

**Section 42A Report Addendum  
Land Use Consent**

**Section 127 Report to Change or Cancel Consent Conditions, Sections  
95 to 95F of the Resource Management Act 1991**

<b>Date:</b>	14 November 2023	<b>App Number:</b>	RM200019
<b>Reporting Planner:</b>	Chris Dawson – BBO	<b>Site Visit on:</b>	22 June 2023

<b>Applicant:</b>	Taumatotara Wind Farm Ltd (TWF)
<b>Property Address:</b>	Taumatotara West Road, Waitomo

**1 INTRODUCTION**

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Taumatotara Windfarm Ltd (TWF) have applied to the Waitomo District Council (Council) to change the conditions of Resource Consent RM500019 granted by Council in 2008 and subsequently varied in 2011 to increase the height of the northern 11 turbines to 121.5 m.

The application has been made under s127 of the Resource Management Act 1991 (the RMA), which prescribes the statutory direction to change or cancel the conditions of resource consents.

This s127 addendum has been prepared to address those statutory documents that were not referred to in the primary s142A report issued on 13 October 2023. This relates to the more recent National Policy Statements that are relevant to the project along with the relevant provisions of the Proposed Waitomo District Plan. A brief summary of the relevant provisions along with an assessment of those provisions as they relate to the Taumatotara windfarm project is set out below.

Importantly, this application has been confirmed as a s127 of the Act in that it is to vary an existing 2011 consent for 22 turbines to reduce the project to 8 taller turbines. This is to be carried out while recognising that the existing consent for 22 turbines is part of the existing environment.

**2 NATIONAL POLICY STATEMENTS (NPS)**

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**2.1 National Policy Statement on Indigenous Biodiversity (NPS- IB)**

The NPS-IB commenced in August 2023. It provides directions to Council to protect, maintain and restore indigenous biodiversity in New Zealand, requiring that at least no further reduction of indigenous biodiversity should occur nationally. The NPS-IB applies to indigenous biodiversity in all terrestrial environments in New Zealand including geothermal ecosystems, specified highly mobile fauna and natural inland wetlands.

As noted in Mr Shearer’s evidence, the NPS-IB states at 1.3(3) that:

*"Nothing in this National Policy Statement applies to the development, operation, maintenance or upgrade of renewable electricity generation assets and activities and electricity transmission network assets and activities. For the avoidance of doubt, renewable electricity generation*

*assets and activities, and electricity transmission network assets and activities, are not "specified infrastructure" for the purposes of this National Policy Statement."*

I concur that this section of the NPS-IB means that it does not apply to the project. I also note that the project does not propose to remove any areas of indigenous vegetation and no turbines are located in areas of indigenous vegetation. All of the remaining 8 turbines are to be located in the same location as the original turbine meaning each turbine is located in an area where a consented turbine is already part of that environment. However I do not consider that NPS-IB 1.3(3) means that the requirements of the RMA s6 (c), the Waikato Regional Policy Statement and the Proposed Waitomo District Plan must be disregarded.

I also note section 4.4 of the NPS-IB which states the following:

#### **4.4 Existing policy statements and plans**

- (1) To the extent that policy statements and plans already (at the commencement date) give effect to this National Policy Statement, local authorities are not obliged to make changes to wording or terminology merely for consistency with it.
- (2) In case of dispute, the onus is on the local authority to show that, despite the different wording or terminology used, their policy statement or plan does implement this National Policy Statement.

I interpret this clause to mean that where there is the potential for a conflict between an existing policy statement or plan and the NPS-IB, then it is up to the Council to demonstrate that the policy statement or plan does implement the NPS-IB.

In terms of timing, section 4 of the NPS-IB states that local authorities shall notify any changes necessary to give effect to the NPS-IB within eight years of the commencement date. Any specific changes to policy statements or plans must be notified within five years of the commencement date.

## **2.2 National Policy Statement on Renewable Energy Generation (NPS-REG) 2011.**

The National Policy Statement on Renewable Energy Generation (NPS-REG) was issued by notice in the New Zealand Gazette on 14 April 2011. The NPS-REG has as its objective: *"to recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation."*

The NPS-REG applies to the Taumatotara wind farm project as the NPS-REG definition of renewable electricity generation *"means generation of electricity from solar, wind, hydro-electricity, geothermal, biomass, tidal, wave, or ocean current energy sources."* Mr Shearer notes in paragraph 10.39 of his evidence that Policy C2 of the NPS-REG has particular relevance to the project.

## *Policy C2*

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

The advice that Council has received in relation to the ecological effects of the project is set out in detail in the report in **Appendix 7** of the s42A report prepared by Dr Leigh Bull, Consultant Ecologist. I noted this in my s42A report when I stated that: *While some ecological assessment and reporting has been undertaken by TWF, Ms Bull concludes that this has been insufficient to confirm the number or type of threatened or at risk species present across the wind farm site and therefore the most appropriate mitigation that should be applied<sup>1</sup>.*

In my opinion, while Policy C2 of the NPS-REG does require the consideration of offsetting or environmental compensation measures, those measures are only to be considered once the effects management hierarchy of avoid, remedy or mitigate has been carefully followed.

The revised set of draft consent conditions tabled this morning have been discussed in depth with the applicant overnight. It now contains comprehensive pre-construction and post construction monitoring for bats and avifauna along with the development of an offset or compensation plan. Proposed condition 46 also requires the consent holder to provide at least \$45,000 per year over 5 years for an investigation of bat populations in the wider geographical area of the windfarm.

In my opinion, with the addition of these revised consent conditions, the proposal will align with the requirements of Policy C2 including the requirement for compensation and offsetting.

## **2.3 Waikato Regional Policy Statement**

### **2.3.1 Waikato Regional Policy Statement**

The Waikato Regional Policy Statement (RPS) was made operative in May 2016. The RPS is a high-level broad-based document containing objectives and policies the purpose of which is to provide an overview of the resource management issues of the Waikato region and to achieve integrated management of the natural and physical resources of the region.

*Among the Key Significant Resource Management Issues for the Region (SRMR) are two issues that have particular relevance to the project:*

#### ***SRMR – 15 – Relationship of tangata whenua with the environment***

*The relationship tangata whenua have with the domains of Ranginui and Papatūānuku is of paramount importance and this relationship is being damaged through:*

- 1. activities which degrade the mauri of the environment, including through cumulative effects;*
- 2. loss of access to, and use and enjoyment of, resources and places;*
- 3. loss or diminishment of the ability of tangata whenua to be involved in or influence management decisions; and*
- 4. loss of ability to exercise and provide for kaitiakitanga.*

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<sup>1</sup> Pg 22, section 14 Ecological Effects, s42A report dated 13 October 2023.

The delivery of an MOU between the applicant and the local iwi is evidence that there has been some engagement between the parties and the addition of several conditions confirms the role of tangata whenua in the implementation of the consent.

### **SRMR – 13 – Providing for Energy Demand**

The preamble states that: *“With increasing demand for energy coupled with Government objectives and targets regarding renewable electricity generation, there is an increasing need for improvements in the way we use energy, and for new energy projects and associated infrastructure, and increasing need to manage potential adverse effects on natural and physical resources.”*

*While addressing this issue generally, specific focus should be directed to addressing the following matters:*

- 1. how the increasing demand for energy is to be met;*
- 2. potential for conflicts between activities to meet energy demand and other land or water uses including natural values;*
- 3. the need to locate renewable energy generation infrastructure where the resource exists;*
- 4. the need to maintain the efficiency of, and production from, existing renewable electricity generation activities;*
- 5. the need for the continued existence, and operation of the Waikato Hydro-scheme as significant national infrastructure; and*
- 6. security of supply.*

This means that the development of renewable energy as provided for by the T4 project is aligned with the Significant Resource Management issue 13 in that it is providing for additional energy derived from a renewable source. However, the RPS also notes the importance of addressing the potential for conflicts between natural values and renewable energy generation activities. The current process associated with the processing of this s127 amendment application is an example of working through those potential conflicts.

With regards to ecological matters, the following policies are relevant to the consideration of the proposal:

***ECO-P2 – Protect significant indigenous vegetation and significant habitats of indigenous fauna***  
*Significant indigenous vegetation and the significant habitats of indigenous fauna shall be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced.*

### ***ECO-P3 – Collaborative management***

*Maintaining and enhancing indigenous biodiversity shall be promoted in an integrated and efficient manner including by working collaboratively with landowners, resource managers, tangata whenua and other stakeholders.*

### **ECO-M2 – Adverse effects on indigenous biodiversity**

*Regional and district plans shall recognise that adverse effects on indigenous biodiversity within terrestrial, freshwater and coastal environments are cumulative and may include:*

- 1. fragmentation and isolation of indigenous ecosystems and habitats;*
- 2. reduction in the extent and quality of indigenous ecosystems and habitats;*
- 3. loss of corridors or connections linking indigenous ecosystems and habitat fragments or between ecosystems and habitats;*

4. *the loss of ecological sequences;*
5. *loss or disruption to migratory pathways in water, land or air;*
6. *effects of changes to hydrological flows, water levels, and water quality on ecosystems;*
7. *loss of buffering of indigenous ecosystems;*
8. *loss of ecosystem services;*
9. *loss, damage or disruption to ecological processes, functions and ecological integrity;*
10. *changes resulting in an increased threat from animal and plant pests;*
11. *effects which contribute to a cumulative loss or degradation of indigenous habitats and ecosystems;*
12. *noise, visual and physical disturbance on indigenous species, particularly within the coastal environment; and*
13. *loss of habitat that supports or provides a key life-cycle function for indigenous species listed as 'Threatened' or 'At Risk' in the New Zealand Threat Classification System lists.*

The ecosystem and indigenous biodiversity objectives and policies seek to ensure that a full range and extent of ecosystem types and indigenous biodiversity are retained in a healthy and functional state. Specifically, the policies seek that the spatial extent of indigenous biodiversity/ecosystems achieve healthy ecological functioning of ecosystems, support the continued functioning of ecological processes and that there is re-creation and restoration of habitats and connectivity between habitats where relevant.

The windfarm consent is existing and it is only the change in effects arising from the reduction from 22 turbines to 8 turbines in combination with the increase in height and rotor diameter that is being assessed. Providing the draft conditions are imposed in relation to ecological matters, I consider that the proposal will align with the relevant objectives and policies in the Waikato Regional Policy Statement.

## **2.4 Proposed Waitomo District Plan**

The Proposed Waitomo District Plan (PWDP) has been notified for submissions and further submissions however hearings have not yet been held. However, while the PWDP is still at a relatively early stage of the statutory process, s86(B) of the Act sets out those instances when rules in the plan have immediately legal effect. Section 86(b) (3) (b) states that: *"A rule in a proposed plan has immediate legal effect if the rule:*

*(b) protects areas of significant indigenous vegetation;.."*

As noted in the evidence of Mr Shearer, a number of Significant Natural Areas (SNA) are located in the vicinity of the windfarm. However as the applicant has also noted, the existing consent and the proposed variation do not seek to remove any areas of indigenous vegetation as part of the project with the only vegetation removal being that associated with the clearance of roadside vegetation to facilitate the movement of the turbine components to the site.

In my opinion, while the SNAs and their respective rules have immediate legal effect, there is little statutory weight that can be placed on those provisions given the early stage in the Schedule 1 process that the Proposed Waitomo District Plan is at. Hearings have not yet been held and as

noted by Mr Shearer in his evidence yesterday, there are some submissions seeking changes to the SNAs.

## **2.5 S 6 (c) RMA**

Section 6 (c) of the RMA *requires 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:*

*(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*

In my view, the existing environment includes the consented windfarm and therefore the assessment only relates to the difference in effects between the consented environment and the proposed varied environment. The applicant has confirmed that no areas of indigenous vegetation will be removed for either the establishment of the turbines or the access roads. In addition, the proposed conditions include the requirement in condition 44c for a Bat Offset or Compensation Plan and the requirement in condition 46 for financial compensation.

Based on the evidence of Ms Bull and the suite of draft conditions attached to this addendum, the proposal will align with the requirement to recognise and provide for section 6 (c).

## **2.6 Draft consent conditions (14 November version)**

We have met with the applicant's team overnight to consider and further refined the draft conditions of consent. The draft conditions now include comprehensive requirements for pre-construction baseline monitoring, post construction monitoring and requirements for offset mitigation in response to the outcomes of that monitoring.

**Chris Dawson**  
**14 November 2023**