

## 8.0 Overall evaluation and outcome

### 8.1 Consent under Plan Change 5?

[751] We now have to consider whether we would grant consent to the wind farm proposal as a power generation facility under the deemed proposed plan constituted by PC5 inserted in the current district plan. The first point to note about Plan Change 5 to the Central Otago District Plan is that it proposes<sup>1255</sup> to decodify section 13 of the district plan.

[752] PC5C then proposes to amend and reorder two landscape objectives for the Rural Resource Area (which includes the Lammermoor) as follows<sup>1256</sup>:

#### 4.3.3 2 Objective – Outstanding Landscapes and Natural Features, Land Over 900 metres, ~~and~~ Land in the Upper Manorburn/Lake Onslow Landscape Management Area and areas of Extreme and High Sensitivity and Significant Landscape Features

To protect the Districts outstanding landscapes and natural features, land over 900 metres, ~~and~~ land in the Upper Manorburn/Lake Onslow Management Area (including landforms) and areas of Extreme and High sensitivity and Significant landscape features as shown on the Landscape Assessment Maps in Schedule 19.22 from the adverse effects of inappropriate subdivision, use and development.

#### 4.3.3 3 Objective – Landscape and Amenity Values

To maintain and enhance rural amenity values created by the open space, landscape, natural character and built environment values of the District's rural environment, and to maintain the open natural character of the hills and ranges.

We are reluctant to say too much about those objectives since they may come to the Court on appeal. However, we observe that the first of those objectives appears to compound the confusion which already exists in the plan whereby outstanding natural landscapes, land over 900 metres, and land in the Upper Manorburn/Lake Onslow Management Area and (now) areas of Extreme and High Sensitivity all have the same objective: they are to be protected from the adverse effects of inappropriate

<sup>1255</sup> Plan Change 5P in PC 5 at p. 32.

<sup>1256</sup> Text to be included is double underlined and text to be deleted is struck out: PC5, pp. 6 and 7.

development, use and subdivision. We do not need to work out the consequences of that here, simply to record that it looks odd.

[753] PC5D then proposes to amend policies 4.4.1 – 4.4.6, 4.4.9 and 4.4.10 in section 4.4 of the Operative Central Otago District Plan as follows:

**4.4.6 1 Policy – Outstanding Landscapes and Natural Features, Land Over 900 metres, and Land in the Upper Manorburn/Lake Onslow Landscape Management Area and areas of Extreme and High Sensitivity and Significant Landscape Features**

To recognise the District's outstanding landscapes and natural features and land over 900 metres, ~~and~~ land in the Upper Manorburn/Lake Onslow Management Area and areas of Extreme and High sensitivity and Significant landscape features as shown on the Landscape Assessment Maps in Schedule 19.22 which:

- (a) Are unique to the district, region or New Zealand; or
- (b) Are representative of a particular landform or land cover occurring in the Central Otago District or of the collective characteristics and features which give the District its particular character; or
- (c) Represent areas of cultural or historic significance in the district, region or New Zealand; or
- (d) Contain visually or scientifically outstanding geological features; or
- (e) Have characteristics of cultural, historical and spiritual value that are significant to Kai Tahu ki Otago;
- (f) Have high natural character values and high landscape quality that can be distinguished from the general landscapes of the Central Otago District

and provide protection for them from inappropriate subdivision, use and development.

**4.4.1 2 Policy – Landscape and Amenity Values**

To manage the effects of land use activities and subdivision to ensure that adverse effects on the open space, landscape, natural character and amenity values of the rural environment are avoided, remedied or mitigated through:

- (a) The design and location of structures and works, particularly in respect of the open natural character of hills and ranges, skylines, ridgelines, prominent places and natural features,
- (d) Development which is compatible with the surrounding environment including the amenity values of adjoining properties,
- (c) The ability to adequately dispose of effluent on site,
- (d) Controlling the generation of noise in back country areas,

- (e) The location of tree planting, particularly in respect of landscape values, natural features and ecological values,
- (f) Controlling the spread of wilding trees.
- (g) Encouraging the location of buildings in valley floors rather than on hillsides to maintain the open natural character of hills and ranges.

[754] Those policies squarely bring in the evidence as to landscape quality we discussed in Chapter 7.0. In particular the new (double underlined) policies are relevant:

- the Meridian site is in an area of “high sensitivity” which has high natural character values and landscape quality that distinguish it from the general landscapes of the Central Otago District in that it is (literally) high and it is predominantly in tussock rather than in weeds or exotic grasses;
- the wind turbines are not placed so as to avoid adverse effects on the open natural character of the Lammermoor Range.

[755] For Meridian, its consultant planner, Mr John Kyle, considered the application of the Rural Resource objectives and policies to the proposal (albeit not in the context of a proposed district plan including PC5). In his evidence he wrote<sup>1257</sup> that Meridian’s mitigation measures “... will ensure that an appropriate level of environmental quality and amenity is maintained. This is consistent with the rural objectives and policy matters ... The wind turbines will be a new element in the landscape, however they will not significantly change its overall rural character ...”. We have difficulties with each of those three sentences. First ‘maintaining environmental quality’ (relevantly) is an oversimplification of the objectives requiring ‘maintenance and enhancement of open space, landscape, natural character ... values of the ... rural environment’. Secondly the test is not whether the application is “consistent” with the objectives and policies but whether they are achieved. Thirdly it is completely inadequate as an assessment of whether the site above 900 metres is protected to say its rural character is not significantly changed. The relevant character is the natural character. Mr Kyle has adopted the same diminishing technique as Mr Rough did, when he wrote (here and

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<sup>1257</sup> Mr J Kyle, evidence-in-chief para 5.24 [Environment Court document 61].

elsewhere) of the rural character rather than about the natural character which is at least to be maintained and enhanced under the (deemed) proposed plan.

[756] While we recognise that the Meridian proposal will assist communities both inside and outside the district to provide<sup>1258</sup> for their wellbeing, we consider that the landscape and natural character values of the District's rural environment are not maintained or enhanced<sup>1259</sup>. Rather we find that about 95 km<sup>2</sup> will lose those values to a considerable extent. Similarly, we consider the proposal is so large it is inappropriate<sup>1260</sup> on land above 900 metres which is also part of an outstanding natural landscape (even if not recognised as such by the operative or proposed district plan). Nor is the open natural character of the Lammermoor Range maintained as required by the PC5 amendment to objective 4.3.3. We accept that objectives as to recreation and water resources are achieved, but we consider there is at least a medium likelihood that the life-supporting capacity of the soils of the site will not be maintained<sup>1261</sup> and that significant habitats of native lizards and invertebrates may not be protected<sup>1262</sup>. For those and the further reasons discussed in Chapter 7.0 relating to Part 2 of the Act we consider the wind farm proposal is inappropriate both under the proposed district plan (PC5) and under Part 2 of the Act.

## 8.2 Outcome

### 8.2.1 Summary on the application for a power generation facility (land use)

[757] After weighing all the relevant matters identified in earlier chapters, we judge that the Meridian project is inappropriate in the outstanding natural landscape of the Eastern Central Otago Upland Landscape and does not achieve sustainable management of the Lammermoor's resources in terms of section 5 of the Act. That is principally because the nationally important positive factors of enabling economic and social welfare by providing a very large quantity of renewable energy are outweighed by the most important adverse consequences, that:

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<sup>1258</sup> Objective 4.3.1 [CODP p. 4:7].

<sup>1259</sup> Objective 4.3.2 [CODP p. 4:7].

<sup>1260</sup> Objective 4.3.3 [CODP p. 4:7].

<sup>1261</sup> Objective 4.3.7 [CODP p. 4:8].

<sup>1262</sup> Objective 4.3.8 [CODP p. 4:8].

- (1) a wind farm with a site envelope of about 135 km<sup>2</sup> with 176 turbines each up to 160 metres high spread over a length of over 20 kilometres must on most objective measures have a substantial impact on the outstanding natural landscape of the Lammermoor and the heritage surroundings of the Old Dunstan Road across it. We have found it is likely to create its own wind farm landscape, which will be within 17 kilometres of, and sometimes visible with, another (approved) wind farm (Mahinerangi);
- (2) the Eastern Central Otago Upland Landscape is one of the very few places in New Zealand where citizens can experience a wide, high peneplain under a big sky (a relatively common experience in Australia and on other continents) in a highly natural and near endemic environment that also contains a heritage trail;
- (3) wind farms are in their comparative youth in New Zealand and there may still be many potential sites which are not located in outstanding natural landscapes. We consider that it would be preferable for current wellbeing and for future generations and would give effect to the RPS if other sites were to be investigated more fully first. In the regional context it would also be preferable for the communities of Otago if sites which have a resource consent and do not affect section 6 values were implemented first – especially the Mahinerangi site;
- (4) the Meridian site is nearly surrounded by the public land we identified in Chapter 2.0, especially the Rock and Pillar Conservation Park and its recent extensions, the Logan Burn Reservoir, Te Papanui and the various Taieri River reserves, so the effect of the wind farm on landscape and amenities is even more important than it would have been if surrounded by private land;
- (5) As we have analysed in detail Meridian, the Central Otago District Council, and the Crown failed to put full evidence before the Court in respect of the efficient use of all the relevant natural and physical resources of the Lammermoor. Such an examination not only of all the benefits of the proposal (which we did receive) but also of all the costs would have further increased the objectivity of this decision, as would have an analysis of the likely benefits and costs of reasonable alternatives to the Meridian proposal.

[758] Since we have judged that land use consents for a wind farm on the Lammermoor as proposed by Meridian should be refused under both the operative and proposed district plans there is no need to decide which plan should be given more weight.

#### 8.2.2 Otago Regional Council land use consents

[759] As a consequence of that judgement we hold that the various consents and permits sought from the ORC should be refused as unnecessary.

#### 8.2.3 Costs

[760] Costs should be reserved. Any application may be made within 30 days of any appeal period expiring (or after appeals are exhausted). However, our current view is that costs should lie where they fall.

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**J R Jackson**  
**Environment Judge**

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**H A McConachy**  
**Environment Commissioner**

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**K D F Fletcher**  
**Deputy Environment Commissioner**

**DISSENTING JUDGMENT OF COMMISSIONER SUTHERLAND**

[761] I agree with and contributed to the writing of the majority decision except for a few matters which include the outcome.

[762] The decision the Court had to make was principally a subjective one in which unquantified and unquantifiable benefits and costs played a significant role. I agree with the majority that in this regard Meridian's section 7(b) analysis is inadequate. That is disappointing because as a result the subjectivity of the decision was increased.

[763] While acknowledging this inadequacy, it is my view that the differences between both the quantifiable one-off benefits and the quantifiable on-going benefits and the corresponding costs as detailed in Chapter 6.0 of the majority decision are such as to be in Meridian's favour. Placing this alongside all the other matters identified for consideration by the Court, properly weighting each and then adding up as pluses and minuses, I come down on the side of Meridian's proposal, albeit by a small margin.

[764] I would therefore grant all the consents sought (on amended conditions) if I commanded a majority.

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**A J Sutherland**  
**Environment Commissioner**

**List of attachments:**

- A Application site map
- B Wind map [J C Gleadow App A affidavit 13.8.08]
- C Planning Map 70