

DECISION OF THE INDEPENDENT HEARING COMMISSIONER

TAUMATATOTARA WIND FARM LIMITED

SECTION 127 APPLICATION TO VARY CONSENT CONDITIONS



**DECISION REPORT OF THE INDEPENDENT HEARING COMMISSIONER APPOINTED
BY THE WAITOMO DISTRICT COUNCIL PURSUANT TO SECTION 34A OF THE
RESOURCE MANAGEMENT ACT 1991**

15 DECEMBER 2023

PROPOSAL DESCRIPTION

Taumatotara Wind Farm Limited have applied to vary consent conditions of land use consent RM050019 to construct a 22-turbine windfarm with maximum tip heights of 110m and 121.5m. The variation proposal includes:

- Reducing the number of turbines from 22 to eight, including reducing the on-site roading proposed.
- Increase the tip height of the remaining eight turbines from 121.5m to 180.5m, with rotor diameter increasing from 100m to 163m.

Application number:	RM200019
Site address:	Taumatotara West Road, Te Anga, Waikato
Applicant:	Taumatotara Wind Farm Limited
Hearing Commenced:	13 November 2023
Independent Hearing Commissioner:	Stephen Daysh
Appearances:	<p><u>For the Applicant:</u> Gill Chappell, Legal counsel Glenn Starr, Corporate Thomas Cameron, Director, 3Energy Services Ltd Michael Smith, Acoustics James Daly, Traffic Mike Moore. Landscape and visual effects Simon Chapman, Ecology Craig Shearer, Planning</p> <p><u>For the Submitters in Support:</u> Ashlee Aspinall (Co-chair Te Ruunanga o Ngaati Mahuta ki te Hauaauru)</p> <p><u>For the Submitters in Opposition:</u> Michelle Hooper, Legal counsel Department of Conservation Moira Pryde, Bat ecology, Department of Conservation Elizabeth Williams, Planning, Department of Conservation</p>

	<p>Susan Irons, 83 Te Waitere Road Chris Irons, 76 & 84 Te Waitere Road Julie Knight, 158 Coutts Road Natasha Willison-Reardon, Marokopa Paa Environmental Team Yvonne Armstrong Jaimee Tamaki, John David Keepa/Kupa Whānau Trust Amanda Pu, John David Keepa/Kupa Whānau Trust Dave Keepa, John David Keepa/Kupa Whānau Trust</p> <p><u>For Council:</u> Chris Dawson, Planning David Mansergh, Landscape and visual effects Dr Leigh Bull, Bat and Avifauna Ecology Siiri Wilkening, Acoustics Thato Mariti, Traffic</p>
Hearing adjourned:	14 November 2023
Commissioner’s site visit:	17 October 2023
Hearing Closed:	1 December 2023
Decision Notified:	15 December 2023

1. INTRODUCTION

- 1.1 Taumatotara Wind Farm Limited (“**T4**”) has applied to the Waitomo District Council (“**the Council**”) to vary conditions of existing land use consent RM050019 for a 22-turbine wind farm located at Taumatotara West Road that was originally granted in 2008, and varied in 2011. As a variation, the application is considered a discretionary activity, and requires consideration under ss 127, 104 and 104B of the Resource Management Act 1991 (“**RMA**” or “**the Act**”).
- 1.2 The Council, acting under ss 34 and 34A of the RMA, appointed Independent Hearing Commissioner, Stephen Daysh to hear and decide the application.
- 1.3 I have considered the application, submissions, evidence and expert advice provided as part of the hearing process within the framework of s104 of the RMA. For the reasons set out in this decision report, the application to vary consent conditions is granted.
- 1.4 This decision records decisions on the application for a variation of conditions and has been prepared in accordance with s113 of the RMA.
- 1.5 The principal issues in contention arising in respect of the resource consent applications, and our findings on them, will be identified as we progress through the matters to be considered, thereby satisfying the requirements of s113.

2. DESCRIPTION OF THE VARIATION PROPOSAL

2.1 The variation proposal is described in T4's AEE¹, responses to further information requests and the Council's Section 42A Report,² as amended by T4's Updated Variation Proposal³, legal submissions⁴ and evidence.⁵ I adopt these descriptions, but the more salient details are:

- a. The Applicant holds resource consent RM050019 to construct a 22-turbine wind farm at Taumatotara West Rd, Te Anga. The consented tip height of the northern 11 turbines (turbines 1-11) is 121.5m. The consented tip height for the southern 11 turbines (turbines 12-22) is 110m. The consent has not yet been exercised.
- b. The Applicant lodged an application on 9 July 2020 to reduce the number of turbines from 22 to 11 and increase the tip height of the remaining 11 turbines to 172.5m.
- c. The Applicant proposed an Updated Variation on 15 September 2023. The Updated Variation Proposal further reduces the number of turbines to eight (by surrendering turbines 2, 4, 9 and 12-22), increases the maximum rotor tip height to 180.5m, and increases the maximum diameter of the rotor area to 163m. This is the proposal that is assessed in this Decision.
- d. There is no proposed change to the positioning of the eight remaining turbines (turbines 1, 3, 5-8, 10 and 11) from that already consented. There will be consequential changes to on-site roading and components of the turbines, such as the tower dimensions, height and size of nacelle, and foundation pad size.

¹ Taumatotara Wind Farm: Application to Change Conditions of Consent, 5 July 2020. Section 2 "Background and Site" and section 3 "The Proposal".

² Section 42A Report, Chris Dawson, 13 October 2023. Section 1.1 "Description of site", Section 1.2 "The Section 127 Proposal",

³ Letter to C Dawson titled "*Update on progress – Taumatotara Windfarm Limited (T4) consent variation application*", dated 15 September 2023.

⁴ Opening Legal submissions, para 6.5

⁵ Legal submissions on behalf of Taumatotara Windfarm Limited responding to Minute 1, dated 27 September 2023, pages 3-6.

- e. The Applicant has also offered changes to consent conditions relating to noise and the management of ecology values.
- f. The proposed windfarm site (the site) is 10km south of Taharoa Village and above the Taumatotara Gorge in the Waitomo District.
- g. The site and the adjacent hills generally have very defined ridgelines with steep slopes on the flanks. The local peak to the northern end of the site has an elevation of 340m with the remainder of the site ranging between 300m and 320m at the southern end. The gradient of the construction site is moderate to steep with slopes generally between 1 in 20 and 1 in 5.
- h. The site is currently used for pastoral farming and is owned by three separate landowners, all of whom have given their written approval.⁶ A small plantation of radiata pines is located around turbine 7.
- i. The site is zoned Rural in the Operative Waitomo District Plan (“**OWDP**”) and the Proposed Waitomo District Plan (“**PWDP**”). No special features or overlays apply to the site, however a number of Significant Natural Areas are shown in proximity to the proposed turbines, being R16UP042.02 – Maungaakohe Scrub⁷ and R16018.02 – Stewardship land, Maungaakohe Reserve Extension.⁸
- j. There are five dwellings with sight lines to the turbines of the Updated Variation Proposal.⁹

⁶ TM Station Limited at Section 12 and Section 22 Block V Kawhia South Survey District; Larry Wallace Harper, Lynnette Elva Harper, and Bailey Ingham Trustees Limited at Section 1 Survey Office Plan 58558; and Mitchell Stanley Harper, Catherine Mary Griffin, and Bailey Ingham Trustees Limited at and Section 2 Block V Kawhia South Survey District.

⁷ Under the PWDP.

⁸ Under the PWDP, and similar area identified as Conservation Zone under the OWDP.

⁹ EIC, M Moore, Appendix D.

3. PROCEDURAL MATTERS

WRITTEN APPROVALS, NOTIFICATION AND SUBMISSIONS

- 3.1 Written approvals were obtained from the three landowners on which the windfarm is located. I have disregarded any effects of the Updated Variation Proposal on those parties.
- 3.2 Mr Dawson recommended that the application be limited notified,¹⁰ however Independent Hearing Commissioner, Greg Hill, found the application should be publicly notified.¹¹
- 3.3 The application was publicly notified on 6 April 2023 and the submission period closed at 5pm on 1 May 2023. A total of 15 submissions were received with 1 in support and 14 in opposition. The submissions are summarised in the Section 42A Report.¹² I adopt that summary but do not repeat it here. I was provided with copies of the original submissions.
- 3.4 Te Nehenehenui withdrew their two submissions by way of email dated 27 October 2023.¹³
- 3.5 Maketuu Marae, Aaruka Marae, Te Kooraha Marae, Tahaaroa Lakes Trust and Te Ruunanga o Ngaa Mahuta ki te Hauaauru collectively submitted on behalf of Ngaati Mahuta ki te Hauaauru in opposition. Since making their submission, the joint submitters have developed a Memorandum of Understanding with the Applicant's and have updated their position to support the application on the basis certain conditions are imposed.¹⁴ At the hearing, Ms Aspinall and Ms Chappell confirmed that, provided appropriate conditions are included in the consent, the application is supported by Ngaati Mahuta ki te Hauaauru.¹⁵ Upon my query, it was confirmed that the MoU is a private agreement.

¹⁰ Notification Report: RM200019, Chris Dawson, dated 17 September 2021.

¹¹ Notification Decision: RM200019, Greg Hill, dated 23 September 2021.

¹² Section 4 Notification and Table 3 therein, and Appendix 4.

¹³ Samuel Mikaere (late submission) and Mia Morgan.

¹⁴ Letter to the Independent Hearing Commissioner, dated 26 October 2023.

¹⁵ Legal submissions for Taumatotara Wind Farm Limited, 13 November 2023 at paragraph 8.48.

3.6 Two submissions were provided after the submission period had formally closed.¹⁶ Mr Dawson requested that a determination be made with respect to whether or not the late submissions be allowed.¹⁷ The late submission from Te Nehenehenui has been withdrawn. The late submission from Yvonne Armstrong raises concerns of a similar nature to other submissions and was able to be considered in the Section 42A Report and subsequent processes, therefore no party was unduly affected by the lateness of the submission. I determine that the late submission by Yvonne Armstrong be allowed.

PROCEDURAL MINUTES ISSUED

3.7 I issued five procedural Minutes before the hearing.

- Minute 1, dated 12 September 2023, which sought legal submissions regarding the processing of the application under s88 or s127 from all parties;
- Minute 2, dated 14 September 2023, which updated the timing of the provision of submissions requested by Minute 1;
- Minute 3, dated 19 September 2023, which advised all parties of the Updated Variation Proposal and updated the evidence exchange timetable accordingly;
- Minute 4, dated 2 October 2023, which further updated the evidence exchange timetable in response to a memo filed by the Applicant; and
- Minute 5 dated 4 October 2023, which set out my interim decision regarding the processing of the application under s88 or s127.

3.8 The substantive issue addressed in procedural Minutes relates to the application status of the application. I was advised by the Council that there had been an ongoing debate since the application was made in

¹⁶ Samuel Mikaere for Te Nehenehenui, and Yvonne Armstrong.

¹⁷ Section 42A Report, page 9.

2019 regarding whether it should be processed, and a decision made, under either s88 or s127 of the RMA.

- 3.9 I requested any interested party to provide planning or legal submissions regarding a number of matters, to assist in my determination of the matter. I received legal submissions from the Council¹⁸ and the Applicant.¹⁹
- 3.10 I summarised the relevant legal tests, responses to specific questions and other relevant matters as set out by both the Council and the Applicants in Minute 5. The Council did not express a definitive view as to how those tests applied to the current application. The Applicant concluded that the application met the legal tests for a s127 variation, with the acknowledgement that: ‘whether the effects of the changes are material may require final determination following the receipt of evidence from other parties’.
- 3.11 As this determination requires a consideration of fact and degree, and all the evidence had not yet been heard, I recommended the application be assessed on an integrated basis as a variation under s127 and recorded that I may need to reconsider my conclusion should the evidence compel me to do so.²⁰
- 3.12 At the hearing, I requested DOC provide further legal submissions, regarding whether I can proceed to deal with the application as a s127 variation application as they did not respond to Minute 1.
- 3.13 DOC endorses the summary of the applicable legal tests set out in the submissions of both the Applicant and the Council and highlighted that one of the relevant considerations arising from the case law is the consideration of whether a variation has ‘materially different adverse effects’. DOC submitted that, based on the evidence of Ms Pryde the

¹⁸ Legal Submissions of Counsel for Waitomo District Council regarding processing of the application under s88 or s127 of the Act, dated 18 September 2023.

¹⁹ Legal submissions on behalf of Taumatotara Windfarm Limited responding to Minute 1, dated 27 September 2023.

²⁰ Minute 5 in relation to the application by Taumatotara Wind Farm Limited, dated 4 October 2023 and reissued on 5 October 2023.

Updated Variation Proposal “creates a real risk of harm to bats with ‘the potential to cause more damage to bats’¹⁰ than the consented activity”. DOC also refers to the “massive size increase of each individual turbine, in terms not just of height but increased rotor length and sweep” and that while it would be open to the Commissioner concluding that the application should be progressed pursuant to s88, it maintains that the appropriate course is for the application to be declined pursuant to s104(6).²¹

3.14 I have carefully considered the further legal submissions provided by DOC and the final right of reply from the Applicant. I prefer the legal position of the Applicant in their analysis, and there was nothing I heard in evidence that alters my preliminary view in Minute 5 that determination should be pursuant to a s127 variation of conditions process. For the same reasons set out in my Minute 5, I am satisfied that the activity being sought remains the same as that provided for in the existing consent; being to construct and operate a utility scale wind farm and identified ancillary activities at a defined location, and that the actual and potential adverse effects arising from the Updated Variation Proposal do not appear to be of a materially different nature or scale to those that would arise from the exercise of the existing consent.

3.15 I therefore complete the following assessment on the basis that the application is a variation of consent conditions in accordance with s127 of the Act.

COUNCIL’S RECOMMENDATION

3.16 Mr Dawson recommended that the Updated Variation Proposal be granted, subject to conditions and advice notes.²²

3.17 Comments or opinions proffered by Mr Dawson are discussed as relevant in the following assessment of effects and relevant statutory considerations.

²¹ Supplementary Legal Submissions on behalf of the Director-General of Conservation *Tumuaki Ahurei* – Points raised by the Commissioner at hearing, undated, paragraphs 29-33.

²² Section 42A Report, page 32.

MATERIAL EXCHANGED PRE-HEARING

- 3.18 Prior to the hearing, the following materials were provided to me and reviewed:
- A copy of the T4 application and assessment of environmental effects (“**AEE**”);
 - Further information provided by T4 in response to requests from Council officers and specialist reviewers under s92 of the Act;
 - A copy of all submissions and late submissions made on the resource consent application;
 - A copy of the notification decision and report prepared under s95 of the Act;
 - A copy of the report prepared under s42A of the Act by Chris Dawson, and the following supporting technical information:
 - Landscape and visual effects review dated 13 September 2023 and addendum dated 27 September 2023 - Dave Mansergh;
 - Noise and Vibration memo dated 25 September 2023 – Siiri Wilkening;
 - Ecology memo dated 12 October 2023 – Dr Leigh Bull; and
 - Transport Effects Peer Review dated 5 October 2023 – Thato Mariti.
 - Briefs of evidence from the following technical experts on behalf of the Applicant:
 - Ecology evidence dated 23 October 2023 – Simon Chapman;
 - Corporate evidence dated 20 October 2023 – Glenn Starr;
 - Acoustic evidence dated 20 October 2023 – Michael Smith;
 - Transport evidence dated 20 October 2023 – James Daly;

- Landscape evidence dated 20 October 2023, and supplementary evidence dated 10 November 2023 – Michael Moore; and
 - Planning evidence dated 26 October 2023, and supplementary evidence dated 11 November 2023 – Craig Shearer.
- A letter from Maketuu Marae, Aaruka Marae, Te Kooraha Marae, Tahaaroa Lakes Trust, Te Ruunanga o Ngaa Mahuta ki te Hauaauru dated 26 October 2023 and a copy of the Ngaati Mahuta ki te Hauaauru Effects Assessment Report dated October 2023;
- Briefs of evidence from the following technical experts for the Director-General of Conservation *Tumuaki Ahurei* (“**DOC**”);
- Bat Ecology evidence dated 8 November 2023 – Moira Pryde; and
 - Planning evidence dated 8 November 2023 – Elizabeth Williams.
- Photographs of the view from 158 Coutts Road – Julie Knight; and
- Presentation notes – Sue Irons.

SITE VISIT

3.19 I visited the site and surrounding areas, including a number of potentially affected properties, on 16 October 2023. I was accompanied by a neighbouring farmer, Tim Stokes. Mr Stokes took me around the northern part of the windfarm site and pointed out locations of the eight turbine layout, and the accessways for construction.

3.20 Separately I travelled by myself in my own vehicle to the location of all submitter properties, including to the Taharoa and Marakopa townships so I had a thorough appreciation of the topography, geographical features and wider context of the site.

THE HEARING (13 AND 14 NOVEMBER 2023)

3.21 The hearing commenced at 9.00am on Monday 13 November at the Les Munro Centre in Te Kuiti.

- 3.22 In accordance with hearing directions that I issued,²³ material exchanged before the hearing was taken “as read” at the hearing. Pre-circulated materials are summarised above, and are available on the Council’s website.²⁴
- 3.23 Expert witnesses or anyone appearing at the hearing was asked to share a summary statement of their key points. Where written summaries and new material were circulated at the hearings, copies were requested and added to the online hearing document record.
- 3.24 I do not separately summarise the evidence and submissions here, but I refer to or quote from hearing material as appropriate in the remainder of this Decision. I took my own notes of any answers given to verbal questions that I posed to Hearing participants.
- 3.25 Mr Dawson, for the Council, provided verbal Reply submissions at the hearing. I asked the parties to undertake further conferencing on condition wording as soon as possible after the hearing, and parties were directed to file written responses and closing legal submissions. These were received on the following dates:
- The Council’s responses to specific information requests and recommended conditions – 24 November 2023.
 - DOC’s further legal submissions in response to specific matters that I requested – 24 November 2023.
 - Applicant’s written reply – 29 November 2023.
 - Final suite of Council’s recommended conditions – 30 November 2023.
- 3.26 I closed the hearing on 1 December 2023, having concluded that I required no further information from any of the parties.

²³ Hearing directions and process under ss 41B, 41C and 103B of the RMA in relation to the application by Ventus Energy (NZ) Limited, 8 August 2023.

²⁴ <https://www.waitomo.govt.nz/our-services/resource-consents/publicly-notified-resource-consents/>

4. SECTION 104 AND 104B

4.1 I now address the relevant aspects of the application in terms of ss 104 and 104B of the RMA. My assessment of the matters as recorded below is modified by s127(3)(b):

(b) the references to a resource consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively.

ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

4.2 Having reviewed the documentation and evidence presented to me during the hearing, I find that I should address the following matters:

- Positive effects
- Ecological effects, particularly effects on bats
- Landscape and visual
- Māori and cultural values and interests
- Aviation
- Noise
- Geotechnical stability and foundations
- Roothing network
- Decommissioning.

4.3 I note concerns raised by submitters relating to wider environmental effects, such as stormwater discharges, the quality of nearby freshwater surface waterbodies and the risk of effects at Kawhia Harbour. At the hearing, I noted these are matters of relevance to the Waikato Regional Council and are outside the scope of my consideration through this process. I do not discuss these matters further.

POSITIVE EFFECTS

- 4.4 As noted in the Section 42A Report,²⁵ the Applicant's legal submissions²⁶ and the evidence of Mr Starr²⁷ and Mr Shearer,²⁸ the Updated Variation Proposal enables more efficient energy generation. A similar amount of power can be generated with less than half the number of turbines originally consented. The power output from the proposed new machines demonstrates the significant improvements in wind power technology and the positive benefits such technology can bring.
- 4.5 The reduction in the number of turbines will also result in a reduction of the following effects compared to the original 22-turbine consent:
- Traffic impacts, with less traffic movements required;
 - Construction impacts, with a reduced extent of construction effects;
 - Area impacted by earthworks, with less on-site roading required;
 - Visual effects, particularly for those submitters who live to the south and west of the windfarm site, with a reduced length of ridgeline impacted and greater distance to turbines; and
 - Total rotor swept area reduced by 14%.
- 4.6 Positive effects associated with contribution to achieving New Zealand's decarbonisation goals, improved grid stability, energy security, and contribution to the local economy are noted to the extent that they are maintained or improved by the Updated Variation Proposal, and the greater efficiency of utilising new technology.
- 4.7 Positive effects are consistent with Policy A of the NES-REG.

²⁵ Section 42A Report, Section 7 "Positive effects".

²⁶ Legal submissions on behalf of Taumatotara Wind Farm limited, dated 13 November 2023, paragraph 6.10.

²⁷ Corporate Evidence of Glenn Starr, dated 20 October 2023, Section 7 "Positive effects of the wind farm".

²⁸ Planning Evidence of Craig Shearer, dated 26 October, Section 10 "Assessment of Effects".

ECOLOGICAL EFFECTS

- 4.8 The actual and potential ecology effects of the Updated Variation Proposal, particularly in relation to potential adverse effects on bats and appropriate ecological management approach remained a contested topic throughout the hearings.
- 4.9 The Section 42A Report, supported by a memo by Dr Leigh Bull, noted that no New Zealand falcon surveys had occurred however bat surveys showed the presence of long-tailed bats at the site.²⁹ The Council provided an amended set of conditions to address information gaps, and ensure that adverse effects on avifauna are adequately avoided, remedied, or mitigated.
- 4.10 The Applicant's ecologist, Mr Chapman, predicted that the risk of long-tailed bats encountering turbine blades and/or zones of higher/lower air pressure would remain unchanged with the proposed increase in turbine size.³⁰ Mr Chapman also concluded that the removal of 14 turbines from the consented wind farm design would result in positive effects, or at the very least neutral effects. Over-all, Mr Chapman is of the opinion that it is unlikely to lead to a materially worse outcome in terms of effects on bats.³¹
- 4.11 Ms Knight raised concerns with the effects of the windfarm on indigenous bird species she had observed in the area, such as matuku (bittern) and New Zealand falcon. Ms Willison-Reardon also sought further information about the presence of pekapeka (long-tailed bats) at the site.
- 4.12 DOC maintained throughout the hearing that their primary objection to the Updated Variation Proposal is that there is insufficient information regarding the potential adverse effects on long-tailed bats, and that the submission should therefore be declined pursuant to s104(6) of the Act.³²

²⁹ Section 42A Report, Section 14 "Ecological effects:", and Appendix 7 "Ecology Technical Report to inform the S42a report for the Taumatotara Wind Farm" dated 12 October 2023.

³⁰ Chapman S, 30 June 2020, Attachment 7 of AEE, page 2, and confirmed in Summary Statement of Simon Chapman, dated 13 November 2023, section 4 "Long-tailed Bats".

³¹ Summary Statement of Simon Chapman, dated 13 November 2023, section 4 "Long-tailed Bats".

³² Supplementary legal submissions of behalf of the Director-General of Conservation *Tumuaki Ahurei* – Points raised by the Commissioner at the hearing, undated, paragraph 31.

- 4.13 Ms Pryde assessed the site as meeting the significance criteria in the Waikato Regional Policy Statement (“**RPS**”) due to the presence of a threatened species (long-tailed bat).³³ Ms Pryde’s evidence states that bats can fly high (>60m)³⁴ and that they can fly above the canopy of trees that are at least 30m high,³⁵ but in a clarification question put to her she agreed that there was no evidence available to suggest that bats fly at heights greater than 121.5m and suggested that bats could be attracted to the turbines to investigate them as potential roosting sites.
- 4.14 While I find Ms Pryde’s assessment of the RPS significance criteria persuasive and note the relevant resource management frameworks associated with Significant Natural Areas, the material issue to be considered is whether the Updated Variation Proposal gives rise to adverse effects, and the scale and extent of those effects, compared to the existing environment.
- 4.15 It appeared that legal counsel for DOC had not briefed Ms Pryde regarding the existing environment, particularly where a resource consent enables an activity to occur. When questioned regarding her understanding of the ‘existing environment’ Ms Pryde responded that she found the concept was difficult to engage with. I also note that Ms Pryde had not undertaken a site visit. The starting point for Ms Pryde’s assessment of effects on bats did not incorporate the existing consent for 22-turbine wind farm, with identified turbine locations and a maximum tip height of 121.5m.
- 4.16 Regardless of whether the site meets the significance criteria, a 22-turbine wind farm, with identified turbine locations and a maximum tip height of up to 121.5m, and the associated adverse effects of such a wind farm, are provided for within the existing environment.
- 4.17 I accept T4’s submission that the actual and potential adverse effects on bats arising from the Updated Variation Proposal are not demonstrably worse than under the original consent, because there is no evidence that

³³ EIC, M Pryde, paragraph 102.

³⁴ EIC M Pryde at 121

³⁵ EIC M Pryde at 125

bats fly at heights greater than 121.5m (being the maximum tip height of the original consent), and on the assumption that a bat's inclination to investigate a turbine exists regardless of the height of the turbine.³⁶

- 4.18 I accept the opinion of the Council's ecologist and planner that it is appropriate for the resource consent to contain conditions which will inform ecological management.³⁷ Ms Pryde also identified a need for baseline surveys to inform subsequent management actions.³⁸ I consider this is particularly important given the potential for the site to meet the RPS significance criteria.
- 4.19 To this end, I requested the Applicant, the Council and DOC to have their planners, ecologists and legal counsel participate in conferencing regarding the monitoring and management of avifauna and bats that may be present at the site. Final conditions, agreed to by the Applicant and Council, were provided to me by the Council on 30 November 2023.
- 4.20 I am satisfied that the potential adverse effects resulting from the Updated Variation Proposal on long-tailed bats can be appropriately identified and managed through the set of ecological conditions agreed by the Applicant provided by the Council.³⁹

LANDSCAPE AND VISUAL

- 4.21 WSP Opus provided a Landscape and Visual Assessment ("**LVA**") with the application which was peer reviewed by David Mansergh on behalf of the Council.⁴⁰

³⁶ Reply legal submissions on behalf of Taumatotara Wind Farm Limited, dated 29 November 2023, paragraphs 4.6-4.7.

³⁷ Section 42A Report, Section 14 "Ecological effects".

³⁸ EIC M Pryde, paragraphs 33 and 34.

³⁹ Including Conditions 40-79 as set out in Appendix 1, which require the Applicant to develop, submit to Council, and implement an Avifauna Population Management Plan, Bat Population Management Plan, Avifauna Mortality Monitoring Plan, Bat Post Construction Monitoring Plan, Bat Mitigation, Offset or Compensation Plan, Bat Monitoring Review Report, and an annual report on the aforementioned plans, as well as reporting on bird or bat strike, providing a monetary contribution towards investigation of bat populations, and adopting DOC protocols for any tree removal.

⁴⁰ Section 42A Report, Appendix 5

- 4.22 The Section 42A Report⁴¹ summarises concerns with the LVA, in particular that, while it accurately described physical attributes of the sites, it fails to describe wider values such as associative values and perceptual experiences. The LVA was not considered to include sufficient evidence to support its conclusions and the Council invited the Applicant to provide additional, replicable assessment as evidence.
- 4.23 Michael Moore provided evidence at the hearing on behalf of the Applicant, including a theoretical visibility analysis and photo-simulations with wireframe diagrams.⁴² Overall, Mr Moore considers landscape and visual effects to be no more than minor.
- 4.24 A number of submitters raised concerns with the visual impacts of the wind farm generally and provided photos of the views which would be impacted.⁴³ Sue Irons also provided a meaningful demonstration of the height of the proposed 180.5m wind turbines compared with other infrastructure in the local area. Submitters highlighted that their land is their workplace, so they won't just be viewing the turbines from set viewpoints at their homes but throughout the day at various locations on their properties. Many submitters were concerned with the presence of the wind farm generally and considered the increased height proposal would exacerbate adverse landscape, visual and amenity effects.
- 4.25 During the hearing, the Council's Landscape Architect, Mr Mansergh queried the method used to develop and the resulting accuracy of the photo-simulations and wireframe diagrams. Mr Moore confirmed his assessment in regard to each viewpoint assessed and provided comment on limitations of the software used.
- 4.26 On the basis of evidence exchanged and discussion at the hearing regarding evidence presented by Mr Moore, I find the following:

⁴¹ Section 42A Report, Section 13 "Landscape and visual effects".

⁴² Evidence in Chief of Michael Moore, Landscape, dated 20 October 2023 and graphic supplement dated October 2023.

⁴³ Chris Irons (78 and 84 Te Waitere Road), Sue and Ray Irons (83 Te Waitere Road), Julie Knights (158 Coutts Road)

- a. The site and relevant surrounding landscape context has no District Plan overlays recognising any significant landscape values.
- b. The key landscape values relate to rural character, including openness, legible natural landform, the presence of indigenous vegetation in places, and rural land uses.
- c. The primary effect is the presence of the wind farm at all, and this adverse effect forms part of the existing environment. The effects of greater visual dominance associated with the larger turbines on the rural character amenity values of openness and naturalness is less significant.
- d. The degree and nature of adverse effects arising from the Updated Variation Proposal varies according to viewpoint location, however, visual effects over-all will be positive as the reduction of turbines and reduced spread of the turbines is more visually significant than the increase in turbine scale.
- e. Adverse physical landscape effects arising from roading will be reduced as the length of road required is reduced and the proposed roads do not require widening. There is low risk of adverse physical landscape effects arising from turbine foundation earthworks and will be remediated by revegetation.
- f. While I must have particular regard to the maintenance and enhancement of amenity values, there is no right to a view. Land use may lawfully change an existing view.⁴⁴

4.27 I therefore accept the opinion of Mr Moore, that adverse effects associated with the Updated Variation Proposal do not result in materially different effects than the original consent and are appropriately addressed.

⁴⁴ *Re Meridian Energy Ltd*, [2013] NZEnvC 59, 2013 WL 1815210 at [112], as quoted in Reply Legal Submissions on behalf of Taumatotara Wind Farm Limited, dated 29 November 2023, paragraph 9.3.

MĀORI AND CULTURAL VALUES AND INTERESTS

- 4.28 Ngaati Mahuta ki te Hauaaaru commissioned an effects assessment report on the Updated Variation Proposal which sets out key issues of concern for mana whenua and proposed or existing conditions or mechanisms to resolve these concerns.⁴⁵
- 4.29 The conditional support of joint submitters Maketuu Marae, Aaruka Marae, Te Kooraha Marae, Tahaaroa Lakes Trust, Te Ruunanga o Ngaati Mahuta ki te Hauaaaru is acknowledged.
- 4.30 Natasha Willison-Reardon submitted on behalf of Marokopa Paa Environmental Team. I thank Ms Willison-Reardon for sharing a beautiful karakia written by Desmond Willison. Ms Willison-Reardon noted that Marokopa mihi to Ms Aspinall and supports their korero and their mahi.
- 4.31 Ms Willison-Reardon raised concerns with environmental, community, economic, DOC, health & safety, lifespan issues and unseen effects. She noted that Marokopa have met with many representatives of the windfarm over about 15 years and was concerned that the consent holders will keep varying the consent.⁴⁶
- 4.32 Jaimee Tamaki also raised concerns regarding potential cultural impacts and noted that we often do not understand the full extent of adverse effects until it is too late.
- 4.33 I acknowledge the position raised by various submitters with cultural concerns and appreciate the time and effort they have taken to express these to me. I am also cognizant that the Applicant has made real and concerted efforts to meet with and explain their proposals over the years with the relevant mana whenua hapu.
- 4.34 Overall and given the consultation efforts the Applicant has made I am satisfied that the recommended conditions agreed between the Applicant and the joint submitters Maketuu Marae, Aaruka Marae, Te

⁴⁵ Ngaati Mahuta ki te Hauaaaru Effects Assessment Report, Maximize Consultancy Ltd, dated October 2023, Table 1.

⁴⁶ Natasha Willison-Reardon (Marokopa Paa Environmental Team).

Kooraha Marae, Tahaaroa Lakes Trust, Te Ruunanga o Ngaati Mahuta ki te Hauaauru appropriately manage potential adverse cultural effects arising from the Updated Variation Proposal, noting that the remaining eight turbines at the northern end of the original wind farm site which comprise the Updated Variation Proposal are located in their rohe.

AVIATION

- 4.35 The Section 42A Report notes that the turbine tip height of 180.5 m (592 feet) is higher than the typical minimum Visual Flight Reference (“**VFR**”) altitude of 500 feet (152 m) permitted by the Civil Aviation Authority (“**CAA**”). The CAA also requires the minimum height an aircraft is allowed to fly over a city, town, or settlement, is 1000 (305 m) feet above the highest obstacle, except when taking off or landing.⁴⁷
- 4.36 Mr Starr confirmed that he has applied to CAA for an updated determination.⁴⁸ T4 accept the amendment to consent conditions to allow for the updated determination.⁴⁹
- 4.37 I am satisfied that, subject to the updated consent conditions, adverse effects on aviation safety are appropriately addressed.

NOISE

- 4.38 Michael Smith provided acoustic evidence for the Applicant which was peer reviewed by Siiri Wilkening on behalf of the Council. The Section 42A Report acknowledges that wind turbine technology has progressed to the point where larger turbines now generate similar or less noise than older, smaller turbines.⁵⁰

⁴⁷ Section 42A Report, Section 10 “Aviation effects”.

⁴⁸ EIC G Starr, paragraph 12.2.

⁴⁹ Legal submissions on behalf of Taumatotara Wind Farm Limited dated 13 November 2023, paragraph 8.43.

⁵⁰ Section 42A Report, Section 11 “Noise Effects”.

- 4.39 Submitters⁵¹ raised concerns regarding noise effects, including concerns with validity of noise modelling, potential effects on health and safety and potential for adverse effects on working dogs.
- 4.40 The evidence of Mr Smith is that the Updated Variation Proposal will lead to noise effects that are less than the consented 22-turbine proposal. The Council's noise specialist, Ms Wilkening agrees with Mr Smith's assessment, and both have agreed to the amended conditions recommended which are an updated suite of existing consented conditions to use the more 'modern' framework of NZS 6808:2010 and provide more certainty than the original conditions.
- 4.41 I accept the opinions of Mr Smith and Ms Wilkening and their recommended conditions associated with noise arising from the amended Updated Variation Proposal.

OTHER MATTERS

- 4.42 Some submitters expressed concern regarding geotechnical stability, turbine foundations, transportation and decommissioning of the site.⁵²
- 4.43 In relation to geotechnical stability and turbine foundations, no issues were raised in the Section 42A Report and no alternative evidence was provided regarding the potential for increased adverse effects as a result of the Updated Variation Proposal. I therefore accept the evidence presented by T4 that there will be no increase in adverse effects associated with the taller towers or larger pads.⁵³
- 4.44 Submitters were concerned with the impacts of heavy traffic on roads which are already in disrepair, noting these local roads are the only connection for these communities. Mr Daly's transport evidence concludes that there will be no increased adverse effects associated with the Updated Variation Proposal and that the number of component transporters will be reduced. I note that conditions relating to transport

⁵¹ Chris Irons (78 and 84 Te Waitere Road), Sue and Ray Irons (83 Te Waitere Road), Julie Knights (158 Coutts Road), Natasha Willison-Reardon (Marokopa Paa Environmental Team), Dave Keepa.

⁵² Sue Irons (83 Te Waitere Road), Julie Knight (158 Coutts Road), Yvonne Armstrong, Jaimee Tamaki.

⁵³ AEE, page 17.

are retained, including updated Traffic Management Plan requirements and an increased bond.⁵⁴

4.45 With respect to decommissioning, submitters were particularly concerned with the disposal of blades. I note that firstly, the reduction in turbines from 22 to eight will be a positive reduction in the amount of material to be disposed of.⁵⁵ As a result of the MoU signed with Ngaati Mahuta ki te Hauaauru, a new condition has been proposed by the Applicant and Council relating to the environmentally suitable disposal of wind farm materials.⁵⁶

4.46 I find that the above matters are appropriately addressed through the resource consent conditions proffered.

OVERALL FINDING ON EFFECTS

4.47 In overall terms I find that, subject to the imposition of updated conditions proposed by the Applicant and supported by the Council team, the actual and potential adverse effects of the Updated Variation Proposal on the environment will be minor and acceptable.

4.48 In particular, I find that the new ecological conditions, which have been substantially upgraded from the earlier consent conditions, with input from counsel and experts acting on behalf of the Applicant, Council and Department of Conservation strike the right balance between certainty for the Applicant, and appropriate management associated with the presence or absence of, and effects on the habitat of long-tailed bats.

4.49 While it would have been preferable to have had all the ecological conditions fully agreed by these parties, I prefer the evidence and advice of Mr Chapman and Ms Bull who are very familiar with the site of the T4 wind farm location and surrounds, and who have provided me an agreed set of ecological conditions. Mr Chapman and Ms Bull have applied a pragmatic approach in the context of the existing environment, in relation

⁵⁴ Refer conditions 22-32.

⁵⁵ Evidence in Chief of Glenn Starr, Corporate Evidence, dated 20 October 2023, paragraph 10.4

⁵⁶ Refer condition 37.

to both their ecological effects assessment and design and wording of their proposed updated conditions.

NATIONAL ENVIRONMENTAL STANDARDS AND OTHER REGULATIONS

- 4.50 Mr Dawson confirmed that consent is not required under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.⁵⁷
- 4.51 My attention was not drawn to any other National Environmental Standards or any other regulations that might apply.

NATIONAL POLICY STATEMENTS

- 4.52 Mr Shearer provided an assessment National Policy Statement for Renewable Electricity Generation 2011 ("**NPS-REG**").⁵⁸ Mr Dawson supported and adopted this assessment.⁵⁹
- 4.53 The NPS-REG provides strong policy support for renewable energy generation activities. I accept and adopt Mr Shearer's assessment that the Updated Variation Proposal is consistent with the objectives and policies of the NPS-REG and will assist in meeting the Government's national target for renewable electricity generation.
- 4.54 Mr Shearer also noted that the National Policy Statement for Indigenous Biodiversity 2023 ("**NPS-IB**") does not apply to the Updated Variation Proposal because clause 1.3(3) specifically excludes renewable energy generation activities.⁶⁰ Ms Williams affirmed this assessment.⁶¹ I accept this assessment and do not assess the NPS-IB further in regard to this application. However, I do not accept Mr Shearer's assertion that the indigenous biodiversity provisions of the OWDP and the PWDP are also

⁵⁷ Section 42A Report, Section 2.2.

⁵⁸ AEE, Section 5.1, and EIC C Shearer, paragraphs 11.3-11.9.

⁵⁹ Section 42A Report, Section 17.1.

⁶⁰ EIC, C Shearer, paragraph 11.10.

⁶¹ Supplementary Planning Evidence, E Williams, paragraph 25.

not relevant to my consideration of the application, as these plans must “give effect” to the NPSIB.⁶²

- 4.55 I accept the opinion of Ms Williams, that the clause 1.3(3) exclusion does not apply to provisions of lower order documents,⁶³ and assess those lower order documents as relevant below.

WAIKATO REGIONAL POLICY STATEMENT (RPS)

- 4.56 Mr Shearer assesses the Updated Variation Proposal against objectives relating to energy, tangata whenua, and landscape, natural character and amenity.⁶⁴ He considers the Updated Variation Proposal is consistent with energy provisions, and not inconsistent with tangata whenua and landscape, natural character and amenity provisions. Mr Dawson confirms the Updated Variation Proposal is consistent with the energy objective.⁶⁵
- 4.57 Ms Williams drew my attention to provisions of the RPS⁶⁶ relating to addressing adverse effects on natural and physical resources,⁶⁷ supporting the full range of ecosystem types in a healthy and functional state, and applying an “effects management hierarchy” to ensure the Applicant reasonably demonstrates the Updated Variation Proposal will result in no net loss.⁶⁸
- 4.58 I accept and adopt the assessment of Mr Shearer, that the Updated Variation Proposal:
- a. Contributes positively to the achievement of Objective EIT-O1 Energy;
 - b. Is consistent with 3.9 Relationship of tāngata whenua with the environment; and

⁶² EIC, C Shearer, paragraph 10.37.

⁶³ EIC, M Williams, paragraph 32-38.

⁶⁴ AEE, Section 5.2, and EIC C Shearer, paragraphs 11.11-11.20.

⁶⁵ Section 42A Report, Section 17.1.1.

⁶⁶ EIC, E Williams, paragraphs 39-42.

⁶⁷ Objective EIT-O1(g).

⁶⁸ ECO-O1, ECO-P1, ECO-P2, ECO-M2 and ECO-M13.

c. Is consistent with Objectives 3.20, Objective 3.22, Objective 3.21, and Policy 12.3 relating to landscape, natural character and amenity.

4.59 I consider the Updated Variation Proposal is consistent with ECO-O1, ECO-P1 and ECO-P2 in so far as they can be applied to a variation. There is no evidence that bats use the area above 121.5m as habitat and the overall rotor swept area is proposed to be reduced under the Updated Variation Proposal. The consent conditions submitted to me by the Council on 30 November 2023 include significantly strengthened ecological surveying and management measures such that a suitable adaptive management approach can be adopted, based on the structure of these new conditions. This includes the removal of condition 40 of the original consent which explicitly excluded any modification or restriction on the operation of the wind turbines.⁶⁹

4.60 I consider the proposed consent conditions set out in Appendix 1 appropriately deal with any conflicting positions in the requirements of the RPS and the NPSREG. I therefore consider the Updated Variation Proposal is consistent with the objectives and policies of the RPS.

WAIKATO REGIONAL PLAN

4.61 Mr Shearer assesses the Waikato Regional Plain in the AEE.⁷⁰ No alternative assessment is provided by Mr Dawson or Ms Williams. I therefore accept and adopt the assessment of Mr Shearer that effects of the Updated Variation Proposal on resources managed under the Regional Plan will be positive due to the reduced amount of roading and turbine platforms.

WAITOMO DISTRICT PLAN AND PROPOSED WAITOMO DISTRICT PLAN

4.62 Mr Shearer assesses the Operative Waitomo Proposed District Plan (“OWDP”) in the AEE.⁷¹ Mr Dawson identifies that Objective 11.3.4, which relates to the protection of areas of significant habitat of indigenous

⁶⁹ Refer Attachment 9 “2008 Consent Conditions, Waitomo District Council” of the AEE.

⁷⁰ AEE, Section 5.3.

⁷¹ AEE, Section 5.4.

fauna, is also relevant⁷² and Ms Williams agrees with Mr Dawson’s list of relevant provisions.⁷³

4.63 Mr Shearer clarified that he did not initially evaluate the Proposed Waitomo District Plan (“**PWDP**”), because it is at the very early stages of its development, with further submissions received but hearings not yet commenced.⁷⁴ Mr Dawson has also not considered the PWDP because the variation application was formally lodged with Council on 5 July 2020 and therefore precedes the notification of the PWDP on 20 October 2022.

4.64 I accept the opinions of Mr Shearer and Mr Dawson and I do not consider the PWDP further.

4.65 In terms of the relevant provisions of the OWDP, I find that:

- a. Objective 11.3.1 promotes the Rural Zone as a productive working environment, and the Updated Variation Proposal will not reduce the rural working environment or existing productivity of the land;
- b. Objective 11.3.7 promotes efficient and effective management of roads. The Updated Variation Proposal will require upgrades to roading and there will be less disruption on public roads due to less turbine componentry being moved compared to the original consent.
- c. Objective 11.3.8 promotes land uses which maintains and enhances amenity values of the rural environment, protects outstanding natural features and landscapes, and preserves the natural character of the coastal environment, wetlands, lakes and rivers, and their margins, and Objective 11.3.9 encourages the maintenances and enhancement of rural visual character. There are no outstanding natural features or landscape relevant to the Updated Variation Proposal, the Updated Variation Proposal will have low impacts on landscape character and the amenity of the rural environment will be maintained.

⁷² Section 42A Report, section 17.1.2.

⁷³ EIC, M Pryde, paragraph 44.

⁷⁴ Summary Statement and Supplementary Evidence of Craig Shearer, Planning, dated 11 November 2023.

- d. Objective 11.3.11 ensures that rural activities and lawfully established industrial activities are not adversely affected by the location of new activities with expectations of high amenity values. I consider the Updated Variation Proposal would have adverse effects on existing physical resources such as roads, but conditions of consent will ensure TWF will be required to maintain the standards of the roads to ensure other legally established rural activities are not adversely affected.
- e. Objective 11.3.4 protects areas of significant indigenous vegetation and significant habitat of indigenous fauna. The Updated Variation Proposal does not change the proposed location of turbines and, as I have found earlier, consent conditions regarding ecological surveys and development of management plans are appropriate to manage ecological values associated with the site.

4.66 I therefore find that the Updated Variation Proposal is consistent with the OWDP.

OTHER MATTERS

- 4.67 Mr Shearer highlighted the following other matters he considered to be relevant and reasonably necessary:
- a. New Zealand Energy Strategy 2011–2021;
 - b. Emissions Reductions Plan 2022 which sets a target of 50 per cent of total final energy consumption to come from renewable sources by 2035;
 - c. Transpower’s 2018 long-range planning report called “Te Mauri Hiko, Electricity Futures”; and
 - d. The Climate Change Response Act as amended by the Climate Change (Zero Carbon) Amendment Act 2019 to set a domestic greenhouse gas emissions target for New Zealand to reduce net

emissions of all greenhouse gases (except biogenic methane) to zero by 2050.⁷⁵

4.68 I note these matters, and the positive weighting they afford the Updated Variation Proposal, insofar as the increased scale of the wind turbines allows for more efficient energy production than the original 22-turbine wind farm.

⁷⁵ EIC, C Shearer, paragraph 11.29.

5. PART 2 MATTERS

- 5.1 An assessment against Part 2 is considered relevant because the OWDP does not give effect to various higher order documents, and was well prepared before the *King Salmon* decision, therefore there is no confidence that the OWDP has been competently prepared in accordance with Part 2 of the RMA.⁷⁶
- 5.2 Mr Shearer and Mr Dawson assess Part 2 in full, and find that the Updated Variation Proposal is consistent with Part 2, and overall meets the purposes and principles of the RMA.⁷⁷
- 5.3 Ms Williams does not provide a fulsome assessment against Part 2, but does highlight the relevance of s6(c) relating to the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.⁷⁸
- 5.4 I agree with the assessment of Mr Dawson that:
- a. The relevant matters of national importance under s6 are the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (s6(c)) and the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (s6(e)).
 - b. The relevant provisions of s7 relate to katiakitanga (s7(a)) the ethic of stewardship (s7(aa)), maintenance and enhancement of amenity values and the quality of the environment (s7(c)), and the benefits to be derived from the use and development of renewable energy (s7(j)).
 - c. The principles of the Treaty of Waitangi must be taken into account (s8).
 - d. T4 have been engaging with tangata whenua on an ongoing basis and have developed an MoU with Maketuu Marae, Aaruka Marae, Te

⁷⁶ Section 42A Report, Section 18 "Part 2 Matters".

⁷⁷ EIC, C Shearer, Section 13 "Part 2 Matters", and Section 42A Report, Section 18 "Part 2 Matters".

⁷⁸ EIC, E Williams, paragraph 2.

Kooraha Marae, Tahaaroa Lakes Trust and Te Ruunanga o Ngaa Mahuta ki te Hauaauru collectively submitted on behalf of Ngaati Mahuta ki te Hauaauru. The Applicant have accepted the recommended consent conditions.

- e. No significant indigenous vegetation will be removed, and monitoring and mitigation, offset and compensation plans shall be provided to Waitomo District Council.
- f. The amenity effects of Updated Variation Proposal have been assessed as minor.
- g. The Updated Variation Proposal enables the more efficient generation of renewable energy.

5.5 Overall, I agree that the Updated Variation Proposal subject to conditions meets the relevant provisions of Part 2 and achieves the purpose of s5, being the sustainable management of natural and physical resources.

6. CONSENT CONDITIONS

- 6.1 The Updated Variation Proposal proposed amendment to the following conditions to enable a maximum tip height of 180.5m and a maximum number of eight turbines and necessary consequential amendments:⁷⁹
- a. Amend Conditions 3 and 11 (relating to turbine height);
 - b. Delete condition 5 (relating to turbines proposed to be removed from the project);
 - c. Amend Condition 1 (general condition referencing the consent application documents) and Condition 1A (to clarify precedence between inconsistent application documents);
 - d. Amend Condition 33 (relating to CAA declaration and approval);
 - e. Amend Condition 34 to remove references to delete turbines;
 - f. Delete advice note 7 which is now redundant.
- 6.2 The Applicant is also willing to accept amendments to noise and ecology conditions on an 'Augier' basis.
- 6.3 The parties have conferenced on the suite of consent conditions at my request. The Council provided me with a suite of consent conditions on 24 November. DOC also provided me with an updated suite of consent conditions which included various requests for amendment to ecological provisions relating to bats, attached to their supplementary legal submissions on 24 November 2023.⁸⁰ In short, DOC seek a fundamentally different approach to the bat ecology conditions, which includes:
- g. Applying the effects management hierarchy;
 - h. Requiring a no net loss outcome objective for bats; and

⁷⁹ Legal submission on behalf of Taumatotara Wind Farm, dated 13 November 2023, paragraph 6.3-6.6.

⁸⁰ Supplementary Legal Submissions on behalf of the Director-General of Conservation, undated.

- i. Specifying the different types of methodologies for monitoring.
- 6.4 I received the final version of consent conditions on 30 November 2023 and the Applicant’s Reply Legal Submissions dated 29 November 2023 explain the intent of revised conditions, including reasons why they had not adopted additional amendments suggested by DOC.⁸¹ I accept the reasons as set out by the Applicant, namely:
- a. The approach adopted by the Applicant and the Council is clearer and consistent with the NPS-REG;
 - b. Requiring a no net loss outcome objective is not reasonable or practicable; and
 - c. It is not necessary to specify the different types of methodologies that may be used for monitoring and it is more appropriate for an expert to determine this in consultation with the Applicant, DOC and Te Ruunanga o Ngaati Mahuta ki te Hauaauru.
- 6.5 I have reviewed the revised conditions and find them to be generally appropriate.⁸²
- 6.6 The amended suite of conditions imposed are attached as Appendix 1 to this Decision.

⁸¹ Reply Legal Submissions on behalf of Taumatotara wind Farm Limited, dated 29 November 2023, section 8 “Proposed consent conditions including the validity of conditions”.

⁸² Noting minor amendments to update numbering and to ensure consistent formatting.

7. OVERALL DECISION

- 7.1 Based on consideration of all the material before me, including the Section 42A report from the council advisors, submissions, evidence and legal submissions presented at the hearing and following consideration of the relevant statutory matters, I am satisfied that:
- a. I have sufficient information to make a decision based on the information and evidence that I have received and heard;
 - b. The actual and potential adverse effects that have been identified can be appropriately managed through the set of conditions identified in Appendix 1;
 - c. The application if granted will have positive effects relating to the reduced extent of the windfarm and improved efficiency of renewable energy generation;
 - d. The application is generally consistent with the provisions of the relevant existing statutory instruments; and
 - e. Granting the variation application with the updated conditions agreed between the Applicant and Council better meets the purpose and principles of the RMA than the alternative proposed by DOC of declining it.

7.2 I therefore **grant** the application lodged by Taumatotara Wind Farm to vary conditions of RM050019 to reduce the number of turbines from 22 to eight, and increase the maximum tip height of the remaining turbines from 121.5m to 180.5m. My reasons are set out above and expanded upon in the body of this Decision.

15 DECEMBER 2023



SG Daysh
Independent Commissioner

Appendix 1: Consent Conditions – Taumatotara Wind Farm

In consideration of Section 104, and pursuant to Sections 104B and 108 of the Resource Management Act 1991, the Waitomo District Council grants consent to Taumatotara Wind Farm to construct and operate a utility scale wind farm comprised of a maximum of 8 horizontal axis turbines and associated substation buildings, earthworks and access roads and activities as described in Conditions (1) and (2) below for the purpose of generating electricity, on a Rural Zoned site located at Taumatotara West Road, Taharoa, legally described as:

- Part Section 10 Block V Kawhia South Survey District and Section 3 Survey Office Plan 53968 comprised in Certificate of Title 141077;
- Section 1 Survey Office Plan 58558 comprised in Certificate of Title SA47A/876;
- Section IA Block V Kawhia South Survey District comprised in Certificate of Title SA37A/25;
- Section 12 and Section 22 Block V Kawhia South Survey District comprised in Certificate of Title SA31C/23; and
- Section 2 Block V Kawhia South Survey District comprised in Certificate of Title SA37A/26;

subject to the following conditions:

General

1. The wind farm development shall be constructed, operated and maintained in general accordance with the information, plans and drawings submitted with the application and received by Council on 23rd December 2005; and the additional information received on 30th January 2005 and 8th March 2005 except as otherwise amended by the s 127 application dated 21st November 2011 and the further information response dated 28th February 2012, Application To Change Consent Conditions dated 5 July 2020 and the Consent Variation Application dated 15 September 2023.

The application documentation comprises of:

- (a) Taumatotara Windfarm Assessment of Environmental Effects, Volume 1 - Main Report, dated March 2005;
- (b) Taumatotara Windfarm Assessment of Environmental Effects, Volume 2 - Book of Figures, dated March 2005;
- (c) Further information received 30th January 2005 and 8th March 2005; and
- (d) Further Information provided in respect of the revised proposal approved as part of the change to the conditions of consent in accordance with Section 127 of the

Resource Management Act 1991, namely:

- i. Report dated 21st November 2011; titled 'Taumatotara Windfarm Assessment of Environmental Effects for a Turbine Tip Height Increase', prepared by Ventus Energy (NZ) Ltd;
- ii. Further information response dated 28th February 2012; titled 'Taumatotara Windfarm Further Information for a Turbine Tip Height Increase', prepared by Ventus Energy (NZ) Ltd;
- iii. Report dated 24th February 2012; titled 'Taumatotara Wind Farm Landscape and Visual Assessment for S 92(1) Further Information Request', prepared by Opus International Consultants Ltd;
- iv. Report dated 5th July 2020; titled 'Application To Change Consent Conditions', prepared by Taumatotara Wind Farm Limited; and
- v. The letter dated 15 September 2023, titled Update on Progress – Taumatotara Windfarm Limited (T4) Consent Variation Application, prepared by Gillian Chappell – Foundry Chambers.

1A. Where there is conflict between earlier and later information provided, the more recent information prevails; and where there is conflict between the general condition and specific conditions, the latter prevails.

2. For the purposes of this consent and for avoidance of doubt the activities authorised by this consent include:

- (a) the installation, operation and maintenance of no more than eight (8) horizontal axis wind turbines ("turbines");
- (b) An underground fibre optic network connecting each turbine to the central control system in the on-site operations building(s);
- (c) Tracking and placement of an underground network of 33kV transmission lines delivering electricity from each turbine to the two on-site substations;
- (d) Overhead or underground powerlines connecting the on-site wind farm substations to the two existing 33kV lines that traverse the eastern edge of the landholding;
- (e) A fenced compound to house the on-site control building and sub-station equipment;
- (f) Earthworks associated with the creation of the turbine building platforms, access roads and other facilities described in items a) to e) above; and
- (g) Widening and/or realignment works along parts of Taumatotara West Road to enable the safe passage of the oversized wind farm components to the site.

3. The turbines shall have a maximum height measured from the ground to the top of the vertically extended blade tip (inclusive of a 17.5 metre clearance between the ground and the start of the blade) as follows:
 - (a) Turbines 1, 3, 5, 6, 7, 8, 10 and 11 inclusive - maximum height of 180.5 metres.
4. Each turbine shall be located within a turbine contingency zone of no greater than 100 metre radius from the turbine locations specified in the application. The turbine contingency zones shall avoid locations closer to external property boundaries, significant indigenous vegetation and significant habitats of indigenous fauna.
5. The consent holder shall submit to the Manager Policy and Planning, Waitomo District Council an as-built plan confirming the locations of all constructed turbines, access roads, entranceways, excess material fills, the substations and control building, the spare turbine component storage area, electricity transmission lines, and road upgrading/realignment works. The Plan shall also include but is not limited to:
 - (a) The finished line of cut and fill batters;
 - (b) The finished edge line of pavement and seal widening works;
 - (c) The location and dimensions of site entrances;
 - (d) The finished level of access road centrelines;
 - (e) The location, size and extent of all new stormwater drains or culvert extensions;
 - (f) The location of all subsoil drains, sumps and manholes; and
 - (g) Any underground services installed or altered as part of the works.

This plan shall be certified by a registered surveyor as to the accuracy at the completion of the work and is required to be submitted to Council within 6 months of the completion of construction of the wind farm.

Cultural

Cultural Observers

6. The Consent Holder shall engage Ngaati Mahuta ki te Hauaauru to act as cultural monitor/observer during all development phases of the wind farm project.

Powhiri and Cultural Induction

7. The Consent holder shall invite Ngaati Mahuta ki te Hauaauru to organise a powhiri prior to the commencement of operations of the wind farm.
8. The Consent holder shall invite Ngaati Mahuta ki te Hauaauru to organise a cultural induction programme, to form part of the site induction, for all new staff, for all contractors constructing the wind farm, and for the operator of the wind farm.

Accidental Discovery Protocol

9. If, at any time during Site Development Works, potential koiwi (human remains) or archaeological artefacts are discovered, then the earthworks or land disturbance within 10m of the discovery must cease immediately and the area secured. Ngaati Mahuta ki te Hauaauru shall be notified and be given 48 hours from the time of discovery to assess the site, including cultural considerations, and work will not recommence until Ngaati Mahuta ki te Hauaauru gives approval for work to continue.

Noise

Operational Noise

10. The consent holder shall ensure that noise from sources on the site does not exceed the following noise limits:

7.00am to 7.00pm 45 dB LAeq(15min)

7.00pm to 7.00am 35 dB LAeq(15min)

7.00pm to 7.00am 60 dB LAFmax

Noise shall be measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008.

11. The consent holder shall ensure that, at the specified assessment positions, at any wind speed, wind farm noise levels do not exceed 40 dB LA90(10 min). Wind farm noise shall be measured and assessed in accordance with NZS 6808:2010. The Assessment Positions shall be outside at the locations marked 22, 23, 24 and 25 on Site Plan Manawatu Aerial Mapping version 1.5 (**see Appendix 1.**)
12. Prior to installation of the turbines, an assessment of the wind farm background sound level measurements shall be undertaken at any Assessment Position within the 30dBA noise contour. Measurements shall be undertaken in accordance with Section 7.4 of NZS6808: 2010 Acoustics. If no Assessment Positions have predicted noise levels above 30 dB LA90, measurements shall be performed at two of the Assessment Positions to the satisfaction of Council's Manager, Policy and Planning. Background sound level measurements shall be taken within a three (3) week period where no construction activities are undertaken. A report of measured noise levels shall be prepared in accordance with Section 8.2 of NZS6808:2010 and this report shall be submitted to the Council's Manager, Policy and Planning, Waitomo District Council.
13. Prior to installation of the turbines, a prediction report shall be submitted to the Council's Manager, Policy and Planning, in accordance with Section 8.4.2 of NZS6808: 2010. That prediction shall be based on the highest sound power level of the turbine to be installed and include results for both NZS 6808: 2010 and IoA GPG methods.
14. The wind turbines shall not have a sound power level of greater than 107.2 dB Lwa. A certificate confirming the sound power level shall be included in the prediction report required by condition 13.

Construction Noise

15. Noise from all construction and decommissioning work including (but not limited to):

- a. Public road upgrades between SH37 and the site;
- b. Site works;
- c. Wind turbine generator assembly and placement;
- d. Concrete placement;
- e. Wind turbine removal; and
- f. Land reinstatement.

shall be measured and assessed in accordance with the requirements of NZS6803:1999 Acoustics – Construction Noise and shall comply with the noise limits in the Table below:

Time	Weekdays		Saturdays		Sundays	
	L _{Aeq}	L _{AFm} ax	L _{Aeq}	L _{AFm} ax	L _{Aeq}	L _{AFm} ax
0630-0730	55dB	75dB	45dB	75dB	45dB	75dB
0730-1800	70dB	85dB	70dB	85dB	55dB	85dB
1800-2000	65dB	80dB	45dB	75dB	45dB	75dB
2000-0630	45dB	75dB	45dB	75dB	45dB	75dB

16. No concrete trucks shall be permitted to enter the site before 7.00am or leave the site after 7.00pm.

17. At least 30 working days prior to the commencement of construction works authorised by this consent, the consent holder shall submit a Construction Noise Management Plan (CNMP) to the Manager, Policy and Planning, Waitomo District Council for certification that the plan meets the objectives in condition 18 (a) to (b). The CNMP shall be prepared by a suitably qualified and experienced person and shall provide for the following objectives:

- a) Designed and implemented to comply with the requirements of NZS6803:1999 Acoustics – Construction Noise; and
- b) Implemented in accordance with the requirements of section 16 of the Resource Management Act 1991, so as to adopt the best practicable option to ensure the emission of noise from construction works does not exceed a reasonable level.

Noise Monitoring:

18. Within six months of the wind farm becoming fully operational, the noise levels shall be measured at all Assessment Positions where, in the condition 13 report, predicted noise levels are greater than 30 dB LA90. If no Assessment Positions have predicted noise levels above 30 dB LA90, measurements shall be performed at the same locations measured in condition 13. If access is denied, alternate locations are to be proposed to the satisfaction of the Manager, Policy and Planning, Waitomo District Council. Within one month of completion of the surveys, a compliance assessment report shall be submitted to the Manager, Policy and Planning, Waitomo District Council in accordance with section 8.4.1 of NZS 6808:2010.
19. The consent holder shall pay all costs associated with noise compliance measurements, monitoring and reporting.

Traffic and Roding

Construction Programme

20. A Construction Programme shall be prepared by the consent holder and submitted to the satisfaction of the Manager, Policy and Planning, Waitomo District Council prior to any construction works commencing. The Construction Programme shall include the following:
 - a. The hours of construction work on Taumatotara West Road and other Waitomo District Council administered roads shall be between 7.00am and 7.00pm Monday to Saturday (excluding public holidays), unless written approval is otherwise obtained from the Manager, Policy and Planning, Waitomo District Council to work outside of these hours;
 - b. Provision shall be made to maintain adequate and safe access to and from individual properties along Taumatotara West Road and other Waitomo District Council administered roads while transportation movements are undertaken; and
 - c. The consent holder shall arrange to hold a copy of all Resource Consents on site at all times during construction.

Traffic Management Plan

21. At least 30 working days prior to the commencement of construction works authorised by this consent, the consent holder shall submit a Traffic Management Plan to the Manager, Policy and Planning, Waitomo District Council for certification that the plan meets the objectives in condition 21 (a) to (f). The objectives of the Traffic Management Plan shall be to:
 - a. Ensure all specific legislative requirements and consent conditions in relation to construction traffic are adhered to;
 - b. Encourage a culture of road safety awareness and commitment;
 - c. Ensure best practice in transport safety;

- d. Ensure emergency services are not obstructed;
- e. Minimise disruption to the surrounding community, farming operations and rural services; and
- f. Keep the local community informed of construction operations.

22. In order to achieve the objectives established in condition 21 above, the TMP shall, as a minimum, address the following matters:

- a. The transport route (in general accordance with the route proposed in the application);
- b. Times and locations when deliveries are prohibited;
- c. Piloting and traffic management procedures;
- d. Contingency plans for breakdowns, bridge or pavement failure, severe weather conditions, accidents or roadworks;
- e. Provisions for co-ordination with other parties, including emergency services;
- f. Provisions to maintain adequate and safe access to and from individual properties along Taumatotara West Road and other Waitomo District Council administered roads while transportation movements are undertaken;
- g. A construction timetable, detailing vehicles movements to and from the site, and the hours that the trucks will operate;
- h. The construction programme and the associated traffic volumes estimated for each construction phase;
- i. Provisions to ensure that at all times during construction, all Waitomo District Council administered roads are kept open. In exceptional circumstances a request may be sought for short term road closures. Any road closures shall be approved by the Manager, Policy and Planning, Waitomo District Council; and
- j. The ongoing review of the contents of the TMP throughout the period of the construction works to ensure it remains fit for purpose.

23. If traffic control measures are not carried out in accordance with the Traffic Management Plan and the Transit New Zealand Code of Practice for Temporary Traffic Management, the Waitomo District Council reserves the right after notifying the consent holder or contractors either verbally or in writing, to instruct the consent holder or contractors to cease all work until the requirements of this TMP and Code of Practice are met. Alternatively the Manager, Policy and Planning, Waitomo District Council, may arrange for the traffic management to be carried out by others, the costs of which will be borne by the consent holder.

Roading Design

24. The consent holder shall provide, to the satisfaction of the Manager, Policy and Planning, Waitomo District Council, pavement deflection data for relevant sections of Waitomo District Council roads that are to be utilised for the transportation of construction materials and turbine components both before and after the construction period. The pavement deflection measurements shall be carried out using either Falling Weight Deflectometer or Benkelman Beam testing techniques.
25. The consent holder shall provide, to the satisfaction of the Manager, Policy and Planning, Waitomo District Council, bridge inspection findings and details of axle loadings resulting from the transportation of the turbine components, to verify that all Waitomo District Council bridges are able to accommodate the transportation of these loads without resulting in any damage. If the Manager, Policy and Planning, Waitomo District Council considers it to be necessary, Council may require the consent holder to provide an appropriate level of supervision of heavy loads across Waitomo District Council bridges.
26. Detailed roading design plans for internal site access roads, Taumatotara West Road, and any other Waitomo District Council roads that are subject to upgrading or realignment works, shall be developed in accordance with appropriate construction standards and submitted to the satisfaction of the Manager, Policy and Planning, Waitomo District Council prior to construction commencing. The detailed design shall include:
 - a. Geotechnical investigation and interpretation report;
 - b. Comer widening design (including cut/fill batters details);
 - c. Taumatotara West Road/ Taharoa Road intersection design;
 - d. Pavement design;
 - e. Surfacing details;
 - f. Shoulder feather-edge details;
 - g. Drainage (surface water channels and culverts);
 - h. Safe stopping sight distance; and
 - i. Minimised cut earthworks for the construction of the internal access roads.

Road Maintenance

27. A maintenance regime covering all Waitomo District Council roads and bridges to be utilised for transportation of construction materials and turbine components shall be prepared by the consent holder and submitted to the satisfaction of the Manager, Policy and Planning, Waitomo District Council prior to any construction works commencing. The maintenance regime shall cover the full construction period and may be developed in partnership with an ongoing maintenance programme (shared with the Waitomo District Council's own Network Maintenance Contractors). The maintenance regime shall ensure

the following:

- a. During the construction period, the consent holder shall undertake any necessary works to ensure that the roads and bridges utilised for transportation of construction materials and turbine components are maintained at a quality no less than the quality of the road and bridges prior to construction commencing.
28. A bond of \$134,000 shall be paid to Council to secure the ongoing performance of condition 23 with regard to Taumatotara West Road maintenance only, pursuant to section 108(2)(b) and section 108A of the Resource Management Act 1991. The bond applies to regular maintenance only, not pavement rehabilitation and shall be refunded to the consent holder at such a time as the Manager, Policy and Planning, Waitomo District Council is satisfied that the objectives of the maintenance regime required by condition 23, as it relates to Taumatotara West Road, has been met. Should the Manager, Policy and Planning, Waitomo District Council consider the consent holder is not meeting the objectives of the maintenance regime with regard to the maintenance of Taumatotara West Road, the bond will be utilised to undertake the work.

Access

29. Detail of vehicle access points and permanent entranceways along Taumatotara West Road shall be provided prior to construction works commencing. The details will include allowances for:
- a. Pavement widening to a minimum 6.5 metre sealed width;
 - b. Bellmouth radii to a minimum 15 metres;
 - c. Entranceway culverts to a minimum 300mm diameter;
 - d. Pavement surfacing to a minimum 70 metres at full width, with matching in tapers at 1 in 10; and
30. All internal access roads shall be a minimum of 5 metres in width.

Landscaping and Visual

31. At least 30 working days prior to the commencement of construction works authorised by this consent, the consent holder shall submit a Landscape Management Plan to the Manager, Policy and Planning, Waitomo District Council for certification that the plan meets the objectives in condition 31 (a) to (b). The objectives of the Landscape Management Plan shall be to:
- a. Ensure all consent conditions in relation to landscaping are adhered to; and
 - b. Encourage the restoration of all disturbed landforms not in permanent site infrastructure (such as roading, turbine pads, site buildings) so as to integrate them into the surrounding contours as much as practicable.

32. In order to achieve the objectives established in condition 31 above, the Landscape Management Plan shall, as a minimum, address the following matters:
- a. Details of planting and landscaping to be undertaken around the substation, control building and spare turbine part storage area;
 - b. Details of the height and location of any earth bunds or mounds created for visual, noise, or mitigation purposes;
 - c. Details of topsoil stockpile and management plan for all topsoil stockpiled for more than six months from the time of stripping;
 - d. The restoration strategy for any disturbed landforms including:
 - i. Permanent earthworks, including all road cuttings;
 - ii. Temporary earthworks, including construction pads; and
 - iii. Topsoil restoration.
 - e. The manner in which the restoration will integrate the new landform into the natural contours, and revegetate (with either pasture or planting) so it appears homogenous with the surrounding landscape;
 - f. Details of an implementation strategy identifying when the mitigation works will be undertaken;
 - g. Details of a maintenance schedule.

The colour of the turbines shall be selected to minimise the visual impact. Due consideration will be given to the predominant ambient background sky colour in selection of the final colour. Low reflectivity finishes shall be used on the turbines and the turbine blades where practicable.

Decommissioning and Site Remediation

33. All “dead” turbines and turbine components shall be removed within one month from the time that they ceased to function, unless exceptional circumstances exist and written approval is obtained from Manager, Policy and Planning, Waitomo District Council.
34. Upon decommissioning of the wind farm, all visible structures (including turbines, substations and hard stand areas) shall be removed from the site. All foundations shall be buried under a minimum of two metres of soil and revegetated, unless otherwise approved by the Manager, Policy and Planning, Waitomo District Council.
35. Ngaati Mahuta ki te Hauaauru shall be invited to contribute to any proposal to remove turbines and associated structures from the site to ensure the materials are disposed of in an environmentally sustainable manner.

Air Safety

36. One month prior to commencing installation of the turbines the consent holder shall provide to the Manager, Policy and Planning, Waitomo District Council for certification, a copy of a determination from the Civil Aviation Authority (CAA) authorising construction of the windfarm to the maximum tip height.
37. Those turbines identified as numbers 1, 5, and 10 and any other turbines as identified by the CAA (and identified below) shall be lit with a medium intensity obstacle light located on the highest practicable point, sufficient to indicate to aircraft the general location of the wind farm.

Turbine ID	Easting	Northing	Attitude
1	2664848	6331439	251m AMSL
5	2665338	6330549	322m AMSL
10	2666640	6329258	319m AMSL

38. The medium intensity obstacle lights shall:
- be red;
 - have an effective intensity of not less than 1600 cd of red light;
 - be visible to aircraft approaching the wind farm from any direction; and
 - shall be installed and operated in a way that minimise their visibility to persons on the ground while meeting CAA requirements.

Geotechnical

39. In accordance with the recommendations of the geotechnical review prepared by Riley Consultants, and submitted with the application (Appendix K of Volume One), the consent holder shall undertake subsurface geotechnical investigation and engineering geological mapping for the wind farm area, to ensure that all of the turbine sites are geotechnically feasible, and provided with stable building platforms. The results of these investigations and detailed design of the proposed geotechnical foundation works for each of the turbines shall be provided for the certification of the Manager, Policy and Planning, Waitomo District Council prior to construction commencing.

Baseline studies

Avifauna Population Monitoring Plan (APMP)

40. Prior to construction of the first turbine¹, the Consent Holder shall engage a suitably qualified avifauna expert (SQEP) to prepare and submit an Avifauna Population Monitoring Plan (APMP) for certification by the Manager, Policy and Planning Waitomo District Council.

¹ Prior to construction of the first turbine means prior to undertaking all civil construction activity associated with the turbines, including the development of the internal roading network across the site.

The objective of the APMP shall be:

- a. to provide baseline information identifying the presence or otherwise of Threatened and At Risk avifauna species including NZ falcon (Sept to Feb) and cryptic marshbirds (Sept to Nov).

41. The APMP shall include (but not be limited to) the following:

- a. Details of the methodology proposed for undertaking the baseline survey; and
- b. Methods for monitoring NZ falcon (Sept to Feb) and cryptic marshbirds (Sept to Nov).

42. The methodology for survey and monitoring shall be developed in consultation with the Department of Conservation. A monitoring season may occur in the same calendar year (eg NZ falcon may be monitored January, February, September – December in the same year).

43. At least (15) working days prior to the APMP being submitted for certification the Consent Holder shall provide a copy of the draft APMP to the following persons and invite their views on it:

- a. Te Ruunanga o Ngaati Mahuta ki te Hauaauru;
- b. The Department of Conservation.

44. If no response is received within 15 working days, the Consent Holder shall provide a copy of the APMP to the Manager, Policy and Planning, Waitomo District Council for certification that the plan meets the objectives and measures specified in conditions 40 and 41. Any comments received on the APMP and how they were addressed shall be included in the APMP.

Bat Population Monitoring Plan (BPMP)

45. Prior to construction of the first turbine², the Consent Holder shall engage a suitably qualified and experienced bat expert (SQEB) to prepare and submit a Bat Population Monitoring Plan (BPMP) for certification by the Manager, Policy and Planning, Waitomo District Council. The objective of the BPMP shall be as follows:

- a. To identify how bats are using the Bat Study Area;
- b. To assess the risks of the turbines on bats; and
- c. To generate robust baseline monitoring data to inform the Bat Post Construction Monitoring Plan (BPCMP).

46. The BPMP shall include (but not be limited to) the following:

- a. Details of the methodology proposed for undertaking the baseline surveys including the use of monitors.

- b. A map showing the Bat Study Area and the locations of bat monitoring sites including each turbine location, non-turbine sites, potential bat flyways, and habitat features such as saddles and bush edges.
- c. Details explaining the proposed locations for monitoring within the Bat Study Area and reasons why these sites have been chosen.
- d. Details of the analysis and reporting required of the data obtained from the survey work.
- e. Details regarding the number of monitoring sessions proposed to be undertaken and when these will occur during the year. As a minimum, this shall include a monitoring session during each of the three following stages of the bat breeding season:
 - i. pre-breeding (October to November);
 - ii. breeding (December to February); and
 - iii. post-breeding (March to April).
- f. The monitoring session may occur in the same calendar year (eg monitoring may take place in January, February, December in the same year). Bat monitoring data must be obtained for all monitoring sites for a minimum of 10 valid survey nights as defined in the Bat Roost Protocol v2 October 2021.

47. The Consent holder shall consult with the Department of Conservation in preparation of the BPMP. At least (15) working days prior to the BPMP being submitted for certification, the Consent Holder shall provide a copy of the draft BPMP to the following persons and invite their views on it:

- a. Te Ruunanga o Ngaati Mahuta ki te Hauaaauru;
- b. The Department of Conservation.

48. If no response is received within 15 working days, the Consent Holder shall provide a copy of the BPMP to the Manager, Policy and Planning, Waitomo District Council for certification that the plan meets the objectives and measures specified in conditions 45 and 46. Any comments received on the BPMP, and how they were addressed by the Consent Holder shall be included in the BPMP.

Approval of Avifauna Population Monitoring Plan (APMP) and Bat Population Monitoring Plan (BPMP)

49. The Consent Holder shall provide a copy of the APMP and BPMP to the Manager, Policy and Planning, Waitomo District Council for certification that the plan meets the objectives and measures specified in conditions 40, 41, 45 and 46, ten working days prior to the baseline surveys being carried out. The baseline studies may not commence until the APMP and BPMP have been certified by the Council.

Post Construction Monitoring

Avifauna Mortality Monitoring Plan (AMMP)

50. The results of the Avifauna Population Monitoring Plan (APMP) required by Condition 40 shall determine (in consultation with the Department of Conservation) if there are any Threatened or At Risk bird species that may require post-construction mortality monitoring. If it is determined that post-construction mortality monitoring is required, an Avifauna Mortality Monitoring Plan (AMMP) shall be prepared by the consent holder in consultation with the Department of Conservation.
51. The objectives of the AMMP shall be:
 - a. To establish the methods required to detect turbine related mortalities of Threatened or At Risk species.
 - b. To determine whether any Threatened or At Risk species are being adversely affected by the operation of the wind farm.
52. The draft AMMP methodology shall include the following:
 - a. Methods and frequency of mortality searches around turbines.
 - b. Any evidence of turbine strike (species, date, weather conditions and other relevant observations) and notes of avoidance behavior.
53. At least 30 working days prior to the draft AMMP being submitted for certification, the Consent Holder shall provide a copy of the draft AMMP to the following persons and invite their views on it:
 - a. Te Ruunanga o Ngaati Mahuta ki te Hauaauru; and
 - b. The Department of Conservation.
54. If no response is received within 30 working days, the Consent Holder shall provide a copy of the AAMP to the Manager, Policy and Planning, Waitomo District Council for certification that the plan meets the objectives and methods specified in conditions 51 and 52. Any comments received on the plan and how they were addressed by the Consent Holder shall be included in the plan. The AAMP shall be implemented immediately following the commissioning of the windfarm.

Bat Post Construction Monitoring Plan (BPCMP)

55. The results of the BPMP shall be analysed and interpreted by the SQEB to determine (in consultation with the Department of Conservation) whether the levels of bat activity require post-construction monitoring. At any turbine for which the baseline activity levels exceed an average of 1 bat pass per night over the baseline survey, then the Consent holder shall identify any reasonable measures to give effect to the objectives of the plan as set out in condition 57 below.
56. If it is determined that post-construction monitoring is required, a Bat Post Construction

Monitoring Plan (BPCMP) will be prepared prior to the commissioning of all turbines by the consent holder, in consultation with the Department of Conservation.

57. The objectives of the BPCMP shall be:
- a. To provide a statistically robust monitoring programme of bat activity post construction.
 - b. To determine whether bats are being adversely affected by the operation of the wind farm.
58. The BPCMP shall include the following:
- a. A review of the results of the baseline surveys carried out for the BPMP;
 - b. The deployment of automated bat detectors on all 8 turbines at 15 metre height and at least 8 non-turbine sites. Results are to be analyzed in relation to wind speed and temperature when monitoring data have been obtained for each of the stages of the bat breeding season as listed in 48(e);
 - c. Consideration of a requirement for bat mortality monitoring and if required, methodologies for recording and reporting bat mortality rates. Should the post construction monitoring identify an average of 10 bat passes per night over any one seasonal monitoring session at an operating turbine site, then mortality monitoring shall be undertaken at those specific turbines to determine mortality rates.
59. Monitoring under the BPCMP shall be implemented for a minimum period of five years with results reported annually over each of those five years.
60. At least 30 working days prior to the draft BPCMP being submitted for certification, the Consent Holder must provide a copy of the draft BPCMP to the following persons and invite their views on it:
- a. Te Ruunanga o Ngaati Mahuta ki te Hauaauru;
 - b. The Department of Conservation.
61. If no response is received within 30 working days, the Consent Holder shall provide a copy of the BPCMP to the Manager, Policy and Planning, Waitomo District Council for certification that the plan meets the objectives and measures specified in conditions 57 and 58. Any comments received on the plan and how they were addressed by the Consent Holder shall be included in the plan. The BPCMP shall be implemented immediately following the commissioning of the windfarm.

Bat Mitigation, Offset or Compensation Plan (BMOCP)

62. If any monitoring under the BPCMP finds a significant adverse effect, the consent holder shall develop a Bat Mitigation, Offset or Compensation Plan (BMOCP) in conjunction with a SQEB and in consultation with the Department of Conservation.

63. The objective of the BMOCP is to identify methods and options to mitigate, offset or compensate for the adverse effects identified by the monitoring under the BPCMP.
64. At least (30) working days prior to the BMOCP being submitted for certification, the Consent Holder must provide a copy of the BMOCP to the following persons and invite their views on it:
 - a. Te Ruunanga o Ngaati Mahuta ki te Hauaaaru;
 - b. The Department of Conservation.
65. If no response is received within 30 working days, the Consent Holder shall provide a copy of the BMOCP to the Manager, Policy and Planning, Waitomo District Council for certification that the plan meets the objectives specified in condition 63. Any comments received on the BMOCP and how they were addressed shall be included in the BMOCP.
66. Where the Consent Holder does not agree with recommendations proposed by the BMOCP or the Bat Monitoring Review Report prepared under condition 68, the Council may serve notice on the Consent Holder under s128 of the Resource Management Act 1991 (or its replacement legislation) of its intention to review the conditions of this resource consent for the purpose of:
 - a. Applying ecological mitigation, offsetting or compensation conditions to deal with any adverse effect on the environment arising from the exercise of the consent, or
 - b. Reviewing the methodology of the BPCMP.
67. Where the Consent Holder agrees to the recommendations of the BMOCP these will be implemented as soon as reasonably practicable after certification and the results will be provided to the Department of Conservation, Waitomo District Council and Te Ruunanga o Ngaati Mahuta ki te Hauaaaru.

Bat Monitoring Review Report – BMRR

68. On the fifth anniversary of the date after any wind turbine first generates electricity, the Consent Holder shall commission a review of the BPCMP and produce a Bat Monitoring Review Report (BMRR), to be prepared by a suitably qualified and experienced bat expert and biostatistician. The objective of the BMRR shall be:
 - a. To review the results of the monitoring required in accordance with the BPCMP;
 - b. To consider whether the monitoring in accordance with the BPCMP needs to continue, be improved and if so at what frequency and with what methods, including having regard to the activity level triggers identified in condition 58 (c).
 - c. To consider whether any mitigation, recommended in the BPCMP, is appropriate for implementation by the Consent Holder.
69. At least (30) working days prior to the draft BMRR being submitted for certification, the Consent Holder must provide a copy of the draft BMRR to the following persons and invite

their views on it:

- a. Te Ruunanga o Ngaati Mahuta ki te Hauaauru;
- b. The Department of Conservation.

70. If no response is received within 30 working days, the Consent Holder shall provide a copy of the BMRR to the Manager, Policy and Planning, Waitomo District Council for certification that the plan meets the objectives specified in condition 68. Any comments received on the BMRR and how they were addressed shall be included in the BMRR. Any recommendations in the BMRR will be implemented as soon as reasonably practicable after certification.

Strike response

71. Any unidentified bird or bat species remains recovered shall be referred to the Department of Conservation for identification as soon as is practicably possible following their discovery.
72. The consent holder shall record and report any evidence of bird or bat strikes detected post-construction. Should a bird or bat species listed in the Department of Conservation's most current threat classification system as Threatened or At Risk at the time be found injured or dead at the site, the Director General of Conservation and the Waitomo District Council is to be notified immediately and the bird or bat provided to the Director General of Conservation or its nominated agent for autopsy or rehabilitation.
73. The consent holder shall forward bat records to the Department of Conservation.

Further investigation

74. The consent holder will commit the sum of \$45,000 per year for 5 years from the commission of the turbines to support an investigation of bat populations in the geographical area running from Marokopa, Te Anga, Te Waitere and Taharoa. This will be offered by the consent holder through a University research scholarship or other equivalent mechanism in consultation with the Waitomo District Council and the Department of Conservation. The consent holder will provide to the Manager Policy and Planning, Waitomo District Council evidence of the offer of the scholarship or other equivalent mechanism on the anniversary of the commissioning of the turbines for the duration of this condition.

[Advice Note: Condition 74 has been offered by the Consent Holder and it has agreed to be bound by this in accordance with the principle in Augier. If the scholarship or other mechanism is not taken up by a third party the consent holder will have complied with this condition, provided the scholarship or equivalent mechanism has been offered].

Reporting

75. An annual report, detailing the information required in conditions 50, 56, 62, 68 & 73³ above shall be provided to Waitomo District Council and the Department of Conservation.

³ 50 - Avifauna Mortality Monitoring Plan, 56 – Bat Post Construction Monitoring Plan, 62 – Bat Mitigation, Offset or Compensation Plan, 68 – Bat Monitoring Review Report, 73 – Bat Records.

Bird Perches

76. No telecommunications devices or signs shall be connected/attached to any part of the turbines and/or the accessory structures.
77. With the exception of the transmission lines connecting the substation to the existing transmission lines, all other intra project lines within the wind farm shall be underground.
78. The turbine towers shall be tubular in design.

Native Vegetation

79. The clearance and trimming of native vegetation associated with the wind farm activities shall be restricted to the minimum area required to undertake the road realignment works, and any realignments of the power line routes. In particular, the consent holder shall avoid the removal of pole stand Rimu where practicable. Any tree removal must be undertaken in accordance with 'Protocols for minimising the risk of felling bat roosts' (version 2 October 2021 or the most recent version available).⁴

Communications

80. In the event that the wind farm activities result in any disruption to free to air (not satellite) television, Broadband Wireless access licenses and/or microwave path operators at those properties in the area surrounding the wind farm site, the consent holder shall assist those parties to obtain reception comparable to the pre-construction quality, to the satisfaction of Council. The consent holder shall advise the Manager Policy and Planning, Waitomo District Council of the agreed mitigation measures in writing.

Complaints Register

81. The consent holder shall appoint a representative who shall be the Waitomo District Council's principal contact person in regard to matters relating to this resource consent. The consent holder shall inform the Manager Policy and Planning, Waitomo District Council of the representative's name and how they can be contacted prior to this resource consent being commenced.
82. The consent holder shall maintain a complaints register for the wind farm activities. The register shall record all complaints received and shall include:
 - a. The date, time and duration of the incident that has resulted in the complaint;
 - b. The location of the complainant;
 - c. The cause of the incident where appropriate;
 - d. Any corrective action undertaken by the consent holder in response to the complaint.

The register shall be available to Council within 2 working days of its request.

⁴ Protocols for minimising the risk of felling bat roosts Oct 2021.pdf (doc.govt.nz)

Implementation, Review and Monitoring

83. Pursuant to sections 128 to 130 of the Resource Management Act the Waitomo District Council may undertake a review of conditions of consent, within twelve months of the commencement of operation of the wind farm and thereafter on an annual basis for the following purpose:
- a. to review the effectiveness of the conditions of this resource consent in avoiding or mitigating any adverse effects on the environment from the exercise of this resource consent (in particular the potential adverse environmental effects in relation to ecological effects, noise, vegetation removal, earthworks, and the visual, landscape and amenity effects), and if necessary to avoid, remedy or mitigate such effects by way of further or amended conditions; or
 - b. to address any adverse effect on the environment which has arisen as a result of the exercise of this consent; or
 - c. if necessary and appropriate, to require the holder of this resource consent to adopt the best practicable option to remove or reduce adverse effects on the surrounding environment; or
 - d. to review the adequacy of and the necessity for monitoring undertaken by the consent holder.

The Council will undertake the review in consultation with the consent holder. The consent holder shall pay the actual and reasonable costs of the review.

84. The consent holder shall pay all costs associated with the implementation of this consent in order to achieve and demonstrate compliance with the consent conditions therein.
85. Pursuant to section 36 of the Resource Management Act 1991 the consent holder shall pay the actual and reasonable costs incurred by the Council when monitoring the conditions of this consent.

Lapse Period

86. This consent shall lapse eight years after the date of it being granted, unless the consent is either given effect to before that lapsing date, or unless the Waitomo District Council fixes a longer period pursuant to section 125 of the Resource Management Act 1991.

Advisory Notes

- 1) The consent holder shall also ensure compliance with conditions of the Waikato Regional Council resource consent. Conditions related to matters covered by that consent have been omitted from this consent to avoid duplication.
- 2) All on-site works shall comply with the requirements of the Health and Safety in Employment Act 1992.
- 3) This consent covers road widening and realignment works associated with Taumatatotara

West Road only. The consent holder shall obtain any other resource consents required for road widening, including any resource consents required from Waikato Regional Council.

- 4) The consent holder will need to consult with and meet the requirements of all road controlling authorities affected by the transportation of the turbine components, including Transit New Zealand.
- 5) The consent holder will need to consult with the Manager, Policy and Planning, Waitomo District Council in order to facilitate proceeding with the establishment of a turbine viewing area on Marokopa Road.
- 6) If the transmission lines connecting the substation to the existing electricity transmission lines are located above ground, they shall be designed and located so that they are a permitted activity in accordance with Rule 15.5.1 of the Proposed Waitomo District Plan and the NZ Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001).

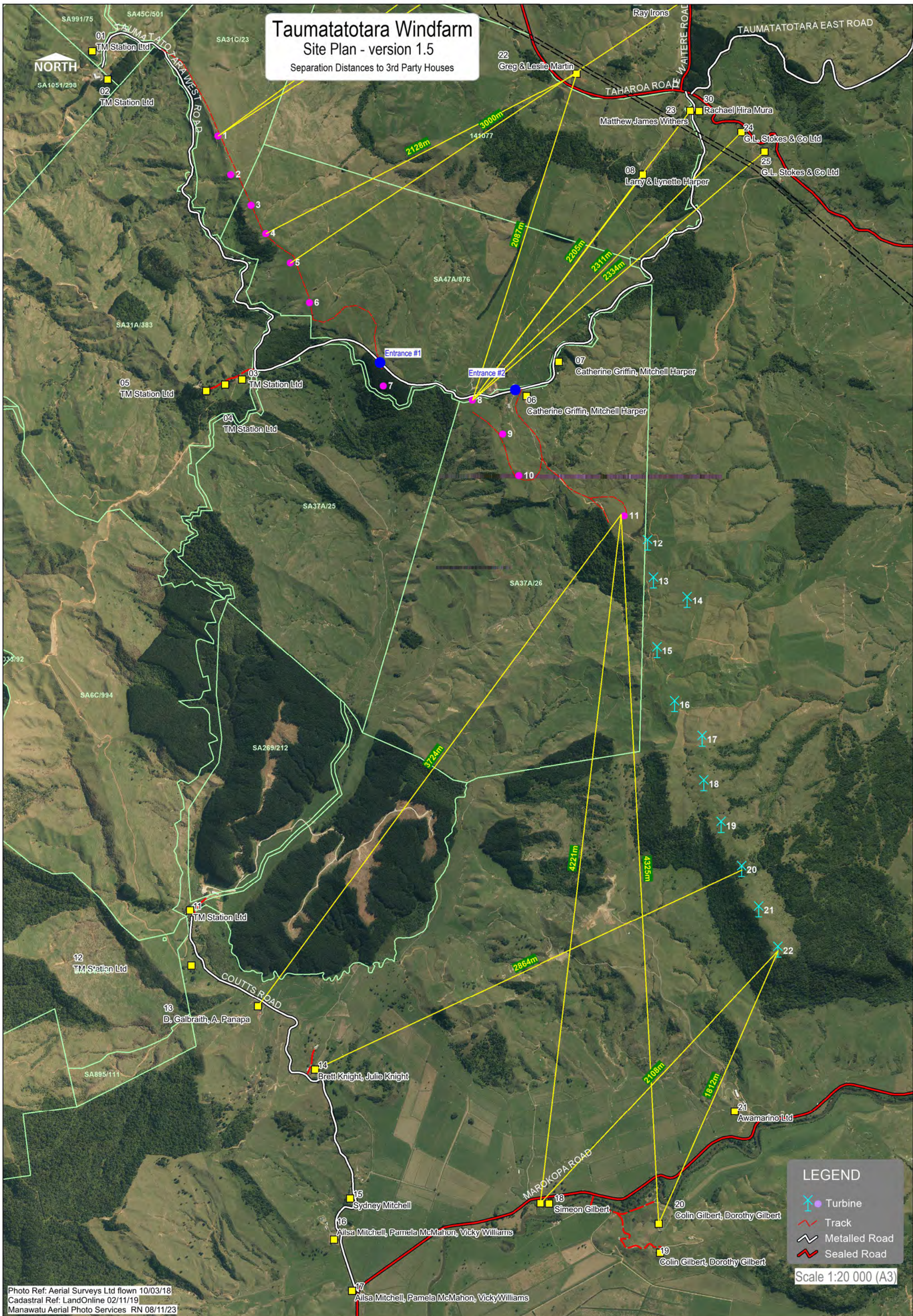
Appendix 1 Taumatotara Windfarm Site Plan

Version 1.5.

Taumatotara Windfarm

Site Plan - version 1.5

Separation Distances to 3rd Party Houses



LEGEND

- Turbine
- Track
- Metalled Road
- Sealed Road

Scale 1:20 000 (A3)

Photo Ref: Aerial Surveys Ltd flown 10/03/18
 Cadastral Ref: LandOnline 02/11/19
 Manawatu Aerial Photo Services RN 08/11/23