

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of the Proposed Waikato District Plan (Stage
1) – Hearing 22 – Infrastructure

**STATEMENT OF EVIDENCE OF MAGGIE ROSE BURNS FOR THE DIRECTOR-GENERAL
OF CONSERVATION**

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1. INTRODUCTION

- 1.1 My name is Maggie Rose Burns.
- 1.2 I hold the qualification of Bachelor of Environmental Planning from the University of Waikato.
- 1.3 I have been employed by the Department of Conservation as a resource management planner since 2018.
- 1.4 My work with the Department of Conservation has involved assessing draft and proposed regional policy statements and regional and district plans and assisting with preparing submissions on policy statement and plan content.
- 1.5 I am experienced in assessing and assisting with submissions on resource consents.
- 1.6 I am engaged by the Director-General of Conservation (the **Director-General**) to provide evidence for the Director-General's submission and further submissions on the proposed Waikato District Plan (the **Proposed Plan**).
- 1.7 I have been involved in this matter since July 2019 and was involved in the preparation of the Director-General's submission and further submission.

2. CODE OF CONDUCT

- 2.1 I confirm I have read the code of conduct for expert witnesses as contained in the Environment Court's Practice Note 2014. I have complied with the practice note when preparing my written statement of evidence and will do so when I give oral evidence before the Commissioners.
- 2.2 The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence.
- 2.3 Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

3. SCOPE

3.1 My evidence covers the following matters:

- a) Amending Rule 14.6.2 to add additional matters of discretion to address any adverse effects associated with the construction, operation and decommission of small-scale and community-scale electricity generation projects.
- b) Rule 14.6.3 and Rule 14.6.4 relating to large-scale wind farms.
- c) Policy 6.1.10 and Rule 14.2.3 relating to the Director-General's further submission on Powerco's submission.

3.2 In preparing this evidence I have read the infrastructure hearing report required by Section 42A of the Resource Management Act 1991 (**RMA**) on these matters.

3.3 I have read and rely on the evidence of Tertia Thurley.

4. RELEVANT POLICY GUIDANCE

Part 2 of the Resource Management Act 1991

4.1 Section 6 (c) of the RMA is particularly relevant to the Director-General's submission which must be recognised and provided for in the Proposed Plan:

Section 6

In achieving the purpose of this Act, all persons exercising function 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...

c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

4.2 It is relevant to note this matter as a consideration with respect to locating windfarms within or adjacent to Significant Natural Areas, acknowledging that significant habitat must be protected whether mapped or not.

4.3 Relating to wind farm rules, the Proposed Plan must be drafted to ensure plan users and decision makers have particular regard for Section 7, RMA matters, two of which are relevant here:

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 have particular regard to:

d) Intrinsic values of ecosystems...

j) the benefits to be derived from the use and development of renewable energy.

- 4.4 Having particular regard to benefits to be derived from the use and development of renewable energy as required by Section 7 (j) must concurrently recognise and provide for significant indigenous vegetation and significant habitats of indigenous fauna (Section 6 (c)), recognise and provide for being a stronger directive and constrain the exercise of implementing 7 (j).

New Zealand Coastal Policy Statement 2010

- 4.5 The Proposed Plan must give effect to the New Zealand Coastal Policy Statement. The New Zealand Coastal Policy Statement applies to the coastal environment within the district.
- 4.6 Policy 11 (b) (ii) of the New Zealand Coastal Policy Statement requires avoidance of adverse effects of activities on indigenous taxa that are listed as threatened or at-risk. Policy 11 (b) (v) requires avoidance of significant adverse effects and avoidance, remediation or mitigation of other adverse effects specific indigenous species and habitats.
- 4.7 The 'avoid' policy directive affords a very high level of protection and consideration and gives priority over less stringent policy wording.
- 4.8 Policy 6 (1) (a) requires recognition of the provision of infrastructure as activities important to the social, economic and cultural well-being of people and communities. Policy 6 (1) (g) is a 'take into account' directive relating to renewable energy generation. I note that both 'recognise' (6 (1) (a)) and 'take into account (6 1 (g)) are overridden by the 'avoid' policy direction in Policy 11.

National Policy Statement Renewable Energy Generation

- 4.9 The National Policy Statement for Renewable Energy Generation provides policy direction for local authorities on how renewable energy generation should be dealt with in RMA documents, including the Proposed Plan.
- 4.10 The National Policy Statement for Renewable Energy Generation requires local authorities recognise the national significance of renewable electricity generation activities and provide for the development, operation, maintenance and upgrading of new and existing renewable energy activities to achieve targets for renewable energy generation.
- 4.11 Policy E3 of the National Policy Statement for Renewable Energy Generation directs district plans to include objectives, policies, and methods (including rules within plans) to provide for wind generation activities to the extent practicable to the district.
- 4.12 Policy F requires district plans include provisions for small and community scale electricity generation activities.
- 4.13 The National Policy Statement for Renewable Energy Generation makes it clear that there is a need for renewable energy generation throughout New Zealand as an alternative to fossil fuel options as a tool to address climate change concerns. The policy directive gives clear direction that renewable energy, including wind energy and those of small and community scale, must be provided for in district plans in their objectives, policies and rules. Rule 14.2.6 is necessary to give effect to this policy directive.
- 4.14 Within the Coastal Environment Policy 11 of the New Zealand Coastal Policy Statement and Policies E3 and F of the National Policy Statement for Renewable Energy Generation are the same order of document and must be considered in conjunction. It is up to the council to provide objectives, policies and rules applying in the coastal environment to provide for wind energy generation (and specifically small and community scale) while also avoiding significant adverse effects on indigenous biodiversity (as the case may be) to ensure the Proposed Plan gives effect to both national policy statements.¹

¹ Note this is in terms of reconciling the two national policy statements only. There is also the need to give effect to the Regional Policy Statement which has biodiversity policies applying across the whole district.

Waikato Regional Policy Statement

- 4.15 The Waikato Regional Policy Statement must be given effect to.
- 4.16 Chapter 11 of the Waikato Regional Policy Statement provides policy direction for indigenous biodiversity in the region. Policy 11.1 directs promotion of positive biodiversity outcomes and maintenance of the full range of ecosystem types. 11.1 (d) in particular specifies a focus on supporting (buffering and/or linking) ecosystems, habitats and areas identified as significant indigenous vegetation and significant habitats of indigenous fauna.
- 4.17 Policy 11.2 directs protection of indigenous vegetation and significant habitats of indigenous fauna by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced. Implementation method 11.2.2 (b) specifically requires a preference for avoidance over remediation or mitigation on activities that affect significant indigenous vegetation or significant habitats of indigenous fauna.
- 4.18 Policy 11.4 (a) relates to protecting indigenous biodiversity in the coastal environment and avoiding adverse effects on indigenous taxa listed as threatened or at risk and habitats of indigenous species where the species are listed as threatened or at risk ((i) and (ii)). This policy gives effect to New Zealand Coastal Policy Statement Policy 11 as detailed above.
- 4.19 Criteria for determining significant indigenous biodiversity is detailed in 11A of the Waikato Regional Policy Statement and should be used to identify areas of significant indigenous biodiversity. I note that the significance criteria should be applied whether significant biodiversity is mapped or not.
- 4.20 11A Criteria for determining significance of indigenous biodiversity in the regional policy statement is of particular relevance to the exercise of recognising and providing for matters of national importance, including 6 (c), in the Proposed Plan. Criterion 3 determines:

It is vegetation or habitat for indigenous species that are:

- *Classed as threatened or at risk, or*
- *Endemic to the Waikato region, or*

- *At the limit of their natural range [emphasis added]*²

4.21 The Waikato Regional Policy Statement also contains policy pertaining to renewable energy generation, specifically Policy 6.5 which relates to energy demand management. Implementation 6.5.1 (b) specifically notes district plans should encourage the use of on-site and community-based renewable energy technologies and gives effect to the National Policy Statement for Renewable Energy Generation.

4.22 To give effect to the Waikato Regional Policy Statement, the Proposed Plan must avoid adverse effects on indigenous biodiversity as a preference while reconciling policy relating to renewable energy generation. Where the directive for small and community scale renewable energy technologies is ‘encourage’, indigenous biodiversity policies require avoidance which should be prioritised.

5. SMALL AND COMMUNITY SCALE RENEWABLE ENERGY GENERATION - RULE 14.6.2

5.1 The Director-General’s submission seeks to include additional matters of discretion to Rule 14.6.2. This is to address any adverse effects on the environment associated with the construction, operation and decommissioning of small-scale and community-scale electricity generation projects, particularly wind farms. The submission considered wind farms have the potential to have significant ecological effects, particularly on avifauna and bats [585.11].

5.2 The staff report recommends that the submission be rejected and that no amendments are made to this provision.

5.3 The staff report considers that “the list of matters of discretion are reasonably comprehensive and includes effects on the values, qualities and characteristics of any Identified Area.” And that “...the reference to “effects on values” as a matter of discretion will ensure the special values are considered.”

5.4 I note that identified areas include Significant Natural Areas, Outstanding Natural Landscapes and Feature and Historic Heritage (and a number of others) and are limited to those areas currently mapped in the Proposed Plan.

² See Evidence of Tertia Thurley paragraph 10.7 which confirms bat habitat meets this criterion.

- 5.5 It is also important to note that the Director-General has made a number of submissions relating to Significant Natural Areas. The Director-General supported the mapping of Significant Natural Areas but also requested additional provisions to ensure unmapped areas that meet Significant Natural Area criteria (detailed in the Waikato Regional Policy Statement) to ensure unmapped areas that meet criteria are managed appropriately [585.35].
- 5.6 The Director-General's submission also requested the additions of objectives, policies and rules to recognize bat zones and tree protection rules [585.38].
- 5.7 The above provisions will be addressed in more detail in Hearing 21B – Significant Natural Areas.
- 5.8 I disagree with the staff report recommendations for the following reasons.
- 5.9 The definition of significant natural in the Proposed Plan only encompasses those areas identified on the planning maps. I consider that the current Significant Natural Area mapping has gaps that do not recognise significant habitat for indigenous species. This is inconsistent with Criterion 3 in appendix in 11A of the Waikato Regional Policy Statement which explicitly states habitat of indigenous species classed as threaten or at risk.
- 5.10 In the absence of more detailed mapping, or the requirement for ecological significance assessment where mapping has not been completed, areas that are providing roosting, foraging or flyway habitat for long-tailed bats are not identified and cannot be considered as a 'value, quality or characteristic' of an identified area. Evidence from Ms Thurley also notes the gaps in Significant Natural Area mapping that does not identify bat habitat.³
- 5.11 Wind farms or turbines, even those of small or community scale, can have minor, moderate or significant adverse effects on long-tailed bats. These effects are detailed in evidence from Ms Thurley.⁴ In the case of the critically endangered long-tailed bats, the loss of any habitat is considered significant and any loss of an individual bat can be devastating to a local population. Effects from wind farms may also extend to other species, including avifauna and invertebrates. Any adverse effects (even minor or moderate) on significant

³ See evidence of Ms Thurley Paragraph 10.5 and Figure 1.

⁴ See Evidence of Ms Thurley Paragraphs 8.2 and 8.3

habitat of indigenous fauna should be avoided as per policy direction in the Waikato Regional Policy Statement and New Zealand Coastal Policy Statement (in the coastal environment).

- 5.12 This means that there may be effects on indigenous species where habitat has not been mapped. These areas cannot be considered in the current matter of discretion and in resource consent applications for small or community scale wind farms, limiting the ability for those making decisions on resource consents to adequately avoid, remedy or mitigate adverse effects on significant indigenous species.
- 5.13 The Proposed Plan is also not clear on what constitutes a ‘value, characteristic or quality.’ For example, if a Significant Natural Area is mapped based on indigenous vegetation values, but also contains a roost tree, can the values associated with the bat habitat be considered as a value given these values were not originally considered as part of that area becoming a Significant Natural Area?
- 5.14 Policy direction is clear that renewable energy is an important consideration and district plans should not be overly restrictive when it comes to renewable energy projects, particularly those of small and community scale. I consider that an additional matter of discretion allowing consideration of ecological effects would be consistent with policy direction in National and Regional policy statements and not cause unnecessary obstacles for applicants. Whilst policy direction for renewable energy generation is strong, avoid/protect/avoid in preference directives for indigenous biodiversity need to be given an element of priority.⁵
- 5.15 An additional matter of discretion is necessary to ensure no further loss of critically endangered species, including the long-tailed bats, and avoid any doubt that ecological effects should be considered when reviewing a consent application for a small or community scale wind farm. This amendment would ensure consistency with the Waikato Regional Policy Statement Chapter 11A criteria.

⁵ Policy 11.1 and 11.2.2 of the Waikato Regional Policy Statement and Policy 11 New Zealand Coastal Policy Statement (in the coastal environment).

5.16 I therefore recommend the addition of a matter of discretion with the following wording:

(f) ecology and biodiversity effects

6. RULE 14.6.3 AND 14.6.4 – LARGE-SCALE WIND FARMS

Rule 14.6.3 Discretionary Activities

6.1 The Director-General's submission supports notified rule 14.6.3, being the discretionary activity status for large-scale wind farms in the rural zone [585.12].

6.2 The staff report recommends accepting the Director-General's submission and retaining the activity status.

6.3 I agree with this recommendation. I also support the proposed changes to the rule which clarifies that these rules do not apply to identified areas.

6.4 Large scale wind farms can have potentially significant effects on any values, including but not limited to, ecological effects. Wind farms outside of the definitions of small of community electricity generation have the potential to have more significant effects on ecological values as there are no parameters around scale.

6.5 The discretionary activity status for consents for large scale wind farms ensures those making decisions on consents can consider any effects including ecological. The rural zone is generally the most appropriate zone for large-scale wind farms as there is more scope to avoid adverse effects.

Rule 14.6.4 Non-Complying Activities

6.6 The Director-General's submission supports notified rule 14.6.4, being the non-complying activity status for large scale wind farms located outside the rural zone, including in identified areas [585.13].

6.7 The staff report recommends accepting the Director-General's submission.

6.8 I agree with this recommendation. I support the proposed changes which amend the rule and clarify that the non-complying status applies to large-scale wind farms within the rural zone and within the identified areas.

6.9 Large scale wind farms in non-rural zones and within identified areas have potentially significant adverse effects and are likely to be inappropriate in these areas.

6.10 The non-complying activity status provides the additional triggers in s104 of the RMA, a threshold test which is appropriate for applications of this scale. A non-complying activity status suggests that a consent would only be granted in exceptional circumstances and where a full and detailed review of potential effects has been undertaken.

7. POWERCO FURTHER SUBMISSIONS

Policy 6.1.10 – Infrastructure in Identified Areas

7.1 The submission from Powerco seeks [836.44]:

a) *Retain Policy 6.1.10 Infrastructure in identified areas, except for the amendments sought below AND Amend Policy 6.1.10 Infrastructure in identified areas as follows:*

b) *Where possible and taking into account the lineal needs of infrastructure, and that the form and function of utilities is generally consistent irrespective of the zone, infrastructure must ensure ~~Ensure~~ consideration of the values, qualities and characteristics of Significant Natural Areas, Landscape and Natural Character Areas and Heritage Items when proposing new infrastructure or undertaking significant upgrades to existing infrastructure.*

7.2 The Director-General opposes this submission and considered this amendment is too permissive inside identified areas [FS1293.64].

7.3 The staff report recommends rejecting Powerco's submission and accepting the Director-General's further submission, agreeing that the proposed amendments would be too permissive in identified areas, and that the proposed wording changes dilute the effectiveness of policies relating to retention of values in identified areas.

7.4 I agree with this recommendation.

7.5 In my opinion, I agree that Policy 6.1.10 needs to be read in conjunction with infrastructure enabling policies. The policy is not an avoid policy directive and

can therefore provide for lineal needs of infrastructure where it may need to occur in identified areas, (with an appropriate analysis of potential effects).

Rule 14.2.3 D1 Discretionary Activities – Infrastructure in Identified Areas

7.6 The submission from Powerco seeks [836.15]:

c) *Amend Rule 14.2.3 D1 Discretionary Activities so that Infrastructure in identified areas is a discretionary activity rather than non-complying:*

Any infrastructure not specifically listed within Chapter 14, including associated earthworks ~~not locate~~ and those within an Identified Area

AND

Delete Rule 14.2.3 NC3 Non-Complying activities.

7.7 The Director-General opposes this submission as he considers this amendment too permissive inside identified areas [FS1293.65].

7.8 The staff report recommends rejecting Powerco’s submission and accepting the Director-General’s further submission, agreeing that the proposed amendments would be too permissive in identified areas and that the proposed wording changes dilute the effectiveness of policies relating to retention of values in identified areas.

7.9 I agree with this recommendation.

7.10 The current non-complying activity status allows for consideration of a full suite of effects and provides additional triggers on any consent application of this nature. Allowing a less stringent activity status would not appropriately recognise the potential for significant adverse effects on identified areas and be inconsistent with national and regional policy direction.

8. CONCLUSION

8.1 Small and community scale wind farms may have significant adverse effects on threatened indigenous species. The current Significant Natural Area mapping does not adequately identify significant habitats of fauna, including those for the long-tailed bat. An additional matter of discretion is recommended in Rule 14.6.2 to address this discrepancy and ensure habitats of indigenous fauna can be considered in consent applications for small or community scale wind farms.

- 8.2 The above amendment would ensure consistency with Section 6 (c) of the RMA, the New Zealand Coastal Policy Statement (in the coastal environment) and specifically policy and criterion in Chapter 11 of the Waikato Regional Policy Statement. It would also remain consistent with policy direction relating to renewable energy.
- 8.3 I agree with the Section 42A recommendations relating to Rules 14.6.4 and 14.6.5 and those relating to Powerco's submission on Policy 6.1.10 and Rule 14.2.3.



Maggie Rose Burns

29 September 2020