

23 September 2021

In reply please quote: RM200019
If calling please ask for: Alex Bell

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Taumatatotara Wind Farm Limited
157 Woodlands Park Road
Titirangi
Auckland 0604

Dear Glenn,

Notification Decision

I have read the application, the Assessment of Environment Effects (AEE) including all further information provided to the Council, the Applicant's notification report, as well as the documents and correspondence provided to me in relation to this application (including the previous consents granted, the associated consent conditions and the Council's peer reviews of the Applicant's Assessment of Environment Effects (AEE) and the notification report and recommendation on the application for resource consent by Mr Dawson, consultant planner (reporting planner) to the Council. I am satisfied that I have sufficient information to consider the matters required by the Resource Management Act 1991 (RMA) and make a decision under delegated authority on notification.

It is my decision the application needs to be processed on a **publicly notified** basis. The reasons for this are set out below. It is my finding, contrary to the position of the Applicant and reporting planner, that in terms of section 95A(8)(b) the activity will have or is likely to have adverse effects on the environment that are more than minor. This means the application must proceed on the basis of public notification.

Notification decisions are made in terms of the provisions of sections 95 to 95G of the RMA (and in particular 95A(8)(b) in terms of this decision) which requires an assessment and determination of the 'adverse effects on the environment'. Any positive effects arising from an activity, as referred to in the application and other material provided by the Applicant, cannot be considered in relation to notification. I accept that the reduction in potential adverse effects arising from this proposal, essentially due to the reduction in the number of wind turbines, is relevant to a notification determination. However, I consider that, notwithstanding the reduction in potential adverse effects, this proposal will have or is likely to have adverse effects on the environment that are more than minor. I address these below.

Cultural Effects

The Applicant consulted with Mana Whenua - Ngaati Mahuta ki te Tai Hauaauro (Ngaati Mahuta). Ngaati Mahuta's response to the wind farm proposal was recorded in statement from the Hui held on 4 May 2021. Ngaati Mahuta opposed the proposal, and stated (in part):

After very careful consideration, and robust discussion of the Pro's and Con's we decided collectively and unanimously to refute and categorically object to any idea that a wind farm within reach of our mana whenua Ngaati Mahuta ki te Tai Hauaauru could be advocated for.

We cannot support the change of wind turbine size, an extra 62.5 metres in height, nor do we see a reduction in turbine numbers as a mitigating factor to lessening the impact of junk/ scrap metal, zero waste, visual effects and all of what was up for discussion. With hand on heart we are not confidently assured that the environmental and cultural impact, the ecological –dirty footprint, biodiversity of indigenous, the health and wellbeing of lives and environment present and in the future has been addressed adequately.

While the statement is not couched in RMA terms (eg less than minor, minor or more than minor), it is clear to me from the statement that Ngaati Mahuta as Mana Whenua do not support the proposal; and that it will have or is likely to have adverse cultural and other effects (“cultural impact, ecological...., biodiversity of indigenous, the health and wellbeing of lives”) on the environment that are more than minor.

While I note that Mr Dawson has recommended Ngaati Mahuta be ‘limited notified’, the limited notified provisions only apply once it has been determined that the requirements of section 95A(8)(b) do not apply (i.e. the proposal will not have or is not likely to have adverse effects on the environment that are more than minor). As set out it is my finding that in terms of section 95A(8)(b) the proposal will have or is likely to have adverse cultural effects on the environment that are more than minor.

Visual Amenity/Landscape effects

The Applicant’s and Council’s landscape architects have addressed the effects of the proposal in terms of visual amenity/landscape effects. Mr Dawson has addressed these effects in his notification report under the heading Effects on landscape character and amenity. He states:

The uncertainties associated with this approach led Mr Mansergh to express some concerns over the assessment methodologies adopted and the subsequent effects ratings provided. He particularly noted that the methodology adopted by WSP was to consider effects ratings of both “very low” and “low” as less than minor. However, in his opinion it was preferable to adopt the notification threshold ratings identified in the New Zealand Institute of Landscape Architects Te Tangi a te Manu – Aotearoa New Zealand Landscape Assessment Guidelines, April 2021 and that these be adopted rather than those adopted by WSP.

On the basis of using the NZILA ratings of “very low” to equal less than minor effects and “low” to equal minor effects, he concluded that the potential adverse visual effects were considered to be low or moderate at House 26 and House 28 (Te Waitere View Limited), House 22 (Martins) and property SA1051/182 (Irons). These are set out in Table 3 below.

Table 3: Visual Affected parties

Legal Description	Landowner/occupier	Status
Section 13 & Part Section 9, Block V Kawhia South SD	Christopher, Raymond and Susan Irons	No written approval provided
Lot 1 DP 332845 in CT 134566	Greg and Leslie Martin House #22	No written approval provided
SA30D/453	Te Waitere View Limited * House #26	No written approval provided
SA42C/698	Te Waitere View Limited * House #28	No written approval provided

Relying on Mr Mansergh's assessment, Mr Dawson recommended those parties in table 3 be (limited) notified.

Mr Shearer, the Applicant's planner set out in his "Notification Assessment" the following:

The Council requested a Visual Assessment be undertaken from a number of dwellings on the Taharoa Road (north) side of the proposed wind farm to determine the severity of visual effects upon them. Two property owners – Tim and Mary Stokes, and Alan and Sue Smith, signed affected party forms. Therefore, the effects on them can be discounted. Many of the dwellings represented are owned by the site owners and are covered under existing written approvals.

Two properties owned by Te Waitere View Limited adjacent to Te Waitere Road – dwellings 28 and 26 (see 11 Turbine Layout map), were evaluated by WSP in terms of the visual effects of the proposal on them. The adverse visual effects on house 26 were evaluated as being 'moderate' using the NZILA criteria, equivalent to 'minor' in RMA terms. Property 28 was assessed as being 'low', or 'less than minor'.

One other property, owned by Greg and Lesley Martin, not identified in the Mansergh Graham report, is located on Taharoa Road and is the closest non-owner dwelling to the wind farm (2,087m). Their property has not been evaluated but it is safe to say the effects on them is minor as they will have a good view of several of the turbines.

Mr Shearer's overall conclusion was:

As a result of the above assessment, it is concluded that the application to change the conditions of consent is able to be processed with notification limited to three persons as follows:

- *Te Waitere View Limited –house 26*
- *Greg and Lesley Martin –house 22*

For the purpose of considering whether or not the visual amenity effects are more than minor, it needs to be determined which properties are excluded under section 95D (a) (ii) of the RMA. The Irons' property is adjacent (directly adjoining) the wind farm site, and is therefore excluded under section 95D (a) (ii). However, the other three properties set out in table 3 above are not adjacent to the wind farm site in terms of section 95D (a) (ii).

Mr Mansergh has concluded that the potential adverse visual effects are low or moderate at House 26 and House 28 (Te Waitere View Limited), and House 22 (Martins). In coming to this position he has applied the New Zealand Institute of Landscape Architects *Te Tangi a te Manu – Aotearoa New Zealand Landscape Assessment Guidelines, April 2021*. Those guidelines state in terms of visual effects at paragraph 6.37 – the following:

... 'More than minor' can be characterised as 'moderate' or above.

The footnote attached to that paragraph states:

Statements such as 'moderate is equivalent to minor in RMA terms' are incorrect (Okura [2018] NZEnvC 78, para 557).

Given the above, it is my finding that this proposal will have (at least) adverse effects on the environment, including in relation to those properties containing houses 22, 26 and 28 set out in Table 3 above, which are more than minor.

While I note that Mr Dawson has recommended a number of properties be limited notified, as I set out in relation to the cultural effects, the limited notified provisions only apply once it has been determined that the requirements of section 95A(8)(b) do not apply (ie the proposal will not have or is not likely to have adverse effects on the environment that are more than minor). As set out, it is my finding that in terms of section 95A (8)(b) the proposal will have or is likely to have adverse visual amenity effects on the environment that are more than minor.

Aviation

There has been little or no assessment (other than comments about the separate Civil Aviation Authority process) about the potential impact of the larger (and higher) wind turbines on aviation. There is little or no information of any potential effects or impact on commercial (eg top dressing operations) or recreational craft (eg privately owned planes, gliders and/or hang gliders).

Given the lack of information, it is not possible to definitively determine that there will or will not be adverse effects on the environment which are more than minor. Accordingly, it is my finding that there is at least the potential that there will be adverse aviation effects on the environment which are more than minor.

Ecological Effects

There is a considerable difference of opinion on the potential or likely effects in relation to ecological matters between the relevant ecological and planning experts, particularly in relation to birds and bats. These differences of opinion, given the complexity of the issues addressed (and the positive ecological effects opined by the Applicant's experts¹), cannot easily be addressed 'on the papers'. They need to be addressed in expert evidence and considered as part of the substantive evaluation under section 104 of the RMA.

¹ I have already set out that I am not able to consider positive effects as part of the notification decision.

Accordingly, I am not in a position to make a definitive finding that, for the purpose of notification, the adverse ecological effects are or are likely to be no more than minor; there is at least the potential for more than minor adverse ecological effects on the environment. This is an additional reason for public notification. It will also enable anybody who has concerns about the ecological effects of the proposal (positive or adverse) to lodge a submission (noting that notification is already required due to the other reasons set out above).

Overall Finding and Decision

For all of the reasons set out above, I have concluded that the proposed activity will have or is likely to have adverse effects on the environment that are more than minor. It follows that public notification is required.

In addition to the public notice, the following parties, in addition to those that the Council deems necessary to directly notify, shall be directly notified:

Legal Description of property	Landowner/Party
Section 13 & Part Section 9, Block V Kawhia South SD	Christopher, Raymond and Susan Irons
Lot 1 DP 332845 in CT 134566	Greg and Leslie Martin
SA30D/453	Te Waitere View Limited
SA42C/698	Te Waitere View Limited
NA	Department of Conservation
NA	Ngaati Mahuta

Special Circumstances

Given my decision that the application needs to proceed on a publicly notified basis, I am not required to determine if there are Special Circumstances that would otherwise require public notification under s95A(9) of the RMA. However, I wish to record that had I found that the application did not need to be publicly notified for any other reason, I would likely have found that there were special circumstances warranting the public notification of the application. Those reasons are briefly set out below.

Special circumstances have been defined by the Court of Appeal as those that are unusual or exceptional, but they may be less than extraordinary or unique.² Moreover, in *Murray v Whakatane District Council*,³ Elias J stated that circumstances which are "special" will be those which make notification desirable, notwithstanding the general provisions excluding the need for notification. In determining what may amount to "special circumstances" it is necessary to consider the matters relevant to the merits of the application as a whole, not merely those considerations stipulated in the tests for notification and service.

In this case the consent was originally granted in 2006, with a variation to that consent granted in 2011 and an application to extend the lapse date granted in 2016. While I accept the consent does not lapse until 2024, no physical development has commenced on the site since the proposal was first granted consent in 2006. Given this length of

² *Peninsula Watchdog Group (Inc) v Minister of Energy* [1996] 2 NZLR 529.

³ [1997] NZRMA 433.

time, it is likely that many members of the public may not be aware that the wind farm has been consented. The public, or those considered affected, may want the opportunity to submit (supporting, neutral or opposing) on the wind farm proposal.

Furthermore, since the granting of the original consent it is likely that environmental concerns and the impact of wind farms (positive or adverse) have changed, with assessment methodologies developed such that those employed at the time of the earlier Council decisions (on the original consent, subsequent changes to conditions and extension of the lapse period) may no longer be appropriate, reliable or relevant.

Moreover, there have been more recent and new statutory planning documents introduced and made operative. This includes the National Policy Statement for Renewable Electricity Generation (2011) and the Waikato Regional Policy Statement (notified in 2010 and made operative in 2016). The provisions in these documents will now need to be assessed in relation to this latest application but did not exist when the original resource consent, which this latest application proposes to change, was decided in 2006.

Given the above, I consider that special circumstances may well have applied to this proposal if I had not otherwise already concluded that public notification was required for other reasons.

Greg Hill

A handwritten signature in black ink, appearing to read "Greg Hill", followed by a period.

Hearing Commissioner

Dated: **23 September 2021**