Before Independent Hearings Commissioners
appointed by the Northland Regional Council

under: the Resource Management Act 1991

in the matter of: an application by Meridian Energy Limited for resource consents for earthworks, associated stormwater diversion and discharges and vegetation clearance for the construction of a solar farm at Ruakākā, Northland (APP.045356.01.01)

between: **Meridian Energy Limited**
Applicant

and: **Northland Regional Council**
Consent Authority

Reply Submissions for Meridian Energy Limited

Dated: 23 August 2024

Reference: J Appleyard (jo.appleyard@chapmantripp.com)
A Hawkins (annabel.hawkins@chapmantripp.com)

chapmantripp.com
T +64 3 353 4130
F +64 4 472 7111

PO Box 2510
Christchurch 8140
New Zealand

Auckland
Wellington
Christchurch

MAY IT PLEASE THE COMMISSIONERS

INTRODUCTION

1 These reply submissions are filed on behalf of Meridian Energy Limited (*MEL*).

2 They address several matters that arose at the hearing, which we have grouped into the following sections:

2.1 draft consent conditions;

2.2 the regional plan and functional need;

2.3 cultural matters;

2.4 the wetlands;

2.5 response to submitters; and

2.6 Council's final position.

3 They also address the additional matters set out in paragraph 7 of the Commissioners' Minute dated 9 August 2024 (in the relevant sections outlined above).

4 Overall, the position for MEL remains (as set out in our opening submissions) that based on MEL's application, the full suite of evidence, and thorough testing of that evidence at the hearing, the Commissioners can be satisfied that the Proposal meets the relevant statutory requirements and is deserving of consent.

DRAFT CONSENT CONDITIONS

5 At the hearing, Commissioner Hill expressed concern about how the evidence for MEL had been translated into the draft consent conditions that were included as Exhibit 1 to **Mr Hood's** evidence.

6 Overnight after the first day of the hearing, Mr Hood and Mr Hartstone worked together, with the necessary technical input, to re-draft the proposed consent conditions. This set of conditions was provided to the Commissioners (and uploaded to the Council's website) after their site visit on day two of the hearing.

7 On 9 August 2024, the Commissioners issued a Minute, attaching both their comments on the re-drafted consent conditions and comments from the Council received at 1:30pm on 9 August 2024.

8 MEL has carefully reviewed both sets of comments and generally agrees with them, and has updated the conditions accordingly. A clean "final draft" set of conditions for the Commissioners' consideration is attached as **Appendix 1** to these submissions.

A tracked-change version of the conditions with comment boxes explaining the more substantive changes is attached as **Appendix 2** to these submissions.

REGIONAL PLAN / FUNCTIONAL NEED

9 At the hearing, Commissioner Hill asked questions about the functional need requirement in the Proposed Regional Plan for Northland (*PRPN*). Counsel and **Mr Hood** understood the Commissioners' question to be whether the PRPN sets a higher bar for functional need than the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (*NES-FW*), including by distinguishing functional need entirely from operational need, when recent Court and council-level decisions appear to somewhat conflate these terms.

10 **Mr Hood** responded to Commissioner Hill's question at the hearing and counsel and **Mr Hood** have subsequently carefully scrutinised the relevant PRPN provisions. Our interpretation is as follows.

11 In terms of functional vs operational need, there remains an important distinction between these two terms. Our reading of the recent case law and council-level decisions is not that the two are necessarily being conflated, but that there are elements of operational need within functional need, and those elements may be of assistance in establishing functional need in a particular case. However, functional need remains a high threshold and there are certain matters that will need to be met for functional need to be established (as we address below).

12 Within the PRPN provisions:

12.1 Each term is defined in Part B.

12.2 New infrastructure assets and associated reclamation and structures in the coastal environment are required to have a functional *or* operational need to be located in the coastal marine area (C.1.1.23, C.1.6.4, C.1.8).

12.3 National grid activities in significant wetlands are required to have a functional *or* operational need to be located in the wetland (C.2.2.5, D.2.10).

12.4 Additions or alterations to structures in certain coastal zones are required to have a functional need to be located in the coastal marine area (C.1.1.11, C.1.1.12).

12.5 When considering the appropriateness of regionally significant infrastructure proposals, regard must be had and appropriate weight given to any demonstrated functional need for the activity *and* any operational, technical or location constraints (D.2.9(3) and (5)).

12.6 The loss of extent of natural inland wetlands must be avoided, their values protected, and their restoration promoted, except where there is a functional need for specified infrastructure in a location (D.4.23(2)).

13 D.2.9 and D.4.23 are relevant to the proposal.

14 D.2.9 is a general provision applying to regionally significant infrastructure. Importantly, it does not contain an outright requirement for functional need. Rather, regard must be had and appropriate weight given to any demonstrated functional need for the activity.

15 D.4.23 is a more specific provision addressing the construction of specified infrastructure that may impact natural inland wetlands. However, it also does not contain an outright requirement for functional need for any activity within natural inland wetlands. Instead, the chapeau of D.4.23 refers to avoiding the loss of extent of natural inland wetlands, protecting their values, and promoting their restoration, except where the Council is satisfied that there is a functional need for the specified infrastructure in that location.

16 In other words, a specified infrastructure proposal might be able to avoid the loss of extent of natural inland wetlands (as is the case here, due to the offset proposal), and therefore not need to establish functional need.

17 Under Regulation 45(6) of the NES-FW, there is an outright requirement for functional need. A resource consent for a discretionary activity under Regulation 45 must not be granted unless the consent authority is satisfied that there is a functional need for the specified infrastructure in that location.

18 On this basis, in our submission while the PRPN gives effect to the NES-FW, it does not set a higher bar for functional need, with the NES-FW instead being more restrictive.

19 As to whether functional need is met in this case (primarily for the purposes of the NES-FW), our opening legal submissions and both **Mr Hood** and Mr Hartstone addressed the Commissioners on this question at the hearing. The key points establishing functional need for a grid-scale proposal of this nature are:

19.1 To make the proposal functional, there obviously needs to be sunshine (i.e. a location with the right topography and irradiance).

19.2 However, in order for the energy generated by that sunshine to be used, there needs to be sufficient proximity to a substation capable of dealing with the energy generated (for a project of this scale) and transmission lines with sufficient capacity to carry the energy.

19.3 As outlined in the evidence of **Mr Sherman**, there are no other viable alternative sites in proximity to the necessary substation and transmission infrastructure to enable a solar farm development at this scale to function.

20 Functional need is therefore clearly established in this case.

CULTURAL MATTERS

21 At the hearing, Commissioner Taylor asked several questions in relation to cultural matters, including asking for:

21.1 clarification from MEL about the status of the Te Parawhau Hapū document included with the application (Appendix 12);

21.2 more detail on the Mara Rongoā (healing garden) and how this is provided for in the consent conditions;

21.3 a position on how Resource Management Act 1991 (*RMA*) processes relate to Te Tiriti o Waitangi settlement processes, as raised by Dr Mere Kepa and in the Te Parawhau Hapū document included with the application; and

21.4 a response to the Crown "look-through" issue, as raised by Dr Kepa.

22 We address these matters in turn below.

Te Parawhau Hapū document

23 As described in the application and in more detail in **Mr Sherman's** evidence, over the course of developing the proposal and preparing the resource consent application, MEL had a number of hui with Te Patuharakeke Hapū's Taiao Unit (Patuharakeke Te Iwi Trust Board), Te Parawhau Hapū and Ngātiwai.[1]

24 Through these hui, MEL's understanding was that Te Parawhau Hapū and Ngātiwai were generally comfortable to tautoko (support) the work undertaken between Patuharakeke Te Iwi Trust Board and MEL on the development of the proposal.[2]

25 As **Mr Sherman** explained at the hearing, when the resource consent application was submitted, MEL accordingly understood that the Cultural Effects Assessment (*CEA*) prepared by Patuharakeke Te Iwi Trust Board (Appendix 11 to the application), in effect, represented the views of the three hapū. This was particularly because the CEA addressed the korero and issues raised at the two hui-a-hapū where Te Parawhau Hapū representatives were present. For example, there is a specific reference in the CEA (pages 18/19)

[1] Evidence of Micah Sherman, paragraphs 64-71.

[2] Evidence of Micah Sherman, paragraphs 68 and 71.

to Pari Walker's korero, and both Te Parawhau Hapū and Ngatiwai are referenced or mentioned elsewhere in the CEA.

26 However, MEL also received what at that stage MEL understood to be a CEA specific to Te Parawhau Hapū. MEL sought to clarify the status of this document before lodging the resource consent application and it was confirmed by Te Parawhau Hapū representatives that the report was a separate CEA on behalf of the Patuharakeke/Te Parawhau hau kainga whanau who reside at Takahiwai. This document was therefore included as Appendix 12 to the application and was put forward as a separate CEA.

27 On this basis, it is considered that the full range of cultural voices have appropriately been taken into account in the development of the proposal and the preparation of the resource consent application. The amended draft conditions of consent (**Appendix 1**) further incorporate cultural matters as raised at the hearing, particularly in relation to ongoing consultation with both Te Patuharakeke Hapū and Te Parawhau Hapū through the detailed design, construction and operational stages.

Mara Rongoā

28 For background context, MEL advises that the concept of the Mara Rongoā first arose in the separate CEA discussed above. There was no prior discussion about it, including on any specific details, before receiving that document. After receiving and reviewing the document, MEL was willing to include the concept as part of the proposed consent conditions and intended for it to be addressed further, with appropriate cultural input, through the detailed wetland design process.

29 The Mara Rongoā is accordingly provided for in Condition 34(b). Importantly, under this condition the Mara Rongoā must be incorporated as part of the Wetland Restoration Management Plan and it must be developed in consultation with Te Patuharakeke Hapū and Te Parawhau Hapū. It is considered that the development of detailed plans for the Mara Rongoā in consultation with Hapū will lead to the best outcomes for this aspect of the wetland development, rather than prescribing more specific details (for example, as to its location and characteristics) in the consent conditions without appropriate cultural input.

RMA and Te Tiriti

30 At the hearing and in her written statements, Dr Kepa discussed the ability for the resource consent process to address cultural matters, particularly as they relate to historical cultural imbalances between Māori and Pakeha and Ti Tiriti o Waitangi claims.

31 Section 8 of the RMA provides for consideration of the principles of Ti Tiriti. This is relevant to the Commissioners' jurisdiction to the extent that the principles relate to the Commissioners'

functions and powers to manage the use, development, and protection of natural and physical resources. Resource consent decision-making under section 104 of the RMA is expressly subject to section 8.

32 MEL has sought to address cultural matters through the development of the project and the resource consent application by way of engagement with relevant hapū and incorporating matters raised by them and their aspirations. The details of that engagement and its incorporation into the project are now before the Commissioners to assist with their decision-making.

33 To the extent that the Crown has taken steps to resolve historical grievances by way of legislation (i.e. through Settlement Acts and/or reform measures), these are also provided for and required to be considered through RMA processes, including under section 104 of the RMA.

34 However, alleged historical wrongs or the application of resources in connection with any obligations that the Crown might have as a Ti Tiriti partner, not yet incorporated in legislation, are respectfully not part of the Commissioners' jurisdiction under the RMA.

35 The Environment Court has made several comments in relation to the consideration of historical grievances in RMA processes. In *Freda Pene Rawhiti Whanau Trust v Auckland Regional Council,* the Court stated:[3]

> *The Environment Court has no jurisdiction to remedy alleged historic wrongs or allocate resources in connection with any obligations that the Crown might have as a Treaty partner. It is for the Crown to take any steps of that sort, which it will usually do by way of legislation, such as the current further aquaculture reform measures.*

36 Similar findings were made in *Chief Executive of the Ministry of Agriculture and Forestry v Waikato Regional Council*, namely that the principles of Te Tiriti are to be taken into account in decision-making under the RMA, but that there is no jurisdiction under the RMA to address historical grievances.[4]

Crown look-through issue

37 At the hearing, Dr Kepa raised look-through issues relating to the Crown's use of State-Owned Enterprises (*SOE*).

[3] *Freda Pene Rawhiti Whanau Trust v Auckland Regional Council* (2004) 11 ELRNZ 235, at [68].

[4] *Chief Executive of the Ministry of Agriculture and Forestry v Waikato Regional Council* [2006] ELFHNZ 99, at [8]-[12].

38 Originally a SOE wholly owned by the New Zealand Government, MEL was partially privatised in October 2013 with the Government retaining 51.02% shares. Today, MEL is a Mixed Model Ownership company, majority owned by the Crown and publicly listed on both the NZX and the ASX.

39 As stated by the Environment Court in *Chief Executive of the Ministry of Agriculture and Forestry v Waikato Regional Council*,[5] land ownership is not relevant to the issue of whether a resource consent should be granted or refused under the RMA. By extension, the Government's current shareholding of MEL is not a relevant consideration. In other words, more or less weight is not afforded to certain sections of the RMA (including sections 8 and 104) because of who or what an applicant is. Instead, the Commissioners' jurisdiction in relation to cultural matters remains as set out at paragraph 31 above.

WETLANDS

Wetland typology

40 Boffa Miskell Limited (*Boffa Miskell*) has prepared a brief memorandum (attached as **Appendix 3** to these submissions) which summarises the responses given by **Dr Flynn** and **Ms Cook** at the hearing to the Commissioners questions relating to:

40.1 the typology of the subject wetlands on Site 1 (i.e. what is their type/nature/characterisation) and the technical basis for assigning this typology; and

40.2 NPS-FM Appendix 6, Principle 2 regarding the appropriateness of offsetting, in light of Mr Warden's response comments, and as noted at paragraph 7(b) of the Commissioners' Minute dated 9 August 2024.

Wetland functions, mapping and "flex"

41 The Boffa Miskell memorandum at **Appendix 3** also addresses the functions of the wetland features to the catchment and Commissioner Taylor's question as to the minimum and maximum extent of the wetlands encountered on site and where Boffa Miskell landed in terms of mapping their extent. The memorandum also comments on the use of the NPS-FM protocols for delineating wetlands.

Calculation of Site 3 wetland area

42 In response to the Commissioners' question at paragraph 7(a) of the Minute dated 9 August 2024, MEL has confirmed that the offset wetland area indicated on Site 3 has been calculated net of the maintenance area required by Transpower around its four towers

[5] *Chief Executive of the Ministry of Agriculture and Forestry v Waikato Regional Council* [2006] ELFHNZ 99, at [10].

and the two accessways. This is now also incorporated into Condition 32.

43 As **Mr Fuller** noted at the hearing, this area will in fact be useful for obtaining access to parts of the wetland for works on and maintenance of the wetland area itself, as well as providing ongoing access for Transpower to its infrastructure.

Timing of implementation of wetland creation works

44 The timing for the implementation of wetland creation works is prescribed in Condition 30. Under this condition, buffer planting and pest weed removal in and around the existing open water area on Site 1 must commence prior to the commencement of earthworks on Site 1. All other wetland creation works on Sites 1 and 3 must commence within 12 months of the commencement of earthworks on Site 1. Commissioner Hill's comments (DH21) on the draft conditions queried whether the wetland on Site 3 could not be commenced simultaneously with the removal of the wetland at Site 1 for early establishment purposes.

45 MEL and Boffa Miskell had previously considered this timing at length, and have re-considered it in light of the Commissioner's comment. MEL has amended the condition so that wetland creation works on Sites 1 and 3 commence within 12 months (previously, the Site 3 wetland creation works were proposed to commence within 24 months). However, there are three key reasons why the 12 month timeframe is required. Firstly, the wetland recreation works require significant detailed design which is intended to occur over this period. Secondly, they require consultation with Te Patuharakeke Hapū and Te Parawhau Hapū, as well as Transpower and Fish and Game. MEL wishes to allow sufficient time for that consultation to occur. Thirdly, the earthworks (summer) and planting (winter) seasons are opposites, so the 12 month timeframe allows for those different activities, and plant sourcing (including from local nurseries), to occur at the appropriate time.

46 In respect of the implementation of the offset wetlands, we note the addition of new Condition 59, which requires additional long-term monitoring to ensure certainty of outcomes for the wetlands.

Council internal groundwater advice

47 At the end of the hearing, Mr Hartstone tabled a response from the Council's Resource Scientist – Groundwater, Hagen Robertson, to Commissioner Hill's question about the Council's Climate Hydrology Report. The context for the question is whether the reference to "normal", being 40th to 60th percentile, in the Council's Climate Hydrology Report is applicable to determining groundwater levels for the purposes of the wetland delineation exercise for this proposal.

48 **Ms McDavitt** has reviewed Mr Robertson's response. She has noted that it is the responsibility of councils across New Zealand to monitor their aquifers and set requirements around what is 'normal'.

The 'normal' range varies across regions based on their local environmental factors. Applicants rely on this published information when preparing assessments of effects, including that the hydrological reports are representative and accurate.

49 **Ms McDavitt** remains of the view, as expressed in her evidence and at the hearing, that in the context of all of the available groundwater data pertaining to the site and the surrounding area, reference to the Council's Climate Hydrology Report metric is appropriate.

50 **Ms McDavitt** reiterates that for the five periods of climatic conditions when the delineation was undertaken (see Table 1 on pages 29/30 of her evidence), where the conditions were described as above normal, this was well above the 60th percentile and generally closer to the 90th percentile:[6]

50.1 Period 1 (27 October to 2 November 2021): groundwater levels were above the 60th percentile and very close to the 90th percentile of all data.

50.2 Period 2 (31 May 2022, 20 June 2022, 6 September 2022): groundwater levels were above the 60th percentile of all data and close to the 90th percentile for September 2022.

50.3 Period 3 (7, 8, 22 and 24 March 2023): groundwater levels were above the 60th percentile and close to or above the 90th percentile of all data.

50.4 Period 4 (28 September 2023 and 8 October 2023): groundwater levels were above the 60th percentile and close to the 90th percentile of all data.

50.5 Period 5 (28 March, 19 June, 21 June and 4 July 2024): groundwater levels were 88%-107% of average (between 40th to 60th percentile) and therefore representative of normal conditions (for the dataset up to that date).

51 Irrespective of the metric used, across the wetland delineation assessment dates, nine out of the 11 assessments during Periods 1-4 (as set out above) were close to or above the 90th percentile for the entire dataset. **Ms McDavitt** considers it cannot be disputed that close to or above the 90th percentile is "*above normal*". It is therefore clear that for at least Periods 1, 2 (September 2022), 3 and 4 groundwater levels were well above normal.[7]

52 Accordingly, it is not correct to suggest that the delineation exercise occurred during classically 'dry' periods. It is also likely that

[6] Evidence of Mandy McDavitt, paragraphs 69-89.

[7] Evidence of Mandy McDavitt, paragraphs 85-86.

groundwater levels would have remained higher on Site 1 following prolonged rainfall due to the condition of the Bercich Drain.

53 In our submission, ultimately, this confirms that the Boffa Miskell delineation exercise was correctly undertaken.

Regulation 45C of the NES-FW

54 At the hearing and in his evidence, **Mr Hood** referred to an alternative consenting pathway under the NES-FW, being Regulation 45C, which enables urban development.

55 For clarity, we confirm that this was simply a reference to illustrate the appropriateness of the proposal or, in other words, that there are pathways for such development, under the NES-FW. MEL is not asking the Commissioners' to make a specific finding on the application and appropriateness of this alternative pathway.

RESPONSE TO SUBMITTERS

56 Several submitters presented at the hearing and it was useful for MEL to hear their concerns expressed in more detail. Relevant submitters' presentations are briefly addressed below. We note that the matters raised by Dr Kepa have been addressed above.

Ross Scobie and Melanie O'Donnell

57 Mr Scobie and Ms O'Donnell raised a range of matters which were largely relevant to the district consents already granted by Whangārei District Council. As noted at the hearing, MEL (through Rebecca Knott, Head of Renewable Development) made contact with Mr Scobie and Ms O'Donnell and indicated a willingness to work with them on the matters raised.

58 Following the hearing, Mr Scobie also provided correspondence to the Panel regarding Condition 28 (current numbering), which relates to flood level increase. MEL, supported by technical advice from Beca, has amended this condition so that there is now a requirement for no flood level increase on any land outside the project Sites 1-3. In our submission, this fully addresses Mr Scobie's concerns.

Shaun Erickson

59 Mr Erickson provided a written statement at the hearing which, in particular, raised potential heat island and micro-climatic effects.

60 **Mr Hood's** evidence addressed these potential effects with reference to decision-making on other solar farms in New Zealand. In those instances, the decision-makers have been satisfied that while these effects have been observed overseas in arid, unvegetated environments, they do not arise in vegetated environments, including where a solar farm is installed on pasture

with surrounding vegetation.[8] **Mr Hood** quoted the conclusion of the Waerenga Solar Farm fast-track consent panel, which was that:[9]

> *The Panel is satisfied that while a heat island effect has been observed in certain instances of solar farms in arid unvegetated environments, the explanation from the Applicants is that the pastoral environment at Waerenga Solar Farm does not require that conditions be imposed to address heat island effects.*

61 Mr Erickson's statement refers to the proposal site being different to the Waerenga site. However, the key similarity is that the MEL solar farm, like Waerenga, will be installed on pasture with surrounding vegetation. That is the key approach for addressing a potential heat island effect (if any). Mr Erickson's statement also refers to conditions imposed on the Waerenga consent associated with these potential effects. Our reading of the decision is that it included an express finding that no conditions were required to address these effects. For completeness, we confirm that there is no condition on the final consent associated with these effects.

62 Mr Erickson's statement addresses the proposed consent conditions, with the legal submissions component noting that the addition of suitable conditions may mitigate effects sufficiently so that a consent could be granted. MEL agrees and considers sufficient mitigation is in place via the draft conditions.

63 The statement contains two suggested proposed conditions of consent regarding monitoring (of heat island effects) and review of the conditions. MEL's position is that the suggested monitoring requirement is not necessary, based on the response to the heat island point set out above and in **Mr Hood's** evidence.

64 As to review of the conditions, there is already a proposed review condition (Condition 62), which enables a review of the conditions by the Council annually for certain purposes. We note that the submitter's suggestion that affected parties (i.e. third parties) be invited to comment on any review process is likely to be considered invalid. However, we reiterate, as emphasised by Ms Knott at the hearing, that MEL is committed to being a good neighbour and to working with residents and the community over the course of the project, if the consent is granted.

65 We note that the other matters raised in Mr Erickson's statement have already been covered in the evidence or legal submissions for MEL.

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[8] Evidence of Brett Hood, paragraph 158.

[9] https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Waerenga/Waerenga-Solar-Farm-decision-report.pdf, paragraph 5.67.

Northland Fish and Game Council

66 A focus of Northland Fish and Game Council's (*Fish and Game*) presentation and the questions the Commissioners asked of its representatives was the impact of the solar farm on birds via collision risk with the solar panels as they move between waterbodies on and off-site in the wider area.

67 Boffa Miskell addressed the potential 'lake effect' at page 63 of the Ecological Effects Assessment (Appendix 13 to the application). While this is an area with limited New Zealand and overseas research, the literature available suggests that such collision risk is low. In any event, the proposal already includes measures to address the risk, including anti-reflective coating on the panels, physical interruptions between the panels (for example, internal roads) to break them into smaller blocks and buffers between the restored wetlands and solar panel areas. We note Fish and Game stated at the hearing that there were no such buffers, however they are (and have always been) an important feature of the proposal.

68 In his evidence, **Dr Shapiro** also addressed the risks of birds colliding with vehicles on adjacent roads as they move between waterbodies on and off-site.[10] To address this risk, there will be a 2m planted earth bund along the dual road frontages adjacent to the restored wetland on Site 3 in order to elevate birds away from the road (this is required by Condition 34(j)). In terms of panel collision risk, the planted buffers between the restored wetlands and solar panels will also assist in elevating birds away from the solar infrastructure.

69 There is also a two-year post-construction monitoring regime included under the Native Avifauna Management Plan (Condition 16(c)). If this monitoring establishes that At Risk or Threatened birds are colliding with the solar panels, this triggers a requirement for a Native Avifauna Collision Management Plan (Conditions 52-54). At the hearing, Fish and Game suggested that this "wait and see" approach did not go far enough to mitigate potential risks to bird life.

70 MEL, with advice from **Dr Shapiro**, has considered whether the development of a collision management plan should be brought forward prior to construction. There are two difficulties with this approach. Firstly, it is difficult to predict how and why birds might collide with solar panels and what measures, in the particular circumstances, would be effective in preventing collisions. While there are a range of measures that can be undertaken, they are generally site and species-specific and require knowledge of why collisions are happening before they can be successfully implemented. Secondly, from an ecological perspective, the purported lake effect is considered low risk and it would be unnecessarily pre-emptive to put a collision management regime in

[10] Evidence of Dr Lee Shapiro, paragraphs 66-73.

place at the outset. However, in the event of unexpected or unanticipated collisions, MEL is certainly willing to put measures in place to address these, and this is clearly provided for in Conditions 52-54.

71 Finally, we note that MEL has accepted the Commissioners' suggestion at paragraph 7(c) of the Minute dated 9 August 2024 that Fish and Game be a named consultation party for the purpose of considering faunal matters in wetland design. This is included as Condition 34(e).

Forest and Bird

72 Mr Kay appeared via Zoom for Forest and Bird at the hearing. He did not provide a hearing statement but reiterated the points made in the submission he filed for Forest and Bird. The evidence for MEL addressed the concerns raised in the submission and MEL did not understand him to be raising any new or providing additional evidence. On this basis, it is considered that the Forest and Bird concerns relating to ecological effects, flood modelling, the wetlands and functional need have been satisfactorily addressed.

Community fund

73 The Commissioners queried at paragraph 7(d) of the Minute dated 9 August 2024 whether MEL had considered offering the establishment of a Community Fund for the Ruakākā community with appropriate annual committed funding as an Augier condition.

74 MEL values the communities that surround its generation assets and strives to include them as part of the MEL whānau. MEL operates Power Up Community Funds in the communities where its generation assets are located.[11] Power Up Community Funds are intended to empower community groups and projects, so that the community itself (rather than MEL) determines where MEL's support is needed and best directed. The Power Up Community Funds have prescribed objectives and selection criteria and applications are made for support for groups or projects.

75 While this is something that MEL might ordinarily establish and operate outside the consent process, in light of the Commissioners' suggestion, in the draft conditions MEL has included an Augier condition requiring the establishment of a community fund (Condition 61).

COUNCIL'S FINAL POSITION

76 On day two of the hearing, Mr Warden and Mr Hartstone presented to the Commissioners.

77 Mr Warden provided speaking notes and these have been addressed either above (i.e. in the Boffa Miskell memorandum at **Appendix 3**)

[11] https://www.meridianenergy.co.nz/community-support/fund.

or were already addressed in the written evidence or the responses given orally at the hearing by MEL's ecology experts.

78 When asked for his final position, Mr Hartstone appeared to sit on the fence with his remaining reservation tied to the question of the typology of the wetlands and whether they are vulnerable/irreplaceable such that offsetting is not appropriate.

79 In our submission, **Dr Flynn's** evidence, responses to questions at the hearing and the Boffa Miskell memorandum at **Appendix 3** clearly establish the dune swale typology of the wetlands and confirm that offsetting of these type of wetlands is both appropriate and achievable. On this basis, we say Mr Hartstone's remaining concern has been suitably addressed.

80 It should also be reiterated that the proposal does not seek to remove the wetlands outright from the entire project site. The proposal will preserve certain high value wetland areas, especially those high quality open water areas close to the coastal margin (i.e. away from roads). The proposal will restore and enhance these areas, as well as extending them on the same site (Site 1) (again, close to the coastal margin and the existing kānuka block). This is a key aspect of the proposal that, in our submission, should not be overlooked.

81 Further, it did appear to be accepted at the hearing that, regardless of the cattle grazing regulations coming into effect in January 2025, the Site 1 wetlands are in a degraded state and will not recover without significant intervention. Fundamentally, the enhancement of the existing open water wetlands and the proposed offset wetland areas will result in positive ecological outcomes.

CONCLUSION

82 In our submission, MEL has carefully and thoroughly addressed all relevant matters raised by Council staff/consultants and submitters, and over the course of the hearing.

83 What is now before the Commissioners is a comprehensive proposal for the construction of a solar farm at Ruakākā at a time when a secure, reliable and sustainable power supply for Northland, and the country, is critical.

84 Critically, the proposal respects the environmental characteristics of the site by avoiding adverse effects to the extent practicable on features of high ecological value, and restoring or replacing lower value features that are currently in a degraded condition. The overall outcome will be positive from an ecological perspective, particularly with ongoing protection in place.

85 On this basis, and subject to the amended draft conditions of consent, the proposal is deserving of consent.

Dated 23 August 2024

J Appleyard / A Hawkins
Counsel for Meridian Energy Limited