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NOTICE OF DECISION**MWRC: 104950, 104951, 104952****TDC File No: 12003.030****HEARING DATES:** 6 – 14 October; 28-29 October; 11 November 2009**HEARING****PANEL:** Mr David McMahon (Chair), Cr Annette Main and Cr Warren Davidson**DATE OF REPORT:**

<u>Site Address:</u>	The site is located 10 kms to the north east of Palmerston North and approximately 2 kms to the north of the Pahiatua-Aokautere Road and North Range Road junction. The site of the proposed extension is adjacent to and generally to the south-east of the existing Te Rere Hau Wind Farm	
	The proposed Te Rere Hau Eastern Extension comprises several parcels of land and includes the following legal descriptions:	
<u>Legal Description:</u>	Section 2 Block II Mangahao Survey District	(WN42C/720)
	Section 6 Block II Mangahao Survey District	(WN25B/416)
	Part Section 1 Block XIX Mangahao Survey District	(WN36B/480)
	Section 4 Block II Mangahao Survey District	(WN23C/569)
<u>Applicant:</u>	New Zealand Windfarms Limited	
<u>Proposal:</u>	New Zealand Windfarms Ltd (NZWL) proposes to develop an extension to its Te Rere Hau wind farm on the eastern side of the Tararua Ranges. The proposed Te Rere Hau Eastern Extension consists of 56 wind turbines located across approximately 300 hectares. Each turbine tower is 29 metres in height and reaches a maximum height of 47 metres with the tower and blade combined. Access to the proposed site will be off the Pahiatua Track via North Range Road.	
<u>Owner(s):</u>	Pier Albert Hoeksema and Brenda Mary Hoeksema Maurice Frank McDonald Ronald Charles Mabey, Jennifer Mabey and Peter Martin Luoni Glen Ridge Limited	

DECISION OF THE HEARING PANEL

1. INTRODUCTION

- 1.1 Pursuant to Section 88 of the Resource Management Act 1991 (the Act), New Zealand Windfarms Limited (NZWL) seeks resource consent from the Tararua District Council (TDC) and the Manawatu-Wanganui Regional Council (MWRC) to enable an extension to the consented Te Rere Hau Wind Farm.
- 1.2 The applications were heard by a Panel of three Commissioners in October and November 2009. Each of the Commissioners was appointed by and had delegated authority from the two Councils to hear and jointly determine the applications.
- 1.3 This is the joint decision of the Commissioners on both sets of applications.

2. THE PROPOSAL

- 2.1 The proposed Te Rere Hau Eastern Extension (TRHE) consists of 56 wind turbines located across approximately 300 hectares. There will be associated transformers and underground 33 kV cabling that will connect to the existing substation and 33 kV transmission lines associated with the consented Te Rere Hau wind farm.
- 2.2 The Windflow 500¹ turbines will be identical to those used in the consented Te Rere Hau (TRH) wind farm and are proposed to generate up to an additional 28 MW of power.
- 2.3 Three access roads are proposed as part of the development (total length of approximately 7.3 kilometres). These will provide access between North Range Road and the sites of individual turbines or groups of turbines.
- 2.4 Each turbine site has a turbine platform or “pad” of approximately 240 square metres (dimensions 20 metres by 12 metres). The pads are required to enable storage of turbine components, to provide an operational platform for a crane during turbine construction, and ongoing maintenance. Oil is to be stored² on site to service the turbines.
- 2.5 The TRHE extension involves earthworks³ for the following activities:
 - a) Access track construction.
 - b) Construction of the turbine foundations and the turbine platform ‘pad’ areas.
 - c) Fill material being deposited on pasture sites located within the TRHE site to an average compacted fill depth of 150 mm.
- 2.6 Culverts are proposed to be installed to allow access roads to cross the four tributary streams of the Makaretu Creek. Culvert installation involves stream bed preparation, laying of pipe

¹ Windflow 500 turbines are produced by New Zealand manufacturer Windflow Technology Limited. Individual structures comprise of a two bladed (approximately 17 metres long) turbine mounted on a tubular steel tower (29 metres tall), with a total maximum height of 47 metres.

² NZWL, AEE, Section 4.3.2, Volume 1 provides details of the hazardous substances likely to be present on site.

³ NZWL, AEE, Section 4, Volume 1 provides details on the works proposed. Volume 2, Appendix D of the AEE outlines the scope of the earthworks.

culverts, construction of headwalls and backfilling and compaction. In addition, culverts will be used to divert stormwater under the access roads.⁴

2.7 The Applicant applied for a suite of resource consents from the Tararua District Council and the Manawatu-Wanganui Regional Council (MWRC) on the 29 May 2009. The consents lodged with MWRC were:

104949 Land Use Consent for vegetation clearance/land disturbance near waterbodies and within a threatened habitat throughout the general wind farm site.

104950 Discharge Permit to discharge stormwater to land where it may enter water from various locations throughout the wind farm site including; the turbine sites, roads and access track and spoil disposal sites during and after construction.

104951 A Discharge Permit for the discharge of cleanfill to land associated with spoil disposal sites throughout the wind farm site.

104952 Land Use Consent for constructing and installing culverts in, on or over water bodies within the general wind farm site.

NB that consent application 104949 was determined to be a Permitted Activity during the course of the Hearing and was withdrawn.

2.8 The Applicant seeks an unlimited term for the land use consent from the Tararua District Council; an unlimited term for the vegetation clearance and land disturbance land use consents from MWRC; a 35 year term for the discharge of cleanfill; and a 15 year term for the discharge of stormwater and the culvert construction consents.

3. SITE LOCALITY AND DESCRIPTION

Application Site

3.1 The subject site is described thoroughly by the Applicant and Tararua District Council and Manawatu-Wanganui Regional Council Officer Reports⁵. The TRHE site is situated to the east of Palmerston North on the Tararua Ranges. The consented section of the wind farm is located on the western side of the ranges. The site of the proposed extension is adjacent to and generally south-east of the existing Te Rere Hau wind farm.

3.2 The subject site comprises four parcels of land totalling an approximate area of 300 hectares, and is accessed from North Range Road. The land is steep hill country and currently supports predominantly pastoral, namely cattle and sheep grazing. Exotic pasture grasses are the main vegetation type with small remnants of regenerating native scrub.

3.3 The site is approximately 10 kilometres to the south east of Palmerston North and two kilometres to the north of the Pahiatua-Aokautere Road and North Range Road.

⁴ NZWL, Volume 2, Appendix D.

⁵ NZWL, Volume I - AEE, page 2 & 5; TDC Officers' Report, page 2-3, para 3 - 7; and MWRC Officer's Report, page 3, para 12 -17.

Surrounding Area

- 3.4 The Applicant provides a description of the existing environment⁶ and includes details of existing land use patterns in the wider area. Both Officers' Reports confer on this.
- 3.5 The site is situated within the Tararua Ranges and is an eastern extension of the existing Te Rere Hau wind farm. The properties to the north-east and south-east of the site are private land holdings utilised for pastoral cattle and sheep grazing. A forestry block is located to the south-west of the site.

Wind farms in the wider area

- 3.6 The Applicant provided details of all the wind farms that are either operational, or, in the process of being constructed⁷ in the Tararua and Ruahine Ranges. These wind farms include:
- the Te Apiti Wind Farm (southern end of the Ruahine ranges);
 - the three stages of the Tararua Wind Farm (northern end of Tararua Ranges); and
 - the Te Rere Hau Wind Farm (south of Tararua wind farm).
- 3.7 The AEE also included an explanation of two other wind farm proposals in the area – namely the Motorimu Wind Farm consent application (RC 202697) and the Mighty River Power Turitea Wind Farm proposal. Both of these applications are discussed below along with other relevant resource consent applications.

Relevant Resource Consents

- 3.8 As alluded to above, this part of the Manawatu has a substantial number of wind turbines constructed on the southern end of the Ruahines and the northern part of the Tararuas. In addition the Panel was made aware of certain proposals which, whilst consented by Palmerston North City Council, have not been constructed. The latter category includes part of the existing Te Rere Hau development.
- 3.9 In this section we outline our understanding of the relevant wind farm resource consents. This is drawn on later in this decision where we describe our understanding of the existing environment, against which we are required to undertake our evaluation of the effects.

Palmerston North City Council

Te Rere Hau Wind Farm

- 3.10 Land use consent was granted for the existing Te Rere Hau (TRH) Wind Farm in 2005 for a period of 8 years. The Applicant advised that three stages involving 65 out of the 97 turbines have been constructed, along with roads, substations, a site office and various other ancillary facilities. Stage 4 involving the remaining 32 turbines has not been implemented.
- 3.11 During the hearing two issues arose concerning the existing TRH consent and its relationship with the TRHE proposal. They were as follows:

⁶ NZWL, Volume I - AEE, Section 3, pages 12 – 15.

⁷ NZWL, Volume I – AEE, Section 1.1

Issue 1

- Firstly, the question as to when the current TRH application lapses and/or whether the consent has been 'given effect to' were raised. The consent was granted in 2005 for a period of 8 years. To that extent, the lapse period has not yet been reached and will not be until 2013. The Applicants position on this, as outlined by their planning consultant Mr Chrystal, was that with some 65 out of 97 turbines (i.e. 67%) so far having been constructed along with other infrastructure and various ancillary facilities, the consent has to be considered as having been 'given effect to' in terms of s125 of the Act.
- Mr Chrystal explained that his understanding of 'given effect to' is that it does not mean completion of a development, as there would be no point in having the clause if that were the case, but that it means reasonable progress has been made towards implementing the consent, which, in his view, is the situation in this case.
- We are not sure that we entirely agree with that analysis as it seems to be a 'cross pollination' of law relating to consent lapse and time extension. It seems to us that the fact that reasonable (or substantial) progress has been made towards implementing the consent is more grounds for seeking an extension to the time period for the consent rather than certifying that the consent has been given effect to.
- In any event we record that apart from agreeing that the consented TRH wind farm (both the constructed and as yet unconstructed turbines) form part of the existing environment, this lapse issue is not a material matter for us given that the consent is still 'live' and has been partially implemented. It has had no bearing on our decision. Rather it is, we suggest, really a matter for the Applicant and Palmerston North City Council to resolve, and preferably sooner rather than later.

Issue 2

- Secondly, the Applicant did not request that the proposed TRHE development be staged. At the hearing, there was some reference from the Applicant's representative, Mr Cross, to the possibility that some or all of the turbines already procured for Stage 4 of the existing TRH development (but not yet erected) may be used for the extension.
- However the Hearing Panel were not informed that the Applicant was surrendering consent for the turbines in the consented TRH development and we have accordingly assessed the TRHE proposal on the basis that the full number of turbines for the TRH proposal (65 existing and 32 consented but as yet unimplemented) represent the full extent of the consented development.

Motorimu Wind Farm

- 3.12 Consent for a wind farm on the Tararua Ranges further to the south of the TRH development was granted by a joint Hearing Panel on behalf of the Palmerston North City Council, the Horowhenua District Council and the MWRC on 25 June 2007. That decision was appealed to, and considered by, the Environment Court in 2008 and their decision released on 26 September 2008. The Court decision largely upheld the initial decision of the local authorities and granted consent for the wind farm subject to a suite of conditions.

- 3.13 On 21 August 2009 the Palmerston North City Council were notified that Motorimu Wind Farm Limited (in liquidation) surrendered their resource consent (RC 202697) pursuant to section 138 of the Resource Management Act 1991. The Council duly accepted this surrender under section 138(4) of the Act on 24 August 2009.
- 3.14 The implications of the surrender of this consent is simply that the Motorimu resource consent no longer exists and therefore cannot be taken into account when considering the TRHE resource consent.

Proposed Turitea Wind Farm

- 3.15 An application by Mighty River Power Ltd to construct turbines on a site to the south of the TRH wind farm has also been lodged with the PNCC and Manawatu-Wanganui Regional Council. The application had been referred to a Board of Inquiry for consideration. At the time of hearing the TRHE the Board of Inquiry had adjourned the hearing pending some further redesign work and assessment by the Applicant.
- 3.16 We were advised by Mr Forrest that the Board would reconvene the hearing sometime in the first quarter of 2010 and that a decision was unlikely to be released until mid 2010 at the earliest.
- 3.17 There was considerable discussion by all parties (Applicant, submitters and reporting officers) during the TRHE hearing regarding the relevance of the Turitea application. In particular, this discussion focused on the extent (if any) to which we could take into account the effects of the Turitea proposal when considering the actual and potential effects of the proposed TRHE application. In other words this was an issue of the relevance of, and contribution to, cumulative effects of the Turitea application.
- 3.18 Such was the level of debate over this matter that we cover this in some detail in Section 6 of this decision. However, it is suffice to say at this point that we are clear on the law on this matter which is that an un-consented development does not form part of the existing environment which we are required to have regard to when considering the nature and impact of environmental effects.

Manawatu-Wanganui Regional Council (Horizons)

- 3.19 Ms Shirley confirmed that the Applicant holds one current resource consent with the Regional Council for the proposed eastern extension site (Consent number 104904). This consent relates to the earthworks and vegetation clearance associated with track formation required for access to TRHE and does not consent the construction of turbine sites nor does it consent any culverts crossing a waterbody. A plan showing both the consented tracks and the tracks for which consent was still required was tabled at the hearing.
- 3.20 We were also advised by Ms Shirley that the Applicant sought retrospective consent for Access Road 4 which had already been constructed at the time of lodging consent 104904. As there were no fill deposition sites identified along Access Road 4 in the plans provided in the application, no consent was deemed to be required.
- 3.21 There was suggestion by some submitters that the Applicant had prematurely begun work on the site associated with the proposed extension. The Applicant took issue with this.

- 3.22 We find that the farm tracks consent referred to above forms part of the existing environment and that the Applicant could start works on these tracks regardless of our decision. Despite this legal right, we accept that the Applicant has not yet started works on these tracks and nor has it commenced any other works on site related to TRHE.
- 3.23 Having described the proposal, the setting and the wider context, we now turn to the procedural aspects of the application.

4. NOTIFICATION, CONSULTATION AND THE HEARING

Notification

- 4.1 A memorandum outlining the events relating to the notification and the processing of the application was provided to us by the TDC and MWRC.
- 4.2 The applications were lodged with the TDC and MWRC on 29 May 2009. It was determined that public notification was required, pursuant to sections 93 and 94 of the Act.
- 4.3 The applications were jointly publicly notified in the Manawatu Standard on Saturday 27 June 2009 and in the Bush Telegraph on Monday 29 June 2009. Submissions closed at 4.45 pm on 27 July 2009 at the Manawatu-Wanganui Regional Council.
- 4.4 It was explained to us that the identification of the parties deemed to be potentially directly-affected was based on a 3 km distance from the subject site. The MWRC considered this distance appropriate as it was in line with general good practice established in the Manawatu region for the processing of wind farm applications. This 3 km distance lead to one hundred and eighty (180) parties being directly served notice of the resource consent applications.

Submissions

- 4.5 A total of 73 submissions were received within the statutory 20 working day timeframe. Of these submissions, four were in support of the TRHE extension, two neutral submissions, and 67 submissions were in opposition.
- 4.6 A complete summary of submissions is reproduced in both the TDC and MWRC Officer Reports⁸. Officers produced a list of the main topics relating to their respective jurisdiction.
- 4.7 Six late submissions were received. The MWRC Officers' Report considered these late submissions; however the Consultant Planner for the TDC did not. We see no reason not to include the six late submissions and have exercised our jurisdiction to accept these under section 37 of the Resource Management Act 1991 and have duly included these in the overall consideration of this proposal.

Manawatu-Wanganui Regional Council (MWRC)

- 4.8 The main issues⁹ relating to the MWRC were listed as:

⁸ Consultant District Planner (David Forrest) for TDC, Appendix A; Horizons Regional Council (Leana Shirley), Annex 1.

⁹ Horizons Regional Council (Leana Shirley), Hearings Report, page 5, para 25.

Positive Effects

- a) *The benefits to climate change and New Zealand's international obligations for renewable energy; and*
- b) *Building generation capacity to meet demand.*

Environmental Effects

- a) *Adverse effects of erosion resulting from earthworks and vegetation removal;*
- b) *Adverse effects on water quality including the effects of silt and sediment;*
- c) *Adverse ecological effects;*
- d) *Discharge of dust to air effects;*
- e) *Cultural effects; and*
- f) *Effects of discharges to land.*

Tararua District Council (TDC)

- 4.9 The TDC Officer Report outlined the main issues pertaining to groups of submitters with similar points of interest.

Support

- 4.10 In general, three of the four submissions in support of the TRHE extension make the following comments:

- a) *Positive renewable energy development which supports climate change initiatives;*
- b) *Utilisation of the wind resource is complementary to existing (and continued) farming practices.*
- c) *Proven environmental practices by way of the existing Te Here Rau Wind Farm.*
- d) *The proposed turbines to be used in the TRHE extension are smaller; therefore will have less impact with regard to construction on the environment.*
- e) *The proposed turbines eliminate and reduce visual impact from the Palmerston North and Pahiatua communities respectively.*

- 4.11 The Energy Efficiency and Conservation Authority (ECCA) submission provided national-level considerations¹⁰ in relation to renewable energy and the mandate and responsibilities held in Energy Efficiency and Conservation Act 2000.

Opposition or Matters of Concern

- 4.12 Sixty-seven submissions in opposition were received within the statutory timeframes. The TDC Officer's Report categorised the submissions into the following: Neighbours of the existing Te Rere Hau Wind Farm and proposed TRHE; Residents of the Tararua District; Residents of the Palmerston North District; and the Palmerston North City Council.

A combined set of issues raised by these submissions is provided in the TDC Officer report¹¹ and are listed below:

- a) *Adverse noise effects.*
- b) *Landscape and visual effects.*
- c) *Adverse Impact on Recreational and Rural Environment Amenity.*
- d) *Property values.*
- e) *Effect of increased traffic Pahiatua Track (safety).*
- f) *Ecological Effects.*

¹⁰ Consultant District Planner (David Forrest) for TDC, page 5 – 6, para 21.

¹¹ Consultant District Planner (David Forrest) for TDC, page 7 - 12.

- g) Economic Viability.*
- h) Actual and Potential Shadow Flicker (and vibration).*
- i) Low national benefit relative to negative effects.*
- j) Decommissioning issues.*
- k) Contrary to Relevant Regional and District Plans.*
- l) Contrary to S104 and Part II of the RMA.*
- m) Earthworks (increased erosion).*
- n) Ability to subdivision property.*
- o) Consider compensation appropriate.*
- p) Adverse social impact on the community (various effects).*
- q) Seismic Risk.*
- r) Applicants Assessment of Effects on the Environment Deficient.*

4.13 The Palmerston North City Council's submissions on the proposed TRHE extension, as stated in their submission notice said:

"PNCC would like the following matters to be considered during the decision making process:

- i. Cumulative Effects on the Landscape...*
- ii. Effect on the Roading Network of Palmerston North City...*
- iii. Noise Report."*

4.14 At the hearing the PNCC representative, Mr Baker, clarified that his Council's submission had largely been satisfied by the information provided by the Applicant during the course of the hearing. He stopped short of withdrawing the submission but indicated agreement with various conditions proposed by the Applicant.

Neutral Submissions

4.15 The Historic Places Trust (HPT) and the Department of Conservation (DoC) lodged individual submissions. Both of these submissions had a degree of neutrality on the proposal; however each reserved concern over the level of information provided and requested several conditions be placed on any consent granted.

Further Information

4.16 Ms Shirley advised that the MWRC requested further information on 5 August 2009 which was then received by MWRC on 14 September 2009. The information consisted of an updated version of plans showing spoil disposal sites within the Wind Farm site. Prior to the hearing, a copy of these updated plans were circulated to submitters with the MWRC Officer Report (Annex 2) on 25 September 2009. This further information was also referred to by Mr Forrest, page 3, para 9 of the TDC Report.

4.17 Mr Forrest advised that there was no official request for further information from the TDC. Rather, he referred to two letters from the TDC to the Applicant as follows:

- a) The first was a letter (dated 31 August 2009) advising the Applicant that, after conducting a visit to the subject site and locality, the Tararua District Council's consultant landscape architect, Mr Boyden Evans, had identified a number of information gaps and concerns with regard to the Landscape and Visual Assessment that formed part of the AEE submitted with the application. The purpose of that letter was to inform the Applicant of Mr Evans' concerns in advance of the hearing in order that the Applicant was able to adequately respond to the Commissioners in respect of the matters raised.

- b) The purpose of the second letter (dated 21 September 2009) was similar to that of the first, being to inform the Applicant that there would be a number of matters raised by way of the Section 42A RMA Officer's Report in relation to noise effects and that it was expected that the Applicant would address these matters at the hearing.

4.18 Against this background of submissions, requests for information and section 42A officer reports that the hearing was scheduled and conducted. The Applicant responded to many of the above matters during the course of the hearing via a range of witnesses, but predominantly through its planning and landscape witnesses.

The Hearing

Hearing Panel

4.19 The Joint Hearing Panel comprised of an independent hearing Commissioner David McMahon (Chair), MWRC Councillor Ms Annette Main and TDC Councillor Mr Warren Davidson. Under section 34A(1) of the Act the Joint Hearing Panel held delegated authority from the MWRC and TDC to determine all matters relating to the resource consent applications.

4.20 Two Consent Administrators, from MWRC (Michelle Tucker and Kathryn Hunt) were appointed to assist the Hearing Panel with process matters and note taking during the hearing.

Hearing Details

4.21 The Hearing was held at the Travelodge and the Palmerston North Convention Centre, Palmerston North and commenced on the 6 October 2009, officially closing on 30 November 2009.

4.22 It is noted that there was a request both prior to, and at the beginning of, the hearing by some submitters to have the hearing adjourned/postponed in order to provide additional time for preparation. This request was not upheld and we discuss this in further detail below. However, we note that in response to this request for postponement (and based on the agreement from the Applicant), MWRC Consents Team Leader, Richard Munneke, rescheduled the commencement of the hearing from Monday 5 October (1.30 pm) until the following day, Tuesday 6 October 2009. This was because there was some concern that the five working day timeframe specified under Section 42A(3) had not been met.

4.23 Over this time the Panel adjourned the hearing twice. These adjournments are explained in more detail below. Overall, the hearing spanned over a total of 38 days; of which 10 days were hearing days.

4.24 The sitting days were as follows:

- Tuesday 6th – Friday 9th October – Opening and Applicant
- Monday 12th – Wednesday 14th October – Submitters
- Tuesday 27th – Wednesday 28th October – Submitters/Applicant/Officers
- Wednesday 11th November – Officers/Applicant's Closing

4.25 The Hearing Panel conducted site and locality visits on 5 October and 10 November.

Hearing Evidence

4.26 Evidence was heard from the Applicant's counsel and witnesses, submitters, and the TDC and MWRC Officers/consultants as follows:

Applicant's Evidence and Witnesses

4.27 In addition to Counsel (Mike Holm and Vicki Morrison) for the Applicant, who coordinated the Applicants presentation, the Applicant called a number of witnesses covering a comprehensive suite of disciplines as follows:

- Stephen Cross (Chief Executive – NZWL)
- Alison (Ali) van Polanen (Consents Manager, NZWL)
- Emma Pollard (Managing Director and 3D Modeller – Visual Simulations)
- Peter Rough (Landscape Architect – Landscape and Visual Effects)
- Malcolm Hunt (Principal and Mechanical Engineer – Noise Effects)
- Miklin Halstead (Associate and Industrial Engineer – Noise Effects)
- Colin Fink (Consulting Engineer - Construction Effects)
- Phillip Peet – (Traffic Engineer – Traffic Effects)
- Gerardus (Gerry) Kessels – Ecology and Environmental Planning Consultant - Ecological Effects)
- Michael Copeland (Economic Consultant – Economic Effects)
- Dean Chrystal (Director and Planning Consultant – Planning).

Submitters

4.28 Submitters who appeared at the hearing included national and local level interest groups, local residents, community group representatives, and local business representatives.

4.29 The full list of the submitters attending the hearing is as follows;

- New Zealand Wind Energy Association – Fraser Clark
- Energy Efficiency and Conservation Authority – Tania Hood
- Department of Conservation – Kris Ericksen and Lynn Adams
- Palmerston North City Council – Jeff Baker
- Lee Huffman
- Graham Devey
- Lorraine R Tremain
- Murray Olsson
- Rebecca Hill
- Sam Ellingham
- Robin and Rhiannon Malley
- Chris J Anderson
- Geoff Irvin
- James Gordon
- Jennifer (Jenny) Olsson
- Lee and Son Property Company Limited – Brent Norrish
- Robert Cleland (Ciel) and Nicky Wallace
- Tararua-Aokautere Guardians Inc (TAG) – Kevin Low

- RB and ME Stewart
- Rachel Summers
- Alison Mildon
- Andrew Day
- Ross Gibson
- Michael (Mike) Grassick
- Angela Grassick
- Peter Allen
- County Heights Trust - Quentin Poole
- DG and DA Sparkes (Dean)
- Kevin and Bronwen Burnette
- Prudence (Pru) Robbie and Detlef Klein

4.30 Most submitters produced written commentary in support of their notice of submission and copies of this material is held on MWRC files. In addition to those submitters who attended the hearing, the Panel were also provided with copies of all submission notices for consideration and deliberation.

Council Officers

4.31 Reports under section 42A of the Act were prepared and circulated to all parties to the application a minimum of five days prior to the commencement of the hearing. These documents contained reports from a range of disciplines and authors.

4.32 The following persons appeared at the hearing in support of the evidence that they presented:

Tararua District Council

- David Forrest (Planning)
- Nigel Lloyd (Acoustic Engineer)
- Boyden Evans (Visual / Landscape)
- Ray Cannon (Traffic)

Manawatu-Wanganui Regional Council

- Phillip Hindrup (Senior Planner)
- Leana Shirley (Consents Planner)
- Peter Blackwood (Manager, Investigations and Design)
- Olivier Ausseil (Water Quality)
- Fleur Maseyk (Ecology)

4.33 The Hearing Panel, with the agreement of the parties, took the Officers' reports as read at the commencement of the hearing and instead focused on brief presentations from, questions to, and supplementary evidence/statements from the Officers listed above.

Detailed Evidence

- 4.34 The written evidence and reports tabled and presented by all parties who presented at the hearing is held on file at the MWRC. The Panel took their own notes of the verbal presentations and answers to their questions, and notes were also taken by the Consents Administrators.
- 4.35 It is not intended to record that material in any detail in this decision. However, specific issues raised in the material are referred to as appropriate in the evaluation section of this decision.

Request for Postponement of Hearing

- 4.36 During the week prior to the hearing commencing two submitters (Lee Huffman and Quentin Poole) contacted the Manawatu-Wanganui Regional Council and raised concerns regarding the sufficiency and adequacy of the notice of the hearing.
- 4.37 This matter was conveyed to the Chair of this Hearings Panel who invited those (and any other) submitters to address this matter at the commencement of the hearing. The same invitation was extended to the Consent's Policy and Consents Manager for Manawatu-Wanganui Regional Council and the Applicant. In addition, and at the request of the Applicant, the commencement of the hearing was deferred for one day from 5 October until 6 October.
- 4.38 After opening the hearing at 9am on 6 October and outlining administrative timetabling and other housekeeping matters, we addressed the above procedural matters relating to the timetabling of the hearing. Specifically, we heard from three submitters who requested that the hearing be delayed. The submitters were:
- Mr Quentin Poole, on behalf of the County Heights Trust;
 - Ms Lee Huffman, a resident of Pahiatua Track, a member of the Tararua/Aokautere Guardians Group (TAG); and
 - Ms Lorraine Tremain, a resident of Pahiatua Track.
- 4.39 The reasons given by the submitters for the requested delay were related to both statutory timeframes, adequacy of notification and sufficiency of time to prepare for a hearing of this magnitude. The potential overlap with another wind farm hearing – the Board of Inquiry into the proposed Turitea Windfarm proposed by Mighty River Power – was also raised as a reason for delay.
- 4.40 Mr Hindrup tabled a memorandum produced by MWRC Consents Team Leader, Richard Munneke. The memorandum outlined the factual information pertaining to notification of the application, the hearing, and the s42A report. The conclusion was that all statutory timeframes had been followed and complied with.
- 4.41 Mr Holm for the Applicant then also tabled some submissions dealing with issue raised by Mr Poole and Ms Huffman. He advised that the Applicant did not accept that there were any deficiencies in the process and stated that the Applicant was extremely concerned by the prospect of delay. He submitted that any delay at this late stage could be seen as an attempted abuse of process by submitters and would be unreasonable and prejudicial to the Applicant.

- 4.42 Having heard from the above, we took a recess to consider the requests put forward and the responses from the Council and the Applicant. We determined that the reasons given by the submitters for the delay distilled to four matters; namely: failure to be identified as affected parties; late receipt of application and assessment of environmental effects, insufficient notice of hearing; and overlap with Turitea hearing. On the first three process matters we are in no doubt that due statutory process has been followed by the MWRC as the lead consent authority for these applications. In this respect, we note that:
- The application was publicly notified and direct service on parties (i.e. everyone within a 3km radius) was reasonably derived having regard to how other wind farm applications in the region had been notified.
 - The application/AEE was available for inspection from the day it was notified. Also, even though there is no statutory requirement to send full copies of the application to parties on the service list, MWRC officers served copies of the application disk on such parties. This was in addition to copies that had been sent to parties as part of the Applicant's own consultation exercise.
 - Approximately 20 working days notice of the hearing had been provided which is almost double the statutory period, and the s42A report was circulated within the prescribed statutory timeframe.
- 4.43 On the above basis and on close examination we concluded that none of these matters appeared to have such merit as to warrant a postponement of the hearing. Even so, we were conscious that the submitters have busy working and family lives and are required to fit their input into the submission and hearing process around such. To this end, rather than postpone the hearing we were pleased to enforce the offer by the Applicant to make full copies of their evidence available to all submitters (in hard copy and on the internet) from the beginning of Day 2 of the hearing and to hear that they were prepared to make their technical witnesses available to submitters for clarification on aspects of the wind farm proposal and proposed operation.
- 4.44 That action was appropriate and appreciated by various submitters, the Officers and the Panel.
- 4.45 On the matter of the Turitea wind farm hearing, we agreed that it was unfortunate that this hearing was occurring in part at the same time as the TRHE hearing. We acknowledged that this had the potential to place a strain on the time and resources of those submitters to both applications. However, it was determined that those submitters appearing at both hearings distilled to one week only and this affected approximately 5 submitters. We gave an undertaking to those submitters (and in fact all submitters) to adopt flexibility in scheduling their presentation and it was also acknowledged that there may be some efficiencies for these submitters given the commonality of the venue and the potential that they may only need to attend on a single day rather than multiple days.
- 4.46 Accordingly, after giving careful consideration to all of the points raised we determined that the hearing should continue.
- 4.47 We reconvened the hearing and delivered our determination along with an explanation for the continuation.

Hearing Minute re: Adjournment for Caucusing and Site Visits

- 4.48 The Panel made a decision to adjourn the hearing on the 28th October 2009, after hearing from all parties; namely, the Applicant (including recalled witnesses on noise and landscape); submitters (approximately 30 presentations from individuals and organisations); and the two Councils (Tararua District Council and the Manawatu-Wanganui Regional Council).
- 4.49 The Panel acknowledged that there remained a number of unresolved issues. The Panel therefore recommended further consultation between the Applicant, the two Councils and representative submitters. The terms of reference for the consultation were set out in a Minute produced by the Chair of the Panel dated 30 October 2009. This consultation was to occur over the next seven working days and the hearing reconvened on Wednesday 11 November.
- 4.50 At the reconvened hearing, we heard from both the Applicant and the Council Officers who took the opportunity to report back on the degree of and nature of any agreements that have been reached. We then proceeded to hear the Applicant's right of reply. The hearing adjourned again for final site visits and preliminary deliberations.

Hearing Minute for Proposed Tararua District Plan (with decisions)

- 4.51 We commenced preliminary deliberations on 12 November 2009. One of the first matters considered by us was whether, prior to officially closing the hearing, we had sufficient information upon which to make a decision. Part way through those deliberations, it came to our attention that the TDC had recently (Friday 6 November 2009) released decisions on submissions to its Proposed District Plan. We were concerned that we had not been informed of this before the hearing had adjourned because, as we discuss below, this had a potentially major bearing on the assessment of the applications.
- 4.52 We must have regard to the provisions of the Proposed Plan "*as amended by decisions*" in accordance with s104(1)(b). In particular, we must have regard to the objectives and policies of the amended Proposed Plan.
- 4.53 In response to this unfortunate situation, we adjourned the hearing for a second time to give a seven day working timeframe for the Tararua District Council planning witness and the Applicant (and any submitter who desired to participate) to identify the changes to the Proposed Plan relevant to this application and to advise us if aspects of their opinion (as expressed in their s42A report/evidence) had changed as a result of the altered provisions, with reasons where relevant. This was conveyed to all parties via 'Minute No. 2'.
- 4.54 In response to this Minute, further written statements were received from both Mr Forrest, representing TDC, and Mr Chrystal, representing the Applicant, on 24 November 2009. No additional information was received from any submitters.
- 4.55 These statements outlined the changes to the Proposed District Plan that occurred as a result of the TDC decisions on submissions. Both Mr Forrest and Mr Chrystal concurred on the nature of the changes brought about by decisions. In addition, they noted that the status of the application remained the same in the amended District Plan as it was in the Proposed Plan. We adopt that advice and refer to it later in this decision.

4.56 Despite some increased specificity in the objectives and policies, and assessment criteria relating to wind farms, neither planner was of a view that their initial position that the application be approved should alter as a result of the differing provisions. We also draw on this material later in this decision.

Hearing Closure

4.57 Having taken the necessary time to receive and assess the additional material from the parties, we resolved that we had sufficient information to commence deliberations. Accordingly, the hearing was officially closed on 30 November.

4.58 Parties were advised of the hearing closure by a letter sent by MWRC dated 30 November 2009. Deliberations were commenced on 7 December 2009. The period for making and releasing the decision was extended under section 37A(2)(a) of the Resource Management Act to 2 February 2010 to take account of several factors including the traditional NZ holiday period.

Hearing Note

4.59 Prior to turning to the substantive part of this decision, we wish to make a note about the nature of the hearing. Despite the clearly polarised positions of the Applicant and submitters in opposition, we were pleased with the professional manner in which the Applicant and submitters conducted themselves. We record that both the Applicant and submitters co-operated with our directions constructively in what was a very open hearing process.

4.60 In particular, we thank the Applicant for having its expert advisors present for large parts of the hearing and readily available to any submitter wishing to discuss or clarify a particular issue. Similarly, we acknowledge the time taken by those submitters who took up the opportunity availed to them by the Applicant. The same applies to those Hearing Officers who attended caucusing with the Applicant and submitters.

4.61 There were also extensive discussions in the course of the hearings over conditions with the consent authorities as well as some with submitters – which were reasonably productive. We particularly acknowledge the input of submitters in this exercise given the outright opposition of some to the proposal.

4.62 In addition, substantial amounts of evidence have also been produced by the Applicant, Officers and submitters in the course of the hearing in response to requests from us. We acknowledge those efforts of all. It is to the assessment and weighing of that evidence that this decision now turns to.

5. STATUTORY FRAMEWORK FOR DECISION

Preliminary Matter

5.1 We sought advice on the applicability of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 and the statutory framework for the considerations of the consent applications. Section 160 of the Amendment Act provides that where anything has been initiated by a local authority and has “*not proceeded to the stage at which no further appeal was possible*” it is to be “*determined as if the amendments made by this Act had not been made.*”

5.2 Accordingly, the statutory framework adopted by the Hearing Panel followed the RMA in its form prior to 1 October, 2009. We also had regard to the requirements of section 113 of the Act when preparing this Decision.

Legislation

5.3 Resource consents are required under the following Sections of the Act: sections 9, 12, 13, 14 and 15. A complete list of consents required from Tararua District Council, and Manawatu-Wanganui Regional Council is outlined in the s42A reports of Ms Shirley and Mr Forrest.

5.4 As a discretionary activity the proposal is to be assessed under Section 104 of the Act which lists the matters which Consent Authorities shall, subject to Part 2 of the Act, have regard to when assessing a resource consent. In giving consideration to the proposal, we are bound by Section 104 of the Act: subsection (1) which states:

- (1) *When considering any application for a resource consent and any submissions received, the consent authority must, subject to Part II, have regard to the following relevant matters*
- (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (b) *any relevant provisions of*
 - i. *a national policy statement;*
 - iii. *a regional policy statement or proposed regional policy statement;*
 - iv. *a plan or a proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application;*

5.5 Further to the above, Counsel for the Applicant drew our attention to leading case law on this provisions of the Act – *Ngati Rangī Trust v Manawatu-Wanganui Regional Council*¹² - where the Environment Court confirmed the nature of the section 104 evaluation as being:

[61] *The relevant matters for us to consider under section 104(1) are*

- (i) *Part II - section 104(1) "subject to Part II";*
- (ii) *Any actual and potential effects on the environment of allowing the activity - section 104(1)(a);*
- (iii) *The relevant statutory instruments.*

[63] *Against that statutory background, and within the confines of the issues and the evidence presented, we have to broadly consider and determine:*

- (i) *First, as a matter of fact, the negative effects of the [proposal]...;*
- (ii) *Secondly, as a matter of fact, the positive effects of the [proposal]...; and*
- (iii) *Evaluate and weigh our findings in (i) and (ii) above, guided by the statutory instruments and the provisions of the Act, particularly Part 2*

5.6 Essentially the framework outlined in the extract above is precisely the framework for organising our assessment. Below in this section we identify the relevant statutory and non-statutory instruments and in Sections 7-11 we outline our assessment of all effects – positive and negative. Section 12 represents our endeavours to evaluate and weigh our findings.

5.7 In addition to the above Section 104(2) states:

- (2) *When forming an opinion for the purposes of subsection (1)(a) a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.*

¹² *Ngati Rangī Trust v Manawatu-Wanganui Regional Council* (EC) (A67/2004).

5.8 We cover this under the heading of “Permitted Activity Baseline” later in this section of the decision. Clause 3 continues:

- (3) *A consent authority must not –*
- (a) *have regard to trade competition when considering an application;*
 - (b) *when considering an application, have regard to any effect on a person who has given written approval to the application...*

5.9 We can state at this point that there were no issues relating to trade competition or written approval to consider.

5.10 Section 104(3) above, which sets out the matters a consent authority must not have regard to. These include *any effect on a person who has given written approval to the application*. This is a pertinent matter in this case where the land owners of the Motorimu wind farm site have supplied their written approval.

5.11 Section 104B of the RMA provides that:

- After considering an application for resource consent for a discretionary activity or non complying activity, a consent authority –*
- (a) *may grant or refuse the application; and*
 - (b) *if it grants the application, impose conditions under Section 108*

5.12 Section 105(1) lists matters relevant to certain applications (e.g. discharge permit) that the consent authority must, in addition to section 104(1) have regard to.

5.13 Section 107 states restrictions on the granting of certain discharge permits.

5.14 Section 108 of the RMA defines the scope of matters that may be included in any conditions imposed on the granting of consent:

5.15 Part 2 (Sections 5 - 8) of the Act sets out the purposes and principles of the legislation.

5.16 Section 5 states:

- "(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while -*
- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) Avoiding remedying or mitigating any adverse effects of activities on the environment."*

5.17 Section 6 – Matters of National Importance states:

"In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall recognise and provide for the following matters of national importance –

- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development.*
- (c) The relationship of Maori and their culture and traditions with ancestral lands, water, sites, waahi tapu and other taonga.*

5.18 Section 7 - Other Matters, states:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) *Kaitiakitanga*
- (b) *The efficient use and development of natural and physical resources.*
- (c) *The maintenance and enhancement of amenity values.*
- (d) *Intrinsic values of ecosystems.*
- (e) *Maintenance and enhancement of the quality of the environment*
- (i) *The effects of climate change.*
- (j) *The benefits to be derived from the use and development of renewable energy.*

5.19 Section 8 – Treaty of Waitangi, states:

In achieving the purpose of this Act, all persons exercising functions and duties under it, in relation to managing the use, development and protection of natural and physical resources shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

5.20 Our assessment of Part 2 matters (section 5-8 of the Act) is contained within Section 12 of this decision.

5.21 All the preceding provisions of the Act have been outlined in full given their importance in our overall evaluation.

Permitted Activity Baseline

5.22 Section 104(2) provides that when forming an opinion for the purposes of subsection 104(1)(a) – the actual or potential effects on the environment of allowing the activity - a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.

5.23 Having reviewed the relevant Plans, and heard from the three planners presenting, we do not consider there is an overall permitted baseline that is of particular relevance in this case. In particular, we note Mr Chrystal’s comments where he noted that in certain other wind farm applications some attempts have been made to establish a baseline of activity, particularly with regard to noise associated with agricultural uses and to a lesser extent buildings. We adopt his view that this argument is difficult to sustain because the activities themselves tend, with regard to noise to be intermittent, and with regard to buildings to be of very limited number.

5.24 We also gave some consideration as to whether forestry (a permitted activity in the district plans) might establish some form of baseline in terms of visual amenity. Both Mr Chrystal and Mr Forrest were clear that it does not as wind turbines once erected will have immediate effects whereas the effects of a forest would emerge over time as it grows. We concur.

5.25 There are however, some elements of the proposal which form part of other permitted activities where it is relevant to compare the way such elements are treated. For example:

- Farming activities, particularly cattle grazing are able to occur unabated across the whole site including the seepage areas.
- Also, we note that Ms Shirley accepted that certain construction effects such as vegetation removal and sedimentation might occur as a result of permitted farming operations. We draw on this in our discussion of earthworks effects arising from construction.

- 5.26 In the meantime, we record that it would be fanciful to believe that the magnitude of the effects of a permitted forestry or farming operation, particularly the effects of noise, visual impact and traffic would be considered to be comparable to the potential adverse effects emanating from the proposed wind farm. Overall, and aside from the construction effects issue, we have determined that the permitted baseline argument is not strong and therefore we have placed no weight on the permitted baseline as we otherwise would be entitled to do so under section 104(2).

Statutory Instruments (Section 104(1)(b) Assessment)

- 5.27 In respect of the assessment in terms of section 104(1)(b) we must have regard to any relevant provisions of any national policy statement, a New Zealand Coastal Policy Statement, a Regional Coastal Policy Statement and a plan or proposed plan.
- 5.28 All the Planners (Council and Applicant) presenting at the hearing gave an outline of the relevant statutory provisions contained in the District and Regional planning instruments. We précis this below and also note that there was full accord between the planners on the relevant provisions and we heard no challenge to this from any submitter. Accordingly, we adopt this précis as a statement of agreed fact.

District Level

Operative District Plan (1998); Proposed Tararua District Plan (as notified, April 2008);

- 5.29 Mr Forrest advised that the zoning and the relevant rules of the Operative and Proposed District Plan (as notified) are the same in application against the proposed wind farm. Mr Chrystal for the Applicant concurred with this.
- 5.30 The site is located within the Rural Management Area of the District Plan and is subject to the Rural Management Area provisions, and the Environmental Standards. The land use activities comprising the proposal include:
1. *Construction, operation and maintenance of the TRHE (including but not limited to): Wind turbines; Substations; Crane Pads (Platforms) and Culverts.*
 2. *Land disturbance and excavation of more than 200m³ of soil and lean fill material.*
 3. *Construction of internal access roads from North Range Road.*
 4. *Installation of structures greater than 10 metres in height in the Rural Management Area.*
 5. *Modification of a Significant Natural Feature and Landscape.*
 6. *Clearance of Indigenous Vegetation.*
- 5.31 Overall these activities require consent as a Discretionary Activity under respective Rules 4.1.5.1; 5.1.5.3; 5.3.1.4(e); 5.4.4.3; 5.5.3.3(b); 5.5.4(b).

Proposed Tararua District Plan (as amended by decisions, November 2009)

- 5.32 As previously discussed in Section 4 of this decision, the Proposed Tararua District Plan was modified by decision during the course of the hearing. This had the effect of replacing the notified Proposed District Plan which along with the Operative District Plan are the two documents that the Applicant's and TDC's planners reported on at the commencement of the hearing.

- 5.33 We are obliged to give consideration to the provisions the Revised Proposed District Plan. A table¹³ comparing the relevant provisions of the Proposed District Plan (as notified) and the Proposed District Plan (as Amended by the Council's Decisions on Submissions) was produced by Mr Forrest and reviewed and agreed upon by Mr Chrystal.
- 5.34 The main alterations to the Proposed District Plan relevant to this application as a result of the TDC decisions are:
- a) Amendments to Objective 2.6.2.1 and Policy 2.3.4.2(b) dealing with the environment;
 - b) New objectives and policies that are relevant to new wind farms activities, namely Objective 2.8.4.1 and Policies 2.8.4.2(a) and (b);
 - c) An assessment matter added to Standard 5.5.4(b)(iii), namely the effects of the modification of indigenous vegetation on any ecological corridor;
 - d) A new Section 5.3.7.4 'Criteria for Assessment', relating specifically to wind farms; and
 - e) Amendments to the Standards in Section 5.2.3 relating to 'no-complaints' covenants.
- 5.35 Both Mr Forrest and Mr Chrystal provided a discussion on the relevant amendments¹⁴. Mr Forrest explained that the decisions created new provisions relating specifically to wind farms and that these were the only provisions of any real relevance with regard to the application under consideration. He added that these new amendments did not change the overall assessment of the resource consent application for the proposed Te Rere Hau extension; therefore his existing assessment in the section 42A RMA Planner's Report and his Supplementary Report adequately addresses the matters covered in these new provisions.
- 5.36 It was also the opinion of Mr Chrystal that the new provisions did not alter his original initial conclusions on the proposal and that matters raised by the new provisions had been adequately covered off. We acknowledge the views of Mr Forrest and Mr Chrystal.

Regional Level

Regional Policy Statement

- 5.37 The Regional Policy Statement (RPS) is an overview document that provides the framework for managing resources in the Manawatu-Wanganui Region in a sustainable way. In the framework for resource management, the RPS lies beneath the central government instruments (national policy statements, national environmental standards). (For the record, the Commissioners note that aside from the national standard for noise from wind farms, there are no national standards in NZ for siting wind farms). It is also noted that District Plans are required to be consistent with both the RPS and regional plans.
- 5.38 We acknowledge that there are two key sections of the Regional Policy Statement regarding the merits of the overall wind farm proposal. These are Chapter 22, regarding Natural and Cultural Features, and Chapter 29 regarding Energy we took these into account in our deliberations.

Various Regional Plans

- 5.39 Information on the status of activities under the following plans was given by Ms Shirley in her section 42A report¹⁵:

¹³ Consultant District Planner (David Forrest) for TDC, Supplementary Statement, 12003.030/24.11.09

¹⁴ Consultant District Planner (David Forrest) for TDC, Supplementary Statement, 12003.030/24.11.09 & Applicant's Planner (Dean Chrystal), Supplementary Statement of Evidence in Response to Minute 2 of the Hearing Panel, 24.11.09

¹⁵ Paragraphs 82-93, 100-102 - Section 42A Report, prepared by L Shirley, Consents Planner, Horizons Regional Council

- Manawatu Catchment Water Quality Regional Plan;
- Land and Water Regional Plan;
- Regional Plan for the Beds of Rivers and Lakes and Associated Activities; and
- Regional Air Plan.

5.40 This information presented by Ms Shirley was not disputed by any party during the course of the hearing and we accept it as a statement of fact.

Proposed One Plan (RPS and Regional Plans)

5.41 The Proposed 'One Plan' combines the requirements for preparation of a Regional Policy Statement and a Regional Plan. It was notified on 31 May 2007. It is described as a "one-stop-shop" regional planning document that defines how the natural and physical resources of the Manawatu-Wanganui Region (including fresh air, clean water, productive land and natural ecosystems) will be cared for and managed by the Manawatu-Wanganui Regional Council in partnership with Territorial Authorities and the community.

5.42 Ms Shirley also gave evidence in relation to the proposal against the Proposed One Plan. She outlined the rules triggered by the proposed extension¹⁶. These included rules affecting:

- land disturbance and vegetation clearance;
- stormwater discharge;
- discharge of cleanfill; and
- stream works.

5.43 Again, this material presented by Ms Shirley was not disputed by any party during the course of the hearing and we accept it as a statement of fact.

Overall Activity Status

5.44 Based on the uncontested legal¹⁷ and planning¹⁸ advice, it became common ground to all parties that the wind farm is to be considered as a discretionary activity under the Tararua District Plan and relevant MWRC Regional Planning documents. Such status allows us to grant or refuse the application, and impose conditions on it under Section 108 of the Act.

5.45 Further, our discretion in respect of these applications is therefore unrestricted and all relevant effects can be considered. Notwithstanding this, there was common agreement amongst all parties that the relevant effects to be considered relate principally to effects on rural amenity as a result of potential noise and visual impacts of the wind farm.

5.46 These potential effects form the basis of the assessment conducted by us in Sections 7-11.

Weighting of Statutory Instruments

5.47 The issue of the weight to be given to new regional and district plans becomes particularly important when there is a conflict in the conclusion of the assessments against the operative and proposed District/Regional Plans. However in this case the following is significant:

¹⁶ Paragraphs 94-99 - Section 42A Report, prepared by L Shirley, Consents Planner, Horizons Regional Council

¹⁷ Legal Submissions for the Applicant

¹⁸ Tararua District Council Planner's Report, paragraphs 46 – 53; Horizons Regional Council Planner's Report, paragraph 106; Applicant's Planner para 13-14.

- Firstly, we accept that there is no indication of any disconnect between the nature of the provisions in the Operative District Plan or the recently amended Proposed District Plan in terms of activity status, generic policy direction and standards. (For the record, this was the same situation between the Operative Plan and the Proposed (as Notified) District Plan before the latter plan was superseded by the version as amended by decisions).
 - Moreover, and perhaps more importantly, there is no recorded conflict of any magnitude in the conclusions of the three planners who undertook assessments against the Operative District and Regional plans and the Proposed District/One Plans as presented on this matter to us.
 - Accordingly, (and given an absence of any planning input from submitters per se) the importance of assigning weighting between the Operative District/Regional and the Proposed District/One Plans is diminished.
- 5.48 On the above basis, all of the effects of the proposal are within our discretion regardless of the nature of the content of the proposed Tararua District Plan and the MWRC One Plan; therefore weighting is not an important and determining consideration at this juncture.
- 5.49 In other words, it is highly likely that we would have arrived at the same decision given at the end of this report, regardless of any significant weighting applied to the consideration between the various statutory instruments.

Non - Statutory Instruments (Section 104(1)(c)) “Other Matters”

- 5.50 In respect of the assessment in terms of section 104(1)(c), the consent authority must have regard to any other matter it considers to be relevant and reasonably necessary to determine the application. In this case, a number of documents are considered relevant. These would include for example the New Zealand Energy Strategy and the Proposed National Policy Statement for Renewable Electricity Generation.
- 5.51 Mr Chrystal gave an undisputed assessment of those documents and we take his views on that as undisputed.

6. ISSUES OF CONTENTION

Context

- 6.1 We note that wind farms in rural settings are provided for as discretionary activities in both the Operative District Plan and the Proposed District Plan (as amended) – the latter an intentional provision to give effect to the 2004 amendment to the RMA which required statutory instruments to have more regard to renewable energy and climate change, and the former a default provision in the operative District Plan which was a first generation district plan produced in the 1990s. As such it can be readily determined that wind generating facilities/activities are generally considered to be an efficient use of resources and generally appropriate in the rural zone of the Tararua District.

- 6.2 By contrast, a wind farm is unlikely to be appropriate in an urban, wilderness or any other environment. Overall, we take from this that, in general terms, the statutory documents are signalling that a wind farm is an appropriate development in the rural environment of the Manawatu, provided it does not have unacceptable adverse effects on the local environment.
- 6.3 In terms of the last point, we acknowledge the concerns of submitters that the generation of wind power does have the potential to create adverse effects and that consideration must be given to how these effects are borne. In other words, whilst wind energy is an environmentally responsible solution, it must also fit into the location in an environmentally responsible way. If it proceeds, the environmental costs of this wind farm will need to be mitigated to a reasonable degree so that they are not unreasonably imposed on the people of parts of Tararua District and on the wider population of the Manawatu region.
- 6.4 It is clear from our analysis of submissions (and the evidence in support of those submissions at the hearing) that there is real potential that adverse effects could result from the construction and operation of the proposed TRHE wind farm. For example, the development could have an adverse effect on the visual amenity offered by this section of the Tararua Ranges and on the amenity of some rural residents in close proximity such as along parts of the Pahiatua track and Ballance Valley Road. We note that submitters judge the potential for adverse environmental effects to be significant due to the scale, nature and location of the proposal.
- 6.5 We therefore have had to consider whether these potential effects can be adequately avoided, remedied or mitigated and/or can be offset by the positive benefits of the proposal.
- 6.6 Thus, and returning to the point originally made at the beginning of this contextual setting, although a wind farm may be consistent with the provisions in the statutory instrument for the rural area, the Act still requires the effects on the environment of this proposal to be assessed. Sections 7-11 of this decision describe each of the potential adverse effects, as categorised by us. Then in Section 12, an evaluation of these effects in terms of Part 2 of the Act is undertaken.

Overview of Issues

- 6.7 Based on our overview of the legislation and the relevant provisions in the statutory instruments from Section 5 and also from our analysis of the submissions and evidence (Section 4), we have considered the main environmental effects to be considered and evaluated fall into the following five categories
- Construction Activities;
 - Natural character/Landscape & Visual Amenity;
 - Operational Noise;
 - Terrestrial and Aquatic Ecology;
 - Archaeological and Cultural values;
- 6.8 In addition, we have considered the potential positive effects which can be attributable to the proposed activity.

Preliminary Notes on the basis of this decision

- 6.9 Prior to evaluating the principal issues of contention emerging from the hearing, we wish to briefly outline certain matters that provide an important context to the application and the

way our deliberations and decision recording has been undertaken. These matters include the following:

- Evidential basis for decision
- Issues Approach to decision
- Irrelevant considerations
- The role of Turitea

Evidential approach

6.10 Counsel for the Applicant, Mr Holm, reminded us that the decision making process is still one which operates on the fundamental basis of evidence heard by a Hearings Panel and the evaluation and weighing of such evidence in accordance with the RMA. We have no issue with this and further agree with that counsel that during the course of the 11 day hearing we heard evidence in three broad categories:

- Expert evidence from the Applicant and the relevant consent authorities – Manawatu-Wanganui (Horizons) Regional Council (MWRC) and Taranaki District Council (TDC);*
- General evidence from individual submitters speaking generally with obvious sincerity, in their own right about their subjective perceptions and beliefs;*
- Comments from other statutory bodies such as the Department of Conservation (DOC) and Historic Places Trust (*

6.11 Mr Holm went on to make the following observations regarding the evidence category (c) and (b):

It is no exaggeration to record that the comments in category (c) were generally based on very little practical experience of the site and little apparent reading or consideration of the relevant expert evidence. The weight to be given to such comments – especially in regard to consent conditions should be minimal.

Many of the comments received in category (b) above must be treated with respect but considerable caution. A hearing such as this is unable to explore with any forensic accuracy the motivations or potential conflicts of interest of any individual submitter. There may be a solid justification for a complaint or claim from a submitter, or there may not. It will always be a very difficult task to assess or distinguish the range of emotions or other reasons which focus on noise, (or any other concern), as a means of voicing general opposition to the presence of wind farms, (or other developments), in the rural environment.

6.12 In our view there is some substance to Mr Holm's comments on category (c) submitters – DoC and HPT - as follows:

- In terms of DoC, it was disappointing for us to hear that the DoC personnel had not visited the site and had not appraised themselves of the updated information produced by Mr Kessels - the Applicant's ecologist - which had been circulated prior to the hearing. In addition, the suite of proposed conditions that they proposed in relation to pre-construction and post-construction monitoring of both aquatic and terrestrial ecology seemed to us to be disproportionate to the quality of the environment that is the subject site and surrounds. In other words, the conditions proposed by this submitter seemed more appropriate to a vulnerable terrestrial and aquatic ecology as opposed to a working farming environ that is the site and its surrounds.
- In terms of the HPT, the notice of submission lodged by them raised a valid point regarding the absence of any archaeological assessment. However their tabled statement (in lieu of attendance at the hearing) failed to acknowledge the archaeological report subsequently prepared by the Applicant and attached to Ms van Polanen. Had they been

aware of that report it is possible that, like Ms Shirley for the MWRC, the HPT would have reassessed their original concerns relating to archaeological protection.

- 6.13 On the above basis, whilst we have not dismissed the evidence in total of the category (c) submitters but have placed little weight on it.
- 6.14 In terms of the category (b) submitters – individual residents – and as unpalatable as it will be for the many of the 25 or so individual submitters who made the effort to attend the hearings and present in support of their submissions - we find that there is some force in Mr Holm’s submissions, particular as they relate to the issue of operational noise and to a lesser extent visual impact. On this basis, we record that no submitters called any independent expert evidence to establish or substantiate any claims of potential adverse effects arising from the TRHE in terms of noise effects or to dispute the council and Applicant evidence on visual impact.
- 6.15 Conversely, and in terms of Mr Holm's category (a), we heard from both councils - neither of which opposed the grant of consents - who called expert evidence in relation to the following potential adverse environmental effects
- (a) Noise;
 - (b) Landscape;
 - (c) Ecology; and
 - (d) Traffic / Roading
 - (e) Planning
- 6.16 In some other areas we note that the Councils did not lead any expert evidence which questioned the evidence of the Applicant – this was notably in respect of the potential economic benefits. We return to that matter in respect to our assessment of positive effects later in this decision.
- 6.17 On the above basis, we reiterate our role as decision-makers; namely that it is not our role to substitute our knowledge for evidence we hear (or don’t hear as the case may be) but rather to use our knowledge to weigh and evaluate the evidence heard, particularly where that evidence is in dispute. The key point we heard in relation to the major technical areas such as noise, traffic and construction effects, was that a large degree of agreement existed between qualified, experienced and recognised experts in those fields.
- 6.18 We make this point to stress that no matter how passionate or firmly held that presentation and views of lay submitters are, it is difficult to not have a large degree of reliance on expert evidence particularly when the issue is a technical one such as noise. Conversely, we accept that in the issue of visual amenity, the topic is less objective and open to more subjective analysis (although that is not to belittle the more objective techniques such as ZTV modelling, visual simulations and landscape characteristic criteria endorsed by the Courts).
- 6.19 As such, and on the subject of landscape character and visual amenity we have, even though there are very few submissions opposing the development from the eastern side of the Tararua Ranges (being the location from which the turbines will be most visible) given careful consideration to those submitters who have raised visual amenity issues as a basis for requesting that the application be declined.

Issues Approach in Decision

- 6.20 We have adopted an “issues approach” in making this decision. In other words, rather than focusing on a submitter by submitter analysis of concerns, we have grouped the concerns of individual submitters into the aforementioned effects categories. Each effect category has then been assessed in terms of the following framework: its statutory context (i.e. plan rules and policies and objectives), the particular matters raised with respect to that issue and an evaluation of the issue.
- 6.21 The approach we have adopted in recording our findings on each of these issue categories is founded deliberately on the principles of avoiding redundancy in issue consideration and promoting economy in recording. By that, we note we they have focused principally on the issues of contention associated with the application and have largely (and almost exclusively) taken those matters where there is little or no disagreement between the parties as read.
- 6.22 Whilst not in itself an unusual approach to decision recording per se, such an approach is usually reserved for decisions on applications where there are few submissions and little assessment required. Whiles this application does not qualify in that regard per se, it is nevertheless reasonably unique in that, despite being a substantial capital investment and a major development for the Manawatu, there were very little areas of expert evidential contention or disagreement presented to us at the hearing.
- 6.23 In terms of the above, we make the following key observations relating to the evidence and reports presented at the hearing:
- There was an absence of any major evidential conflict between all parties on those specified matters that both the Operative District Plan and the Proposed Plan reserve discretion over;
 - On the key issue of operational noise, there was no authoritative or credible challenge to the evidence led by the Applicant or contained in the Council Officer reports. This included 4 acoustic engineers/experts (3 who gave evidence in person and one whose report was tabled in relation to monitoring).
 - We acknowledge that some residents have first hand experience of noise from the existing TRH operation but note that the undisputed technical evidence of both the Applicant (Mr Hunt and Mr Halstead) and the Council expert (Mr Lloyd) and merely note that despite some minor evidential differences between Mr Lloyd’s reports and the other acoustic engineers, there were no substantive or fundamental discrepancy between their positions.
 - Similarly there was reasonably high accord between the landscape and planning evidence of both the Applicant and Council Officers.
- 6.24 For completeness, we record that whilst there was no attendance from some submitters, this by no means negates their written notices of submission. However we do note that those submissions were very generic in nature and without the benefit of any evidence to substantiate the concerns (and in the face of evidence led by the Applicant to the contrary and supported by the Council), it was difficult if not impossible to ascertain any merit in, or afford any weight to, the matters raised in those notices.
- 6.25 In conclusion, and as the planning witness for the Applicant observed in his presentation, there was a strong measure of agreement between the majority of experts associated with the proceedings. We refer to this by reference to specific issues in section 7-11, but for the time

being it is suffice to state that we agree with and adopt this observation as the basis for the style of decision report.

Irrelevant Considerations

- 6.26 We were careful to adopt a consistent approach to hearing all evidence so as to ensure a fair hearing and decision making process was followed. In the reasonably structured but open nature of the proceedings it was inevitable that a number of issues would be raised by submitters which are not relevant considerations under the RMA.
- 6.27 These included:
- (a) The financial viability of the proposed activity;
 - (b) Personal difficulties or the financial viability of the Applicant- including imposing a bond in relation to decommissioning of the site;
 - (c) Effects on property values as they are simply another measure of adverse effects on amenity values; and
 - (d) The impact on participants of two RMA hearings running at the same time.
- 6.28 At the time of the hearing, we indicated that whilst it was unlikely we could make determinations on these matters we were open to hearing the concerns but were likely to make a ruling on such in the written decision. We do so here by saying that we are unable to determine or resolve those particular issues and we would expect that this does not come as any surprise to submitters who raised such matters.
- 6.29 Aligned to this theme, we feel obliged to make a comment about the defences between the compliance of the existing TRH farm and the application for the TRHE that is before us. Quite simply, whilst the TRHE is an extension to the existing wind farm, it is noted that the resource consent under our considering application is legally separate from the consent already granted to NZWL.
- 6.30 Accordingly, this consent hearing is not an opportunity to review the existing consent. There are separate provision under the Act for such a review and we direct submitters to those procedure should they believe a case exists.

The Role of Turitea

- 6.31 The issue of the cumulative effect of wind farms in the Manawatu Region was a matter of debate before us and will be discussed further latter in this decision. However one aspect of cumulative impact that we need to deal with up front relates to the role of the proposed Turitea wind farm in our deliberations.
- 6.32 Amongst the legal and planning experts there did not appear to be any dispute that the consideration of effects of wind farms as yet neither applied for nor consented should not form part of our deliberations. However this was not the position of several submitters and we feel obliged to comment on this perception lest there be continued misunderstanding of the legal situation that prevails.
- 6.33 For the record, we note that Mighty River Power (MRP), are proposing to erect a wind farm within the Turitea Water Catchment Reserve (owned by PNCC) and neighbouring privately owned properties. The area within which turbine site locations are being proposed extends from Brown's Flat for a distance of approximately 9km to land near the Pahiatua Track. We

understand that change to the Turitea Reserve Management Plan to include a new purpose to allow “renewable power generation” in part of the reserve was made in the last two years.

- 6.34 At the time of the TRHE hearing, MRP had lodged their application and, as already mentioned, it was being heard by a Board of Inquiry who adjourned the hearing until the first quarter of 2010 in order to enable a revision to the proposal to be engineered by the Applicant. A date for reconvening the hearing was yet to be set when we closed our hearing but importantly there is no prospect of a decision on that application until at least mid 2010.
- 6.35 As mentioned, some submitters asserted that the cumulative effects of the TRHE extension together with the proposed Turitea wind farm will be unacceptable, particularly with respect to noise and landscape issues. Indeed, submitters such as the Tararua Aokautere Guardians Inc (TAG) representatives requested that no decision on this hearing be released until Turitea has been decided.
- 6.36 Accordingly, we sought comment from the TDC Planner and the Applicant on whether the potential effects of the proposed Turitea wind farm are required to be considered.
- 6.37 For the Applicant, Mr Holm told us that the legal position is clear:

Unless and until the Turitea project receives consent, it is not lawfully to be considered. In particular, the Court of Appeal¹⁹ has confirmed that the "environment" for the purposes of assessing potential and actual effects includes the future state of the environment as it might be modified by:

- (a) Permitted activities under an operative district rule; and*
- (b) The implementation of 'operative' resource consents where it appears such activities / consents will be implemented.*

Like the TRHE extension the Turitea windfarm proposal is not a permitted activity and will require a number of discretionary activity resource consents. While these consents have been applied for they have not yet been granted. Indeed, the hearings for Turitea have not yet concluded and are not due to recommence until March next year as, the Applicant, Mighty River Power, is understood to be reconsidering the turbine types and layouts²⁰.

- 6.38 Mr Forrest concurred with this view when he stated.

The Committee has questioned whether the proposed Turitea wind farm should be taken into account in any consideration of the potential cumulative effects of the proposed Te Rere Hau Extension. I am of the opinion that Turitea should not be considered in relation to the assessment of this application, given that the outcome of the consideration of the Turitea wind farm application by the Board of Inquiry cannot be predicted with any level of certainty whatsoever. In any case, it is only appropriate to take into account the existing environment when making a decision as to whether or not to grant consent to an application.

In my view, the 'existing environment' includes only existing activities, consented but not yet existing activities, and activities that are permitted under the relevant Plans (i.e. those could be undertaken without the need for a resource consent). The proposed Turitea wind farm does not fit any of these categories at present.

- 6.39 On the above basis it seems irrefutable to us that Turitea does not form part of the “existing environment”, and cannot be considered by us when assessing the cumulative effects that could arise from TRHE.
- 6.40 Nevertheless, to the extent possible, expert evidence from the Applicant has dealt with potential cumulative noise and visual amenity/landscape effects arising from Turitea and TRHE/TRH should both Turitea and TRHE be consented. To this end, the Applicant concluded that noise and landscape/visual amenity cumulative effects will not be an issue warranting declining consents.

¹⁹ *Queenstown-Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424 at paragraph [84].

²⁰ MfE website <http://www.mfe.govt.nz/rma/call-in-turitea/>

- 6.41 We refer to this “belts and braces” evidence under the respective effects headings in the remainder of this decision and in particular under the headings of “Operational Noise” and “Landscape/Visual Amenity Effects”.
- 6.42 On the above basis we now evaluate the actual and potential effects of the proposal.

7. CONSTRUCTION EFFECTS

Evidence heard

- 7.1 We heard from Mr Colin Fink (Associate and Surveyor – Kevin O’Connor and Associates Limited) on the nature of the construction works and the associated programme for the proposal. The evidence of Mr Fink was that the construction and commissioning of the turbines will be completed over a period of approximately two years. The hours of operation for the construction will be between 6.00am and 6.00pm, up to 7 day a week.
- 7.2 Mr Fink advised us that:
- The location of the access roads and turbines has been identified to meet both construction feasibility and wind generation capacity. The position of the roads has been designed to follow existing contours, and where possible, the turbine platforms have been incorporated into the road area. These measures will limit ground disturbance, minimise the amount of earthworks and minimise the risk of any site erosion;
 - The fill and disposal sites have been identified to avoid seepage zones and will be located in locations that provide stable ground. These fill/disposal sites will be covered in topsoil and re-grassed as soon as the sites are no longer required. In his view this, in combination with the use of stormwater and sediment controls (outlined by Mr Kessels), will minimise erosion and reduce the potential adverse effects of increased sedimentation on the seepage zones
- 7.3 In terms of potential impacts arising from the construction operation, we heard from the following witnesses:
- Mr Philip Peet (Transportation Planning and Traffic Engineering Team Leader and Engineer - MWH) who addressed traffic issues.
 - Mr Gerry Kessels (Managing Director and ecologist - Kessels and Associates) who addressed ecology issues.
 - Mr Malcolm Hunt (Principal and Mechanical Engineer – Malcolm Hunt Associates) who address noise issues including construction noise.
- 7.4 In addition, Mr Chrystal – consultant planner for the Applicant – outlined the statutory context for the consideration of these effects. In essence, that context distilled to the discretionary activity status of the proposal under the district plan regime and the discharge consent regime under the regional framework.
- 7.5 For the Regional Council, the principal evidence led by Ms Shirley was from Mr Peter Blackwood, Manager Investigations and Design for the Regional Council who provided a peer review of Mr Fink’s construction assessment and whose report focuses specifically on

the engineering design around earthworks and culvert construction. Ms Shirley also called two other witnesses to comment on the ecological effects of construction namely:

- Ms Fleur Maseyk, Senior Environmental Scientist – Ecology for the Regional Council whose technical assessment focused specifically on ecological matters;
- Dr Olivier Ausseil, Senior Consulting Scientist with Aquanet Consulting for the Regional Council and who dealt specifically with the effects of earthworks activities on water quality matters.

7.6 Ms Shirley’s overall position in terms of potentially adverse ecological effects arising from the construction period was that, so long as some gaps in the information provided in the application (particularly around the fill disposal sites, erosion and sediment control and the design of the culverts requiring consent), were addressed she was satisfied that the actual and potential adverse environmental effects can be avoided remedied or mitigated by recommended consent conditions.

7.7 For the District Council, Mr Forrest acknowledged that the principle effects are regional and he deferred largely to Ms Shirley on that when he said:

“The effects of the construction of the proposed TRHE on the flora, fauna and ecology... construction earthworks... sediment and dust of the area have been considered by the staff of the MWRC and are included in the MWRC Planner’s Report”.²¹

7.8 However, Mr Forrest did refer to witnesses on the effects on construction noise (Mr Lloyd) and construction traffic (Mr Cannon). Mr Forrest’s view was that there was nothing unusual about the construction proposed and in fact the use of existing infrastructure associated with TRH, notably the access road, was a positive factor in reducing impact during the construction process. As with Ms Shirley, he concluded that all construction effects could be effectively avoided, remedied or mitigated through the imposition of a suite of suitable conditions including a construction management plan.

7.9 There was a paucity of information provided by submitters on this potential effect other than some submitters referring to potential for conflict between heavy trucks and cyclists on the Pahiataua track during deliveries of material and components. Apart from that, this matter appeared to be “below the radar” for submitters.

Issues Arising

7.10 This was, in our view, clearly a category of effect where there was a high level of uniformity in agreement between the Council and the Applicant and a topic where submitters did not express significant concern. Moreover, it seems that on this particular matter, all roads lead to the identification and imposition of suitable conditions to deal with impact.

7.11 Accordingly our focus has been on the key issues and determining the appropriate package of conditions - something which we do note there wasn’t full agreement on between the Applicant and the Council, particularly at the regional level.

7.12 For the sake of convenience we have grouped the various sub categories of constructions effects into regional and district categories as follows. Generally, Mr Forrest dealt with the former and Ms Shirley the latter.

²¹ Consultant District Planner (David Forrest) for TDC, page 22, para 102-103.

District Environmental Effects

- Traffic/Roading Effects
- Construction Noise
- Archaeological/Cultural effects;

Regional Environmental Effects

- Ecological effects resulting from earthworks and vegetation removal on water quality and ecology (terrestrial and aquatic)
- Discharge of dust to air effects.

Traffic/Roading Effects

7.13 Our starting point on this matter was the report by the Engineering Services Manager for the Tararua District Council, Mr Ray Cannon, on the transport and roading effects of the application.

7.14 Mr Cannon acknowledged the comprehensive nature of the Applicant's Traffic Impact Assessment, completed by Mr Peet from MWH²².

7.15 In terms of traffic construction impacts, he agreed the following assessment²³

"The construction period would, however, see a relatively significant volume of heavy vehicles and construction traffic. This can easily be managed under conditions that were imposed for the consented works.

The intersection of North Range Road and Pahiatua Track is an existing intersection with poor visibility toward Pahiatua. The North Range Road approach was sealed for 30 m from Pahiatua Track as a condition of the consented works. There have been no reported crashes at this intersection in the past 10-years, which includes construction of the consented works. No further improvements are considered necessary.

A primary access is proposed directly opposite the existing consented primary access. This would have good sight distance once constructed, and would be downgraded to a secondary access on completion of construction.

North Range road was upgraded, with the easing of curves and signing of tighter curves, for the consented wind farm. In addition to this, the posted speed limit is temporarily reduced to 30km/h. No additional improvements are considered necessary. NZ Windfarms Limited currently maintains North Range Road to a suitable standard, and would continue to until construction is complete."

7.16 The concerns raised by submitters in relation to construction traffic were acknowledged in the 'Submissions Received' section of Mr Cannon's report²⁴ Mr Cannon identified that in relation to site access the:

"...Tararua District Council would have concerns if the supply [of goods and services to the site] conditions were to change requiring traffic to enter from the TDC side".

7.17 His report stated that the Council's concerns are related primarily to sight distances at this intersection when approaching the intersection from the eastern (Pahiatua) side of the Pahiatua Track and turning right into North Range Road. In this respect, Mr Cannon shared the concerns of Palmerston North City Council (PNCC) raised in its submission [46]. The PNCC requested that

"...the sight distance at Pahiatua Track intersection be investigated and be confirmed that they are adequate, or alternatively that mitigation measures be implemented".

²² MWH Report Appendix I (Volume II) of the AEE.

²³ MWH Report Appendix I (Volume II) page 8

²⁴ MWH Report Appendix I (Volume II) page 3

- 7.18 Additionally, Mr Cannon identified a further concern which is in relation to the potential closure of the Manawatu Gorge. He stated that the Average Daily Traffic (ADT) Count is about 1500 vehicles per day; however as a result of closures of the Manawatu Gorge, this can double to 3000 vehicles per day. He was of the view that potentially adverse effects arising from such a situation had not been addressed by the Applicant in its AEE.
- 7.19 In response to these identified concerns from Mr Cannon, Mr Forrest made the following two recommendations in his planning report:
- That if there is a requirement to investigate and upgrade the North Range Road intersection with the Pahiatua Track, that the cost of this investigation and upgrade be undertaken by the Consent Holder.
 - That as traffic doubles on the Pahiatua Track during periods of State Highway 3 Manawatu Gorge closure; consideration should be given to restricting construction traffic to the Te Rere Hau Windfarm, particularly the heavy and over dimension traffic, during any Manawatu Gorge closures. Restrictions could be limited to one or two movements of oversize loads per day subject to traffic volumes using the road. This would be at the discretion of both PNCC and TDC.
- 7.20 The Applicant's response was both generic and specific. At the general level, and by reference to Mr Peet's report, (which concluded that the traffic effects of the proposal are no more than minor) the Applicant reiterated that there are no traffic or roading-related issues which would warrant declining consent.
- 7.21 Specifically and in response to Mr Cannon, concerns regarding the maintenance of North Range Road and the sight lines from Pahiatua Track for oversize traffic when turning right into North Range Road, the Applicant advised that it had held discussions on these matters with both PNCC and TDC, and that these concerns have now been addressed by adding the following requirements to the proposed conditions:
- (a) A requirement that the consent holder maintain North Range Road to the same standard it is at, as at the date of the granting of consent; and
 - (b) A restriction on oversize traffic turning right into North Range Road from Pahiatua Track when the Manawatu Gorge is closed.
- 7.22 Mr Forrest signalled no dispute with that response and accordingly we are satisfied that this particular matter can be satisfactorily mitigated through conditions.
- 7.23 The above aside, while submitters such as Mr Olsson expressed concerns about the effect of construction traffic on cyclists and other traffic, no evidence was produced to support that position and neither expert traffic witness saw this as an issue. Indeed, Mr Peet's evidence expressly addressed the crash history of the Road and found that there had been no incidents arising between cyclists/other traffic and construction traffic.
- 7.24 We also note Mr Cannon's advice to us during questioning at the hearing that the TDC as road controlling authority for the Pahiatua Track will also have the ability to consider this potential effect when it takes part in the oversize and overweight permitting process that will be required for the transportation of the turbine components.

- 7.25 Furthermore, we believe that it would represent sound planning practice to include this as a matter for consideration in the Traffic Management Plan that the Applicant is required to prepare and submit to the TDC for approval prior to commencing any work on the site.

Construction Noise

- 7.26 We were advised by Mr Forrest that Mr Nigel Lloyd of Acousafe Consulting and Engineering Limited (Acousafe) had been engaged by the Council to consider and report on the noise effects of the activities encompassed by the application. His report was attached to Mr Forrest's s42A report as Appendix B. That report, whilst focusing on Operational noise effects (which we deal with under separate heading later in this decision), also gave consideration of the Applicant's potential noise effects associated with construction activities on the site.²⁵
- 7.27 Mr Lloyd reviewed the Applicants reports prepared by Mr Hunt and Mr Halstead and concurred that the noise effects resulting from construction activities will be controlled by reference to NZS6803:1999 Acoustics – Construction Noise. In this respect, he stated that *“the Standard provides for minimal daytime noise limits to allow for construction activities to take place and these will easily be met by the predicted construction works”*. No one disputed this and we accept it as an agreed position. If approved, the wind farm construction would be subject to such a condition.
- 7.28 Additionally, Section 8 of the Acousafe Noise Peer Review Report²⁶ considered concerns related to road traffic noise associated with the construction period. Based on the Applicant's predicted heavy vehicle movements detailed in the Traffic Report appended to Volume II of the AEE as Appendix I, Acousafe identified that *“average sound levels from vehicular activity are not expected to be high in traffic noise terms”*. However, Acousafe recommended that offsite traffic noise be controlled by way of a Traffic Management Plan that restricts heavy vehicles from using North Range Road between the hours of 10 pm and 7 am.
- 7.29 Mr Forrest, in assessing the construction noise issue, referred to Section 11 of the Acousafe Report²⁷ which discussed the consideration of appropriate conditions of consent in the event that the TRHE is granted. He noted that the draft conditions recommended in the Acousafe Noise Peer Review Report closely follow those contained in the resource consent (Consent Order) for the existing Te Rere Hau wind farm, for the reasons outlined below:

“...there are compelling reasons to impose the existing Te Rere Hau wind farm noise conditions on the TRHE especially as there are a number of dwellings that will experience the noise from Te Rere Hau and from the TRHE as a combined wind farm. To have two sets of noise rules for what will become effectively the same wind farm would be nonsensical.”

- 7.30 We note that recommended draft noise conditions 1 and 2 relate specifically to the construction noise of the proposed TRHE. Having reviewed these conditions and discussed them with the author during the hearing, it is our view that they are appropriate should consent to the application for the TRHE be granted.
- 7.31 Finally on the matter of construction noise, we note that the issue outlined above as raised by both Mr Lloyd and Mr Forrest in respect to the undesirability of having two sets of conditions for noise measurement for what would effectively be one farm if consent is granted to TRHE is an live issue for operational noise. We return to that later in this decision.

²⁵ Section 7 of the Acousafe Noise Peer Review Report (page 7)

²⁶ refer page 8

²⁷ page 10

Archaeological & cultural effects associated with construction

Archaeological

- 7.32 Mr Forrest discussed this issue in his s42A report and in doing so drew on the submission of the HPT. Even though in dealing with this matter under the heading of construction effects, we do acknowledge that some of the potential cultural effects potentially relate to post construction/operation effects, however it is opportune to cover those at the same time given the commonality of the issue.
- 7.33 Mr Forrest's starting point acknowledged that the Applicant had advised that consultation has been undertaken with Tanenuiarangi Manawatu Incorporated (TMI) and Rangitane a Tamaki nui a Rua Inc (Rangitane) in terms of the TRHE project. He also recorded that:
- The Applicant also identifies that a Cultural Impact Assessment (CIA) was undertaken by TMI.; and
 - The Applicant states that only the "*Executive Summary*" of the CIA is provided in the AEE²⁸. The Applicant has advised that TMI has requested that the full CIA not be included in the application in order to protect its sites of cultural significance.
- 7.34 Our attention was drawn to TMI's concerns (as expressed in the CIA) regarding:
- (a) The potential for construction activities to uncover and disturb archaeological material The Applicant proposes the inclusion of an "*accidental archaeological discovery protocol*".
 - (b) Ecological concerns.
- 7.35 In terms of (a) above – accidental discovery - Mr Forrest drew our attention to the conditions of consent for the existing Te Rere Hau Wind farm²⁹ which requires an Accidental Discovery Protocol (ADP) to be implemented during earthworks and construction activities. Mr Forrest recommended that this condition be adopted with the necessary modifications, as also being appropriate to the TRHE
- 7.36 In terms of the ecological concerns identified by TMI, Mr Forrest quite rightly noted that such concerns were addressed in the MWRC reporting officer's report. We agree and deal with those concerns under that regional grouping of construction effects.
- 7.37 Aside for those matters Mr Forrest noted that the Applicant states that seven of the proposed TRHE turbine sites have been identified, by TMI in the CIA, as being in close proximity to three peaks that are significant to Rangitane o Manawatu³⁰ He advised us that TMI requests that the Applicant reconsiders the placement of these turbines or "*develop appropriate buffer zones or other such mitigation measures in consultation with TMI*". In respect to this Mr Forrest noted that in the absence of the full CIA, it is difficult to determine whether any further mitigation measures are necessary and / or what measures would be appropriate in order to address TMI's concerns.

²⁸ Appendix K of the Application

²⁹ refer Appendix L of the AEE, Condition 24

³⁰ [refer Figure 1 of the CIA Executive Summary (Appendix K of the AEE Volume II)].

- 7.38 We concur with Mr Forrest above, but also note that TMI did not make a submission on the application. Furthermore, it is also noted that the “significant peaks” referred to in the CIA are not recorded in the Operative and Proposed District Plan (and associated Planning Maps). Like Mr Forrest, we therefore consider that if consent is granted then the only mitigation measure related to archaeological matters is a condition in relation to the accidental discovery protocol discussed above.
- 7.39 Notwithstanding this, there is still the concern of the HPT in their submission regarding the lack of an archaeological assessment in the AEE as lodged with the application. In this respect we note that the Applicant commissioned Dr Caroline Phillips, a very experienced archaeologist, to undertake an assessment of the site. A copy of Dr Phillip’s assessment was attached to Ms van Polanen’s evidence.
- 7.40 We understand that Dr Phillips undertook a field survey of the project area on the 3rd September 2009. No archaeological evidence of Maori or early European occupation was found during this walkover. The Archaeological Assessment did, however, find that the site may have been utilised for small birding encampments and shelters used by travellers on the walking tracks that were used by Maori to traverse the ranges in the past.
- 7.41 Notwithstanding that no archaeological sites were found, Dr Phillips acknowledged the potential for the proposed works to unearth evidence of Maori use of the area and supported the proposed inclusion of an Accidental Discovery Protocol condition. We were advised by Ms Polanen that NZWL altered its proposal to avoid, as far as practicable, the cultural sites that TMI had identified. On this basis we are satisfied that any adverse effects on archaeological resource should be capable of being avoided.

Tāngata Whenua Consultation

- 7.42 In addition to concerns about the potential for the TRHE to impact on cultural sites, particularly significant peaks and trails, there were some concerns raised in the submission process regarding the consultation process undertaken by the Applicant.
- 7.43 Through Mr Holm, the Applicant generally noted that there is no legal obligation on resource consent Applicants to consult. However, he pointed to the evidence of Ms van Polanen which confirmed that NZWL undertook consultation in this case. In this respect we accept that:
- NZWL consulted with Tanenuiarangi Manawatu Incorporated (TMI) and Rāngitane a Tamaki nui a Rua as these were the groups it was advised had an interest in the area.
 - NZWL did not consult with Nga Hapu o Himatangi (Ngati Rakau, Ngati Turanga, and Ngati Te Au) as prior to their submission being lodged, they genuinely were not aware that these groups had an interest in the area.
- 7.44 As we understand the evidence of the Applicant, they will continue to consult on the issues associated with turbine placement. We also understand from the evidence of Ms van Polanen that NZWL will also continue to consult with Rangitane o Tamaki Nui a Rua (Rangitane) and that it intends to consult with Nga Hapu o Himatangi.
- 7.45 Overall, we are satisfied that the archaeological and cultural impacts of the proposal are not adverse and are “in hand” in that:

- The CIA provided by Tanenuiarangi Manawatu Incorporated (TMI) identifies the effects of the proposed TRHE on cultural values of importance to them which are located on the site and the surrounding area. A number of measures have been proposed to avoid and mitigate potential adverse effects of the development on cultural values.
- There is a demonstrable commitment by the Applicant to continue consultation with Tangata Whenua.

Ecological effects of construction (and operation) of the Wind Farm

The Issues

- 7.46 The effects on the environment arising from construction earthworks and sediment were considered by staff of the MWRC and reported by way of the MWRC Section 42A Officer's Report. We have already outlined at the beginning of this section on construction effects what evidence we heard and what the key issues are. However to recap (as perhaps of all the issues pertaining to construction, this topic was the most in dispute between the parties) the key to the dispute was the nature of the conditions necessary to avoid and mitigate the effects of construction on ecological values – and more notably, the effects on water quality and acetic values from earthworks and sediment. There was also a concern with the effect on terrestrial values (particular in regard to avifauna) during the operation of the wind farm.
- 7.47 To be clear, we need to record that no evidence was given to the position that the potential ecological effects of construction and operational the wind farm were such the application should be declined. Furthermore, Mr Holm made it clear that the Applicant accepts that conditions are necessary to protect the ecological values of the site. The dispute is as to what conditions are necessary and appropriate to protect those values.
- 7.48 For the council, Ms Shirley (drawing on the reports of Ms Maseyk and Dr Ausseil) provided in her s42A report a succinct overview of the potential construction effects on flora, wetlands, and water sources on the site and its surrounds. She came to the following conclusions:
63. *Based on the above assessment of effects, I note there are some gaps in the information provided in the application particularly around the fill disposal sites, erosion and sediment control and the design of the culverts requiring consent. I am satisfied that the actual and potential adverse environmental effects can be avoided remedied or mitigated by recommended consent conditions.*
64. *As noted above, the specific design has not been finalised and provided as part of the application. The Applicant has outlined that a detailed design report prior to the commencement of construction will be provided by way of conditions of consent. I have considered whether there is adequate information to understand the nature of the effects at this stage or whether the Applicant is putting matters into a management plan that more appropriately sit in an assessment of a resource consent. I am mindful this matter was traversed recently in the Mill Creek Wind Farm Hearing with Greater Wellington Regional Council. I understand that if an application lacks sufficient information to assess effects and impose appropriate conditions, then it must be declined or suspended for further information. The condition process cannot be used to plug the defects in an application. In Wood v West Coast Regional Council C127/99 the Environment Court stated that the purpose of a management plan is to provide the consent authority with enough information about the way in which the Consent Holder intends to comply with more specific controls or parameters laid down by way of other conditions of consent. A management plan should not be rigid but should be able to be amended as advances in technology and changes in the environment take place. The Court held that the Consent Holder should be able to change the management plan without having to go through the process of seeking a change to the conditions of consent.*
65. *I consider that in general terms the above matters identified in paragraph 63 and 64 can be adequately mitigated through appropriate conditions to the point that those effects are no more than minor.*

- 7.49 On the above basis, Ms Shirley advised us that having carefully considered this matter she had recommended a comprehensive suite of conditions to not only cover any deficiencies in information, but also to ensure potential and actual adverse effects can be appropriately avoided, remedied or mitigated.
- 7.50 The Applicant responded thorough Mr Kessels and Mr Chrystal. In particular, Mr Kessels' strongly worded conclusion was that, based on his extensive site and research investigations, the site is ideally located from an ecological perspective, being situated within pastoral land. Other factors in his view which diminished it's ecology value are:
- *No endangered, rare, threatened or vulnerable plant species were found within the site, although further surveys for the New Zealand falcon and bats have been proposed to confirm with greater certainty that these threatened species are not utilising the site*
 - *No fish or aquatic macro invertebrate habitats are considered to be adversely affected, subject to ensuring adequate sediment control measures are in place*
 - *Given the limited habitat available and thus the low densities of birds utilising the site, the potential impact on birds through collision with turbine blades is likely to be very low.*
- 7.51 In short, Mr Kessels was of the view that the original set of conditions included in the MWRC s42A report was inappropriate given the *relatively low ecological values of this site* in combination with what Mr Fink described as the *relatively modest scale of works* that will be occurring on-site.
- 7.52 It was clear to us following the presentation of the Applicant's and Council's ecological witnesses, that there was (at least initially) a sizable disconnect between their respective positions; and that the foci on these disagreements were the conditions relating to earthworks/sediment control and ecological monitoring. We suggested that the parties get together in the scheduled week-long adjournment and report back to us at the resumption, which in fact is what happened.
- 7.53 At the resumption on 11 November, we were presented with supplementary reports from Ms Shirley and her technical witnesses and by closing submissions in a reply from Mr Holm on behalf of the Applicant. The parties advised that there had been a number of discussions between the Applicant and Council regarding the conditions resulting in some agreements. However, there were some residual concerns which were still unresolved. As a result of these discussions, the Applicant had produced a set of proposed conditions which were reviewed by Ms Shirley and relevant technical staff for the Council. Those conditions were tabled by the Applicant as part of their right of reply. A revised set of conditions from the Council were also produced by Ms Shirley.
- 7.54 A table summarising the main remaining areas of agreement and disagreement regarding the conditions between the Applicant and the MWRC was usefully presented by Ms Shirley. In her view, the Applicant, by its own acknowledgment, still needed to work through a number of matters at the detailed design stage of the project. Those matters which she felt still required further information were:
- a. *Ecological conditions, specifically around water quality monitoring*
 - b. *Silt and sediment controls;*
 - c. *The location and method of control for cut and fill areas; and*
 - d. *The design of culverts.*

- 7.55 Ms Shirley also advised that the MWRC has produced some additional recommended conditions with regards to avifauna and bat monitoring in consultation with the Department of Conservation. A copy of these conditions was tabled as part of Ms Maseyk's supplementary report.
- 7.56 In response, Mr Holm acknowledged that there would indeed need to be further detailed design required for the aspects of the project listed by Ms Shirley and that it was standard practice for projects like this one, for such design to be undertaken after any consent approval is obtained. He reiterated that the Applicant, through various witnesses, was trying to establish that the proposed erosion and sediment control measures (while not fully decided on yet) will be appropriate. He reminded us that such measures are likely to be based on the measures for the existing consented Te Rere Hau wind farm site which had experienced no significant sedimentation and erosion issues.
- 7.57 In other words, the Applicant argued that the proposed site is purely an extension with similar characteristics to the existing consented site and therefore does not require the level of consent conditions recommended by the Regional Council. Further, the position of the Applicant was that the Construction and Environmental Management Plan (CEMP) process outlined in their suite of conditions would provide a sufficient basis for the Applicant to produce detailed design and for the Council to assess and certify that design report prior to construction commencing.
- 7.58 In her final presentation, Ms Shirley advised that she had a fundamental disagreement with the approach advanced by the Applicant to rely on the CEMP process. She contested their premise that *that just because this site is close to the existing consented wind farm site that it has the same characteristics this somehow means that robust conditions of consent are not required to manage the potential adverse effects*. In particular, she advised that the precautionary principle meant that the information needs to be produced now so that the application can be considered on its merits and appropriate conditions of consent imposed to avoid, remedy or mitigate potential adverse effects.

Evaluation

Management Plan

- 7.59 Whilst it would have been preferable for the parties to have reached an agreement on the remaining unresolved issues and produce a final agreed set of conditions, we accepted that this was not going to be possible despite the time we had provided and a willingness of the parties to co-operate. Even though there were disagreements, by the close of the hearing these had been isolated into two matters; namely:
- The risks of environmental degradation as a result of the proposed earthworks; and
 - The sufficiency of information provided (and the role of the CEMP process)
- 7.60 Starting with the former, we return to the evidence of Mr Kessels. In his view the site and surrounds contain low terrestrial and aquatic ecological values. In his view the TRHE site is, from an ecological perspective, *"an ideal site"* for a wind farm. Earlier in this decision, we referred to the need to make a decision based on a carefully examination and weighing of the technical evidence which includes examining the manner in which the evidence has been derived. In this respect, we accept that Mr Kessels.

- is a highly experienced ecologist with considerable experience in relation to wind farm projects; and
- He has undertaken a thorough review of the ecological values of the site and has found that there is no ecological reason for declining consent.

7.61 We accept his view. In addition, and on the basis of his comprehensive investigation, which included several visits to the site, we accept that he has recommended a suite of ecological conditions that will ensure that the ecological value of the site will be protected whilst ensuring that the conditions do not go further than is necessary to protect those values.

7.62 Without wanting to be critical of the genuine technical inputs from the MWRC (and we certainly do not dispute the qualifications and experience of Ms Maseyk and Dr Ausseil) and the representatives from DOC who gave evidence on ecological issues, it is hard for us to ignore the facts presented to us by Mr Holm in his closing; namely that:

- (a) *None of these witnesses provided any evidence to contest Mr Kessels findings in relation to the existing ecological flora and fauna on the site;*
- (b) *None of these witnesses had themselves carried out an ecological assessment of the site; and*
- (c) *Most of these witnesses had only visited the site on one occasion or had spent very little time on the site itself.*

Reasons (b) and (c) above do not provide an excuse or basis for applying a so called “precautionary approach” to conditions when it would, with some diligence, be possible to be properly informed.

7.63 On the second matter we outlined above - the adequacy (or in the inadequacy) of the conditions proposed by the Applicant to protect the ecological values of the TRHE site and surrounding locality - we also draw on a previous reference in this decision; in particular, the reference by Ms Shirley to the role of the Management Plan process and her reference to the Court’s comments on such. In this respect, Ms Shirley’s starting point was that:

- If an application lacks sufficient information to assess effects and impose appropriate conditions, then it must be declined or suspended for further information; and
- The condition process cannot be used to plug the defects in an application.

7.64 In support of this position, Ms Shirley referred to *Wood v West Coast Regional Council*³¹ where the Environment Court stated (from her paraphrased words):

that the purpose of a management plan is to provide the consent authority with enough information about the way in which the Consent Holder intends to comply with more specific controls or parameters laid down by way of other conditions of consent. A management plan should not be rigid but should be able to be amended as advances in technology and changes in the environment take place. The Court held that the Consent Holder should be able to change the management plan without having to go through the process of seeking a change to the conditions of consent.

7.65 In our view, this position adopted by the Court, and quoted by Ms Shirley, is essentially no different from the position advanced by the Applicant. In other words, as the Court envisioned for the Management Plan process, the Applicant intends to use the CEMP to provide all the information pertinent to construction (including the residual information identified by MWRC) to the Council for review, assessment and certification prior to the

³¹ C127/99

commencement of construction. To our thinking, this is the purpose the Management Plan as outlined by the Court.

- 7.66 We accept that this approach may not be as appropriate if the information initially supplied by the Applicant was so deficient as not to enable any Officer or decision-maker to understand the nature of the effects and the degree to which they can be avoided, remedied or mitigated via conditions such as the Management Plan. We understand that Ms Shirley and her colleagues were not suggesting that to be the case.
- 7.67 Further, we also accept that we would perhaps not be so conducive to this management plan approach had we not been convinced, by Mr Kessels (and generally agreed to by Ms Maseyk and Dr Ausseil), and Mr Fink (and largely endorsed by Mr Blackwood) respectively of the relatively low ecological values of this site and the relatively modest scale of works that will be occurring on-site.
- 7.68 We also accept the wording of the Management Plan should be clear on the information that is required and the way it will be assessed. In this case, we believe that the wording suggested by the Applicant - which outlines the information to be supplied and the reference to the Wellington Regional Council's Erosion and Sediment Control Guidelines for the Wellington Region - provides a suitable basis for assessment and certification of the CEMP by the MWRC.
- 7.69 We also note the interactive approach of the Management Plan process whereby both the Council and the Applicant have the ability to be involved in the early stages of formulation – and prior to it being submitted - through actions such as joint walkovers of the site.
- 7.70 Overall, we accept that construction/earthworks have the potential to result in temporary adverse effects, and accept the conclusions of Mr Fink and Mr Kessels that the effects can be mitigated to a less than minor level for the duration of the project. Appropriate conditions of consent are recommended (e.g. a Construction and Environmental Management Plan - CEMP) which will require detailed information to be submitted by the Applicant on how potential effects of earthworks, including silt run-off and dust arising from the construction activities, will be managed.
- 7.71 We accept the CEMP condition framework supplied by the Applicant as preferable to that of the MWRC. It will allow flexibility for the Applicant to finalise the specific design for construction and provide a detailed design report to the Council prior to construction for review and certification
- 7.72 We note that the CEMP requirement follows a well established practice implemented by many other Councils, and accept that implementation of the CEMP will ensure any construction/earthworks effects will be appropriately addressed and/or mitigated.
- 7.73 Finally, as far as the Mill Creek application referred to by Ms Shirley is concerned, having familiarised ourselves with that decision, we believe that the Management Plan framework there was not fundamentally different to what's being proposed by the Applicant here; albeit that it is more detailed which accounts for the more ecologically sensitive environment on that part of the south-west coast of Wellington.

Other Ecological Issues

- 7.74 The issue of the management plans aside, there were many other minor issues raised by the Applicant which have the potential to be covered by way of conditions should consent be granted.
- 7.75 We note that all parties appeared to agree with Mr Kessels' assessment that there is little significant indigenous vegetation on the site. Further, clearance of what little indigenous vegetation there is on site is a permitted activity (provided it complies with certain standards). We note that Ms Maseyk for MWRC expressly acknowledged this in her evidence.
- 7.76 In relation to fauna, the major point of dispute appeared to be how much additional monitoring/information is required to prove a negative – in other words, that NZ Falcon, bats and other species of concern are not using the site or if they are what conditions are necessary and appropriate to protect these species from any potentially adverse effects of the wind farm. On this basis, we find that the extensive monitoring programmes proposed by DoC and the MWRC officers were not warranted. The monitoring proposed by Mr Kessels is considered to be appropriate to the situation.

Other Construction issues

Dust

- 7.77 With regards to dust, we accepted Mr Fink's assessment that the effects of dust can be mitigated; and due to the distant location of the site, will have negligible effects on any adjoining properties.

Geotechnical

- 7.78 Ms Shirley's s42A report recommended³² that a geotechnical report be prepared prior to commencement of construction. Based on Ms van Polanen's evidence³³ we noted that an assessment has already been undertaken which determined that the geological characteristics of the site were very similar to the existing TRH windfarm.
- 7.79 We therefore questioned the necessity for a further geotechnical report prior to construction. The response we received from the Applicant was that the geology of each turbine site will also be individually tested prior to its construction and the proposed condition would just add an unnecessary cost to the process. We accept this and also accept that geotechnical considerations will form part of the Building Consent process.

Conclusion on Construction Effects

- 7.80 In conclusion, after weighing all the evidence, we accept that the main construction effects i.e. noise; traffic and sediment control can be adequately managed and/or mitigated by appropriate conditions.
- 7.81 In our opinion, not all of the conditions proposed by MWRC are considered practical or necessary and the layout design of the TRHE, together with the proposed mitigation

³² paragraph 61

³³ paragraphs 24 - 26

measures and conditions, will ensure that the effects of the construction of the wind farm will be no more than minor.

8. LANDSCAPE/VISUAL AMENITY EFFECTS

AEE, Submissions, Evidence and Issues

- 8.1 The visual impact of the wind farm extension itself was a key concern addressed in the AEE lodged with the application and probably the second most important concern for the majority of the submitters (operational noise being the principal concern). This is understandable given that the Tararua Range is a prominent landform and can be viewed from a number of vantage points on both its eastern and western sides. The flatness of the plains on either side of the range helps to emphasize its prominence.
- 8.2 In this section, and so that there is no uncertainty over the basis for our evaluation that follows in the second half of this section, we have recorded in some detail the content of various inputs into the hearing and our deliberations. These include the AEE lodged with the application, a synopsis of the submissions and the various briefs of evidence led by the Applicant, submitters and the Councils.

The Application/AEE

- 8.3 The starting point was the Assessment of Environmental Effects (AEE) prepared and lodged with the application. It included:
- An assessment of landscape and visual effects prepared by Peter Rough Landscape Architects Ltd.
 - A number of visual simulations produced by Emma Pollard from Morgan and Pollard Visual.
- 8.4 Mr Forrest advised us that the AEE material was notified and served as a basis for firstly submissions and secondly the assessment by the Councils.
- 8.5 In addition the planning assessment accompanying the AEE provided a full statutory assessment of the proposal including a planning assessment of the landscape and visual effects of the proposal.

Submissions

- 8.6 In terms of the submissions received in respect of the application, the key issues raised by submitters (as summarised in the s42A Report³⁴) were as follows:
- *Adverse visual effects on the skyline and effects on visual amenity of the Tararua ranges and 'visual pollution'.*
 - *Contrary to the RPS and proposed One Plan in relation to outstanding natural features.*
 - *'Visual saturation' of too many turbines, at too higher density in the landscape and the 'industrial' nature that so many turbines create*

³⁴ Landscape and Visual Effects Peer Review Report, pages 25-26

- *Preference for fewer, larger three bladed turbines, over the higher density smaller turbines and the dislike of the mixture of the different types of turbines visible in one view.*
- *Dislike of the appearance of the two-bladed turbines when turning their 'tumbling and unsettling' motion and when at rest 'like crucifixes'.*
- *Some stated a preference for the three-bladed turbines which were considered more balanced, and less obtrusive. Two bladed turbines are 'ugly'. Adverse effects on visual character and rural character.*
- *'Reduction of visual amenity' and 'loss of amenity values for those living in the vicinity' of TRHE were typical phrases used in terms of amenity. Often these comments were closely associated with noise issues, and adverse effects of the perceived tranquillity of the rural environment.*
- *Adverse effects on maintenance and enhancement of amenity values (RMA Section 7(c)).*
- *Unacceptable cumulative effects that additional turbines will bring (often the specific effects such as visual or noise were not specifically associated with the term 'cumulative'). Several submissions commented that 56 more turbines would be unacceptable and that there were already enough wind farms and turbines. A few submitters commented that the 'saturation point' of turbines on the Tararua Ranges had been reached."*

8.7 We also note that that the Palmerston North City Council's submission raised concerns that the TRHE application did not include a reasonable assessment of cumulative effects of the wind farms on the Tararua Ranges including an assessment of the impact in conjunction with the proposed Turitea wind farm. We return to this matter presently.

8.8 The summary above was also representative of the 'flavour' of the evidence submitted by many of the individual residents who presented at the hearing as listed in Section 4 of this decision. It was these submissions (and the individual presentations in support of them by residents (particularly those living in and around Pahiatua Track) that provided the basis for our testing of the evidence presented by the two landscape experts - Mr Rough and Mr Evans. So whilst we have not identified individual submissions or summitters per se, we can provide an assurance to all parties that, based on the evidence heard and our visits to submitters' properties, we were alive to the issues raised by all submitters pertaining to landscape and visual matters.

Section 42A Report

8.9 Mr Forrest for the TDC explained that Mr Boyden Evans of Boffa Miskell Limited was commissioned by the Council, to review the landscape and visual effects of the proposed TRHE resource consent application. His report was attached as Appendix C to the s42A report.

8.10 Mr Evans noted that in preparing the report that he reviewed the application documents and the landscape and visual effects assessment, consulted with the Council's reporting officers, reviewed the submissions, and visited the site and local area (21 August 2009) with the Applicant and Council Officers. He noted that he had several telephone discussions with Mr Peter Rough in relation to his assessment. For the record we note that Mr Evans was also present at the hearing when Mr Rough presented his evidence.

8.11 The Boffa Miskell Landscape and Visual Effects Peer Review Report addresses two aspects of the TRHE proposal:

- (a) Earthworks – rehabilitation and visibility
- (b) Turbines – visual amenity impacts

These are outlined below.

Earthworks

- 8.12 In the Boffa Miskell report, Mr Evans stated that the earthworks for the consented Te Rere Hau wind farm and redistribution of material have largely been successful and that he understood that a similar approach to earthworks will be adopted for the TRHE. He also noted that a quarter of the proposed TRHE turbine sites are proposed to be sited on widened turbine sections of the access roads rather than on separate spur roads which will reduce disturbance.
- 8.13 The AEE recorded that cut and fill sites will be hydro-seeded with pasture grasses. Mr Evans identified that this has been mostly successful on the existing wind farm. Additionally, in terms of visual effects, he made reference to page 6 of the Construction Effects report prepared by Kevin O'Connor Associates. He stated that cut batters may be visible from the eastern side of the range but details that, due to the ground contour, these would only be visible from a distance.
- 8.14 Further, Mr Evans identified that the Applicant's landscape report makes some general observations and comments regarding turbine platforms and fill sites and notes that the proposed work ought to be undertaken to "*re-establish the original appearance of the land surrounding each turbine site*". He confirmed that road cuts are detailed in the visual simulations included in the TRHE AEE.
- 8.15 The only matter of uncertainty in the Boffa Miskell report related to the observation that formation of the turbine platform will be similar to that used in the existing Te Rere Hau Wind Farm; i.e. that the landform around the small turbine platforms at the existing Te Rere Hau Wind Farm has not been re-contoured so that the platforms are integrated with the surrounding topography. Mr Evans queried why this approach has been taken when in most other wind farm developments "*the aim has been to re-contour the terrain around the turbine platform so the new landform is integrated with the surrounding topography*".
- 8.16 On the above basis Mr Forrest suggested that it would be helpful if the Applicant would respond to this query at the hearing and explain why this particular approach to the cutting and stepping of the turbine platforms is proposed, rather than re-contouring so that the turbine platform integrates into the landscape.

Turbines

- 8.17 Detailed in Section 3 of the Boffa Miskell Landscape and Visual Effects Peer Review Report, following the site visit and review of the application documents, information Mr Evans identified six gaps in the assessment as follows³⁵:
1. *The Applicants' Landscape and Visual Assessment fails to adequately address the potential cumulative landscape and visual effects of the Te Rere Hau Eastern Extension in relation to the proposed Turitea Wind Farm currently before a Board of Inquiry.*
 2. *The Landscape and Visual Assessment does not include a map that shows the locations of other wind farms that have been built (existing, consented or lodged (for example Turitea)). Such a map is considered important when discussing cumulative effects.*

³⁵ Landscape and Visual Effects Peer Review Report, pages 5 and 6

3. *The Landscape and Visual Assessment does not contain a Zone of Theoretical Visibility (ZTV) map, which is essential to illustrate the potential extent of visibility, and as a tool to be used in determining viewpoint selection for the preparation of the visual simulations. A ZTV map will materially assist the decision makers.*
4. *Further information and detail is needed on the selection of viewpoints on the eastern side of the ranges. Specifically:*
 - i. *No information is provided in the Landscape and Visual Assessment as to why viewpoints were omitted along Ballance Valley Road south of Post Office Road.*
 - ii. *Additionally, a single viewpoint is included in the vicinity of Pahiatua township (this is located on the hill slopes behind the town on Kaitawa-Tiraumea Road). The grid layout of Pahiatua itself means that there are viewshafts to the Tararua Ranges and the TRHE site along roads orientated east-west, yet there are no viewpoints within the township. Pahiatua is the largest settlement within the Tararua District in close proximity to the TRHE site and thus warrants closer scrutiny.*
 - iii. *A viewpoint is included from Troup Road (a secondary road within the District) but no viewpoint is included from State Highway 2 which provides wide panoramic views of the Tararua Ranges.*
5. *The Landscape and Visual Assessment does not include an analysis of the viewing audience, for example, in relation to its size, composition and closest dwellings.*
6. *The Landscape and Visual Assessment does not include an assessment of landscape and visual effects in relation to established recreational uses (such as horse trekking and quad bike tours) on North Range Road.”.*

- 8.18 Mr Evans wrote in his report that he considered these ‘gaps’ to be important omissions from the Applicant’s landscape and visual assessment. Mr Forrest added to this by stating in the s42A report that he expected that the Applicant would address those landscape and visual assessment ‘gaps’ by way of submission or evidence at the hearing.
- 8.19 We note that the Boffa Miskell report was unable to arrive at a firm conclusion about the landscape and visual effects of the TRHE due to the information ‘gaps’ detailed above. Notwithstanding these gaps, Mr Evans noted that he concurred with the overall approach and methodology used in the Applicant’s landscape and visual assessment³⁶. In addition, and having reviewed the Applicant’s draft conditions of consent in Section 8 of the Applicants AEE, we note that the Boffa Miskell report concurred with their intent. In the event that the application is granted, the report suggested a more *“comprehensive approach to the management of environmental effects both during construction and operation.”* In particular it was recommended that *“...a comprehensive Environmental Management Plan (EMP) be developed to ensure that the actual environmental effects of the development are consistent with those evaluated in the various assessments of environmental effects.”*³⁷
- 8.20 Drawing on the Boffa Miskell Report, and acknowledging the identification of some information gaps within the Applicant’s AEE in respect of landscape and visual matters, Mr Forrest concluded that those matters need to be addressed in order for the Applicant to demonstrate to the Commissioners that it is able to avoid, remedy or mitigate the actual and potential adverse effects of the proposed TRHE. Subject to that being done to our satisfaction, he recommended that consent be granted subject to conditions.
- 8.21 Prior to turning to the hearing, we should note that Mr Forrest indicated that one of the principal reasons for the absence of a firm recommendation in the Boffa Miskell related to insufficient information on cumulative impact. In particular, Mr Forrest referred to the Boffa Miskell conclusions that the cumulative landscape and visual effects of the proposed TRHE has not been *“convincingly addressed”*³⁸ in the AEE. We note that the Boffa Miskell report detailed the principle reason for this as being *“...largely due to no consideration being given to*

³⁶ Landscape and Visual Effects Boffa Miskell Peer Review Report page 30.

³⁷ Landscape and Visual Effects Boffa Miskell Peer Review Report, Section 13

³⁸ Landscape and Visual Effects Boffa Miskell Peer Review Report, Section 6

*the potential landscape effects of the Turitea Wind Farm*³⁹. We also note that this was one of the main information gaps that the Boffa Miskell report identified as needing to be addressed at the hearing. It was also one of the key concerns raised by submitters.

- 8.22 Whilst we accept that, regardless as to whether the Turitea Wind Farm proceeds or not, the proposed TRHE has potential to result in cumulative landscape and visual effects in combination with the existing consented wind farms including TRH (and its consented but unimplemented turbines), we do not accept (for the reasons that we outlined in Section 4) that the contribution by the Turitea wind farm can be considered. To reiterate, the reason for this is that Turitea is unconsented (and there is no guarantee that it will be consented), and it therefore does not form part of the existing environment upon which we are required to assess the nature of impact from the proposal.
- 8.23 Whilst we can understand the rationale for Mr Evans, (and indeed many of the submitters) wanting to provide a complete landscape assessment of the effects of all potential wind farms, it is beyond legal challenge that we are unable to consider this matter. Accordingly, and as did Mr Forrest in his s42A report, we have removed that aspect of Mr Evans' concerns and assessment from our own evaluation and have concentrated on the actual and potential visual effects on the landscape of the existing environment. To be absolutely clear, we record that that we have given consideration to the cumulative effect of TRHE in conjunction with TRH and the other existing wind farms in the Tararua (T1-3) and Ruahine (Te Apiti) Ranges.

The Hearing

- 8.24 In response to the concerns of the submitters and the reports of Mr Evans and Mr Forrest, the Applicant called the following witnesses:
- Ms Emma Pollard (Managing Director and 3D Modeller - Morgan & Pollard Visual Limited) who explained the visual simulations prepared for the wind farm.
 - Mr Peter Rough (Director and Landscape Architect – Peter Rough Landscape Architects Limited) who address landscape and amenity value issues including potential cumulative effects.
- 8.25 Mr Chrystal also gave his regional and district planning assessment of the landscape and visual impacts.
- 8.26 Given that there was general acceptance of the accuracy of the technology associated with the imagery presented by Ms Pollard, the focus of our interest and questions was on Mr Rough and Mr Evans who both presented two briefs of evidence each as follows:
- Mr Evans s42A report was taken as read at the hearing (as was Mr Forrest's) and he produced a supplementary statement responding the matter raised by Mr Rough and us during the first week of the hearing.
 - Mr Rough presented his Evidence-in-Chief on 6th and 7th October and a Further Statement of Evidence on 14th October.

³⁹ Landscape and Visual Effects Boffa Miskell Peer Review Report page 30

8.27 Mr Rough's Evidence-in-Chief (EIC) addressed many of the matters that Mr Evans had raised following the review of Mr Rough's landscape/visual assessment report and Mr Evans' site visit. These concerns were largely the matters raised in the TDC "further information" letter of 31 August 2009 to NZWL described in Section 4 of this decision.

8.28 In his Further Statement of Evidence (FSE) Mr Rough addressed the outstanding matters that had been raised in the letter of 31 August, together with matters which had been raised by us during the course of the hearing. These included information on:

- Transformer building colour
- Zone of Theoretical Visibility (ZTV) maps
- Wind energy landscapes
- Photo-point location map/Photo-points on Pahiatua Track
- Locations investigated but not utilised for the preparation of photo-simulations
- Orientation of turbines in photo-simulations
- Landscape and visual effects of the proposed turbines from Ballance Valley Road
- Cumulative effects
- Visual effect of the turbine blades "at rest"
- Peer Review issues raised by Mr Evans including clarifications on the visual simulations; the significance of the two bladed turbines cf. 3 bladed and earthworks re-contouring
- Conditions of consent

8.29 On the above basis, Mr Rough returned to his 9 point summary from his EIC and stated that he was confident that those conclusions remained valid, even more so given the additional scrutiny he had adopted.

8.30 For the record, that summary of conclusions is as follows:

- (a) *In a cumulative sense the Te Apiti, Tararua and Te Rere Hau wind farms have become a significant feature on the skyline and tops of the northern end of the Tararua and southern end of the Ruahine ranges.*
- (b) *The proposed Te Rere Hau Eastern Extension will also increase the overall effect wind farms have on the mountain range that separates the Manawatu and Tararua lowlands. However, its effect will be modest and it will augment, in a modest way, the notion of the skyline and tops of the northern Tararuas being a wind energy landscape.*
- (c) *The proposed extension will have no more than a minor effect on the outstanding status of the skyline of the Tararua Range.*
- (d) *From the western side of the Tararua Range, in terms of the Resource Management Act 1991 (RMA) section 7(c), the proposed extension will have negligible landscape and visual effects. Cumulative effects (which include consideration of the proposed Turitea Wind Farm) will also be negligible in most views.*
- (e) *From the saddle on the Pahiatua Track, the landscape and visual effects of the proposed extension will be minor.*
- (f) *The proposed extension will be more obvious from the lowlands on the eastern side of the Tararua Range. From these lowlands the landscape and visual effects of the proposed extension will mostly be negligible or minor.*
- (g) *From the settlement of Ballance and from along Ballance Valley Road the landscape and visual effects of the proposed extension will be moderate and, from one location and its vicinity, reasonably significant.*
- (h) *From the Tararua lowlands cumulative effects resulting from the proposed extension will be negligible to minor with the exception of three locations where they will be moderate.*
- (i) *Overall, the proposed extension will, with only a few exceptions, have negligible to minor landscape, visual and cumulative effects.*

8.31 Mr Evans presented a supplementary report at the hearing. He acknowledged that Mr Rough had, in his opinion, satisfactorily addressed in his two briefs of evidence, many of the matters that he had raised in his landscape report that formed part of the Section 42A officer's report. He did note however, that there were some of Mr Rough's responses which he did not agree with, or that in his opinion, had not been completely covered off satisfactorily. Mr Evans addressed these in his supplementary evidence, including addressing points raised by us in the course of our questioning Mr Rough.

8.32 His overall conclusion is repeated below:

68. The addition of 56 Windflow 500 turbines proposed for TRHE will result in landscape and visual effects. Given that the proposed TRHE turbines will be located on the upper flanks to the east of the ridge, the effects on visual amenity will be minor or less than minor when viewed from the Manawatu Plains and the western side of the Tararua Range. However, from the eastern lowlands the effects on visual amenity will be moderate to minor depending on the viewpoint. Distance will have a mitigating effect, but this will be offset to some degree by the dense arrangement of the TRHE turbines and by the way that the two-bladed turbines and their 'tumbling and unsettling' rotation will contrast markedly with the majority of the turbines already built on the ranges. This contrast will be exacerbated if the Turitea Wind Farm is consented and built.

69. While there were very few submissions to TRHE from residents located on the eastern side of the Tararua Range, the landscape and visual assessment should have included visits to private properties and explicit assessments carried out in relation to some of these properties.

70. TRHE will have cumulative landscape effects through both the addition of turbines in the 'gaps' along the ridgetop where there are no turbines currently, and through the elimination of the gap separating Tararua Wind Farm from Te Rere Hau and TRHE. The addition of the TRHE turbines even without those proposed for Turitea Wind Farm will extend turbines continuously along 17km of the Tararua – Ruahine skyline.

Evaluation

8.33 It will be clear that we have spent some time above traversing the evidence, including carefully outlining the sequence of the presentations and also quoting from what we believe to be determinative tracts – this has been done for the simple reason that such a précis affects our weighing of the evidence. Moreover, as we indicated in Section 4 of this decision it is the evidence (and its relative weight) which is what affects our evaluations and ultimately determines our decision.

8.34 Furthermore, we indicated at the inception of this section on landscape and visual matters that the issues raised by Mr Evans were essentially a replica of the matters raised by submitters on this topic; therefore Mr Evans became a quasi "keeper" of those issues. The significance of this being that the extent to which Mr Evans, as an independent professional and experienced landscape architect, accepted the evaluation of an equally-experienced and renowned landscape professional in Mr Rough is what has largely influenced our decision.

8.35 Accordingly, what we have derived from the above comes down to the final evaluation by Mr Evans and generally distils to the following issues :

- *The effects on visual amenity will be minor or less than minor when viewed from the western side of the Tararua Range.* This is a matter of agreement and we find accordingly;
- *The effects on visual amenity will be moderate to minor from the eastern lowlands depending on the viewpoint. Distance reduces that effect but may be offset by a greater density of the layout and the tumbling effect of the 2-bladed turbines. This contrast will be exacerbated if the Turitea Wind Farm is consented and built.* Mr Rough generally agreed with the ambit of that assessment but

preferred to shape it as Minor to Moderate. We treat this as largely an agreement also. As previously mentioned, we are not entitled to consider the potential effect of Turitea.

- *TRHE will have cumulative landscape effects through both the addition of turbines in the 'gaps' along the ridgetop where there are no turbines currently, and through the elimination of the gap separating Tararua Wind Farm from Te Rere Hau and TRHE.* Mr Rough also agreed that there would be some cumulative effects but concluded that they would be minor. We concur.

8.36 On the above basis, and aside for some issues of personal preference in landscape assessment techniques, the only areas of potential substantial disagreement between Mr Rough and Mr Evans relates to the significance of local amenity and cumulative effects. From this, we have (because it is a requirement of Part 2 of the Act) added the consideration of whether the site has any outstanding landscape features in terms of section 6(b). Accordingly, in the remainder of this landscape evaluation we ask the following questions:

- Is the site located within an Outstanding Natural Landscape or contain Outstanding Natural Features, and if so, is the use inappropriate?
- What is the impact on local amenity values as a result of the proposed extension?
- What (if any) cumulative visual effects arise from the proposed extension?

8.37 We have discussed each of these questions individually below.

Is the site located within an Outstanding Natural Landscape (ONL) or does it comprise any Outstanding Natural Features (ONF)?

8.38 The issue here relates to the general requirements of the RMA to recognise and provide for the protection of outstanding natural features and landscapes from inappropriate use and development. Accordingly what we are required to decide is whether the site of the wind farm and surrounds is part of an outstanding natural landscape or feature and whether the proposed TRHE represents an inappropriate development in that setting.

Statutory Instruments

8.39 The starting point for this type of assessment is normally the statutory instruments and in this respect both Mr Forrest and Mr Chrystal provided useful and complimentary evidence. The statutory facts are as follows:

- The skyline of the Tararua Range is identified in the Operative RPS as one of many features that are both outstanding and regionally significant. Specifically the skyline of the Tararua Range has “*scenic qualities provided by its prominence throughout much of the Region and its backdrop vista in contrast to the Region’s plains*” (Policy 8.3, p 1 (i)).
- The Proposed One Plan, which will eventually incorporate and replace the Regional Policy Statement (RPS), identifies the skyline of the Tararua Ranges as it currently exists with wind turbines, as an outstanding natural feature or landscape. However Map F:9 in Schedule F does not include those parts of the ranges that contain currently consented and/or built wind farms as a ‘*Significant Landscape*’. (That is the area between Pahiatua Track and the Manawatu Gorge).

- The Palmerston North City Council District Plan does not specifically identify outstanding natural landscapes in its area. In the Tararua District Plan the Ridgeline of the Tararua Ranges skyline is entered under the “*Schedule of Natural Features*”⁴⁰ for the reason that it has scenic values particularly as viewed from adjacent plains. Listed natural features are subject to rules that aim to control the adverse effects of activities at, or in close proximity to, such features. This has not altered in the Proposed Tararua District Plan as amended by decisions.

- 8.40 On the above basis, and perhaps with the generic exception of the Operative RPS, it is reasonable to conclude that the statutory instruments do not specifically identify the site as either an outstanding OLA or ONF. In terms of the more generic provisions in the operative RPS, we understand that whilst the proposed TRHE will be located within the ‘skyline’ of the Tararua Range when viewed from certain vantage points, this is more a policy issue rather than a categorical statement about the landscape status of the site
- 8.41 Further to the above we also accept the explanations by Mr Chrystal and Mr Forrest regarding the shift in policy protection that has occurred for this part of the Tararua ranges in the evolution of the current RPS into the One Plan. Essentially that argument notes that when the RPS became operative in 1998 there were no wind farms on the Tararua Range and the neighbouring Ruahine Range. Since 1998, on the Tararua Range the Tararua Wind Farm (stages I, II and III) and approximately two-thirds of the consented Te Rere Hau Wind Farm have been commissioned. As a result of these additional wind farms the skyline of the northern end of the Tararua Range has changed significantly. Turbines are now visible features on sections of the skyline from both sides of the range.
- 8.42 Perhaps in response to this, the One Plan has refined the extent of the “*Outstanding Landscape*” in the Tararua Range, to encompass a more limited area located further to the south of the site. Planning witnesses suggested that his change to the definition of the extent of the significant landscape, more accurately reflects the changes that have occurred in recent times as the Tararua Range has become a wind energy landscape. We agree.

Landscape Assessment

- 8.43 Notwithstanding the fact that the Tararua Range in the vicinity of the proposed extension is not recognised as being outstanding in the relevant district and regional planning documents, we note that case law recognises that sites that are outstanding, but have not been identified as such in a plan, can still fall to be assessed under section 104 subject to Part 2 of the RMA.⁴¹
- 8.44 Several factors are typically used to assess whether or not a landscape is outstanding under section 6(b) of the RMA. These are commonly referred to in case law as the “modified Pigeon Bay criteria”⁴², (natural science values, aesthetic values, expressiveness, transient values, shared values, value to Tangata Whenua, and historical associations).⁴³
- 8.45 Both Mr Rough and Mr Evans indicated their familiarity with the application of these criteria and have used them to identify areas of outstanding natural landscape in numerous situations throughout New Zealand. In their opinion the area of the Tararua Range in the vicinity of

⁴⁰ Appendix 3, Section 3.3, other significant natural features and landscapes.

⁴¹ *Unison Networks Limited v Hastings District Council* (HC, WN, CIV-2007-485-896 11 December 2007).

⁴² Environment Court New Zealand, Decision No. C32/99, *Pigeon Bay Aquaculture Limited v Canterbury Regional Council*.

⁴³ Environment Court New Zealand, Decision No. C180/99, *Wakatipu Environmental Society Inc v The Queenstown Lakes District Council*.

the application site (from the Pahiatua Track to the Manawatu Gorge) does not meet the Pigeon Bay criteria and should not be regarded as achieving outstanding status. In their views, the highly modified nature of the Range's land cover, including the presence of approximately 243 turbines (with 286 consented) mitigate against this.

- 8.46 At the local level, we concur with Mr Rough and Mr Evans that the northern end of the Tararuas, between Pahiatua Track and the Manawatu Gorge, is neither an outstanding natural feature nor an outstanding natural landscape, due in part to the presence of wind turbines. These lower elevation hills with more gentle topography are the foothills to the main ranges and have a very different character to the more mountainous and 'wild' mountains to the south. They are a less-prominent and more-modified landform. The more gentle topography of the foothills has lent itself to use for farming and consequential modifications, such as the clearance of much of the native vegetation, establishment of roads, forestry blocks, farm buildings and structures, and wind farms; it is very much a 'working rural landscape.'
- 8.47 On the above basis, we conclude that the site is not an outstanding natural landscape and therefore the issue of whether the proposal is an inappropriate development in such a landscape is a moot point.
- 8.48 Notwithstanding our conclusions above, we agree that the continuous skyline of the ranges and foothills are a distinctive local feature and worthy of particular consideration in relation to development that may affect it. To this extent, there are therefore section 7c amenity issues we must consider, which is focussed on in the following two sections.

What is the impact on local amenity values as a result of the proposed extension?

- 8.49 This issue largely comes down to the visibility and integration of the proposed turbines into the landscape when viewed from the east. In this sense we note that the wind farms on the Tararua Range are of varying size, construction type and turbine number and are now a dominant part of the landscape both north and south of the Manawatu Gorge. The wind farms are however all very different. For example the existing TRH wind farm has much smaller turbine sizes (47m in height compared to others over 120m in height), two rather than three blades and has a greater number of turbines than Stage 3 of the Tararua wind farm to the north. Stages 1 and 2 of the Tararua wind farm are different to Stage 3 having steel lattice rather than tubular steel towers and are much shorter in height.

View from the West

- 8.50 Mr Rough assessed that the proposed extension will be visible to a small degree from the Manawatu side of the Tararua Range, and Mr Evans agreed. In some instances views of the proposed extension from this area will potentially be discernible behind the existing TRH turbines, while in other instances they will appear to slightly increase the extent of the existing wind farm on the skyline. Having assessed the proposal from these various viewpoints we conclude that from the western side of the Tararua Range the proposed extension will have negligible landscape and visual effects.

View from the south/Pahiatua Track

- 8.51 From the saddle of the Pahiatua Track Mr Rough noted that the view towards the site of the proposed extension is dominated by hill and gully landforms, shelterbelts and prominent trees and that although the closest of the proposed turbines will only be 1.76 km away, most of the 17 turbines within that view will only be partially visible. Taking this landscape context and turbines visibility into account Mr Rough concluded that the landscape and

visual effects of the proposed extension from this location will be minor. Mr Evans agreed and so do we.

View from the eastern lowlands

- 8.52 Mr Rough noted, and we agree, that the proposed extension will be more obvious from the lowlands on the eastern side of the Tararua Range due to the turbines lying on the eastern side of the crest of the Range. Mr Rough indicated that in most views from the Tararua lowlands the extension will result in the existing TRH wind farm being extended along the skyline to the north and south.
- 8.53 The issue with this however is the significance of that visibility. In this respect Mr Rough concluded that because of the viewing distances and the diminutive size of the TRH turbines from viewing locations, that landscape and visual effects of the proposed extension will generally be negligible or minor. We visited each of the viewing points and considered the various visual and landscape issues. We concur with the visual impact assessment undertaken by Mr Rough which concludes that overall the TRHE will have negligible to minor visual effects.
- 8.54 However, as both Mr Rough and Mr Evans noted, the exception to this is viewing locations in the vicinity of the settlement of Ballance and from along Ballance Valley Road, where principally (as a result of the proximity to turbines to these viewpoints and because any views towards the site of the proposed extension are focused ones) landscape and visual effects will be moderate and, from one location (Photo-point 4c) reasonably significant.
- 8.55 We asked Mr Rough to address this assessment in his supplementary report and in particular to comment on the possible need for mitigation measures, perhaps involving the removal of turbines, in views from Ballance Valley Road for which he has indicated that from Photo-points 4a and 4b the landscape and visual effects will be “*moderate*” and from Photo-points 4c the effects will be “*reasonably significant*”.
- 8.56 Mr Rough had several points to make in response to the notion of mitigation and we record this in full because we found, with the benefit of visiting the locality and particular the Day properties on Ballance Valley Road, that Mr Rough’s response was logical and acceptable. He said:
- (a) *I have used the terms “moderate” and “reasonably significant” in relation to the degree to which the visible turbines and earthworks of the proposed extension will change the existing character of the landscape and the view of the landscape. That the effects from Photo-points 4a and 4b will be moderate and those from Photo-point 4c will be reasonably significant does not mean that they will necessarily be adverse effects. For reasons set out in my EIC, at paragraphs 72-79, the effects a wind farm makes ultimately depends on the attitude and aesthetic appreciation of an individual viewer.*
 - (b) *The landscape and visual effects of the proposed extension, as they will be experienced from Ballance Valley Road, will certainly be no more, and will very likely be considerably less, than the effects of the much larger turbines of the existing Tararua Wind Farm as it is experienced from various locations (including Ballance Valley Road), north of Post Office Road*
 - (c) *There are few opportunities to view the proposed extension as it is depicted in the DTM simulations from the closest viewing points, viz Photo-points 4b and 4c (at 1.45 km and 1.36 km away from the nearest turbines respectively), as landform and/or trees obscure views towards the site from much of the southern two-thirds of Ballance Valley Road between Post Office Road and the foot of the Pahiatua Track. Furthermore, there are no dwellings in close proximity to the viewpoint (Photo-point 4c) that is closest to the proposed extension. The nearest dwelling is some 400 m northeast along Ballance Valley Road and, by my reckoning the proposed turbines will not be visible from that dwelling because of foreground trees and landform*

- (d) *The only submitter from Ballance Valley Road is Mr Andrew Day of No. 303. Mr Day resides very close to DTM Photo-point 4b. While I appreciate that Mr Day did not have the benefit of seeing simulations from Photo-points 4a, 4b and 4c prior to the hearing I note from his submission that he is generally supportive of the project and his principal concern is noise. The only other submitters that could be considered to be nearby have addresses in Makomako Road. These are Mr and Mrs Percy at No. 789 and Mr and Mrs McBride at No. 933. A dwelling at No. 789 is approximately 600 m from the road and buildings at No. 933 are approximately 80 m from the road but concealed by trees from it. These addresses are between 4 km and 6 km from the proposed extension site and I was unable to determine if direct views of the turbines would be obtained from these locations*
- (e) *I am aware that in some landscape assessments of proposed wind farms roadside planting and planting around dwellings are proposed as mitigation measures. I am not an advocate of such mitigation measures because I believe that in rural settings most people would rather see open views with turbines on distant hilltops than have such views curtailed by planting adjacent to roadsides and/or around dwellings in order to conceal distant turbines*
- (f) *That leaves the only mitigation measure open to consideration being the removal of turbines. In the case of the proposed extension and views of it from Ballance Road I do not consider this to be warranted as the moderate and reasonably significant landscape and visual effects that I have identified are somewhat restricted in their extent and location and will not be experienced by many people on a day to day basis. Furthermore not dissimilar landscape and visual effects occur north of Ballance where the larger turbines of the Tararua Wind Farm are visible from various locations in the range of 2.5 km to 4.5 km away from that wind farm*

8.57 Based on the above, we accept that the greater impacts in the relatively confined area of Ballance Valley Road, which is reasonably isolated from wide spread public access, is not sufficient to override the wider visual and landscape conclusions. We also consider that existing wind farm development along the Tararua Range has greater or no less visual effect than those in the Ballance Valley Road area.

8.58 Even had we not adopted that view and determined that the visual impact of the farm was unacceptable, this would not have necessarily or automatically meant that the contributing turbines (which were identified by Ms Pollard at our request) would have been deleted by us. In this respect we note, as indeed Mr Chrystal reminded us, that that this particular landscape effect is but one matter which needs to be put into the 'pot' in undertaking an overall assessment and balancing of the various issues associated with this proposal; and particularly in terms of the broad overall judgement required in terms of s5 of the Act. As it stands, that broad judgment was not necessary in this instance as the issue was one that we could decide on effects alone.

What (if any) cumulative visual effects arise from the proposed extension?

8.59 Turning to the issue of cumulative visual and landscape effects, the landscape of the Tararua Range in the general area of the proposed wind farm extension is one in which wind energy is now a significant element of the landscape, with further turbines proposed to the south in the form of the Turitea proposal. There is no doubt that there is an accumulation of wind turbines both north and south of the Manawatu Gorge. The question for us here was whether the TRHE would result in an adverse cumulative effect.

8.60 A consideration in this regard is our earlier finding that that the Tararua Range in this location has not been identified as an ONL in the Proposed One Plan or the Proposed District Plan despite its prominence from a reasonably wide area. It is however referred to in the operative RPS as part of an area of outstanding natural landscape that stretches from Upper Hutt to the Manawatu Gorge.

8.61 From the western side of the range we accept that there is already a combined visibility of wind energy developments from north of the Manawatu Gorge through to the Pahiatua Track. Any cumulative visual effects from this direction, in our view, would likely therefore

already be present regardless of the proposed TRHE, because the proposed location for the turbines associated with TRHE will be discernible behind the existing TRH turbines or only appear to slightly increase the extent of the existing wind farm on the skyline.

- 8.62 We accept Mr Evans view that the potential of the TRHE to have cumulative visual and landscape effects are greater from the eastern side of the Tararua Range. However, TRHE will not significantly extend the length of wind farm development along the range, but is instead crossing over the range to the east and concentrating wind farm development within the overall 'wind energy landscape'. In that context Mr Rough considered the extension was merely replicating from a visual perspective the length of wind energy developments on the western side of the range not extending it significantly further. In this regard, we acknowledge that there is a closing of the gap between the Tararua Stage 3 turbines and the TRH wind farm as a result of the TRHE. However, we agree with the comments made by Mr Rough that reducing the gap has a very limited visual impact. Indeed and from our visits to those viewpoints and with the aid of the photo simulations we accept Mr Rough's conclusion that from certain side on views the gap is currently not distinguishable. As such we also can see no valid visual reasons for maintaining it.
- 8.63 Before leaving the issue of cumulative impact, we wish to record that Mr Rough's aforementioned assessment of cumulative impact (and his conclusion of only minor effect) did include the potential impact of the proposed Turitea wind farm should it be consented and constructed. His evidence referred to the visual simulations produced by Ms Pollard which identified the general position of the Turitea proposal on each image (to the extent that it is known). Mr Rough's subsequent assessment of the various types of cumulative impact (combined effects, succession effects and sequential effects) did specifically acknowledge any impact that might arise for TRH/TRHE and the northern section of the Tararua should the Turitea proposal ever proceed.
- 8.64 Mr Holm reminded us that this information on Turitea was presented on a without prejudice basis to his legal submission that we do not have authority to consider the Turitea proposal because it is not part of the existing environment. Instead, he advised that it was a "belts and braces approach" by the Applicant to give us some comfort that even if Turitea had been a legal consideration for this application, the evidence produced would not change Mr Rough's conclusion that cumulative effects are minor.
- 8.65 For the record, and although it does not form part of our determination per se, we record that based on the information presented by Ms Pollard and Mr Rough on the potential cumulative effects of TRHE and Turitea being considered, we would have been unlikely to arrive at a different finding based on landscape and visual effects.

Conclusion on Landscape/Visual Amenity Effects

- 8.66 Notwithstanding the sincerity of the concerns of some submitters regarding the potential visual impact and changes in landscape character as a result of the TRHE proposal, the evidence of both Mr Rough and Mr Evans - well qualified professionals with over 20 years expertise each in the field of landscape and visual assessment - has been instrumental in our decision making on this topic. Both experts have, for perhaps different reasons, concluded that the effects of the proposal are acceptable by reference to the statutory documents, by having regard to the nature of the existing landscape, and through the fact that the site is clearly not an outstanding natural landscape.

- 8.67 We are confident that both assessments have been rigorously applied. Moreover, we believe that Mr Evans was thorough in his testing of Mr Rough's assessment and in his appreciation of the concerns of submitters. Equally, Mr Rough responded comprehensively to all the relevant requests for further information and additional assessment as set out by Mr Evans. We accept, whilst they did not agree on all aspects of the issues, there was no fundamental disagreement between them as to the overall impact of the proposal on landscape and visual amenity.
- 8.68 Essentially, and notwithstanding the views of the submitters in and around the Pahiatua Track, we have arrived at the position that the proposed TRHE turbines will have an effect on the host environment but that this effect would neither be significant, nor adverse particularly having regard to the provisions of the relevant statutory planning documents. Further, we find that this conclusion holds regardless of whether the environment is termed a "wind energy landscape" or a "working environment".
- 8.69 For us, the reality is that this landscape is highly modified. The turbines will barely be visible when viewed from the western (Palmerston North City) side of the Tararua; and while most visible from the east, where most residents are likely to have a view of them, this is diminished by both distance and the relatively small size of the turbines. We acknowledge that very few submitters to the east took the opportunity to submit in opposition to the proposal and of those that did a tiny portion raised landscape issues.
- 8.70 In conclusion, with regard to the landscape effects of the proposal, it is our collective position, based on the evidence heard and the landscape provisions of the relevant plans and policy statements, that the proposal will not have significant adverse effects (including cumulative effects) relating to landscape values.

9. OPERATIONAL NOISE EFFECTS

AEE, Submissions, Evidence and Issues

- 9.1 As mentioned in the preceding section, operational noise effects were by far the most raised and debated issue at the hearing. By our estimate, 4 out of 5 of the individual submitters listed in Section 4 of this decision raised the issue of noise with us. Of these, a core group of well researched lay residents, particularly those in around Pahiatua Track, gave considered presentations.
- 9.2 We return to the concerns of submitters imminently but first it is useful to outline the sequence of events and the evolution of issues during the process that we ultimately need to comment on.
- 9.3 In doing so, we note that we have adopted a similar approach to this topic to that employed in the preceding landscape section and for similar reasons; namely so that there is no uncertainty over the basis of the various inputs into the hearing and ultimately our evaluations. These inputs include the AEE lodged with the application, a synopsis of the submissions and the various briefs of evidence led by the Applicant, submitters and the Councils.
- 9.4 As with our landscape assessment, the issue of the role of Turitea arose in terms of cumulative noise effects and whilst we comment on this briefly latter in this section, we need to categorically record at this point that we have not taken that proposal into account in

assessing the noise impact because it does not form part of the existing environment we are required to have regard to when assessing effects.

The Application/AEE/Evidence of Applicant

- 9.5 From a preliminary perspective, we record that we have grouped the content of the Applicant's AEE and noise EIC together because of the commonality of the content. Essentially, the only difference between the two documents (AEE and EIC) were in that latter document related to the material that the two noise witnesses for the Applicant tabled in response to the concerns raised by submitters, the Council noise expert and ourselves. We deal with that additional information in sequence later in this section.
- 9.6 The Assessment of Environmental Effects (AEE) prepared and lodged with the application and the Applicant's noise EIC included:
- A noise assessment prepared by Mr Malcolm Hunt (Principal and Mechanical Engineer – Malcolm Hunt Associates a consultancy firm specialising in environmental noise) which addressed noise issues including compliance of the existing TRH site; and
 - Evidence produced by Mr Hunt and also by Mr Miklin Halstead (Associate and Industrial Engineer – Marshall Day Acoustics Limited). Mr Hunt's evidence focused on compliance with the appropriate noise standards whilst Mr Halstead statement addressed a range of noise issues (in particular complaints, monitoring and tonality) as well as undertaking a peer review of the findings of the MHA report produced by Mr Hunt.
- 9.7 In his evidence in chief, Mr Hunt informed us that his firm was originally commissioned by NZWL in 2004 to assist with the preparation of an AEE Noise for the original Te Rere Hau (TRH) Project. We acknowledge that continuity of involvement in this site. Regarding TRHE, he advised that his firm was first commissioned by NZWL in 2007 to carry out noise assessment work for the extension. Once the wind farm layout had been confirmed his firm conducted background sound level monitoring in August, September and October 2008. He referred to the Noise AEE, which described how the existing turbines were switched off at times to enable potential noise effects (if any) of the existing turbines on the measured levels to be identified and taken into account.
- 9.8 Before turning to his conclusions Mr Hunt usefully outlined the methods and procedures he used to collect and analyse ambient sound levels for noise-sensitive receiver sites located in the area. We found this to be helpful as it was an understandable explanation of the somewhat complex methods used to predict wind farm noise levels. In particular Mr Hunt:
- Outlined the available criteria to assess wind turbine and wind farm sound levels in New Zealand, mainly focusing on the District Plans and relevant NZ Standards; and
 - Explained that his assessment of potential wind farm noise effects is based on a comparison of the measured background sound levels with predicted wind farm noise levels at existing and approved dwelling sites in the local area, in general accordance with methods recommended by the relevant New Zealand Standard, NZS6808:1998.
- 9.9 Following on from that, his evidence summarised the noise assessment investigations his firm has carried out and updates the assessment leading to the finding that the proposed TRHE will operate in full compliance with NZS6808:1998.

9.10 Mr Hunt's evidence also:

- Addressed cumulative noise issues associated with the TRHE and the existing TRH wind farm. Significantly, (and continuing the theme from Mr Roughts evidence) and despite his counsel's insistence the it was not applicable, Mr Hunt also addressed the proposed Turitea Wind farm project in terms of cumulative noise.
- Included (in a supplementary brief) a response to noise issues raised by submitters and commented on the planning report regarding noise issues.

9.11 We return to both of those matters shortly; in the interim, we record Mr Hunt's findings. He summarised his conclusions into 7 succinct paragraphs. Based on his technical investigations and thorough knowledge of the site, Mr Hunt's summary was that:

- I have conducted an investigation into potential noise effects associated with the proposed Wind farm TRHE using the recommended methods and procedures set out in New Zealand Standard NZS6808:1998.*
- Levels of ambient sound at selected rural-residential sites in the local area have been measured for periods exceeding the minimum period recommended by New Zealand Standard NZS6808:1998.*
- Sound from the existing turbines was found not to affect the field readings of background sound levels taken in accordance with this Standard.*
- The sampled background sound levels therefore reasonably represent the existing noise environment within which low level wind farm sounds may arise, should consent for the wind farm extension be granted.*
- My assessment has covered in detail the predicted sound levels from the TRHE. In addition I have predicted cumulative sound levels from the eastern extension and the originally consented Te Rere Hau Windfarm Development. In addition, the Noise AEE sets out a cumulative noise assessment of the Turitea Windfarm proposed for the area.*
- Predicted levels of wind farm sound show that existing rural residential locations will receive 35 dBA or less, with most dwelling locations receiving less than 30 dBA due to the separation distances involved.*
- Some existing rural residential locations may receive audible sounds from the Windfarm TRHE at times however the levels will be below the guideline limits. The resulting minor degree of effect will therefore be within the levels set by guidelines and standards. Given the setbacks and location of dwellings in the area, sounds from non-wind farm sources will dominate when the winds are sufficient to cause the WTG's to commence operating*

9.12 His assessment concluded that the TRHE windfarm will result in audible windfarm sound within the site, and across farmland in the local area. However due to the size and layout of the windfarm the levels of sound received at any existing residence will be fully compliant with a received level of windfarm sound level not exceeding 40 dBA or the average background sound level plus 5 dBA (whichever is the greater); being the upper limit recommended within NZS6808:1998. This includes cumulative sound from the existing TRH windfarm and, if constructed, the Turitea Windfarm.

9.13 Mr Halstead who has had 21 years experience assessing and advising on the environmental sound effects of various projects, such as wind farms (including consenting for the Te Apiti and Waitahora wind farms, measurements for Tararua 3 and West Wind), gas production plants, electricity substations and roading projects for industrial and public sector clients, summarised his conclusions as:

- Compliance measurements have been taken in accordance with the requirements of the conditions of consent for the existing Te Rere Hau Wind Farm (TRH).*
- Complaints received during the past several months have been examined, and have been shown to occur over a range of wind directions and wind speeds. The conditions during which complaints have occurred are not necessarily the loudest periods, but include quieter periods where windfarm sound is more exposed.*

- (c) *Tonality has been assessed as required in NZS6808:1998 but using the techniques of the Joint Nordic Method (JNM) as incorporated in the relevant international standard IEC-61400-This combination of standards references has given rise to some conflicts of interpretation as to the intended position of measurement, but when assessed at numerous residential locations, no penalty for tonality is indicated.*
- (d) *A review of the methods of assessment conducted by MHA has been carried out. I agree with the use of NZS6808:1998 as a means of assessment, and I agree with the conclusion that noise effects will be acceptable.*

- 9.14 We included the summary of both Mr Hunt's and Halstead's conclusions in full for two reasons. Firstly, because they set the scene for much of our subsequent discussion of evidence and evaluation, but also secondly because several other witness referred to these conclusions. We can say that based on the qualifications, expertise and roles of these two witnesses that their evidence and findings effectively set the bar for us in terms of making a decision on an evidential basis - a point we emphasised in section 4 of this decision.
- 9.15 We acknowledge that we also heard from another highly qualified noise expert, Mr Nigel Lloyd; an acoustical consultant with Acousafe Consulting & Engineering Limited. It is to Mr Lloyd's role, the issues of the submitters and the s42A report that we now turn to.

Submissions and Section 42A Report

Submitters Concerns

- 9.16 As already indicated, the majority of the individual submissions listed in Section 4 of this decision who opposed the proposed TRHE referred to noise as an adverse effect. In addition to raising concerns about the potential new and cumulative effects of the TRHE operation, and as acknowledged by both Mr Lloyd and Mr Forrest *"a high number describe their annoyance to noise from the existing Te Rere Hau wind farm"*. In particular, we note that the submitters in this category identified specific and significant concerns as to whether the Applicant's existing Te Rere Hau wind farm is able to comply with its resource consent conditions in respect of noise also had specific concerns regarding "the character of the wind farm sound". A number of submissions describe the Te Rere Hau turbines as "whining" or of experiencing "noise of a mechanical nature".
- 9.17 These above concerns were elaborated upon in person by the submitters in opposition who attended the hearing, as outlined in Section 4 of this decision. In addition as we discuss below, Mr Llyod (for the TDC) also took on the mantle of the submitters' concerns in his own review of the application. In this respect, his role was very similar to that of Mr Evans and again rather than focus on individual submission we have focused on the various submission categories outlined by Mr Lloyd.

TDC Noise Peer Review Report

- 9.18 As mentioned, this report was produced by Mr Lloyd. Before outlining his comments and review. We felt it useful, as we did with Mr Hunt and Mr Halstead, to record his qualifications experience and the basis for his overall assessment on this issues which he delivered in his peer review and supplementary reports.
- 9.19 Mr Lloyd advised us that he has had a total of over 30 years experience as a noise control engineer/acoustical consultant. Significantly, and like Mr Halstead and Mr Hunt, he has advised on a number of wind farm applications including:

- Wellington City Council on the Westwind, Mill Creek and Long Gully applications
- Palmerston North City Council on TRH, Tararua 3, Motorimu and Turitea applications

- 9.20 We were also interested to hear that Mr Lloyd has been advising Wellington City Council on an ongoing basis with regards to the Makara Westwind wind farm including visiting various sites on repeated occasions and analysing noise data that has been received from the wind farm operator and from monitoring he has undertaken personally.
- 9.21 For the TRHE application, we noted that Mr Lloyd wrote a peer review dated 18th September 2009 regarding the noise information contained in the Applicant's AEE in which he also commented on the submissions that had been received.
- 9.22 Mr Lloyd advised us that as part of the assessment process he visited the site of the proposed wind farm on 20 July 2009 and he visited the wind farm on a number of occasions since then, including visiting the properties of Lee Huffman and Robin Malley.
- 9.23 Aside from his involvement in the TRHE review, we note that he is also in the process of peer reviewing the compliance report for the original Te Rere Hau wind farm on behalf of Palmerston North City Council. We agree that gives him an ideal perspective from which to comment on compliance with the relevant NZ Standard for managing noise from wind farms not only generally but in this specific location.
- 9.24 Against the above background, Mr Forrest incorporated Mr Lloyds peer review report into his s42A report. Mr Forrest précised the key findings in respect to the consideration of environmental noise effects described in Mr Lloyd's Peer Review Report. Like Mr Forrest, we have chosen to focus on those findings where there is a disagreement with the Applicant's consultant noise engineer's noise impact assessment and noise concerns raised in submissions received in respect of the application. In that respect, we were able to discern four categories of concern raised by Mr Lloyd based on his assessment of the submissions and his technical review. These are outlined immediately below.

Existing TRH: wind farm compliance and noise complaints

- 9.25 Mr Lloyd referred to noise compliance reports that have been issued post completion of the Applicant's Noise Impact Assessment and sought comment from the Applicant on the matters raised in these documents. In particular he stated that: *“There are serious issues concerning the sound characteristics of the windflow 500 WTG's”*. Further to this, *“there are also concerns about why so many complaints are being received by Palmerston City Council regarding the existing wind farm noise”*.
- 9.26 Mr Lloyd asked the Applicant to provide further information at the hearing on the status of the compliance testing that is taking place for the existing Te Rere Hau wind farm and to confirm that the consent holder is complying with the existing terms and conditions of consent.

Background Sound Monitoring

- 9.27 Mr Lloyd identified a few anomalies in the data in this section of the Applicant's Noise Impact Assessment⁴⁴ He said that *“it is important to recognise and correct these apparent anomalies at this stage because they have a bearing on establishing the design limits and on any subsequent compliance assessments should consent be granted.”* He also suggested that the Applicant should respond to those matters at the hearing.

⁴⁴ (Refer page 4 and 5 of the Acousafe Noise Peer Review Report).

Wind Farm Noise Prediction

- 9.28 Mr Lloyd identified a few minor anomalies in the Applicant's Noise Impact Assessment regarding the prediction of wind farm noise. These anomalies reside in Figure 13 and also in Table 7. Of these the only one of potential substance was in Table 7 for the Day Residence where the figures indicate that the existing ambient, as measured onsite for daytime noise is less than the levels shown for night-time. He noted that this is an unusual situation and probably has a simple explanation but did nevertheless require further explanation or correction as appropriate. For the record, Mr Hunt explained the figures had been transposed and he recalculated them and presented those to the hearing. Mr Lloyd had no reason to dispute those and therefore we need not revisit this in our evaluation.
- 9.29 With respect to the Applicant's wind farm noise prediction and potential adverse effects, Mr Lloyd confirmed that the data provided by the Applicant indicates that the Poff Residence is unlikely to experience any significant increase in noise due to the TRHE beyond what has already been consented to at the existing Te Rere Hau wind farm. He confirmed that this is likely to be the case for all dwellings on the Palmerston North City side of the Tararua Ranges. Again we accept that as a finding of fact that no one disputed and do not need to re-evaluate this.

Cumulative Noise

- 9.30 Mr Lloyd identified a potential compliance concern should the proposed Turitea wind farm gain consent⁴⁵. He stated that the cumulative noise impact of both the existing Te Rere Hau wind farm and the proposed Turitea wind farm, “*is potentially greater than 40 dBA at all locations along the Pahiatua Track between the two wind farms*”. Mr Lloyd advised us that he understood that Mighty River Power's experts provided evidence to the Board of Inquiry, that compliance with NZS6808:1998, in terms of cumulative noise effects, can be achieved by reducing the power output of the Turitea wind farm. On that basis he suggested that it “*...is unclear how the Extension to Te Rere Hau can then be further accommodated*”.
- 9.31 In terms of the above, Mr Lloyd suggested that the Applicant may wish to respond to this concern regarding the potential cumulative noise effects in the locality referred to above, and explain how the proposed TRHE can be developed and operated to comply with NZS6808:1998.
- 9.32 For the record, we note (as we also record later) that the Applicant did choose to provide the information through Mr Hunt. However and again similar to the landscape issue that information was provided on the basis that it was not part of the legal test and was provided to give a comfort that should Turitea ever be consented and constructed, there would in combination with TRH and an approved TRHE continue to be compliance with the appropriate NZ Noise standard.
- 9.33 For the record, the information supplied by Mr Hunt showed compliance of TRHE and Turitea. This was not seriously disputed by any party. We do not revisit this in our evaluation.

Issues and recommendations

- 9.34 Aside from the information gaps above, Mr Lloyd stressed to us that in relation to operational turbine noise effects the followings likely to result:

⁴⁵ refer page 6 of the Acousafe Noise Peer Review Report

To the west

It is inevitable that there will be some loss of peace and tranquillity on land closest to the wind farm site. There is no claim that the wind farm will not be audible although the level of audibility will vary. Dwellings on the western side of the Tararua Ranges including those on the Palmerston North side of the Pahiatua track should not experience increased noise from the TRHE. However, the concerns of these submitters regarding noise are acknowledged.

To the east

The dwellings located on Ballance Valley Road will experience the noise from the TRHE substantially as a new noise, however, it is noted that only a single submission in opposition to the application was received from a Ballance Valley Road address (with two submissions from Makomako Road which is located further from the site).

- 9.35 In terms of the last point, it is noted that we heard from Mr Day the owner of 303 Ballance Valley Road. Mr Day, who disclosed that he has interests in the proposed Turitea Project, outlined concerns regarding the character of the noise that has been experienced from the existing Te Rere Hau wind farm turbines and raised concerns about the potential increase in noise as a result of the extension.
- 9.36 Mr Lloyd identified that this dwelling will experience the greatest potential impact with respect to noise effects due to the dwellings location downwind of the predominant wind. He noted that the Applicant's Noise Impact Assessment predicts that the TRHE will comply with NZS6808:1998. However, Mr Lloyd, whilst not disagreeing with that compliance assessment, noted that *"...there is no margin of safety to allow for compliance should the character of the noise is shown to warrant a penalty for special audible characteristics to be applied in terms of IEC61400-11(2002)"*.
- 9.37 We discuss the issue of special audible characteristics later but in respect of the Day residence discussed above, we note that Mr Lloyd's peer review report commented as follows:
- "The TRHE noise at the Day residence is predicted to be 37dBA at 10m/s wind farm wind speed. With a possible +5 db penalty for special audible characteristics then this would exceed a 40 dBA noise limit? Given the background sound monitoring that has been undertaken 40 dBA would be an appropriate limit at this wind speed at the Day residence."*
- 9.38 He suggested that the Applicant may wish to describe the noise mitigation methods available to it to ensure that the noise received at the Day residence will be in compliance with NZS6808:1998, particularly if a penalty for special audible characteristics needs to be applied.
- 9.39 As an aside, later in the hearing Mr Hunt had cause to slightly recalculate the noise predictions for this property. Although the predicted level increased, they did, as Mr Lloyd concurred, show that the predicted noise exposure of the Day residence to wind farm noise would still be within the limits set within the NZ Standard for wind farm noise. We accept this as a finding of fact that was undisputed. The tonality issue was still a live issue for us and we deal with this later in our evaluation

Overall position of Mr Lloyd and Mr Forrest

- 9.40 Notwithstanding the above information gaps and the potential uncertainty on the application of special audible characteristics, Mr Lloyd's recommendation in his peer review report was that consent be granted to the proposed TRHE on noise grounds subject to conditions. However, this recommendation was subject to the Applicant addressing the *"...concerns raised by submitters regarding the character of the wind farm noise and a clear indication from the Applicant that compliance can be achieved with the Recommended Draft Noise Conditions"*.

- 9.41 Mr Lloyd's report concluded with a discussion on of appropriate conditions of consent in the event that the TRHE is granted. He recommended that the conditions of consent for the existing Te Rere Hau wind farm be imposed with minor modifications, to account for locations, areas of redundancy, and the different local authority involved.
- 9.42 Mr Forrest adopted Mr Lloyd's recommendations including the TRH conditions (with slight modification). His own recommendation to us was:

It is recommended that consent be granted to the TRHE on noise grounds subject to the concerns raised by submitters regarding the character of the wind farm noise and a clear indication from the Applicant that compliance can be achieved with the Recommended Draft Noise Conditions.

Evaluation

Issues

9.43 There reached a point during the hearing prior to the initial adjournment on 14 October 2009 after the presentation of the Applicant's case and part way through the presentation by submitters (particularly submitters such as Huffman/Devey, Tremain, Olsson, Irvin, Wallace and Gibson to name but a handful of representative submitters on this topic), where we as a Panel felt it was appropriate to signal to all parties some of the key issues that this complex noise topic had raised for us. At the same time we wanted to give the three noise experts an opportunity to respond to the issues in the same way that Mr Forrest and Mr Evans had provided opportunity for responses from the Applicant to landscape issues. We did this verbally during the hearing.

9.44 Our questions were recorded by the 3 experts and essentially involved the following queries:

A: Applicant's measurements and redetections

- Whether the panel can rely on NZWL Depiction of the 40dba contour?
- Whether there was sufficient data for the Modelling to be robust
- Are the background measurements reliable?

B: Alternative Noise levels/Secondary Noise Standard

- Are there grounds for setting a Standard other than NZS6808 such as the use of a secondary standard or something else?
- Are you aware of any other wind farms having used a different standard?
- What are the practical implications (i.e. excluding legalities which we sought a response from Mr Holm on) of imposing a different Standard - particularly given the existing Wind farms consent conditions?
- Based asked on the NZWL track record and Monitoring undertaken is there any need for a Different standard? Complaints and compliance issues and the weight they can be given in determining the appropriate standard

C: Tonality and certification Issues

- Whether tonality or special audible characteristics are present;
- Comments on the significance of the certification process for the Windflow 500 turbine and its noise characteristics – particularly tonality;

D: Specific Properties Potential Affected

- how does the 40dba contour affect the Lee and son property

- What is the effect of any SAC on the Day property

E: Conditions Generally

- Adequacy of the proposed noise conditions in the AEE.

9.45 When we resumed on the 27th of October 2009 (after Labour Day) we heard from both Mr Hunt and Mr Halstead with their supplementary reports which gave responses to all our remaining queries.

Applicants Supplementary Noise reports

9.46 Mr Halstead prepared and presented a statement in response to the specific range of noise and acoustic questions raised by us during the hearing. His evidence was presented as a statement in reply to each stated question covering the following areas:

- Whether tonality or special audible characteristics are present;
- Comments on the certification of Windflow 500 turbine and its noise characteristics – particularly tonality;
- Complaints and compliance issues and the weight they can be given in determining the appropriate standard;
- Adequacy of the proposed noise conditions in the AEE.

9.47 Mr Hunt also presented his supplementary statement of evidence in response to a specific range of noise and acoustic questions raised by us during the hearing. Essentially Mr Hunt answered the remaining questions that we posed above that weren't responded to by Mr Halstead.

9.48 Mr Holm, later in his Right of Reply, provided a legal synopsis for the consideration of these supplementary statements. It covered a number of matters including the role of standards, the difference between the current and proposed draft NZ Standard for wind farm noise, District Plan controls and codification of the NZS6808 into the latest version of the Proposed District Plan and the need for consistency and certainty in the application of conditions to the extension that do not thwart the existing TRH consent or make a mockery of trying to operate what will essentially be one joint windfarm under two different sets of conditions. We record that these were largely matters that had been dealt with in the opening submissions of the Applicant and in the evidence of Mr Chrystal. We note that Mr Forrest in his supplementary statement, delivered prior to the Applicants RoR, endorsed those planning principles around standards and conditions.

9.49 Full copies of all these statements are held on the MWRC file. Rather than précis the content specifically now, we felt it was more productive to evaluate Mr Lloyd's response to those statements and focus solely on any on any remaining disagreement. In this respect we include the salient aspect of Mr Lloyd's response below:

- *The current evidence is that the Te Rere Hau wind farm will comply with the provisions of NZS6808:1998 and the resource consent conditions but many submitters are clearly dissatisfied with the resultant noise emissions. While there is the potential for stricter noise limits to be applied to the Eastern Extension it is difficult to find justification for these given the measured background sound levels and the presence of the existing (and consented) Te Rere Hau wind farm.*
- *I have suggested a separate Condition that requires the consent holder to provide a report to Council that demonstrates that the best practicable option has been adopted for the design of the proposed wind turbines. This formalises the BPO requirements of S16 of the RMA. The intention of this condition is to eliminate the mechanical sounds associated with*

the Windflow 500 turbines, which would include the audible tone. Such mechanical sounds have no place in the design of a modern wind turbine.

- I remain of the opinion that the enforcement of Condition 5(l) for the assessment of special audible characteristics should be made in accordance with IEC 6140-11 and measured at the location defined in the Standard i.e. near to the individual turbines. At Westwind Makara there is a Condition (Condition 18(a)) requiring the consent holder to furnish an acoustic emissions report to Council prior to the installation of any wind turbines in accordance with IEC6140-11 including spectra and tonality at integer wind speed 6 to 10 m/s and up to 95% of rated power. I accept though that Condition 5(l) in the Te Rere Hau conditions is open to interpretation.*
- The submissions from the residents of Palmerston North concern the noise from the existing part-constructed wind farm. The level of annoyance expressed by submitters is of concern and I propose to work with Palmerston North City Council to determine what reasonable steps are available to confirm that the Conditions are being complied with at all dwellings.*
- Ultimately the evidence is that the noise from the turbines will comply with the provisions of NZS6808:1998 on a cumulative basis and that the existing and future consented Te Rere Hau wind farm noise will be dominant to dwellings to the west of the Tararuas. For dwellings in the Tararua District there is no justification for stricter noise limits than those set out in NZS6808:1998.*
- My recommendation in my section 42A report for the Extension was that consent be granted to the TRHE on noise grounds subject to the concerns raised by submitters regarding the character of the wind farm noise and a clear indication from the Applicant that compliance can be achieved with the Recommended Draft Noise Conditions.*
- We have heard from the Applicant's noise experts that they believe the wind farm can comply with the draft noise conditions and we have heard from submitters regarding the adverse noise impacts they are suffering. The extension of the wind farm towards the east will expose more dwellings along North Range Road and Ballance Valley Road to similar noise. The adverse noise impacts and extent on those impacts are therefore well described for this application.*

9.50 The main points that we have distilled from all these presentations (and ultimately the basis for our findings on this topic) is that there is full agreement between the experts on the following 3 key matters:

- The appropriate standard for measuring noise is NZS6808:1998. That standard is subject to review but the essential control on setting noise limits in that draft review are unchanged, and in any event that draft standard does not have any effect. Further NZS6808 is codified into the prevailing district planning documents – perhaps only obliquely so in the Operative TDC District Plan, but definitely overtly in the Proposed District Plan (both the notified and ‘as amended by decision’ version);
- The levels of sound received at any existing residence will be fully compliant with a received level of windfarm sound level not exceeding 40 dBA or the average background sound level plus 5 dBA (whichever is the greater); being the upper limit recommended within NZS6808:1998. This includes cumulative sound from the existing TRH windfarm and, if constructed, the Turitea Windfarm.
- There is no actual or reasonable basis, having regard to the empirical data, content of the NZ Standard (and the proposed review of it), and the statutory planning documents (particularly the TDC Proposed District Plan) for a secondary noise standard to be imposed. By this we understand that the criteria for imposing a more stringent noise limit than what appears in the current and draft standard and in the District Plan do not exist.

9.51 Accordingly, we adopt those above matters as our findings. We should note here that there was not full consensus between the three of us on the issue of secondary noise. Cr. Davidson was of the view that a secondary noise limit is appropriate and would have

preferred that such a condition was applied. He has recorded his thoughts on the matter in Appendix Three to this decision. Notwithstanding these differences of opinion, all three of us felt it important to record that these differences do not detract from the unanimous view of the Commissioners that the wind farm is an environmentally responsible development that achieves the purpose and principles of the Act and overall is appropriate in this environment.

9.52 There were additionally two matters in which the experts could not agree. They were

- On the issue of Special Audible Characteristics, disagreement as to how and where tonality (SAC) should be measured from; and
- The need (or otherwise) for a BPO condition.

9.53 On the issue of special audible characteristics (i.e. tonality) and whether a 5 dBA penalty must be applied, the parties agreed that this was best covered by a condition. What they could not agree to was the wording of that condition. Mr Lloyd was of the opinion that the condition dealing with the assessment of special audible characteristics should be made in accordance with IEC 6140-11 and measured at the location defined in the Standard i.e. near to the individual turbines. Conversely, both Mr Hunt's and Mr Halstead's interpretations were that it refer to the techniques of the Joint Nordic Method (JNM) as incorporated in the relevant international standard IEC-61400, which in their view allows measurement near the receptor.

9.54 This was a difficult and complex technical matter for us to rule on but in the end we have preferred the interpretation of the Applicant. There were two reasons for this, Firstly, Mr Lloyd seemed to be relying on his interpretation based on what Condition 5(l) in the Te Rere Hau consent provided for rather than what the NZ standard specifies. We are not obliged to adopt the TRH condition on this matter and prefer to align with the Standard. Further, we note that Mr Lloyd did note that he accepts that this matter was open to interpretation.

9.55 Secondly the legal advice received from Mr Holm was convincing and unchallenged by anyone; Mr Holm said.

Reasons why tonality should be measured at the receiver are

(a) The entire thrust of the RMA directs decision makers to consider effects. This can only be done by considering the noise which people experience and this cannot be directly measured near the turbine. All of New Zealand's noise measurement and assessment standards (NZS 6801, 6802, 6803, 6808 and others) do this.

(b) Any mitigation offered by modification of the sound path can only be accounted for by measuring at the receiver location.

The interpretation of the relevant part of NZS6808 consistent with the above approach is to measure at the resident's notional boundary, and use the method in IEC 61400 to process that data. IEC 61400 does not direct a different measurement location.

IEC 61 400-11 is the correct method for characterizing the noise emission of a turbine. It is not the current standard for measuring the noise "emission" which is the sound received at the affected location. For that the standards in NZS 6801/6802/6808 are relied upon. Internationally ISO 1996 is available for this purpose.

The proper scope of IEC 61400-11 includes the following statement in the scope

"The procedures described are different in some respects from those that would be adopted for noise assessment in community noise studies. They are intended to facilitate characterization of wind turbine noise with respect to a range of wind speeds and directions."

- 9.56 The second matter of disagreement related to the need for a BPO condition. Although Mr Lloyd had suggested this possibility in his supplementary evidence, upon questioning, he acknowledged that this was fraught with difficulties, and largely resiled from that suggestion. Accordingly, we did not take this suggestion any further.
- 9.57 On the above basis, we have adopted the TDC suite of conditions on noise as modified by the Applicant. We note that these include a number of many changes from the initial iteration provided by the Applicant and in fact take on board several changes expressed by Mr Lloyd and submitters. These main features are include:
- (a) A cumulative effects condition to ensure that the noise emitted from TRHE and any existing consented wind farm does not exceed the relevant noise limits;
 - (b) A requirement to produce a Noise Management Plan which sets out procedures for managing and investigating complaints, remediation measures if compliance is not able to be demonstrated and procedures for consultation and liaison with the community ;
 - (c) A requirement to measure background sound levels at three residences (Anderson, Day and Poff) and to undertake compliance measurements at these locations;
 - (d) Provision for on-off testing for compliance and a specific requirement to measure compliance at the Stewart residence; and
 - (e) A requirement for the number of turbines to be stated in compliance measurements and for such measurements to be undertaken so as to represent nominal full operation of the wind farm.
- 9.58 On the above basis we conclude that operational noise effects associated with the TRHE are acceptable by reference to the tests we have had to consider under section 104 of the Act.

Conclusion

- 9.59 This has been a complex topic to deal with. This is because it is a specialist technical field. In the end the reason for the complexity became the solution to the matters that had to be resolved; namely this was a matter where we had to rely on the information/evidence of the highly qualified and experienced experts as opposed to the (no doubt) genuine views of those submitters in and around the Pahiatua Track and one submitter in a residence in Ballance Valley Road.
- 9.60 In that respect, and apart from the two matters we have canvassed above, there was full agreement between the experts and this is reflected in our decision to approve the application subject to conditions. With regard to the two matters of expert contention we have exercised our judgment to adopt the Applicants proposed conditions for the reasons we have outlined.
- 9.61 In terms of the outcome, we agree that it is inevitable that there will be some loss of peace and tranquillity on land closest to the wind farm site but the spatial area of such land affected is defined and limited. Moreover, there is no claim made by the Applicant or embodied in the NZ Standard that compliance with the Standard will mean that a wind farm will not be audible, although the level of audibility will vary. In his instance, dwellings on the western

side of the Tararua Ranges including those on the Palmerston North side of the Pahiatua track should not experience increased noise from the TRHE.

- 9.62 Dwellings on the Tararua side may experience some increased noise but this, we conclude will be in the ambit of what the NZ Standard and the District Plan framework anticipate and provide for. We accept that this is little comfort to the residents/submitters affected but it is the settled regulatory framework under which we must make our determination on the issue of noise effects.

10. OTHER EFFECTS

- 10.1 While we have elected to focus our evaluation primarily on the main issues in contention, there are a number of other effects which require our attention, as raised through the submissions and hearing evidence.

Shadow Flicker and Blade Glint

- 10.2 As noted in several briefs of evidence we were delivered, shadow flicker and blade glint are potential effects associated with the regular operation of wind turbines.
- 10.3 Mr Fraser in particular addressed these issues in his evidence. He indicated that there were no formal standards for assessing the effects of shadow flicker and blade glint but that a general rule used in the industry is that such effects are only likely to arise up to a distance 10 times the rotor diameter⁴⁶. He explained that for the TRHE proposal, that would equate to a distance of roughly 330m.
- 10.4 His view in this case, where the nearest residence is over 1km away and the turbines are proposed to be painted a light blue grey colour with low reflectivity, was that blade glint and shadow flicker are unlikely to be a significant issue. This was mirrored in the views of Mr Rough and Ms van Polanen who suggested that the distance of the turbines from dwellings and main public roads is likely to mitigate against any concerns or safety issues in this instance. We agree with this view.
- 10.5 Moreover, we gain comfort from the fact that, in the decade or more since the first windfarm was established in this general area, neither Palmerston North City Council nor Tararua District Council have received any formal complaints or concerns in relation to these effects.

Recreational

- 10.6 Mr Rough in his evidence provided an outline of the recreational uses along the Tararua Range in the vicinity of the windfarms and provided some assessment of the effects of the TRHE on recreational use. There is little doubt in his opinion that the TRHE will impact on some people's recreational experience of the area, while others are likely to be neutral, an example perhaps being four wheel drivers. He noted the following points of relevance, however:
- Public access is essentially limited to North Range Road; and

⁴⁶ Paragraph [9.3] – [9.4] of Mr Fraser's Evidence.

- The existing TRH wind farm is likely to be already having similar effects (noise and visual) on recreational users because of its proximity to North Range Road.
- 10.7 We saw no submission or evidence to refute Mr Rough's conclusion; accordingly, we adopt his position on this matter and consider this to be of negligible concern.

Effects on Subdivision Potential

- 10.8 One submitter (Lee and Son Limited) has referred to impacts of the proposal on their ability to subdivide their property; specifically due to concerns over noise, strobe and vibration effects. The property in question is located to the east of North Range Road and bounds the Pahiatua Track Road.
- 10.9 Before we consider the merit of this submission, we must first consider our jurisdictional abilities to do so.
- 10.10 The fundamental issue to us was to firstly understand the ability for further subdivision and housing to occur as of right for the submitter (or other neighbouring landowners). In this respect, a critical consideration is that all new subdivision requires a resource consent under the relevant District Plans (i.e. there is no permitted baseline or 'automatic' development right for such a development within the existing or proposed plan provisions).
- 10.11 Being that the land in question is located within the Tararua District and as subdivision consent is required but has not yet been obtained (or even applied for); it is beyond our jurisdiction to consider the potential effects of TRHE on any such hypothetical development.
- 10.12 The High Court has confirmed this view that the environment does not include the effects of resource consents that might be granted in the future⁴⁷.
- 10.13 Notwithstanding this, we still wish to express our view on the specific concerns raised by the submitter for completeness. Firstly, we note that the 40dBA noise contour affects only a very small proportion of the northern boundary of the property concerned. Additionally, blade glint and shadow flicker are unlikely to be particular problems there due both to the limited number of turbines which can be seen from the property and to the fact that they will be located to the north-east of the property; meaning that the sun will generally be too high in the sky by the time it is oriented towards the property to create any nuisance from shadow flicker.
- 10.14 In considering this, we see no reason why the granting of this application would necessarily preclude the ability for any neighbouring landowner (the submitter included) to apply for subdivision or residential intensification on their land.
- 10.15 More importantly, however, we reiterate that there is no such 'live' application for us to consider as part of the existing environment for the purposes of our assessment. Accordingly, we reject the submission insofar as it relates to the potential adverse affects on subdivision potential for landowners in the vicinity of the application site.

Decommissioning Issues

- 10.16 Some submitters raised concerns over the eventual decommissioning of the wind farm. Our understanding of the works entailed with this process is that they would be similar to the construction process, except that the concrete foundation of any decommissioned turbine would remain in the ground, be covered with 20cm of topsoil and then revegetated. Mr

⁴⁷ *Unison Networks v Hawkes Bay Wind Farm* [2007] NZRMA 340 (HC).

Fink advised us that earthworks involved in decommissioning would be significantly less than that required for construction.

- 10.17 In any case, we note that the applicant recommended that decommissioning works should be controlled by a condition of consent if that situation arose. We are satisfied that this process should sufficiently manage any potential adverse effects associated with the decommissioning of any turbines.

Other Inconsequential Matters

- 10.18 There was some difference in interpretation as to the matter of compliance with existing activities on the site. Specifically, while the s42A report took the view that there was no compliance history for the application site, the Applicant (through Mr Chrystal) suggested that a wider view should be taken. He noted that this application was for an extension to an existing wind energy generation facility, and suggested we consider the compliance history of the consented and operational TRH.
- 10.19 In this regard, Mr Chrystal stated that TRH has complied in all respects with its present conditions; and aside from the complaints raised regarding noise (which is discussed previously in this decision) there have been no particular environmental concerns raised in association with the development to date.

11. POSITIVE EFFECTS

- 11.1 We heard from a number of witnesses who pointed out the various positive effects which are anticipated from the construction and operation of the wind farm if approved. These included potential benefits to both national and local interests.

Positive effects to National interests

- 11.2 Messrs Cross and Copeland provided extensive evidence on the applications' potential benefits to New Zealand. The many positive effects of the proposal are also repeated in the evidence of Ms Hood⁴⁸ and Mr Clark⁴⁹ which include assisting in meeting climate change obligations and renewable energy targets, contribution to dry year security of supply and are an efficient use of resources given the transmission efficiencies with the existing TRH site.
- 11.3 Mr Chrystal condensed the comments from these other witnesses within his evidence, stating the following as the key national benefits:
- Increasing New Zealand's installed electricity generation by up to 28MW and approximately 95 GWh per annum. This is sufficient electricity to supply approximately 12,000 average New Zealand homes per annum;
 - The increased levels of generation will assist in meeting the projected shortfall in New Zealand's electricity supply (assessed as increasing by 1.3% per annum);
 - Utilisation of a renewable energy source to generate electricity. The use of this renewable energy will offset up to approximately 92,100 tonnes of CO₂e greenhouse gases associated with the equivalent output from a thermal generation source;

⁴⁸ Refer paragraphs 7, 11 and 30-34 of evidence tabled at the hearing.

⁴⁹ Refer paragraphs 7.9, 7.19-23 and 8.5 of the evidence tabled at the hearing.

- Contributing towards meeting the New Zealand targets for sustainable electricity generation;
- The use of New Zealand made turbines and local expertise, ensuring that approximately 90% of the project's budget will be spent in New Zealand.

11.4 During the questioning of Mr Clark, we requested further data pertaining to the contribution that NZWEA anticipates that the project would make to electricity demand growth, the government's 90% renewable electricity target and commitments to reduce its carbon emissions under the Kyoto Protocol. In response, Mr Clark prepared the following table (Table 1), which was circulated to us later in the hearing process:

Measure	Notes	Target/Reference	TRHE Contribution	% Contribution
Electricity demand growth to 2025	NZWEA estimate based on 1.5% p.a. average demand growth on 2008 basis (as per Appendix 1 of evidence)	12,165 GWh total or 715 GWh per year (avg)	95 GWh	0.8% (of total) or 13% (of 1 year's growth)
90% renewable electricity in 2025	NZWEA estimate based on 2008 basis (as per Appendix 1 of evidence)	21,350 GWh total or 1,260 GWh per year (avg)	95 GWh	0.4% (of total) or 7.5% (of 1 year's growth)
Electricity sector emissions compared to 1990 levels	From 'MED Energy Greenhouse Gas Emissions - 2008 Calendar Year Edition', July 2009	4,237 kt-CO ₂ e above 1990 levels in 2008	- 36.7 kt-CO ₂ e* to - 92.1 kt-CO ₂ e*	- 0.9%* To - 2.2%*
Gross emissions compared to 1990 levels	From MfE 'Net Position Report 2009', April 2009.	13.7 Mt-CO ₂ e above 1990 levels in 2007	- 0.04 Mt-CO ₂ e* to - 0.09 MT-CO ₂ e*	- 0.3%* to - 0.7%*

Table 1 – Supplementary Evidence from F Clark

Note - TRHE contribution to emissions shown with a (-) sign to indicate that these are emission reductions.

References: MED - http://www.med.govt.nz/templates/MultipageDocumentTOC_41212.aspx

MfE - <http://www.mfe.govt.nz/publications/climate/net-position-report-2009/index.html>

Positive effects to local interests

11.5 We were also made aware of a number of potential benefits to the local area. Again, Mr Chrystal summarised some of the key examples, being:

- The direct employment of approximately 40 staff during construction, most of whom are likely to live permanently within the Manawatu-Wanganui region during this period. Wages and salaries paid to these staff are estimated at \$2.3 million per annum. Indirect (or multiplier) economic effects could potentially create an additional 70 jobs and \$4.0 million per annum in additional wages and salaries;
- The employment of up to four fulltime staff once operation to undertake regular servicing of the additional turbines;
- The continued utilisation of the land for grazing of sheep and cattle both during (except in certain areas where construction is occurring) and post construction.
- Additional income for the landowner of the land on which the turbines are situated; and
- The use of existing infrastructure (including some roads, and the substation in TRH) thereby creating resource efficiencies and reducing potential effects.

Evaluation

- 11.6 We believe it important to record that neither submitters nor Officers provided significant challenge to these potential benefits cited above. In considering this, and the nature of the evidence provided, we adopt the various supporting submissions and evidence citing the positive effects from the application.
- 11.7 Turning to the significance of the national benefits, we accept that the figures provided by Mr Clark may be perceived by some as a “drop in the bucket” when considering the overall energy requirements and goals for the Country. Notwithstanding this, we endorse Mr Clark’s view that “every little bit helps,” particularly given the fact that the energy generation for this activity is derived from a renewable source. We find that, despite the perception that the overall output of the proposal seems relatively small on a national scale; its benefits in this regard cannot be ignored, nor discounted.
- 11.8 In our consideration of the weighting to apply to these effects versus the potential for adverse effects, we note that little is required in terms of offsetting the bad with the good (so to speak). In other words, we are generally satisfied that the nature and scale of the potential adverse effects will not require the need for significant positive effects to justify the granting of the application. If such a conclusion was required however, we could say without question (having considered all evidence that has been placed before us by Officers, submitters and the Applicant) that the positive effects of the application will far outweigh the negative.

12. OVERALL EVALUATION OF THE PROPOSAL

- 12.1 We now set out our general evaluation of the proposal in consideration of the principal statutory framework, being the provisions of s104 of the Act. This includes our assessment of actual and potential effects of the activity (as outlined above), and consideration of the relevant statutory instruments and Part II of the Act.

Summary of Effects Assessment

- 12.2 As discussed above, we consider the paramount issues in contention to be the potential effects relating to construction, landscape / visual amenity and operational noise.
- 12.3 Regarding the construction issues, we conclude that the impacts of the activity will be temporary and minor in nature. Moreover, the inclusion of a condition requiring a robust Construction and Environmental Management Plan (CEMP) will ensure that an acceptable standard of environmental responsibility is maintained throughout the construction process. The CEMP process and the conditions enforcing it will enable the Applicant to finalise its design in conjunction with the MWRC and allow the Council to have the ability to undertake technical approval (certification) of the CEMP prior to any construction commencing on site.
- 12.4 In terms of noise effects, our assessment concludes that the impact of the activity will be acceptable, subject to its compliance with specific conditions, including adherence to the accepted New Zealand Noise Standard (6808) and to the provisions of the proposed management plan. Again, we are of the view that this approach will ensure that any adverse noise effects will be acceptably avoided or mitigated. We note that this approach is unequivocally endorsed by all of the noise experts who provided evidence before us.

- 12.5 Our conclusions on landscape and visual impacts is that the potential effects of the activity are not significant and that no additional mitigation is required over-and-above the conditions offered by the Applicant. This determination is based on the evidence we heard from landscape experts with extensive experience in similar matters who agreed that the effects of the proposal are acceptable by reference to the statutory documents, by having regard to the nature of the existing landscape, and through the fact that it is clearly not an outstanding natural landscape (by accepted definition).
- 12.6 Our assessment also turned to the potential cumulative effects of the application in relation to noise and landscape matters, and included a discussion pertaining to the appropriateness of including the proposed Turitea wind farm application within that assessment. We were satisfied from the expert evidence presented on these matters that there would be no significant cumulative effects arising from the proposal being approved.
- 12.7 We have additionally assessed the potential for and impact of other adverse effects which could arise (including effects on recreational activities, subdivision potential for neighbouring land, shadow flicker, blade glint, etc), as well as the potential positive effects relating to the activity.
- 12.8 On balance, we hold that the actual and potential effects on the environment will be negligible to minor for the activity.

Evaluation of Statutory Instruments and Other Matters

- 12.9 As noted in Section 5 above, the three planners who provided evidence before us were in agreement that the activity is not inconsistent with any of the relevant high-level Statutory Instruments, Objectives or Policies – and this includes the change in status to the proposed District Plan arising from the Council Decision on submissions.
- 12.10 Furthermore, this matter remained unchallenged by any submitter.
- 12.11 Accordingly, we deem any further analysis of this consideration on our part to be unnecessary, and we therefore adopt the views of Ms Shirley and Messrs Forrest and Chrystal that the activity is not inconsistent with any relevant Statutory Instrument, Objective or Policy.

Evaluation of Part II Matters

- 12.12 As noted above, we are generally satisfied that the nature and scale of the potential adverse effects are negligible to minor, and we anticipate that the positive effects of the application will outweigh the negative.
- 12.13 We reiterate this point to illustrate that there is no need in this instance to weigh the benefits and costs of the proposal. Notwithstanding this, it is fundamental to the evaluation of this application to ensure it achieves the purpose of the Act set out under Part II. In that regard, we commence our discussion of Part II by evaluating the proposal in terms of sections 6, 7 and 8 of the Act.

Section 6 Matters

- 12.14 In our view, the pertinent components of s6 for our consideration of this proposal are subsections (b), (c) and (e).

- 12.15 s6(b) pertains to the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development. As established by Messrs Evans and Rough, and adopted by us, the subject site is not classified as an outstanding natural landscape or feature.
- 12.16 Pertaining to the protection of significant indigenous flora and fauna, s6(c) is also of relevance to this proposal. In terms of significant flora, clearance of what little indigenous vegetation there is on site, is, provided it complies with certain standards, a permitted activity. Moreover, the evidence we heard from the relevant experts in this field was that the impact on indigenous vegetation from the proposal would be negligible.
- 12.17 Regarding indigenous fauna, and despite the evidence presented by DoC calling for extensive pre-activity monitoring, we heard no evidence of the presence of significant indigenous species in the immediate environment which justify the need for avoidance or mitigation measures.
- 12.18 s6(e) notes the significance of the relationship of Maori and their cultural traditions with their ancestral lands, water, sites waahi tapu and other taonga. We reiterate our sentiments from above in that we are satisfied that the archaeological and cultural impacts of the proposal are not adverse and are “in hand,” particularly in considering the results arising from the CIA process and in the commitment by the Applicant to maintain ongoing dialogue with Tangata Whenua.

Section 7 Matters

- 12.19 s7 outlines a number of other matters which must be regarded in considering this application. We find the proposal to be consistent with s7, particularly as it:
- allows for the continued stewardship of the land following the construction of the facilities (aa);
 - results in the efficient use and development of natural and physical resources (b);
 - will not compromise the intrinsic values of the local ecosystem (d); and
 - takes advantage of the benefits to be derived from the use and development of renewable energy (j).
- 12.20 We note that the application could lead to some impacts on amenity values (s7(c)) and, in a temporary sense, the maintenance and enhancement of the quality of the environment (s7(f)); however as we have concluded above, these potential impacts will be of a minor nature, and outweighed by the benefits promoted by the activity.

Section 8 Matters

- 12.21 Section 8 requires that the provisions of the Treaty of Waitangi are taken into account in assessing the application. The fundamental values to ensure are attended to in this regard is a recognition of the relationship of Tangata Whenua with natural and physical resources, and the active participation of and consultation with Tangata Whenua.
- 12.22 In terms of s8, consultation with Tangata Whenua has been undertaken by the Applicant. The consultation and the CIA identified a number of potential adverse effects on water quality, avifauna and historic heritage. A number of mitigation measures and conditions have

been proposed to address these issues including sediment control, management of fill sites, the monitoring of native birds and the inclusion of an accidental discovery protocol.

- 12.23 We note that the request by Tangata Whenua to have access rights to the site to undertake cultural impact monitoring and to exercise kaitiakitanga cannot be met by the Applicant as it is not the owner of the land. Access to and use of the site for other purposes will need to be negotiated with the current landowners further to this process to achieve this end.
- 12.24 On balance, our view is that the effects of the proposal on the iwi relationship with the area, kaitakitanga and the ethic of stewardship will be avoided or mitigated provided that the identified mitigation measures are implemented.

Section 5 Matters

- 12.25 Having considered these Part II matters, and the other requirements under s104, we now conclude with our evaluation of the application in regards to its ability to achieve the purposes of the Act defined under s5.
- 12.26 The sub-elements of s5 (being the matters set out in s5(2)(a)-(c)) require some measurement of the extent to which the activity achieves the result anticipated. Though each decision involves a value judgement, this also involves a factual dimension and requires consideration as to future events and must take into account uncertainties.
- 12.27 It follows that s5(2)(a), (b) and (c) are not absolute requirements. Rather, what we must consider is the degree to which they are met and the extent to which that is adequate or appropriate in the context of this proposal. What is adequate or appropriate will depend, among other things, on the significance of the enablement of people and communities afforded by the proposal.
- 12.28 In terms of sub-clause (a), we find that the application will help meet the needs of present and future generations whilst sustaining (through mitigation and environmental management) and harnessing (through the use of renewable energy generation principles) the potential of natural and physical resources.
- 12.29 Sub-clause (b) seeks to safeguard the life-supporting qualities of air, water, soil and ecosystems. While the application will cause some disruption to the soil and ecosystem in the wind farm location, and while there is a risk that construction activities of this nature (in general) can adversely impact local water quality as well, we are satisfied that these potential effects will be temporary and largely insignificant in this instance. Furthermore, we must recognise the values promoted by this application in terms of generating energy from a renewable source with no atmospheric emissions – thereby safeguarding the life-supporting quality of air.
- 12.30 Finally, it is evident to us that the application has sufficiently considered the need to avoid, remedy and mitigate certain impacts that the proposal will have on the environment, as sought under sub-clause (c). Moreover, where there is a need to address particular effects to a greater extent or through attaining greater certainty, this has been addressed by specific conditions which accompany this decision.
- 12.31 To conclude this evaluation, we hold that, when all relevant factors are weighed, the application will promote the sustainable management of natural and physical resources and will not have unacceptable or significant adverse effects. Our view, therefore, is that the application is consistent with the purpose of the Act.

13. DECISION

For the foregoing reasons and under delegation from the **Tararua District Council**, and pursuant to Sections 104B, 105, 107 and 108 of the Resource Management Act 1991, we **grant land use consent** to NZ Windfarms Ltd for:

The construction, use and maintenance of an extension to its Te Rere Hau wind farm on the eastern side of the Tararua Ranges. The consent approves 56 additional wind turbines located across approximately 300 hectares. Each turbine tower is 29 metres in height and reaches a maximum height of 47 metres with the tower and blade combined. Access to the proposed site will be off the Pahiatua Track via North Range Road.

The land use consent is for the properties for which the legal description is provided in the applications. Consent is granted subject to the conditions listed in Appendix One at the end of this decision. A lapse period of ten years is granted under s 125 of the Resource Management Act 1991

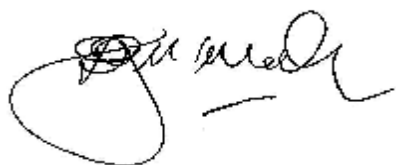
Under delegation from the **Manawatu-Wanganui Regional Council**, and pursuant to Sections 104A, 104B, 105, 107 and 108 of the Resource Management Act 1991, we **grant** the following **regional consents** to NZ Windfarms Ltd for the activities described in these applications:

104950 Discharge Permit to discharge stormwater to land where it may enter water from various locations throughout the wind farm site including; the turbine sites, roads and access track and spoil disposal sites during construction and post construction. A term of 15 years is granted

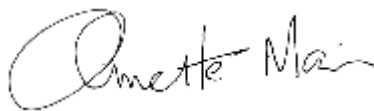
104951 A Discharge Permit for the discharge of cleanfill to land associated with spoil disposal sites throughout the wind farm site. A term of 35 years is granted

104952 Land Use Consent for constructing and installing culverts in, on or over water bodies within the general wind farm site. A term of 15 years is granted

These regional consents are subject to the conditions listed in Appendix Two at the end of this decision. A lapse period of ten years is granted under s125 of the Resource Management Act 1991



David McMahon
Independent Commissioner
Chair of Hearings Panel



Cr Annette Main
(MWRC)



Cr Warren Davidson
(Tararua District Council)

HEARING COMMISSIONERS
3 February 2010