

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of submissions by **GENESIS ENERGY** on the
Horizons Regional Plan One Plan – Chapter 4 (Te
Ao Māori)

LEGAL SUBMISSIONS ON BEHALF OF GENESIS ENERGY

(11 AUGUST 2008)

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Introduction

1. Since the release of Council's planning report, the following documents relevant to proposed Chapter 4 have been circulated:
 - (a) Evidence of Jarrod Bowler (not required to be pre-circulated).
 - (b) The Chairperson's preliminary questions.
 - (c) Supplementary Recommendations of H Marr.
2. The position has evolved such that there is now some common ground as between council staff and submitters.
3. As foreshadowed in the 'Marr Report', additional comments and recommendations will be presented at the end of the Chapter 4 hearing.
4. These submissions address the interim responses in the Marr Report to Mr Bowler's evidence.

Policy 4-1

5. The Marr Report agrees in part with Mr Bowler's proposed amendments in the preamble and paragraph (e), but comments (at the table at page 4):

"Not necessary to also add 'encourage' as well as 'enable' and 'foster'."

6. The term 'encouraging' is appropriate as otherwise Council is effectively committing to achieve the outcomes specified in paragraphs (a) - (h), which are neither certain nor matters solely in the hands of the Council. For example, paragraph (a) (memoranda of partnerships) may not be desired by some tāngata whenua.

Policy 4-2

7. The Marr Report agrees with the addition of the term "co-operatively" in paragraph (b)(i), but disagrees with Mr Bowler's proposed amendments to paragraphs (a) and (b) (change from "protect" to "manage to recognise and provide for").
8. The first reason for disagreement is that the policy (at the table at page 4):

"... should clarify how [the] objective will be implemented, not simply repeat wording."

However, the proposed wording is not a clarification - it significantly changes the legal threshold from that specified in section 6(e). In other words, the proposed policy rewrites the RMA and therefore is not appropriate.

9. The second reason for disagreement is that the policy is consistent, it is said, with section 6(f). This reference appears to be a tacit acknowledgement that the use of the term "protect" in relation to wāhi tapu in the policy is not authorised by section 6(e). Moreover, to rely on

the extended definition of "historic heritage" in section 6(f) for a wāhi tapu specific policy is to lead to confusion on the part of the public given the provisions in Chapter 7 dealing expressly with historic heritage as a component of Living Heritage.

10. In relation to the Chairperson's Question 13, if it is intended by Council that resource users are to be bound by yet to be developed codes of practice outside of permitted activity conditions or existing resource consents, then clearly the relevant RMA processes will need to be followed (for example, consent condition reviews or plan changes etc).

Policy 4-3

11. The Marr Report agrees with Mr Bowler's proposed amendments in the preamble and paragraph (a).
12. In relation to paragraph (b), the Marr Report agrees that the RMA does not authorise a mandatory cessation of activity for the purposes of a rahui, but recommends "facilitating voluntary rahui".
13. There is no issue with the Council attempting to facilitate any outcome. However, when the proposal has the cloak of a formal policy, it has a legal status. For example, such policy would be relevant under any consideration of section 104D(1)(b) of the RMA.
14. Thus, rather than this provision being an actual policy, the safer approach is to include any reference to a voluntary rahui, for example, as part of the introduction.

Methods - MOP

15. The Marr Report agrees in part with Mr Bowler's proposed amendments as to transparency, but comments:

"... do not agree that proposed last sentence is appropriate in a method describing memorandum of partnership."

16. It is unclear why the proposed wording is opposed when it is couched in terms where such information "may" be shared where agreed by "hāpu and iwi".



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