression. I reiterate that there should be some clarification somewhere that the policy is not intended to capture constructed wetlands.

9.3 The further amendments I propose are shown below in blue:

Policy 47: Managing effects on indigenous ecosystems and habitats with significant indigenous biodiversity values – consideration

When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district or regional plan, a determination shall be made as to whether an activity may affect indigenous ecosystems and habitats with significant indigenous biodiversity values, and in determining whether the proposed activity is inappropriate particular regard shall be given to:

- (a) *maintaining connections within, or corridors between, habitats of indigenous flora and fauna, and/or enhancing the connectivity between fragmented indigenous habitats;*
- (b) *providing adequate **buffering** around areas of significant indigenous ecosystems and habitats from other land uses;*
- (c) *managing **natural** wetlands for the purpose of aquatic ecosystem health, recognising the wider benefits, such as for indigenous biodiversity, water quality and holding water in the landscape;*
- (d) *avoiding the cumulative adverse effects of the incremental loss of indigenous ecosystems and habitats;*
- (e) *providing seasonal or core habitat for indigenous species;*
- (f) *protecting the life supporting capacity of indigenous ecosystems and habitats;*
- (g) ~~*remedying or mitigating*~~ *minimising or remedying adverse effects on the indigenous biodiversity values where avoiding adverse effects is not practicably achievable; ~~and~~*
- (h) *the need for a precautionary approach **to be adopted** when assessing **and managing** the potential for adverse effects on indigenous ecosystems and habitats, **where;***
 - (i) *the effects on indigenous biodiversity are uncertain, unknown, or little understood; and*
 - (ii) *those effects could cause significant or irreversible damage to indigenous biodiversity;*
- (i) ~~*the limits for biodiversity offsetting and biodiversity compensation set out in Appendix 1A*~~ *the provisions to protect significant biodiversity values in Policy 24, ~~and~~ the principles for biodiversity offsetting and biodiversity compensation in Policy 24A and the effects management hierarchy set out in Policy 24B;*
- (j) *...*

10. Chapter 4.1: Proposed New Policy IE.2A

PC1 Amendment:	Proposed new Policy IE.2A (not included in the publicly notified PC1)
Meridian Submission Points:	Consequential matter arising from s. 42A report recommendation
S. 42A Report 3.5.2:	Paragraphs 82 to 102 (pages 20 to)

10.1 The s. 42A report proposes a new policy IE.2A (as follows) to give effect to NPS-IB Clause 3.16:

Policy IE.2A: Maintaining indigenous biodiversity – consideration

When considering an application for a resource consent, notice of requirement, or a plan change, variation or review of a district plan or regional plan, indigenous biodiversity in the terrestrial environment that does not have significant indigenous biodiversity values and is not on Māori land, shall be maintained by:

- (a) recognising and providing for the importance of maintaining indigenous biodiversity that does not have significant biodiversity values under Policy 23;
- (b) managing any significant adverse effects on indigenous biodiversity from any proposed activity by applying the effects management hierarchy in the National Policy Statement for Indigenous Biodiversity 2023; and
- (c) managing all other adverse effects on indigenous biodiversity from any proposed activity to achieve at least no overall loss in indigenous biodiversity within the region or district as applicable.

Explanation

Policy IE.2A recognises that it is important to maintain indigenous biodiversity that does not have significant indigenous biodiversity values to meet the requirements in section 30(1)(qa) and section 31(b)(iii) of the RMA. This policy applies to indigenous biodiversity that does not have significant values in the terrestrial environment and requires a more robust approach to managing any significant adverse effects on indigenous biodiversity from a proposed activity and to maintain indigenous biodiversity more generally.

10.2 As earlier explained, in section 8 of this statement of evidence, the consultation draft NPS-REG and NPS-ET contemplated a quite different approach for managing the effects of REG and ET activities outside SNAs. Clause 3.16 of the NPS-IB does not strictly apply to REG and ET assets and activities (because of the ‘carve-out’ of Clause 1.3 (3)). For the reasons earlier explained, it is my view that the proposed new Policy IE.2A needs to reflect this explicit

exception. There are no submission points directly on proposed Policy IE.2A because this policy has been proposed as consequential relief to address points made generally in various submissions. The s. 42A report does not specify explicitly which submission points provide the scope for the proposed new policy.

10.3 Policy IE.2A is highly relevant for REG activities and has the potential to significantly restrict REG activities in a manner that conflicts with Clause 1.3 (3) of the NPS-IB. The clear intention signalled by the consultation draft NPS-REG Clause 3.6 effects management hierarchy is that REG activities must be allowed within significant areas in certain circumstances and there is no additional restriction for areas that have no indigenous biodiversity significance. The wording of proposed Policy IE.2A would create a more stringent approach than the Clause 3.6 intention and is inappropriate for REG and ET activities, in my opinion, in areas that do not have significant biodiversity values. The express intention of Clause 1.3 (3) of the NPS-IB is that the effects management hierarchy set out in the NPS-IB not apply to REG and ET activities. To overcome this potential conflict, I suggest the following amendments in blue text (noting again that I have confined my suggestions to REG):

Policy IE.2A: Maintaining indigenous biodiversity – consideration (except for renewable electricity generation assets and activities)

When considering an application for a resource consent, notice of requirement, or a plan change, variation or review of a district plan or regional plan (except in relation to renewable electricity generation assets and activities), indigenous biodiversity in the terrestrial environment that does not have significant indigenous biodiversity values and is not on Māori land, shall be maintained by:

- (a) recognising and providing for the importance of maintaining indigenous biodiversity that does not have significant biodiversity values under Policy 23;
- (b) managing any significant adverse effects on indigenous biodiversity from any proposed activity by applying the effects management hierarchy in the National Policy Statement for Indigenous Biodiversity 2023; and
- (c) managing all other adverse effects on indigenous biodiversity from any proposed activity to achieve at least no overall loss in indigenous biodiversity within the region or district as applicable.

11. RPS Definitions

PC1 Amendment:	Proposed new definitions for: <ul style="list-style-type: none">- Biodiversity compensation;- Biodiversity offsetting;- Maintain;- Protect; and Replacement of Te Rito o te Harakeke with decision-making principles (refer pages 216, 220 and 222 of PC1)
Meridian Submission Points:	S100.021 and S100.026 FS26.072 and FS26.075 on Rangitāne O Wairarapa S168.084 and S168.083 FS26.071, FS26.074, FS26.076, FS26.077 and FS26.080 on RFBPS S165.0125, S165.0126, S165.0134, S165.0138 and S165.0141 FS26.073 on GWRC S137.023 FS26.079 on WIAL S148.058 FS26.078 on UHCC S34.0106
S. 42A Report 3.9:	Paragraphs 340 to 364 (pages 80 to 87)

Biodiversity Compensation and Biodiversity Offsetting

11.1 Meridian's further submission points opposed the inclusion in the definition of any requirement for a 10% net gain of indigenous biodiversity values. Ms Guest agrees there is no need to specify this in the definition (the extent of positive outcome will be directed by the policies).

11.2 While Meridian's submission points did not request other amendments to these definitions, I note that there are now definitions for both expressions in the NPS-IB. I also note that the submission point S32.040 by the Director General of Conservation requests amendments to the definitions necessary to give effect to the NPS-IB. Ms Guest has proposed amendments to the definitions that are slightly different from those in the NPS-IB (they expand on the text in the NPS-IB). In paragraph 524 of the s. 42A report, Ms Guest states her intention that the PC1 definitions should be amended to be consistent with the NPS-IB. It is not clear why the recommended text doesn't actually do that. The key difference of concern to Meridian is the absence of 'more than minor residual adverse effects'. It is my opinion that it is important to include these words because the threshold 'more than minor' is included in the principles for biodiversity offsetting and compensation in Appendices 3 and 4 of the NPS-IB (and the recommended amended PC1 provisions reference these). Addressing this requires the following (blue) amendments to the s. 42A recommended wording:

<u>Biodiversity compensation</u>	<p><i>A measurable positive environmental conservation outcome resulting from actions that are designed to compensate for any more than minor residual adverse biodiversity effects on indigenous biodiversity that cannot be otherwise managed after all appropriate avoidance, minimisation, remediation, and biodiversity offsetting measures have been sequentially applied. This includes biodiversity compensation in the terrestrial environment and aquatic compensation for the extent and values of rivers and natural inland wetlands.</i></p>
<u>Biodiversity offsetting</u>	<p><i>A measurable positive environmental conservation outcome resulting from actions designed to redress for any more than minor the residual adverse effects on indigenous biodiversity arising from activities after all appropriate avoidance, minimisation, and remediation measures have been sequentially applied. The goal of biodiversity offsetting is to achieve no net loss, and preferably a net gain, of in type, amount, and condition of indigenous biodiversity values compared to that lost. This includes biodiversity offsetting in the terrestrial environment and aquatic offsetting for the extent and values of rivers and natural inland wetlands.</i></p>

Protect

11.3 Ms Guest agrees with Meridian’s submission point that the definition proposed by PC1 is unclear and not helpful and recommends its deletion. I support its deletion. I agree with Ms Guest that ‘protect’ is a word that is able to be understood on its ordinary meaning.

Maintain

11.4 Meridian’s further submission opposed a request by Forest and Bird to insert into the definition of ‘maintain’ a requirement for restoration and enhancement. Helpfully, the NPS-IB includes a definition of ‘maintaining indigenous biodiversity’, which Ms Guest recommends be included in PC1. I support that recommendation.

Te Rito o te Harakeke

11.5 I reiterate my support recorded earlier in this statement of evidence for replacement of this defined expression with the ‘decision-making principles’ set out in Clause 1.5 of the NPS-IB.

12. Conclusion

12.1 I set out in Attachment 1 to this statement of evidence the amendments to the PC1 provisions of interest to Meridian in Hearing Stream 6, showing the further amendments I propose to address the concerns raised in Meridian's submission points.

Christine Anne Foster

30 January 2024

ATTACHMENT 1

**HEARING STREAM 6 S. 42A RECOMMENDED AMENDMENTS TO
PROVISIONS**

**WITH FURTHER AMENDMENTS PROPOSED BY CHRISTINE FOSTER FOR
MERIDIAN ENERGY LIMITED**

(SHOWN IN BLUE FONT)