

BEFORE THE ENVIRONMENT COURT

Decision No. C103/2009

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under section 120 of the Act

BETWEEN

MANIOTOTO ENVIRONMENTAL
SOCIETY INCORPORATED

(ENV-2007-CHC-300)

UPLAND LANDSCAPE PROTECTION
SOCIETY INCORPORATED

(ENV-2007-CHC-297)

J, S & A DOUGLAS

(ENV-2007-CHC-299)

E AND C LAURENSEN & THE ERIC AND
CATE LAURENSEN FAMILY TRUST

(ENV-2007-CHC-301)

I AND S MANSON AND RIVERVIEW
SETTLEMENT TRUST

(ENV-2007-CHC-302)

GAELE SOGUEL DIT-PIQUARD

(ENV-2007-CHC-303)

E R CARR

(ENV-2007-CHC-304)

R P SULLIVAN

(ENV-2007-CHC-307)

Appellants

MERIDIAN ENERGY LIMITED

(ENV-2007-CHC-295)

Applicant (and Appellant)

AND

CENTRAL OTAGO DISTRICT COUNCIL
AND OTAGO REGIONAL COUNCIL

Respondents

Hearing: at Cromwell on 19, 21, 22, 23, 26, 27 and 28 May 2008, 28 to 31 July, 1 and 5 to 8 August 2008; and at Queenstown on 19 to 23, 26 to 30 January, and 9 to 12, 16 and 17 February 2009

Site inspections: 27 and 28 March, 29 May 2008 and 18 and 19 February, 16 and 17 March 2009

Court: Environment Judge J R Jackson
Environment Commissioner H A McConachy
Environment Commissioner A J Sutherland
Deputy Environment Commissioner K D F Fletcher

Appearances: Mr H Rennie QC, Mr A J L Beatson and Mr H J Tapper for Meridian Energy Ltd
Mr A J Logan for the Otago Regional Council
Mr G M Todd and Ms J E Macdonald for Central Otago District Council
Mr M Holm, Mr I M Gordon and Mr M J Slyfield for Maniototo Environmental Society Incorporated and Central Otago Environmental Society (section 274 party)
Mr E R Carr for himself, G S Dit-Piquard, Danseys Pass Coach Inn Limited and Brookside Properties Limited and for the Upland Landscape Protection Society Incorporated
Mr J Douglas for J, S & A Douglas
Mr N S Marquet for E & C Laurenson and The Eric and Cate Laurenson Family Trust and for I and S Manson and Riverview Settlement Trust
Ms S J Ritchie for the Crown (as a section 274 party)
Dr M J Floate for Otago Goldfields Heritage Trust – section 274 party
Ms J Kelly for Central Otago Recreational Users Forum – section 274 party

Date of decision: 28 October 2009

Date of Issue: 6 November 2009

DECISION

- A: Under section 290 of the Resource Management Act 1991 the appeals ENV-2007-CHC-300, ENV-2007-CHC-297, ENV-2007-CHC-299, ENV-2007-CHC-301, ENV-2007-CHC-302, ENV-2007-CHC-303, ENV-2007-CHC-304 and ENV-2007-CHC-307 are allowed.
- B: As a consequence of A, no order is made in respect of appeal ENV-2007-CHC-295 by Meridian Energy Limited.
- C: The decisions of the Central Otago District Council and Otago Regional Council to grant resource consents to Meridian Energy Limited for a wind farm on the Lammermoor are cancelled.
- D: Costs are reserved.
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REASONS

Table of Contents

Para

1.0	Introduction: a wind farm on the Lammermoor?	[1]
1.1	The issue and the parties	[1]
1.2	The proposal	[8]
1.2.1	A 630 megawatt wind farm	[8]
1.2.2	Turbines – size and location	[9]
1.2.3	Substations and grid connection	[12]
1.2.4	Earthworks and roading design	[13]
1.3	The resource consents sought and their status	[15]
1.3.1	Land use consents from the CODC	[15]
1.3.2	Regional consents	[17]
1.3.3	Resource consents from the Dunedin City Council	[22]
1.4	The matters to be considered	[23]

2.0	The facts	[25]
2.1	The Meridian site	[25]
2.2	The wind resource	[26]
	The wind data	[28]
	Seasonality of the wind resource	[36]
	Conclusions on the wind resource	[38]
2.3	The surrounding area	[39]
2.4	The history of the area	[48]
2.5	The uses of the area (farming, water reservoir, energy transmission)	[60]
	Schemes for conserving water quantity and quality	[61]
	Transmission infrastructure (and constraints)	[63]
2.6	Other uses of the area (recreation, tourism, heritage protection)	[68]
2.6.1	Introduction	[68]
	(1) The Rock and Pillar Range	[69]
	(2) The Logan Burn Reservoir	[69]
	(3) The Old Dunstan Road	[69]
	(4) Great Moss Swamp Wetlands, Shepherds Hut and Stony Creek Wildlife Management Reserves	[69]
	(5) Te Papanui Conservation Area	[69]
	(6) Rocklands Station	[69]
	(7) The Upper Taieri River	[69]
	(8) The Styx Jail and Hotel	[69]
	(9) Other heritage sites	[69]
2.6.2	Commercial tourism	[70]
2.6.3	Fishing	[71]
2.6.4	Tramping, walking and skiing	[74]
2.6.5	Mountain biking	[76]
2.6.6	Driving and sightseeing	[77]
2.6.7	Horse trekking	[79]
2.6.8	Hunting	[80]
2.6.9	Photography, botanising, art and filming	[81]
2.6.10	Recreational significance of the study area	[82]
2.7	The vegetation of the Lammermoor	[85]
2.7.1	Introduction	[85]
2.7.2	Tussock grassland	[87]
2.7.3	Shrubland	[91]
2.7.4	Gully floors, bog wetlands	[94]
2.7.5	Existing pest plant species	[97]
2.7.6	Conclusions	[98]
2.8	Fauna	[102]
2.8.1	Birds	[102]
2.8.2	Invertebrates	[104]
2.8.3	Lizards	[109]
2.8.4	Fish	[119]
2.9	Other aspects of the existing environment	[127]
	The Mahinerangi wind farm	[128]
	The Teviot wind farm	[130]
	The Kaiwera Downs wind farm	[131]
2.10	Climate change	[132]
3.0	The law	[142]
3.1	The matters to be considered	[142]
3.2	Actual and potential effects on the environment (section 104(1)(a)of the Act)	[143]

	Accumulative effects	[151]
3.3	The Central Otago District Plan (s 104(1)(b)(iv) of the Act)	[153]
	3.3.1 The scheme of the district plan	[153]
	3.3.2 The resources and issues	[154]
	3.3.3 The Rural Resource Area	[155]
	3.3.4 District-wide rules (section 12 of the district plan)	[158]
	3.3.5 Infrastructure, energy and utilities (section 13 of the district plan)	[159]
	The rules	[167]
	3.3.6 Heritage	[173]
	3.3.7 Financial contributions (section 15 of the district plan)	[174]
3.4	Plan Change 5 to the district plan (s 104(1)(b)(iv) of the Act)	[177]
3.5	The regional instruments (s 104(1)(b)(iii) of the Act)	[185]
3.6	Other matters to be had regard to (s 104(1)(c) of the Act)	[196]
	3.6.1 Other relevant matters raised in the evidence	[196]
	3.6.2 The National Energy Strategy	[197]
	3.6.3 International treaties	[198]
3.7	Part 2 of the RMA	[199]
	3.7.1 The strong directions in sections 6 and 8	[199]
	3.7.2 Section 6 matters	[200]
	Outstanding natural landscapes	[201]
	Historic heritage	[207]
	3.7.3 Section 7 of the Act (generally)	[209]
	The ethic of stewardship (section 7(aa))	[210]
	Energy (section (ba) and (j))	[214]
	Maintenance and enhancement of amenity values and quality of the environment (section 7(c) and (f))	[216]
	Intrinsic values of ecosystems (section 7(d))	[217]
	Any finite characteristics of natural and physical resources (section 7(g))	[219]
	The protection of the habitat of trout and salmon (section 7(h))	[220]
	The effects of climate change (section 7(i))	[221]
3.8	Efficient use of resources (section 7(b) of the Act)	[223]
	3.8.1 Efficiency of using the wind	[223]
	3.8.2 How is efficiency determined?	[227]
	3.8.3 Are alternative locations relevant?	[234]
	3.8.4 Conclusions on alternatives	[242]
4.0	The landscape	[243]
4.1	Describing the landscape	[243]
4.2	Natural science characteristics and elements	[245]
	4.2.1 Geomorphology	[245]
	4.2.2 Vegetation and ground cover	[249]
	4.2.3 Structures	[251]
	4.2.4 Fauna	[252]
	4.2.5 Summary	[253]
4.3	Identifying the relevant landscape	[254]
	4.3.1 The wider landscape	[254]
	Mountain Ranges	[257]
	Category 1A	[257]
	Category 1B	[257]
	Foothills and Ridges	[257]
	Category 2A	[257]
	Category 2B	[257]

	Category 2C	[257]
	Categories 2D to 2I	[257]
	Alluvial Terraces and Basins	[257]
	Categories 3A and 3B	[257]
	Category 3C	[257]
4.3.2	The evidence of the landscape architects as to the landscape's boundaries	[259]
	Mr P Rough's evidence	[260]
	Mr S Brown's evidence	[265]
	Ms E A Steven's evidence	[271]
	Mr B Espie's evidence	[275]
	Mr P Baxter's evidence	[282]
	Dr M C G Mabin's evidence	[283]
4.3.3	Findings	[285]
4.4	Assessing the naturalness of the landscape	[292]
4.5	Is the landscape outstanding?	[301]
4.5.1	The Central Otago District Plan on the landscape	[301]
4.5.2	Plan Change 5 to the district plan	[302]
4.5.3	Evidence on the values of the Eastern Central Otago Upland Landscape	[305]
	Legibility of the landscape	[305]
	Transient values	[306]
	Shared and recognised values	[307]
	Tangata whenua values	[311]
	Aesthetic values	[312]
	Historic values	[314]
4.5.4	Direct evidence on whether the landscape is outstanding	[315]
	The evidence for Meridian	[315]
	Evidence for other parties	[318]
4.5.5	The views of the local authority's commissioners	[321]
4.5.6	Having regard to the Otago RPS	[328]
4.5.7	Conclusions	[329]
5.0	The possible effects : qualitative analysis	[331]
5.1	Introduction	[331]
5.2	Positive effects	[334]
5.2.1	Meeting the demand for more electricity	[334]
5.2.2	Placing downward pressure on electricity prices	[335]
5.2.3	Reducing carbon emissions	[337]
5.2.4	Complementarity of wind to hydro	[339]
5.2.5	Employment	[345]
5.2.6	Tourism attraction	[346]
5.3	Predictions about the effects of climate change	[351]
5.4	Earthworks, erosion and sedimentation	[356]
5.4.1	Overview	[356]
5.4.2	Earthworks remediation	[357]
5.4.3	The proposed management plans	[362]
	Review of the proposed management plans	[363]
	Erosion and sediment control guidelines	[367]
	Basecourse material	[368]
	Disposal sites	[370]
	Extreme events	[375]
	Snow and ice	[378]
5.4.4	Sedimentation in rivers	[379]

5.4.5	The agreed statement of facts, recommended modifications and our conclusions	[382]
5.5	Ecological effects – flora – damage and restoration	[386]
5.5.1	The earthworks	[386]
5.5.2	Remedial work	[387]
5.5.3	Conclusions on revegetation	[394]
5.6	Ecological effects – fauna	[397]
5.6.1	Birds	[397]
5.6.2	Invertebrates	[405]
5.6.3	Lizards	[411]
5.6.4	Fish	[413]
	Sediment loads, unusual/infrequent loads	[414]
	Vehicle contamination	[416]
	Pest species introduction	[418]
	Loss of habitat including spawning grounds	[420]
	Water take	[422]
	Summary in relation to fish	[423]
5.7	Landscape and visual effects	[424]
5.7.1	Introduction	[424]
5.7.2	Effects on the physical components of the landscape	[425]
5.7.3	Effects on perceptions of the wind farm : methods	[428]
	Selection of viewpoints	[428]
	Photo-simulations of the proposed wind farm	[430]
	Scales for assessing visual effects	[439]
5.7.4	Assessment of effects on the landscape from the viewpoints	[441]
	Distant views	[441]
	Clarks Junction area	[442]
	Eastern side of Lammermoor (within Dunedin City)	[444]
	• Old Dunstan Road – eastern side of Logan Burn Reservoir	[445]
	• Near Logan Burn Reservoir	[447]
	• Rock outcrop by Old Dunstan Road	[448]
	Old Dunstan Road within Central Otago district	[449]
	• Old Dunstan Road, near McPhees Creek	[449]
	• Old Dunstan Road, near Turbine V3Z3	[450]
	• Old Dunstan Road, 2.97 kilometres uphill from Paerau	[452]
	Styx-Patearoa Road and its continuation, Upper Taieri Paerau Road	[453]
	• Near Styx Creek	[453]
	• Upper Taieri Paerau Road	[454]
	Serpentine Flat	[455]
	• Junction of Linnburn Runs Road and Deep Creek Road	[456]
	• Middle of Serpentine Flat	[459]
	Old Dunstan Road (Rough Ridge)	[460]
	Serpentine Scenic Reserve	[463]
	Southern end of the Meridian site	[464]
	• Pylon Road	[464]
	• Taieri Rapids Scenic Reserve	[465]
	Te Papanui Conservation Park	[466]
	Rock and Pillar Range	[467]
	• McPhees Rock (1310 masl)	[468]

5.7.5	Mitigation of effects on the landscape	[469]
	Turbine design	[470]
	Other infrastructure	[473]
	Revegetation	[478]
5.7.6	Accumulative effects	[482]
5.7.7	Conclusions as to the values of the landscape	[491]
	Mr Espie's evidence	[491]
	Mr Rough	[492]
	Ms Steven	[493]
5.7.8	Visual Absorption Capacity of the Meridian site	[494]
5.8	Effects on amenities	[501]
5.9	Effects on historic heritage	[509]
5.9.1	Archaeological heritage	[509]
5.9.2	The Old Dunstan Road	[517]
	Changes to the fabric of the Old Dunstan Road	[518]
	Surroundings of the Old Dunstan Road	[526]
6.0	Efficient use of resources – attempting to quantify the costs and benefits	[534]
6.1	Introduction	[534]
6.2	Benefits	[536]
6.2.1	Summary of benefits	[536]
6.2.2	Benefits of electricity produced or contribution to Gross Domestic Product	[539]
	The intermediate consumption	[540]
	Is \$80/MWh a fair estimate of price?	[544]
6.2.3	Reduced upward pressure on prices	[548]
6.2.4	Avoiding transmission losses on import of electricity into Otago-Southland	[554]
6.2.5	Improved security of supply	[555]
6.2.6	Complementarity of wind to hydro	[557]
6.2.7	Benefits to the economy from the construction of the wind farm	[559]
6.2.8	Development Impact Levy	[571]
6.2.9	Economic benefit of operation	[573]
6.2.10	Reduced CO ₂ emissions	[574]
6.2.11	Other benefits	[581]
6.3	The costs	[584]
6.3.1	Listing the possible costs	[584]
6.3.2	Cost of electricity from wind	[586]
6.3.3	Additional electricity system costs – frequency keeping and reserve capacity	[589]
6.3.4	Back-up generation	[592]
6.3.5	Frequency keeping and operating reserves	[605]
6.3.6	Additional costs in upgrading the national grid	[608]
6.3.7	Additional transmission losses	[617]
6.3.8	Impacts on recreation and tourism	[623]
	Cost of alternative recreational venues	[630]
	Tourism in the wider region	[636]
	Other environmental and ecological costs	[639]
6.4	Summary of cost benefit analysis	[641]
6.4.1	Tables of benefits and costs	[641]
6.4.2	Probabilities	[643]
	One-off benefits and costs	[644]
	On-going benefits and costs	[647]

6.4.3	Conclusions	[649]
7.0	Should the power generation facility be approved under the operative district plan?	[651]
7.1	Introduction: achieving sustainable management of the Lammermoor's resources	[651]
7.2	Are the operative objectives and policies met?	[652]
7.2.1	Applying the code in section 13 of the operative district plan	[652]
7.2.2	Does the proposal achieve the policies? Positive effects of developing a wind farm	[653] [655]
7.2.3	Other rules	[659]
7.3	Having regard to the Otago Regional Policy Statement	[660]
7.4	Having regard to the local authorities' decision (section 279A of the Act)	[669]
7.5	Other matters (section 104(1)(c) of the RMA)	[673]
7.5.1	The existing environment and the permitted baseline	[673]
7.5.2	Crown policies	[676]
7.5.3	Crown support for Meridian's proposal	[680]
7.5.4	Conduct of the appellants and supporters	[684]
7.5.5	Reversibility	[689]
7.5.6	All or nothing?	[691]
7.6	'Subject to Part 2 ...'	[693]
7.6.1	Summary to this point	[693]
7.6.2	Should we consider the application under Part 2 of the Act?	[694]
7.7	Is the proposal an efficient use of resources?	[697]
7.7.1	Do the quantified benefits exceed the costs? Summary of the benefits and costs	[697] [698]
7.7.2	Alternatives: could the same output be achieved at lesser cost by using different resources? Should alternatives be considered? Do alternatives exist?	[702] [702] [705]
7.8	Other section 7 matters	[711]
	Stewardship (section 7(aa))	[712]
	Maintenance and enhancement of amenity values (section 7(c))	[714]
	Intrinsic values of ecosystems (section 7(a))	[719]
	Maintenance and enhancement of the quality of the environment (section 7(f))	[720]
	Any finite characteristics of natural and physical resources (section 7(g))	[721]
	The effects of climate change and the benefits of renewable energy (section 7(i) and (j))	[722]
7.9	Weighing all relevant matters	[723]
7.9.1	Appropriateness under sections 5 and 6	[723]
7.9.2	The actual and potential effects	[725]
7.9.3	The provisions of the operative district plan	[727]
7.9.4	The provisions of the provisional district plan (PC5)	[728]
7.9.5	The provisions of the Otago Regional Policy Statement	[729]
7.9.6	The Hearing Commissioners' decision	[730]
7.9.7	Achieving sustainable management of the site's resources	[732]
	Effects on the landscape	[734]
	Effects on historic heritage	[740]
	Conclusions	[745]

8.0	Overall evaluation and outcome	[751]
8.1	Consent under Plan Change 5?	[751]
8.2	Outcome	[757]
8.2.1	Summary on the application for a power generation facility (land use)	[757]
8.2.2	Otago Regional Council land use consents	[759]
8.2.3	Costs	[760]
	Dissenting Judgment of Commissioner Sutherland	[761]

JUDGMENT OF THE MAJORITY

1.0 Introduction: a wind farm on the Lammermoor?

1.1 The issue and the parties

[1] Meridian Energy Limited applied to the Central Otago District Council (“CODC”) on 12 July 2006 and the Otago Regional Council (“ORC”) on 1 November 2006 for resource consents to establish and operate a wind farm using up to 176 wind turbines each capable of generating up to 3.6 megawatts (“MW”) of power on the Lammermoor Range in Central Otago. The two consent authorities granted consents on conditions, and the appellants lodged appeals in the Environment Court. Meridian’s appeal was about conditions only. The ultimate issue for the Court in this decision is whether we should confirm or cancel or modify the consents granted by the two consent authorities.

[2] The proposed wind farm site is located on a high plateau generally more than 900 metres above sea level which is (approximately in each case) 70 kilometres to the north-west of Dunedin City, 40 kilometres to the south of Ranfurly and 15 kilometres west of Middlemarch. The site covers an area of 92 km² as shown on the attached plan of the proposed wind farm marked “A”. The site covers the uplands part of five high country stations. From south to north they and the proposed numbers of turbines on them are:

- Rocklands 35 turbines
- Lammermoor 66 turbines
- Glen Ayre 19 turbines
- Logan Burn 9 turbines
- Loganbrae 46 turbines

The owners of those properties, apart from Logan Burn which is now owned by Meridian have licence agreements with Meridian to allow the construction and operation of a wind farm on their land. The total area (“the site envelope”) is about 135 km² and includes both the various parts of the site and the intervening land (including the Logan Burn Gorge and the valley of Spillers Creek) and roads leading to it.

[3] Meridian is a State owned enterprise and a major New Zealand energy company. The Government appeared¹ through counsel for the Minister for the Environment to support Meridian’s application and the local authorities’ decisions as a section 274 party. Mr Parker explained that the Minister had presented what was described as an “All of Government Submission”² to the Commissioners’ hearing on the proceedings for the two councils and that the authority for the filing of that submission came from Cabinet. That is, apparently, the first ‘whole of Government’ submission in support of an electricity project under the Resource Management Act 1991 (“the RMA” or “the Act”) as a project of national significance.

[4] The Regional Council and the CODC support the proposal and their decisions to grant it.

[5] All the appellants except Meridian (which appealed some land use conditions) oppose the land use consent completely. Several other section 274 parties appeared to support the appellants:

- the Central Otago Environmental Society in support of the Maniototo Environmental Society Incorporated (“MESI”);
- Otago Goldfields Heritage Trust; and
- Central Otago Recreational Users Forum in support of MESI and Messrs Carr and Douglas.

[6] The only exception to the “All of Government” support for Meridian’s application was from the Director-General of Conservation who lodged through the Otago

¹ Submissions of Mr M T Parker 6 August 2008 [Environment Court document 36].

² Mr P F Gurnsey, evidence-in-chief Exhibit ‘PFG-1’ [Environment Court document 39].

Conservancy, acting under delegated authority, a separate submission³ to the consent authorities. The Otago Conservancy's concerns were met by agreement with Meridian (it appears a potential payment is proposed, which is quite legitimate, if not transparent) and so the Director-General's position was neither to support nor oppose the applications⁴. In contrast the Otago Conservation Board, a quango, appeared through two witnesses – Mr Sutherland and Dr Nixon – to oppose the application.

[7] The Executive called four witnesses:

Mr D E Boyle, Planning and Development Manager at Transpower;

Mr J C Gleadow, Director Transmission of the Electricity Commission;

Mr P F Gurnsey, Manager, Climate Change Policy for the Ministry for the Environment; and

Mr S D Calman, Acting Deputy Secretary, Energy and Communications Branch of the Ministry of Economic Development.

The Court is grateful to all four of these witnesses for taking the time to give evidence to the Court, and especially to Mr Boyle and Mr Gleadow whose employers are not parties to the proceeding. Mr Gleadow was kind enough to return to the hearing in 2009 to answer further questions from the Court.

1.2 The proposal

1.2.1 A 630 megawatt wind farm

[8] Meridian's wind farm⁵ will be capable of generating power of up to 630 megawatts depending on the final turbine type selected. However, Meridian is interested in energy (measured in megawatt hours, or gigawatt hours) rather than in power. Because the wind does not blow all the time or, when it does, at the optimum strength, a wind farm only generates a proportion of its theoretical maximum capacity. If a 3.6 MW turbine is selected and is assumed, over a year, to generate 40% of its theoretical

³ Mr P F Gurnsey, evidence-in-chief Exhibit 'PFG-2' [Environment Court document 39].

⁴ Mr M T Parker, submissions for the Crown para 18 [Environment Court document 36].

⁵ Meridian called its proposal "Project Hayes" in honour of an engineer who worked in the area. However, that has caused a good deal of confusion to outsiders such as journalists, some of whom have understood the proposal to be in the Lake Hayes area near Queenstown.

maximum then the 176 turbines of the Meridian proposal would generate sufficient electricity to supply power for 278,000 average homes.

1.2.2 Turbines – size and location

[9] A wind turbine is made up of:

- (a) blades, typically three in the ‘Danish design’ although a New Zealand home-grown model has two;
- (b) a hub (the hub and blades make the rotor);
- (c) a nacelle, which contains the drive train gearbox, generator and controller (and to which the rotor and tower are attached); and
- (d) a tower, which supports the nacelle and the electrical cables.

[10] In this case each of the turbines will have a maximum height of 160 metres to the tip of the rotor. Although consent is sought for turbines of up to that maximum size, Meridian offered a condition that all turbines would be of the same size (regardless of which model is finally selected) to ensure uniformity of appearance. The turbines proposed for Project Hayes are three-bladed turbines and similar (but larger) to those in other Meridian projects at White Hill (Central Southland), Makara (near Wellington) and Te Apiti (Manawatu), all of which we have inspected, with the parties’ agreement, after the formal part of the hearing concluded.

[11] In addition, Meridian has sought a limited degree of flexibility in the final siting of turbines, in that each turbine would be sited within a 150 metre radius of a defined point⁶. That flexibility is sought because the final access, layout and position of turbines is intended by Meridian to be subject to survey, detailed design, ecological and geotechnical considerations as encountered at each turbine site during construction. At the beginning of the hearing Meridian acknowledged that it would be appropriate to relocate one turbine (F9M3) away from the Taieri Rapids Scenic Reserve at the southern end of the site.

⁶ Mr A J Coulman, evidence-in-chief para 3.8 [Environment Court document 30].

1.2.3 Substations and grid connection

[12] Five 220kV substations will be required to connect the wind turbines to the transmission grid. Four of these will feed to the Sluicings Substation at the southern end of the Meridian site via an internal 33 kV line. Electricity produced by the wind farm will then be fed via the Sluicings substation into the Roxburgh-Three Mile Hill (Dunedin) transmission line that runs across the southern end of the site. Internal cabling between turbines, substations and the Roxburgh-Three Mile Hill line will be required. Where practicable, this will be located underground to minimise visual effects. Where the use of overhead lines cannot practically be avoided (in particular, between substations and to the link to the 220 kV network), Meridian proposes that they will be either hidden from public view points or located within an identified corridor that has been designed to reduce visual effects while maintaining a safe distance from turbines.

1.2.4 Earthworks and roading design

[13] Earthworks are required on the site for a number of purposes including to construct internal access roads, turbine platforms and foundations. An internal road network of approximately 150 kilometres will be constructed. Nearly 100 kilometres of these access roads will involve upgrading (sometimes major) of existing tracks. Wherever possible roads have been designed to follow existing farm tracks and tops of ridges. Meridian claimed that will reduce the potential visual effects from external viewpoints by minimising the amount of excavation required.

[14] Work will also be needed on the Old Dunstan Road east of the site to change grades, widen the road, strengthen its surface, enlarge corners and bridge streams.

1.3 The resource consents sought and their status

1.3.1 Land use consents from the CODC

[15] The resource consent sought from the CODC was simply to construct and commission a wind farm of up to 176 turbines on the Meridian site with each turbine having a 'nameplate' capacity of 3.6 MW. The reason for the simple description of the proposed activity is that rule 13.7.4 of the CODC's district plan states (relevantly)⁷:

⁷ District Plan, pp. 13:16-17.

13.7.4 Power Generation Facilities

...

(iii) Discretionary Activities – Development of New Power Generation Facilities

Except as provided for by (iv) below, any activity that:

- (a) Involves or is associated with the construction and commissioning of a power generation facility,

OR

- (b) Results in an increase in the height of a dam ...

is a discretionary activity.

For the purposes of this rule “construction and commissioning” activities includes those activities directly involved with the building and operation of a new energy production facility. This includes site preparation, earthworks, quarrying, concrete batching, plant construction, road construction and widening, traffic generation, reservoir formation, clearance or inundation of vegetation, but specifically excludes investigative activities such as geological sampling and surveys.

In other words construction and working on new power stations includes all ancillary operations identified. A further sentence makes it clear that any need to reroute remote network facilities is also included in such an application.

[16] The parties agree that the land use applications are to be considered as an unrestricted discretionary activity under the operative district plan. They did not consider the status of the activity under the proposed plan constituted by Plan Change 5 which was notified during an adjournment of the hearing, but it appears to us still to be a discretionary activity. As such, the Court may grant or refuse consent under section 104B of the Act and, if consent is granted, may impose conditions under section 108 of the Act. As we have stated, while most of the appeals opposed the grant of the land use consents, Meridian’s appeal was only concerned about seven of the conditions placed on the CODC consent – these related to traffic issues and to the amount payable under a development levy.

1.3.2 Regional consents

[17] A number of consents were applied for by Meridian from the Otago Regional Council. These are essentially related to construction activities and all are required in terms of the Regional Water Plan. The types of resource consents required are:

Landuse Consents:

- to replace and where necessary install culverts within various waterbodies throughout the proposed wind farm site;
- to disturb the beds of various waterbodies associated with construction works throughout the proposed wind farm site;
- to deposit fill material associated with fill disposal areas which may enter surface waterbodies;
- to deposit excess material which may enter surface waterbodies;
- to erect defences against water to manage and control waterbodies where necessary throughout the proposed wind farm site;
- to construct bores for the purpose of taking groundwater in order to lower localised groundwater tables.

[18] A number of discharge permits have also been sought as follows:

- to discharge stormwater runoff to land and water throughout the subject site associated with construction, maintenance and use of structures and ancillary facilities associated with the proposed wind farm;
- to discharge contaminants to land where they may enter water, namely silt and sediment from construction, maintenance and use activities associated with the proposed wind farm;
- to discharge contaminants to water, namely silt and sediment from construction, maintenance and use activities associated with the proposed wind farm;
- to discharge abstracted ground water to land as a result of lowering localised water tables during construction throughout the proposed wind farm site.

[19] A number of water permits have also been applied for by Meridian:

- to take ground water in order to lower localised water tables during the construction of the proposed wind farm throughout the site;

- to temporarily divert water in order to install culverts within various water bodies associated with the proposed wind farm;
- to divert stormwater around fill disposal areas on the proposed wind farm site during construction and on completion of the works.

[20] The applications and the activities for which consent is sought are variously to be considered either as a controlled activity, a restricted discretionary activity or a discretionary activity in terms of the Otago Regional Council Water Plan. At the time of the Council hearing, a report was prepared by a Regional Council officer, Mr Christophers. His report included a table of the consents in question and this table set out the activity status of each individual consent. No party questioned that before us.

[21] The only appeal relating to the Regional Council consents was that of Mr Douglas and his family. They opposed the grant of resource consents completely.

1.3.3 Resource consents from the Dunedin City Council

[22] We were advised by Mr Beatson for Meridian that roadworks within the road reserve width of the Old Dunstan Road do not require resource consents in either the Central Otago district or Dunedin City. However, it appears that some works (e.g. possible bridging of Sutton Stream at the base of the eastern scarp of the Rock and Pillar/Lammermoor Ranges) may require works outside the road reserve and so further resource consents may be necessary.

1.4 **The matters to be considered**

[23] Under section 104(1) of the RMA we are subject to Part 2 of the Act to have regard to any actual and potential effects on the environment of allowing the activity⁸; the relevant statutory instruments⁹; and other relevant matters¹⁰, and we must also have regard to the local authorities' decisions¹¹. We set out our findings, predictions, and judgements on each of those matters in the following chapters:

⁸ Section 104(1)(a) of the RMA.

⁹ Section 104(1)(b) of the RMA.

¹⁰ Section 104(1)(c) of the RMA.

¹¹ Section 290A of the RMA.

Chapter 2.0	The facts
Chapter 3.0	The law
Chapter 4.0	The landscape
Chapter 5.0	The possible effects – qualitative analysis
Chapter 6.0	Efficient use of resources? – attempting to quantify the costs and benefits
Chapter 7.0	Should the power generation facility be approved under the operative district plan?
Chapter 8.0	Overall evaluation and outcome

[24] All issues between Meridian and the respondents have been resolved by consent.