

Section 42A Report
Land Use Consent

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

Date:	13 October 2023	App Number:	RM200019
Reporting Planner:	Chris Dawson – BBO	Site Visit on:	22 June 2023

Applicant:	Taumatotara Wind Farm Ltd (TWF)
Property Address:	Taumatotara West Road, Waitomo
Legal Description:	<ul style="list-style-type: none"> • Part Section 10 Block V Kawhia South Survey District and Section 3 Survey Office Plan 53968 comprised in Record of Title 141077 • Section 3 Block IX Kawhia South Survey District comprised in Record of Title SA28A/586 • Section 1 Survey Office Plan 58558 comprised in Record of Title SA47A/876 • Section 1A Block V Kawhia South Survey District comprised in Record of Title SA37A/25. • Section 12 and Section 22 Block V Kawhia South Survey District comprised in Record of Title SA31C/23. • Section 2 Block V Kawhia South Survey District comprised in Record of Title SA37A/26 • Part Section 24 Block V Kawhia South Survey District and Section 2 Survey Office Plan 53968 comprised in Record of Title SA48B/494.
District Plan	Operative Waitomo District Plan 2009
Activity Status:	Discretionary Activity
Zoning:	Rural Zone
Policy Area(s):	Landscape Policy Area
Proposal:	<ul style="list-style-type: none"> • To remove the southern 11 turbines from the project scope along with the removal of turbines 2, 4 & 9 to result in a total of 8 turbines remaining. • For the remaining 8 turbines; to undertake a minor increase in maximum diameter of the rotor area from 155 m to 163 m and an increase in the tip height from 172.5 m to 180.5 m to enable the ground clearance of 17.5 m to be maintained.

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1 INTRODUCTION

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

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

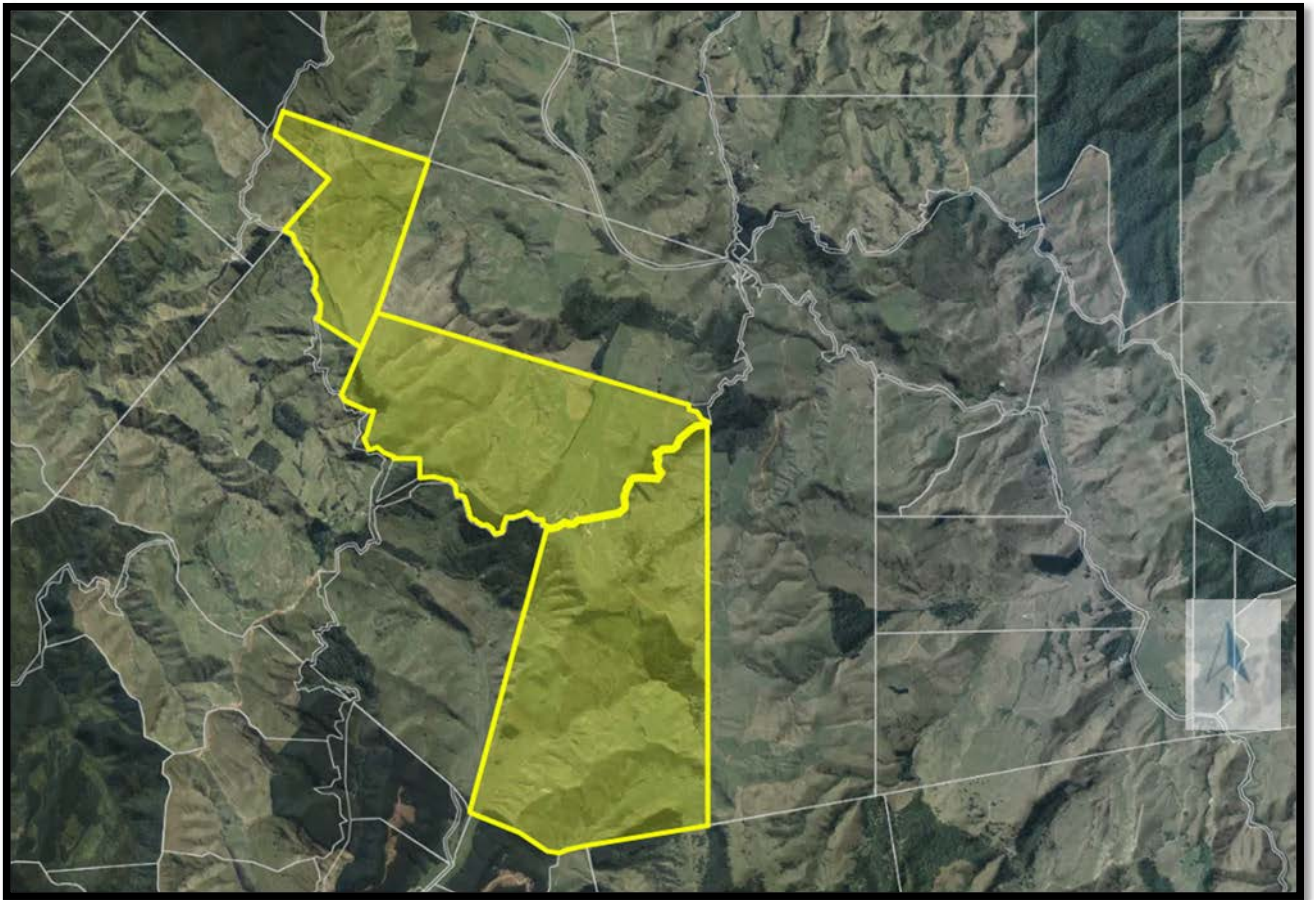
1.1 Description of site

The proposed windfarm site (the site) is 10km south of Taharoa Village and above the Taumatotara Gorge in the Waitomo District. The windfarm is located on farms owned by three separate landowners, all of whom have given their written approval to the project. The site and the adjacent hills generally have very defined, but level 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 too steep with slopes generally between 1 in 20 and 1 in 5. The site is currently used for grazing cattle and sheep with a very small plantation of radiata pines around the location of turbine 7.

The site is zoned Rural in the Operative Waitomo District Plan (ODP). No special features or overlays apply to the site. A number of Significant Natural Areas are shown on the site, being R16UP042.02 – Maungaakohe Scrub and R16018.02 – Stewardship land, Maungaakohe Reserve Extension.

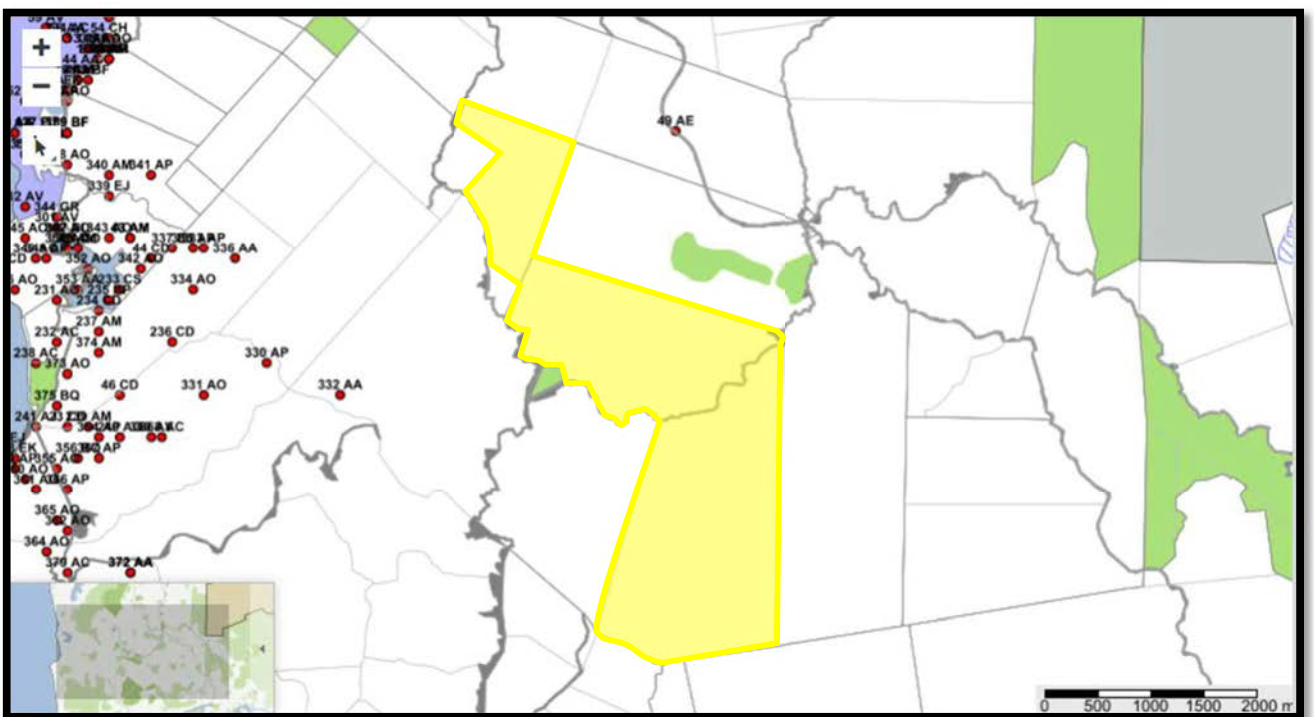
Refer to Figure 1 below for an aerial of the subject site (windfarm site is outlined in yellow).

Figure 1: Aerial photograph of site.



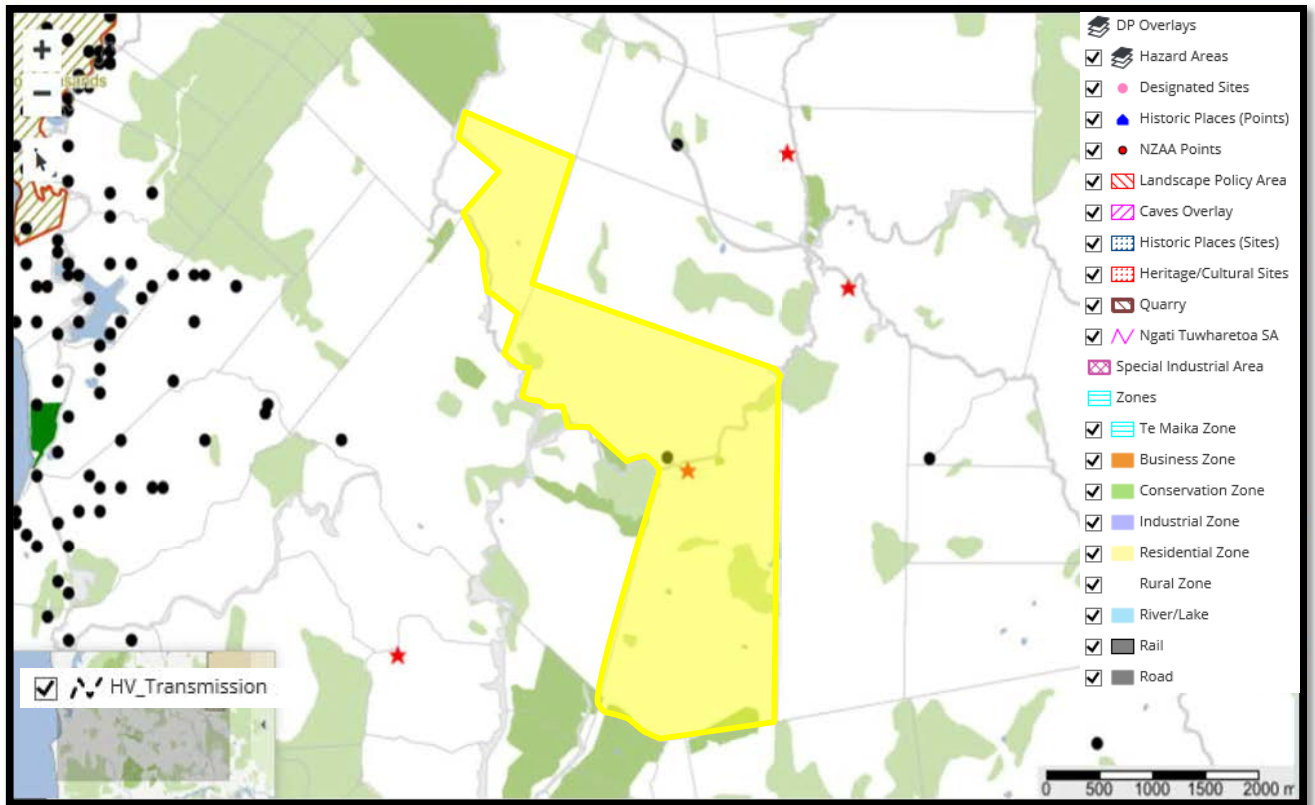
Source: <https://app.grip.co.nz/>

Figure 2: ODP Zone and Policy Overlays (windfarm site is outlined in yellow).



Source: <https://waitomo.intramaps.co.nz>

Figure 3: Special Features.



Source: <https://waitomo.intramaps.co.nz>

1.2 The Section 127 Proposal

Pursuant to s88 of the RMA, TWF has applied to increase the tip height of turbines at its Taumatotara site through an application under s127 of the RMA. The windfarm is subject to an existing resource consent approved in 2006 which approved 22 turbines, each at 110 m in height. A further application to increase the height of the northern 11 turbines to 121.5 m was subsequently approved in 2011 and will hereafter be referred to as “the application”.

Following the receipt of a further variation application from the applicant on 15 September 2023, the final proposal before Council is now:

- to delete the 14 turbines from the project specifically turbines 2, 4 & 9 and turbines 12 to 22, leaving a total of eight turbines.
- to increase the tip height above existing ground of the remaining eight turbines from 121.5 m to 180.5 m, and
- to apply for a minor increase in the maximum rotor diameter from 155 m to 163 m;

The positioning of the eight turbines would not change from that already consented. However, there will be consequential changes to other components of the turbines, such as the tower dimensions, height and nacelle size and foundation pad size. TWF seeks changes to the conditions of the existing consent conditions 1, 2, 3 and 11, relating to turbine height and to the general condition 1, as it relates to the number of turbines. It is also expected that there will be consequential changes to other conditions due to changes in technology and progress in condition drafting since 2006.

Conditions 3 and 11 are as follows:

3. *The turbines shall have a maximum height measured from the ground to the top of the vertically extended blade tip as follows:*

(a) Turbines 1 to 11 inclusive – maximum height of 121.5 metres.

(b) Turbines 12 – 22 inclusive – maximum height of 110 metres.

11. *The wind turbines shall not exceed a rotor tip height of 110 metres above ground level and a sound power of 107.2dBA unless it can be demonstrated by a person specialising in acoustics and accepted by the Manager, Policy and Planning, Waitomo District Council that higher turbine heights or sound power will still comply with the requirements of NZS6808: 1998.*

Condition 5 will be deleted as it relates to turbines 19-22, to be removed from the project.

The proposed nominal turbine dimensions are 180.5 m tip height, 95 m hub height and 163 m rotor. It is possible that development of the wind farm will be staged but this has not been further clarified by TWF.

1.3 History

Ventus Energy was granted consent to construct a 22-turbine wind farm at Taumatotara West Rd, Te Anga in 2008 (after an appeal to the Environment Court was withdrawn). All turbines were to be 110 m high. A copy of the existing resource consent decision and conditions is provided as Appendix 1. Regional consents for earthworks were also granted by Waikato Regional Council (WRC), but these have since expired.

In 2011 Ventus Energy applied for a change in the conditions of the 2008 consent to increase the turbine height of the northern 11 turbines to 121.5 m. This was approved by the Council and a copy of this decision is included as Appendix 2. A lapse date extension was applied for in 2016 for a further 8 years until 2024. This was also approved.

An application to change the conditions of consent was made to Council on 5 July 2020 with a subsequent further variation submitted to Council dated 15 September 2023 (the 2023 update). The 2020 application, and all suitable modifications as set out in the 2023 update is the application subject to this s42a report. The detail of this application is set out in section 1.2 above, and the following sections of this report.

The scope of the resource consent application is limited to reducing the number of turbines from 22 to eight and increasing the tip height conditions 3 and 11 on the 2008 consent relating to tip height. Conditions 1 and 5 will also be updated to reference this application as a matter of process. However, it is also anticipated that there will be a number of consequential amendments required to other conditions throughout the condition set due to either requests from TWF, agreed condition changes between the experts or additional amendments to address effects arising from the variation.

As the previous WRC consents that Ventus Energy had applied for have expired, TWF has applied for a land use consent from the WRC to undertake approximately 259,000 m³ of excavation associated with the development of the windfarm including the construction of tracks and wind turbine platforms. This consent was granted by WRC for a consent term of 15 years and a lapse

period of 10 years. A copy of the WRC consent (APP 141827) is included as Appendix 3 to this report.

Table 1 below summarises the relevant interests on the two existing Record of Titles.

Table 1: Existing titles and interests.

Title Reference	Legal Description	Size	Date Issued	Relevant Interests
SA31C/21	Section 12 Block V Kawhia South SD	98.743ha	09 May 1984	<ul style="list-style-type: none"> ▪ Subject to s8 Mining Act 1971 ▪ Subject to s5 Coal Mines Act 1979 ▪ H523842 Land Improvement Agreement under Soil Conservation and Rivers Control Act 1941. ▪ 11688001.1 Caveat by TWF
SA47A/876	Section 1 SO 58558	226.400ha	23 Oct 1990	<ul style="list-style-type: none"> ▪ Subject to: <ul style="list-style-type: none"> ○ s3 Petroleum Act 1937 ○ Atomic Energy Act 1945 ○ s3 Geothermal Energy Act 1953 ○ S6 and 8 Mining Act 1971 ○ S5 Coal Mines Act 1979 ○ Part IV A Conservation Act 19879969571.4 Consent Notice ▪ 11783123.1 Caveat by Ventus Energy (NZ)
SA37A/26	Section 2 Block V Kawhia South SD	350.248 ha	19 Aug 1986	<ul style="list-style-type: none"> ▪ Subject to s8 Mining Act 1971 ▪ Subject to s5 Coal Mines Act 1979 ▪ H417502 Subject to Land Improvement Agent ▪ 9115115.1 Notice Pursuant to s195(2) Climate Change Response Act 2002

It is considered that the above listed interests do not restrict the proposal from proceeding.

2 REASON FOR THE APPLICATION

A land use consent (as described under section 87(a) of the Resource Management Act 1991) is required for the reasons set out below:

2.1 Operative Waitomo District Plan (ODP)

The application has been applied for as a variation to the original 2006 consent (as issued in 2008 following the appeal resolution) along with the 2011 variation to increase the tip height of eight of the turbines to 180.5 m under s127 of the RMA. This application is therefore being considered as a Discretionary Activity, as required under s127 of the RMA.

There has been a lot of correspondence between the Council and TWF in relation to whether the application should be processed as a s127 or as a new application pursuant to s88 of the RMA.

Commissioner Daysh issued Minute 1 on 12 September 2023 in relation to this matter and invited legal and/or planning submissions from any party on the following questions:

- a) *What are the relevant legal tests to determine if the application should be considered as a variation under s127 or a new application under s88 of the RMA.*
- b) *How do those legal tests apply to the TWF application; specifically whether the comparison is against the 2006 consent or the 2011 varied consent, what aspects of the proposal should be relevant to determine differences in effects and the relevance of whether the consent which is the subject of this application been exercised or not.*

Following the receipt of legal submissions, Commissioner Daysh issued Minute 5 on 4 October 2023 which made the following findings:

- The consideration of adverse effects should be between the 2011 consent and the proposed variation.
- It is irrelevant that the existing consent has not been exercised.
- All potential adverse effects of the modified proposal are relevant to assessment of the differences in the character, intensity and scale of those adverse effects. This may include any new adverse effects of the modified proposal that were not considered as part of the existing consent.
- The full package of conditions should be considered when considering the application against the existing consent (and the effects on the environment it seeks to manage).

This s42A report has therefore been prepared on the basis of assessing the application pursuant to s127 of the RMA.

127 *Change or cancellation of consent condition on application by consent holder*

(1) *The holder of a resource consent may apply to a consent authority for a change or cancellation of a condition of the consent, subject to the following:*

(a) *the holder of a subdivision consent must apply under this section for a change or cancellation of the consent before the deposit of the survey plan (and must apply under [section 221](#) for a variation or cancellation of a consent notice after the deposit of the survey plan); and*

(b) *no holder of any consent may apply for a change or cancellation of a condition on the duration of the consent.*

(2) *[Repealed]*

(3) *[Sections 88 to 121](#) apply, with all necessary modifications, as if—*

(a) *the application were an application for a resource consent for a discretionary activity; and*

(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.*

For the purposes of determining who is adversely affected by the change or cancellation, the consent authority must consider, in particular, every person who—

(a) *made a submission on the original application; and*

(b) *may be affected by the change or cancellation.*

The effects of the proposed changes are considered in the latter sections of this report. Consideration has been given to all persons who made submissions on the original application in that the current variation application was publicly notified for submissions as set out in section 4 below.

2.2 Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES)

These regulations came into force on 1 January 2012 and apply when a person wants to do an activity described in regulation 5(2) to 5(6) on a piece of land described in regulation 5(7) or 5(8). Following a review of the historical aerial photographs contained within Council's records, a Hazardous Activity and Industry List (activity does not appear to have been undertaken on the site. In accordance with Regulation 5(7), the site is not a 'piece of land' and consent is not required under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

3 SECTION 95 NOTIFICATION DECISION UNDER DELEGATED AUTHORITY

On 17 September 2021, Chris Dawson, Consultant Planner on behalf of Council recommended pursuant to section 95B of the RMA to limited notify the application by TWF for a Discretionary Activity to 5 landowners / parties. The notification report was provided to Commissioner Greg Hill for a determination. Subsequently, on 23 September 2021, contrary to Mr Dawson's recommendation and the position of the TWF, Greg Hill – Hearing Commissioner determined that the application should be publicly notified pursuant to section 95A(8)(b) of the RMA. A copy of this decision is included as Appendix 12.

4 NOTIFICATION

The application was publicly notified on Thursday, 6 April 2023 and for which submissions closed at 5pm on Monday, 1 May 2023. A total of 15 submissions were received to the application and their position as to whether they support or oppose the application are included in Table 2 below. This shows that 14 submitters supported the application and one submitter that remained neutral, three that did not specify, and seven submissions that opposed the application.

Table 2: Submission totals

Position	Number
Support	1
Oppose	14
Neutral	0
Unspecified	0
Total	15

The 14 details of the submitters are included in Table 3 below:

Table 3: Submitter details

<u>Submission ID</u>	<u>Submitter</u>
1	Te Waitere View Limited
2	David Galbraith
3	Department of Conservation
4	Julie Knight and Brett Knight
5	Leslie Gaston Marokopa Paa Environment
6	Team
7	Ngahuia Herangi

8	Roimata Harmon
9	Susan Irons
10	Te Nehenehenui
11	Trustees of the John David Keepa/Kupa Whanau Trust
12	Virginnia Dawn Taia
13	Waikato Regional Council
L1	<i>Te Nehenehenui</i>
L2	<i>Yvonne Armstrong</i>

A number of these submissions were from groups (Submitters 7, 10, 11, and 12). Submitters L1 and L2 provided their submissions after the submission period had formally closed.

A determination from the Commissioner is requested with respect to whether or not the late submissions from Te Nehenehenui and Yvonne Armstrong should be allowed or not.

Appendix 4 provides a list of submitters and a summary of all submissions received. It summarises the effects discussed in those submissions, and the reasons given for each submission. In summary, the greatest concerns were adverse effects related to cultural effects, ecological effects, and traffic effects. Other submissions raising concerns with adverse effects were noise effects, visual effects, economic effects with the remainder outlined in detail in Table 5 below.

Table 4: Adverse effects raised in submissions.

Adverse effect	Number
Cultural	8
Archaeological	1
Visual	3
Environmental	2
Heritage	2
Infrastructure	0
Traffic	5
Ecological	6
Scale of activity	1
Public safety	0
Noise	4
Construction	0
Flooding	0
Lighting	2
Economic	3

Table 5 provides a summary of the positive effects discussed in submissions with only 1 submitter identifying positive effects. These positive effects related to economic and environmental sustainability.

Table 5: Summary of positive effects raised in submissions.

Positive effect	Number
Economic	1
Environmental Sustainability	1

The aim of providing the summary information in Appendix 4 and Table 6 and Table 7 is to provide general guidance on the common themes presented in submissions and the broad range of issues that have been raised. It is important to keep in mind that there are groups of persons presenting some of the submissions, and the assessment below gives equal consideration to the matters raised where they are within the scope of the RMA decision-making process. The details of submissions will be discussed further when assessing the relevant effects on the environment below.

5 TECHNICAL REVIEW COMMENTS

Assistance with reviewing the technical information contained in the application was provided by the following:

- Visual/Amenity Dave Mansergh, Director, Mansergh Graham Landscape Architects (refer to Appendix 5).
- Noise effects Siiri Wilkening, Acoustic Engineer, Acoustics, Marshall Day Acoustics (refer to Appendix 6)
- Ecology Leigh Bull, Ecologist, Blue Green Ecology (Appendix 7)
- Traffic/Transport Thato Mariti, Transport Engineer, BBO (refer to Appendix 8)

Dave Mansergh and Chris Dawson undertook a site visit across the entire windfarm site along with surrounding public roads on 19 November 2019 in the company of the TWF. The entire s42A reporting team undertook a site visit on 22 June 2023, also in the company of the TWF. On that basis, all of those providing technical reporting to this hearing have visited the wind farm site in person prior to completing their report.

6 SECTION 104

This application is to be considered as a Discretionary Activity under section 104 of the RMA (in accordance with section 127(3)(a) of the RMA). Section 104 sets out those matters that Council must consider when assessing an application for resource consent. The matters that are relevant to the consideration of this application (subject also to Part II, Purpose and Principles are:

- a) Any actual and potential effects on the environment of allowing the activity;
and*
- b) Any relevant provisions of-
(vi) A plan or proposed plan; and*
- c) Any other matters the consent authority considers relevant and reasonably necessary to determine the application."*

6.1 Section 104(1)A - Actual and potential effects on the environment

6.2 Actual and Potential Effects

The TWF provided an Assessment of Effects on the Environment (AEE) that addressed the following:

6.3 Geotechnical stability

- Turbine foundations
- Transportation effect
- Aviation effects

- Sound Effects
- Shadow Flicker
- Landscape and visual effects
- Ecological effects
- Positive effects
- Cultural / Iwi consultation

The conclusion of the TWF is that:

“Overall, with the changed dimensions of the proposal the actual and potential environmental effects have been shown to be less than the existing consented environment and are assessed as being ‘less than minor’ in RMA terms, ”

Geotechnical stability can still be achieved and the foundation changes have a very small and very localised impact. Modern design of turbine componentry and transportation techniques will allow transport of all machinery within the confines of the existing consent, albeit with a greatly reduced number of components to be transported. There will be no shadow flicker effects on any dwellings outside the site – in fact shadow flicker will be significantly reduced.

Larger turbines are not anticipated to increase impacts upon birds and bats, with the halving of the number of turbines being a positive effect. The increased height of the 11 turbines will not create increased noise levels above existing consented levels. Finally, visual effects of increasing the tip height and dimensions of the turbine and structures have been assessed as being less than minor.

All other effects originally assessed and approved in the 2008 consent will not change as a result of the new proposal – they will be no greater with this amended proposal than that originally assessed, and likely to be much less due to the reduced number of turbines.”

As a Discretionary Activity, the Council's discretion is unrestricted when considering the potential adverse effects on the environment. I believe the potential adverse effects on the environment relate to:

- Positive effects
- Construction effects
- Transport Effects
- Aviation Effects
- Noise Effects
- Shadow Flicker
- Landscape and Visual Effects
- Ecological Effects
- Archaeological/Heritage
- Cultural/Spiritual
- General submissions, miscellaneous

7 Positive effects

The windfarm proposal will lead to a greater amount of electricity being generated with up to 48.4 MW of electricity able to be produced, due to the larger generation capacity of the proposed larger turbines which are capable of producing 4.4 MW each. This is an increase from the output

of the consented 22 turbine windfarm at 32.5MW to 48.4MW. This will occur with under half the number of turbines to that 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.

The reduction in the number of turbines will reduce the amount of traffic that would have been required for the originally consented 22 turbines and will also likely limit the construction impacts (as set out below) along with a reduction in visual effects, particularly for those submitters who live to the south and west of the windfarm site. A more detailed analysis of the effects is set out below.

8 Construction Effects

It is considered that the development of the eight turbine wind farm will result in some adverse effects on the environment arising from construction; primarily around the upgrade of the road network, the construction of internal roads, the transportation of the necessary foundation materials such as gravel, concrete and reinforcing steel and finally the transport of the turbine and tower components from port to site plus appropriate cranes for turbine assembly. The majority of the internal construction activities will have little to no adverse construction effects due to the substantial distance to surrounding dwellings that are not connected to the project. This is illustrated on the separation distance map included as Appendix 9 which shows that the minimum distance from a turbine to a third party house is 1719 m with all other separation distances being greater than this.

In my opinion, the extent of construction effects from the development of an eight turbine windfarm over the northern portion of the original consented area will be significantly reduced compared to the consented level of construction effects from the 2011 variation wind farm. In addition, a number of the existing conditions (which will be carried over into the varied consent) address and manage construction effects such as condition 18, Construction Management Plan and conditions 19, 20 and 21, Traffic Management Plan.

9 Geotechnical stability and Turbine Foundations

The geotechnical report provided with the original consent held by Ventus Energy for 22 turbines was able to provide sufficient information to conclude that the geotechnical stability would not create any adverse effects on the environment as a result of undertaking construction and operation of the turbines. It also considered that the effects of constructing and using the windfarm access roads were appropriate. The reduction in turbine numbers from 22 down to 8 taller turbines will result in a corresponding reduction in the length of windfarm internal roads and is expected to result in a similar set of geotechnical conditions.

The 2019 s127 application by TWF assessed the geotechnical stability effects of 11 turbines at a height of 172.5 m and a diameter of 155 m. The diameter of the updated eight turbine proposal is 163 m which represents a 5% increase in size. TWF states on page 8 of the AEE that the taller turbines will each require an 18 m x 18 m concrete foundation which is a relatively small increase from the consented 14 m x 14 m. Condition 36 in the existing set of consent conditions requires further subsurface geotechnical investigation and mapping of the windfarm site to ensure that all of the turbines are provided with a stable building platform. The results of this investigation

must be reported to the Council for approval prior to the start of construction. In my view, the introduction of fewer, taller turbines will not result in additional geotechnical effects that cannot be addressed by the condition and the Council certification that it requires.

Transportation Effects

The originally consented turbines allowed for transportation of turbines with a diameter of up to 100 m with 10 m ground clearance. The existing consent provides for transportation of such turbines in conjunction with consent conditions to preserve Council Roads.

The updated proposal is for larger turbines, thereby resulting in a change to how the turbines can be transported to the site. Advancements in turbine and transport technology may also contribute to a newer approach to how the wind turbines could be transported to site since the original consent was granted.

The transport information provided to Council has been technically reviewed by Thato Mariti, Transportation Engineer, BBO. Her memo is summarised below and a copy of her technical assessment is included as Appendix 8.

Mrs Mariti confirms that the following documents and items have been submitted by the applicant and reviewed as part of this process:

1. Taumatotara Wind Farm Application to change conditions of consent (July 2020):
This document contains proposed changes to the conditions of consent for the wind farm due to changes in both size and number of wind turbines.
2. Transportation of Turbine Components for Taumatotara Wind Farm Memo (July 2020):
This memo details the transportation logistics for the turbine components in support of change of conditions application.
3. Transportation Response to s92 – Taumatotara Wind Farm – RM200019 (December 2020):
This memo was a response addressing specific transport related information that was requested by WDC and submitters after reviewing document 1 and 2 above.
4. Transportation Response to s92 – Taumatotara Wind Farm – RM200019 (February 2021): Similar to the previous response, this document was a response to additional information requested from the applicant.
5. Bridge Review – Taumatotara Wind Farm (April 2022):
This document involves a review of bridges within WDC on the route that will be used for wind turbine transportation.
6. Turbine Dimensions:
This information details the dimensions of the wind turbines that will be installed for TWF.
7. Taharoa C Tower Test Run (July 2009):
This document presents the results of a tower test run conducted for the Taharoa C Wind Farm. The test was conducted to assess the ability of roads and bridges along between Waitomo Village and Taharoa Township to accommodate the oversized vehicles including the live weights of the turbine components.

These documents have been peer reviewed accordingly.

Firstly, Mrs Mariti commented on the adequacy of information provided as a part of the 2020 application noting that:

- Transportation will be made easier due to technological advancements in fabrication and transportation techniques however, the applicant has yet to provide a clear plan on how they intend to further disassemble the turbine components. While the proposed change of conditions will have fewer turbines, the new turbines will rather have large components; and the applicant has mentioned that these will be broken into smaller components which effectively result in more generate traffic movements.”
- The applicant notes in the application that it is not anticipated that road widening over that already approved for the existing consent will be necessary, including site access roads. Outside of Mrs Mariti’s memo, I add that a report provided by the Applicant from Kina Consulting Engineers (date 12 April 2022) notes that “significant work is required to strengthen bridge 7 to accommodate the loads. We recommend that a bypass and temporary bridge be established around bridge 7. This will prevent the need for significant extra investigation, and issues regarding the potential need to extend the effective life of this bridge.”
- However, Appendix 1 of the Kina Report also contains a marked-up plan for Bridge 7 showing some structural strengthening options. Confirmation on the applicant’s preferred solution was sought through a letter request for further information under s92 of the RMA dated (3 July 2023). In the corresponding response on behalf of the applicant, it was specified that it was their preference to strengthen bridge 7 and that any works will comply with Condition 20 of the existing consent that all WDC administered roads will remain open.
- The applicant should conduct a comprehensive route assessment, inclusive of detailed tracking curves, to demonstrate that the transportation of tower, nacelle, and blade components can be successfully accomplished without adverse effects on the environment per Conditions 22, 23 and 24.

Following an assessment on the adequacy of the information provided by the applicant, Mrs Mariti assessed the route of the turbines to the site, including port of origin which is proposed to be Maungatapu Port, Tauranga. Mrs Mariti goes on to comment on the Route Test Report which identified a need for mitigation measures associated with transporting the turbines to site on Council administered roads. These being:

- Widening of a roundabout circulating lane on Te Anga Road / Tumutumumu Road outside of Waitomo Caves, by 8m.
- Road widening at some isolated corners along the route to allow the passage of oversized loads.
- Transportation route may have a potential impact on some power lines along Taharoa Road.
- Highlighted the need for assessments and widening of few bridges on Te Anga Road to ensure that these bridges can safely accommodate the weight and dimensions of wind turbine components.

Mrs Mariti’s comments on the Transportation of Turbine Components for Taumatotara Wind Farm Memo (July 2020) highlights that although the reports adequately address the effects of transportation of large tower components along the route between port of entry and Taharoa Township, the reports were conducted over 15 years ago and do not account for any changes that have potentially occurred along the mentioned route in the intervening years. As such, Mrs Mariti’s memo recommended that an updated assessment of a tower test route be conducted prior to turbine component transportation to address any changes that may have occurred along the preferred route since the initial reports were produced. This updated assessment should take into consideration any route alterations for the intended purpose. Any mitigation measures

required (if any) should clearly demonstrated to the satisfaction of the Council. Furthermore, the proposed Tauranga Port route differs from the initially preferred one originating from New Plymouth Port and a high-level analysis of various ports of entry and the route options should have been conducted highlighting the associated challenges and considerations for each.

Mrs Mariti agrees that the existing road network from Waitomo Village to Taharoa Road intersection can accommodate over dimensioned vehicles and that the identified roading issues such as power lines are consistent with the report. The TWF has not yet addressed any mitigation measures for the identified risk locations and Mrs Mariti recommends that a route test is undertaken once the vehicle size has been confirmed and detailed route assessment conducted.

Mrs Mariti’s comments on the Bridge Review report note that that a detailed bridge assessment as required by the Council be conducted to determine the necessary works to strengthen the bridges along the route. The assessments should evaluate the structural integrity and capacity of these bridges and determine any necessary strengthening or modifications required to ensure their safe use for over-dimension and overweight loads, with specific reference to the related weights of the proposed wind turbine components. Full details of the required inspections and assessments are adequately described in Condition 23.

Submissions on the application related to Transport:

Of the 15 submissions received, six specified transportation effects as a concern. Table 7 below summarizes the key transportation concerns by those submitters, five of which opposed TWF.

Table 7: Transportation Effects Related Submissions (BBO Transport Memo, Appendix 8)

Summary of Submitters and key concerns			
Concerns Submitted	No. of Submitters	Oppose/Support	Wish to be heard
Lack of a Traffic Management Plan for review	2	Oppose	1
Insufficient Earthworks information is available for reviewing.	2	Oppose	1
No information about the impact of trucks on WDC roads	6	Oppose	5
Absence of documentation outlining the applicant's plans to reinstate road infrastructure affected by the project.	2	Oppose	1

Issues raised by submitters:

- Traffic management plan
 - Submitters 8 and 12 identified concerns about the lack of a Construction Management Plan (CMP) for both delivery and construction periods.
 - The peer review agreed that a CMP is required and should be adhered to for the safety of all users of the affected district roads. The requirements for a CMP are adequately outlined and covered under Condition 19.
- Earthworks
 - Submitters 1, 8, and 12 identified concerns about the lack of assessment of construction related effects and earthworks.
 - The applicant has provided the expected site generated traffic volumes during the construction phase. The memo notes that the uncertainty of actual construction traffic and the effects thereof at this point.

- The memo recommends that detailed information about earthworks and construction activities (construction phase) be submitted to the Council in line with the CMP detailed under Conditions 19-21.

Impact of Trucks to Council Roding Infrastructure

- Submitters 1, 5, 8, 12, and 15 stated that they are unable to understand the impact of trucks on the local road network due to a lack of information concerning the construction phase.
- The memo acknowledges that the applicant has provided the anticipated trip generation during both delivery and construction phase. The memo agrees that the applicant should submit a detailed route assessment addressing all potential impacts of TWF activities on the Council Roads prior to any turbine deliveries or construction. TWF has also stated in their s92 Transportation Response dated 6 July 2023 that a detailed route assessment will be required at a later stage following approval of this s127 application. Requirements related to this submission are adequately discussed under Conditions 19-25 of the existing consent.
- Reinstatement of the Council Road Infrastructure Post-Construction
 - Submitter 4 raised concerns of the lack of information on how the applicant intends to reinstate the road infrastructure, particularly the pavement and bridge structures after the completion of the project.
 - I agree that TWF has not submitted information regarding maintenance and reinstating of roading and infrastructure on the Council Roads. Mrs Mariti's memo recommends that TWF should conduct investigations including pavement deflection measurements and bridges review both before and after the construction period and make the necessary improvements (if any) to all the infrastructure in accordance with condition 26 of the existing consent.
 - It is worth noting that a bond of \$86,000 was initially stipulated under the 2006 conditions. Given the significant rise in construction costs due to inflation, I would recommend that the bond amount be adjusted to align with the current 2023 costs of the anticipated road maintenance.

It is noted that any use of public roads to access the wind farm site must first gain prior approval from the relevant Road Controlling Authority being NZTA and the Council. Over-dimension and over-weight permits will be required from both authorities, and also from Kiwirail and the various Lines Companies along the transport route. To accompany such applications, detailed assessments of the preferred route, including swept path analysis of track and trailer tracking, road closures necessary, timing will be needed.

In conjunction with the conclusions drawn from the submitters assessment, technical information provided, and the peer review undertaken by BBO on behalf of the Council, I conclude and recommend the following:

- Information submitted by TWF, which are high-level Memos of the TWF transportation effects on the Council Roads suggests that the current Council roading infrastructure is largely sufficient to accommodate the transportation of turbines, including construction-related activities for TWF, pending a detailed route assessment, compliance with consent conditions, and the necessary approvals from the Road Controlling Authority(s).
- There is no comprehensive general transport assessment report provided for the proposed activity. This should be provided prior to any turbine component deliveries or construction activities and should cover the following at the very least:

- A current route feasibility assessment for the proposed transporters to be used for the proposed size of wind turbine components. A report from 2009 for different sized components is not adequate to confirm the likely impacts of the haulage activities to site.
- Detailed design for all required road works along the transport route on Council Roads to accommodate the over dimension trucks. Detailed design for the necessary road and bridge works should be in line with the conditions 22, 23, 24 and 27.
- A comprehensive bridge assessment along the proposed route on the Council Roads should be conducted to the satisfaction of Conditions 23, 25 and 26.
- A CMP for both the turbine component deliveries and the construction phase should adequately satisfy Conditions 19-21 of the existing consent.
- A maintenance plan on the Council Roads during both the construction period and post construction should be addressed by TWF as per Conditions 22, 25 and 26 of the existing consent.
- TWF should also increase the 2006 bond amount under Condition 26 to bring it into line with the 2023 construction and maintenance costs given the 14 years that have elapsed since the original consent was granted. TWF are invited to propose an updated bond amount at the hearing.
- The submitters concern about the impact of TWF transport effects including the CMP and the Council Road maintenance should be adequately addressed by TWF through the detailed route assessment and CTMP prior to commencement of any project work.

Subject to the above recommendations in conjunction with compliance with the existing and proposed conditions, I am of the opinion that the transport effects from the proposal can be appropriately managed to be no more than minor.

Note*: The applicant is invited to comment on the quantum of the roading bond given inflation and the present day cost of road works maintenance and construction.

10 Aviation effects

The increased tip height results in an increased risk to aircraft. The risk to aircraft decreases in that the current proposal results in lower number of turbines from that that was originally consented. However, 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.

TWF has proposed that the updated determination and details on turbine dimensions can be sought upon the outcome of the decision on this application and propose that a condition be added to the consent conditions requiring a new determination be obtained from CAA.

I am satisfied that subject to the determination from the CAA as set out in Condition 33, the aviation effects of the increased tip height of the turbines and reduction in number of turbines will be appropriate to render effects to be no more than minor.

11 Noise Effects

Since the original consent was applied for in 2005, wind turbine technology has progressed to the point where larger turbines now generate similar or less noise than older, smaller turbines.

Ms Siiri Wilkening from Marshall Day Acoustics (MDA) was engaged by the Council to review the acoustic assessment undertaken by TWF and the corresponding conditions of consent that have been proposed. The assessment was based on a tip height of 180.5 m above ground level. The location of the turbines to the closest receivers has been used as measurement points with the receivers included dwellings from which written approval has been obtained, dwellings on the wind farm site as well as dwellings where noise effects must be assessed.

The closest dwellings at which effects must be assessed are more than 2 km from the closest wind turbine. Those are dwellings 22 to 25 on Taharoa Road and Taumatotara West Road. We understand that written approval has been obtained from the Stokes family (835 Taharoa Road) and the Smith family (189 and 313 Te Waitere Road) and therefore the effects on these dwelling must not be taken into consideration (section 95E(3)(a)).

Predicted Noise Levels

The assessment by Altissimo (item (d) in the list above) includes noise level predictions of turbine layout scenarios:

- 11 turbines with a hub height of 95 m and a sound power level of 103.9 dB LAW (a previous iteration not relevant now).
- 11 turbines with a hub height of 95 m and a sound power level of 107.2 dB LAW (the consented sound power level and previous layout).
- 22 turbines with a hub height of 65 m and a sound power level of 107.2 dB LAW (the consented sound power level and originally consented layout/height) (the original proposal from 2006).

Of the above scenarios, the closest to the proposed 8-turbine, 99 m hub height layout, is the 11-turbine scenario with the 95 m hub height, with the proposed sound power level of 107.2 dB LWA. For this scenario, the noise levels at all receivers are below 35 dB LA90(10 min). Such noise levels are within the most stringent noise limit of NZS6808, which is 40 dB LA90(10 min) or the background noise level LA90 + 5 dB, whichever is the higher.

With the proposed 8 turbines, with slightly higher hub height and the same sound power level, the noise levels would be the same or lower than predicted at all dwellings. The highest predicted noise levels are at house 22 (the Martin dwelling) at 32 dB LA90(10min), with all other dwellings predicted to receive noise levels below 30 dB LA90(10min).

This means that the wind farm will likely be largely inaudible, and only intermittently audible when there are still conditions at the dwelling location and windy conditions at the wind farm site. Altissimo concludes that increasing the turbine height will not materially change the sound level received at the affected properties, and therefore the acoustic effects of this alteration will be no more than minor.

MDA's assessment considered the four submissions that raised an issue with noise effects from the proposal.

- *Te Waitere View Limited (submitter 1)*
 - The submitter is concerned with noise from construction and operation of the wind farm. The concern is that wind farm noise will be at a level so that the submitter loses "the ability to hear the sea in the morning and evening".
 - The submitter is located approximately 3 km from the closest wind turbine and just under 8 km from the coast. At the distance from the closest turbine while potentially at times audible, will generally be inaudible and should not interfere

with the ambient noise environment. MDA consider that the wind farm will not result in the adverse noise effects that the submitter is concerned about.

- During construction, I do not consider that noise levels will have an adverse effect on the environment that is more than minor, as at the distance and the shielding afforded by the intervening terrain (e.g. where materials are transported along the road), noise levels will be well less than 35 dB LAeq and therefore, while potentially audible at times outside, will be generally inaudible.
- *Knight Family Trust (Submitter 4)*
 - The submitter seeks to understand the noise levels from the wind farm at their property and comments that no noise level survey has been undertaken. MDA note that noise level surveys only need to be undertaken where the predicted noise level from the wind farm is 35 dB LA90 or higher.
 - The submitter property is located approximately 4 km from the closest wind turbine. MDA estimate that the noise levels at this property would be less than 25 dB LA90 which will be largely inaudible. Based on this noise level, MDA consider that the wind farm will have negligible noise effects on this property.
- *Leslie Gaston (Submitter 5)*
 - The submitter is concerned with the noise pollution from trucks on the public roads when delivering the wind farm components. I understand that delivery will occur via Te Anga Road rather than through Marokopa Road. Ms Wilkening notes that traffic is intended to and permitted to use public roads and that audibility is not an appropriate design criterion for traffic on the road. As such, noise effects from traffic generated by the proposal during construction / delivery cannot be considered. See map in Appendix 9 for separation distances from turbines to surrounding houses.
 - Trucks on the public road are not governed by noise limits in the ODP. MDA advise that best practice to mitigate traffic noise would be to undertake heavy vehicle movements during day time to avoid night-time noise impacts.
- *Marokopa Paa Environmental Team (Submitter 6)*
 - The submitter queries the noise levels from the turbines. The submission was unclear if this information is sought for the environment as a whole or at a specific location in relation to the Marokopa Paa.
 - As discussed, any receiver more than 2km from the closest wind turbine is likely to receive noise levels below 35 dB LA90 which is a relatively low level that is unlikely to cause adverse effects on the environment. Any locations further away will receive lower noise levels, and therefore negligible noise effects where the wind turbines will be largely inaudible (see map in Appendix 9).

Conclusion of Noise Effects on Submitters

Based on the assessment provided by TWF and subsequent review by MDA, I am satisfied that the noise effects to the submitters, and all sensitive receivers can be adequately avoided, remedied or mitigated through the imposition of appropriate consent conditions, which will result in no more than minor adverse effects on the environment. The proposed conditions related to Noise are outlined in the proposed condition set in Appendix 11 as draft conditions 7 to 17.

12 Shadow Flicker:

Shadow flicker was previously considered to potentially affect properties with 2km of a wind turbine. This was the accepted practice when the original application and tip height increase amendment were submitted. However, since that time the understanding of shadow flicker has been refined to be a product of the maximum blade chord (or width). Turbine blades of the modern design have become narrower relative to the overall size of the machine. A typical max chord for the larger machines that could be used at this site is 4m.

As the blade is estimated at a maximum of 4 m for this assessment and there are no third-party houses within 1060 m of the proposed eight wind turbines, shadow flicker effects are considered negligible. Regardless, this distance is less than the shadow flicker effect likely from the original consented turbines of 1166 m.

Accordingly, I adopt the findings of the applicant's assessment that the change in number of turbines and increase in tip height to 180.5 m will not create any additional adverse effects on the environment over and above what has already been authorised by the existing consent.

13 Landscape and visual effects:

The landscape and visual assessment has been reviewed by Dave Mansergh, Director, Mansergh Graham Landscape Architects who has had experience in windfarm assessments previously. I have summarised his memo below and include a copy of his technical assessment and addendum as Appendix 5.

Mr Mansergh has reviewed the Landscape and Visual Assessment (LVA) Proposed Variation to Consent: Revision 3. 22 March 2021 prepared by WSP. His review has drawn from the guidance provided by the Te Tangi a te Manu Aotearoa New Zealand Landscape Assessment Guidelines July 2022 in how to conduct peer reviews. Mr Mansergh also visited the site on 19 November 2019 in the company of Mr Dawson and TWF.

Mr Mansergh identified some concerns with the approach taken by WSP, including a failure to identify or assess the wider values associated with the landscape (aside from the fact that the site is not categorised as an outstanding natural feature or landscape in terms of s6 of the RMA) and how the increase in turbine height could affect those values. Mr Mansergh also concludes that the LVA prepared by the WSP does not provide adequate support for its argument that the landscape effects will be moderately positive. He also disagrees with the LVA conclusion that a decrease in adverse effects in one area can discount an increase in adverse effects at another location to result in an "average effect".

Mr Mansergh generally agrees with the LVA findings with respect to views from public viewpoints such as roads. From these locations, views of the windfarm will often be limited due to winding roads, roadside vegetation, topography resulting in a "transient" view. He also agrees that it is unlikely that any additional mitigation measures could be imposed on the development that would lessen its effects from a landscape and visual perspective. However, Mr Mansergh concludes that the conclusions of the LVA are not adequately supported by the analysis contained in the LVA report and it is difficult to understand how the various assessment ratings have been reached by WSP.

A number of submissions referred to landscape and visual effects but did not provide any further detail surrounding their concern.

Mr Mansergh concludes that the LVA provided by TWF provides insufficient information to fully understand the nature of the application and the effects that are likely to arise from it. He considers that the effects of the increase in size for the remaining 8 turbines may be underestimated and that they may be more noticeable and dominant from viewpoints to the north. The assessment of landscape and visual effects is more complex and should include looking at both the number and size of the turbines in weighing up their landscape and visual impact.

While he does not conclude that the recommendations in the LVA are necessarily incorrect, he notes that the LVA conclusions are not supported by the data and analysis to allow an independent reviewer to apply the same approach and reach the same conclusion. In particular, the focus of the LVA is on the southern end of the site, with less analysis of the northern part of the visual catchment which is where the 8 remaining turbines are to be located.

Mr Mansergh has also reviewed the memo prepared by Mike Moore Landscape Architect, who has now replaced WSP as the visual assessment expert. Mr Moore concludes in his "will say" memo dated 13 September 2023 that the overall visual effects will be positive and in locations where there are visual effects, that they will be no greater than adverse/low (minor). Mr Mansergh notes that the Mike Moore "will say" statement does not contain enough information for those findings to be reviewed and verified. Mr Moore is invited to provide sufficient detail in his evidence to enable his findings to be verified while also confirming the extent to which he has relied on the evidence original WSP assessment work.

On this basis, TWF is invited to provide further information to clarify these outstanding matters at the hearing, specifically:

- The way in which the landscape architect has reached the effects conclusions and assessment ratings through his report.
- The extent to which Mr Moore has relied on the original WSP LVA and the extent to which he has undertaken his own independent assessment in sufficient detail to be verified and reviewed by Council.

Provided TWF is able to adequately respond to the two matters above and Mr Mansergh is satisfied that the findings can be adequately supported by the analysis, I consider that any change in the landscape effects arising from the variation will be minor.

14 Ecological effects:

Leigh Bull, an Ecologist from BlueGreen Ecology Ltd with significant experience in wind farms in New Zealand has undertaken an expert peer review of the ecological reporting provided by TWF. I have provided below a summary of the ecology peer review conclusions with her full technical memo in Appendix 7 to this report.

Ms Bull notes that a substantial time period has elapsed since the granting of the original wind farm consent in 2006 and the practices associated with ecological assessments for wind farm developments have progressed significantly over that time. Importantly, Ms Bull notes that

AUSWEA (2018) produced best practice guidelines for ecological assessments for wind farms which recommend the following approach:

1. a desktop review of available information to identify any potential issues that may prevent the project being approved;
2. field surveys to map the vegetation and identify flora and fauna species;
3. species-specific studies to obtain more information about significant flora and fauna (particularly birds and bats) that may be at risk from the development or to avoid them or develop mitigation strategies;
4. development of avoidance, mitigation and offset strategies to minimise impacts on species if required; and
5. development and implementation of monitoring programs for the construction and operational phases of the wind farm development.

While some ecological assessment and reporting was been undertaken by TWF, Ms Bull concludes that this has been insufficient to confirm the number or type of threatened or at risk species present across the wind farm site and therefore the most appropriate mitigation that should be applied.

The specific conclusions in Ms Bull's memo are set out below:

"The original (2006 and 2011) assessments only alluded to bats being present in the wider area, furthermore they considered the risk of bats hitting the structures, blades or power lines was extremely low. The first ecological assessment for the current application only undertook a desktop approach (no field data) which then elicited my initial s92 recommendations. Through the s92 process, long-tailed data has been collected showing the presence of this species across the site. However, the survey was only undertaken during one of the key periods of bat activity. Still no appropriate / targeted NZ falcon surveys have been undertaken. In addition, studies arising since the time of the original assessment have shown that bats populations can be impacted by wind farm developments. It remains my opinion that effects to bats and falcon of the proposed changes to the windfarm cannot be appropriately judged, and that the effects management regime cannot be adequately considered. On this basis, turbine curtailment should be given due consideration as a requirement to manage potential effects on bats.¹

This conclusion raises questions in relation to the appropriateness of the mitigation proposed by TWF with respect to bats and New Zealand Falcons along with other threatened and at risk species. Without more certainty around the presence or absence of bats and New Zealand Falcon across the windfarm site and more specifically around the eight remaining turbines, it is difficult to confirm how the mitigation and offset compensation proposed by the applicant is appropriate or sufficient.

The reduction in the number of turbines from 22 to 8 should result in a reduction in adverse effects on avifauna, however it is not clear from the information provided by the applicant that the effects management hierarchy has been appropriately implemented with respect to the investigations completed, the avoidance mechanisms adopted or the conditions proposed. Therefore, the applicant has not sufficiently demonstrated that they have fully sought to avoid, remedy or mitigate adverse effects on avifauna for those 8 turbines that remain as part of this application.

¹ Appendix 7: Technical memo of Leigh Bull, Blue Green Ecology, dated 29 September 2023, para 33 - 38
RM200019: s42A Report

In addition, the latest variation application (which removed turbines 2, 4 and 9) while retaining turbines 1, 7 and 11 where the highest levels of bat activity were recorded by the applicant. This is illustrated in Table 8 below².

Table 8 – Turbines and bat presence (Leigh Bull)

Turbine	Distance (m) to SNA	Bat detector	Bat detect distance (m)	Ave passes / night
6	127	4	151	Failed
1	469	1	245	8.75
11	104	9	108	6.15
7	19	5	40	0.94
2	220	2	124	0.93
3	49	2	128	0.93
4	38	3	145	0.73
5	98	3	88	0.73
10	125	8	217	0.54
8	86	6	100	0.4
9	267	7	159	0

It is not clear on the rationale behind the removal of turbines 2, 4 and 9 as opposed to removing other turbines where the initial bat survey showed a much higher number of average bat passes per night. TWF is invited to comment on this matter further in their evidence at the hearing.

On the basis of Ms Bull’s technical memo, I have provided an amended set of recommended conditions (see Appendix 11). Specifically, these additional ecology conditions address the lack of a baseline study for NZ Falcon, the lack of a standardised post construction mortality monitoring condition for bird and bat strikes and the specific exclusion of any modification or restriction on the operation of the wind turbines. Since 2006, advances in the area of turbine curtailment have increased significantly resulting in the ability to consider this as a legitimate mitigation option.

As Ms Bull has noted, the Department of Conservation have recently issued the New Zealand Bat Recovery Group Information Sheet “Bats and wind farms in New Zealand, Version 5.0 dated October 2023. Ms Bull has helpfully referenced her comments back to the relevant section of the DoC Information sheet where relevant.

On this basis, I consider that the additional conditions proposed by Ms Bull³ are appropriate to address the gaps in information provided by TWF with respect to the effects of the varied windfarm configuration on avifauna. In particular, I consider that the development of mitigation approaches in collaboration with the Department of Conservation, including curtailment approaches if warranted, is appropriate.

15 Cultural / Iwi consultation

A number of submissions were received from submitters comprising local iwi which noted a lack of engagement and the lack of a Cultural Impact Assessment for the project. Other submissions raised concerns over potential impacts on iwi, hapu and whare, cultural, social, economic and environmental interests. It was also noted that there was no assessment against the Maniapoto

² Appendix 7: Technical memo of Leigh Bull, Blue Green Ecology, dated 29 September 2023, para 32

³ Appendix 11 – draft conditions 37 to 52

Environmental Management Plan. TWF has provided a summary of engagement actions, dates and responses in the 15 September 2023 variation application. This information indicates a number of engagement actions and attempts to engage but provides no conclusions or comments. The last few entries under the 2023 actions seem to indicate that the development of a CIA (Cultural Impact Assessment) was underway but no indication of timing has been provided by the TWF. No additional information has yet been provided to clarify progress with this issue.

TWF is invited to share any updated information that has been obtained through the ongoing engagement in their evidence at the hearing. In my opinion the adverse effects on matters of cultural significance cannot be appropriately assessed until additional information is provided at the hearing.

16 General submission issues, miscellaneous

A number of the submissions have raised issues that do not fit within the main issues listed above. I have listed these below and discuss each of them below.

Submitter # 2: David Galbraith raised a concern in relation to what will happen with used turbine blades after they have been replaced. He also questioned the amount of energy used to construct the turbines.

Discussion: It is anticipated that any turbine blades that are replaced in the future will need to be removed from the site and taken to an appropriate facility for recycling or disposal. TWF is invited to comment on their plans with respect to this issue.

Given that this application is a variation to an existing resource consent that has not yet lapsed, the question of energy use in turbine construction is not relevant. The consent holder has a consent that would enable a 22 turbine wind farm to be constructed immediately and have applied to vary that consent to remove 14 turbines while making the remaining 8 turbines larger. As such, s127 of the RMA limits the discretion of the Council to assessing only those effects that are materially different to those that were originally consented in 2006 and then varied in 2011. Given the substantial reduction in the number of turbines proposed for the project, this question becomes immaterial as the overall number of turbines and therefore physical construction required, is reduced.

Submitter # 4 Julie and Brett Knight: have raised concerns over the disposal of used wind turbine blades and components, the visual pollution of red flashing lights at night and a failure to enable new landowner who had bought since the granting of the original consent to voice any concerns over that original process.

Discussion: It is anticipated that any turbine blades that are replaced in the future will need to be removed from the site and taken to an appropriate facility for recycling or disposal. The applicant is invited to comment on their plans with respect to this issue.

The consent holder holds a valid resource consent from 2006 (varied in 2011) which has not yet lapsed. The statutory process related to this consent took place some 14 years ago and there are no statutory opportunities to revisit this process.

Submitter # 6 – Marokopa Pa & #8 Roimata Harmon: These submitters raised concerns with water quality and soil stability impacts, safety concerns, economic benefits, compliance with regulations and the consideration of alternatives.

Discussion: Water quality and soil stability issues have been addressed through the Waikato Regional Council consent which was granted on 20 August 2020 with a term of 15 years and a lapse period of 10 years. A copy of this consent is included in Appendix 3. Given the wind farm is located within large rural properties with significant distances to the nearest neighbours, safety concerns are restricted to interactions between the windfarm construction activities and the local roading network. These matters have been addressed by the applicant and are covered by the transportation peer review in this report and draft conditions 18 to 28 in Appendix 11.

The economic benefits of the project were canvassed as part of the original wind farm consent process in 2006 and this process is only able to assess the adverse effects of any differences between the effects of the consented windfarm and the proposed variation.

A resource consent is granted on the basis of an assumption that a consent holder will comply with the conditions of that consent. The consent and its set of conditions forms a legally binding agreement between the Council and the consent holder in relation to the project.

Given the application is a variation on an existing consented windfarm, there is no requirement to assess alternative sites or technologies.

17 Section 104(1)(b) - Relevant Provisions

Pursuant to s104(1)(b), in considering an application for a resource consent, regard must be had to the following relevant provisions of section 7.2. The provisions considered relevant are restricted to those relevant to the change in conditions of the resource consent, and not to the unchanged aspects of the existing application.

17.1 National Policy Statements and National Environmental Standards

A number of National Policy Statements (NPS) have been issued since the original consent was granted in 2008. These comprise:

- National Policy Statement for Fresh Water Management
- National Policy Statement for Renewable Electricity Generation
- National Policy Statement for Electricity Transmission
- New Zealand Coastal Policy Statement
- National Policy Statement on Urban Development Capacity
- National Policy Statement for Highly Productive Land
- National Policy Statement for Indigenous Biodiversity
- National Policy Statement for Greenhouse Gas Emissions from Industrial Process Heat

It should be noted that the NPS for Highly Productive Land, Indigenous Biodiversity and Greenhouse Gas Emissions from Industrial Process Heat came into effect after this application was lodged, and have therefore the application has not been assessed against these NPSs. The only relevant National Policy Statement is the National Policy Statement for Renewable Electricity Generation 2011 (NPSREG). The NPSREG sets out an objective and policies to enable the sustainable management of renewable electricity generation under the RMA. The NPSREG came into effect on 13 May 2011.

The NPSREG has the following Objective: *To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation.*

The Taumatotara Wind Farm has an existing consent granted in 2006 (and varied in 2011) that provides for the development of a 22-turbine wind farm. The current variation before the Council seeks to amend that proposal to remove 14 wind turbines from the project leaving 8 remaining turbines, largely in the northern part of the site. TWF has provided an assessment of the relevant policies in the NPSREG for the current proposal. For the purposes of this report, I have adopted their assessment as contained on page 18 of the AEE and consider the proposal is entirely consistent with this NPSREG.

17.1.1 Waikato Regional Policy Statement and Regional Plan

The Waikato Regional Policy Statement (WRPS) lists Energy as on Objective:

- *Objective 3.5 Energy*
Energy use is managed, and electricity generation and transmission is operated, maintained, developed and upgraded, in a way that
 - a) increases efficiency;*
 - b) recognises any increasing demand for energy;*
 - c) seeks opportunities to minimise demand for energy;*
 - d) recognises and provides for the national significance of electricity transmission and renewable electricity generation activities;*
 - e) recognises and provides for the national, regional and local benefits of electricity transmission and renewable electricity generation;*
 - f) reduces reliance on fossil fuels over time;*
 - g) addresses adverse effects on natural and physical resources;*
 - h) recognises the technical and operational constraints of the electricity transmission network and electricity generation activities; and*
 - i) recognises the contribution of existing and future electricity transmission and electricity generation activities to regional and national energy needs and security of supply.*

The proposed amendment will increase efficiency of energy production by producing more electricity across fewer turbines. This will help further the provision of renewable energy production that is not from fossil fuels while providing for regional and national energy needs. Accordingly, I find that the proposal is consistent with the stated Objective of the WRPS in particular by providing for additional energy produced from a renewable resource while addressing adverse effects on environment.

17.1.2 Operative Waitomo District Plan Objectives and Policies

TWF's agent has provided an assessment of the relevant ODP objectives and policies. The key objectives and policies noted by TWF as being relevant are set out below:

- *Objective 11.3.1 – To promote the Rural Zone as a productive working environment where the use and development of its natural resources, consistent with meeting environmental safeguards, is encouraged.*
- *Objective 11.3.7 – To promote efficient and effective management of the District's physical resources of roading, land drainage, and bulk services.*
- *Objective 11.3.8 – To promote use of rural land in a manner which encourages maintenance and enhancement of amenity values of the rural environment, protects outstanding natural features and landscapes from inappropriate use and development, and preserves the natural character of the coastal environment, wetlands, lakes and rivers, and their margins.*
- *Objective 11.3.9 – To encourage maintenance and enhancement of rural visual character.*
- *Objective 11.3.11 – To ensure that rural activities and lawfully established industrial activities in the rural area are not adversely affected by the location of new activities with expectations of high amenity values.*

In addition I wish to add:

- *11.3.4 To protect areas of significant indigenous vegetation and significant habitat of indigenous fauna.*

As set out above in my assessment of the effects arising from the variation, it is only the difference in effects between the 2011 consented windfarm and the latest variation application that can be assessed. The removal of 14 turbines with the remaining 8 turbines to be up to 180.5 m high with consequential changes in turbine blade length, overall height, foundation size and transportation logistics has been carefully reviewed by the expert s42A team.

In terms of transportation, the expert peer reviewer⁴ concluded that the environmental effects of the proposed changes can be addressed within the existing transport conditions and the requirement for various management plans to be submitted for certification prior to activities commencement.

In terms of noise, the expert reviewer⁵ concluded that *"we are now satisfied that the proposed wind farm can comply with the relevant noise limits, and that the effects would be insignificant, and generally inaudible, at most of the closest dwellings from which written approval has not been obtained."*⁶

In terms of landscape, the expert peer reviewer⁷ noted that sufficient information has been provided to understand the nature of the application and the effects that are likely to arise. He also concurred that the approach taken for the assessment of public views was supported and that these would be mostly transient and expected to have lower viewer sensitivity. However, he did have residual questions surrounding the visual effects ratings and while *"this does not*

⁴ Thato Mariti, BBO

⁵ Siiri Wilkening, Marshall Day Acoustics

⁶ Pg 1, Noise expert peer review memo, Marshall Day Acoustics, dated 25 September 2023 in Appendix 6

⁷ Dave Mansergh, Mansergh Graham Landscape Architects

necessarily mean that the conclusions reached in the LVA are incorrect, rather it means that the conclusions reached are not sufficiently supported to allow an independent reviewer to apply the same approach and reach the same conclusions.” Specifically, the expert review noted that *from it, the premises and weighting applied during the assessment means that the effects of the increase in the size of the proposed turbines are underestimated.*⁸ On the basis that TWF is able to provide additional clarity on these matters in their evidence at the hearing and Mr Mansergh is satisfied that the conclusions in the LVA are correct, then I consider that the adverse effects on the environment of the variation on landscape and visual amenity will be no more than minor.

In terms of ecology, the expert peer reviewer⁹ noted the absence or lack of background data on bats and New Zealand Falcons meant that effects on the environment of the proposed variation on these species could not be appropriately assessed. This means that the appropriateness of the effects management regime proposed by TWF could not be adequately assessed. The ecology peer reviewer has proposed a number of additional ecology conditions requiring the collection of baseline presence/absence data on bats and New Zealand Falcons prior to the commencement of construction, improved monitoring post construction and consideration of measures such as curtailment (in conjunction with the Department of Conservation) should adverse effects on bats and New Zealand falcons arise as a result of the windfarm operation. On the basis of these additional conditions being imposed, I consider that adverse effects on ecological matters from the variation can be appropriately mitigated such that any adverse effects will be minor.

The removal of 14 turbines results in a decrease in the amount and area of earthworks across the site. While the increased blade length could result in some additional road widening required along the transport route leading to the site, this is likely to be minimal provided that TWF can secure the blade lifting transporter they have proposed.

In conclusion and taking into account the provisos set out above, it is my opinion that the variation proposal will be consistent with all of the relevant objectives and policies set out in the Rural Zone provisions of the ODP. The amended set of draft consent conditions are included in Appendix 11).

17.2 Section 104(1)(c) – Other Matters

17.2.1 Treaty Settlement Acts – Areas of Interest (AOI) or Statutory Acknowledgement Area

No Areas of Interest of Statutory Acknowledgment Areas will be affected by the proposed activity.

18 PART 2 MATTERS

The Court of Appeal's decision in *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 was released on 21 August 2018. The Court of Appeal held that the Supreme Court's rejection in *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38 (“*King Salmon*”) of the “overall broad judgment” approach in the context of plan provisions applied in the particular factual and statutory context of the NZCPS which, the Supreme Court confirmed, already reflects Part 2 and complies with the requirements of the RMA. The Court of Appeal did not consider that the Supreme Court in *King Salmon* “intended to

⁸ Page 15, Landscape peer review, Mansergh Graham Landscape Architects, 13 September 2023, Appendix 5

⁹ Dr Leigh Bull, Blue Green Ecology

prohibit consideration of Part 2 by a consent authority in the context of resource consent applications (paragraph [66])”.

In the context of resource consents, the Court of Appeal determined that:

- (a) *RMA decision makers should usually consider Part 2 when making decisions on resource consents (this is the implication of the words “subject to Part 2” in section 104); and*
- (b) *However, doing so is unlikely to advance matters where the relevant plan provisions have clearly given effect to Part 2, or where it is clear that the plan is “competently prepared” with “a coherent set of policies” such that there is no need to refer to Part 2.*

The variation application was formally lodged with Council on 5 July 2020 and therefore precedes the notification of the Proposed Waitomo District Plan on 20 October 2022 and has therefore not been considered in assessing this application. As the ODP does not give effect to various higher order policy documents it is considered that it has not been competently prepared in accordance with Part 2 of the RMA. Further, the ODP was prepared well before the *King Salmon* decision. As such there can be no certainty that it is a competently prepared plan. Accordingly, it is appropriate to provide an assessment of the application against Part 2 below.

18.1 Section 6 – Matters of National Importance

Section 6 requires that Council shall recognise and provide for the following matters of national importance:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
- (f) *The protection of historic heritage from inappropriate subdivision, use and development.*
- (g) *The protection of recognised customary activities.*

The project is not in the coastal environment and is not in an area noted in the ODP as an outstanding natural features or landscape overlay. Minimal significant indigenous vegetation will be removed, and the application will not affect any lakes, rivers or wetlands. There are no other matters of national importance under s6 that are relevant to the consideration of the proposal in my view.

TWF has been engaging with tangata whenua on an ongoing basis and is invited to report on this engagement further at the hearing. In particular, TWF is invited to report on any proposed conditions recommended by tangata whenua which should be applied to the consent to ensure a greater degree of safety for the relationship of Māori and their culture and tradition with their ancestral lands, water, sites, waahi tapu and other taonga.

18.2 Section 7 – Other Matters

Section 7 requires that Council shall have particular regard to a number of other matters:

Section 7 – Other Matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to –

- (a) Kaitiakitanga*
- (aa) The ethic of stewardship*
- (b) The efficient use and development of natural and physical resources*
- (ba) The efficiency of the end use of energy*
- (c) The maintenance and enhancement of amenity values*
- (d) Intrinsic values of ecosystems*
- (e) repealed*
- (f) Maintenance and enhancement of the quality of the environment*
- (g) Any finite characteristics of natural and physical resources*
- (h) The protection of the habitat of trout and salmon*
- (i) The effects of climate change*
- (j) The benefits to be derived from the use and development of renewable energy*

In this case, sections (a, (aa), (c) and (f) are relevant to consideration of the proposal.

(a) Kaitiakitanga and (aa) the Ethic of stewardship

This matter must be assessed in relation to the difference in effects between the consented and the proposed activity. As noted above, TWF has been engaging with tangata whenua for some time and is invited to report at the hearing on the outcomes of that engagement, particularly around any conditions that are invited to address the matters in s7(a) and (aa).

(c) and (f) Maintenance and Enhancement of Amenity Values & Quality of the Environment

In terms of the maintenance and enhancement of amenity values (7(c)) and the maintenance and enhancement of the quality of the environment (7(f)) there has been an assessment of landscape and visual effects. Noting that only the adverse effects of the proposed changes to the consented activity can be taken into account and assuming that TWF provides additional clarity on the analysis of the effects ratings associated with the larger turbines, I consider that s7(c) and (f) have been considered in this assessment.

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

The amended proposal will deliver renewable energy from 8 turbines and is therefore consistent with s7(j) due to the benefits derived from the windfarm, as demonstrated by the assessment of positive effects outlined in this report.

Taking the above into consideration, it is my opinion that the proposal meets the relevant principles of s7.

18.3 Section 8 – Treaty of Waitangi

Section 8 requires that the principles of the Treaty of Waitangi be taken into account.

TWF has commenced engagement with tangata whenua and has indicated in the latest package of information provided on 15 September 2023 that this engagement has been ongoing and that a Cultural Impact Assessment is underway. TWF is invited to report further on this matter at the hearing.

However, on the basis that the application is a reduction in the size of the windfarm from its originally consented 22 turbines to 8 turbines and that the consideration of effects is limited to the difference in effects between the consented and varied proposal and that appropriate engagement has been ongoing between the applicant and tangata whenua to understand their concerns, I consider that the principles of the Treaty of Waitangi have been taken into account in this process.

18.4 Section 5 - Purpose

As stated above, s6, 7 and 8 all serve to inform the analysis and consideration of whether the purpose of the RMA under s5 will be achieved by the proposal. S5 is set out as follows and the matters within it are considered below:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while -*
 - (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

The overriding purpose of the RMA is 'to promote the sustainable management of natural and physical resources'. It is my opinion that the proposal does provide for people and communities and their social, economic and cultural wellbeing while promoting the sustainable management of the natural (land) or physical (infrastructure) resources. The proposal will enable the development of a renewable energy facility to provide additional electricity generation from a renewable source, the wind.

Having regard to the above assessment it is concluded that the proposal is consistent with the principles (sections 6 to 8) of the Resource Management Act 1991. This is provisional on the following matters:

1. the effects on landscape matters being appropriately addressed by the applicant at the hearing,
2. the additional ecology conditions being accepted, and
3. the applicant demonstrating that cultural/iwi effects can be appropriately addressed by the applicant at the hearing.

Overall and on the basis that these provisos are satisfactorily addressed at the hearing the application is considered to meet the relevant provisions of Part 2 of the RMA as the proposal achieves the purpose (section 5) of the RMA being sustainable management of natural and physical resources.

19 RECOMMENDATION

On the basis that those issues requiring clarification are addressed further by the applicant at the hearing, specifically the additional ecology conditions, the adequate addressing of cultural / iwi effects and the confirmation on the rating and significance of the landscape effects, I believe the proposed variation application is acceptable subject to compliance with the suite of existing, amended and proposed conditions contained in Appendix 11. Subject to these provisos being addressed, I consider that the proposal is consistent with relevant objectives and policies of the ODP, as well as being consistent with the Waikato Regional Policy Statement and all other relevant matters.

In my view, the proposed change to consent conditions pursuant to s127 of the RMA meets the purpose and principles of Part 2 of the RMA and therefore subject to the conditions and advice notes recommended in Appendix 11, the proposed change to consent conditions can be granted under the Operative Waitomo District Plan.

Reporting Officer:



Chris Dawson
Consultant Planner

Dated: 13 October 2023

Approved By:



Alex Bell
General Manager – Strategy & Environment
Waitomo District Council

Dated: 13 October 2023

Appendix 1
2006 windfarm decision



Appendix 2
2011 windfarm variation decision



Appendix 3

WRC consent 2020



Appendix 4

Summary of submissions



Appendix 5

Landscape and Visual Assessment



Appendix 6

Noise Assessment



Appendix 7

Ecology Assessment



Appendix 8

Traffic Assessment



Appendix 9

Separation Distance Map



Appendix 10

Applicant's draft conditions



Appendix 11

S42A report draft conditions



Appendix 12

Notification decision

