

Regulatory Impact and Compliance Cost Statement: Regulation for Project Aqua to become a network utility operation.

Background

- 1 Project Aqua is a joint hydro and irrigation development proposed for the lower Waitaki River below Kurow in North Otago. The Project is being developed by Meridian Energy Limited (“Meridian”) to address the projected energy demand for 2009-2011 and beyond. The scheme would divert two thirds of the mean flow of the lower Waitaki River into a 60 kilometre long, 80 metre wide, 7 metre deep canal located on the south bank of the river. A series of six 95MW power stations would be constructed along the canal, generating 3200GWh of power per year in total. The project has the potential to generate up to 8% New Zealand’s current energy demand.
- 2 Project Aqua differs fundamentally in its design from other power generation facilities, which are generally single site developments that are substitutable in location and not reliant on a linear network for the generation aspects. Typical power generation plants are not reliant on being located in a particular location so that the creation of gaps in the network is unimportant. Therefore, they usually do not fit within the “linear/network” prescription.
- 3 Project Aqua is a linear development. The power generation aspect of the project is unique, consisting of a cascade of six single generating power stations with integral spillway structures. The power stations will generally be confined within the footprint of, and integrated with, the canals. The Project does not include any dams on a river or storage lakes in the traditional sense of hydroelectric schemes. If gaps were created in the network, the system as it has been designed would not work. It is the first major development of its type since the RMA was enacted and was clearly not envisaged at the time of writing the RMA.

Statement of problem and the need for government action

- 4 The main driving force behind the proposed regulation is the need to provide security of supply of electricity supply in New Zealand, for the following reasons:
 - New Zealand is subject to dry year risk, given our dependence on hydro. This means that reserve capacity and fuels must be kept available for generation in dry years. The costs of maintaining dry year reserves and risks relating to fuel availability are increasing as a result of the depletion of Maui.
 - The cost of generation varies hugely from year to year (and between seasons, weekdays and weekends, day and night), depending on demand and, critically, on whether lake levels and inflows are high, or there is a hydro shortage looming (and expensive reserve generation is required to generate).
 - Increasing demand (around 2% a year) means new capacity needs to be built from around 2005 at the rate of about 150MW/pa (or 800GWh/yr). New capacity is expected to be more

expensive following the depletion of the Maui gas field. This means prices need to rise to make new generation investments economic.

- Our transmission system is long and stringy, resulting in constraints (where least cost electricity cannot be transmitted into a region) and loss of electricity in transmission
 - There is ongoing risk of failure of major plant, key transmission lines and fuel supplies (e.g. gas).
- 5 Thus risk and volatility are inherent in the New Zealand system. The key issue is how best to manage and mitigate that risk and volatility. Project Aqua is seen by government as a necessary and partial solution to this problem as it has the potential to generate up to 8% of New Zealand's current energy demand.
- 6 However, electricity generators have identified difficulties in the provisions of the Resource Management Act 1991 ("RMA") regarding resource consents, obtaining necessary land areas and ensuring that there are speedy processes to address emergencies. New Zealand is likely to become less attractive to new investment in energy intensive projects if decision-making takes too long. Project Aqua was clearly not envisaged at the time of writing the RMA and the nature of the Project means that a complicated set of land use consents applications would be required.
- 7 Underlying all these problems is the necessity to acquire private land for Project Aqua. Some landowners maybe unwilling to sell through normal market processes or resort to rent seeking behaviour in attempt to demand exorbitant prices. Meridian has advised that with respect to their land acquisition to September 2002, there are 22 properties outstanding, including those under negotiation. This represents 43% of the total number of private properties required for the project. This is potentially a significant problem, as it may delay or even stop the construction of the Project and the ultimate supply of electricity.
- 8 Assuming the Project gains ahead, a subsidiary issue is the ability of Meridian Energy to mitigate emergencies such as canal failure, flooding or earthquake damage, in a timely manner without the need to first obtain planning approval from councils to undertake remedial work.

Statement of the public policy objectives

- 9 The overarching public policy objective is to ensure that New Zealand builds new generating capacity to meet its expected growth in electricity demand. To facilitate government's attainment of this overarching objective there is a desire for speedy decisions on the outcome of Project Aqua.

Options for achieving the desired objectives

- 10 Feasible options for government:
- **Option 1:** The **status quo** requires Meridian Energy to apply to the Waitaki District Council for land use approval for Project Aqua under the standard resource consent processes in the RMA. While applying for these consents is an alternative, it would not provide Meridian with

emergency or compulsory acquisition powers. Meridian will be unable to use the compulsory land acquisition provisions in the Public Works Act 1981 to obtain private land if the land owners are unwilling to sell through normal market processes. Further, there is less certainty as to the success outcome of the Project proceeding and meeting government's desire to provide security for electricity supply, The option is therefore not effective in meeting the public policy objective.

- **Option 2:** To undertake **legislative change** to section 166 of the RMA. The government could amend the RMA to allow power generation of the type proposed by Project Aqua to be included in the list of activities deemed to be network utility operations. The granting of this status is required before Meridian can apply for *requiring authority* status for Project Aqua from the Minister for the Environment. Requiring authority status, if granted, would allow Meridian to designate land for Project Aqua, to undertake works in an emergency under the RMA, to apply for a Court order go onto private land to undertake investigations, and to apply to the Minister for Land Information for the Crown to use the compulsory land acquisition powers in the Public Works Act 1981. This option would achieve the public policy objectives. However, this option is not practical as for Project Aqua as legislative changes take a long time to be promulgated and enacted. The option would be unlikely to meet the public policy objective and is therefore not effective.
- **Option 3:** To **make a regulation** to prescribe Project Aqua to be a network utility operation (the **preferred option**). The RMA makes express provision for a regulation (in s.166(i) and through s.360 (1)(e)) to declare any project or work to be a “network utility operation”, if the project is not included in the list of network utility operators in s 166 of the RMA. The same outcome as legislative change would be a consequence. There are no specified criteria for considering a regulation to make a project a network utility operation. Activities prescribed as network utility operations in the RMA are generally characterised by a linear/network use of land. These typically involve numerous landowners and sometimes different territorial authorities. The rationale is that their linear nature makes the activity inflexible in terms of alternate locations and they are vulnerable to pre-emptive land development and/or landowner holdout. Project Aqua is a linear development. The key features of this option are the declaration by regulation of the linear components Project Aqua as a network utility operation.

No precedent or expectation will be created for allowing other hydro type developments because the regulation can be drafted in such a manner that is specific to Project Aqua in terms of its location and design.

Net benefit of this regulation

11 Benefits of the regulation:

- Quicker on line benefits from increased power generation capacity for New Zealanders and an increased likelihood that the electricity benefits from Project Aqua (which are essential to meet the projected electricity demand in 2009/11 and beyond) will be delivered.

- The regulation will enable Meridian to apply to the Minister for the Environment for requiring authority status under the RMA.. Once a requiring authority it could apply to the Minister for Land Information to have that Minister compulsorily acquire the land affected by the designation under the Public Works Act 1981 As a requiring authority, Meridian will potentially be able to overcome land-owner “hold out” in the acquisition of land which is critical for Project Aqua to proceed.
- Meridian will gain access to the emergency provisions in the RMA. If Meridian was made a requiring authority for Project Aqua, it would be able to address any emergency requiring work before applying for any resource consents. For example, this may be important for allowing Meridian to immediately repair the canal should it be damaged by events such as an earthquake, flooding or land movement.
- Requiring authority status will enable Meridian to designate the project corridor thereby protecting its construction and operation from other potentially conflicting land uses.
- It is likely that Meridian (as a state owned enterprise looking to fulfil a projected market shortage in the supply of electricity) will receive increased revenue and increased profit.

12 Costs of the regulation:

- There are obvious and direct costs to landowners of property rights, to the extent that recourse might ultimately be necessary to use compulsory acquisition powers under the Public Works Act 1981 to overcome land owner “hold out” in property acquisition, if market negotiations are not successful. However, access to the Public Works Act procedures is not automatic, but is only with the consent of the Minister for Land Information. It is not possible to quantify these costs with any certainty.
- There are costs associated with becoming a requiring authority. Meridian will have to pay to apply to the Minister for the Environment to become a requiring authority. They will have to supply the Minister with copies of their financial statements to show that they can satisfactorily carry out all the responsibilities of a requiring authority.
- There may be a perceived potential for Meridian Energy to gain a competitive advantage from the project. However, the nature of the regulation is specific to Project Aqua and the lower Waitaki River. Other generation companies have similar opportunities to propose initiatives for other power projects should they fit within the description of a “network utility operation”.

13 On conclusion there is a marginal net benefit of the regulation. The benefit of security of electricity supply is likely to outweigh any direct costs to land owners. The preferred option is therefore efficient in meeting the public policy objective.

Consultative programme

14 The Ministry for Economic Development, Land Information New Zealand, Te Puni Kokiri, Department of Conservation, Ministry of Transport, Treasury, the Department of Internal Affairs

(Local Government Policy) and the Ministry of Agriculture and Forestry were consulted on with respect to the proposed regulatory action. The Department of Conservation and the Ministry of Agriculture and Forestry raised concerns about the inclusion of quarries, borrow and fill areas and landfills associated with the Project. The Minister for the Environment has similar concerns about these “non-linear” elements and they are to be excluded from the regulation.

- 15 None of the businesses or private landowners within the boundaries of the Project have been consulted about the proposed regulation. However, Meridian Energy has undertaken extensive consultation with all affected parties but not specifically about this regulation. Due consideration has been undertaken of Meridian Energy’s prior consultation on the matter. Further, time restraints and need for urgency on this matter have prevented any consultation with landowners.
- 16 The Ministry for the Environment has contacted local authorities in the area and Te Rūnanga o Ngāi Tahu. It is also noted that Meridian is continuing to consult with Ngāi Tahu. It is considered that Ngāi Tahu has the potential to be disaffected by the proposed regulation, because of the flow on implications of compulsory acquisition/disposal of land. Te Rūnanga o Ngāi Tahu advise that Ngāi Tahu has yet to form a position of support or opposition to Project Aqua and that Ngāi Tahu are still in the process of gathering information about the Project. They however, consider the proposal as precedent setting for power generation to compulsorily acquire land. The Ministry for the Environment does not hold this view because manner in which the regulation will be written will overcome such precedent.

Business Compliance Cost Statement

17 Source of the compliance costs

If the regulation is made it will impact on the landowners affected by unwanted compulsory acquisition powers. Issues such as court costs, legal fees, valuation information, personal stress and loss of business time may result.

18 Parties to be affected

The proposed regulation has the potential to affect those farmers and other rural land use businesses located within the land corridor identified by Meridian as being necessary to acquire for the project. Up to 22 landowners (at September 2002) in the area are currently unwilling to sell their land to Meridian that is affected by the project. On the whole these are rural properties used for pastoral agricultural purposes, both sheep and dairy.

19 Estimated compliance costs of the proposal

It is difficult to calculate with certainty the magnitude of the costs the regulation could impose on the businesses of the rural landowners. It could affect up to 22 landowners in the area who are currently unwilling to sell their land to Meridian. Some land holding could be split thereby reducing

the productivity potential of the land. It is difficult to put a cost on this as it is impossible to know with certainty whether the process obtained using compulsory acquisition would be higher or lower than those negotiated using the market. Cost associated court costs, legal fees, valuation information, personal stress and loss of business time may result are also difficult to evaluate.

20 Long term implications of the compliance costs

The costs identified above are likely to one off.

21 Level of confidence of compliance costs estimates

There is a high degree of uncertainty associated with the compliance costs, because costs may be sufficiently mitigated through amicable settlement with the landowner and Meridian.

22 Key compliance costs issues identified in consultation

No consultation was carried out with landowners by the Ministry for the Environment. Compliance cost issues were not identified by any of the government departments consulted.

23 Overlapping compliance requirements

There are no overlapping compliance requirements.

24 Steps taken to minimise compliance costs

The cost generally relate to implementation issues. The Ministry for the Environment has produced information that will inform landowners of their rights and obligations. Further, Meridian has already undertaken extensive consultation with landowners on the issues associated with the Project.