

**Before the Hearing Panel Appointed by Wellington City Council  
to Hear Submissions on the Proposed Wellington City District Plan**

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

And: **Submissions and Further Submissions  
Lodged on the Proposed Wellington City  
District Plan by Meridian Energy Limited**

**Supplementary Statement of Evidence of Christine Anne  
Foster**

**Called by Meridian Energy Limited**

**HEARING STREAM 7 – GENERAL RURAL ZONE  
PROVISIONS**

**22 March 2024**

## 1. Introduction

- 1.1. This supplementary statement of evidence responds to the Statement of Supplementary Planning Evidence of Josh Patterson dated 12 March 2024 (**Supplementary Statement**). I prepared a statement of evidence for Hearing Stream 7, addressing submission points made by Meridian Energy Limited. My qualifications and evidence are as summarised in my statement of evidence to Hearing Stream 1 (dated 3 February 2023) and I reiterate my commitment to abide the Code of Conduct made in both statements of evidence.
- 1.2. The particular matters I propose to address are set out in paragraphs 12 to 20 of Mr Patterson’s Supplementary Statement. They relate to Meridian’s submission points 228.112 and 228.113 requesting insertion into the GRUZ rules of a new ‘reverse sensitivity’ setback standard for ‘sensitive activities’ in respect of the West Wind and Mill Creek wind farms. Mr Patterson’s s. 42A report and Supplementary Statement support Meridian’s proposal in principle. My supplementary statement addresses the further questions of detail Mr Patterson raises in his Supplementary Statement. In particular:
- (a) Mr Patterson’s opinion that Meridian’s requested standard should be placed in the REG chapter rather than in the Rural Zone chapter;
  - (b) The absence, and need for, a s. 32AA evaluation to support Meridian’s requested rule;
  - (c) Further detail on the assessment matters for non-compliance with Meridian’s requested rule; and
  - (d) Mr Patterson’s request to demonstrate why the mapped 40 dBA contour proposed by Meridian is the most appropriate contour to base the rule on.

## 2. REG or Rural Zone GRUZ Chapter

- 2.1 Mr Patterson’s opinion is that Meridian’s proposed setback standard should sit in the REG chapter (not the GRUZ chapter). I take a different view to Mr Patterson on Plan structure.
- 2.2 The stated purpose of the REG chapter<sup>1</sup> is: *‘to provide for the development, operation, maintenance and repair, and upgrade of renewable electricity generation activities’*. In my opinion, the job of the REG chapter is to provide the policy guidance, rules and standards for REG activities. I accept that the chapter includes an objective and policy relating to reverse sensitivity of other activities on established REG (REG-O3 and REG-P12) and I agree these are appropriately placed in the REG chapter. However, none of the rules or standards of the REG chapter apply currently to non-REG activities. It is not a chapter I would expect an individual

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<sup>1</sup> As stated in the second sentence of the introduction to the REG chapter.

rural landowner to refer to in trying to understand the rules and standards relevant for building, say, a house (or any of the other defined 'sensitive activities') in the GRUZ zone.

2.3 The relevant rules, standards and policy guidance for buildings (including buildings for 'sensitive activities') are contained within the GRUZ zone. This is the approach directed by the National Planning Standards format. The GRUZ zone chapter is the natural home, in my view, for any additional setback standards that apply to building activities in the GRUZ zone. It is the GRUZ zone that is relevant because it is the zone within which Meridian's wind farms are located. To split out one setback standard for GRUZ building activities and place it in the REG chapter would, in my opinion, be at odds with the current logical organisation of this Plan. It would also not be consistent with the intention of the National Planning Standards of holding all of the rules for zone-specific activities as much as possible in the zone chapter.

2.4 There is a note, at the beginning of the GRUZ chapter (and all zone chapters) stating that: *'There may be a number of provisions that apply to an activity, building, structure or site. Resource consent may therefore be required under rules in this chapter as well as other chapters. Unless specifically stated in a rule, resource consent is required under each relevant rule. The steps to determine the status of an activity are set out in the General Approach chapter'*. Even with this note, or even a more explicit note pointing Plan users to the REG chapter, I consider it would be less convenient, less effective and less efficient for the proposed setback standard to be placed in the REG chapter. That is because it may require more words, will not necessarily be obvious to the people it needs to be obvious to and would require flipping between chapters. The standard, as proposed by Meridian, and the default consent considerations I discuss below form a compact and discrete set of provisions. They be placed in either chapter. My view is that convenience for the ordinary plan user and plan effectiveness are better served by placing these provisions in the GRUZ chapter.

### 3. S. 32AA

3.1 I agree with Mr Patterson that, if you decide to insert the standard Meridian requests, your decision needs to include or be supported by a s. 32AA evaluation. I traversed some of the reasons why Meridian's proposal is more appropriate than the publicly notified PDP in my 22 March 2024 statement of evidence. To assist, I set out in **Attachment A** to this statement the provisions as amended by Meridian's suggestion. I have refined the relief requested slightly to better fit the format of the GRUZ zone standards. I also set out there a summary of the relevant s. 32AA matters. The assessment also concludes that the PDP as currently worded does not achieve the relevant objective and Meridian's proposed provisions are a more appropriate way to achieve the relevant PDP objective and the RMA purpose. I trust the evaluation in Attachment A assists the Hearing Panel and would be happy to engage further with Mr Patterson to iron out any details in either the proposed provisions or the s. 32AA evaluation.

#### 4. Assessment Matters for Non-Compliance

4.1 Meridian's request is that the setback standard be inserted as a new standard applied to permitted activity Rules GRUZ-R17 (Construction, alteration or addition to buildings and structures associated with rural activities) and GRUZ-R18 (Construction, addition or alteration to residential buildings and structures). The default rule for non-compliance with the standards specified for these rules is restricted discretionary activity under Rules GRUZ-R17 (2) and GRUZ-R18 (2). The publicly notified PDP GRUZ-R17 (2) matters of discretion are:

1. *The extent and effect of non-compliance with any standard not being met as specified in the associated assessment criteria for the infringed standards; and*
2. *The matters in GRUZ-P7*

4.2 The publicly notified PDP GRUZ-R18 (2) matters of discretion are:

1. *The matters in Policy GRUZ-P1, GRUZ-P8, GRUZ-P9, and GRUZ-P11.*
2. *The extent and effect of non-compliance with any standard not being met as specified in the associated assessment criteria for the infringed standards;*
3. *The Rural Design Guide;*
4. *Whether the proposal makes adequate provision for services including water supply, stormwater run-off control and wastewater treatment; and*
5. *Where a proposal is located near an existing urban area or an existing residential subdivision, whether services could be undergrounded.*

4.3 The 'extent and effect of non-compliance with any standard not being met as specified in the associated assessment criteria' refers to the matters listed alongside the standard. Meridian's submission did not propose any assessment criteria. Mr Patterson has raised a valid issue. My opinion is that restricted discretionary activity status is appropriate for non-compliance with the rule (as opposed, say, to full discretionary activity). The matters to which the decision-making should be restricted are already listed in Policy REG-P12:

***'Reverse sensitivity effects***

*Require new sensitive activities to be designed, located and undertaken to avoid conflict with, including reverse sensitivity effects on, existing renewable electricity generation activities.'*

4.4 The simplest (most efficient) way to insert appropriate assessment matters would be to refer to the matters in Policy REG-P12. The matters in the GRUZ Policies GRUZ-P1, GRUZ-P7, GRUZ-P8 GRUZ-P9 and GRUZ-P11 do not address the reverse sensitivity impacts of proposed building on Meridian's wind farms. Reference to Policy REG-P12 would ensure they are considered and avoided. Policy REG-P12 seeks to avoid creating adverse reverse sensitivity conflicts. Reference to Polic REG-P12 would require an applicant to demonstrate how such effects would be avoided, if the proposed building is located closer to the wind turbines than the

mapped 40 dBA contour line. This is appropriate, in my view, given the NPS-REG policy support, and the policy support already accepted for this PDP for avoidance of adverse reverse sensitivity effects.

- 4.5 Anticipating the Hearing Panel's questions about scope to add to the requested rule, it is relevant to note that the covering letter from Meridian that accompanied the submission included the following statement:

*'Meridian requests the relief specified in the attached submission, or such further or other relief as will address the issues raised in the submission.'*

- 4.6 This statement provides the scope necessary, in my view, to enable the requested setback standard to be included in the Plan in a way that would more completely address the issues raised in the submission point.

## 5. Why the 40 dBA Contour Map?

- 5.1 Meridian included in its submission two maps: Map 'A' showing the position of all existing wind turbines in the West Wind and Mill Creek wind farms and Map 'B' showing contour lines for a range of noise impacts, including a 40 dBA contour line in relation to those existing wind turbines. It is my understanding that the consents for each wind farm specified a limit of 40 dBA to be met in relation to turbine wind noise and existing dwellings located near the turbines. For example, Condition 17 of the consent for Mill Creek limits operational (turbine) noise in the following way:

*'17. Wind turbine sound levels, when measured at the notional boundary of residential buildings must not exceed the appropriate regression curve of the A-weighted background sound level ( $L_{95}$ ) by more than 5 dBA  $L_{95}$ , or a level of 40 dBA  $L_{95}$  whichever is the greater,...'*

- 5.2 The 40 dBA limit and the wording of the condition are derived from the relevant wind farm noise standard (NZS6808:2010). As I understand it, the 40 dBA limit is intended to provide protection against sleep disturbance and maintain a reasonable amenity at locations surrounding a wind farm. Recommendations in the Standard are based on the World Health Organisation's guideline noise limit of 30 dB inside bedrooms to prevent sleep disturbance. It would not be possible to map the background sound level + 5 dBA  $L_{95}$  (because this is location and situation specific) but it is possible to map the 40 dBA contour (this was supplied in evidence to the hearings for the wind farms). The 40 dBA contour represents a pragmatic, unambiguous and simple measurement point for the purpose of enabling compliance with the standard. I understand Meridian is satisfied that it would provide an appropriate level of protection against future complaints based on noise, by clarifying that turbine noise up to 40 dBA  $L_{95}$  must be expected within that contour line. The line can be inserted as a GIS layer on

the PDP maps, so will achieve the on-the-ground accuracy necessary for enforcing compliance with the standard. As much as anything, the contour will be very helpful in clarifying for people planning to build houses and other sensitive activity buildings of the noise conditions prevailing and allow them to make appropriate decisions about the positioning of buildings.

A handwritten signature in black ink, appearing to read 'Christine Foster', with a stylized flourish at the end.

**Christine Foster**  
**22 March 2024**

## APPENDIX A: S. 32AA EVALUATION

### Proposed GRUZ zone provisions as amended by Meridian’s requested relief:

Insert a new setback standard for buildings intended to be used for sensitive activities in Rules GRUZ-R17 and GRUZ-R18 as follows:

#### **GRUZ-R17 Construction, alteration or addition to buildings and structures associated with rural activities**

Activity status: **Permitted**

Where:

- a. Compliance is achieved with:
  - i. GRUZ-S1;
  - ii. GRUZ-S2;
  - iii. GRUZ-S5; and
  - iv. GRUZ-S7

#### 2. Activity status: **Restricted Discretionary**

Where:

- a. Compliance with any of the relevant requirements of [GRUZ-R17.1](#) cannot be achieved.

Matters of discretion are:

1. The extent and [effect](#) of non-compliance with any standard not being met as specified in the associated assessment criteria for the infringed standards; and
2. The matters in [GRUZ-P7](#); and
3. For non-compliance with standard GRUZ-S5 (3) the matters in Policy REG-P12.

#### **GRUZ-R18 Construction, alteration or addition to residential buildings and structures**

Activity status: **Permitted**

Where:

- a. The activity is not the construction of a new [residential](#) unit; and
- b. Compliance is achieved with:
  - i. GRUZ-S1;

- ii. [GRUZ-S2](#);
- iii. [GRUZ-S4](#);
- iv. [GRUZ-S5 \(3\)](#); and
- v. [GRUZ-S7](#)

3. Activity status: **Restricted Discretionary**

Where:

- a. Compliance with any of the relevant requirements of [GRUZ-R18.1](#) cannot be achieved.

Matters of discretion are:

1. The matters in Policy [GRUZ-P1](#), [GRUZ-P8](#), [GRUZ-P9](#), and [GRUZ-P11](#).
2. The extent and **effect** of non-compliance with any standard not being met as specified in the associated assessment criteria for the infringed standards; and
3. The [Rural Design Guide](#);
4. Whether the proposal makes adequate provision for services including **water** supply stormwater run-off control and **wastewater** treatment; and
5. Where a proposal is located near an existing urban area or an existing residential **subdivision**, whether services could be undergrounded; and
6. For non-compliance with standard [GRUZ-S5 \(3\)](#) the matters in [REG-P12](#).

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Standards		
<b>GRUZ-S5</b>	<b>Minimum boundary setbacks for rural buildings</b>	
<b>Rural building or structure</b>	<b>Setback</b>	Assessment criteria where the standard is infringed:
1. <b>Buildings</b> under 50 m <sup>2</sup> in area	3m minimum from all yards	<ol style="list-style-type: none"> <li>1. Effects on rural <b>character</b> and amenity;</li> <li>2. Dominance, privacy or shading effects on adjacent properties;</li> <li>3. The ability to mitigate adverse effects through screening, planting and landscaping;</li> <li>4. Whether topographical or other <b>site</b> constraints make compliance with the standard impractical; and</li> <li>5. Whether the form and scale of the <b>building</b> or <b>structure</b> is compatible with other <b>buildings</b> in the vicinity of the <b>site</b>.</li> </ol>
2. <b>Buildings</b> over 50 m <sup>2</sup> in area	6m minimum from all yards	
3. <b>Buildings</b> for <b>sensitive activities</b>	<u>No part of the <b>building</b> shall be located closer to any existing wind turbine in the West Wind or Mill Creek wind farms than the 40 dBA noise contour line shown on the Plan maps.</u>	



### **S. 32AA Considerations:**

1. Section 32AA(1) requires a further evaluation where changes are proposed to the proposal under consideration (i.e. the PDP). This evaluation must be undertaken in accordance with sections 32(1) to (4) and must be undertaken at a level of detail that corresponds to the scale and significance of the proposed changes and by reference to other reasonably practicable alternatives. For this purpose, I have considered the PDP as notified as the primary alternative.
  
2. The relevant considerations in s 32(1)–(4) are:
  - (a) S. 32(1)(a) requires an examination of the extent to which any proposed objectives are the most appropriate. No changes to PDP objectives are proposed, so there is no need to consider s. 32 (1) (a);
  - (b) S. 32(1)(b) requires an examination of whether the proposed provisions are the most appropriate way to achieve the relevant objectives, by reference to other reasonably practicable options and considering efficiency and effectiveness;
  - (c) S. 32(1)(c): the evaluation report must contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from implementation of the proposed changes;
  - (d) S. 32(2)(a)–(c) require that the assessment under (1)(b) must:
    - (i) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from implementation of the proposed changes, including opportunities for economic growth and employment; and
    - (ii) if practicable, must quantify the benefits and costs identified; and
    - (iii) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the proposed changes.
  - (e) Another relevant matter is the extent to which the Plan provisions will assist the Council in the exercise of its functions set out in s. 31 of the Act.
  
3. Bringing the above matters together, the following is my evaluation of the relevant s. 32AA considerations (and the tick and cross symbols in the cells of the table below provide an abbreviated indication of which option I consider to be superior):

<b>s. 32AA Consideration</b>	<b>PDP as Publicly Notified</b>	<b>Meridian's Request</b>
<b>Appropriateness in achieving the RMA purpose:</b>	× The PDP is only partially effective in giving effect to the s. 7 (j) obligation to have particular regard to the benefits to be derived from the use and development of renewable energy. Although the PDP contains objectives and policies that recognise these benefits, the rules fail to follow through with tangible protection for these benefits.	✓ The proposed insertion of enforceable, unambiguous rule requirements will more appropriately achieve the RMA purpose.
<b>Appropriateness in achieving the objective:</b> The relevant PDP Objective is REG-O3 (efficient operation of REG activities not constrained or compromised by reverse sensitivity effects).	× The PDP does not include rules or standards to ensure this outcome. Does not follow through in achieving the relevant objective.	✓ The proposed standard follows through and will ensure the relevant objective is achieved. The proposed restricted discretionary matter gives effect to the associated Policy REG-P12 and will ensure the objective is achieved. Together, the standard and restricted discretionary matter are a more appropriate way to achieve the relevant objective.
<b>Effectiveness in giving effect to the NPS-REG:</b>	× The PDP is only partially effective in giving effect to the NPS-REG (which includes Policy D (which obliges decision-makers to the extent reasonably possible to manage activities to avoid reverse sensitivity effect on consented existing REG activities). That is because, although the PDP contains objectives and policies that seek to avoid reverse sensitivity effect, there are no rules or standards that follow through to ensure this.	✓ The proposed standard and restricted discretionary matter will be more effective in giving effect to the NPS-REG for the reasons explained above. The proposed provisions also better recognise the significant benefits derived from the use of renewable energy in the operation of the established wind farms (without reverse sensitivity constraint) as intended by PDP Policy REG-P3.

s. 32AA Consideration	PDP as Publicly Notified	Meridian's Request
<b>Effectiveness:</b>	✘ As noted above, the PDP is not actually effective in following through on the Objective REG-O3 and Policy REG-P12 intentions.	✓ The proposed standard and restricted discretionary matter will be effective in giving effect to the REG-P3 and REG-P12 policy intention and achieving the outcome intended by REG-O3.
<b>Efficiency:</b>	✘ For the reasons explained above, the PDP could result in reverse sensitivity complaints affecting the efficiency of operation of the lawfully-established wind farms.	✓ For the reasons explained above, Meridian's proposed amendments will ensure that the potential risks associated with locating sensitive activities closer than the 40 dBA noise contour line are brought to land owners' attention at the time they are contemplating or designing their building proposals, avoiding unnecessary future dispute about noise effects. This is a more administratively efficient approach than the current PDP. Also, although it is a subtle point, placing the details of the setback standard in the GRUZ zone rules will be more administratively efficient and effective than placing them in the REG chapter (for the reasons explained in Section 2 of this statement of evidence).
<b>Environmental, economic, social, cultural benefits:</b>	✘ To the extent that the PDP fails to follow through with rules and standards that give effect to the relevant REG objective and policy, the PDP fails to secure the environmental protection that Meridian's proposed provisions will.	✓ For the converse reasons, Meridian's proposed provisions deliver more environmental (amenity) protection and will better secure associated social benefits.

<b>s. 32AA Consideration</b>	<b>PDP as Publicly Notified</b>	<b>Meridian's Request</b>
<b>Environmental, economic, social, cultural costs:</b>	✘ For the reasons explained above, the PDP does not avoid or appropriately mitigate potential environmental (noise) effects and potentially facilitates the creation of adverse environmental effects (costs) on future sensitive activities.	✔ For the reasons explained above, Meridian's proposed provisions will avoid the creation of adverse environmental (noise) effects.
<b>Economic growth and employment</b>	There are no direct effects on economic growth or employment (any potential effects associated with reverse sensitivity complaints constraining the operation of the wind farms has been accounted for under the other headings above. Both options have neutral impact in this respect.	
<b>Risks:</b>	✘ The risks of not making any change are captured in the above comments. In this respect the current PDP is less favourable.	✔ The risks associated with reverse sensitivity effects are more effectively addressed for the reasons explained above.
<b>WCC's s. 31 Functions:</b> The Council's functions include those set out in s. 31 (1) (b) and (d) in relation to controlling actual or potential effects of the use and development of land and the control of noise.	✘ For the reasons explained above, the PDP will be less effective in assisting the Council exercise these functions.	✔ For the reasons explained above, Meridian's proposed provisions will be more effective in assisting the Council exercise these functions.

4. **Conclusion:** The PDP as currently worded does not achieve the relevant objective. Meridian's proposed provisions are a more appropriate way to achieve the relevant PDP objective and the RMA purpose.