

Application to vary resource consent RM050019 by Taumatotara Wind Farm Limited under  
s127 of the Act

**NOTE TO COMMISSIONER ON PLANNING ASSESSMENT OF PART 2 AND SECTION 31 OF  
THE RMA IN RELATION TO THE T4 S127 APPLICATION**

1. You have asked me to provide a planning assessment of the relevance of Part 2, and in particular section 6(c) of the Act to biodiversity matters, and also the relevance of s31.
2. When considering an application for a resource consent and any submissions received, your decision must be subject to Part 2 of the Act.

**Part 2 section 6(c)**

3. Section 6 of the Part 2 deals with matters of national importance and (c) is:

*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:*

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

4. Under section 104 when considering this application, you must have regard to any relevant NPS, RPS, and any plan or proposed plan.
5. Under Section 86B(3) of the Act, a rule in a proposed plan has immediate legal effect if the rule (b) protects areas of significant indigenous vegetation, or (c) protects areas of significant habitats of indigenous fauna;
6. With the above in mind, I have undertaken a planning assessment of the relevance of *significant indigenous vegetation*, and *significant habitats of indigenous fauna*, to the application.

**Significant Indigenous Vegetation**

7. "Indigenous vegetation" is not defined in the Act, but is defined in the NPSIB as:

*indigenous vegetation means vascular and non-vascular plants that, in relation to a particular area, are native to the ecological district in which that area is located*

8. And SNA, or significant natural area, means:

*(a) any area that, after the commencement date, is notified or included in a district plan as an SNA following an assessment of the area in accordance with Appendix 1; and*

*(b) any area that, on the commencement date, is already identified in a policy statement or plan as an area of significant indigenous vegetation or significant habitat of indigenous fauna (regardless of how it is described); in which case it remains as an SNA unless or until a suitably qualified ecologist engaged by the relevant local authority determines that it is not an area of significant indigenous vegetation or significant habitat of indigenous fauna.*

9. So, I conclude a SNA contains significant indigenous vegetation, and under 3.9 of the NPSIB, councils are required to identify SNAs in their district, including mapping and describing them.
10. Do either the Operative or Proposed Waitomo District Plans map SNA's? And do they contain SNA rules?
11. The Proposed Plan contains SNAs, but not the Operative one. The Proposed Plan denotes six SNAs in the vicinity of the proposed 8 turbine wind farm (5 of local significance, 1 of regional significance). None of the turbines are proposed to be located within these SNAs. The turbines are located along the top of ridges, with the SNAs generally being on the slopes leading up to the ridges. No works are proposed within SNAs.
12. I note the Operative District Plan contains an objective in the Rural Zone provisions that mirrors Section 6(c) of the Act and reads as follows:
 

*11.3.4 To protect areas of significant indigenous vegetation and significant habitat of indigenous fauna.*
13. This objective is supported by the following policy:
 

*11.4.10 To avoid, remedy or mitigate the adverse effects of removal of areas of significant indigenous vegetation and significant habitat of indigenous fauna.*
14. I have read through the relevant objectives, policies and rules of Chapter 26, Ecosystems and Indigenous Biodiversity section of the Proposed District Plan. They are generally focussed on recognising and protecting the values and characteristics of SNAs, including maintaining, protecting, and enhancing them. The proposed T4 eight turbine wind farm is not proposing in any way to locate in, alter, remove vegetation or otherwise threaten the existence of the SNAs located in the general vicinity of the turbines.

15. I therefore conclude that, in accordance with Part 2, the protection of areas of significant indigenous vegetation is not threatened by the application and thus the application is consistent with Part 2.

**Significant habitats of indigenous fauna**

16. “Significant habitats of indigenous fauna” is not defined in the Act, although “habitat” is defined in the NPSIB as:

*habitat means the area or environment where an organism or ecological community lives or occurs naturally for some or all of its life cycle, or as part of its seasonal feeding or breeding pattern; but does not include built structures or an area or environment where an organism is present only fleetingly.*

17. The last sentence is interesting as habitat excludes built structures and wind farms are built structures. By applying this definition, the proposed wind farm cannot be a “habitat”, although the farmland around it could be.

18. The Waikato RPS provides for the protection of habitat as follows:

***ECO-P2 – Protect significant indigenous vegetation and significant habitats of indigenous fauna***

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

19. Significant habitat is not specifically defined in the RPS but Appendix 5 contains information at APP5 “Criteria for determining significance of indigenous biodiversity”. APP% says:

*To be identified as significant an area needs to meet one of more of the criteria identified in the table below. Areas of significant indigenous biodiversity shall not include areas that have been created and subsequently maintained for or in connection with:*

- *artificial structures (unless they have been created specifically or primarily for the purpose of protecting or enhancing biodiversity).*

20. Table 28 - Criteria for determining significance of indigenous biodiversity – says in assessing ecological values, under section 3 of the table,

*it is vegetation or habitat that is currently habitat for indigenous species or association of indigenous species that are classed as threatened or at risk.*

21. Bats are classed as threatened. Using the NPSIB definition of habitat above, the farmland outside the wind farm can be considered to be bat habitat.
22. However, under section 61(1) of the Act a regional council must prepare and change its regional policy statement in accordance with a national policy statement, and at 62(3), a regional policy statement must give effect to a national policy statement. The Waikato RPS is consistent with this direction set out in clause 19 above. So applying the NPS and the RPS habitat excludes built structures. My analysis is that the NPSIB does not apply to renewable electricity generation activities and the RPS does not include artificial structures and in my opinion the same applies to the District Plan. In my opinion the wind turbines are not within a bat habitat. The same assessment can be applied to any objectives, policies or rules applying to habitat in the proposed district plan.
23. I conclude that, in accordance with Part 2, the protection of areas of significant habitats of indigenous fauna are not threatened by the application and thus the application is consistent with Part 2 of the Act.

### **Section 31**

24. Ms Williams for DOC has said that Section 31(1)(b)(iii) of the Act is relevant. This section relates to the functions of territorial councils - every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district - *the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the maintenance of indigenous biological diversity.*
25. I do not disagree that territorial councils have the above functions. However, for reasons given in the above sections, I am not persuaded that reference to section 31 makes any difference to how one assesses the relevance of significant indigenous vegetation and significant habitats of indigenous fauna in the T4 application.

### **Conclusion**

26. The above analysis shows that the application is consistent with section 6(c) of Part 2 of the Act. I note that section 104 requires that these are matters you must "have regard to". This is a section 127 application and, and in my opinion the variation application will have actual or potential effects on the environment that are less than those created by the existing consented environment. If you are not in agreement with my assessment, the application can be granted because the policy direction of the various statutory

documents is not infringed by the lesser effects of this application and further, finds specific policy support in the NPSREG.

Craig Shearer

14 November 2023