BEFORE THE EXPERT CONSENTING PANEL

CONCERNING THE WAIUKU WIND FARM

IN THE MATTER	of the COVID-19 Recovery (Fast-Track Consenting Act) 2020 (the FTA) and the deliberations and final decision of the Expert Consenting Panel appointed under Clauses 2, 3, and 4 of Schedule 5 of the FTA to consider applications for consent for the Waiuku Wind Farm Project
Expert Consenting Panel:	Trevor Robinson (Chair) Mark St Clair (Member) James Whetu (Member)
Date for comments to be received under Clause 17(4) of Schedule 6 to FTA:	2 July 2024
Details of any hearing if held under Clause 21 of Schedule 6 to the FTA:	No hearing was held (refer Clause 20, Schedule 6 to the COVID-19 Recovery (Fast-Track Consenting Act) 2020)
Date of Hearing if held:	Not applicable
Date of Decision:	20 August 2024
Date of Issue:	20 August 2024

RECORD OF DECISION OF THE EXPERT CONSENTING PANEL UNDER CLAUSE 37 SCHEDULE 6 OF THE COVID-19 RECOVERY (FAST-TRACK CONSENTING ACT) 2020

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PART A: EXECUTIVE SUMMARY

1. LET Capital Number 3 Limited Partnership has sought consent for the development and operation of the Waiuku Wind Farm, including construction and operation of 13 wind turbines up to a maximum height of 190 metres to the blade tip on seven properties located north of Waiuku Forest. Once fully operational, the wind farm would have a generation capacity of approximately 85.8 megawatts.

2. In the Panel's view, the Project was a poor fit for the fast-track process provided for in the COVID-19 Recovery (Fast-Track Consenting) Act 2020 (**the FTA**).

3. This was partly due to the complexity of the Project and the number of issues it gave rise to. The main problem, however, was that the application documents showed clear signs of being put together in an excessive hurry, presumably to meet the deadlines of the FTA.

4. As a result, the Applicant's Assessment of Environmental Effects, most obviously in relation to the assessment of the Project's effects on threatened and at-risk avifauna and bats, to the point where the Panel considered the Environmental Protection Authority's confirmation that the Application was complete following its receipt was questionable.

5. The Panel asked the Applicant many questions in an endeavour to clarify the areas where it felt there was excessive uncertainty in the Assessment of Environmental Effects and/or the Applicant's proposed conditions to manage those effects. The Applicant used that opportunity to fill in some gaps in its case, among other things, putting before the Panel (at its request) results of further avifauna and bat monitoring it had done taken over the summer following lodgement of its applications in December 2023.

6. The further data did not resolve the issues that we had identified at the outset. In relation to bats, in the Panel's view, the additional data raised more questions than it answered, indicating that there was much more bat activity in and around the site, and that it was much more widely dispersed than had previously been identified.

7. The Applicant proposed that it would undertake a further twelve months of avifauna monitoring post consent with the benefit of radar. The Panel's view was that the Applicant needed the data such monitoring would produce to support its application, both in order to give us confidence that the Project could proceed without excessive risk, and to provide a firm basis for the process of adaptive management that the

Applicant proposed. Without it, the Panel considered that there was unacceptable uncertainty that effects on threatened and at-risk species, including on the Australasian bittern that has the highest threat status, equivalent to the kākāpō.

8. The problem with effects on bats was slightly different. In that case the Applicant's proposed management response appeared out of step with the level of bat activity. In the Panel's view, the monitored level of activity demanded a clear course of action, which we could assess, rather than deferring finalisation of what would be done to a future process. Again, we lacked confidence that adverse effects on a species with the highest-level threat status, as well as being a taonga species to Ngaati Te Ata, would be managed to an acceptably low level.

9. We record that the Applicant proffered compensation arrangements in relation to both avifauna and bats as a fallback, but in our view, the lack of clarity in the assessment of effects meant that it was difficult to put great weight on the compensation offer, because we did not have confidence in our understanding of the effects being compensated for, and therefore whether the proffered compensation offered an equality of exchange. The compensation offer in each case also lacked clarity as to what benefits would actually be achieved, or that off-site pest management would be adequately funded over the life of the project.

10. In terms of the legal tests we are required to apply, we found insufficient information in relation to potential adverse effects on threatened and at-risk avifauna and bat species for the purposes of Clause 31(8) of the Sixth Schedule to the FTA.

11. There were other problems with the application. The Assessment of Visual and Landscape Effects did not suffer from an insufficiency of data, or gaps in the Assessment of Effects (at least after the answers to the Panel's requests for information were received). Rather, the issue was the extent of the assessed effects. To their credit, the Applicant's expert advisers did not shrink from the significance of the adverse effects, but the end result was that two properties were assessed as being subject to 'very high' adverse effects' and another seven 'high' adverse effects. One of the two properties with the highest level of adverse effects is used for papakāinga, introducing a cultural overlay to what was already a concerning effects issue.

12. Again, the Applicant proffered compensation as a means to address these adverse effects, and again we felt that the Applicant had not given us confidence that the proffered compensation provided an equality of exchange with the high level of adverse effects.

13. The Applicant sought to press on the Panel the relevance of previous wind farm cases where the Environment Court had referenced the tension between national benefits and local adverse effects. The comparison is apposite, but even in such cases, both the Environment Court and Boards of Inquiry have drawn the line where individual residences are incurring an excessively adverse effect from specific wind turbines.

14. The Panel records also that the National Policy Statement for Renewable Electricity Generation (**NPSREG**) instructs us to have regard to the benefits of the proposal from a number of perspectives. There would undoubtedly be benefits in terms of generation of electricity from a renewable source in relatively close proximity to New Zealand's largest urban area and greatest centre of electricity demand. However, the Panel did not find those benefits excessively large when weighed against the extent of visual effects on some individuals, in particular.

15. In view of current concerns about wholesale electricity prices, the Panel had no evidence that the Project would make a difference to pricing once completed in 2-3 years' time.

16. The Panel is also required to consider the purpose of the FTA, which similarly puts weight on the economic contribution the Project would make to recovery from COVID. Again, we found that contribution material, but not excessively large.

17. The Panel records its view that neither the NPSREG, nor the purpose of the FTA skews the decision-making process to the point where a project with a clear risk of unsatisfactory environmental effects is nevertheless allowed to proceed. The process of the FTA for referred projects is certainly fast, and arguably offers strategic advantages to an Applicant, but in the Panel's view, it does not materially alter the decision-making process to that extent.

18. Had the Panel found that all other effects issues could be resolved satisfactorily, it would have directed that 5 of the 13 wind turbines be removed. The remaining 8 turbines would have had a material but not high or very high level of adverse visual effects on the Project's neighbours, but in the Panel's view, that would have been acceptable given on the benefits of the Project, the value of which the NPSREG emphasises.

19. As it was, however, the Panel did not get to that point. The potential effects on at-risk avifauna and bat species and the lack of information the Panel had to conclude that those effects would be managed to a satisfactorily low level have already been noted.

20. Ngaati Te Ata provided the Panel with a telling Comment on the extent of adverse effects of a large construction project in this culturally rich environment. The Applicant has sought to work around key cultural sites, but the Panel has found potential for significant adverse effects on Ngaati Te Ata's cultural values to remain.

21. The Panel was also left uncomfortable with proposed management of sediment. The Panel found it surprising that the Applicant had not applied for a consent to discharge contaminants (i.e. sediment laden runoff) to surface waterways. The Applicant's position was that its sediment management would be of such a high standard that any discharges would meet Regional Plan permitted activity standards. The expert advice the Panel received was that this was unlikely to be possible in practice, and had not been demonstrated to an adequate standard (the Applicant declined to provide examples of exactly how it would manage sediment and key locations).

22. Ultimately, however, if the Project proceeded without a discharge consent and discharges in breach of permitted activity standards occurred, that would be an enforcement matter for Waikato Regional Council. Accordingly, the Panel did not regard it as decisive.

23. The other area where we considered information was lacking to enable us to make an informed decision would in relation to potential health and safety risks to paragliders following the line of the coastal cliffs on the seaward side of the proposed site. The Panel had one comment from a paragliding operation expressing concern about that risk and it asked the Applicant to assess it. The Applicant's response was that the operator relies on access across Project site land, and that that access would be terminated. The Panel did not regard that as a satisfactory response for the reasons set out in this Report, and it regards the Applicant's failure to assess this health and safety risk as a material omission, although limited in implications to the coastal turbines at the north-west of the site.

24. The comments received from interested parties raised a wide range of other issues. The Panel has worked its way through those issues in the report that follows. In most cases, the Panel has found the concerns expressed to be capable of management through conditions, although not necessarily those proffered by the Applicant. The Panel has found itself unable to consider other effects for reasons that follow in this Report. The Panel has concluded that it was unable, in particular, to take account of potential effects of the Project on property values (a concern of a large number of the comments received from Project neighbours) as a result of caselaw consistently holding that this is not appropriate.

25. The Panel wishes to express our thanks to all of the people and organisations who took the time to provide it with comments in response to the invitation to do so. The Panel records that some of the comments it received exhibited a degree of careful analysis that was impressive.

26. The Panel also wishes to thank the Applicant for its contribution to the process. As above, the Panel asked many questions and for the most part, it received comprehensive answers to its questions.

27. Ultimately, however, the Panel has found that the applications before it should be declined.

28. While other findings, summarised above, have contributed to that decision, this is largely due to:

    (a) The significant adverse visual effects of the turbines on neighbouring properties and the inability to adequately mitigate those effects (including by way of the proposed financial compensation), which requires deletion of five of the thirteen turbines;

    (b) The risk of adverse effects on key indigenous avifauna species and the significant lack of certainty as to the efficacy of the proposed mitigation and compensation measures; and

    (c) The risk of adverse effects on long-tailed bats (a Threatened-National Critical species as well as a taonga of Ngaati Te Ata) and the significant level of uncertainty associated with the efficacy of the proposed mitigation and compensation measures.

PART B: INTRODUCTION AND PROCEDURE

29. The Applicant for the Waiuku Wind Farm Project (**WWF**) is LET Capital Number 3 Limited Partnership.

30. As originally conceived, WWF involved construction of some 18 wind turbines up to 190 metres high (to blade tip) on six rural properties located south-west of Waiuku, and a transmission connection to Glenbrook. It was the subject of an Order in Council under the COVID-19 Recovery (Fast-Track Consenting Act) 2020 (**the FTA**) dated 3 July 2023. As part of that Order in Council the Minister for the Environment accepted that the application should be referred because the Project will help achieve the purpose of the FTA.

31. In accordance with the FTA, the Applicant's applications for resource consents were filed on 11 December 2023. The application included a comprehensive assessment of environmental effects (**AEE**) supported by some 31 appendices, including expert reports on a variety of subjects and a set of draft conditions.

32. In that application, the number of wind turbines had been reduced to from 18 to 13[1]. The AEE advised that the maximum height of the proposed turbines had not changed (at 190 metres to the blade tip) but that technological advances had enabled a reduction in the number of turbines without any reduction in the generation capacity at approximately 85.8 megawatts (**MW**).

33. The AEE stated that the application site was made up of seven separate properties (612 Forestry Road, Otaua; 136 Thomson Road, Otaua; 191 Thomson Road, Otaua; 260 Thomson Road, Otaua; 66 Huarau Way, Otaua; 44 Robertson Road, Otaua; 76 Robertson Road, Otaua). The total land area of the site was advised to be a little over 562 hectares. The AEE noted that one of the listed sites (76 Robertson Road) was the subject of application only because it be required for the purposes of construction of an access road across it to a turbine located on an adjacent property. We were advised further that the properties making up the application site were owned by three landowners, and as part of the process of responding to our requests for information

[1] Some of the Comments received expressed some confusion about the process, and whether the application was for 13 or 18 turbines. The Panel has approached the applications before it on the basis that the original proposal has been narrowed and the characteristics that are described in PART C of this report represent the outer limits of what might be consented.

(discussed below), we were provided with written approvals from those three landowners.

34. Among other changes to the Project since referral, the AEE advised that the proposed transmission line to connect the site to the Glenbrook Substation had not been assessed, because the Applicant's investigations indicated that that was a permitted activity. We observe that the application documents do not include a request for a Certification of Compliance confirming that view and the Applicant's subsequent Response to Comments recorded that the transmission line external to the site did not form part of the proposal.

35. We will have more to say about the ambit of the applications before us, but the AEE advised that it included installation of two metrological monitoring masts of 100 metres in height, new and upgraded internal access roads, a central hub including a switch room building and an operations and maintenance building, temporary lay down areas for construction, numerous culverts to channel water courses and overland flows, and substantial earthworks.

36. The Expert Consenting Panel (**Panel**) was appointed with effect from 27 May 2024 and comprised:

    (a) Trevor Robinson – Barrister of Napier as Chair;

    (b) Mark St Clair – Planner of Wellington as Member;

    (c) James Whetu – Planner of Ngāruawāhia as Member.

37. The Panel identified at the outset that it would need expert advice in key areas and accordingly requested that the Environmental Protection Authority (**EPA**) instruct:

    (a) Mr Mark Chrisp, a Partner of Mitchell-Daysh Limited in Hamilton, to provide planning advice and to assist with analysis and drafting of conditions;

    (b) Mr Shannon Bray, a Partner of Wayfinder Landscape Planning and Strategy, to provide with advice on visual and landscape issues; and

    (c) Mr Kerry Pearce, Land Management Consultant at Bryant Solutions Limited, to provide advice in relation to erosion and sediment management.

38. The Panel undertook a site visit, accompanied by Messrs Chrisp, Bray and Pearce on 28 May 2024. This involved a comprehensive tour of the site accompanied by Mr John Southworth on behalf of the Applicant, and Ms Jodie Hansen of the EPA. Separately,

but in conjunction with the site visit, two members of the Panel (Messrs Robinson and St Clair) and Mr Bray undertook a tour of the surrounding areas, noting from public vantage points the location of nearby dwellings and their view of the site, and driving the identified heavy traffic route to the site.

39. Subsequently, the Panel requested that the EPA instruct additional expert assistance in the form of Mr James Lambie of Lambie Ecology to provide advice on avifauna and bat issues; and Mr Martin Williams, Barrister, to provide advice on selected legal issues.

40. On 10 June 2024, the Panel invited comments on WWF both from the parties listed in Clause 17(4) of Schedule 6 of the FTA, and from a number of other parties (under Clause 17(5) of Schedule 6). The parties invited to comment are listed in Appendix A to this Decision Report. The rationale for the Panel inviting additional parties to provide comment was set out in a Minute (#3) dated 10 June 2024.

41. The date for providing Comments was set as 2 July 2024. Some 64 separate parties provided Comments before that deadline[2]. Some of those Comments were substantial documents in their own right.

42. Subsequent to the deadline, the Panel received two further Comments, from:

    (i) George, Julia and Bryce Johnson; and

    (ii) Kay Vincent.

43. It also received an Addendum from Ms Jane Davies, supplementing the Comment received from her and her husband that had been received in time.

44. The Panel determined that it should have regard to all three late contributions for reasons set out in its Minute 10 and gave the Applicant the opportunity to respond to them.

45. On 7 June 2024, the Panel gave notice pursuant to Clause 25 of Schedule 6 of the FTA seeking a wide range of information from the Applicant. The Applicant provided a comprehensive response under cover of a Memorandum of its counsel, Mr Doesburg dated 21 June 2024. The Panel issued further requests for information of the Applicant on 2 July, 5 July, 17 July, and 23 July 2024. The draft conditions included in the application documents were alone the subject of in excess of 70 separate queries,

[2] One of those Comments, that of Mr Dean Barker, 450 Bothwell Park Road, was misfiled when received and was not provided to the Applicant with the other Comments. The Panel gave the Applicant a separate opportunity to respond to it.

leading to numerous revisions and amendments in the version tabled on 15 July 2024, which was subject to further revision thereafter. Excluding consent condition issues, we made nearly 100 discrete requests for information. The Applicant's various responses to our requests for information provided an extensive and valuable commentary on issues relating to the applications, including material changes in its position on a number of points. While we understand that the project was not unique in this regard, and that other Fast Track Panels have found the need to make many information requests, we considered the number and nature of our information requests a somewhat disquieting commentary on the quality of the application documents. The draft consent conditions provided with the applications, in particular, were seriously deficient.

46. On 8 July 2024, the Panel requested further information from a number of the parties who had filed comments in response to its invitation, as follows:

    (i) C and S Maunsell;

    (ii) Department of Conservation;

    (iii) Huarau Trust;

    (iv) J and C Davies;

    (v) Ngaati Te Ata Waiohua;

    (vi) Waikato District Council; and

    (vii) Waikato Regional Council.

    We duly received a response from each of those parties.

47. Also on 8 July 2024, the Panel determined that it would not convene a hearing in relation to the WWF and would exercise the discretion provided by Clause 37(3) of Schedule 6 of the FTA to extend the time for making its decision by an additional 25 working days. The reasons for those decisions were set out in the Panel Minute 10.

48. In Minute 10, the Panel also advised that it had received an opinion from Mr Williams in relation to the initial issues referred to him, and provided the parties with an opportunity to advise if they disagreed with his conclusions.

49. On 9 July 2024 the Applicant requested, and the Panel consented to, a brief suspension of the processing of the Applications to enable it to complete its reply to the Comments

received. The Applicant requested that processing restart on 15 July and in the Panel's Minute 12 the Panel confirmed that processing would restart on the following day, 16 July 2024. The EPA duly notified parties of that restart.

50. In the interim, the Applicant provided a comprehensive Response to Comments on 15 July 2024. The Applicant's response raised one procedural issue that we need to address at this point. This arose from the fact that as part of its response to the invitation to comment, Waikato District Council provided the Panel with a volume of correspondence it had received in relation to the Project. The District Council advised that these comments were appended for our information, and added the following comment:

> *"The Mayor and Councillors are aware of the community concern and are supportive of them being able to have their views considered as part of the Fast Track process."*

51. As part of its response to comments, the Applicant's counsel took issue with this process, arguing that the correspondence the District Council had provided should be excluded from our consideration on the basis that the process of inviting and receiving comment is specifically mandated in the Sixth Schedule to the FTA. The District Council's action in providing the Panel with comments it had received could not be used to enlarge the pool of parties able to comment on the applications. In one specific case, the Applicant's counsel argued that the communication the District Council had provided as part of its 47 page bundle was motivated by trade competition, consideration of which was precluded under clause 31(4) of the Sixth Schedule.

52. The Panel determined that it should seek legal advice as to whether Counsel for the Applicant's contention is correct.

53. This was in fact one of a number of points on which we sought Mr Martin Williams' advice. Specifically:

    (a) On 8 July, we received legal advice on two questions:

        (i) Whether the Panel was able to grant the Application in part (Mr Williams confirmed that we do have that power); and

        (ii) Whether he concurred with the legal advice the Applicant had provided to the effect that WWF was 'specified infrastructure' purposes of the NES-FW (Mr Williams agreed with that view).

(b) On 25 July, we received further advice from Mr Williams on the question of whether the Applicant's proposed compensation arrangements in relation to adverse effects on avifauna and bats could be the subject of a consent condition review under Section 128 of the Resource Management Act (Mr Williams' view was that it could not, consistent with our inability to impose compensation requirements that have not been proffered by the Applicant).

54. We invited any interested party to tell us if they disagreed with Mr Williams' first opinion. While we received considerable commentary as to why we should not exercise the discretion Mr Williams was of the opinion we had, no party disagreed with the fact that we had such a discretion.

55. We invited the Applicant to advise us if it wished to revise its proposed compensation condition in the light of Mr Williams second opinion, an invitation taken up under the cover of a Memorandum of its Counsel dated 30 July 2024. We discuss the revised Condition below in Section K.

56. Mr Williams' opinion dated 6 August 2024 on the scope to consider the additional material provided by Waikato District Council was that we should disregard that material, essentially for the reasons given by Counsel for the Applicant. We accept that advice and have proceeded accordingly.

57. We received detailed reports from Mr Bray (on 1 August 2024), Mr Pearce (on 2 August 2024) and Mr Lambie (on 2 August 2024) reviewing the applications and the Comments we had received in their respective areas of expertise. These were circulated in order that interested parties might provide feedback on them and we received comments from a number of parties, including the Applicant.

PART C: DESCRIPTION OF WWF

58. To provide a basis for the sections of our report that follow, we need to describe WWF more fully.

59. As identified above, the site comprises seven properties. A map of those properties taken from the AEE[3] is set out below. One feature of the Site is that there are properties that do not form part of the Site that are almost entirely surrounded by Wind Farm properties. Other properties have the Wind Farm Site on three sides. As the AEE

[3] AEE, Figure 2

notes[4], this means that some dwellings "*will effectively be located within the wind farm*". As the Panel will discuss later in its report, this was not a positive feature of WWF.



60. The proposal is described in the AEE[5] as follows:

- *The installation of 13, three-blade wind turbines with a 155m rotor diameter. Each turbine will have a hub height of between 100 and 130 metres above final ground level (depending on final turbine selection and level of cut), a maximum height of 190 metres to blade tip above existing ground level and a minimum blade tip height of 30m above final ground level;*
- *The installation of two meteorological monitoring masts of 100 metres in height (Met Mast 1 and Met Mast 2);*
- *New and upgraded internal access roads with underground electricity and fibre optic cables running under these roads;*
- *The inclusion of ancillary infrastructure (referred to as the 'central hub') to provide for the operation of the wind farm and its connection to the electricity network. This yard area will be approximately 30 m by 40 m and include:*

[4] AEE, Section 11.5.4.2
[5] AEE, Section 5.1 Page 15 and additional details from Section 5

- *a switch room building of approximately 75 m^2 and a likely height of 4.2 m above ground level[6];*
- *an operations and maintenance building, being similar appearance to a farm shed, approximately 150 m^2 with a height of 8 m.[7] ;*
- *station transformer for low voltage loads;*
- *Standby diesel generator;*
- *Intruder resistant boundary fencing with appropriate "high-voltage" danger signage;*
- *Minimal outdoor switchgear will be required due to all high-voltage switching taking place in indoor switchgear;*

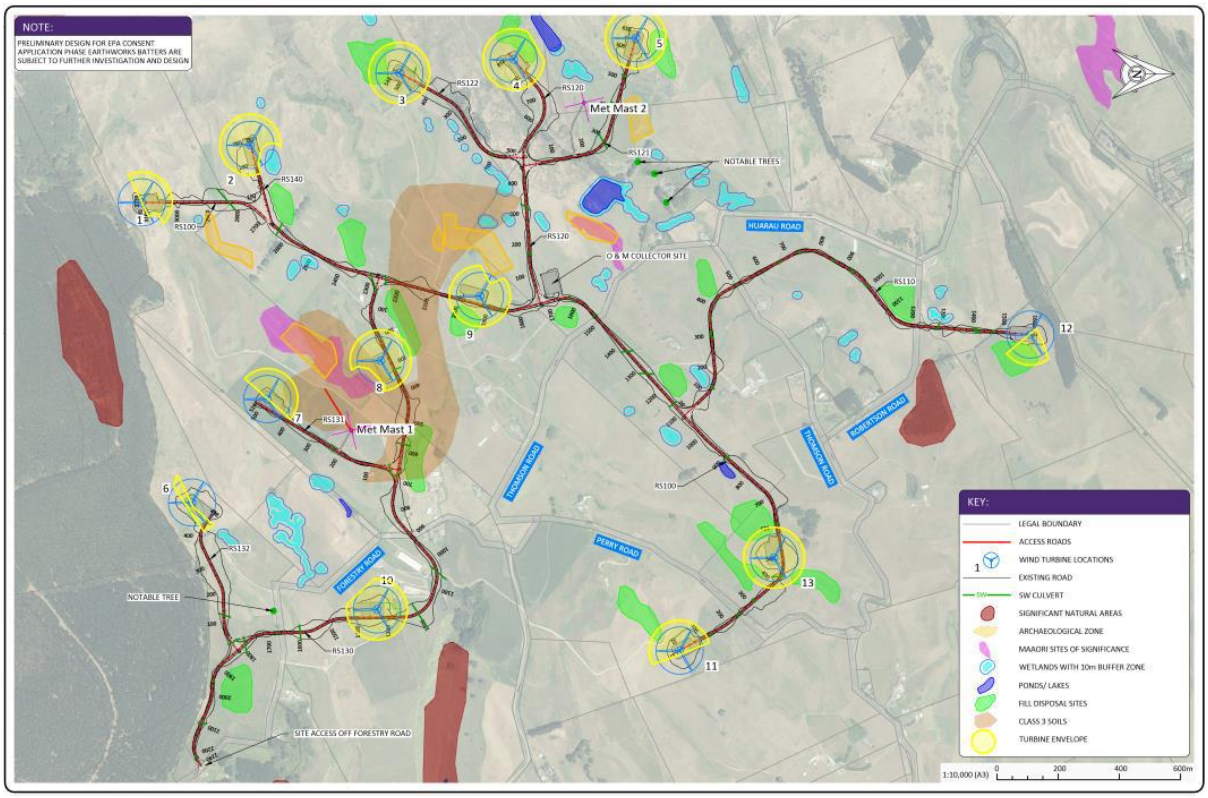
- *Security / stock fencing with a height of 2 m around the perimeter of the turbines;*
- *Temporary laydown areas for construction purposes, established adjacent to the turbine locations and central hub;*
- *Culverts to reconnect modified watercourses, artificial watercourses and overland flows crossed by the proposed internal access roads;*
- *Earthworks to form platforms for the turbines, crane pads beside the turbines, the central hub area, and to construct / upgrade access roads and trenching for underground cables;*
- *A new transmission line within the road reserve to connect the WWF to the Glenbrook Substation via Waiuku township; and*
- *Provision for ongoing farming of the land around the wind turbines, including utilising the internal access roads.*

61. In relation to the second to last bullet point above as to the new transmission line; we have already noted that the transmission line is not part of the application before us.

62. The AEE goes on to describe the proposal in further detail, including, in summary:

- Exclusion zones (see the map reproduced below[8]) for features to be avoided, such as wetlands, Sites of Significance to Māori, Significant Natural Areas and NZAA Archaeological sites.[9]

[6] In response to Request for the Information, dated 7 June 2024, the Applicant advised that "The Collector Building (switchroom) shall have a maximum height of 5m above finished ground level. The footprint of the building shall be approximately 15m x 5m, and not exceed 80m².”
[7] In response to Requests for the Information, dated 7 June 2024, The Applicant advised that "The Operations (and maintenance) Building shall have a maximum height of eight (8) metres above finished ground level. The maximum footprint of the operations and maintenance building shall not exceed 20m x 15m."
[8] AEE Figure 7
[9] AEE Section 5.2



- Turbines - Description of physical size, generation capacity, spacing layout, foundations, turbine platforms, crane platforms and daisy chain cable connections from turbine to substation and switch room.[10]
- Factors for turbine layout.[11]
- Micro siting of turbines[12] – A 100m radius circle around each turbine, providing an envelope within which micro siting of the turbine can occur to allow flexibility in siting. The envelopes provided are clipped in some cases (see the map above), so as to avoid exclusion zones, avoid boundary overhang of blades, and specifically, *"… Turbines 10 and 13 will not be located any closer to the dwellings of 522 Forestry Road and 64 Thomson Road respectively due to the potential to increase adverse visual effects for residents of the dwellings at these properties."*[13]
- Turbine Operation[14] - Description of rotor speed and direction, red aviation lighting to CAA requirements, environmental controls including shadow flicker control, noise reduction modules to ensure compliance with *"NZS6808:2010*

[10] AEE Section 5.3
[11] AEE Section 5.3.1
[12] AEE, Section 5.3.2
[13] AEE, Section 5.3.2, Last Para, Page 18
[14] AEE, Section 5.3.3

Acoustics - Wind Farm Noise in higher wind conditions for the dwellings adjacent to the Site" and curtailment modules for Turbines T1, T6 and T12 so that these *"turbines are able to be turned off during the peak bat season (1 October to 30 April), during hours and meteorological conditions where bat activity is highest."* In addition, a bird radar system is proposed should preconstruction avifauna monitoring determine it necessary to avoid adverse effects on the bird population.

- Meteorological masts[15] – Up to two 100m maximum height, lattice meteorological masts with guy wires and also having a 100m enabling micro siting envelope.
- Underground Electrical Network[16] – Reticulation of power cables and fibre optic cables are proposed to generally follow the access roads in approximately 1,000 mm deep and 300 mm wide trenches. Trenches are to be backfilled, and farmland restored with any stream crossings under-bored.[17]
- Hazardous Substances[18] – proposed storage facility (likely in Central Hub) during construction for fuel, oils and lubricants, to be drained and bunded.
- Public Roads – upgrades are required for large turbine components including:
    - *An upgrade to the intersection of Forestry Road / Ghezzie Road including temporary pavement widening, vegetation removal, extending an existing culvert and undergrounding an existing overhead line. The temporary pavement will be removed and reinstated as grass berm on completion of turbine delivery.[19]*
    - *Carriageway widening or construction of appropriately spaced passing bays to allow vehicles to safely pass each other on Forestry Road (depending on the actual construction trip generation); and widening of one of the road bends.[20]*

[15] AEE, Section 5.4
[16] AEE – Section 5.5.1
[17] First memorandum of Counsel on behalf of the Applicant date 21 June 2024, Attachment A Comprehensive response table, Page 2 Row 3 - The overall length of trenching is approximately 20 km to provide for internal site reticulation, located within the internal road network (AEE at section 5.5). The earthworks volume associated with this element is encapsulated within the included in the overall total cut for Construction Access road figures (cut of 600,000m^3) (AEE at section 5.7.3, Table 4).
[18] AEE - Section 5.5.4
[19] See Appendix N - Project Drawings
[20] See Appendix N – Project Drawings

- Internal Access Roads[21] – The AEE advises that the main Site access will be off Forestry Road, with access around the Site via a 10km internal road access network that crosses Forestry Road, Thomson Road, Perry Road and Robertson Road at different points.[22] Internal roads are proposed to be 6m in width with shoulders and side drains and up to 10m widening on curves, unsealed with subgrade of imported aggregate and potential asphalt surface on steep sections. New vehicle site accesses will be constructed to the "Heavy Commercial" standard in accordance with the *Regional Infrastructure Technical Specifications* ("RITS") D3.3.4.
- Traffic Generation[23] – the three aspects of traffic generation are construction traffic, turbine transportation and operational traffic. The latter involves only periodic visits for inspection and routine maintenance via light vehicles. The majority of deliveries will occur during the construction phase, being concrete, gravel and reinforced steel. For a continuous concrete pour for each turbine base, this will likely generate 100 concrete truck deliveries, or around 8 – 10 deliveries per hour over a 12-hour period. The Applicant's response to the Request for Information dated 7 June 2024 confirmed that concrete truck deliveries would use the main construction access off Forestry Road. 60 – 80 construction staff (peaking to 100-130 during earthworks and internal road construction) and an estimated 18 – 20 months construction period results in an estimated average of 80 vehicle movements per day and set out in the following table;

Table 2: Total Trip Generation During Construction Phase

Total trip generation during construction phase			
Type	**One-way trips / loads**	**Two-way trips / loads**	**Average Daily Traffic (vehicle movements per working day)**
Over – dimension / Over-weight	188	376	1
Truck Trips	7,907	15,814	41
Car Trips	940 Pilot Vehicles 6,500 for Staff	14,880	38
Total			**80**

The anticipated route for the over dimensioned loads from the Port of Auckland to the site is specified and that approval from the relevant authorities for over-dimension and over-weight components will be sought.

[21] AEE - Section 5.6.2
[22] AEE Figure 12 maps the internal road network, including those public road crossing points.
[23] AEE - Section 5.6.3

- Construction Programme and Hours[24] – The indicative construction programme will involve approximately two years activity on the Site. Proposed Consent Conditions provided by the Applicant (15 July 2024 version) would restrict construction to 7.30am – 6pm Monday to Saturday "*except where authorised by a certified Management Plan*". The AEE notes that construction hours may extend to evenings and Sundays, for example during earthworks season or concrete pours or turbine component deliveries and will be addressed through the Construction Environmental Management Plan.
- Earthworks[25] – the overall description of the earthworks excluding contingency proposed is as follows:

    - Site clearance / vegetation removal – existing structures, services, trees and vegetation.
    - Stripping and preparation – ground area of ~63.3 ha for earthworks and construction of permanent infrastructure. This will involve the stripping of approximately 188,000 m^3 of topsoil material to temporary stockpiles for respreading.
    - Cut to fill operation – excavation of approximately 910,000 m^3 of in-situ material and placement in fill or stockpile areas located on the site. For the turbine foundation cut and fill depths of up to 16 m deep at gradients of 1V:2H will be required.
    - Undercutting operation – excavation of unsuitable subgrade materials and replacement of up to 50,000 m^3 of suitable material.
    - Cutting, placing, reshaping, or spreading of materials – bulk earthworks over the site required to achieve finished design levels.
    - Trenching operations – installation of pipelines and chambers required for permanent infrastructure.

    And summarised in Table 4 – Approximate Cut and Fill Quantities (including contingency). The areas of vegetation disturbance proposed include, 32.3916ha of pasture, 0.9392ha of Exotic Tree Cover (incl. shelterbelts, stands and individuals), 0.0725 of Mixed Exotic Native Bush (General), 1.0158 hectares

[24] AEE Sections 5.7.1 and 5.7.2
[25] AEE Section 5.7.3

of Pioneering Scrub (excluding flaxland), and 0.0283 of Native Trees (inc. stands and individuals).[26]

- Erosion and Sediment Control[27] - A Civil Engineering Report sets out a draft Erosion and Sediment Control Plan (ESCP) and earthwork activities are proposed to be undertaken in general accordance with the Waikato Regional Council document titled '*Erosion and Sediment Control – Guidelines for Soil Disturbing Activities*' (Technical Report No. 2009/02 – dated January 2009). Section 5.3.4 of the AEE sets out the proposed approach to erosion and sediment control and the main measures to be used.
- Dust[28] – A Dust Management Plan is proposed including visual monitoring with water being available from sediment retention ponds for wetting exposed areas when required.
- Stormwater Management[29] – Stormwater from earthworks areas is proposed to be managed by measures in the ESCP. *"In regard to the access roading design, it is intended to retain the existing water paths and allow the runoff from the proposed access roads to be collected via swales on the sides and discharged through proposed new culverts into the existing watercourses or onto land. The works will be designed to provide connectivity, continuity, and scour and erosion protection. No water quality treatment is required as the access roads are private, gravel roads that will be used only for the construction and maintenance of turbines. There will be no direct discharge of stormwater to any natural wetland, lake or watercourse."*[30]
- Culverts[31] - 56 new or replacement pipe culverts are proposed, with no culverts required within natural watercourses, seven culverts required within modified watercourses and nine culverts required within artificial watercourses (farm drains). The remainder will be placed in overland flow areas. Culvert length will range from 10 m to 70 m. Culverts in modified watercourses and artificial watercourses where fish habitat is identified will be designed to enable fish passage meeting the requirements of requirements of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F). Placement of culverts is to be undertaken during fine weather and installation works are anticipated to take one to two days. Survey of

[26] Appendix G – Ecological Effects Assessment- Terrestrial and Freshwater, Figure 7 and Table 5.
[27] AEE – Section 5.7.4
[28] AEE - Section 5.7.5
[29] AEE – Section 5.7.6
[30] AEE – Section 5.7.6 Pages 29 - 20
[31] AEE - Section 5.7.7

watercourses for fish habitat is proposed to be undertaken by suitable qualified person and any recovery and relocation addressed by a Fish Management Plan.

- Operational activities[32] – an operational period of 75 years is proposed with the key operation and maintenance activities being:
    - *Wind farm operation – control and scheduling of electrical equipment and dispatch of power;*
    - *Maintenance activities, including:*
        - *Turbine maintenance and servicing, including changes of oils, filters, inspections and component replacements.*
        - *Transmission maintenance and plant upgrades.*
        - *Repair of internal roads, buildings or laydown areas to accommodate natural deterioration or for specific scheduled maintenance.*
    - *Other operation and maintenance phase activities include:*
        - *Turbine performance testing.*
        - *Consent compliance testing and monitoring.*
        - *Refurbishment or replacement of turbines or turbine components (on a like for like basis).*[33]

Existing Farming activities are proposed to continue alongside wind farm.

PART D: STATUTORY FRAMEWORK

63. The role of an Expert Panel appointed under the FTA has been carefully described in the decision on the Matawii Water Storage Reservoir near Kaikohe dated 27 October 2020. We do not repeat that description. It is noted, however, that the Matawii decision was in respect of a 'listed' project[34]. The WWF, by contrast, is a 'referred' project and accordingly needs to be determined under a slightly different statutory framework. The most significant difference between listed and referred projects is that the Expert Panels considering the former had a limited discretion to refuse the consents sought. That is not the case for referred projects.

64. The starting point of the Panel's consideration of the application before it is the purpose of the FTA, as set out in Section 4:

[32] AEE – Section 5.8
[33] AEE – Section 5.8.1, Pages 30 -31
[34] That is to say, it was listed in Schedule 2 of the Act

The purpose of this Act is to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support their certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.

65. That reference to promotion of the sustainable management of natural and physical resources imports the purpose of the RMA, as stated in Section 5 of the latter.

66. Clause 31 of Schedule 6 of the FTA gives the following directions about the Panel's decision-making process:

> *(1) When considering a consent application in relation to a referred project and any comments received in response to an invitation given under section 17(3), a panel must, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, have regard to—*
>
> *(a) any actual and potential effects on the environment of allowing the activity; and*
>
> *(b) any measure proposed or agreed to by the consent applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity; and*
>
> *(c) any relevant provisions of any of the documents listed in clause 29(2); and*
>
> *(d) any other matter the panel considers relevant and reasonably necessary to determine the consent application.*
>
> *(2) In respect of the matters listed under subclause (1), a panel must apply section 6 of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi).*

67. We observe that Clause 31(1) has significant similarities to Section 104 of the RMA. We record also that the way in which Section 31(1) is framed means that both the purpose of the FTA and Part 2 of the RMA are relevant to our inquiry. In our view, neither prevails over the other, although the specific instruction in Clause 31(2) means that RMA Section 8 effectively does not apply, and we must instead apply FTA Section 6, which directs that we must act in a manner consistent with the principles of the Treaty of Waitangi.

68. Also similar to the provision of Section 104, Clause 31(4) of Schedule 6 provides:

> *(4) When forming an opinion for the purposes of subsection (1)(a), a panel may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*

69. Clause 31(5) of Schedule 6 lists a number of matters the Panel must not have regard to. The only one of these matters that is relevant to us is the instruction, like the parallel

provision in Section 104 RMA, that we must not have regard to any effect on a person who has given written approval to the application. As above, the landowners of the properties on which the WWF would be situated, have all given their written approval.

70. We also observe that the cross reference in Clause 31(1)(c) to Clause 29(2) brings into consideration all of the same policy and plan instruments that would be considered under Section 104 of the RMA.

71. Normally, in an RMA application setting, we would apply the guidance provided by the Court of Appeal in *RJ Davidson Family Trust v Marlborough District Council*[35] as to when it is appropriate to look beyond the relevant policy statements and plans, to Part 2 of the RMA, in the consideration of a consent application. In this setting, however, we consider that that guidance needs to be followed with care because the introduction of the purpose of the FTA as a relevant consideration needs to be borne in mind. We cannot assume that the relevant RMA policy statements and plans will have given effect to that separate purpose.

72. With that qualification, we have reviewed the relevant policy documents, starting at the national level.

National Policy Statements

73. Stating the obvious, WWF seeks consents for renewable electricity generation. As such, the National Policy Statement for Renewable Electricity Generation 2011 (**NPSREG**) is directly relevant. In its AEE, the Applicant drew our attention to the objective of the NPSREG, which is worded as follows:

> ***Objective***
>
> *To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation.*

74. That objective is supported by a number of policies. Again, the Applicant drew our attention to Policy A, Policy B and Policies C1 and C2, as follows:

> *A. Recognising the benefits of renewable electricity generation activities*
>
> *POLICY A*

[35] [2-18] NZCA 316

Decision-makers shall recognise and provide for the national significance of renewable electricity generation activities, including the national, regional and local benefits relevant to renewable electricity generation activities. These benefits include, but are not limited to:
a) maintaining or increasing electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions;
b) maintaining or increasing security of electricity supply at local, regional and national levels by diversifying the type and/or location of electricity generation;
c) using renewable natural resources rather than finite resources;
d) the reversibility of the adverse effects on the environment of some renewable electricity generation technologies;
e) avoiding reliance on imported fuels for the purposes of generating electricity

B. Acknowledging the practical implications of achieving New Zealand's target for electricity generation from renewable resources

POLICY B
Decision-makers shall have particular regard to the following matters:
…
c) meeting or exceeding the New Zealand Government's national target for the generation of electricity from renewable resources will require the significant development of renewable electricity generation activities.

C. Acknowledging the practical constraints associated with the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities.

POLICY C1
Decision-makers shall have particular regard to the following matters:

a) the need to locate the renewable electricity generation activity where the renewable energy resource is available;

b) logistical or technical practicalities associated with developing, upgrading, operating or maintaining the renewable electricity generation activity;

c) the location of existing structures and infrastructure including, but not limited to, roads, navigation and telecommunication structures and facilities, the distribution network and the national grid in relation to the renewable electricity

generation activity, and the need to connect renewable electricity generation activity to the national grid;

d) designing measures which allow operational requirements to complement and provide for mitigation opportunities; and

e) adaptive management measures.

POLICY C2

When considering any residual environmental effects of renewable electricity generation activities that cannot be avoided, remedied or mitigated, decision-makers shall have regard to offsetting measures or environmental compensation including measures or compensation which benefit the local environment and community affected.

75. In addition, because the WWF involves renewable electricity generation activities, the National Policy Statement for Indigenous Biodiversity 2023 (**NPSIB**) is not a relevant consideration for the Project.[36]

76. Five of the proposed 13 wind turbines are located within the coastal environment (as identified in the appeals version of the Waikato Proposed District Plan[37]). As such, the New Zealand Coastal Policy Statement 2010 (**NZCPS**) is relevant to that part of the Project.

77. The Applicant drew our attention to Objectives 1, 2 and 6 of the NZCPS, which are worded as follows:

Objective 1

To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:

• maintaining or enhancing natural biological and physical processes in the coastal environment and recognising their dynamic, complex and interdependent nature;

• protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora and fauna; and

• maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with

[36] Refer Clause 1.3(3)
[37] Which in turn adopts the Indicative boundary of the Coastal Environment shown in the Operative Regional Policy Statement maps, Section 5.2.3)

significant adverse effects on ecology and habitat, because of discharges associated with human activity.

Objective 2

To preserve the natural character of the coastal environment and protect natural features and landscape values through:

• recognising the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution;

• identifying those areas where various forms of subdivision, use and development would be inappropriate and protecting them from such activities; and

• encouraging restoration of the coastal environment.

Objective 6

To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:

• the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;

• some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;

• functionally some uses and developments can only be located on the coast or in the coastal marine area;

• the coastal environment contains renewable energy resources of significant value;

• the protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities;

• the potential to protect, use, and develop natural and physical resources in the coastal marine area should not be compromised by activities on land;

• the proportion of the coastal marine area under any formal protection is small and therefore management under the Act is an important means by which the natural resources of the coastal marine area can be protected;

• historic heritage in the coastal environment is extensive but not fully known, and vulnerable to loss or damage from inappropriate subdivision, use, and development.

78. The Applicant also noted Policies 6, 11, 13 and 15, worded as follows:

Policy 6 Activities in the coastal environment

(1) In relation to the coastal environment:

(a) recognise that the provision of infrastructure, the supply and transport of energy including the generation and transmission of electricity, and the extraction of minerals are activities important to the social, economic and cultural well-being of people and communities;

(b) *consider the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment*;

(c) encourage the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement and urban growth;

(d) recognise tangata whenua needs for papakäinga3, marae and associated developments and make appropriate provision for them;

(e) consider where and how built development on land should be controlled so that it does not compromise activities of national or regional importance that have a functional need to locate and operate in the coastal marine area;

(f) consider where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change in character would be acceptable;

(g) take into account the potential of renewable resources in the coastal environment, such as energy from wind, waves, currents and tides, to meet the reasonably foreseeable needs of future generations;

(h) consider how adverse visual impacts of development can be avoided in areas sensitive to such effects, such as headlands and prominent ridgelines, and as far as practicable and reasonable apply controls or conditions to avoid those effects;

(i) set back development from the coastal marine area and other water bodies, where practicable and reasonable, to protect the natural character, open space, public access and amenity values of the coastal environment;

(j) where appropriate, buffer areas and sites of significant indigenous biological diversity, or historic heritage value….

Policy 11 Indigenous biological diversity (biodiversity)

To protect indigenous biological diversity in the coastal environment:

(a) avoid adverse effects of activities on:

(i) indigenous taxa4 that are listed as threatened5 or at risk in the New Zealand Threat Classification System lists;
(ii) taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;
(iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;
(iv) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;
(v) areas containing nationally significant examples of indigenous community types; and
(vi) areas set aside for full or partial protection of indigenous biological diversity under other legislation; and

(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:

(i) areas of predominantly indigenous vegetation in the coastal environment;
(ii) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;
(iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;
(iv) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;
(v) habitats, including areas and routes, important to migratory species; and
(vi) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.

Policy 13 Preservation of natural character

(1) To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:

(a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and
(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment;
including by:
(c) assessing the natural character of the coastal environment of the region or district, by mapping or otherwise identifying at least areas of high natural character; and:
(d) ensuring that regional policy statements, and plans, identify areas where preserving natural character requires objectives, policies and rules, and include those provisions.

(2) Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:

(a) natural elements, processes and patterns;
(b) biophysical, ecological, geological and geomorphological aspects;
(c) natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;
(d) the natural movement of water and sediment;
(e) the natural darkness of the night sky;
(f) places or areas that are wild or scenic;
(g) a range of natural character from pristine to modified;
(h) experiential attributes, including the sounds and smell of the sea; and their context or setting.

Policy 15 Natural features and natural landscapes

To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:

(a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and
(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment;
including by:
(c) identifying and assessing the natural features and natural landscapes of the coastal environment of the region or district, at minimum by land typing, soil characterisation and landscape characterisation and having regard to:

(i) natural science factors, including geological, topographical, ecological and dynamic components;
(ii) the presence of water including in seas, lakes, rivers and streams;
(iii) legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;
(iv) aesthetic values including memorability and naturalness;
(v) vegetation (native and exotic);
(vi) transient values, including presence of wildlife or other values at certain times of the day or year;
(vii) whether the values are shared and recognised;
(viii) cultural and spiritual values for tangata whenua, identified by working, as far as practicable, in accordance with tikanga Māori; including their expression as cultural landscapes and features;
(ix) historical and heritage associations; and
(x) wild or scenic values;

(d) ensuring that regional policy statements, and plans, map or otherwise identify areas where the protection of natural features and natural landscapes requires objectives, policies and rules;
(e) including the objectives, policies and rules required by (d) in plans.

79. We note that given the identified potential in the Applicant's AEE for adverse effects on threatened and at-risk indigenous avifauna and bats, there is an obvious tension

between NZCPS Policy 11, in particular, and the more enabling provisions of NZCPS Policy 6 in relation to the generation of electricity, and of the NPSREG.

80. We approach that tension in light of the guidance provided by the Supreme Court's decision in *Port Otago Limited v Environmental Defence Society Inc.*[38] in our discussion of the relevant effects below.

81. The Applicant noted the relevance of the National Policy Statement for Freshwater Management 2020 (**NPSFM**). In particular, the NPSFM contains a single overarching objective:

> *The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:*
> *a) first, the health and well-being of water bodies and freshwater ecosystems;*
> *b) second, the health needs of people (such as drinking water);*
> *c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

82. The policies noted by the AEE as being relevant were as follows (by heading only):

> *Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai.*
> *Policy 2: Tangata whenua are actively involved in freshwater management (including decision making processes), and Māori freshwater values are identified and provided for.*
> *Policy 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.*
> *Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.*
> *Policy 7: The loss of river extent and values is avoided to the extent practicable.*
> *Policy 9: The habitats of indigenous freshwater species are protected.*
> *Policy 15: Communities are enabled to provide for their social, economic, and cultural wellbeing in a way that is consistent with this National Policy Statement*

83. Lastly, the AEE noted that part of the site includes a small area of highly productive land for the purposes of the National Policy Statement for Highly Productive Land 2022 (**NPSHPL**).

84. It identified the relevant key provisions of the NPSHPL as follows:

> ***Objective***
> *Highly productive land is protected for use in land-based primary production, both now and for future generations.*

[38] [2023] NZSC 112

Policies

Policy 4: The use of highly productive land for land-based primary production is prioritised and supported.

Policy 8: Highly productive land is protected from inappropriate use and development.

Policy 9: Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land.

Implementation

3.9 Protecting highly productive land from inappropriate use and development

(1) Territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production.

(2) A use or development of highly productive land is inappropriate except where at least one of the following applies to the use or development, and the measures in subclause (3) are applied:

…

(j) it is associated with one of the following, and there is a functional or operational need for the use or development to be on the highly productive land:

(i) the maintenance, operation, upgrade, or expansion of specified infrastructure…

(3) Territorial authorities must take measures to ensure that any use or development on highly productive land:

(a) minimises or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in their district; and

(b) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.

85. We asked the Applicant a question about the practical application of the NPSHPL in our first request for information because, in our view, its justification for its proposed use of highly productive land (as defined by NPSHPL) was somewhat generic. The response gave a much more targeted explanation for the Applicant's reasons for locating infrastructure on highly productive land, as follows:

"*In order to avoid the Class 3 soils the proposed roading network and earthworks will need substantial amendment to avoid these areas. Alternate routes are also constrained by other significant features such as wetlands and archaeological zones. Overall, across the site the impacted area in proportion to the total area is very low. During the detailed design the design will be refined where practicable to limit the works within the class 3 soil zone. Once construction is completed the construction footprint, and earth worked areas where not occupied by permanent elements will be returned to pasture and used for farming activities."*

86. In light of this explanation, and in the absence of any comments raising a contrary view, we accept the Applicant's position in this regard.

National Environmental Standards

87. The AEE also noted the Resource Management (National Environmental Standards for Freshwater Regulations 2020) (**NESFW**) as being relevant to the proposed culverting of water courses, as well as earthworks and vegetation within or adjacent to natural wetlands.

88. The application of the NESFW is materially affected by whether the WWF is considered 'specified infrastructure'. The Applicant provided a legal opinion from Wynn Williams suggested that this was the case. We asked Mr Martin Williams to peer review that opinion as part of his advice to us. Mr Williams concurred with Wynn Williams. If anything, Mr Williams considered that to the extent that Wynn Williams' opinion canvassed potentially countervailing views, that was an unnecessarily conservative position. We note also that in its comment to us, Waikato Regional Council agreed that the WFF is specified infrastructure for the purposes of the NESFW.

89. The Panel has therefore proceeded on the basis that the WWF is specified infrastructure, which means that Regulation 45 of the NESFW is potentially relevant (making the construction of specified infrastructure a Discretionary Activity in certain circumstances in relation to the proximity of natural inland wetlands). However, the AEE concludes (at Section 10.4.1) that no resource consents are required or sought in regard to activities regulated under the NESFW. The Panel's review of the application documentation, supplemented by the responses the Panel received to its Requests for Information, concurs with that conclusion.

Waikato Regional Policy Statement

90. In Section 12.5 of the AEE, the Applicant identified and discussed the following objectives and policies in the Waikato Regional Policy Statement (**RPS**) considered to be relevant to the applications:

Renewable Energy and Infrastructure

- EIT- O1 Energy
- EIT-P1 – Significant infrastructure and energy resources

Integrated Management

- IM-O2 Resource Use and Development
- IM-O6 Ecosystem services
- IM-O7 Relationship of tangata whenua with the environment
- IM-O9 Amenity
- IM-P3 Tangata Whenua
- IM-P5 Maintain and enhance areas of amenity value

Coastal Environment

- CE-O1 Coastal Environment
- CE-P1 Planning for development in the coastal environment
- CE-P2 Safeguard coastal/marine ecosystems

Land and Freshwater

- LF-O1 Mauri and values of freshwater bodies
- LF-O3 Riparian areas and wetlands
- LF-O5 High class soils
- LF-P3 All freshwater bodies
- LF-P11 High class soils

Ecosystems and Indigenous Vegetation

- ECO-O1 Ecological integrity and indigenous biodiversity
- ECO-P1 Maintain or enhance indigenous biodiversity

Historical and Cultural Values

- HCV-O1 Historic and Cultural Heritage
- HCV-P1 Managing historic and cultural heritage
- HCV-P2 Relationship of Maori to taonga

Natural Character

- NATC-01 Natural Character
- NATC-P1 Preserve natural character

Urban Form and Development

- UFD-O1 Built Environment
- UFD-P3 Energy demand management

91. Having set out the objectives and policies listed above, the AEE consistently expressed the view (in relation to each set of topics) that the WWF is consistent with those objectives and policies and set out the reasons why that was considered to be the case. We observe that the analysis appears to be silent on, or downplays, aspects of the proposal that are at odds or at least create some tension with the outcomes sought to be achieved by the objectives and policies.

92. Having said that, we concur with much of the analysis of the objectives and policies listed above as presented in the AEE. In particular, the proposal is clearly consistent with Objective EIT-O1 and Policy EIT-P1 which recognise the importance of renewable electricity generation (also recognised as significant infrastructure) and its benefits.

93. However, the Panel considers that the proposal is not in accordance with all of the aspects of the objectives and policies identified. In particular, we discuss in Part I below the effects of the WWF on visual amenity and landscape values. Those matters have to be considered in the context of Objective IM-O9, which requires that the qualities and characteristics of areas and features valued for their contribution to amenity are maintained and enhanced and Objective CE-O1 which seeks to preserve the natural character and landscape values of the coastal environment. As above, five turbines are located within the coastal environment.

94. The objectives and policies under the heading "Land and Freshwater" seek to maintain or enhance the mauri and identified values of freshwater bodies. This includes maintaining or enhancing the overall quality of freshwater and reducing sediment in freshwater bodies. The Applicant's position was that all discharges will meet the Permitted Activity standards of the Waikato Regional Plan. As we discuss in Part E below, we doubt that that will be possible. For present purposes, it is sufficient to note that any breach of those permitted activity standards is likely to result in outcomes which are contrary to the objectives and policies in the Land and Freshwater section of the RPS. The Applicant has not assessed those outcomes.

95. The objectives and policies in the RPS under the heading Natural Character are particularly relevant to the proposal.

96. In relation to the RPS, the AEE reaches the following overall conclusion:

> "*In summary, the Project is consistent with the overall direction of the RPS. Specifically, it provides for the development of renewable electricity generation, that is of regional and national significance, in a manner that avoids, remedies or mitigates adverse effects on natural and physical resources. In addition, iwi*

consultation has been carried out and LET Capital will continue to engage with Ngaati Te Ata through the duration of the Project."

97. Part of the above conclusion is that the proposal "*avoids, remedies or mitigates adverse effects on natural or physical resources*". The assessment required under s.104 of the RMA is whether the proposal avoids, remedies or mitigates adverse effects on the *environment* which clearly requires a wider scope of analysis: one that considers the nature and scale of adverse effects on people and communities. Our report discusses the magnitude and significance of various effects on the environment at some length and, and in Part P below, sets out that the Panel's conclusion as to whether the proposal appropriately avoids, remedies, or mitigates those adverse effects.

98. The final sentence of the conclusion refers to the fact that consultation has been undertaken (and will continue) with Ngaati Te Ata. The proposal's consistency with the objectives and policies in the RPS that focus on matters of importance to iwi is in issue. We note in particular objective HCV-O1:

"Sites, structures, landscapes, areas or places of historic and cultural heritage are protected, maintained or enhanced in order to retain the identity and integrity of the Waikato region's and New Zealand's history and culture-"

99. That objective is supported by HCV-P2:

"Recognise and provide for the relationship of tangata whenua and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga."

100. We discuss that issue in Part M below.

101. The AEE does not reference or analyse the following policy:

"ECO-P2 – Protect significant indigenous vegetation and significant habitats of indigenous fauna

Significant indigenous vegetation and the significant habitats of indigenous fauna shall be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced."

102. We consider that this policy is particularly relevant when considering the effects of the WWF on bats and avifauna.

Waikato Regional Plan

103. In section 12.6.1 of the AEE, the Applicant drew our attention to the objectives and policies in the Waikato Regional Plan (**WRP**) under the following topic headings:

- Matters of Significance to Māori;
- Overarching Management of Water Resources;
- Water Takes;
- Efficient use of Water;
- Diversion of Water Courses;
- Drilling below the Water Table;
- Accelerated Erosion;

104. Like the analysis presented in the AEE in relation to the RPS, the analysis in relation to the WRP focuses entirely on reasons why it is considered that the WWF is consistent with the relevant objectives and policies. The analysis does not identify and analyse the aspects of the proposal which are either contrary to or create some tension with the objectives and policies.

105. In relation to matters of significance to Māori, the AEE concludes:

> *"The consent conditions recognise and provide for the cultural and spiritual relationship that Ngaati Te Ata have with the area. Accordingly, it is considered that the project is consistent with the above objectives and policies."*

106. In Part M below, we discuss whether that is the case, having regard to the CIA (paragraph 6.12 in particular) and the comments received from Ngaati Te Ata.

107. No analysis of the proposal has been provided by the Applicant in relation to the objectives and policies relating to discharges (in Section 3.5 of the WRP). It is understood that this is because no application has been made for a Discharge Permit based on a conclusion that all discharges will comply with the relevant Permitted Activity rules. As above, we consider that view questionable.

108. We note that in Section 3.5.3 of the WRP, Policy 1 seeks to enable discharges that will have only minor adverse effects. Compliance with the relevant permitted activity rules in relation to the discharge of stormwater (Rules 3.5.11.4 and 3.5.11.5) would achieve that outcome. Equally, failure to comply with those rules would raise questions about whether that is the case.

109. Due to the extent of earthworks involved (including the importation of cleanfill – in this case primarily aggregate), the other key aspect of the WRP which is relevant to the WWF is the objectives and policies within the Land and Soil Module. The proposal should be able to be consistent with these objectives and policies if the proposed erosion and sediment control measures are adequate. We discuss that question in Part E below.

Waikato Proposed District Plan (Appeals Version)

110. In section 12.6.2 of the AEE, the Applicant drew our attention to the objectives and policies in the Waikato Proposed District Plan (Appeals Version) (**PDP**) under the following topic headings:

- All Infrastructure;
- Ecosystems and Indigenous Biodiversity; and
- Natural Character.

111. The proposed wind farm is clearly consistent with the objectives and policies that focus on infrastructure including, in particular, the provisions that seek an increase in renewable electricity generation and the associated benefits of the same.

112. The objectives and policies under the heading Ecosystems and Indigenous Biodiversity are particularly relevant to the WWF. The relevant objective (ECO-O2) is: *"Indigenous biodiversity and the life-supporting capacity of indigenous ecosystems are maintained or enhanced."*

113. Policy ECO-P4 states:

"ECO-P4 - Biodiversity in the coastal environment.

(1) Avoid the adverse effects of subdivision use and development within the coastal environment on:
(a) Indigenous species that are listed as threatened or at risk in the New Zealand Threat Classification System lists;
(b) Habitats of indigenous species where the species are listed as threatened or at risk, are at the limit of their natural range, or are naturally rare;
(c) Areas containing nationally-significant examples of indigenous community types;
(d) Indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare; and
(e) Areas set aside for full or partial protection of indigenous biological diversity under legislation."

114. The relevant aspect of the objective in relation to natural character is:

"The natural character of the coastal environment is protected from inappropriate subdivision, use and development."

115. The provisions quoted above include strongly worded direction including "avoid" and "protect".

116. While the use of a renewable energy source on rural land might be considered, in principle, to be an 'appropriate' form of use and development, the Supreme Court's decision in *EDS v New Zealand King Salmon Company Ltd*[39] suggests that appropriateness in this context needs to be judged with reference to whether natural character is protected[40].

117. The AEE notes the relevance also of ECO-P8, ECO-P9 and ECO-P10. ECO-P8 requires consideration of habitats of threatened and at risk species, and of migratory pathways as part of avoiding, remedying or mitigating adverse effects on indigenous biodiversity. ECO-P9 directs use of a hierarchy of management responses, working down to offsetting of any significant residual adverse effects. ECO-P10 directs how and when offsetting will be allowed.

118. The AEE does not identify or assess relevant District Plan matters related to cultural values. We note in particular provisions in the section, Sites and areas of significance to Maaori.

119. Thus SASM-O2 Honanga seeks:

> *"The connections between tangata whenua and their ancestral lands,water, sites of significance, waahi tapu, other taonga and taonga species are protected or enhanced."*

120. Supporting that objective, we note also:

> *"SASM-P2 – Ngaa taonga tuku iho (Sites and areas of significance to Maaori).*
>
> *(1)Ensure subdivision, use and development does not compromise the cultural and spiritual significance of areas, including waahi tapu, urupaa, maunga and other landforms,mahinga kai, and indigenous flora and fauna.*
>
> *(2)Areas and sites of significance to Maaori including waahi tapu sites and waahi tapu areas are protected from adverse effects of development or activities on those sites."*

[39] [2014] NZSC 38
[40] Ibid at [101] and [105]

Operative Waikato District Plan (Franklin Section)

121. In section 12.6.3 of the AEE, the Applicant drew our attention to the objectives and policies in the Waikato Operative District Plan (Franklin Section) (**ODP**) under the following topic headings:

- Network and Other Utilities
- Strategic Rural and Coastal Areas and Villages Objectives
- Rural and Coastal

122. The key policies include:

*"**Amenity, landscape and ecological values***

11. Maintain and enhance landscape, cultural, archaeological, heritage and amenity values.

12. Ensure all subdivision, use and development is designed in such a way that landscape and ecological values are maintained or enhanced.

13. Protect areas of significant indigenous vegetation and fauna habitats."

123. The focus is on "*maintain and enhance*" in relation to landscape, amenity and ecological values and the "*protection*" of, in this case, significant fauna habitats.

Weighting of District Plans

124. Section 12.7 of the AEE states that the outcomes sought to be achieved the ODP and PDP are the same, whereby no weighting exercise is required. They are certainly similar, but in our view, the PDP has been prepared (including decisions on submissions) with the benefit of more recent national policy direction of matters such as soils and freshwater. The PDP is also well advanced having now reached the appeals stage of the planning process. In the event of any conflict, we consider that more weight should be placed on the PDP except to the extent that relevant provisions are still the subject of appeals.

Waikato-Tainui Environmental Management Plan

125. The application identifies the Waikato-Tainui Environmental Management Plan Tai Tumu Tai Pari Tai Ao ("WTEMP") as a planning document recognised by a relevant iwi authority and lodged with a local authority. An assessment of the Project against the relevant provisions of the WTEMP is included in the AEE. The application identified and briefly assessed the following WTEMP provisions:

(a) Policy 21.3.1.2 Land Development

(b) Objective 24.3.4 Activities in the Coast Area

(c) Objective 23.7.1 Electricity Generation and Transmission

(d) Policy 23.7.1.1 Electricity Generation and Transmission

126. No other iwi planning document was identified by the Applicant.

127. The Panel is satisfied that there are no other planning documents recognised by a relevant iwi authority and lodged with a local authority that is in addition to the WTEMP. However, the Panel view the assessment of the WTEMP as cursory, and have identified a number of additional provisions relevant to the Project. These are set out in Appendix B to our report.

128. As a premise, the WTEMP states that "the goal of Waikato-Tainui is to ensure that the needs of present and future generations are provided for in a manner that goes beyond sustainability towards an approach that enhances the environment[41]".

> *"An 'enhancement' approach requires the consideration of, not only individual resource use, activities, buildings, or elements, but also an holistic approach to the whole environment. It aims for positive ecological and social outcomes where the resource use and activities effecting the environment becomes a conduit for producing resources and energy, improving physical and psychological health, remedying past pollution, and transforming and filtering waste into new resources.*
>
> *….. The 'enhancement' approach aims not to maintain but, through our actions, to improve the quality of the environment for future generations.*
>
> *Therefore, Waikato-Tainui is in favour of an approach to resource use and activity operation that sees a net benefit back to the environment in such a way that the environment is actually enhanced from the resource use, activity, or development."* [42]

129. Clause 31(10) of Schedule 6 of the FTA states that if Treaty settlement imposes are an obligation on a local authority, or other decision maker, when determining an application for a resource consent, a panel must comply with that obligation as if it were the local authority or other decision maker.

[41] Waikato-Tainui Environmental Management Plan, Section 7 Towards Environmental Enhancement, Page 56
[42] Ibid, Page 56

130. For the WTEMP, section 40(2) of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 carries a similar obligation of "must have regard to" in Clause 31(1)(c) of Schedule 6 of the FTA.

Section 40 Effect

(1) A local authority served under section 39(2)(b) *preparing, reviewing, or changing a Resource Management Act 1991 planning document must recognise the Waikato-Tainui environmental plan in the same manner as would be required under the Resource Management Act 1991 for any planning document recognised by an iwi authority.*

(2) A consent authority considering an application for a resource consent under section 104 of the Resource Management Act 1991 must have regard to the Waikato-Tainui environmental plan, if it considers that section 104(1)(c) applies to the plan.

(3) A person carrying out functions or exercising powers under sections 12 to 14 of the Fisheries Act 1996 must recognise and provide for the Waikato-Tainui environmental plan to the extent to which its contents relate to the functions or powers.

(4) A person carrying out functions or exercising powers under the conservation legislation in relation to the Waikato River and its catchment must have particular regard to the Waikato-Tainui environmental plan to the extent to which its contents relate to the functions or powers.

131. There are a substantial number of WTEMP provisions that were neither considered, nor assessed, by the Applicant.

PART E: APPLICATIONS AND APPLICATION STATUS

132. As part of our requests for information, we sought greater clarity on exactly what the Applicant was applying for in each jurisdiction. Its advice was set out in Attachment D to Counsel's fourth Memorandum dated 19 July.

133. In the jurisdiction of Waikato District Council, the activities for which land use consent was sought were:

"The construction, operation and maintenance of the Waiuku Wind Farm, including:

- *Earthworks for site clearance and vegetation removal, site stripping and preparation, formation of platforms for turbines, crane pads, a central hub building, to construct new and upgraded internal access roads, place underground transmission lines and for site reestablishment;*
- *establishment of temporary laydown areas for construction purposes;*
- *vegetation clearance;*

• construction of new and upgraded internal access roads with associated vehicle crossings and underground utilities;

• construction, operation and maintenance of 13, three-bladed wind turbines and associated infrastructure within micro-sited platforms, each turbine having a maximum height of 190 metres to blade tip above existing ground level;

• construction, operation and maintenance of two meteorological monitoring masts, each with a maximum height of 100 metres above existing ground level; and

• construction, operation and maintenance of ancillary structures and buildings, including fencing at turbine sites, a switch room and operations and maintenance building and associated curtilage areas."

134. In the Waikato Regional Council jurisdiction, the Applicant confirmed that it sought two water permits and two land use consents.

135. The water permits sought were:

(i) "The take and use of water for dust suppression and dewatering groundwater during construction works"; and

(ii) "The diversion of water, including temporary diversion for installation of culverts, diversion by culverts and for the construction of access roads."

136. The land use consents sought were for:

(i) "Earthworks associated with construction of the Waiuku Wind Farm, including for site clearance and vegetation removal, site stripping and preparation, formation of platforms for turbines, crane pads, a central hub building, to construct new and upgraded internal access roads, place underground transmission lines and for site re-establishment"; and

(ii) "Drilling below the water table to construct pile foundations.'

137. Separately, in response to the Panel's first request for information, the Applicant confirmed that the location of the applications was the seven properties listed above (612 Forestry Road, Otaua; 136 Thomson Road, Otaua; 191 Thomson Road, Otaua; 260 Thomson Road, Otaua; 66 Huarau Way, Otaua; 44 Robertson Road, Otaua; 76 Robertson Road, Otaua), the consent duration sought was not limited for both regional and district land use consents, and 5 years for regional water permits, and the lapse period proposed was two years. The Applicant's analysis of the requirements at District Council level[43] was that, overall, the Project was a Discretionary Activity under both the Appeals Version of the Proposed Waikato District Plan and the Operative Waikato

[43] Summarised in the AEE at Sections 10.2 and 10.3

District Plan – Franklin Section. Waikato District Council did not provide any commentary on that classification as part of its comments. We assume it would have done so had it disagreed with the Applicant. In any event, Mr Chrisp's advice to the Panel was to the same effect as the Applicant.

138. We therefore proceed on the basis that the land use component (at District Council level) falls to be assessed as a full Discretionary Activity.

139. Turning to the resource consents within the Regional Council jurisdiction, the Applicant's assessment[44] was that these too should be considered as Discretionary Activities. Waikato Regional Council, however, disagreed. In its Comment, Waikato Regional Council stated its view that the proposed surface water take (of up to 500m^3 per day from sediment retention ponds) was a non-complying activity because it did not meet the requirements of Rule 3.3.4.23(3) of the Waikato Regional Plan related to primary and secondary flow allowances.

140. The Applicant's response to the Regional Council Comment analysed the rule as essentially not applying to the particular type of take that was in issue and suggested that the activity was 'innominate' and therefore needed to be considered under Section 87B(1)(b) of the RMA.

141. We consider it inherently unlikely that a section of the Waikato Regional Plan made operative following a highly contested Environment Court process[45] would fail to address a take of the kind now in issue, with the result that it should be considered 'innominate'.

142. We note that the context of the relevant rules as provided by Policy 7 of Section 3.3 of the Waikato Regional Plan. It directs that "*where the combination of all authorised water takes exceeds the combined primary and secondary allocable flows in Table 3-5 the Waikato Regional Council will manage the further allocation of surface water by classifying the taking of surface water on a net take basis as … a non-complying activity for any other new take".* Waikato Regional Council advises that this particular catchment is fully-allocated in terms of Table 3.5. The intention that any new take (of which this is one) not meeting any of the specific exceptions in Policy 7 (which this doesn't), is a non-complying water take and should be considered as such.

[44] Summarised at Section 10.1 of the AEE
[45] See *Carter Holt Harvey Limited & Others v Waikato Regional Council* [2011] NZEnvC 380

143. In summary, therefore, we agree with Waikato Regional Council's position. That is not, however, the end of the matter. As part of the Panel's fourth request for information, it asked the Applicant to advise its view as to the extent to which its application should be bundled as non-complying, should we agree with Waikato Regional Council. Its response, as set out in the Fifth Memorandum of Counsel for the Applicant dated 24 July, was that if the Panel considered the Regional Council's position to be correct, the Applicant would withdraw that element of the proposal and rely on the ability to import water by way of water trucks and/or to source groundwater as a permitted activity.

144. That is the position. Accordingly, we have treated the first water permit application quoted above as limited to dewatering groundwater during construction works.

145. Limiting the scope of the applications within the Regional Council jurisdiction in this way means that the 'regional' resource applications collectively fall to be considered as Discretionary Activities. We proceed on that basis.

146. Thus far, we have discussed what the Applicant is applying for. We now turn to consider what it is not applying for, and the implications of that for our consideration of its applications.

147. Firstly, in the District Council jurisdiction, the Application documents contained a desktop analysis suggesting that the required transmission line would meet the District Plan permitted activity rules.

148. As we have already noted, the Applicant expressly recorded that the external transmission link between the site and Glenbrook, where it is proposed that the wind farm would connect to the National Grid, does not form part of the proposal. This is reinforced by the Applicant limiting its applications to the defined site. No activities can be authorised outside that site. This is the answer to the suggestion in Doc's Comment that we might exercise our discretion and not disregard permitted activities. If the transmission line is located outside the area the subject of application, that discretion does not arise.

149. Comments we received cast doubt on whether the Applicant would in fact be able to construct its proposed transmission line as a permitted activity. Waikato District Council advised that the report provided by the Applicant did not provide the level of detail required to assess the transmission line against all District Plan rules to confirm compliance, or that poles can be positioned appropriately within the road corridor.

150. Mr and Mrs Davies and Ms Kingham provided detailed commentaries in their Comments on these issues, seeking to cast doubt on the practical ability of the Applicant to construct a transmission line for its entire length within the road corridor. They drew attention also to the need to relocate existing transmission plant owned and operated by Counties Energy. Counties Energy also provided a Comment noting that no arrangements had been arrived at with the Applicant in relation to such works.

151. For its part, the Applicant acknowledged (in response to the comment of Waikato District Council) that further detailed design is required.

152. We approach the matter on the basis that we cannot be certain that the transmission line is a permitted activity for its entire length, but it is likely that substantial sections of the line, at the least, will meet the permitted activity standards in the Proposed and Operative District Plans.

153. The law on the subject is that generally, all necessary resource consents should be sought at the same time, so that the effects of any one proposal can be comprehensively considered[46]. That is not, however, an invariable rule. In *Contact Energy Limited v Manawatu-Wanganui Regional Council*[47] the Environment Court considered a wind farm proposal where the proponent acknowledged that it would need resource consents for a transmission link to the Grid and had not sought those consents. The Court found that where, as in the case before it, a large proposal can be broken down into discrete component parts it is permissible to seek consents on a staged basis. The critical point the Court made was that detailed knowledge of the transmission line was not necessary to assess the effects of the wind farm. We consider the same is the case here. If anything, this is a clearer case than was the wind farm decision that we have referred to because it is likely that a substantial part, if not the entire transmission line, is a Permitted Activity.

154. We emphasise a point also made by the Environment Court:

> *"…the Applicant bears the risk of finding itself with a set of wind farm consents that cannot be put into effect if it is unable to obtain the necessary approvals for the transmission facility."*

155. Turning to the Regional Council jurisdiction, the Applicant has not made application for any consent to permit discharge of water or contaminants to water. We found that surprising. The members of the Panel have never been involved in an application for

[46] AFFCO NZ Limited v Far North District Council (No. 2) [1994] NZRMA 224
[47] [2010] NZEnvC 406

large-scale earthworks across a wide area which did not involve sediment discharges to waterways within and/or adjacent to the site requiring consent.

156. The draft conditions proffered by the Applicant as part of its application documents made numerous references to discharges and, in our first request for information, we sought to clarify what exactly was proposed given that, as above, no discharge consent has been sought. We note that recent Environment Court Authority[48] confirms that if required, a discrete application must be made for discharge consents.

157. This option is no longer available in this case. The window for lodgement of applications under the FTA (and in our view material amendments to applications) has closed. So even if the Applicant was minded to seek a discharge consent now (and it has shown no indication of that), we do not think that such an application could be pursued through the fast-track process.

158. Nor, in terms of the principles we have taken from the *Contact Energy* case quoted above, can sediment discharges to adjacent watercourses be considered a discrete activity sufficiently unconnected to construction of the wind farm that it could be consented later, if necessary. We also take on board a point made in Waikato Regional Council's comment, that if sediment discharges do occur to the Waikato River Catchment this requires the assessment of effects in the light of, among other things, the Vision and Strategy for the Waikato River (Te Ture Whaimana o Te Awa o Waikato), which covers the entire catchment. Although the Vision and Strategy forms part of the Regional Policy Statement, under the Treaty Settlement Acts that gave rise to it, it has the status of National Policy Statement, prevailing over all other national direction in the event of conflict[49].

159. We would also need to have regard to the provisions of Change 1 to the Waikato Regional Plan, insofar as it addresses sediment discharges in the Waikato River Catchment.

160. The Applicant's position in response to our questions was that it would meet the Permitted Activity requirements of the Waikato Regional Plan, and accordingly no consent to discharge was required. It proffered a number of condition amendments to import the permitted activity standards into the consent condition framework.

[48] *Kaiuma Farm Limited v Marlborough District Council* [2024] NZEnvC 150
[49] Refer e.g. Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010) Section 12

161. The problem we had with that position was that Mr Pearce's advice to the Panel was that this would not be possible in practice. Quoting from his Report:

> ***"****The Application Documents appear to assume that the proposed activities can meet the Waikato Regional Plan Permitted Activity requirements for discharge, and this is reflected in the proposed conditions. This discharge standard can be very difficult to achieve even with best practice ESC* [i.e. erosion and sediment control] *measures, and is unlikely to be achieved across all sediment control devices across all rain events with even the highest standard of ESC. The Application Documents may be setting the Project up to fail by proposing a consent condition that is difficult to comply with, noting that it may also be difficult with the lack of monitoring data to prove any compliance or non-compliance."*

162. The Regional Council also suggested that the Applicant should provide detailed design plans for at least one portion of the site to confirm how erosion and sediment control measures will be configured. Mr Pearce made a similar recommendation, and the Panel requested that the Applicant supply that in our second request for information. The Applicant's response to our request was that in its view, the draft ESCP was suitable and contained sufficient detail for the consenting phase. It recorded that it had met with Waikato Regional Council, who had agreed that with an additional condition limiting exposed surfaces to 20 hectares, there was sufficient certainty of effect that further detail could be provided during the detailed design phase for the Regional Council to certify prior to construction.

163. Mr Pearce did not share that view, and as a result of his advice, we remain distinctly uneasy that the Erosion and Sediment Control plans tabled to date are insufficiently detailed or ground-truthed to provide us with confidence that the Applicant will indeed be able to meet Permitted Activity standards for sediment discharge. We are effectively being asked to delegate responsibility for ensuring that to Waikato Regional Council.

164. The end result is in our view unsatisfactory. At one level, the risk is that of the Applicant. If it proceeds and is unable to effectively manage sediment within the Permitted Activity standards of the Waikato Regional Plan, that would be an enforcement issue for Waikato Regional Council. We are conscious, however, that, in Mr Pearce's words, "*the Application Documents may be setting the Project up to fail by proposing a consent condition that is difficult to comply with".*

165. If the Project should 'fail' in this regard, then there is potential for the purpose of the FTA not to be achieved.

166. We are unable to resolve the difference of opinion within the confines of the Fast-Track process. We do not find the issue to be so decisive as to cause us to reject grant of consents on that account, but in our view, it is a relevant factor for us to bear in mind.

167. Waikato Regional Council raised a related issue. In its Comment to us, it noted the limited information provided as to how once construction is completed, stormwater runoff would be managed to avoid potential adverse water quality or quantity effects within downstream receiving environments. It recommended that either that further information be supplied or that an application for a discharge consent be added. As above, adding a new consent is not an option open to the Applicant, or us.

168. As part of its revised conditions, the Applicant proffered a new Condition 8A requiring that no less than 40 working days prior to commencement of permanent stormwater works, the consent holder would provide Waikato Regional Council with a set of final design drawings and accompanying detailed design report to demonstrate that a range of environmental performance standards would be met. The suggested conditions do not outline what the Applicant/Consent Holder will do if it is unable to demonstrate the required outcomes will be achieved, and there has to be a prospect that that condition might 'frustrate' grant of consent, and on that account be unenforceable.

169. Enforceability might in that case depend on whether the condition is proffered on an *Augier* basis. It had not been pitched on that basis and had we been moving to the stage of providing our own set of draft conditions we would have sought to clarify that point.

170. Last, but not least, the suggested new Condition 8A poses the risk that in order to demonstrate compliance, the (by then) consent holder would need to alter its site plan materially, in ways that we cannot currently foresee or assess.

171. These matters remain issues in our minds, but not so serious an issue as to call the grant of consent into question.

172. Another area where the scope of the applications might be called into question relates to the deposition of cleanfill. In our second request for information, we queried the absence of any consideration of the effect of Waikato Regional Plan Rules 5.2.5.4-6 related to cleanfill disposal. Waikato Regional Council made a similar point querying whether cleanfill importation is anticipated, and whether this triggers an additional resource consent requirement. The Applicant's response to both our query and that of Waikato Regional Council was the same, pointing to an exclusion in the rules for "*soil*

disturbance activities where cleanfill is re-used, such as land contouring, and roading and tracking which are addressed by methods and rules in Section 5.1.4".

173. We do not consider the Applicant's reasoning to be correct. Our reading of the exclusion in the relevant Waikato Regional Plan rules is that it provides for cleanfill to be re-used within a site for the specified purposes. It is not an exclusion for cleanfill which is imported to the site, and in this case, the Applicant is importing some 67,000 tonnes of aggregate, which falls squarely within the definition of cleanfill in the Waikato Regional Plan. To say the least, this is not an inconsiderable quantity. Having said that, we are satisfied that all relevant adverse effects have been assessed as part of the Application documents and this is, therefore, much more in the nature of a technical compliance issue.

174. We record, however, that in our view this is an omission and that if the Project were to proceed, the Applicant would need to make a separate application for the relevant consent (which would be assessed as a Controlled Activity).

175. Lastly, in terms of activities for which no application has been made, we note that AEE references works required to roads outside the site to enable safe passage of large loads accessing the site[50]. The Applicant considered these works can be undertaken as permitted activities at both regional and district level. We proceed on the basis that if this is incorrect, it cannot be addressed in this process, because the Applicant has limited the scope of its applications to the defined site.

PART F: APPROACH TO THE ISSUES

176. Our examination of the WWF applications needs to start with the consideration of whether the proposal before us is consistent with the principles of the Treaty of Waitangi.

177. We will then consider positive effects of the Project, if it proceeds. This is relevant, among other things to our consideration of the purpose of the FTA, and the NPSREG. As regards the former, while the Minister for the Environment was of the view that the WWF would contribute to achieving the purpose of the FTA, we do not think that absolves us from forming our own view on that question. We also have to make findings

[50] AEE at section 5.6.1

on the extent of that contribution, since that determines what weight we should give to that consideration.

178. We will then consider in detail the issues that in our view determine whether consents should be granted or refused, when weighed against the positive effects we have identified:

(a) Effects on landscape and visual amenity, including proposals for compensation;

(b) Effects on avifauna, including proposals for compensation;

(c) Effects on bats, including proposals for compensation;

(d) Erosion and sediment control, including dust and stormwater;

(e) Cultural effects, together with effects on heritage and archaeology:

(f) Health and safety effects.

179. As is evident from our Executive Summary, we have found our resolution of these issues to be decisive of the outcome. Nevertheless, we will review and make findings on the many other issues addressed in the AEE, or raised in the Comments we have received, under the following headings:

(a) Consultation;

(b) Property values;

(c) Community values

(d) Project viability;

(e) Transmission line effects;

(f) Terrestrial and freshwater ecology, including wetlands;

(g) Traffic and transport;

(h) Noise

(i) Shadow Flicker;

(j) Radio and telephone interference;

(k) Fire risk;

(l) Waste and end of use;

(m) Other Condition Issues.

PART G: CONSISTENCY WITH THE PRINCIPLES OF THE TREATY

180. Section 6 of the FTA requires all persons performing functions and exercising powers to act in a manner that is consistent with the principles of Te Tiriti o Waitangi/Treaty of Waitangi 1840 (**Te Tiriti**) and Treaty settlements.

181. As we have noted in Part D above, Clause 31(2), Schedule 6 of the FTA requires the application of section 6 instead of section 8 RMA when having regard to the matters listed under clause 31(1).

182. A Panel must decline consent for a referred project if that is necessary to comply with section 6 of the FTA (Treaty of Waitangi)[51]. Accordingly, the Panel had to first identify the appropriate iwi/hapū authorities in, and Treaty settlements relevant to, the Project to execute its obligations under section 6 of the FTA.

Iwi/Hapū Authorities & Treaty Settlements

183. The report prepared under section 17 of the FTA (**section 17 report**) identified[52] the relevant iwi authorities as:

(a) Te Whakakitenga o Waikato Incorporated (representing Waikato-Tainui iwi)

(b) Ngāti Tamaoho Trust (representing Ngāti Tamaoho iwi)

(c) Te Ara Rangatu o Te Iwi o Ngaati Te Ata Waiohua (representing Ngaati Te Ata iwi)

184. Included as Appendix K in the application was a Cultural Impact Assessment report prepared by Ngaati Te Ata.

185. Included as Appendix Y were a series of email correspondence between the Applicant's agent and representatives of Waikato-Tainui and Ngāti Tamaoho. Both iwi authorities informed the Applicant in that correspondence that Ngaati Te Ata is the appropriate iwi to actively engage with in the Project.

[51] Schedule 6, Clause 31(12).
[52] Iwi authorities relevant to project, Point 18, Page 4

186. No other iwi/hapū were identified by the three relevant iwi authorities.

187. It is important to note here that the section 17 report had also identified iwi and hapū[53] as other parties that may have interests in the Project. This advice in the section 17 report was noted by the Panel, and accordingly, the following parties were invited to comment:

(e) Te Whakakitenga o Waikato Incorporated

(f) Waikato Land Acquisition Trust

(g) Waikato Raupatu River Trust

(h) Waikato Raupatu Lands Trust

(i) Te Ara Rangatu o Te Iwi o Ngāti Te Ata Waiohua

(j) Ngāti Tamaoho Trust

(k) Ngāti Tamaoho Settlement Trust

(l) Te Ākitai Waiohua Waka Taua Incorporated

(m) Ngāti Koheriki Claims Committee

(n) Ngāti Karewa Ngāti Tāhinga Trust

188. Clause 18(3) of Schedule 6 of the FTA outlines that "*an iwi authority invited to provide comments may share the consent application or notice of requirement with hapū whose rohe is in the project area proposed in the application or notice; and choose to include comments from that hapū with the comments provided to the panel by the iwi authority*."

189. Through the invitation process, only Te Ara Rangatu o Te Iwi o Ngāti Te Ata Waiohua (**Ngaati Te Ata**) formally submitted a Comment to the Panel. Their Comment is discussed later in this section.

190. A late Comment was submitted to the Panel by the Ngāti Tamaoho Trust. However, due to the length of time between invitation and receiving comments (via email) from the Ngāti Tamaoho Trust, the Panel determined it could not formally receive their Comment.

[53] Other iwi authorities, treaty settlements entities, and parties which may have an interest Points 20 – 21, Page 4

191. No other comments were received by the Panel from the listed invited parties.

192. In its consideration of section 6 of the FTA, the Applicant identifies four Treaty settlement statutes relevant within the Project area and states that the application is consistent with the listed Treaty settlement legislation identified in the section 17 report.

193. As a mechanism/statutory acknowledgement established under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, the application identifies Te Ture Whaimana o Te Awa o Waikato/Vision and Strategy for the Waikato River (**Te Ture Whaimana**) as relevant, but considers the Project will "*not impinge on any values, nor affect the health and wellbeing of the Waikato River*"[54].

194. Similarly, the application identifies and assesses the Waikato-Tainui Environmental Management Plan Tai Tumu Tai Pari Tai Ao (**WTEMP**).

195. No other provisions within Treaty settlement legislation were identified by the Applicant.

196. The Panel agrees that both Te Ture Whaimana and WTEMP are relevant.

197. To this end, the Panel are satisfied that:

    (a) the appropriate and relevant iwi/hapū were identified and invited to comment on the Project, and

    (b) there was information on Treaty settlement relevant to the Project area, and identified relevant provisions therein.

198. However, the application falls short of a comprehensive of assessment of both Te Ture Whaimana and WTEMP, and fails to demonstrate consistency with the Waikato-Tainui Claims Waikato River Settlement Act 2010, specifically:

    (a) Sections 12, 14 and 17 - Te Ture Whaimana

    (b) Section 40 - WTEMP

199. In Part E of our report, we have addressed the broader issue of the Applicant's failure to address the potential for sediment discharges in the Waikato River Catchment.

200. Failure to adequately consider the WTEMP is, in the Panel's view, a significant omission.

[54] AEE Section 7.4.2 Te Ture Whaimana o Te Awa o Waikato, Page 37

Principles of Te Tiriti o Waitangi

201. In considering principles of Te Tiriti, the application outlines that it is the role and responsibility of decision makers, rather than on applicants, to perform the duty and function on this matter.

202. The Panel notes that section 6 of the FTA requires **all persons** performing functions and exercising powers to act in a manner that is consistent with the principles of Te Tiriti o Waitangi/Treaty of Waitangi 1840 and Treaty settlements. As an authorised person identified in the referral order, the Applicant does have a duty to meet requirements of section 6 of the FTA.

203. Within the application, the Applicant outlines its efforts to undertake good faith consultation with iwi/hapū, the commissioning of a Cultural Impact Assessment report (**CIA report**) from Ngaati Te Ata, and commitment to work with iwi/hapū, specifically Ngaati Te Ata, throughout the life of the Project and beyond.

204. In response to consultation and the CIA report, the Project proposes Exclusion Zones as a measure to protect recorded sites and areas of significance and importance to Ngaati Te Ata (alongside other identified sensitive sites/features on the Project Site).

205. In an attempt to understand the role of iwi/hapū (as tangata whenua) in the Project, the Panel sought further information on the Applicant's engagement strategy/plan to involve iwi/hapū, and consideration of mātauranga Māori in the Project. We were informed that, *"a particular engagement strategy is not considered to be required, and that amendments to the respective Management Plan conditions are sufficient*"[55].

206. Although the Comment from Ngaati Te Ata informs the Panel that they do not support the Project, the Panel are of the view that the Applicant has, to some level, acted in a manner that is consistent, rather than inconsistent, with the principles of Te Tiriti.

207. The Panel has reviewed the application, and consider that in most respects the Applicant has acted in a manner that is consistent with the principles of Te Tiriti o Waitangi and Treaty settlements, although further consultation/engagement with iwi/hapū could have improved the partnership (including participation and active protection) with Ngaati Te Ata as envisaged by the Applicant.

[55] Table response to RFI2 and RFI3, Page 29 and 30.

PART H: POSITIVE EFFECTS

208. The AEE summarises the positive effects of the proposal at Section 11.14 as follows:

- *Local employment and economic benefits – An Economic Impact Assessment by Market Economics (Appendix DD) has determined that the proposal will result in both direct and indirect economic impacts, with an overall total impact of $129.3 million to the wider economy.*
- *Social and cultural wellbeing – the construction and operation of the WWF will generate additional and diversified income for the landowners, as well as more diversified employment opportunities for the community (while retaining the existing farming activities). Furthermore, tangata whenua have been consulted with throughout the conception and design of the proposal. LET seeks to reflect their values through the development and use of a CHMP.*
- *Public benefit – The proposal benefits the public in multiple ways including:*
    - *Generating employment (as discussed above).*
    - *Significantly contributing to New Zealand's target for renewable energy generation, through the provision of electricity for approximately 40,000 homes.*
    - *The increase of wind energy infrastructure will contribute to a decrease in the need for reliance on coal or new hydro in responding to increasing energy needs and subsequently result in the lowering of New Zealand's carbon emissions relative to kilowatts of energy produced.*
    - *The increase in energy generation diversity and resilience will result in a greater security in electricity supply.*
    - *Promoting the protection of historic heritage through the use of a Cultural Heritage Management Plan.*
- *The proposal includes the use of new technology to New Zealand in the form of a radar system that will monitor and track avifauna. Use of this system is likely to provide increased data and knowledge of the impact of wind farms on avifauna. Similarly, the project proposes a site-specific curtailment system for long-tailed bats, which will increase knowledge of the impact of wind farms on long-tailed bats.*
- *Fundamentally the project has significant positive effects as it is a renewable energy project in close proximity to an area of high electricity demand, will reduce the use of fossil fuels, and assist in the transition of New Zealand to a low carbon economy.*
- *The proximity of the generation to Auckland is also a benefit as Auckland has significant demand for electricity (approximately 2,088 MW per annum) and*

very little supply (151 MW per annum in the region). Introducing new generation has benefits in terms of security of supply and minimising transmission losses.

209. We observe that "*Promoting the protection of historic heritage through the use of a Cultural Heritage Management Plan*" does not seem a positive benefit to us. Rather, we would classify it at best as the absence of an adverse effect that might otherwise arise.

210. The Market Economics Report supporting the AEE refers to provided additional detail, including predictions of:

- 416 job years/330 fulltime equivalents of work directly sustained between 2025 and 2027 principally in the fields of heavy and civil engineering construction and construction services;
- Taking account of direct, indirect and induced employment, the WWF will give rise to 1415/1124 fulltime equivalents;
- The overwhelming majority of employment generated will be within the Auckland Region;
- During operation of the WWF, 35 roles/31 FTEs will be created;
    - Analysing the period 2010-2021, the WWF would represent a 9.4 increase to total generation capacity from wind and a 0.92% increase in total electricity generation (excluding co-generation);
    - The WWF has the potential to displace up to 85.8MW of generation from higher emitting generation sources such as coal;

211. We observe that like any wind farm, the WWF will not operate at capacity all of the time. The predicted output of 230-300 GWh/yr[56] implies an average capacity utilisation of approximately 30-40%. Comparisons of WWF generation capacity with other forms of electricity generation with a different capacity utilisation[57] therefore need to be treated with caution. A predicted output of 230-300GWh might be compared with current annual electricity consumption of around 40,000GWh[58].

[56] AEE Executive Summary
[57] Our understanding is that geothermal generation for example typically operates at a capacity utilisation of in excess of 90% and that large scale hydro typically has a capacity utilisation of greater than 40%.
[58] From MBIE, Electricity Demand and Generation Scenarios (July 2024) at page 30

212. Some comments queried the predicted economic returns, comparing them unfavourably with a much larger wind farm project in Southland[59]. The Applicant's response noted that the proponent of the Southland Wind Farm proposal is an established electricity generator, which is able to utilise an existing corporate capacity, whereas the Applicant is a new merchant generator, which consequently needs to start afresh. The Applicant also observed that construction projects are managed in different ways and that it is difficult to compare different projects in this regard.

213. We did not know enough about the Southland project to form a view on whether comparison of the two projects is useful.

214. We accept, in principle, the outcomes predicted by Market Economics are reasonable, taking account of the fact that such predictions must necessarily be an approximation of reality.

215. We did consider, however, that the Market Economics Report presented an incomplete picture of the level of positive effects. In particular, by presenting its predictions as absolute figures, it was difficult to gain any understanding of how significant they are. Our first information request therefore sought greater contextual information. Market Economics advised that the predicted $129.3M in value-add (over a three-year construction period) was in the context of an Auckland construction sector GV of $8.65bn in the year ended March 2023 and that total supported employment predicted is the equivalent of 0.1-0.3% of overall Auckland Region construction sector employment.

216. We also observed that relying on 2010-2021 electricity generation data might be misleading given the number of electricity generation projects committed to or under construction since 2021, and the decommissioning of fossil fuelled generation plants which had occurred or been announced in that same period, and we sought more information on these matters. Taking account of more recent data, Market Economics advised that having remained relatively static at around 70% in 2000-2008, renewable energy as a share of total generation had increased to 88% in 2023 and non-renewable energy as a share of net generation had been trending down over the same period.

217. Market Economics was unable to assist with projected decommissioning of fossil fuel generation, noting limited information in the public domain.

[59] See the Comments of C and S Maunsell and S Day

218. We also queried whether it was realistic to contemplate that the WWF might entirely substitute 85 MW of non-renewable generation. We did not get a clear answer to that question from Market Economics. However, the fact that the WWF is predicted to operate at or close to full capacity only 12% of the time[60], combined with the reducing percentage of fossil fuelled generation the Applicant had noted, suggested to the Panel that while it might literally be correct that the WWF had the potential to substitute 85MW of fossil-fuelled generation, the likelihood of that actually occurring, certainly for anything other than very short periods of time, was low. We accept that the WWF might substitute fossil-fuelled generation to some extent, but we did not have enough information to make a finding as to how often that might occur or what quantum of generation might be substituted.

219. In our second request for information, we sought to clarify the statements in the AEE and supporting Market Economics Report around diversification of generation and line losses. The Applicant advised that compared to the Tararua Wind Farms, over the lowest 40% of days for the combined Tararua Wind Farm generation output, the WWF's average generation output was predicted to be almost a third of total Tararua wind output, operating at a capacity factor of 26%, which was twice the capacity factor of the Tararua Wind Farms. This is clearly a strategic benefit of the WWF's operation, but to understand the extent of that benefit would have required us to understand when the Tararua Wind Farms were productive relative to periods of higher demand, which we did not have.

220. The Applicant further advised that the electricity market applies a 7% differential in pricing as between Glenbrook and the Tararua Wind Farms to recognise line losses over that distance.

221. We received other information to provide context on these issues. In particular, Counties Energy provided us with Transpower sourced information of the public pipeline of generation connections to the national grid totalling 14,153MW, of which 1,764MW is listed as being in the 'delivery' phase. Counties Energy noted that total generation capacity in New Zealand is currently approximately 10,000MW.

222. As part of the Applicant's response to Comments, its Counsel referenced a recent MBIE Report[61] as demonstrating the extent of the challenge New Zealand faces with total electricity demand is forecast to grow by 57% to 62,100 GWh by 2050 and estimates

[60] Applicant's Response to First Request for Information, Point 18
[61] Electricity Demand and Generation Scenarios MBIE, July 2024

9.4GW of new electrical generation capacity build is required by 2050 (a gross increase of 95 percent).

223. Counsel also noted MBIE's estimate that 140MW per year of wind generation to be built and that by comparison, during the last 10 years wind generation capacity only grew about 40MW per year on average, so a significant acceleration is required.

224. We have reviewed the MBIE report and find that while the task confronting the nation is significant, the range of generation projects in the pipeline appear to be meeting that challenge, at least at the moment, rather tending to confirm the material Counties Energy provided to us. We also observe that while this process was underway, Mercury Energy have commenced construction of the second stage of its Kaiwera Downs Wind Farm in Southland, involving 36 additional turbines and a $486M investment.[62]

225. That information also suggests that while this is a good site for a wind farm on account of the availability of the wind resource, there are many others with access to a useable wind resource.

226. We consider that Counsel's comparison of the increase of wind generation over the last 10 years with what is required going forward a little misleading. Our understanding is that through much of that period, electricity demand was flat, if not declining in the aftermath of the Global Financial Crisis[63], and the threat of closure of the Tiwai Aluminium Smelter acted as a damper on development of additional electricity generation capacity. The rapid increase in generation projects under construction or committed to in recent years suggests that the previous period was atypical.

227. Against that background, we find that the WWF would make a relatively modest, but not immaterial contribution. The material we have reviewed suggests that it would be a relatively small part of the solution to the electricity supply challenges the country faces, rather than being a significant part of the solution.

228. We had no evidence for instance that the project would have any impact on wholesale electricity prices.

229. The proximity of the project to Auckland demand is a clear plus, but the loading the electricity market puts on generation distant from Auckland compared to that at the site is not so large as to 'move the dial' materially. Similarly, while the NPSREG puts

[62] See Stage two begins at $486m Kaiwera Downs wind farm | Otago Daily Times Online News (odt.co.nz)
[63] Evident from Figure 13 of the MBIE report the Applicant referred us to.

emphasis on the value of local generation from a security of supply perspective, we did not have evidence as to the significance of that factor in this case. If anything, the size of Auckland relative to the predicted output from the WWF suggests that this factor should carry little weight. It would be far more significant in a smaller market where output from the WWF constituted a significant proportion of local demand - if it was located in Northland, for instance.

230. The NPSREG directs that we recognise and provide for the benefits the project will have. We agree with Counsel for the Applicant's observation that the essence of the relevant NPSREG Policy A is carried through and given effect to in the Waikato Regional Policy Statement and the Proposed Waikato District Plan.

231. We also agree with Counsel's observation that this direction is not a 'trump card', but that the benefits of renewable electricity generation must be taken into account when considering the appropriateness of the proposal.

232. Ms Day referred us to an Environment Court decision[64] that put the same point somewhat more eloquently, when commenting on District Plan provisions seeking to manage wind farms post the gazettal of the NPSREG:

> *"It does not take detailed scrutiny of them to see that the importance of renewable energy generation is amply reflected and is to be given full consideration in coming to decisions. They also reflect, rightly, that renewable energy generation, important as it is, does not sweep all before it and that other interests and values also must be considered."*

233. We proceed on that basis.

234. The employment benefits identified by Market Economics also go directly to the purpose of the FTA. Counties Energy implied in its Comment that the queue of projects seeking to connect to the National Grid might delay provision of those benefits. The Applicant's response has satisfied us that this is not likely to be the case. However, on the basis of the information the Applicant has provided, those benefits would be relatively modest in the context of the market sectors involved.

235. We return to these issues when we have addressed the adverse effects that also need to be considered in the decision whether or not to grant the consents sought. We will also consider in the sections that follow the claimed benefits though "*the use of new technology to New Zealand in the form of a radar system that will monitor and track*

[64] *Mighty River Power Ltd v Porirua City Council* [2012] NZEnvC 213 at [17]

avifauna", and through "*a site-specific curtailment system for long-tailed bats, which will increase knowledge of the impact of wind farms on long-tailed bats*".

PART I: EFFECTS ON LANDSCAPE AND VISUAL AMENITY

236. Adverse effects of the proposed wind farm were possibly the most contentious issue we had to consider. Of the 66 comments received, some 38 raised concerns about visual effects (including shadow flicker).

237. There are a range of issues that we need to consider under the broad heading of landscape and visual amenity. In particular, the provisions of the NZCPS mean that potential effects on natural character on that part of the site within the Coastal Environment is an important issue.

238. Effects on landscape also need to be considered with particular emphasis on any landscapes or landscape features categorised as outstanding or special in relevant plans.

239. Lastly, we need to consider potential adverse landscape and visual effects both on visitors to the area who will view the site from public places, and local residents, who will view the site from in and around their homes, and while travelling to their homes.

240. Effects on local residents include the phenomenon of shadow flicker, which as we understand it, is caused by the rotation of turbine blades casting intermittent shadows that appear to 'flicker' as the sun passes behind the turbine blades.

241. These issues came sharply into focus because of the number of third party dwellings in relatively close proximity to one or more of the proposed wind turbines. From the material available to us, we counted three dwellings at less than 500 metres from the nearest turbine, ten dwellings between 500 and 600 metres from the nearest wind turbine, twelve dwellings between 600 and 750 metres from the nearest turbine, and another 6 dwellings between 750 metres and one kilometre from the nearest turbine (i.e. 31 dwellings within one kilometre of a turbine).

242. As already noted, the turbines have a potential height of up to 190 metres and the consistent[65] message from the comments we received was one of great concern about

[65] Consistent but not unanimous: we note the Comment received on behalf of the owners and occupiers of 108 Thomson Road (R20), one of the properties assessed as being subject to a 'high' adverse visual effect, who expressed themselves satisfied that their concerns had been adequately addressed.

the potential visual effects (including shadow flicker effects) they would have on nearby residents.

243. The Application was supported by a comprehensive report authored by an experienced landscape architect employed by Boffa Miskell Limited (the **Boffa Miskell Report**).

244. The Boffa Miskell Report was accompanied by a detailed graphical analysis that included visual simulations from a number of representative points and a property-by-property assessment of visual effects.

245. The conclusions in the Boffa Miskell Report were, in summary:

- The greatest influence on landscape and rural character will be within approximately 2km of the site "*where the proposed wind turbines have the potential to be viewed as prominent elements within the receiving landscape."* Boffa Miskell assessed the effects in this area as 'moderate-high' adverse but localised due to the topography;
- Within 2-4km of the site, effects reduced to 'moderate' adverse, and become 'low' adverse beyond 5km of the site;
- Physical effects on landform would be 'moderate' adverse during construction, reducing to 'very low' adverse once construction is completed;
- The turbines do not encroach on any recognised outstanding or special amenity landscapes, ensuring that the turbines' impact on established landscape values remains limited. The landscape will maintain a sense of openness;
- Effects on the regionally significant landscapes of Okariha Sand Spit, Waikato River and Karioitahi coastline area considered to be 'very low' adverse;
- Within the immediate site context, there are both public roads and dwellings that will experience a 'high' to 'very high' adverse level of visual effect;
- Outside the Project footprint, there are two dwellings identified where potential very high adverse visual effects may occur. A further seven dwellings have identified potential high adverse visual effects. Boffa Miskell identified some potential to further mitigate potential adverse effects on these dwellings through localised plantings;

- For views between 1.5km to 4km away, effects generally reduced to between ‘moderate-high ‘adverse to ‘moderate’ adverse, depending on the nature of the view;

- For views beyond 4km, effects reduced to ‘moderate’ adverse, with effects 5km and beyond reducing further to ‘low’ or ‘very low’ adverse. There will be ‘low-moderate’ adverse effects on natural character;

- Potential cumulative effects are very limited given the distance of the WWF to the nearest other wind farm site in the area, being Awhitu Wind Farm to the north;

- It is considered that the proposed development is consistent with the outcomes envisaged in the NZCPS and the relevant Regional and District Planning documents.

246. The overall conclusion in the Boffa Miskell Report was that:

> *“The Site is considered to have potential to absorb the wind farm as proposed and further consideration of localised screening can manage the potential for significant adverse effects.”*

247. Boffa Miskell addressed shadow flicker effects in the body of its Report, cross referencing the specialised report on that subject provided by 4Sight Limited to the effect that while the proposed development had the potential to introduce shadow flicker effects to dwellings surrounding it, controls over wind farm operation will ensure shadow flicker is reduced to below guideline criteria.

248. The number or people commenting on landscape and visual amenity issues defies summary other than at a very general level. A consistent view expressed was that the wind turbines are too big and too close to too many people not involved in the Project. Commentators took exception in particular to Boffa Miskell’s description of the Site as ‘remote’, pointing to the number of dwellings in close proximity to the Site.

249. A number of commentators pointed out to us UK standards that supposedly restrict wind farms to a 1.55km minimum setback from dwellings and the Palmerston North District Plan which requires dwellings located less than 1.5km from the location of any consented wind turbine to obtain consent.

250. The Project was also compared, unfavourably, to the Southland Wind Farm proposal already noted, which has a minimum 2km setback from residential dwellings.

251. Many commentators also urged upon the Panel the significance of the predicted shadow flicker levels, arguing that they constituted both an unreasonable annoyance, and a health risk. We will address health risks separately in Part N below.

252. Other commentators focussed on the constraint the visual effects of the Project would have on future development of their properties.

253. One of the dwellings classified by Boffa Miskell as the subject of very high adverse and visual effects[66], is owned by Huarau Trust and used for papakāinga. We sought further information from the Trust about their current and potential future use of the papakāinga. The Trust provided us with Minutes of a shareholders' hui that had been held in January 2024 to discuss development of a papakāinga of housing for shareholders. The Trust also noted a recent request for a 78 year old kaumatua of the whānau wanting to move to their papakāinga to live out his retirement years.

254. In terms of intermittent use, the Trust noted that there are regular current events of tangihanga (presumably associated with the adjacent urupā), unveilings, meetings and wananga that occur once or twice a month and can involve between 20 and 60 people at a time.

255. Secondly, the comments of C & S Maunsell noted their plans to construct a house on their property at 74 Thomson Road. Their comments noted that they had advised the Applicant of their plans as part of consultation. It appeared to the Panel that these plans were sufficiently well advanced, as well as being permitted activities under the District Plan, that potential effects on the proposed Maunsell house should be considered. We asked the Applicant to provide an assessment of those effects and Boffa Miskell categorised them as 'high' due to the proximity of proposed turbine 12.

256. We were assisted in our review of the Boffa Miskell Report and the comments that we received from Mr Shannan Bray, who provided us with an expert review of both. Mr Bray also contributed to our asking a number of questions of the Applicant.

257. The answers we received to those information requests, including additional visual simulations and effects assessments provided a valuable addition to the Boffa Miskell Report, clarifying a number of points. We note, in particular:

    - In question #34, we asked for further detail on the 7 point scale employed by Boffa Miskell, seeking clarification in particular as to what the various

[66] 102 Perry Road identified as R8 in Boffa Miskell's Appendix 2

categorisations of visual effect meant. The response received was that a high level of visual effect involve:

"A major change in primary views. Turbines would be a prominent, but not necessarily dominant in views."

That compared to very high which was described as*:*

"Turbines would appear dominant and overbearing in primary views."

Both high and very high adverse effects were categorised by Boffa Miskell as being 'significant' in RMA terms;

- Although Boffa Miskell had relied on localised screening to manage the potential for significant adverse effects, the Applicant was unable to demonstrate the location and nature of structures or planting that might provide such screening, and its answer to question #48 on that subject included an acknowledgement that it may not be possible to effectively screen views to turbines. Accordingly, it accepted that its offer of a sum of $25,000 per property assessed as being affected to a high or very high degree was compensatory in nature, rather than mitigation;

- The logic of a proposed capped compensation amount of $25,000 was that it was identified "*as being a sum that could make a meaningful difference to the use and appreciation of outdoor areas*"[67];

- In response to question #94 seeking to identify which turbines would need to be removed to reduce the effects on properties to 'moderate-high', Boffa Miskell noted that if turbines T6, T10, T11, T12 and T13 were removed from the layout, the high effects footprint would reduce overall, with the level of effects experienced from locations on Thomson Road, Perry Road and Forestry Road reducing from 'high' adverse to 'moderate-high' adverse. The attached Schedule provided a further detailed assessment of the effect of removing these turbines on the most adversely affected properties. We note that with this change, the minimum distance to the nearest house (102 Perry Road/ Huarau Trust) would increase to 754 metres. All other properties would have a distance close to or exceeding 1km from the nearest turbine.

[67] Applicant's response to question #48(d))

258. Mr Bray's assessment, taking account of all of the information which had been provided was:

- Boffa Miskell's assessment had been undertaken in accordance with best practice and without any attempt to downplay or disguise potential effects. Mr Bray categorised it as thorough and professionally considered, while noting that he had some concerns about the overall conclusions reached;

- The graphical material provided by Boffa Miskell is accurate and can be relied upon as a tool to assist with the assessment of landscape and natural character effects of the proposal;

- Mr Bray agreed with Boffa Miskell's assessment that physical landscape effects of the rehabilitated earthworks on landform will be low, while noting the need for additional conditions to manage potential effects on sites with sandy soils close to the coast. He did not disagree with Boffa Miskell's assessment of construction effects on landscape as moderate;

- Mr Bray agreed with Boffa Miskell's assessment of the landscape value of existing native vegetation on site and risk of being removed is low and that landscape effects on regionally significant landscapes, outstanding natural features and landscapes, and significant amenity areas will be very low;

- Mr Bray agreed with Boffa Miskell's assessment provided in response to the Panel's fourth information request that the effects of the proposed wind monitoring masts would be low in the context of wind farm as a whole, provided they are subject to suitable conditions.

- The proposed Central Hub will have limited effects on landscape values, provided appropriate controls are put in place. Mr Bray considered that the proposed night lighting of the turbines would have a higher effect than assessed by Boffa Miskell at 'moderate-high' to 'high' visual effects at night, but that this can be effectively mitigated through conditions;

- Mr Bray agreed with Boffa Miskell's conclusion that natural character values are affected to a 'low-moderate' degree.

- Mr Bray did not consider arbitrary setback distances (as sought by Commentators) useful. Rather, he was of the view that effects needed to be considered on a case-by-case basis;

- Over-exposure to shadow flicker effects could be appropriately avoided with modified condition wording;

- The existing character of the site and its environs could be described as:

  "… somewhat remote, rural farmland that is influenced by coastal process, containing a mix of land use activities including dairy, drystock, equestrian, forestry and lifestyle…[and] *it is typically enjoyed for its sense of productive capabilities, openness, peacefulness, remoteness and general lack of built forms."*

- Boffa Miskell's overall rating of landscape effects experienced within 2km as moderate-high was not consistent with its acknowledgement that some nine dwellings within this distance will experience either 'high' or 'very high' adverse visual effects;

- While Mr Bray generally agreed with the classifications of level of adverse effect in the Boffa Miskell Report, he disagreed with the categorisation of 25 Robertson Road (R16) and 100 Thomson Road (R18), finding effects on those properties more likely to be 'moderate-high', or even 'high' and with its categorisation of 451 Bothwell Park Road (R50) which he considered was more properly assessed as 'low-moderate' adverse;

- Mr Bray had difficulties with Boffa Miskell's overall conclusion, that the site and its environs had the capacity to absorb the wind farm, noting that in his view, it did not take account of locations in the surrounding landscape where landscape effects would be 'high' to 'very high'. In his view, the proposal would result in a landscape change and that there will be locations where the landscape effects experienced will be 'high' to 'very high';

- He considered further that Boffa Miskell's assessment had failed to take account of the fact that some of the identified residences are effectively within the broader envelope of the proposal, rather than being distanced from it (and outside, looking in);

- Mr Bray considered that the Boffa Miskell assessment also suffered from undertaking a static analysis from specific locations, rather than considering how people would experience the wind farm as they moved through the landscape;

- Although the pastoral landscape values of the site and environs will remain, Mr Bray considered that locations within the broader envelope of the wind farm "*will become dominated by the presence of wind energy infrastructure, in nearly all directions".* In that regard, Mr Bray categorised the landscape effects experienced both visually and perceptually by residents of some 15 dwellings[68] would be 'high' to 'very-high';

- That equates to a significant adverse effect even without considering the effects on the proposed dwelling at the Maunsell property;

- Mr Bray identified a further five properties as experiencing moderate-high effects;

- There is no effective mitigation that can be provided for the identified significant adverse effects;

- While the offer of compensation for those properties to which it is offered is a positive gesture, on balance, Mr Bray did not consider that it provided mitigation for the identified adverse effects. He also noted that it is difficult to appropriately value the adverse effect in dollar terms;

- Removing proposed turbines T6, T10, T11, T12 and T13 would result in an overall downgrading of potential landscape effects to 'moderate' to 'moderate-high' within 2km of the proposal;

259. Mr Bray's Report was the subject of feedback from a number of the parties who had previously provided comments. We have already noted that he corrected his Report in one respect in response to the input of Mr Richardson.

260. Two commentators (Kingham and Davies) provided further information to flesh out how they interacted with the landscape in and around their properties, picking up on Mr Bray's focus on perceptual effects.

261. A number of commentators also challenged Mr Bray's logic in relation to defining setbacks. We will address that point below.

262. The response from Boffa Miskell on behalf of the Applicant focussed on the inter-relationship between visual effects and landscape effects. Boffa Miskell noted that it

[68] Mr Bray's initial report quantified 14 dwellings as being in this category but he revised this to 15 after Mr Richardson pointed out that his property (64 Thomson Road) was recorded as subject to 'high' adverse effects in one part of Mr Bray's report, but not mentioned in his conclusion.

had considered the outcomes to the relevant provisions of the Waikato District Plan "*which anticipates renewable energy development"* and disputed Mr Bray's logic when concluding that it had underestimated the scale of landscape effects. In Boffa Miskell's view landscape effects would not be greater than moderate-high even 'within' the wind farm site as the underlying physical qualities of the landscape largely remain and the landscape is not an area with identified high values.

263. Boffa Miskell also disputed Mr Bray's upgrading of visual effects for six dwellings. It suggested that Mr Bray had conflated his interpretation of broader landscape effects with what is actually visible from the particular dwellings.

264. As regards the broader landscape issues examined by Boffa Miskell and Mr Bray we accept their conclusion that:

- The outstanding natural features and landscapes and special amenity landscapes identified in relative planning documents are sufficiently distant from the site that effects on them are not a factor in our decision making process;
- Adverse effects on coastal natural character are similarly sufficiently low that they do not bear on our ultimate decision whether or not to grant consents, taking account of the national direction in the NZCPS.

265. Considering the effect of the project on the rural landscape and the people who live within that landscape, the first question to consider is whether a landscape/visual effect setback should be applied. On that point, we consider that the offshore precedents quoted by commentators provide little assistance. It does not appear that the UK standard they referred to us was ever enacted, and conditions in the Australian states are quite different to New Zealand. They have vastly more rural land within which to choose suitable wind farm sites for a start.

266. We accept Mr Bray's reasoning that there is no necessary connection between any particular distance and any particular level of landscape effect. In the Porirua case already referred to, where the Environment Court did impose a 700m setback, it quoted landscape evidence that such a setback is meaningless in landscape terms, because the distance may bear no relationship to landscape features, to lines of visibility, or other issues[69].

[69] *Mighty River Power Limited v Porirua City Council* [2012] NZEnvC 213 at [27]

267. The Board of Inquiry considering the Turitea Wind Farm arrived at a similar conclusion, but noted its view that distance is the factor that makes the greatest contribution to effects[70].

268. The Board of Inquiry found that turbines 125 metres high in a clear view at a distance of 1.5 kilometre would be dominant and that turbines clearly visible at a distance of 1.5-3.5 kilometres could be described as 'prominent and potentially dominant'.[71]

269. That view (as to when effects are prominent or dominant) did not accord with the expert landscape opinions we had before us, and we suspect that it related to the topography of the Turitea site (and indeed the Tararua wind farms generally), with wind turbines located on the upper levels of a substantial ridgeline, significantly elevated above potential viewing points.

270. We also suspect that the provisions of the Palmerston North City Plan directing that new dwellings within a 1.5km radius of a consented wind turbine obtain a resource consent that Commentators referred us to reflect both the findings of the Turitea Board of Inquiry, and the topographical features of the area.

271. Returning to the Porirua Plan decision, having said that one could not justify a setback on landscape grounds, the Court then identified that a 700m setback had a good rationale in terms of adverse noise effects. We think, therefore, that Commentators criticising Mr Bray's reasoning as being contrary to that decision seem to have missed that element of the Court's decision. Mr Bray was not addressing setbacks from a noise perspective.

272. Be that as it may, in our view, this illustrates the overlap between different issues. We consider it was likely no coincidence that one of the properties with the highest level of assessed adverse visual effects (522 Forestry Road, aka R3) also had the greatest predicted unmitigated noise effect, and the greatest number of likely annual hours per year of shadow flicker (without mitigation).

273. The Court in the Porirua Plan case did not appear to consider the possibility of noise being mitigated at source (presumably that suggestion was not put before it). As we discuss in the section of our Report dealing with noise effects, if noise is reduced at source because of the way the wind turbines are programmed, with the result that received noise is within the guidelines set by NZS6808, this is an acceptable end result.

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[70] Final Report and Decision of the Board of Inquiry into the Turitea Wind Farm Proposal September 2011 (**Turitea BoI Decision**) Chapter 13 at [65]
[71] Ibid at [62]

Likewise, we accept Mr Bray's conclusion that if shadow flicker effects are reduced through programming of the way in which the wind turbines operate to within guideline levels, this too should be an acceptable outcome.

274. As Mr Bray observes, however, just as distance at the upper end is no guarantee of an unacceptable adverse visual effect, the inverse is also true. Mr Bray noted that the Te Rere Hau Repowering Project was granted consent through the Covid Fast-Track process despite the presence of residential properties as close as 470m from the nearest turbine. As far as we can see, the Expert Panel did not identify that as an issue that required discussion presumably because, as Mr Bray noted, the properties concerned were already affected by existing two-bladed turbines that would be removed upon repowering.

275. We therefore proceed on the basis that there is no magic distance that ought to determine that turbines are unacceptable, or acceptable for that matter. What is required is an assessment of the effects from a visual perspective.

276. In that regard, we have two competing assessments. Mr Bray's assessment takes a broader view of the range of factors contributing to the categorisation of effect than does that of Boffa Miskell. We lean towards Mr Bray's rationale, because people do not just sit in their houses and view their surroundings from there[72] and if necessary, would have found that at least some of the additional properties he identified will incur 'high' level of adverse effects. We would also have put the proposed Maunsell house in the same category also, for the reasons discussed above. Even if we accepted Boffa Miskell's assessment as being the better view, though, there is no doubt that the Project will have significant adverse visual effects on a number of adjacent residents. We do not find the difference between whether those effects are on 9 people or 15 people to be decisive. The Turitea Board of Inquiry appear to have directed that one turbine with a dominant effect on a single property be removed[73].

277. Addressing the level of effect, categorisation of visual effects being 'significant' rather understates the position in our view. While Boffa Miskell did not provide visual simulations from each of the most affected houses, some of the representative

[72] Refer the material Ms Kingham and Mr and Mrs Davies put to us in response to Mr Bray's Report. We note also the comment of the Environment Court in its Project West Wind interim decision (*Meridian Energy Ltd v Wellington City Council* W031/287) at [521] supporting a more dynamic view.
[73] Turitea BoI Decision, Chapter 13 at [406]. As we will discuss shortly, in another case, adverse effects on three properties prompted the Environment Court to delete two turbines from a Meridian wind farm proposal.

simulations that it did provide as a proxy for views from those dwellings were nothing if not confronting.

278. We also think that there is much to be said in Mr Bray's analysis, pointing out that the most affected residences are literally within the wind farm, and residences would feel surrounded by turbines. In two cases at least, turbines will appear dominant and overbearing. In one of those cases, the use of the property as papakāinga and the presence of a urupā immediately adjacent adds a cultural overlay, exacerbating the already 'very high' assessed effect. In a number of other cases, the turbines are assessed as constituting a major and prominent change in primary views.

279. Boffa Miskell are to be commended for not shrinking from that assessment, but we need to consider the implications of that level of adverse effect.

280. As we have noted, Boffa Miskell's initial report, suggested that the adverse effect might be able to be mitigated through planting and other screening. Such techniques have not generally been accepted in previous decisions on wind farms. We note, again, the Turitea Board of Inquiry decision on this point[74], which in turn cited the earlier Project West Wind[75] and Motorimu[76] decisions.

281. In any event, in its response to request for information, the Applicant conceded that it could not advance details to show how the adverse effects might be mitigated by planting and/or screening in this case. Thus, we accept Mr Bray's conclusion that the high and very high adverse effects Boffa Miskell identified cannot effectively be mitigated.

282. Having initially framed the management response in terms of mitigation, subject to a $25,000 cap on each property, the Applicant pivoted to making that sum outright compensation for the level of adverse effects. As above, when we asked how that sum had been arrived at, the answer was that it was assessed as sufficient to make a meaningful difference, for example, to the provision of outside amenities. The irony of suggesting that significant adverse visual effects from the location of turbines proximate to properties might be ameliorated by enhancing the outdoor amenities of those properties so that the residents can better enjoy the view of those turbines seems to have been lost on the Applicant. Obviously, however, residents might spend compensation on whatever they valued.

[74] Turitea BoI Decision, Chapter 13 at [110]
[75] Project West Wind interim decision at [520]
[76] *Motorimu Wind Farm Ltd v Palmerston North City Council* W067/2008 at [229]

283. We also note that with the exception already noted, the residents of the affected dwellings who provided Comments did not accept that the proffered compensation was adequate.

284. We take Mr Bray's point that if the Applicant's offer was to be correctly interpreted as an offer of compensation, it is somewhat odd that the Applicant proffers a set figure for all of the most affected properties, rather than tailoring its offer to reflect the degree of effect, given those effects clearly vary significantly in nature and degree as between different properties.

285. We record that the Applicant did not seek to justify its compensation offer by reference to the value of the affected properties, or the effect the wind farm might have on that value. We will discuss the relevance of property values later in this Report (concluding that they cannot be relied upon) but that might have given us at least some reference point.

286. Ultimately the decision as to whether a compensation offer is sufficient is therefore almost entirely subjective.

287. Understandably, Mr Bray declined to proffer a view on whether the compensation is adequate.

288. Our conclusion is that we have no evidence before us that would suggest that an offer of $25,000 is a reasonable exchange of value for the degree of adverse visual effects the wind farm would impose on the residents concerned. Clearly, it would be better than nothing, but we do not consider that that is an adequate basis on which to accept it.

289. We note that if we were to rely on compensation as a solution, that would bring much more sharply into focus the question of who is categorised as being subject to a high or very high effect (and therefore entitled to compensation) and who is not. As above, we prefer Mr Bray's reasoning and if necessary, would have found there to be additional dwellings, including the Maunsell proposed house, that are in that category. The Applicant has not offered compensation more broadly than the nine properties Boffa Miskell identified. That too is problematic.

290. We refer to Mr Williams legal advice that we do not have the power to direct additional compensation be provided. That advice is consistent with the decision of the Board of Inquiry into the Hauāuru mā Raki Wind Farm[77], and the Applicant agreed with it.

291. Accordingly, we are left with a significant adverse effect that is effectively unmitigable and which is the subject of a compensation offer that we cannot conclude is satisfactory.

292. Counsel for the Applicant referred us to cases on wind farms that had identified, what he termed, the 'tension' between local effects and national benefits.

293. Those related to two wind farm proposals at Mount Cass in Canterbury: *MainPower NZ Limited v Hurunui District Council*[78] and *Re Meridian Energy Limited*[79].

294. In relation to the *MainPower* decision, as Counsel for the Applicant identifies, the Environment Court did indeed weigh up the primarily national level benefits and adverse effects at the local level. The Court took into account the fact that the Project would involve the creation and funding of a conservation management area for restoration of a significant limestone ecosystem including a walkway that would make what it described as this important site more accessible for both recreation and education purposes. That appears to have tipped the balance in the Court's mind. However, we note that the Court separately described the landscape and visual effects in the following terms:

> *"The evidence from the landscape architects was that while the turbines would be evident and noticeable they would not cause an adverse visual effect such that the Proposal should be turned down. We heard from persons directly affected (predominantly farmers). They were not so much concerned with views from dwellings, rather the change in landscape and visual amenity presently enjoyed as their workplace is outside…"*

295. On this basis, it does not appear that the Environment Court was dealing with adverse visual effects at anything approaching the nature or level that we have before us. We also have nothing equating to the MainPower proposed conservation area to add to the equation.

296. Addressing the *Meridian* decision, as Counsel notes, the Court was persuaded that the regional and national benefits associated with the Proposal outweighed the remaining significant adverse visual amenity effects that were unable to be mitigated from certain

[77] Final Report and Decision of the Board of Inquiry into the Hauāuru mā Raki Wind Farm and Infrastructure Connection to Grid (May 2011) (**HMR**) at [178]
[78] [2011] NZEnvC 384
[79] [2013] NZEnvC 59

nearby properties. We note, however, that the Court identified two groups of properties the subject of adverse visual effects. The first were those with a few turbines in close proximity. The second had turbines further away, but would see a larger number of turbines.[80] The Court identified three properties as an example of the former. They were adversely affected by the dominant, overbearing proximity of two turbines in particular. The Court directed that those turbines be removed. The remaining significant adverse visual effects the Court was referring to in the passage cited by Counsel for the Applicant were in the second category.

297. The Turitea Wind Farm provides another example of proposed turbines that were deleted because of significant adverse effects on specific properties.

298. By contrast the HMR Board of Inquiry decision provides an example of the second category of landowners identified as being the subject of significant adverse effects by reason of the visibility of a number of wind turbines at a distance (in excess of 1km). The Board of Inquiry concluded that the balance of national benefit prevailed over local disadvantage.

299. Lastly, we note in a similar vein an observation in the Environment Court Project Hayes decision[81]:

> *"Of more concern to us about the* [first instance] *Commissioners' majority decision is that there appears to be an unexpressed premise that a wind farm must be remote from houses. We consider that citizens of working landscapes in rural New Zealand beyond a range of about three to five kilometres from a windy site may need to get used to the idea of a wind farm within their sight, if the site is not within an outstanding natural landscape or protected by another nationally important matter in Section 6 of the RMA."*

300. That decision was issued before gazettal of the NPSREG which exemplifies that view and, arguably, supports both a greater weight being given to national benefits and a consequentially smaller separation distance that people need to get used to. We do not consider, however, that the position has yet been reached where local adverse effects are entirely irrelevant, so that people need to accept what in our view are unacceptable effects on their amenity values and general wellbeing.

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[80] At [170]

[81] *Maniapoto Environmental Society Inc and Others v Central Otago District Council* C103/2009 at [762]

301. Against that background, we categorise the 9 properties (at minimum) that Boffa Miskell identified as being in that category: of individual properties the subject of unacceptable adverse visual effects by reason of the proximity of specific turbines.

302. The only solution to addressing those unacceptable effects as Mr Bray identifies, to remove the relevant turbines: T6, T10-13 (inclusive).

303. That leaves those 9 properties, and a number of others, still subject to material levels of adverse visual effect. On the material before us, those adverse effects are categorised as being, at most in the 'moderate to high' category and consistent with the decisions that we have cited, we consider that this is where the line needs to be drawn between national benefit and local adverse effects. Bearing in mind the national direction provided by the NPSREG, repeated by the Waikato Regional Policy Statement and the Waikato District Plan, this is the level of local adverse effect that we consider that the local community ought to be expected to bear for the national good (and no more than that).

304. We arrive at that decision on the basis that visual effects are an effect on amenity values. They are recognised in relevant planning instruments via the Waikato Regional Policy Statement Objective IM-09 referred to above and, more particularly, the policies of the Proposed and Operative Waikato District Plan. In its Comment, Waikato District Council referred us to AINF-P6 of the Proposed Plan (Appeals Version), which requires the development, operation, maintenance, repair, replacement, upgrading and removal of infrastructure and its associated structures, "*to avoid, remedy or mitigate adverse effects on the environment, community health, safety and amenity"* and to AINF-P21, which enables REG activities *"provided that adverse effects and avoided, remedied or mitigated".* Those policies reference back, ultimately, to Section 7(c) of the RMA.

305. Boffa Miskell suggested, in its response to Mr Bray's report, that adverse visual effects needed to be viewed in the context of an enabling District Plan framework. Such a view overlooks the qualification we have quoted. Clearly the 'high' and 'very high' adverse visual effects Boffa Miskell assessed will not be avoided, remedied or mitigated, contrary to AINF-P6.

306. Waikato District Council also referred us to Part 16.2.3.2 of its Operative District Plan, which identifies among other things, "*the absence or subservience of manmade structures other than those relating to rural production activities*" as potentially contributing to rural character. Rural production activities are not defined. However, they are normally associated with agriculture, horticulture and forestry. Wind energy

generation typically occurs in rural areas, but it is not inherently a 'rural' activity.[82] We therefore approach this provision on the basis that the Project would not be within the exception.

307. The effect of the project on natural character is related to the other principal point of difference between Mr Bray and Boffa Miskell, as regards the extent of adverse effects on landscape values. We accept that landscape encompasses broader considerations than visual amenity, but we note the observation of the Environment Court in its *Motorimu* decision that how landscape is seen is an important component of landscape assessment[83].

308. For the people living effectively within the wind farm, and immediately surrounding it, the landscape will change significantly if the project proceeds as proposed, and not for the better.

309. Mr Williams advised us, and the Applicant accepted, that we have a discretion to grant the application in part. We accept the point made by the Applicant that we need to consider both the loss of benefits the NPSREG deems nationally significant, and the reduced economic benefits the purpose of the FTA makes relevant in any exercise of that discretion.

310. We have done so and conclude that if we are to grant consent, it should be without Turbines T6, T10, T11, T12 and T13, for the reasons we have discussed.

Effects on Cultural Landscape

311. Cultural effects are discussed further in Part M of this decision. However the effects on the cultural landscape were canvassed by both the Applicant and by the Panel's special advisor Mr Bray.

312. It was identified in the AEE that the Project is located within "*an important cultural landscape with cultural significance to Ngaati Te Ata*"[84]. This is stated in the Ngaati Te Ata CIA report, and supported by invited comments from C&S Maunsell, K&T Holmes, the Huarau Trust, and the trustee for Pukekōnui Urupā.

313. The Boffa Miskell Report acknowledges[85] the CIA report and the cultural history and Ngaati Te Ata relationship to the landscape. However it does not attempt to interpret

[82] Compare the Brooklyn Wind Turbine in Wellington
[83] *Motorimu Wind Farm Ltd v Palmerston North City Council* W067/2008 at [199]
[84] AEE, Section 4.1.6 Cultural and Archaeological Environment, Page 13
[85] Boffa Miskell, Section 2.3 Associative landscape Values, Page 6

or assign effects upon these values and only "*recognises these as a dimension of this landscape*", commenting that the "*proposed activities that occur in and around the site are relevant*" *and will potentially affect iwi cultural values and other associative values*".

314. Having not attempted to assess the effects upon these values, the landscape assessment does not offer clear mitigation measures (includes remedial and avoidance measures) to specifically address the adverse effects to the cultural landscape.

315. However, through the request for further information by the Panel, the Applicant acknowledged in its response that the role of iwi/hapū (as tangata whenua) was not well reflected in the proposed conditions for the preparation and implementation of the proposed Landscape Management Plan.

316. Accordingly, an amendment to the proposed conditions was proffered to enable iwi/hapū to participate in the development of the Landscape Management Plan to reflect and encompass Ngaati Te Ata values and be informed by mātauranga Māori.

317. A further request for information was put to the Applicant regarding the inclusion of unrecorded cultural heritage features identified in the CIA report within their Indicative Access Road Layout & Turbine Platform Locations Overview graphic (and supporting sheets.

318. While the request for further information did not explicitly relate to cultural landscapes, the Applicant's response did provide an understanding of the spatial relationship between turbines, proposed earthworks and internal roading, with the location of cultural heritage features on the Project Site. The Applicant appears to have maintained physical separation of project components from known cultural sites. That is not, however, a complete answer since it fails to respond to the cultural values associated with the landscape highlighted in the CIA and Ngaati Te Ata's Comment.

319. We concluded above that proposed turbines T6, T10, T11, T12 and T13 should be deleted if we are to grant consent. This is a positive step in recognition of those cultural values.

320. We note, however, that although the Applicant proposes amendments to consent conditions to enable iwi/hapū to participate in the development of the Landscape Management Plan, Ngaati Te Ata continue to oppose the project.

321. The Panel considers that the remaining proposed turbines (T1- T5 and T7-T9) will have an adverse effect on the values of Ngaati Te Ata associated with the landscape and

that this adverse effect needs to be taken into account in our overall evaluation of the applications.

PART J: EFFECTS ON AVIFAUNA

322. The Application was supported by a report on potential effects on avifauna authored by Wildland Consultants Limited (**Wildlands**). Avifauna for this purpose encompasses the entire range of bird species that might be affected by the Project, but not bats. This includes both resident bird species and migratory birds passing through the site. Understandably, the focus was on 'threatened' and at 'at risk' indigenous species.

323. Wildlands recorded that avifauna surveys had been conducted by 4Sight and its report relied on the output from those surveys.

324. The Wildlands Report noted that there were issues with data collection which gave rise to "*knowledge gaps in the baseline survey of avifauna at the site"*. In particular, no summer migratory monitoring was undertaken "*due to time constraints",* meaning that the migration of internal waders was not captured in the baseline survey. Acoustic recording devices (**ARD**) were deployed in an attempt to capture passing migratory flocks, but technological issues meant that no data was obtained. Lastly the survey effort at low tide sites was low "*resulting in a low representation of coastal species present at the site".*

325. Wildlands described in their Report their reliance on Guidelines of the Environment Institute of Australia and New Zealand (**EIANZ**). These guidelines employ a matrix involving consideration both of the magnitude of effect on, and the ecological value of, relevant species. In effect, the greater the ecological value of the species concerned, the lower the magnitude of effect required to demand offsetting or compensation, and vice versa. Thus, for the highest value species, effects have to be negligible before the need for offsetting or compensation is avoided.

326. The summary of the bird monitoring was that some 30 indigenous and 24 exotic bird species were identified as being present on the site. One of the indigenous species (Caspian Tern) is classified as 'threatened – nationally vulnerable'. A further 8 indigenous species were classified as 'at risk'.

327. That compared with a previous desktop study (undertaken by Boffa Miskell) which identified 50 indigenous avifauna species that may utilise the site, including 29 species

with a national threat status. Three of those species were identified as having a high risk of annual mortalities (South Island pied oystercatcher (**SIPO**), little shag and pied shag). Wildlands noted that no large flocks of southerly migrating species were detected during the 4Sight monitoring surveys and "*it is likely that other key migratory species were missed during peak summer migration periods of northerly migrations during December, January and February".*

328. Wildlands noted also the likelihood that SIPO would traverse the WWF twice a year, travelling between northern harbours and their breeding grounds in the South Island.

329. Banded dotterels and wrybill ('at risk – recovering' and 'threatened – nationally vulnerable', respectively) were not recorded, but were likewise expected to cross the site twice a year.

330. Wildlands also noted that Australian bittern were not recorded, but may traverse the site as they had been recorded at a number of locations in relatively close proximity. Wildlands advised that Australasian bittern have a 'threatened – nationally critical' status which meant that they had the highest assigned ecological value. We will discuss the evidence related to potential effects on Australasian bittern in some detail below.

331. Wildlands identified potential effects both during construction (from habitat loss and disturbance through earthworks and vegetation clearance) and direct harm once the wind farm is operational (through collision with spinning turbine blades in particular).

332. Wildlands identified key species of those observed during 2023 monitoring as being pied shag, little shag, little black shag and SIPO. It also noted godwits, wrybill and Australian bittern as unconfirmed but "*likely to be present and at risk of collision"*. In relation to the Australasian bittern, Wildlands noted that "*the close proximity of wind turbines to the wetland and dune lakes at the site present a risk of collision for bittern".* They were also at elevated risk because of their size and flight speed.

333. Wildlands reviewed a number of measures to minimise effects on birds during both the construction and operational phase. In relation to the latter, Wildlands noted that pre-construction use of radar technology could be used to inform baseline monitoring of avifauna presence, "*particularly of flocking migratory species and large 'Threatened' species such as bittern".* It recommended that the radar system be installed twelve months prior to turbine operation, in parallel with construction, to be used as part of baseline monitoring, following which the results should be reviewed to assess the

results and effectiveness of the radar technology, and whether continued use is necessary.

334. Wildlands noted use of radar in the US in conjunction with automated curtailment systems and expressed the view that curtailment to the operation of turbines to reduce collision strike on avifauna is "*a new and potentially beneficial strategy*" to reduce mortality at wind farms. It acknowledged, however, that the technology had not previously been applied to wind farms in New Zealand.

335. We observe that reduction of turbine operation would necessarily reduce the output from the WWF and therefore the benefits of the project. The Applicant told us, however, that the reduction in output was not material.

336. Wildlands also recommended that a predator control programme at breeding grounds of relevant species should be explored for the WWF as an option to compensate for the adverse effects of collision strike.

337. In Table 4 of its Report, Wildlands undertook a species-by-species review of potential effects, assessing both the initial level of effect and the final level taking into account measures to avoid, remedy or mitigate effects.

338. In the case of Australasian bittern, the initial level of effect was assessed as 'very high', and the final level of effect "*potentially moderate to high (if present) (possibly reduced with the use of radar curtailment model)".* Three other species with 'very high' ecological value (banded dotterel, wrybill and Caspian tern) had a similar classification, but without the qualification that they might not be present.

339. Another five species (little shag, New Zealand dabchick, New Zealand pipit, pied shag and SIPO) were categorised as being of high ecological value, subject to an initial high level of effect, reduced to "*low to moderate (with use of radar curtailment model)".*

340. Wildlands' Report was accompanied by a separate draft Avifauna Management Plan. We note, in that draft plan statements that:

- Collision mortality monitoring is an important tool for evaluation of the operational effects of wind farms on birds (Section 3.2);
- "*To understand the potential for habitat displacement and turbine collision, a full year of baseline monitoring is required to capture monthly and seasonal habitat useable at the Waiuku Wind Farm site"* (Section 4.0);

- "*Although no large flocks of key migratory species were detected between June to September monitoring by 4Sight, it is still likely migratory species are present in the summer months"* and it was recommended that flock counts and ARD be undertaken over peak summer migratory periods of key waders (Section 4.0);

- *"Curtailment of the operation of turbines to reduce collision risk on avifauna is a potentially beneficial strategy to reduce mortality at wind farms"* and "*curtailment strategies should be informed by pre-construction monitoring" (*Section 7.0).

341. The absence of summer monitoring data and the acknowledgement in Wildlands' Report that key species were likely to be present, but had not been recorded, raise obvious questions in the Panel's mind as to the robustness of the effects assessment it had provided. It appeared to the Panel from the references to time constraints precluding obtaining of additional baseline data that the quality of the effects assessment presented had been compromised in order to meet the timelines of the FTA for submission of an application. We found it somewhat surprising that the EPA had not picked up on this point as part of its completeness check of the Application.

342. Be that as it may, as part of the Panel's first request for information, it inquired whether monitoring had gone ahead in the summer 2023/24, as foreshadowed by Wildlands. The answer was that it had, and the Applicant provided a detailed Wildlands' survey report recording that surveys had been undertaken in six days across January, late February and early March, and early April.

343. It noted that (contrary to the proposal in the draft Avifauna Management Plan), ARD were not deployed on the basis that the proposed radar-assisted monitoring would be more reliable.

344. Key conclusions from this additional monitoring were:

- *"With the proposed post-construction monitoring data, when available, this study will help determine whether construction of WWF has any adverse effects on indigenous bird populations and if further mitigation is required through adaptive management";*

- "*Overall, the number of 'at risk' and 'threatened' bird species found on site is consistent with the previous survey (11 compared to 9) and it is considered that the study results do not change the previous assessment of effects and proposed mitigation measures…".*

345. That response was received in time for circulation to interested parties and the Panel had the benefit of a detailed commentary from the Director-General of Conservation (**DoC**) that included consideration of this additional information.

346. Key points made in DoC's comment were:

- *"The Avifauna Ecological Effects Assessment (Appendix H) the Applicant has provided has reached subjective conclusions, largely based on desk-top analysis only, and likely underestimates effects";*[86]
- *"… a minimum of two years of* [radar assisted] *monitoring will be required to account for variability from year to year";*[87]
- The summer monitoring recently reported was wasted "*because it was largely the wrong time of year to record many bird migrations".*[88] In this regard, DoC's tracking data indicated that 96% of SIPO summer migrations were outside the period observed;
- The absence of any collision rate estimates included in the Application was an important omission;[89]
- *"What is known is that the site is located on a significant migratory route for Threatened and At-Risk birds and is within the natural range of the Threatened – Nationally Critical Australian bittern";*[90]
- *"Australasian bitterns are classed as Nationally Critical, with the same threat classification as Kakapo, indicating that they are heading towards imminent extinction unless conservation management activities are successful";*[91]
- Collisions between Australian bittern and wind turbines are a significant new risk for this species "*largely because they fly frequently at night", commonly within rotor strike heights, between wetland areas where they feed";*[92]

[86] Point 7
[87] DoC comment at #16
[88] Ibid
[89] Ibid at #17
[90] Ibid at #19
[91] Ibid at #27
[92] Ibid at #29

- The chances of detecting Australasian bittern were very slim given the techniques employed;[93]

- There was no evidence that the proposed pest control would achieve a no net loss outcome and it was unclear how the figure of $100,000 to fund off site predator control had been arrived at. Spread over the anticipated life of the wind farm of 75 years, the funds would provide no meaningful benefit.[94]

347. Also, the Panel notes the absence of consideration of cultural values, especially the Ngaati Te Ata CIA report, in the preparation of the ecological assessment on avifauna.

348. Although cultural effects are discussed further in Part M of this decision, here the Panel makes reference to the avifauna cultural values outlined in the Comment from Ngaati Te Ata.

349. Birds (and bats) are identified in the Comment, with specific reference to kōrero tuku iho of the "mythical, night-flying bird, hookioi, which foretells death or disaster", and proceed to share the whakatauki/proverb 'pekapeka rere ahiahi, hokioi rere pō' (the bat flies at twilight, the hokioi flies at night).

350. It is clear that these birds (and bats) have value to Ngaati Te Ata and are part of the fabric of the identity of Ngaati Te Ata.

351. We note also the Maunsell Comment, advising that they had sighted an Australasian bittern taking off from the wetland on their property (located between proposed turbines T12 and T13, and heard their distinctive booming at night.

352. The Applicant's response to DoC included the following points:

- The assessments undertaken had considered the impacts on species not detected but anticipated;

- The Applicant was willing to undertake more collision modelling prior to commissioning;

- As regards the critique of the methodology for detecting Australasian bittern, the Wildlands Effects Assessment included the deployment of ARD at wetland sites,

[93] Ibid at #33
[94] Ibid at #72

and did not detect Australasian bittern. Nevertheless, the assessment assumed Australasian bittern were present;

- In response to the criticism that baseline monitoring was incomplete at the time of Application, the proposed conditions contain extensive provision for further monitoring, with a trigger of moderate or high-level effect with reference to EIANZ guidelines for review of the Avifauna Management Plan.

353. We have already noted our first request for information, which produced Wildlands' Report of the summer monitoring it had undertaken. As part of the same request for information, we posed a number of questions about the draft Conditions focussing on:

- The lack of clarity as to what standard of collision mortality of at-risk avifauna was considered acceptable;

- Whether the discretion proposed to be conferred on the Applicant's ecological advisor and the Waikato Regional Council in relation to continued use of radar monitoring and/or radar-assisted turbine curtailment contravened High Court case law, by reason of it being an inappropriate delegation of discretion;

- Whether the proposed adaptive management provisions were consistent with the principles set out in relevant cases;

- Whether the reference in conditions to 'compensation' rather than offsetting for adverse residual effects on avifauna was deliberate;

- How the proposed figure of $100,000 (for off-site pest eradication) was arrived at, and what relationship it had to the risks to biodiversity.

354. The Applicant's response to these questions was:

- The conditions needed to be modified to consistently reference a test of less than moderate effects in terms of the EIANZ Guidelines;

- The caselaw on delegation referenced in the Panel's question was distinguishable, among other reasons because "*baseline monitoring has been undertaken and further pre and post-construction monitoring is proposed."* Further, the discretions being exercised were not the power to make factual findings on the level of effect on avian ecology;

- The existing and most recent monitoring, along with existing data "*provides sufficient baseline information about the receiving environment".* That baseline will be supplemented by proposed pre-construction monitoring, including the use of radar technology. The revised conditions propose a clear trigger, as above, and are designed to provide for effects to be remedied before they are irreversible;

- The reference in the proposed conditions to compensation as opposed to offsetting was deliberate "*as the AMP is unable to supply a like-for-like measurable outcome, which is key to offsetting".* While the goal is to produce no-net-loss and preferably net-gain of indigenous biodiversity *"at this stage, the AMP is based on data which does not provide the numbers of bird collision or mitigation thresholds";*

- The intention of the proposed fund was to provide for payment of three to four years of off-site pest management was based on a similar fund Wildlands had been involved with in relation to the Waipipi Wind Farm at Waverley where actions had been identified "*that could fit with the budget of $113k for the first four years".* Four years funding would provide enough time to collect operational data, and "*assess the actual level of effects are less than moderate – or not".* The Applicant's position was that if effects were moderate or higher, the AMP will be reviewed.

355. The last response prompted a further question from the Panel, noting that its understanding was that compensation provisions must be volunteered by an applicant, and therefore querying whether a condition review would be valid. The Applicant's response was that additional or extended off-site compensation could be provided through the process of a section 128 RMA review, but that it was open to a more explicit condition requiring a review of the off-site compensation.

356. We sought legal advice from Mr Martin Williams as to whether he agreed with the Applicant's assertion that additional compensation could be imposed by way of a Section 128 condition review. Mr Williams' advice, in summary was that he did not. Just as the Panel could not impose new or additional compensation conditions, neither could a future decision-maker on a section 128 review. We gave the Applicant the opportunity to respond to Mr Williams' opinion. Its Counsel pointed to the breadth of the statutory power to provide for consent condition reviews, but suggested a revised condition that would provide that a review of the Avifauna Management Plan might

involve additional compensation if required. We discuss the efficacy of such a condition below.

357. In our second request for information, we also sought clarification of Wildlands Table 5, in its initial report. Specifically, what the assessed level of effect on relevant species was without radar curtailment? The Applicant referred us to a desktop assessment of collision risk prepared by other ecologists which had identified SIPO, pied shag and little shag as having a potentially moderate level of effect, without mitigation measures such as radar.

358. In response to another question we had, the Applicant confirmed that conventional bird survey methods have a low probability of detecting cryptic species such as bittern, which was why monitoring for effects on such species will be undertaken by the use of radar monitoring and carcass searches. The response noted also that "*aside from finding physical evidence of bird strike, or noting a change in bird behaviour on site post-construction (from radar or bird counts) it is unlikely that an effect would be detectable."*

359. We were assisted in the review of the application documents and responses to requests for information, and the comments we had received by Mr James Lambie. Mr Lambie provided us with a detailed report. Key conclusions he arrived at in relation to avifauna were:

- *"A substantial amount of effort has been put into native bird survey, but there remains uncertainty on how frequently the site is traversed by (in particular) matuku-hūrepo Australasian bittern (Botaurus poiciloptilus) and migratory seabirds. With this comes a level of uncertainty that the collision risk (and thus level of impact on threatened avifauna) can be managed within an acceptably low level of loss"*;

- *"As it stands, the proposal reads as one where there are potentially high collision effects on at least one species of native bird is Threatened (Nationally Critical). I am very concerned with the approach for reasons relating to the yet-to-be established efficacy of curtailment and lack of specificity on how to manage significant adverse effects if they arise".*

- *"There is enough information to get an impression of the risk, but in my view further survey is required to get a better understanding on whether the adverse*

effects on threatened bird species within the coastal environment can be robustly quantified in the first instance, and can be avoided in the second";

- *"I consider it remains uncertain that a compensatory approach will sufficiently address the potential residual adverse effects enough to be confident that the outcome is no net loss of at-risk species and net gain in species of a higher threat status".*

- *"I have suggested some changes to conditions to improve the certainty of outcome under adaptive management, but there remains insufficient information for me to advise that consent can be granted";*

- More specifically, Table 5 of Wildlands' original report *"indicates there are potentially unavoidable adverse effects (<u>with remedies and mitigations in place</u>) on at least one threatened species. There is a low level of certainty that these effects could be managed to acceptably low levels within the site. These effects occur across the site, including the parts of a site that lies within the Coastal Zone";*

- *"… it should be surmised that, while radar-informed curtailment offers good potential for the effects on birds to be reduced, it is by no means certain that this will translate out to acceptably low effects on each species simply because it may not be possible to use the radar data to inform the collision risk"*. And in relation to Australasian bittern, "…*it remains highly uncertain that radar-informed curtailment offers effective mitigation of effects simply because it may not be possible relate radar data back to the species being impacted."*

360. As part of the Applicant's response to Mr Lambie's report, its Counsel was sharply critical of Mr Lambie expressing an opinion on whether or not consent can be granted. In Counsel's submission, that is a matter for the Panel. Counsel also noted that it was not clear whether Mr Lambie had taken account of the purpose of the FTA and the considerations militating in favour of granting of consent.

361. Counsel also submitted that a balance needs to be struck in seeking additional monitoring or detail, otherwise the purpose of the FTA (in particular its focus on urgent promotion of employment and support of ongoing investment) would be undermined.

362. Lastly, Counsel submitted that less weight should be given to Mr Lambie's views because he had not undertaken a site visit.

363. Wildlands provided a separate response reiterating its view that enough data had been assessed to address the possible adverse effects of the proposal *"to a sufficiently appropriate level".*

364. Addressing Counsel's criticism of Mr Lambie, we struggled to understand the value a site visit would provide to an ecologist peer reviewing another ecologist's work to form a view as to whether there was a sufficiently robust basis for the opinions expressed. We consider Mr Lambie was entitled to expect that Wildlands would have documented all matters having a material influence on the assessments it had presented.

365. We agree that it was not for Mr Lambie to express a view on the ultimate question: whether or not consent *should* be granted on the applications. That is a matter for the Panel who, assuredly, will take in account the matters raised by Counsel. However, he did not do that. Nor did Mr Lambie say that we could not grant consents. What Mr Lambie did, at our request, was to advise whether in his particular sphere, he considered that there was sufficient information on which to base the grant of consent. He recorded that in relation to avifauna, and as we will see shortly bats, he was unable to give us that advice. We note that the Applicant's civil engineering advisors, Bloxam Burnett & Olliver were much more direct, asserting their view in response to Mr Pearce's report that "*the outcome arrived at is sufficient to allow approval to be granted….*" Counsel's criticism accordingly seems to us a little selective.

366. We reiterate, it is for the Panel to decide how Mr Lambie's advice, if we accept that it is well-founded, fits into the statutory framework, and all of the other considerations that bear on our ultimate decision whether or not to grant consent.

367. Before addressing that question, however, we need to make findings on a number of relevant points.

368. It was apparent to the Panel that at the point application was made, the Applicant did not have sufficient evidence as to the existing avifauna environment on which to base assessment of adverse effects and mitigation thereof. Wildlands said as much in its Report. Summer monitoring was required to supplement the material that had already been gathered.

369. We now have before us Wildlands Summer Monitoring Report and the initial question we have to answer is whether that fills the evidential hole present at the point of Application.

370. The fact that, as the Applicant acknowledged, that it had insufficient information to craft a true offsetting proposal supports a conclusion that the body of information the Applicant has collected to date is insufficient to provide an adequate categorisation of the baseline environment.

371. DoC also says it is not adequate, because the monitoring was undertaken at the wrong time and/or was insufficient to capture the extent to which threatened and at-risk indigenous migratory species traversed the site. There is reason to consider that DoC may well be correct. In the Collision Modelling Report that the Applicant provided to us for other purposes, the authors noted significant numbers of migratory seabirds having been identified with use of radar following the coastline south of Port Waikato as part of the HMR consent process. Most of those shorebirds are flying to and from harbours north of the application site, but neither Wildlands' monitoring, nor the earlier 4Sight monitoring had picked them up in anything like the numbers recorded further south.

372. That does not inspire confidence in the robustness of the monitoring results we had before us.

373. In the particular case of Australasian bittern, it is not a migratory bird, but Wildlands assessed it as being likely to be present and at-risk of collision with wind turbines.

374. Australasian bittern were not detected at the monitoring undertaken by 4Sight and Wildlands and the Applicant accepted that the observation methods employed (at least) were unlikely to have detected a cryptic species such as Australasian bittern which we understand flies frequently at night. With 4Sight's ARD monitoring having failed to pick up bittern, perhaps with the benefit of hindsight, it was unfortunate that Wildlands did not follow through on the Draft Avifauna Management Plan's indication that ARD should be employed in summer monitoring.

375. Australasian bittern acquire considerable significance because they have the highest assessed threat level of 'Threatened (Nationally Critical). The fact that Ngaati Te Ata noted Australasian bittern (aka Matuku) as an indigenous species of significant cultural significance 'raises the stakes' even higher in that regard.

376. On our initial review of the application documents and proposed conditions, we had a very real concern that there was insufficient direction as to what standard of effects mitigation was in fact required to be achieved. This was unacceptably vague in the draft conditions, although the intention was obviously to pick up on a signal of the Supreme Court that even where an avoidance policy applies, a materiality test of any adverse

effects is appropriate.[95] The problem was that a condition specifying that there be no material harm to threatened species leaves open the question of what the test of materiality is.

377. We are comfortable with the suggestion that the Applicant made to clarify that point by use of the EIANZ Guidelines. While we note the criticism of DoC as to their use, we accept Mr Lambie's advice that the EIANZ Guidelines can be used to guide the nature and extent of the management response to an adverse effect. We also consider that there is intrinsic merit in an approach which matches the level of acceptable effect to the significance of what is being affected has intrinsic merit. We will have more to say on that subject in the context of our discussion of the Supreme Court's decision in *Sustain our Sounds Inc v The New Zealand King Salmon Company Limited*[96], which we read as supporting such an approach.

378. As above, the Applicant's position was that a period of twelve months additional monitoring utilising radar in parallel with the construction process would fill any holes left in the baseline monitoring and inform a process of radar assisted turbine curtailment if required to ensure an appropriate level of the effects of the Project on threatened avifauna.

379. While the need for further monitoring to characterise the existing environment presents a problem, it is not necessarily fatal to the application. For us to make a judgement on that question, we need to discuss the leading cases on the application on an adaptive management approach. We start with the Environment Court's interim decision in *Crest Energy Kaipara Limited v Northland Regional Council*[97]. That case involved an application for a series of consents to enable a tidal energy generation project at the mouth of Kaipara Harbour. One of the key issues was the potential for fish coming in and out of the harbour to be injured by contact with the subsurface turbines. The Applicant proposed an adaptive management project to address this.

380. The Court emphasised the need for any such approach to incorporate robust baseline monitoring[98]. It noted the Applicant's approach of suggesting that baseline monitoring might be obtained post consent[99].

[95] Refer *Port Otago Limited v Environmental Defence Society Inc* [2023] NZSC112 at [65]
[96] [2014] NZSC40
[97] Environment Court Decision A132/2009
[98] Ibid at [100]
[99] Ibid at [102]

381. Later in its decision, the Court stated that it was critical to establish that "…*all necessary baseline information is already in hand."*[100]

382. On the other hand, the Court said that the applicant should not be put in the position of having carried out all necessary research before making the application, or before hearing, and that it would be unfair and unreasonable to hold that an applicant must try to anticipate and research all hypotheses that may occur to someone during the course of an application process.[101] The following paragraph then stated the Court's view that:

> *"The converse is that the applicant must establish sufficient of a case to persuade the Court to grant consent on the basis of allowing the adaptive management processes to be embarked upon. That is, the Court must be satisfied that the environmental management plan can operate in a way that will serve the purpose of the Act."*

383. We pause to observe that the avifauna issues of concern could hardly be described as left field hypotheses emerging only once the process had commenced. Wildlands identified them from the outset.

384. The Environment Court's approach was considered in detail by the Supreme Court in the *Sustain our Sounds* decision already referred to. This also was a case where the applicant had not completely characterised potential adverse effects, this time on water quality in the Marlborough Sounds. The Board of Inquiry's approach, summarised in paragraph [105] of the Supreme Court's decision, was that one of the pre-conditions for adaptive management was that there *will be* good baseline information at the point the activity commences.

385. The Supreme Court cited both domestic and off-shore authority on adaptive management approaches before stating[102]:

> *"As to the threshold question of whether an adaptive management regime can even be considered, there must be an adequate evidential foundation to have reasonable assurance that the adaptive management approach will achieve its goals of sufficiently reducing uncertainty and adequately managing any remaining risk. The threshold question is an important step and must always be considered. As Preston CJ said in Newcastle, adaptive management is not a "suck it and see" approach*[103]*."*

386. Considering the position against that question, the Supreme Court noted that the Board of Inquiry had before it modelling suggesting that results would largely be satisfactory

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[100] Ibid at [117]
[101] Ibid at [228]
[102] At [125]
[103] Citing Newcastle & Hunter Valley Speleological Society Inc v Upper Hunter Shire Council [2010] NSWLEC 48 at [184].

and that while there was potential for a catastrophic outcome, the expert evidence was that that was unlikely.[104]

387. The Supreme Court's consideration of these issues was intertwined with the application of a precautionary approach, which Policy 3 of the NZCPS mandates.

388. On that question, the Court stated[105]:

> *"The secondary question of whether the precautionary approach requires an activity to be prohibited until further information is available, rather than an adaptive management or other approach, will depend on an assessment of a combination of factors:*
>
> *(a) the extent of the environmental risk (including the gravity of the consequences if the risk is realised);*
> *(b) the importance of the activity (which could in some circumstances be an activity it is hoped will protect the environment);*
> *(c) the degree of uncertainty; and*
> *(d) the extent to which an adaptive management approach will sufficiently diminish the risk and the uncertainty.*
>
> *The overall question is whether any adaptive management regime can be considered consistent with a precautionary approach."*

389. A little later in its decision, the Court described the final question in (d) above as being the vital part of the test, dealing with the risk and uncertainty, and the ability of an adaptive management regime to deal with that risk of uncertainty.

390. As regards that question, the Court said[106]:

> *"The answer to the overall question from [129](d) of whether risk and uncertainty will be diminished sufficiently for an adaptive management regime to be consistent with a precautionary approach will depend on the extent of risk and uncertainty remaining and the gravity of the consequences if the risk is realised. For example, a small remaining risk of annihilation of an endangered species may mean an adaptive management approach is unavailable. A larger risk of consequences of less gravity may leave room for an adaptive management approach."*

391. Against a factual background, as found by the Board of Inquiry, of largely satisfactory outcomes being modelled and an unlikely grave risk, the Supreme Court found that the Board of Inquiry was entitled to take the approach it did.

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[104] Ibid at [126] and [140]
[105] At [129]
[106] At [139]

392. We therefore approached the matter asking ourselves what the evidential foundation is now, what it will be following another year's modelling, and whether the proposed adaptive management approach has the ability to deal with the risk and uncertainty.

393. This is against a background where the activity can reasonably be described as important by reason of the NPSREG if nothing else. However, based on our review of positive effects in Part H above, we would categorise it as not being critically important.

394. We have already found that the existing baseline information is unsatisfactory. Clearly radar assisted monitoring will provide better information, in particular on the movement of nocturnal and cryptic flyers like some of the key migratory shorebird species, and Australasian bittern respectively.

395. We note, however, Mr Lambie's point that expert ecologists in the HMR consent process had agreed that detecting smaller, faster moving shorebird species like wrybill and banded dotterel would be difficult and that:

"At this stage, it is difficult to ascertain whether the data being collected will suffice to provide enough robust information for adaptive management of effects on native birds."

396. As regards the potential for adaptive management to resolve the uncertainty and ensure an acceptable low level of adverse effect, relative to the threatened species of the species concerned, the final position of the Applicant relied almost exclusively on radar assisted curtailment. This stood in marked contradistinction to the approach in Wildlands' original report which, as we have already noted, referred to curtailment of the operation of turbines to reduce collision risk as a *"new and potentially beneficial strategy"*[107]

397. The seventh Memorandum of Counsel for the Applicant dated 30 July 2024 described the proposed bat radar system as being "*proven internationally".* By contrast, Wildlands noted that such a system had been tested in a power project in Wyoming and been found to reduce fatal impacts for eagles by 82% relative to the control site. An 82% success rate appears impressive but, stating the obvious, it equates to an 18% failure rate. We also record that eagles are very large birds. Put colloquially, they would be hard to miss.

398. Accordingly, we think that the assertion that the system is proven internationally is overstated. More importantly, it is certainly not proven in New Zealand conditions. One

[107] Wildlands Ecological Effects Assessment – Avifauna at 10.2.4

of the positive effects that the Applicant identified for its Project was the opportunity to prove it. That cuts both ways of course. Trialling radar might demonstrate that it is less effective than one hopes.

399. We note also Mr Lambie's point that Wildlands' assessment was that there were potentially unavoidable adverse effects on at least one threatened species even with remedies and mitigations in place. This is consistent with Wildlands assessment that predicted adverse effects on Australian bittern were only "*possibly reduced*" with the use of radar.

400. In terms of the consequences of failure, they do not involve annihilation of a species, to use the Supreme Court's words, but the threat status of Australasian bittern means that any loss of birds is extremely serious. There may be marginally more room for experimentation with the indigenous migratory shorebirds that have a lower threat status, but even then, we consider that there needs to be reasonable certainty of a satisfactory end result. Adopting the EIANZ guidelines, as the Applicant proposes, that is a negligible adverse effect on key species.

401. In *Sustain Our Sounds*, the Supreme Court tested the proposed adaptive management regime by asking whether, among other things, the conditions provide for effective monitoring and thresholds are set to trigger remedial action before the effects become overly damaging.[108] We note the passage quoted from the Applicant's response to our request for information above, indicating the practical difficulties detecting an adverse effect on Australasian bittern. That suggests to us an unsatisfactory risk of material adverse effects on a Nationally Critical Threatened indigenous species may occur before it was detected.

402. We have considered the Applicant's offer of compensation by way of off-site predator reduction in key breeding areas in the South Island (the Applicant suggested the Lower Ashburton River). The problem with the Applicant's proposal is the lack of clarity as to what the level of funds the Applicant is committing will achieve. As we have already noted, the Applicant's fund was capped at $100,000 which appeared also derisory if it was spread over the operational life of the wind farm (taking the 75 year access agreements the Applicant has arranged as indicative of that).

403. The Applicant's response was that the idea was that three or four years funding would be provided, which would be sufficient to clarify the uncertainties and, if necessary, the

[108] Sustain Our Sounds at [133]-[134]

fund could then be topped up. We have summarised already the questions we had about the enforceability of such an arrangement. The Applicant's final position was that the conditions governing the Avifauna Management Plan would provide for the potential for compensation to be increased, with the revised Plan needing to be certified by Waikato Regional Council.

404. Against a background where the law appears clear that a compensation condition cannot be imposed, and must be proffered by an Applicant, we have difficulty putting weight on this sort of arrangement. We can foresee all too clearly the potential for any attempt by Waikato Regional Council to insist that the revised management plan include provision for greater levels of 'compensation' to be challenged.

405. We were also provided with scant details of either the existing off-site compensation scheme Wildlands had developed, or how a WWF overlay on that scheme would operate and would ensure that the same benefits in terms of pest reduction and improved breeding rates would not be counted twice, once for each project.

406. We also note the description of the Waipipi Wind Farm Project as identifying a range of actions "*that could fit with the budget of $113k for the first four years".* This seems to us to be entirely the wrong focus. If the proposal is to compensate for residual adverse effects, the actions to compensate for those residual adverse effects should determine the budget, not the other way round.

407. Lastly, we note that the same fund was proposed as compensation for both avifauna and bats. Whereas the avifauna focus would be in the braided rivers of the South Island (the recommendation was for bat compensation to be focussed in the Waikato region. We had no information as to how both objectives would be achieved within the same budget but on the face of it, we should treat the capped sum of $100,000 as effectively halved for each purpose.

408. In summary, we were left with very little confidence that the proposed compensation arrangement would in fact achieve a reasonable equality of value with the potential residual adverse effects.

409. Consideration of adverse effects on threatened indigenous avifauna needs to occur against a background where the NZCPS directs that such effects be avoided in the Coastal Environment. That includes the area within which Turbines T1-5 are proposed to be located.

410. The NZCPS also directs use of a precautionary approach where effects are uncertain, unknown or little understood, but potentially significantly adverse. In our view, that is the situation we face, certainly with Australasian bittern.

411. Further, while the NPSIB does not apply to REG activities, the provisions of the Waikato Regional Policy Statement and the Waikato Regional Plan do. We have noted already that ECO-P2 of the Regional Policy Statement, which directs protection of the significant habitats of indigenous fauna. As a thorough route for threatened indigenous migratory species, we consider that the site qualifies. Similarly, to the extent that wetlands on the site are a habitat for Australasian bittern, they and the flight routes between them would similarly qualify. ECO-P9 of the Appeals Version of the Waikato Proposed District Plan also provides for hierarchy of management responses. It works down to off-setting of any significant residual adverse effects but, as we have noted, the Applicant accepted that it was unable to meet the requirements for off-setting.

412. Also, while Policy 3 of the NZCPS only applies a precautionary approach in the Coastal Environment, we note the view of the King Salmon board of Inquiry that the precautionary approach is inherent in the RMA[109].

413. In conclusion, we find that the Applicant has not provided an adequate evidential foundation to have reasonable assurance that its proposed adaptive management approach will sufficiently achieve its goals. The proposed radar assisted monitoring is a positive step, but it needed to have been undertaken as part of the preparation of the Application, in order that we might have more confidence as to its efficacy both in detecting threatened avifauna species, particularly Australasian bittern, and assisting management of adverse effects on those species. Particularly for Australasian bittern, given its elevated threat status and cultural significance, a much greater level of confidence is required than that Applicant has been able to provide us with.

414. Both DoC and Mr Lambie considered that more monitoring would be required than a single twelve-month period. We agree in principle that a comprehensive monitoring approach would allow for the potential for a single year's monitoring results to be atypical. We consider, however, that had the Applicant presented its Application with the benefit of a year of radar-assisted monitoring, that would likely have sufficiently reduced the risks to allow for further monitoring to occur post-consent, in parallel with

[109] Referenced in the *Sustain Our Sounds* decision at [102] without adverse comment.

the construction process in terms of the principles set out in the Supreme Court's *Sustain Our Sounds* decision.

415. In the Applicant's response to Mr Lambie's Report, its counsel suggested that the purpose of the FTA, and its focus on the urgent promotion of employment and support for ongoing investment should militate a desire for additional monitoring or detail.

416. We do not accept that submission. While the purpose of the FTA does indeed focus on urgent promotion of employment opportunities, it equally focusses on Section 5 of the RMA. The nature of the fast-track process is one where the ability of expert hearing panels to test the material before them is significantly constrained. That is partly because of the speed of the process, and partly because of the practical inability to convene a hearing and test difficult evidential issues in a way that exchange of written requests for information, and written responses cannot emulate. It is even more constrained than a full hearing of matters in the Environment Court, which has the benefit of cross examination of the experts it hears.

417. It seems to us that rather than less information and detail, if anything, applications following a fast-track process should be better prepared, with more information, and more detail, to ensure that both limbs of the purpose of the FTA are properly addressed.

418. We emphasise that we have considered the positive effects of the proposal summarised in Part H in this context against the background of both the NPSREG and the purpose of the FTA.

419. We find those considerations insufficient to overcome the risks posed to threatened avifauna including but not limited to Australasian Bittern. In terms of the tests in the Sixth Schedule to the FTA, the information provided by the Applicant was inadequate to determine the Application.

420. We return to discuss the implications of that finding in Part P of our Report below.

PART K: EFFECTS ON BATS

421. Potential effects on bats were assessed separately from avifauna by a different Wildlands team. Wildlands' Bat Report noted that long-tailed bats (aka Pekapeka) are classified as 'Threatened – Nationally Critical'. This is the same threat status as that for the Australasian bittern which we have discussed in Part J of our Report.

422. Long-tail bats are nocturnal fliers. Wildlands' Report contained survey data from surveys undertaken over 31 nights between 12 December 2022 and 11 January 2023 by 4Sight ecologists and a further survey over 21 nights between 10 October 2023 and 31 October 2023 by Wildlands. The surveys used automatic bat monitors (**ABMs**) sourced from DoC at selected locations. The earlier 4Sight survey employed ten ABMs, two of which failed and recorded no data. The later Wildlands survey employed ABMs at 30 locations. While Wildlands reported some technological issues, it did not consider that they affected the validity of their findings.

423. Wildlands described the 4Sight survey as a preliminary survey which indicated that long-tailed bats used the site for foraging and may be roosting within the site or nearby. It highlighted that the interface between Waiuku Forest and Project site is a particularly high activity area.

424. The more comprehensive Wildlands survey indicated that activity was low across most of the site, particularly in areas of open pasture, but Wildlands speculated that this might be because October is early in the survey season and lower temperatures potentially resulted in lower bat activity levels. It confirmed, however, the earlier 4Sight finding that activity was high along the edge of Waiuku Forest. It also identified high activity in the north-east of the site near proposed turbine T12.

425. Wildlands noted the following limitations of the data they had available on which to draw conclusions:

- *"ABMs provide evidence of bat presence and activity levels at a site, but do not give an indication of population size or flight height or direction. They provide some evidence as to whether bats are roosting or foraging in or near an area, but care needs to be taken not to misinterpret the data regarding these factors.";*
- "*Due to limitations in the recording range of the DOC AR4s* [i.e. the ABMs]*, it is possible that bats flying high above the recorders (within the strike zone of the proposed turbines) would not have been detected*";
- "*The current data only represents activity from October, and a small amount of data from February 2023. That behaviour varies across the year, so understanding how they are using the site throughout time is required. Two further surveys are currently scheduled for the 2023-2024 summer period."*

426. Wildlands identified potential effects from loss of habitat associated with construction activities, and from collision or changes to air pressure around the spinning turbine blades (termed barotrauma).

427. Wildlands also identified lighting at wind farms as a potential adverse effect on bats, either through resulting in avoidance of habitat and decreases of activity levels, or through attracting bats to turbines and increasing the risk of blade strike.

428. Wildlands assessed various management strategies. It considered, in particular, deterrent strategies, but found that there was an insufficient basis to have confidence in its effectiveness.

429. Wildlands recommended use of red lights that are less attractive to insects.

430. The main management mechanism recommended, however, was restricting the operation of wind turbines at times and locations when and where bats are at most risk of blade strike. Wildlands cited overseas studies that identified mortality reductions if a higher cut-in wind speed is used before wind turbines commence operation.

431. Wildlands also noted experience from the Te Uku Wind Farm located 60km south of the proposed site (east of Raglan). Overall, while the results from the Te Uku Wind Farm provided evidence that long-tailed bats are less vulnerable to the effects of wind turbines than some bat species in other countries, Wildlands cautioned extrapolation of the findings from Te Uku to the WWF on the basis that the latter, "…*has higher long-bat activity levels than were recorded at Te Uku, and the proposed turbines are larger, creating a larger strike zone…".*

432. Wildlands recommended a range of steps to mitigate potential construction effects. In relation to operational effects, Wildlands considered that collision risk will likely be highest between October and April, and that while this may change depending on the season, the data which had been collected indicated that turbine sites in open pasture (T2-4, T7-11 and T13) indicated that they were not located in key foraging or commuting areas. However, activity was much higher at points along forest edges such as near T1, T6 and T12.

433. Wildlands recommended consideration of a curtailment strategy focussing on an increased cut-in wind speed of 5 metres/second at Turbines 1, 6 and 12 between dusk and dawn, throughout October to April inclusive, with provision to adjust the curtailment parameters following further monitoring and the assistance of an expert biostatistician. Wildlands also recommended that off-site pest control be explored as an option to

address residual effects at a site within the Waikato Region with consistent bat activity and potential roosting sites. It suggested that parts of Waiuku Forest would be an obvious candidate.

434. As for avifauna, Wildlands provided a tabulated assessment of effects considering the ecological value of long-tailed bats (very high), the initial level of effect and the final level of effect post avoidance/mitigation.

435. Injury through collision or barotrauma was assessed as having an initial very high level of effect and an assessed final level of effect of:

> *"Potentially moderate. Ongoing pre-and post-construction monitoring is required to properly understand the level of the effect, and to develop suitable residual effect management if required."*

436. As for avifauna, a separate draft Bat Management Plan was provided with the Application documents.

437. Also as with avifauna, the absence of summer monitoring data, and the clear acknowledgement by Wildlands that activity may be higher in periods with warmer temperatures (than October at least) raised obvious questions about the robustness of Wildlands' effects assessment.

438. Again, it appeared to the Panel that the need to lodge an application within the deadlines fixed by the FTA had precluded obtaining of appropriate baseline data and compromised the quality of the effects assessment.

439. As with avifauna, our first request for information therefore inquired whether the summer monitoring Wildlands had foreshadowed had in fact occurred. The answer was that it had, and we were provided with a comprehensive Wildlands report that included the data it had reported as part of the Application from the 10 October-31 October 2023 survey, together with data from two further surveys, one between 11 December 2023 and 8 January 2024, and a second between 12 March 2024 and 11 April 2024.

440. In summary, results from the December-January survey were largely consistent with the earlier October survey, although indicating an elevated level of activity over short periods at a site near proposed Turbine T5.

441. Results for the March-April survey, however, painted quite a different picture, with a much higher level of nightly bat activity and each survey night recording over 100 bat passes at multiple sites.

442. Wildlands conclusion was:

> *"Overall, while the acoustic surveys did find seasonal fluctuations in bat activity at the site, it is considered that the results do not change the previous assessment of effects and proposed mitigation measures…."*

443. Wildlands continued to recommend a further baseline acoustic survey be undertaken between May and September prior to construction of the WWF.

444. DoC's comments on the applications, taking account of this additional survey data, made the following points, in summary:

- While construction has the potential to have adverse effects on bats, the concerns of the author were primarily related to operational effects identified by Wildlands;
- Survey results from Te Uku did not support a conclusion that effects on bats will be acceptable. In particular:
    - DoC reiterated a point Wildlands had noted, to the effect that carcases 'planted' at Te Uku to assess searching efficiency were not fact located. DoC attributed this to rapid scavenging. The same phenomenon suggested that any bats killed at the wind farm were likely to remain undetected.
    - The ten year survey which had been undertaken at Te Uku had not sought to analyse changes in bat numbers over time statistically.
    - The suggestion that long-tail bat activity had significantly decreased at the turbine sites implied a negative impact on bat activity.
    - DoC noted the same points as had been made in the Wildlands survey also about the differences between the two sites;
- While DoC was supportive of the proposed curtailment protocol, if the Panel was minded to grant consent, DoC recommended that the protocol apply at all thirteen turbines, not just the three suggested by the Applicant, based on the recorded high level of bat activity across the entire site;
- The limited curtailment proposed was unlikely to reduce overall risk based on the latest survey results, and the absence of any data from winter;

- DoC recommended an alternative approach, involving 'live curtailment' where bat detectors are installed on the site and trigger turbines to turn off when bats are present or alternatively curtailment when modelling indicates that bats will be present, based on the data of bat activity (termed 'smart curtailment');

- Even if live curtailment were employed, residual risks would remain.

445. In its response to DoC, the Applicant:

    - Disputed the suggested that effects on bats had been underestimated, noting Wildlands' acknowledgement that adverse effects from collision or barotrauma may be moderate;

    - The inferences drawn from Te Uku had not been advanced as a definitive statement that there will be no effect. Rather, Te Uku was referred to as it is the best available information on post-construction monitoring from a wind farm near a known population of bats;

    - The proposed conditions focus on three turbines initially, as they are in close proximity to high bat activity areas, but measures will be revisited based on site-specific information. The Applicant considered the suggested approach similar to the 'smart curtailment' DoC had proposed.

446. Ngaati Te Ata highlighted the cultural significance of Pekapeka Bats in its Comment and produced an Ecological Report providing what was termed a 'snapshot' tree survey of bat roosts on the Maunsell property located between proposed turbines T12 and T13, and on a property north of the wind farm site, together with evidence of flight passage between bush blocks, wetlands and paddocks within and immediately adjacent to WWF.

447. We note also the Maunsell Comment advising of their recording of bat passes on their property, which is located between proposed turbines T12 and T13.

448. The Applicant's response to these comments included criticism of the Ecological Report Ngaati Te Ata had produced, querying the qualifications of its authors in this field. There is some justification for that criticism but the message in the Report Ngaati Te Ata had provided, and indeed the supporting Maunsell commentary, is consistent with the latest Wildlands survey, and demonstrates that there is significant bat activity within and around the wind farm site.

449. Once again, we had a number of questions of our own for the Applicant. We note its responses that:

- The proposed curtailment conditions are based on current literature rather than analytical data, and are proposed with the intention of being a baseline to be reviewed once an analytical study has been undertaken to incorporate the relevant environmental data;
- Turbine T13 should be added to the proposed conditions as one of the turbines subject to initial curtailment;
- The same fund as was proposed for avifauna-related pest management measures would also address bats;
- Monitoring of bat populations over time is challenging and so the Applicant proposed to rely on on-site monitoring techniques to provide direct evidence as to whether the wind farm is having an adverse effect, with adaptive management measures required to be implemented if there is evidence of blade strike and/or barotrauma discovered through incidental carcass observations and/or thermal imaging, and/or if acoustic surveys show a decrease in bat activity;
- Pest control has been shown to be effective for increasing bat survivability, but measuring population gain as a result of pest control (or other compensation measures) will be challenging.

450. Mr Lambie reviewed the Application documents, the responses we obtained to our requests for information, and the Comments we had received (and the Applicant's response to those Comments). His views, in summary were:

- In places, bat activity is very high;
- It is clear that an assessment of winter activity is needed to fully inform the proposed curtailment strategy and lack of information leaves uncertainty that curtailment will result in mitigation of the potential effects down to a suitably low level;
- Ideally the placement of all turbines should ensure that the blade swath is at least 200m away from areas of high activity;
- The proposed placement of turbines relatively close to Waiuku Forest is risky, and while the Applicant's responses to the Panel's questions indicate little room

for flexibility at least for turbine T6 because of competing considerations, movement of those turbines should be considered;

- The assessed moderate level of adverse effect after avoidance, remediation and mitigation occurs across the site, including the parts within the Coastal Zone;
- There is potentially a significant adverse collision effect on bats and the proposed adaptive management framework is inadequately set up to address them;
- The curtailment proposal by the Application is potentially both inefficient and ineffective. Mr Lambie noted in particular that the proposed revised cut-in wind speed was untested;
- Redrafting of the proposed conditions and Bat Management Plan is required to capture triggers for adaptive management, robust monitoring, and a planned approach to establishing an off-site offset;
- The strategy requires active or programmed curtailment of every turbine where the presence of bats has been identified;
- While the suggestions of alternative approaches from DoC go some way towards providing comfort, there is uncertainty as to whether current bat protection methods are suitably sensitive to resolve the uncertainty that a curtailment strategy will reduce the effects of an acceptably low level;
- While Mr Lambie had suggested some changes to conditions to improve the certainty of outcome, *"there remains insufficient information for me to advise that the consent can be granted."*

451. We have already noted the Applicant's response to Mr Lambie's Report in our discussion of potential avifauna effects.

452. By contrast, DoC's response to Mr Lambie's Report was to indicate that his conclusions were consistent with those reached by DoC's expert ecology reviewer, Dr Colin O'Donnell.

453. DoC also clarified that in its view, even with the adoption of its initial suggestions, effects on threatened bats are likely to be unacceptably adverse.

454. DoC also agreed that even with a 200m setback from supposed high activity areas, there will likely be an unacceptable level of bat mortality if all turbines are not curtailed.

455. Reviewing the material ourselves, there are obvious parallels between the position in relation to avifauna and that related long-tailed bats. Long-tailed bats have the same threat status as Australasian bittern and require a similarly rigorous assessment of the potential risk of adverse effects.

456. The Applicant suggested an adaptive management approach to effects on long-tailed bats as well, and thus the principles set out in Part J above drawn from the case law are equally applicable. As with avifauna, we find that the assessment of the existing environment for long-tailed bats in the Application documents was inadequate. Wildlands Report noted the deficiencies in the data and the likelihood that the data it did have was both unrepresentative and potentially understated in terms of potential effects.

457. We take on board the advice of both DoC and Mr Lambie that baseline data remains deficient in the absence of winter monitoring.

458. Clearly this is an issue, but the problem with the Applicant's approach to bats is not so much a shortage of monitoring data, but rather that its proposed management response to effects on bats does not match the data that it has already obtained.

459. Thus, while the approach of having an initial focus on the few turbines where material levels of bat activity had been detected had a reasonable rationale based on the October 2023 data, and the December 2023/January 2024 results did not seriously call that approach into question, we found it extremely difficult to understand how Wildlands could continue to support that approach in the face of the data obtained in March/April 2024.

460. The data went from a situation where a relatively small number of turbines were considered to be near areas of bat activity, to one where the reverse was the case. The turbine sites not near a level of significant bat activity were the exceptions rather than the rule.

461. We find it extremely difficult to understand why Wildlands did not consider that that data altered its assessment of effects and the potential mitigation measures applied to those effects. We consider it required rather more explanation than the brief conclusion we have quoted above.

462. We asked what test had been applied for identifying the turbines the subject of initial curtailment, pointing to the data obtained in March/April 2024 as suggesting that Turbine 13, for instance, appeared to be near sites of significant activity. The Applicant's

response was to accept that Turbine 13 should be added to the list. It did not consider the implications of that acknowledgement for other turbines, also near significant levels of bat activity.

463. At the heart of the Applicant's proposed management response to bats is use of an elevated cut-in speed at selected turbines. The default speed is 5 m/s "*unless site-specific information indicates otherwise*". Wildlands based that speed on offshore articles that discussed a variety of cut-in speed options. 5 m/s is at the lower end of the range discussed. Mr Lambie described it as untested. We agree. We observe that the Applicant implied that overseas experience with bats cannot be relied upon when dealing with New Zealand long-tailed bats in a different context[110] and in our view, there can be no certainty that an indigenous bat species will exhibit the same behaviour as overseas species in this respect either. This appears to us to be an example of 'suck-it and see'[111].

464. The Applicant's proposed conditions provide for an examination of site conditions, and variation from the default if required. That approach raises the question as to why the Applicant has not undertaken the necessary work already, so that it could suggest a management regime that was thoroughly analysed and technically robust. We consider that a serious defect in the Applicant's case.

465. As was the case for avifauna, this was not a left field hypothesis that emerged in the process, and which the Applicant might reasonably defer to a future expert assessment process. The recent data may have increased the risks, but the approach adopted was always questionable in our view.

466. Another consequence of the findings in the March/April period is that any comfort that might have been taken from the Te Uku Wind Farm post construction monitoring and assessment, which was already somewhat questionable for the reasons that DoC gave us, was further diminished. If as we were advised, the level of activity on the Project site was already greater than at Te Uku based on the October 2023 monitoring, the significantly increased levels of activity monitored in March/April 2024 mean that the comparison between the two is even less applicable.

467. As Mr Lambie has noted, the assessed level of effect on long-tailed bats in Wildlands' Report is a potentially moderate level of adverse effects remaining after avoidance,

[110] Applicant's Response to Request for Information #117, dated 22 July 2024
[111] *Refer Newcastle & Hunter Valley Speleological Society Inc v Upper Hunter Shire Council [*2010] NSWLEC 48 at [184] discussed in Part I above.

remediation and mitigation. In terms of the EIANZ guidelines the Applicant proposed to apply, that level of effect demands off-setting or compensation. The Applicant did not suggest that off-setting was an available option in this case and, again relied on its proposed compensation arrangements. For the same reasons as we have provided in avifauna, the compensation provisions lack sufficient detail to give us confidence that there will be a reasonable exchange of value. The Applicant's acknowledgement that measuring bat population gain as a result of pest control or other compensation measures will be challenging, also means that it may never be known with surety as to what beneficial effects such measures have had relative to the assessed adverse effects.

468. We also have little confidence that the level of adverse effects on the site will be able to be established with any certainty. The fact that carcass monitors at Te Uku were unable to locate carcasses that had been 'planted' to test the adequacy of the monitoring is deeply concerning.

469. The Applicant suggested that piloting a site-specific curtailment system for long-tailed bats will increase knowledge of the impact of wind farms on long-tailed bats, and that this would be a positive feature of the project. Our concern was that if the system could not be relied upon to identify when and where it was failing, an entirely false message might be taken from its supposed 'success', posing a broader threat to a Nationally Critical Threatened species than just at this site.

470. It also calls into question the ability of the Project to meet one of the criteria for acceptable adaptive management, as set out in the *Sustain Our Sounds* decision, namely that effective triggers are in place to ensure remedial action is taken before effects are overly damaging.[112]

471. Both DoC and Mr Lambie went down the path of trying to devise a more adequate management process for long-tailed bats involving potential curtailment at all turbines. Mr Lambie, however, identified uncertainty that current bat detection methods are suitably sensitive to allow for the live curtailment DoC suggested and Dr O'Donnell's response for DoC made it clear that this was very much a fallback option, if consents were going to be granted.

472. Mr Lambie identified other issues around the location of turbines in the vicinity of higher levels of bat activity, and the desirability of providing greater separation. This also would

[112] *Sustain Our Sounds* at [133]

have merited further consideration, but the Applicant's response did not take up that as a possibility, and we do not have a sufficient understanding of all of the issues that any further restrictions on the location of turbines would have to direct that as an outcome. This also is a problem generated by the fast-track process.

473. We have already canvassed the relevant Plan provisions, starting with the direction in the NZCPS that effects on threatened fauna such as long-tailed bats be avoided in the Coastal Environment and a precautionary approach be applied, and including Regional Policy Statement and District Plan provisions that we have noted in Part J above.

474. The end result is that we have come to the same conclusion in relation to long-tailed bats as that in relation to avifauna, although for different reasons: namely that in this respect the information provided by the consent Applicant is inadequate to determine the Application and we are not able to resolve the issues we have identified.

PART L: SEDIMENT AND EROSION EFFECTS

475. We describe the nature and extent of earthworks and the erosion and sediment control methodology and measures proposed during the construction phase above.[113] More specifically it is proposed that the earthworks activities would be undertaken in general accordance with the Waikato Regional Council document titled *'Erosion and Sediment Control – Guidelines for Soil Disturbing Activities'* (Technical Report No. 2009/02 – dated January 2009) and through using current best practice techniques, and that any discharges from sediment control devices would meet the permitted activity standards in the Waikato Regional Plan.

476. In response to our questions as to whether Auckland Council's 'Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region June 2016 Guideline Document 2016/005 Incorporating Amendment 3' (GD05) was more recent best practice, the Applicant's response was that as the site was within the jurisdiction of Waikato Regional Council any reference should be to *'Erosion and Sediment Control – Guidelines for Soil Disturbing Activities'* (Technical Report No. 2009/02 – dated January 2009), while accepting that GD05 was also best practice and used in the Auckland Region. Mr Pearce, erosion and sediment advisor to the Panel, had a differing view and cited reasons and examples where GD05 provided a higher standard of ESC. Initially agreeing with the Applicant, the Regional Council later advised that it concurred

[113] See Part C

with Mr Pearce's view that GD05 might be used in conjunction with a condition requiring a 4% design volume requirement for all Decanting Earth Bunds/Sediment Retention Ponds.

477. We adopt that position.

478. We also requested additional information as to the earthworks methodology and erosion and sediment control measures including: discharge monitoring standards and their measurement, chemical testing for the Flocculation Management Plan, and example details of how the overarching approach to erosion and sediment control can be implemented on site in specific areas. Similar matters were raised by the Regional Council in their invited comments, noting that the Project *"…at the time of implementation would likely comprise one of largest scale earthworks operations occurring within the Waikato Region."*[114] and recommending staging, increased capacity standards and more detailed assessment of the potential sediment discharge effects on downstream aquatic receiving environments. The Applicant responded to the Regional Council's issues with a 20ha staging limit, increased capacity on devices and other amendments to the conditions following a meeting with the Regional Council. We record that the Applicant declined to provide the detail on how the approach to erosion and sediment control can be implemented on site in specific areas. In the Response to comments from the Regional Council dated 15 July 2024, the Applicant advised that at the meeting with the Regional Council on 8 July 20204, there was agreement, *"… that a more detailed assessment of potential sediment runoff will be provided at the detailed design phase for WRC to approve prior to starting construction."* and conditions 40 and 41 provided for this to occur.

479. In summary the Applicant's position was that the information relating to the draft ESCP is suitable and contains sufficient details for the consenting stage.

480. By contrast, Mr Pearce[115] drew our attention to a number of issues including discharge standards - where and how they measured, inconsistencies within the proposed conditions, lack of assessment as to receiving environments more susceptible to sediment discharge, monitoring issues as to compliance, flocculation, culvert construction/works in watercourses and issues relating to the lack of Site Specific Erosion and Sediment Control Plans.

[114] Invited Comments from Waikato Regional Council, dated 2 July 2024, Section 5.2.1
[115] Memo – Mr Pearce to Panel, dated 2 August 2024.

481. The Applicant, by way of a memorandum from their advisors[116] responded to Mr Pearce's report, with some revisions to conditions, stating that the approach was standard practice and opining *"… that the outcome arrived at is sufficient to allow approval to be granted and works implemented with effects managed appropriately."*

482. We note that the extent of proposed earthworks, and the management of earthworks and other activities, were of interest to Ngaati Te Ata as it could expose:

- Koiwi (skeletal remains)
- Taonga (artifacts)
- Tools and utensils
- Weapons
- Cached items (wetlands)
- Ara (traditional pathways)
- Further evidence of paa and waahi nohoanga (villages) like post holes, midden remnants, storage pits.

483. As it relates to sediment and erosion control, Ngaati Te Ata were concerned with the adverse impact upon "waahi taonga (paa, kaainga, ara hikoi, waterways, repo, among others) waahi tapu (places of significance) including our mataitai (traditional fishing and kaimoana harvesting) areas."[117]

484. Additionally, the Ngaati Te Ata CIA report spoke of their relationship with water, with specific reference to Te Manukanuka o Hoturoa (Manukau Harbour) to the north and east, Te Moananui o Rehua (Tasman Sea) to the west, and Te Awa o Waikato (Waikato River) to the south.

485. There is significant scale of earthworks proposed (2,395,000m^3 over 63.3ha). The Project has significant potential for adverse erosion and sediment discharge effects within downstream receiving environments if these activities are not appropriately managed. The downstream receiving environment includes waahi taonga, waahi tapu, and waterways.

486. When considered in the context of no discharge permit having been applied for, and reliance being placed on meeting permitted activity standards with no assessment of the detailed assessment of the downstream receiving environments or definitive means

[116] Eighth Memorandum of Counsel on Behalf of the Applicant , dated 8 August 2024, BBO memorandum attached.
[117]

of monitoring compliance, we find the situation unsatisfactory. Given the issues identified by Mr Pearce we find that additional information should have been provided as part of this application, and that putting off the provision of that information to a management plan process is inappropriate. However, as discussed in Part E of our report, we do not consider this matter to be determinative as, if all other issues were able to be addressed, this matter could be addressed by revised conditions.

Dust

487. Unsurprisingly for a wind farm site, the Project Site is subject to frequent high wind conditions. Dust is a potential adverse effect on human and ecological health and there are sensitive receivers, including waahi taonga, waahi tapu, and Ngaati Te Ata mataitai areas downwind.

488. Appropriate management of dust emissions is important for these reasons.

489. The draft ESCP states that the Applicant proposes to take surface water from sediment control devices (up to 500m^3 per day) for the purposes of dust suppression during construction activities.

490. As discussed in Part E of our report, consequent on our finding that the proposed take is a non-complying activity under the Waikato Regional Plan, the Applicant has withdrawn that element of the proposal and relies on the ability to import water by way of water trucks and/or to source groundwater as a permitted activity.

491. We also record that the Applicant made a number of amendments to the conditions in relation to dust management.[118]

492. We find that in relation to dust management, the alternative water supply method addresses the concerns identified by the Regional Council about the adequacy of the water supply for dust control, and with the proposed amendments to the conditions, this matter would be appropriately addressed.

118 Third Memorandum of Counsel Response to Comments, dated 15 July 2024, Attachment D

Stormwater

493. The AEE describes the approach to the management of stormwater post construction with further details provided in the accompanying stormwater report.[119] The AAE states that there will be no direct discharge to wetlands, lakes or watercourses[120]. However, we observe that the stormwater report states that;

> *The proposed stormwater approach is to retain the existing water paths and allow the runoff from the proposed access roads to be collected via swales on the sides and discharged through proposed new culverts into the existing watercourses.*[121]

494. The Regional Council's Comment noted the limited information provided on how stormwater from the proposed significant area of impervious surface could avoid potential effects on water quantity and quality in downstream environments. The Regional Council further noted that there was a reliance on the activities being permitted activities, with confirmation being provided at the detailed design stage. The Regional Council suggested either additional information be provided or an application for discharge consent be made.[122]

495. In response to that Comment, the Applicant provided additional stormwater maps as to pre and post maximum flow velocities, opining that in combination with information already provided shows in that almost all receiving environments, the effects would be less than minor, and any minor increases could be addressed in detailed design. In addition, as well as noting that discharge of stormwater was not from a high-risk facility or contaminated site, the Applicant set out details of how the standards were to be achieved; those standards being permitted activity standards of the Regional Plan (Rule 3.5.1.4 and 3.5.11.5) and further condition (8A) to reference the standards.[123]

496. The Panel notes that the Project is located in the Waikato River catchment and subject to Te Ture Whaimana. The Applicant informs us that the Project will "*not impinge on any values, nor affect the health and wellbeing of the Waikato River*"[124].

497. Through its Comment, the Waikato Regional Council referred to the relevance of Te Ture Whaimana, and recommended that the Applicant should provide additional assessment.

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[119] AEE – Appendix S Civil Engineering Report.
[120] AEE Section 5.7.6
[121] AEE – Appendix S Civil Engineering Report, Appendix B - Stormwater Report – Section 5
[122] Invited Comment from Waikato Regional Council, dated 2 July 2024, Attachment 1 – Pages 8 - 9
[123] Response to Comments from Waikato Regional Council dated 15 July 2024
[124] AEE Section 7.4.2 Te Ture Whaimana o Te Awa o Waikato, Page 37

498. In response to the Waikato Regional Council's comments, the Applicant's reaffirmed that its assessment of Te Ture Whaimana is within its application, and noted that the proposed Riparian Offset Plan (ROP) is intended to achieve a net gain in ecological values of the remnant watercourses.

499. In a request for further information by the Panel regarding the implementation of Objectives I and M[125], the Applicant acknowledged in its response that the role of iwi/hapū was not well reflected in the proposed conditions for the preparation and implementation of the proposed ROP, as well as Native Fish Captive and Relocation Plan (NFCRP), Lizard Management Plan (LMP), Avifauna Management Plan (AMP), Bat Management Plan (BMP), and Landscape Mitigation Plan. It suggested amendments to address that, which we agree with.

500. In Part E of our report above, we noted that the suggested conditions do not outline what the Applicant/Consent Holder will do if it is unable to demonstrate the required outcomes will be achieved. We find that this is a potential issue, but not one so serious as to call the grant of consent into question

501. Where Te Ture Whaimana has been applied in the consideration of, and decision on, resource consent applications, the Panel recognises the leading authority *Puke Coal Ltd v Waikato Regional Council*[126], and also recognise the Board of Inquiry decision on the Watercare water take from the Waikato River.

[125] Objective I - The protection and enhancement of significant sites, fisheries, flora and fauna, and Objective M - The application to the above of both maatauranga Maaori and latest available scientific methods,

[126] [2014] NZEnvC 223

PART M: CULTURAL EFFECTS, ARCHAEOLOGY AND HERITAGE

Application and AEE

502. The application contained a CIA report[127] prepared by Ngaati Te Ata, which outlines the iwi's understanding of the Project, and details the values to the iwi in the Waiuku area, the traditional, historical and spiritual association of Ngaati Te Ata with the Project Site and coastline, and identifies sites and areas of significance and importance on, and in proximity to, the Project Site.

503. The assessment framework outlined in the Ngaati Te Ata CIA report sought to identify whether the proposal will:

(a) Conflict with tikanga, values and traditional relationship with taonga and waahi tapu (including contingency plan if something goes wrong with the turbines and whanau are injured or worse),

(b) Degrade or adversely impact waahi taonga (paa, kaainga, ara hikoi, waterways, repo, among others) waahi tapu (places of significance) including our mataitai (traditional fishing and kaimoana harvesting) areas.

(c) Impede ability to exercise kaitiakitanga

(d) Visually and physically compromise the integrity of significant cultural landscapes and natural features including landforms, ridgelines, trees, bush, wetlands, lakes and any other natural outstanding features, including the natural character of the coastal environment.

(e) Provide an opportunity for reinvestment in iwi cultural, environmental, social and economic wellbeing

504. The CIA report identifies areas where there will be adverse effects to relevant values, interests, and sites and areas of significance and importance, and states that the ultimate goal for Ngaati Te Ata is the protection, preservation and appropriate management of the natural and cultural landscape (and resources) in a manner that recognises and provides for their cultural interests and values, and enables positive environmental outcomes.

[127] This document is culturally sensitive and has been withheld from EPA website at the request of Ngaati Te Ata. At the Panel's request, Ngaati Te Ata gave the Panel approval to refer to it in the Panel's requests to the Applicant for information.

505. Although Ngaati Te Ata noted that their preference was not to have a windfarm situated on the Project Site, the CIA report advised that should resource consents be granted, Ngaati Te Ata recommended:

(a) *A partnership agreement between LET Capital Number 3 Limited Partnership and Ngaati Te Ata is agreed to ensure the protection and management of the cultural heritage matters raised in this report. This includes any matters of a commercial nature agreed to by both parties.*

(b) *That a Cultural Heritage Management Plan be undertaken and implemented including the covenanting of all identified paa and cultural heritage features and the return of these cultural resources to Ngaati Te Ata.*

(c) *That further discussion with LET Capital Number 3 Limited Partnership is undertaken regarding the implications of the windfarm proposal to identify information gaps, raise issues or opportunities we had not foreseen, and clarify and reach agreement of those issues as identified in this assessment*

(d) *It is our expectation that this CIA report continue to assist with ongoing decision making and ensure Ngaati Te Ata issues, concerns and values are provided for including resource consent requirements, and to assist with site and route planning to avoid areas of cultural significance.*

506. The AEE provided further information on the Applicant's consultation and responses from Ngaati Te Ata, and provided an assessment of cultural effects (includes effects to cultural values). It proposed the preparation of a Cultural Heritage Management Plan (**CHMP**) in partnership with Ngaati Te Ata as a measure to manage adverse effects on Ngaati Te Ata.

507. When the Panel asked a specific question of Ngaati Te Ata relating to the CHMP (proposed conditions 18-21) as part its request for further information, Ngaati Te Ata reaffirmed their original position in opposition, but advised[128] the Panel that should the Project be granted resource consent, proposed Condition 18 would need to be in place.

508. Over the course of processing the application where questions, invited comments, and new information were presented to the Panel, the proposed consent conditions were enhanced by the Applicant to improve the role of Ngaati Te Ata across the Project.

[128] Ngaati Te Ata response to Request for Information dated 19 July 2024

Consideration of Section 6(e), (f) and (g) of the RMA

509. Section 6 directs that in achieving the purpose of the RMA, when managing the use, development and protection of natural and physical resources, persons shall recognise and provide for:

- Section 6(e) - the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga,
- Section 6(f) - the protection of historic heritage from inappropriate subdivision, use, and development, and
- Section 6(g) - the protection of protected customary rights.

510. As discussed in Part D above, both the Waikato Regional Policy Statement and the Proposed Waikato District Plan (Appeals Version) give effect to these instructions.

511. In addition to the sites and areas of significance and importance identified by Ngaati Te Ata in their CIA report, there were two Māori Freehold properties in proximity to the Project Site:

(a) 102 Perry Road, Otaua (Parish of Waiuku West 143A 2 Block) owned by the Huarau Trust, and

(b) Lot 96A Waiuku West Parish Block (Māori Reservation - Urupā) owned/operated by Pukekonui Urupā.

512. The two parties were invited by the Panel to comment on the Project, and Comments were received from both.

513. The Huarau Trust outlined their ancestral association to the property, connection with the Project Site (e.g. the sites and areas of significance and importance identified by Ngaati Te Ata in their CIA report), the establishment and maintenance of Taupiri Nokinoki urupā, and their aspiration to live on the land by establishing papakāinga.

514. The trustee representing the Pukekōnui Urupā also commented on the sites and areas of significance and importance on, and in proximity to, the Project Site, and sought that these sites and areas are avoided and protected from development.

515. The Panel accepts their relationship, and expression of their culture and traditions, with their ancestral lands, water, sites, waahi tapu, and other taonga on, and in proximity to,

the Project Site. These are relevant under section 6(e) of the RMA and the Policy and Plan provisions giving effect to it.

516. With historic heritage, an archaeological assessment was included as Appendix L to the AEE, with the assessment identifying four recorded archaeological sites[129] within the Project Site:

(a) two pā (R13/53 and R13/1), and

(b) two pit and terrace sites (R13/52 and 29)

517. The assessment further advised that the archaeological landscape of the Project Site is "*characterised predominantly by cultural heritage relating to Māori settlement, which collectively form a significant archaeological landscape*."[130]

518. Although the AEE states that the known archaeological sites will be protected from works, there will be adverse effects on the wider archaeological landscape values[131].

519. Heritage New Zealand Pouhere Taonga were invited to comment, and advised the Panel that they were in agreement with the recommendation made by Clough and Associates to obtain an archaeological authority and supported the proposed draft conditions pertaining to archaeological matters (Conditions 22-24), and the preparation of a CHMP with Ngaati Te Ata (Conditions 18-21).

520. Although the Panel acknowledges Heritage New Zealand Pouhere Taonga commentary in this regard, the Comments from Ngaati Te Ata advised that they do not support the Project and prefer that their sites and areas of significance and importance are not destroyed.

521. In considering the relevance of section 6(g) of the RMA, and clause 9(6)(b) of Schedule 6 of the FTA regarding customary marine title groups, and clause 10(1)(h) regarding protected customary rights, the Project must provide an assessment of effects where relevant.

522. The Panel notes that the Project Site is along the west coast (Āwhitu coastline) and adjoins the Tasman Sea.

[129] Clough and Associates (Dec 2023), Archaeological Assessment, page 39
[130] Ibid, page 40
[131] Ibid, page 40

523. The AEE advises the Panel that there are no customary marine titles, and there are no protected customary rights related to the Project Site.

524. Although there are applications lodged by iwi/hapū with Te Arawhiti[132] to consider, determine and confirm customary marine titles and protected customary rights in proximity to the Project, there are currently no agreements/deeds in place for the Panel to consider.

Cultural Effects

525. It is not disputed by the Applicant that there will be adverse effects to the values and interests of Ngaati Te Ata.

526. Cultural effects on cultural landscapes and avifauna and bats, and the effects to cultural values arising from earthworks and stormwater, are discussed above.

527. Our finding (in Part I above) that proposed turbines T6, T10, T11, T12 and T13 should be deleted, will ensure that adverse effects to a number of identified cultural heritage features that inform the cultural landscape are avoided, and also reduce the effects on the current and future beneficiaries of the Huarau Trust in their occupation of ancestral land at 102 Perry Road, Otaua (Parish of Waiuku West 143A 2 Block).

528. It is the remaining proposed turbines T1-T5 and T7-T9 (including their locations and proposed works therein) that the Panel turns its attention to, to understand the extent of the actual and potential adverse effect on the values of Ngaati Te Ata, Huarau Trust and Pukekōnui Urupā Trust.

529. In its application, the Applicant identified that:

(a) Turbine 1 - Is near archaeological site (and cultural heritage site) Pukekōnui Pā, and in proximity to small natural inland wetland;

(b) Turbine 2 - Is near watercourses and two natural inland wetlands;

(c) Turbine 3 - The access road to be constructed to serve T3 runs alongside watercourses and natural inland wetlands;

(d) Turbine 4 - Is near watercourses and an identified cultural heritage site Roto popo;

[132] The Office for Crown Māori Relations

(e) Turbine 5 - The access road to serve T5 potentially runs through, or along the edges of, a recorded archaeological site (and cultural heritage site) Toka kawau Pā, and is near Pukekōnui Urupā;

(f) Turbine 7 - In proximity to archaeological site (and cultural heritage site) Pukekōnui Pā;

(g) Turbine 8 - Very close to archaeological site (and cultural heritage site) Pukekōnui Pā;

(h) Turbine 9 - Very close to archaeological site R13/52 pit and terrace site.

530. Although the Applicant proposes Exclusion Zones and a CHMP, alongside the involvement of Ngaati Te Ata in the preparation and implementation of ROP, NFCRP, LMP, AMP, BMP, and LMP, and Archaeological Management Plan, there are still adverse cultural effects to Ngaati Te Ata waahi taonga (paa, kaainga, ara hikoi, waterways, repo, among others) and waahi tapu (places of significance).

531. Ngaati Te Ata advise in their CIA report that "*once these cultural sites are lost, they can never get them back, not even their remnants.*"[133] Therefore, the adverse effects are considered significant by the Panel should Ngaati Te Ata choose not to participate in the Project, as a third party, through the identified management plans.

532. With the consideration of adverse effects on threatened indigenous avifauna, the Panel highlighted above that this needs to occur against a background where the NZCPS directs that such effects be avoided in the Coastal Environment. Proposed turbines T1-T5 are in the Coastal Environment.

533. The Comments from Ngaati Te Ata articulates the cultural value of birds and bats to Ngaati Te Ata, and how both birds and bats can illustrate their relationship with the Project Site and area, and also how they form their culture and traditions with sites, waahi tapu and other taonga on, and near, the Project Site.

534. In the scenario that Ngaati Te Ata do not actively participate in the Project, then the only effective option is to avoid such adverse effects to Ngaati Te Ata values.

535. It is clear that the Coastal Environment area is a habitat of taonga species to Ngaati Te Ata. Parts J and K of our report identify uncertainty that those species will be adequately protected.

[133] AEE, Appendx K Ngaati Te Ata Cultural Impact Assessment Report, Page 27

536. Having closely considered the above matters, the Panel are of the view that the application would have benefitted from further engagement with Ngaati Te Ata, and a formalised agreement (i.e. a commitment to working together as envisaged and promoted by the Applicant) had been in place prior to our decision. That would have given us greater confidence that adverse effects on Ngaati Te Ata's cultural sites and values would be minimised.

537. Even with such an agreement however, and assuming the proposed turbines T6, T10, T11, T12 and T13 are removed to address landscape and visual amenity effects, the potential adverse effects from proposed turbines T1-T5, and T7-T9 on Ngaati Te Ata cultural values, including but not limited to those related to taonga species, would still in the Panel's view have been significant, and need to be considered in our overall evaluation of the applications.

PART N: HEALTH AND SAFETY EFFECTS

538. Many Comments we received addressed what we have chosen to summarise as health and safety effects, including;

(a) Aviation;

(b) Discharge to air of contaminants from turbine blades;

(c) Proximity of turbines to boundaries/dwellings;

(d) Horses and livestock;

(e) Mental health.

Aviation

539. In relation to aviation safety the Applicant proposes to seek approval from the Civil Aviation Authority (CAA) before installing any turbines and that all hazard lighting would be installed in line with any CAA approval.[134] The AEE goes on to state that as such, there will be no adverse effects on aviation. The AEE makes no assessment as to the effects on paragliding other than a one-line reference to the activity occurring *"… in the wide* [sic] *area."*[135]

[134] AEE Section 10.6.3
[135] AEE Section 4.2

540. The Comment received from Mr Hawker provided some details as to paragliding activities in the area, identifying potential risks and seeking that a risk analysis be undertaken[136]. The Applicant's response to those comments was that in relation to the Maioro training location identified by Mr Hawker, access to the launch site was by way of an informal agreement between the farmer and the paragliding club; and that that access would cease when the wind farm became operational. Accordingly, as the access was from private property that would not be available in the future, *"the risk to paragliders is considered low"* [137] and the club would need to undertake its own risk assessment for any new location (of a launch site) in the full knowledge of the wind farm proposal.[138]

541. We observe that the Applicant has not provided any assessment as to recreational aspects of paragliding activities along the coast and the interaction of those activities with the proposed wind farm, other than from the launch site Mr Hawker references.

542. The legislation directs us to consider Part 2 of the RMA , which includes section 5(2) *"…enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety…"*. We find that the application has not addressed or quantified the potential effect to human health of the recreational paragliding activity and that the Applicant's response to the issue is unsatisfactory.

543. From Mr Hawker's description, use by paragliders of the updrafts from the coastal cliffs on the western edge of the site is an existing activity that, as far as we are aware does not need a consent. If the launch location relocates a little further north, the health and safety issue Mr Hawker identifies (of inexperienced paragliders being blown back into the northern most coastal turbines) will remain.

544. The Applicant's failure to address the substance of the issue is disappointing. We will take it into account in our overall evaluation of the applications.

Discharge to air of contaminants from turbine blades

545. The potential emissions of bisphenol A (**BPA**) from leading edge erosion from wind turbine blades was an issue raised in many of the Comments received. The concern expressed was that microplastics/ toxic compounds from the turbine blades could

[136] Mr Hawker, Invited Comments.
[137] Response RF1 #2 and #3, Dated 19 July 2024, Row 109
[138] Response to Invited Comments by the Applicant – dated 15 July 2024, Row 65.

potentially contaminate soil, watercourses, and roof drinking supply systems, including the Waikato River.

546. In its response to Comments, the Applicant stated that;

"Modern wind turbines contain very low levels of BPAs in the epoxy used in their construction. The epoxy is protected by other coatings, including paint. Turbines are maintained to prevent leading edge deterioration or broken blades. Concerns about BPAs have never been substantiated in relation to any other wind farm proposal in New Zealand."[139]

547. In relation to this matter , we were assisted by the memorandum of Dr Caldwell provided by Waikato Regional Council as to the potential emission rate, the amount of BPA contained within a rotor blade and the significance of exposure to microplastics and BPA emissions from the turbines.[140]

548. We accept that routine maintenance and replacement of the blades is a way of minimising any potential discharge, and we prefer the advice of Dr Caldwell as to the unreliability of suggestions as to the estimated 62 kg loss of BPA per annum along with his view that roof water contamination is likely to be a minor exposure route when compared to other sources.[141] We find that the potential effects of BPA discharge is less than minor.

Proximity of turbines to boundaries/dwellings

549. The proximity of turbines to boundaries and dwellings gave rise to concerns raised through Comments about health effects from noise and shadow flicker, and the potential for turbine blades (or parts thereof) to break off and fly significant distances.

550. The Application included both noise and shadow flicker assessment reports with mitigation of those effects by way of curtailment programmes in the turbines, Noise Reduction System to meet the acoustic standard in the Proposed District Plans[142] and computer programmes in individual turbines which switch the turbine off so that the shadow flicker international guideline standards are met[143]. The Applicant responded to

[139] Response to Invited Comments by the Applicant – dated 15 July 2024, Row 59, *etal*.
[140] Memo of D J Caldwell attached to Waikato Regional Council response, dated 15 July 2024, to question from the Panel
[141] Memo of D J Caldwell attached to Waikato Regional Council response, dated 15 July 2024, Page 3 Final Para
[142] AEE – Appendix Q – Sections 6 and 8
[143] AEE – Appendix CC

the matters raised through the Comments received and the identified of conditions to ensure mitigation would be implemented.

551. We have considered the amenity implications of shadow flicker in Part I of this report. Our finding that Turbines T6 and T10-13 should be deleted from the WWF would significantly reduce received noise and shadow flicker at adjacent dwellings because of the increased spatial separation.

552. Irrespective, the Panel considers that the application and responses from the Applicant, demonstrate that these issues can be appropriately addressed through conditions of consent.

553. The concern about turbine blades flying off[144] reflected overseas examples of this occurring. As far as we are aware, it has never occurred in New Zealand. In our view, this is a structural engineering issue properly assessed by the District Council in its jurisdiction under the Building Act, just as it would assess the structural stability of any new building. We asked Waikato District Council about this, and the Council confirmed that such issues would be addressed as part of a peer review of WWF's structural design that would likely occur as part of Council's Building Act assessment.

554. To the extent that an issue might arise post construction, we consider that the Applicant/ Consent Holder is incentivised to maintain the turbine structures, since any deterioration of the condition of the blades will affect output.

555. Ultimately neighbouring residents have rights of action in the civil courts if damage to property occurs.

556. We also note that the greater separation resulting from deletion of turbines, as above, will lessen any risk in practice.

557. We consider that this is a low risk that we do not need to place weight on.

Horses and Livestock

558. A number of Comments raised concerns related to the effects on horses and livestock in relation to both construction and operational activities. In relation to construction activities, the issue primarily concerns the effect construction traffic, including turbine deliveries, would have on stock movements and horses. The Applicant proposed to

[144] See e.g. the Comment of C and S Maunsell at 16-19

address those issues through communication and complaints arrangement via the Construction Traffic Management Plan.[145]

559. The effects of operational activities of concern relate to visual impacts and shadows, startling horses, particularly thoroughbreds that are trained in the Forestry Road area. The Applicant's position was that horses can be acclimatised to wind turbines.[146]

560. The Applicant directed us to two Environment Court cases. In the first, the Court concluded in relation to potential traffic impacts of construction traffic (related to a wind farm) on horses that;

> *"… the effects which might otherwise arise, particularly from construction phase traffic, using the public roads around the site are inherently minor and would, in any event, be managed and significantly mitigated by the proposed conditions. We have the clear view that the expressed concern about risk to horses is not substantiated by experience in comparable situations elsewhere and that the proposed conditions will reduce such risk as there may be to a level not greater than presently exists."*[147]

561. We discuss in Part N below whether the proposed conditions here can similarly be relied on to achieve the same result, but in principle we find it should be possible.

562. In the second decision, which relates to the Awhitu Wind Farm, the Court similarly concluded that the effects of the wind farm can be managed by communication and the aversive stimuli generated by the turbines is unlikely to cause effects which are more than minor.[148] We have no reason to believe the effects here would be any greater.

563. In summary, we find that the effects as to horses and livestock would be able to be appropriately managed by conditions.

Mental Health

564. A number of Comments we received raised concerns about effects of the Project on their mental wellbeing.

565. We refer to and rely on the Environment Court's decision in Meridian Energy Limited[149] that general anxiety ought not to be treated as an effect, or annoyance as to the

[145] Comprehensive Feedback on Conditions Waikato District Council dated 15 July 2024, Row 85
[146] Consolidated Response to Comments from Invited Parties, dated 15 July 2024, Rows 38, 45, 68, 70, 72
[147] *Contact Energy Limited v Manawatu Wanganui Regional Council* [2011] NZEnvC 406, at [51]-[73]
[148] *Genesis Power Limited v Franklin District Council*, A148/2005, [168] to [170]
[149] [2013] NZEnvC 59

presence of a wind farm as a separate health effect, recognising that the RMA is not a 'no effects' statute.

566. Given that decision, while we do not doubt the sincerity of the people who have raised this issue, we do not consider we would be justified in putting weight on the Comments received in our overall assessment of the applications.

PART O: OTHER EFFECT ISSUES

Consultation

567. A number of Comments raised issues with the adequacy of the Applicant's consultation with the community. Putting aside consultation with tangata whenua, which we have addressed in Parts G and M above, it appears that the principal issues related to the timing of consultation relative to applications being made, and the way in which the Applicant sought to engage with the community. The Applicant was criticised for instance about the choice of personnel who attended public meetings and the information consequently available to attendees.

568. We observe that consultation with a large number of affected parties on a highly contentious application is always a challenge.

569. Ultimately though, while consultation is recognised as good practice under the RMA and the Act requires a Fast Track applicant to report on consultation undertaken, there is no legal obligation to consult with affected parties[150].

570. Accordingly, we do not find it necessary to embark on a review of what the Applicant did or did not do in this regard.

Property Values

571. A number of Comments raised concern regarding the adverse effects of the project on property values and/or saleability of their properties.

572. In the Third Memorandum of Counsel on Behalf of the Applicant Response to Comments dated 15 July 2024, Counsel submitted that clauses 31 and 32 of the FTA, similar to section 104 of the RMA *"… do not provide for the consideration of reduced property values as a separate actual or potential environmental effect."*[151] Counsel

[150] RMA section 36A
[151] Third Memorandum of Counsel on Behalf of the Applicant Response to Comments dated 15 July 2024, Para 28

referred to caselaw[152] in submitting that, "*It is preferable to consider the effects on the environment directly, rather than through the lens of the market's response, out of recognition not only that the market can be an imperfect measure of environmental effects but can be warped by subjectivity."*[153]

573. We note that in a later case[154], the Environment Court held:

> *"Adverse effects on land and property values are not in themselves a relevant consideration, but if they occur, they are simply a measure of adverse effects on amenity values.*
>
> *If property values are reduced as a result of activities on adjoining land, the devaluation would reflect the effects of that activity on the environment. The correct approach is to consider those effects directly rather than market responses because the latter can be an imperfect measure of environmental effects."*

574. Aside from the subjectivity and inherent contestability of valuation evidence[155], considering valuation effects separately from the factors that give rise to them involves double counting of the same effects[156].

575. The Panel is bound by decisions of the Environment Court. Based on the long-established principles outlined in the caselaw referred to above, the Panel finds that effects on property values are not a consideration we should give weight to in our decision.

576. We emphasise that we do not doubt the genuineness of the concern put to us by many Commentators. However, we are not able to base our decision on actual or predicted loss of property values. We have instead focussed on assessing the extent of effects on the environment that might give rise to loss of property value.

Community Values

577. A number of Comments raised the adverse effects the applications have had on the local community[157]. It was suggested that the applications had divided the community,

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[152] *Tram Lease Ltd v Auckland Transport* [2015] NZEnvC 137 at [57] to [60] and *Bunnik v Waikato District Council* A42/96; *Hudson v New Plymouth District Council* W138/95
[153] Third Memorandum of Counsel on Behalf of the Applicant Response to Comments dated 15 July 2024, Para 29
[154] *City Rail Link Limited v Auckland Council* [2017] NZEnvC 204 at [62]-[63]
[155] Where provided. We note that none of the commentators provided us with independent valuation evidence.
[156] *Foot v Wellington City Council* (W73/98), 2 September 1998 at paras 254-255
[157] Refer, for example, the Comment of Thomas O'Neill

with the relatively small number of participating landowners in one camp, and the balance of the community in the other.

578. We note that the Applicant has the legal right to make the applications it has.

579. It is a short step from having regard to concerns of the type we have noted to turning the process into a public opinion poll, which clearly, we cannot do[158].

580. In summary, we acknowledge the concerns expressed, but find that we cannot take them into account in the determinations we reach.

Project Viability

581. Several Comments were received from parties raising issues as to the viability or financial feasibility of the project. Some Comments considered that the cost of the transmission line should be included in the wind farm's financial viability. We have already addressed above (see Part E) that the transmission line is not part of the applications before us, so we do not consider that issue further.

582. As to the other aspects of financial viability on which comments were made, the principal concern arose from the mitigation offered in terms of shutting down turbines when required to meet the proffered noise, shadow flicker and avifauna mitigation measures. Counsel for the Applicant's response to these comments[159], was that any impact on financial viability in relation to these matters was at the Applicant's risk. Mr Williams (the Panel's legal advisor)[160] drew to our attention to cases where the Environment Court has reached the same conclusion[161]. We note in particular, the Court's finding;

> *[42] We acknowledge that the question of the viability of any project is a matter for the applicant and not for the parties. To that extent, the argument that certain configurations are not economic is not a matter for this Court. The Court's role is clearly to set parameters under a plan in terms of the Act or consider a resource consent. Although we recognise that economic well-being is a factor, we do not consider that this means that the Court must seek to maximize or minimise profitability to individual owners from a development. In the circumstances of this case, the key criteria are set out in the Plan itself. Given that this is a non-complying application, the Court would be able to consider any other matter that it considered necessary, together with the general provisions of the Act.*[162]

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[158] See *Contact Energy Ltd v Waikato Regional Council* Environment Court Decision A04/2000 at [254]
[159] Applicant's Consolidated Response to Comments dated 15 July 2024 at #111 and #123
[160] Waiuku Wind Farm Legal Advice – 8 July 2024
[161] *Motorimu Limited v Palmerston North City Council* (W067/2008) at [80]-[86].
[162] *Royal Forest and Bird Society Incorporated, Te Runanga O Ngati Awa v Whakatane District Council and Mirador Limited*, [2012] NZEnvC 038 at [42]

583. We observe that we did not receive any evidence from the parties as to the quantum of any financial risk. However, we note that the Applicant did provide an estimate of the reduced output of the nose and shadow flicker mitigation, which appeared to support the Applicant's advice that it was not material.[163]

584. In line with the Court's decisions we find that any financial viability is a risk for the Applicant. It is not our role to make a determination on this matter, even more so when we have no specific evidence before us that would cause us to question its viability.

Terrestrial and Freshwater Ecology

585. In relation to terrestrial ecology, we have addressed the matters as to avifauna and bats at Parts J and K above, and so do not repeat that here. Residual terrestrial ecology matters relate to vegetation removal. Freshwater ecology matters relate the impacts primarily from earthworks and erosion and sediment control. Again, we have addressed those matters in Part L above. Residual effects to be considered are in relation to wetlands and discharges to water bodies.

Vegetation Removal

586. The AEE described the vegetation to be removed. It assessed the vegetation types as generally being of low quality and proposed conditions for restoration planting in relation to the moderate value pioneering scrub being removed.[164] Mr Lambie concurred with AEE assessment and suggested some changes to the conditions so as to specify the maximum areas to be removed and measurable targets to canopy closure to ensure the mitigation proposed was effective.[165]

587. Noting the low quality of the vegetation to be removed, the restoration planting proposed, subject to the amendment to the conditions suggested by Mr Lambie, the Panel considers that this is a matter that is satisfactorily addressed by proposed conditions.

Freshwater Ecology and wetlands

588. The application set out the methodology and assessment of effects on freshwater ecology for wetlands and watercourses, with a focus on culvert installation and associated diversions and earthworks activities.[166] We note that the AEE records that

[163] RFI 1 Response #19.
[164] AEE Section 11.4.1.2
[165] Memorandum – J Lambie – 2 August 2024, Pages 4- 5
[166] AEE -Section 11.4.2 and Appendix G

the watercourses generally flow in a southwest direction towards the Waikato River. Comments received raised concerns as to wetlands being potentially affected by changes to groundwater conditions from the proposal and sediment entering watercourses. Responding to those Comments[167], the Applicant set out the reasons given in the Geotechnical Report (Appendix R) as why the hydrological function of the wetlands would not be altered. In addition, proposed condition 111 requires a report prior to the commencement of the works from a suitably qualified person that the hydraulic function will not occur.

589. Mr Lambie's view was that wetlands and lakes had been appropriately addressed in the application and responses[168], apart from suggesting that condition 111 could be improved by requiring monitoring from wetlands, before, during and after construction, to ensure no damage to wetlands from construction occurred and any issues raised by Mr Pearce as to discharge quality from sediment control devices. We also record that Mr Lambie similarly agreed with the Applicant's assessment of watercourses, their vegetation and the communities of plant and micro invertebrates, with a difference of opinion as to the approach to at risk fish species and the scale of offsetting as to culverts, but that these matters could be addressed by conditions.[169] However, taking account of Mr Pearce's concern as to whether or not the permitted activities standards for sediment discharges could be met, it was difficult to conclude that the effects on aquatic ecosystems are likely to be low.[170]

590. We have already set out our finding, that the Applicant has not applied for a discharge of sediment permit and has not assessed the implications of any discharges for the Vision and Strategy that forms part of the Regional Policy Statement.[171]

591. In terms of wetlands, we find that the Applicant's approach has primarily been one of avoidance and that, all things being equal, accept that conditions could be imposed to address the issues raised.

592. However, in relation to discharges to watercourses, we find the lack of assessment as to the receiving environment, ultimately the Waikato River, to be problematic. As

[167] Applicant Response to Comments from Invited Parties, dated 15 July 2024, Item #127
[168] Memorandum, J Lambie Dated 2 August 2024, Paras 14 – 18 and 21 – 27; and Memorandum, J Lambie, Dated 10 August 2024, Paras 10 - 11
[169] Memorandum, J Lambie Dated 2 August 2024, Paras 28 - 33
[170] Memorandum, J Lambie Dated 10 August 2024, Paras 10-11
[171] See Part E above

previously stated[172], the material lack of information is a relevant factor in our overall consideration of the applications.

Traffic and Transport

593. Concerns about traffic, particularly construction traffic, were raised in a number of Comments. Once operational, traffic associated with the WWF will be minimal and only involve light vehicles.

594. In relation to construction traffic, the AEE (at section 5.6.3.1) states:

"The construction phase will result in large vehicle trip generation. The key transportation activities during this phase involve the following:

- *Transportation of wind turbine components, construction plant and heavy equipment from the Port of Auckland.*
- *Transportation of construction materials for roading and infrastructure.*
- *Transportation of contractors to and from the site.*

…

The most intensive vehicle movements will occur during concrete pours, as off-site concrete batching plants will be used. It is anticipated that there will be a continuous pour within a day for each turbine base. This will likely generate 100 concrete truck deliveries, or around 8 – 10 deliveries per hour over a 12 hour period."

595. The Applicant has proposed a number of consent conditions to address the effects of traffic generation including the preparation of a Construction Traffic Management Plan (CTMP) and a Turbine Component Transport Plan (TCTP) which are to be certified by the Waikato District Council.

596. The AEE (at section 11.2.6) states:

"It is recognised that during the construction period the Project will result in very high traffic volumes on the local rural roads, which may cause disruption and disturbance to surrounding properties. The majority of the traffic volume will occur during daytime hours, reducing the disturbance, while notification will be given to neighbours of nighttime deliveries (e.g. deliveries of turbine components). All traffic will be managed by the CTMP, which will be adapted

during construction to ensure that disruption to surrounding properties is minimised to the greatest extent practicable."

597. The Panel agrees that the nature and level of traffic generation will be disruptive to local residents and other road users during the construction phase of the project which is estimated to take about eighteen to twenty months. These effects are similar to other large scale construction projects of this nature and to a large extent are unavoidable if the project is allowed to proceed. While they will not be welcomed by local residents and other road users, the Panel is of the view that (like has occurred in relation to the construction of numerous other wind farms) these types of effects are capable of being appropriately managed by way of appropriate consent conditions.

598. We had a particular concern as to whether the proposed conditions adequately addressed safety issues around the interaction between construction traffic and the school bus service, including children waiting for, and climbing on and off the school bus, and school children walking and cycling on the construction traffic route. We asked the Applicant about that issue, and potential conflicts also between construction traffic movements and stock movements.

599. The Applicant proposed condition amendments to address these issues, but in our view, the conditions continued to lack direction and specificity. Proposed provisions for the safety of children for instance were proceeded by the statement, "*safety measures **could** include…." (*emphasis added).

600. This was unsatisfactory. Similarly, the provisions governing interaction with stock, particularly horses on or beside the road (as noted in Part N, a concern of residents on and near Forestry Road) similarly lacked direction. We compared them (unfavourably) with the conditions discussed in *Contact Energy Limited v Manawatu-Wanganui Regional Council*[173] requiring trucks passing an equestrian centre to limit their speed when there are horses in roadside paddocks to 40kph (oversized loads were limited to 10kph), to stop if a horse takes fright, and to use CB radios to track school bus and stock movements.

601. The Environment Court found the concerns expressed about these arrangements to be unfounded, and had we concluded consent might be granted to WWF, we would be looking to impose a similarly directive approach.

[173] [2010] NZEnvC 406 at [56]

602. Another area we found to be too vague lay in the use of the construction route which had been assessed. We were told that construction traffic would be required to use that route, but conditions did not reflect that advice.

603. Again, this was something we felt found significant sharpening in the Conditions.

604. The Davies and Kingham Comments expressed concern about the Conditoins governing maintenance and repair of affected roads during and after completion of construction. We asked Waikato District Council about those concerns, but the Council did not appear to consider there to be a material issue. We rely on the Council's expertise and interest as the relevant road authority.

605. Waikato District Council sought a bond for required roadworks. The Applicant said it was unnecessary. We agree with the Applicant. Having initially suggested that the bond amount might be agreed, the Council suggested a bond of $50,000 in response to our question (as to what would happen if agreement was not possible). That is a relatively small amount against the investment the Applicant is proposing to make and we do not consider there to be any real risk of financial default.

606. In summary, therefore, the conditions presented to us were not in a form we would have endorsed, had we been proceeding down the track of granting consent. They required significant work. However, we do not find this to be an insuperable problem, such that it might impinge on our consideration of whether or not to grant consent.

Noise

607. Concerns about noise were raised in the Comments from surrounding landowners. There are two aspects of noise to consider – during construction and during operation. In relation to construction noise, the AEE states (at section 11.2.4):

> *"… no mitigation measures are required or proposed to address daytime noise generated from construction activities as levels will be compliant with NZS 6803 and therefore are considered to result in a reasonable level of noise on sensitive receivers.*
> *To achieve compliance with NZS 6803 nighttime noise limits during foundation works, the Acoustic Assessment recommends that:*
> - *Temporary noise barriers are installed where construction equipment is operated within a specified distance of occupied dwellings (refer to Table 8 of Acoustic Assessment).*
> - *Construction works are scheduled to avoid periods when dwellings are occupied or to coincide with periods where people are less sensitive to noise e.g. daytime.*
> - *Alternative, quieter equipment is utilised.*

- *The community is kept well informed about upcoming works in the area.*
- *Detailed tracking of complaints about construction noise.*

A consent condition is proposed requiring a Construction Noise Management Plan (CNMP) to be submitted to WDC for certification prior to construction commencing. The CNMP will incorporate the above mitigation measures and ensure that construction noise will be appropriately managed during construction activities to remain at a reasonable level."

608. The approach proposed by the Applicant in relation to construction noise is in accordance with normal and accepted best practice. Importantly, the proposed conditions require compliance with NZS6803:1999 Acoustics – Construction Noise and the proposed Construction Noise Management Plan (to be certified by the Waikato District Council) would detail how that outcome is to be achieved.

609. In relation to operational noise from the WWF, the AEE (at section 11.8.1) notes:

"The PDP requires assessment of noise from wind farms to be undertaken in accordance with New Zealand Standard NZS 6808-2010 Acoustics - Wind farm noise (NZS 6808). NZS 6808 provides a methodology for the prediction, measurement and assessment of noise from the proposed project's wind turbines."

610. Under NZS 6808, noise levels from turbines should not exceed the background noise level (L_{A90}) by more than 5 dB, or a level of 40 dB L_{A90}, whichever is greater. The AEE states (at section 11.8.2.1):

"The predicted noise levels from the proposed wind turbine generators, without noise mitigation, is summarised as follows:
- *Noise levels at 14 of the receivers are predicted to exceed 40 dB L_{A90}.*
- *The highest predicted level is at R3 (522 Forestry Road), with a level of 44 dB L_{A90}."*

611. The Applicant proposes that:

"The above-described predicted noised level exceedances can be mitigated through the application of varying levels of Noise Reduction System (NRS) modes at individual turbines, which is proposed."

612. Conditions are proposed by the Applicant which require compliance with NZS 6808 along with compliance testing. The Panel considers that this would result in an acceptable outcome in relation to the management of turbine noise effects for potentially affected dwellings.

613. Waikato District Council queried whether the noise conditions should apply to dwellings on currently vacant land. The Applicant opposed that extension.

614. We largely agree with the Applicant. It has assessed the effects on the existing environment, and it is unreasonable that its operations (once consented) should be restricted with reference to houses constructed in future. The exception is the proposed Maunsell house at 74 Thomson Road. This is sufficiently far advanced that in the Panel's view, it should be assumed to be present for this purpose (i.e. be part of the 'existing environment').

615. While we understand the concern expressed by those who provided Comments on the issue, we consider that concern misplaced. 40 dB L_{A90} is the noise level usually specified to ensure that people inside their homes can sleep. Wind in the trees could exceed that level. The issue with wind farm noise is when that noise is superimposed on a very quiet background noise level. Although a wind farm will only operate when the wind is blowing, that situation can arise when there is a significant elevation difference, so for instance, the wind is blowing, and the turbines operating, on a ridgeline, and it is very quiet on the valley floor where adjacent dwellings are located. NZS6808 addresses that scenario with the alternative background plus 5 dB limit.

616. The other potential problem is when the installed turbines exhibit Special Audible Characteristics (**SAC**s). NZS6808 imposes a noise penalty for the presence of SACs.

617. In summary, we are comfortable that adherence with the limits in NZS6808 will result in an acceptable outcome in relation to the management of turbine noise effects.

618. We note also that with the deletion of a number of turbines we have found to be required for other reasons (refer Part I above), the minimum distance between turbines and any dwelling has increased, providing a greater buffer and reducing received noise accordingly.

619. The only other material issue we had with the proposed conditions was that the Applicant appeared reluctant to commit to its acoustic expert certifying that the performance of the turbines once installed and operational accords with the specifications that formed the basis of their noise predictions. We consider that this is an essential check, and would have required it in Condition had we been going down that track.

620. The noise effects associated with the Central Hub are predicted to *"readily comply"*[174] with the relevant permitted activity noise limits in the Waikato Proposed District Plan and a consent condition reflecting those limits has been proposed by the Applicant.

Fire Risk

621. A number of Comments raised the risk of fire as an issue, including the potential that helicopter-based firefighters will be unable to Access the area quickly.

622. The Applicant's response to the latter issue was that firefighting helicopter pilots are highly trained and will not be constrained from addressing fires.

623. While there have been reported instances of fire at wind turbines overseas, we are aware of only one case of fire at a New Zealand wind turbine (in the Tararuas). In the Panel's view the risk of fire is overstated in the Comments we read.

624. Clearly there is a fire risk, just as there is for any machine in a rural environment. As the Applicant observes, if fire affects third parties, they (or their insurer) will have a right of action against the wind farm operator. We do not consider this a risk that should influence our overall assessment of the applications.

Radio and Television Reception

625. The Davies and Kingham Comments raised the possibility of interference to radio and television signals and recommended an investigation of this potential.

626. The Panel separately sought further information about the absence of assessment of any known existing paths from the Spectrum Radio Management telecommunication license database and any Fresnel exclusion areas.

627. The Applicant provided a comprehensive response[175], noting that as part of its feasibility assessment the Applicant undertook a review of the potential for interference by turbines at the proposed location to frequency spectra performance especially usage related to aviation and telecommunications spectra.

628. It also noted that, "*the proposed site is very different to the more traditional sites such as found on high ridge features as found on the Tararua Ranges. Ranges are natural hosts for transmitters and receivers across all types of usage. The Waiuku site sits low compared to other features in the region and is not a suitable location for frequency transmission or reception which require line of sight*".

629. The Applicant's proposed conditions also contained a requirement that:

"Prior to the erection of any wind turbine, the Consent Holder shall submit to Waikato District Council a report from a SQEP confirming that the final locations of the wind turbines do not affect any known telecommunication pathways or fixed radio high capacity links."

630. We concur with the Applicant's view that no additional technical assessment is required.

Waste and End of Use

631. Policy UFD-P3 – Energy demand management in the Waikato RPS states:

"Development should minimise transport, energy demand and waste production, encourage beneficial re-use of waste materials, and promote the efficient use of energy."

632. Section 15.4.5 of the AEE states:

"Construction contractors will be encouraged to have waste minimisation strategies in place as part of their construction programmes.

The wind turbines are expected to have at least a 30-year lifespan. When decommissioned a large amount of the components will be able to be recycled. Prior to decommissioning a detailed review will be undertaken to ensure that as many materials as possible are recycled.

The agreements with landowners are for a period of 75 years, so there is likelihood of the WWF repowering with new turbines to extend the life of the Project and extend the utilisation of the core infrastructure investment that has been installed."

633. Ms Day suggested in her comment that a bond should be imposed to cover wind farm decommissioning. We asked Waikato District Council about that possibility, and it advised that it did not consider it appropriate to hold a bond for an indefinite period of time against the possibility of decommissioning.

634. Given that the District Council is the only entity that could feasibly hold such a bond, we have not taken the issue any further.

635. In summary, therefore, we consider the Applicant's proposals satisfactory in this regard.

Other Condition Issues

636. The proposed conditions were significantly improved over the course of the Fast Track process from the version attached to the AEE but there remained a number of issues that would need to be addressed before consents could be granted..

637. Had the Panel been minded to grant consent, we would therefore have strengthened many of the consent conditions proposed by the Applicant. As an example, we have previously noted the need to provide much greater direction in the conditions relating to the management of construction traffic.

638. However, it has not undertaken the complete review required for that purpose given the decision reached in the following section, to decline the applications.

PART P: OVERALL ASSESSMENT OF APPLICATION

639. Summarising our findings:

(a) The Applicant's failure to apply for consents for, or to assess the effects of, discharges to the Waikato River catchment during construction is unsatisfactory, given the likelihood that it will be unable to meet permitted activity standards, but not so serious on its on to cause us to decline grant of consents on that account. The potential for stormwater discharges post construction not to meet permitted activity standards is in the same category, but less serious. The Applicant's failure to apply for consent to deposit cleanfill, by contrast, is a technical omission that it would need to remedy before commencing construction.

(b) The Applicant's failure to apply for consents (if required) for its transmission connection to the nation grid is acceptable as we can assess the effects of the applications it has made without that.

(c) We conclude that in most respects, the Applicant has acted in a way that is consistent with the principles of Te Tiriti of Waitangi and Treaty Settlements. Accordingly, this consideration is not a bar to our granting consents.

(d) The applications, if granted and implemented, would provide benefits that the NPSREG requires be recognised and provided for, and would assist in achieving those aspects of the purpose of the FTA focussed on employment and investment. The scale of those benefits, while material, is not so large as to demand grant of consents irrespective of other considerations.

(e) The configuration of the site, and the juxtaposition of proposed turbine sites with nearby dwellings means that the level of adverse effects on a number of properties is excessively high. The compensation proffered for those effects is restricted in ambit (it does not cover all of the properties that in the Panel's view would warrant compensation) and insufficient in quantum to clearly equate to the level of effects. Taking account of the NPSREG and the purpose of the FTA, the Panel has found that if consents are granted, it should be without turbines T6, T10, T11, T12 and T13.

(f) The risk of effects on Threatened and At-Risk avifauna species is excessively high, particularly against a background where the NZCPS directs avoidance of such effects in the coastal environment. While that only covers turbines T1-T5, the Applicant accepted (rightly in our view) that it needed to ensure that effects on key indigenous species would be negligible. The Panel finds in particular that the threat to a Nationally-Critical threatened species (Australasian bittern) over the whole site has not been adequately assessed, and that the Applicant has not provided a sufficient evidential foundation to permit it to embark on the adaptive management approach it proposes for Australasian bittern and for At-Risk indigenous migratory shorebirds. The Applicant proposes compensation as a fallback, but its proposal lacks certainty, both as to the benefits that might be achieved, relative to the adverse effects, and whether adequate ongoing funding can be relied upon. Overall, the Panel has found that the Applicant has provided insufficient information in relation to effects on avifauna to permit the grant of consents.

(g) The risk of adverse effects on long-tail bats is similarly excessively high given their status as Threatened-Nationally Critical. Recently obtained monitoring data indicates that long-tail bats are much more active across the entire site than had hitherto been identified. Continued reliance on a process of curtailment, the details of which were yet to be confirmed, against that background is unsatisfactory. As with avifauna, the Panel finds that the Applicant has not provided a sufficient evidential foundation to permit it to embark on the adaptive management approach it proposes. The Applicant's proposed compensation for residual adverse effects on bats similarly lacks certainty that it would deliver an equality of exchange to be relied upon. The Panel has found that the Applicant has provided insufficient information in relation to effects on avifauna to permit the grant of consents.

(h) The level of detail provided in relation to management of erosion and sediment during construction was unsatisfactory. Potential adverse effects in that sphere are something the panel needs to take into account. Management of stormwater post construction is similarly an issue, but less serious. The Panel finds the Applicant's proposals for management of dust satisfactory.

(i) There will be adverse effects on the cultural values and interests of Ngaati Te Ata. Those effects add weight to the concerns the Panel had about the risk of adverse effects on avifauna, bats, and in relation to sediment and erosion control. In addition, the Applicant's proposed exclusion of known cultural sites does not provide sufficient separation from them, and there remains potential for significant adverse effects on Ngaati Te Ata cultural values.

(j) The Panel's review of health and safety issues indicates that most issues do not pose a serious problem. The exception is the risk to paragliders from the coastal turbines at the north-west of the site which, in the Panel's view, the applicant has not adequately assessed.

(k) The Panel's review of other issues identifies matters that either should not bear upon its ultimate decision whether or not to grant consents, or can be adequately addressed in conditions. In some areas, however, the draft conditions need more work to provide assurance that they would deliver acceptable outcomes.

640. Our conclusions in Part I of our report, summarised at (e) above mean that any consents we granted would be limited to turbines T1-T5 and T7-T9.

641. Although the NPSREG and that part of the purpose of the FTA focussed on employment and investment favour grant of consent, the Applicant accepted that neither was determinative of the applications, and our conclusions in relation to avifauna and bats are significant obstacles to grant of consent. We agree with the Applicant's approach to the latter issues, which means that the project should ensure negligible adverse effects on the key Threatened and At-Risk avifauna species, and on long-tailed bats. The Applicant has not, however, put sufficient information before us to provide confidence that this will be the case, and we have found the proposed compensation arrangements insufficient to overcome that.

642. We find that failure to be fatal to the applications.

643. That conclusion is supported by our findings on erosion and sediment control, and on cultural issues. The health and safety risks to paragliders support it too, although that issue is limited to effects of the coastal turbines at the north-west of the site.

644. We therefore decline the application the Applicant has made for these reasons.

645. For that reason, we have not taken the next step of preparing and circulating a set of draft conditions. We note that for the reasons set out in our report, and summarised above, we would not have been able to identify what changes were required to the revised consent conditions in relation to management of effects on avifauna and bats in particular.



Trevor Robinson (Chair)



Mark St Clair (Member)



James Whetu (Member)

Appendix A- Parties Invited to Make Comment

Commentators marked with*

[redacted]

Owners site:

[redacted]

Additional Parties Invited to Comment

Property Address	Property Owner Name
612 Whiriwhiri Road*	[redacted]
600 Whiriwhiri Road	[redacted]
58 Bird Road WAIUKU	[redacted]
48 Bird Road WAIUKU*	[redacted]
23 Bird Road WAIUKU	[redacted]

451 Bothwell Park Road WAIUKU	[redacted]
557 Whiriwhiri Road WAIUKU*	[redacted]
549 Whiriwhiri Road WAIUKU*	[redacted]
534 Whiriwhiri Road WAIUKU*	[redacted]
358 Bothwell Park Road WAIUKU	[redacted]
399 Bothwell Park Road WAIUKU	[redacted]
708 Whiriwhiri Road WAIUKU*	[redacted]
710 Whiriwhiri Road WAIUKU	[redacted]
396 Maioro Road WAIUKU	[redacted]
350 Maioro Road WAIUKU*	[redacted]
334 Maioro Road WAIUKU*	[redacted]
50 Maioro Road WAIUKU	[redacted]
724 Waiuku-Otaua Road WAIUKU*	[redacted]
34 Maioro Road WAIUKU	[redacted]
36 Maioro Road WAIUKU*	[redacted]
38 Maioro Road WAIUKU*	[redacted]
42 Maioro Road WAIUKU	[redacted]
44 Maioro Road WAIUKU	[redacted]
46 Maioro Road WAIUKU	[redacted]
48 Maioro Road WAIUKU	[redacted]
54 Maioro Road WAIUKU*	[redacted]
56 Maioro Road WAIUKU	[redacted]
58 Maioro Road WAIUKU	[redacted]
58 A Maioro Road WAIUKU	[redacted]
64 Maioro Road WAIUKU	[redacted]
66 Maioro Road WAIUKU	[redacted]
72 Maioro Road WAIUKU*	[redacted]
76 Maioro Road WAIUKU	[redacted]

735 Waiuku-Otaua Road WAIUKU	[redacted]
733 Waiuku-Otaua Road WAIUKU*	[redacted]
356 Otaua Road WAIUKU*	[redacted]
757 Waiuku-Otaua Road WAIUKU	[redacted]
33 Maioro Road WAIUKU*	[redacted]
33 A Maioro Road WAIUKU*	[redacted]
32 Factory Road WAIUKU	[redacted]
Maioro Road WAIUKU – Otaua War Memorial Bowling Green	[redacted]
43 Maioro Road WAIUKU*	[redacted]
45 Maioro Road WAIUKU	[redacted]
51 Maioro Road WAIUKU	[redacted]
3 Hoods Landing Road WAIUKU*	[redacted]
49 Factory Road WAIUKU*	[redacted]
47 Factory Road WAIUKU*	[redacted]
7 Hoods Landing Road WAIUKU	[redacted]
45 Factory Road WAIUKU	[redacted]
9 Hoods Landing Road WAIUKU	[redacted]
41 Factory Road WAIUKU	[redacted]
11 Hoods Landing Road WAIUKU*	[redacted]
Factory Road WAIUKU*	[redacted]
461 Hoods Landing Road WAIUKU*	[redacted]
27 Hoods Landing Road WAIUKU	[redacted]
21 Hoods Landing Road WAIUKU*	[redacted]
23 Hoods Landing Road WAIUKU	[redacted]
25 Hoods Landing Road WAIUKU	[redacted]
41 Hoods Landing Road WAIUKU	[redacted]
Part Allot 151 PSH OF Waiuku West (69 Hoods Landing Road?)	[redacted]
97 Hoods Landing Road WAIUKU	[redacted]

125 Hoods Landing Road WAIUKU	[redacted]
120 Harris Road WAIUKU	[redacted]
383 Maioro Road WAIUKU	[redacted]
102 Motion Road East WAIUKU*	[redacted]
18 Motion Road East WAIUKU*	[redacted]
117 Maioro Road WAIUKU*	[redacted]
85 Maioro Road WAIUKU	[redacted]
83 Maioro Road WAIUKU	[redacted]
75 Maioro Road WAIUKU	[redacted]
73 Maioro Road WAIUKU	[redacted]
69 Maioro Road WAIUKU	[redacted]
67 Maioro Road WAIUKU	[redacted]
65 Maioro Road WAIUKU	[redacted]
8 Hoods Landing Road WAIUKU	[redacted]
10 Hoods Landing Road WAIUKU	[redacted]
71 Maioro Road WAIUKU	[redacted]
77 Maioro Road WAIUKU	[redacted]
20 Hoods Landing Road WAIUKU*	[redacted]
22 Hoods Landing Road WAIUKU	[redacted]
24 Hoods Landing Road WAIUKU*	[redacted]
26 Hoods Landing Road WAIUKU*	[redacted]
140 Hoods Landing Road WAIUKU*	[redacted]
195 Forestry Road WAIUKU*	[redacted]
188 Forestry Road WAIUKU*	[redacted]
369 Forestry Road WAIUKU	[redacted]
399 Forestry Road WAIUKU*	[redacted]
86 Forestry Road WAIUKU*	[redacted]
Ghezzie Road WAIUKU	[redacted]
Wilson Road WAIUKU	[redacted]

Waiuku Rural Preservation Society*

Civil Aviation Authority
Maioro Paragliding Site – Wings and Waves Limited
Highside Paragliding – Skywings*
Fire and Emergency NZ

OIC Listed Parties:
Minister of Resources
Minister of Agriculture
Transpower New Zealand
Counties Energy Limited*
Te Akitai Waiohua Iwi Authority
Ngāti Koheriki Claims Committee
Ngāti Kārwa Ngāti Tāhinga Trust

Local and Iwi Authority:
Waikato District Council*
Waikato Regional Council*
Ngāti Tamaoho Trust
Ngāti Tamaoho Settlement Trust
Te Ara Rangatu o Te Iwi Ngāti Te Ata Waiohua*
Te Whakakitenga o Waikato incorporated
Waikto Raupatu River Trust
Waikato Raupatu Lands Trust
Waikato Land Acquisition Trust

Specified Organisations and Ministers:
Business New Zealand Incorporated
Employers' and Manufacturers' Association (Northern) Incorporated
Environmental Defence Society Incoporated
Generation Zero Incorporated
Greenpeace of New Zealand Incoporated
Heritage New Zealand Pouhere Taonga*
Infrastructure New Zealand Incorporated*
New Zealand Fish and Game Council
New Zealand Infrastructure Commission / Te Waihanga
Property Council of New Zealand*
Royal Forest and Bird Protection Society of New Zealand*
Department of Conservation*
Minister for Arts, Culture and Heritage
Minister for Treaty of Waitangi Negotiations
Minister of Māori Crown Relations: Te Arawhiti
Minister of Conservation
Minister for Infrastructure
Minister of Housing and Urban Development
Minister of Education
Minister for Land Information
Minister of Transport
Minister of Energy (OIC list)

Minister of Local Government
Minister for Climate Change
EPA - OIA team
Parliament Private Sec

Appendix B- Relevant Provisions of the Waikato-Tainui Environmental Management Plan

Section	Objective	Policy
Tribal Strategic Plan - Whakatupuranga Waikato-Tainui 2050	Objective 10.5.1 Collaboration and Consistency *Resource management, use and activities within the Waikato-Tainui rohe are consistent with the vision, mission, values and strategic objectives of Whakatupuranga 2050.*	Policy 10.5.1.1 Collaboration and Consistency *To ensure that resource management, use and activities within the Waikato-Tainui rohe are consistent with the vision, mission, values and strategic objectives of Whakatupuranga 2050.*
The Vision and Strategy for the Waikato River - Te Ture Whaimana o te Awa o Waikato	Objective 11.7.1 Te Ture Whaimana prevails *Te Ture Whaimana prevails in any resource management, use and activity within the Waikato River catchment in the Waikato-Tainui rohe.*	Policy 11.7.1.1 Te Ture Whaimana prevails *To ensure that Te Ture Whaimana prevails in any resource management, use and activity within the Waikato River catchment in the Waikato-Tainui rohe.*
Waikato-Tainui Communities - Ngaa Papakaainga me Ngaa Marae	Objective 13.3.1 Papakaainga development in rural and urban areas *Papakaainga development is sustainable and supported.*	Policy 13.3.1.1 Sustainable papakaainga development *To ensure that papakaainga development is sustainable and supported* Policy 13.3.1.2 Papakaainga development in rural and urban areas

Section	Objective	Policy
		To ensure that papakaainga are able to be developed within rural and urban areas.
Customary Activities - Ngaa Mahi Tuku Iho a Waikato-Tainui	Objective 14.3.1 Waikato-Tainui able to access and undertake customary activities *Waikato-Tainui access to and ability to undertake customary activities and resource use, including along the margins of waterways, is protected and enhanced.*	Policy 14.3.1.1 Access is provided *To ensure that Waikato-Tainui is provided access to regionally, spiritually, and culturally significant sites to undertake customary activities and resource use.*
	Objective 14.3.2 Waikato-Tainui customary activities are protected and enhanced *The ability of Waikato-Tainui to undertake customary activities is protected and enhanced within the rohe, particularly on, in, and around waterways and their margins, including wetlands and reserves.*	Policy 14.3.2.1 Effect of competing activities *To ensure that activities do not adversely affect Waikato-Tainui customary activities and use of resources, particularly on, in and around waterway and their margins, including wetlands and reserves.* Policy 14.3.2.4 Restore, protect and enhance customary activities and resource uses *To restore, protect and enhance customary activities and resource uses.*

Section	Objective	Policy
		Policy 14.3.2.5 Collaboration *To work collaboratively with other resource users to manage competing interests around access to and ability to undertake customary activities and resource use.*
Natural Heritage and Biosecurity - Ngaa taonga Maaori tuku iho me Te aarai taiao	Objective 15.3.1 Indigenous biodiversity *The full range of Waikato ecosystem types found throughout the Waikato-Tainui rohe are robust and support representative native flora and fauna.*	Policy 15.3.1.1 Indigenous biodiversity *To ensure that the full range of Waikato ecosystem types found throughout the Waikato-Tainui rohe are robust and support representative native flora and fauna.*
	Objective - landscape planning and natural heritage 15.3.2 Cultural, spiritual and ecological features of the Waikato landscape that are significant to Waikato-Tainui are protected and enhanced to improve the mauri of the land.	Policy – landscape planning and natural heritage 15.3.2.1 To ensure that there is greater protection and enhancement of cultural, spiritual and ecological features of significance to Waikato-Tainui.
Valuable Historical Items, Highly Prized Sites, Sites of	Objective 16.3.1 Site management protocols *Site management protocols exist to ensure a*	Policy 16.3.2 Site management protocols *The Project Manager for a project or consented activities*

Section	Objective	Policy
Significance - Ngaa taonga tuku iho, Ngaa waahi tapu, Ngaa waahi tuupuna	*precautionary approach to site works to manage the potential for waahi tapu and taonga tuku iho discovery.*	*incorporates site management protocols and other protocols in this chapter into the site management plan so as to ensure a precautionary approach to site works to manage the potential discover of waahi tapu and taonga tuku iho.*
	Objective 16.3.3 Managing waahi tapu and waahi tuupuna *Waikato-Tainui manages and/or owns all identified waahi tapu and waahi tuupuna.*	Policy 16.3.3.1 Waahi tapu, waahi tuupuna site identification *Waahi tapu and waahi tuupuna are identified and information is stored and shared appropriately.* Policy 16.3.3.2 Active engagement *Waikato-Tainui marae are actively engaged to ensure the appropriate management of waahi tapu and waahi tuupuna.* Policy 16.3.3.3 General provisions *To ensure that sufficient general provisions for Waikato-Tainui involvement in waahi tapu and waahi*

Section	Objective	Policy
		tuupuna management are in place and understood
	Objective 16.3.4 Discovery of taonga (including archaeological sites) *Procedures are in place to manage the discovery of taonga and archaeological sites.*	Policy 16.3.4.1 Archaeological surveys and excavations (information and permission) *To ensure that appropriate guidelines are in place for undertaking archaeological surveys and excavations (information and permission).* Policy 16.3.4.2 Taonga discovery *To ensure that a clear protocol is followed in the event of discovering taonga* Policy 16.3.4.3 Archaeological sites *To ensure that the appropriate protocol for the accidental discovery of archaeological sites is followed.*
	Objective 16.3.5 Areas and sites of significance *The adverse effects of resource use and activity operation are managed so as*	Policy 16.3.5.1 Areas and sites of significance *To ensure that the adverse effects of resource use and activity operation are managed so as to*

Section	Objective	Policy
	to appropriately protect areas and sites of significance.	*appropriately protect areas and sites of significance.*
Freshwater - Te Wai Maaori.	Objective 19.4.1 The relationship between Waikato-Tainui and water *Waikato-Tainui engage and participate in the highest level of decision-making on matters that affect waters in the Waikato-Tainui rohe.*	Policy 19.4.1.1 Decision making *To ensure that Waikato-Tainui engage and participate in the highest level of decision-making on matters that affect waters in the Waikato-Tainui rohe.*
Wetlands - Ngaa Repo	Objective 20.3.1 Wetland mauri and condition, hauanga kai, habitat *Existing wetlands are protected and enhanced*	Policy 20.3.1.1 Improvement to the condition of existing wetlands *To encourage improvements to local hydrology (where possible) to support healthy wetland function, and restoration of locally appropriate wetland biodiversity within local planning and land management practice.* Policy 20.3.1.2 Land use planning and management adjacent to wetlands *To ensure that all land use practices that have the potential to impact on wetlands have efficient sediment, drainage,*

Section	Objective	Policy
		discharge, fertiliser application, and riparian buffer control practices in place to ensure that adverse impacts on wetlands are prevented.
	Objective 20.3.2 Access *The relationship of Waikato-Tainui with its wetlands is enhanced through the restoration of wetlands and enhanced/ permitted access for cultural purposes.*	Policy 20.3.2.1 Access *To ensure that the relationship of Waikato-Tainui with its wetlands is enhanced through the restoration of wetlands and enhanced/permitted access for cultural purposes.*
Land - Te Whenua	Objective 21.3.1 Effectively manage soil erosion *Activities that accelerate soil erosion are managed effectively, including through the reforestation and retirement of marginal lands from existing intensive and environmentally unsustainable land uses.*	Policy 21.3.1.2 Land development *All major excavation works that have the potential to impact on waterways shall have sufficient erosion and sediment control measures in place to ensure that adverse effects on water bodies are managed.*
	Objective 21.3.2 The life supporting capacity of land and soils	Policy 21.3.2.1 Soil and land management practices *To promote the adoption of best practice land and soil*

Section	Objective	Policy
	The life supporting capacity of land and soils effectively manages soil nutrient loss and water quality so there is minimal impact on nutrient loss to waterways.	*management that minimises soil erosion, nutrient leaching, and sediment and nutrient runoff.* Policy 21.3.2.2 Land management *Promote and encourage the development and adoption of land management practices that protects waterways from suspended sediments, nutrients and pollutants.*
	Objective 21.3.3 Effectively manage land contamination *Effectively manage the impact of contaminated land on the surrounding environment.*	Policy 21.3.3.1 Effectively manage land contamination *To ensure that the impact of contaminated land is effectively managed and, where possible and practicable, mitigate and restore the contaminated land.*
	Objective 21.3.4 Achieve integrated catchment management, including floodplain and drainage management *Integrated catchment management occurs across the entire rohe of Waikato-Tainui, including in*	Policy 21.3.4.1 Integrated catchment management plans and land use *To promote the development and use of integrated catchment management plans that adequately considers land use, floodplain and drainage management*

Section	Objective	Policy
	catchments that impact on, or flow into the Waikato-Tainui rohe. Integrated catchment management includes the effective and sustainable management of floodplains and drainage areas to promote natural habitat enhancement.	*and that promotes habitat restoration.* Policy 21.3.4.2 Collaboration with landowners and managers *To ensure that landowners and land managers that impact on the rohe manage land sustainably and effectively. This includes land that is upstream of the Waikato-Tainui rohe.* Policy 21.3.4.3 Waikato-Tainui relationship with catchment *To recognise and provide for the relationship of Waikato-Tainui with catchments in the Waikato-Tainui rohe*
Air - Te Ararangi	Objective 23.3.1 Discharge quality and amenity *The quality and amenity of discharge to air is such that the life supporting capacity and quality of air within the rohe is retained at a level that does not compromise human health, amenity values, or property.*	Policy 23.3.1.1 Discharge quality *To ensure that the quality of any discharge to air is retained at a level such that it does not compromise human health, amenity values, or property*

Section	Objective	Policy
Coastal Environment - Te Taiao Moana	Objective 24.3.1 Water quality *The mauri of marine waters in the Waikato-Tainui coastal area is protected and enhanced and the marine biodiversity in the Waikato-Tainui coastal area is restored and protected.*	Policy 24.3.1.1 Mauri, marine biodiversity *To ensure that the mauri of marine waters in the Waikato-Tainui coastal area is protected and enhanced and that the marine biodiversity in the Waikato-Tainui coastal area is restored and protected.*
	Objective 24.3.2 Coastal erosion *Coastal erosion is effectively managed so that the Waikato-Tainui coastal area is protected and enhanced.*	Policy 24.3.2.1 Coastal erosion *To ensure that coastal erosion is effectively managed so that the Waikato-Tainui coastal area is protected and enhanced.*
	Objective 24.3.3 Coastal access *Waikato-Tainui access to coastal areas for customary activities is protected and enhanced.*	Policy 24.3.3.1 Coastal access *To ensure that Waikato-Tainui access to coastal areas for customary activities is protected and enhanced.*
	Objective 24.3.5 Integrated management and relationships	Policy 24.3.5.1 Integrated management

Section	Objective	Policy
	Waikato-Tainui coastal areas are managed in an integrated way, considering the upstream effects of land and freshwater activities. Productive relationships exist between those who impact on or use the resources of the Waikato-Tainui coastal area.	*To ensure integrated management is applied to the coastal area.*
Land Use Planning - Ngaa whakaritenga moo ngaa whenua o Waikato-Tainui.	Objective 25.3.2 Urban and rural development *Urban and rural development is well planned and the environmental, cultural, spiritual, and social outcomes are positive.*	Policy 25.3.2.2 Rural development *To ensure that rural development is well planned and the environmental, cultural, spiritual and social outcomes are positive.*
	Objective 25.3.3 Positive environmental and cultural effects *Land use and development has positive environmental and cultural effects.*	Policy 25.3.3.1 Positive environmental and cultural effects *To ensure that land use and development, particularly new land use and development, has positive environmental and cultural effects.*
infrastructure - Waihanga matua	Objective 26.3.1 Waikato-Tainui engagement	Policy 26.3.1.1 Waikato-Tainui engagement

Section	Objective	Policy
	Infrastructure development, upgrade, and maintenance within the Waikato-Tainui rohe occurs in partnership with Waikato-Tainui.	*To ensure that infrastructure development, upgrade and maintenance within the Waikato-Tainui rohe occurs in partnership with Waikato-Tainui.*
	Objective 26.3.2 Infrastructure development, upgrade, and maintenance *Infrastructure development, upgrade, and maintenance manages economic, social, cultural, spiritual, and environmental effects.*	Policy 26.3.2.1 Infrastructure development, upgrade and maintenance *To ensure that infrastructure development, upgrade, and maintenance manages economic, social, cultural, spiritual, and environmental effects.*
	Objective 26.3.5 Natural hazards *Infrastructure shall be sited and operated in a way to avoid impacting on the risk of natural hazards occurring or the magnitude of a natural hazard event.*	Policy 26.3.5.1 Natural hazards and infrastructure *To ensure that infrastructure is sited and operated in a way to avoid impacting on the risk of natural hazards occurring or the magnitude of a natural hazard event.*
Electricity Generation - Whakaputa hiko	Objective 27.3.1 Electricity generation and transmission *In partnership with Waikato-Tainui, existing and new electricity generation activities, and the structures and*	Policy 27.3.1.1 Electricity generation and transmission *In partnership with Waikato-Tainui, to ensure that existing and new electricity generation activities, and the*

Section	Objective	Policy
	operations to transmit electricity to end users, effectively manages adverse social, cultural, spiritual, environmental, and economic effects.	*structures and operations to transmit electricity to end users effectively manages adverse social, cultural, spiritual, environmental, and economic effects.*
	Objective 27.3.2 Alternative electricity generation sources *Alternative sustainable forms of electricity generation are developed, provided any adverse effects on the environment, particularly on the Waikato River or culturally and/or spiritually sensitive sites, are managed.*	Policy 27.3.2.1 Alternative electricity generation sources *Ensure that preference is given to the development of sustainable forms of electricity generation, provided any adverse effects on the environment, particularly on the Waikato River or culturally and/or spiritually sensitive sites, are managed.*
	Objective 27.3.3 Local cost, local benefit *Electricity generation and transmission activities demonstrate a direct community benefit for the communities near their activities.*	Policy 27.3.3.1 Local cost, local benefit *To ensure that electricity generation and transmission activities demonstrate a direct community benefit for the communities near their activities.*