

ORIGINAL

Decision No. A 148/2005

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under section 120 of the Act

BETWEEN GENESIS POWER LIMITED

(ENV A376/04)

AND

THE ENERGY EFFICIENCY AND
CONSERVATION AUTHORITY

(ENV A392/04)

Appellants

AND

FRANKLIN DISTRICT COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge R G Whiting (presiding)

Environment Commissioner K Prime

Environment Commissioner M Oliver

HEARING at Auckland on 9, 10, 11 and 13 of May, 16-20 May, 23-27 May, and
13-15 June 2005

APPEARANCES

Mr P Majurey and Mr T Hovell for Genesis Energy

Ms H Ash for Franklin District Council

Mr T Gould and Ms G Hall for Karioitahi Equestrian Environment Protection

Society Incorporated and the Waiuku Wind Farm Information Group Incorporated

Mr J Burns for the Auckland Regional Council

Mr R Enright for the Environmental Defence Society

Mr D A Kirkpatrick for Energy Efficiency and Conservation Authority

Mr B I J Cowper for Mighty River Power Limited

Mr D Currie for Greenpeace New Zealand Inc.



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INTERIM DECISION

Introduction

[1] These appeals concern a land use consent application by Genesis Energy¹ to:

Construct, operate, use and maintain structures and infrastructure required for operating up to 18 wind turbines for the purpose of generating electricity at a site located on the Awhitu Peninsula.

[2] The site is situated on property referred to in the evidence as the "Hull property".

[3] The application was heard by Commissioners appointed by the Council. Following a nine day hearing the Commissioners, in a decision refused the resource consent application. Genesis and the Energy Efficiency Conservation Authority appealed the decision.

[4] The application before the Council was for 19 turbines. Subsequent to the Council decision, dismissing the application, Genesis Energy removed Turbine 1 and relocated Turbines 2 and 3. There are no jurisdictional issues arising from these amendments to the application.

[5] It is common ground that the wind farm is to be considered as a discretionary activity under the Franklin District Plan. No other resource consents are required for the proposed wind farm.

Background

The Awhitu Peninsula

[6] Mr Alan Rackham a consultant landscape architect called by Genesis described the Awhitu Peninsula thus:

The Awhitu Peninsula encloses the Manukau Harbour and Waiuku River Estuary from the Tasman sea to the west. The northern point of the Awhitu Peninsula lies approximately 24km to the south west of Central Auckland.

Genesis Energy is the trading name for Genesis Power Limited, a State-owned Enterprise.



The Peninsula lies on a northwest-southeast alignment, approximately 40km in length from its southern extent at the mouth of the Waikato River, to its northern most point at Manukau Heads. It has an approximate width of 8km from east to west – wider in the north. The Awhitu Peninsula coastal landform is a huge sand dune barrier over 200m in height. The following description is taken from "Land Forms – the Shaping of New Zealand" 'Molloy and Smith 2002'.

Over the last million years, large quantities of rhyolitic pumice sand (carried down the Waikato River from the Central Volcanic Plateau) and heavier, dark titanomagnetite sand (from the andesitic volcanoes of Taranaki) were swept northwards along the western shores of the North Island, forming a giant sand barrier from Port Waikato to South Head.²

[7] The Awhitu Peninsula has been described as possibly one of the most densely populated areas of the Auckland Province, prior to European contact³. Te Iwi O Ngati Te Ata are the tangata whenua. They have a long and close association with the Peninsula. It accordingly is very special to them as part of their cultural heritage.

The proposal

[8] The proposal was described to us by a number of witnesses. It was succinctly summarised in the evidence of Ms K Butler, the Project Development Manager at Genesis Energy.⁴

[9] The Awhitu wind farm will use wind energy to generate electricity for supply to consumers via the local lines network. The wind farm project includes:

- (i) construction of access roading;
- (ii) up to 18 wind turbines; and
- (iii) associated upgrading of transmission lines and installation of a switchyard.

[10] The proposed location of the wind turbines is shown in the map attached as Appendix 1. The indicative area of each wind turbine is shown by the black dot in the centre of the white circles or part circles. Each circle represents a radius of 100m from the centre point. The purpose of the circles is to enable movement of the



² Rackham, EiC, paragraph 5.1
³ Mackloch and Taylor 1969:1988.
⁴ Butler, EiC, paragraph 4.1 and following.

placement of the wind turbines in the event of any archaeological findings of significance. An indicative on-site road layout is indicated in the map attached as Appendix 2.⁵

[11] The specific wind turbine generator design or manufacturer has not been selected as yet. However, the maximum turbine height (inclusive of rotor blades) would be 90m. Each wind turbine would consist of a tubeless steel tower with a maximum height of 62m, and a rotor assembly consisting of 3 rotor blades. The towers would have a diameter of approximately 3-4m at the base and 2-3m at the top.

[12] The maximum rotational speed of the rotor assembly would be up to 32 revolutions per minute, depending on the wind turbine model chosen, although it is more likely that a rotational speed would not exceed 25 revolutions per minute. The nominal power output per wind turbine would be approximately 1000kW (1MW), although larger capacity wind turbines may also be possible.

[13] On the site, the wind turbines would be spaced, such that once construction is complete, the turbines and access roads would occupy approximately 1% of the land (2 hectares). The remaining land area would continue to be used for farming activities as before.

[14] The individual turbines will be transported to the site in up to five over dimension loads. The nacelle comprises one such load, and is an "over weight load", in the order of 60-70 tons. Each wind turbine tower would be delivered in 2 or 3 separate sections, each an "over length" load, ready for assembly on the site. The three rotor blades would be delivered as separate "over length" loads.

[15] A layout for up to 25 wind turbines was developed for the site. However this has been modified and placement of the wind turbines has been progressively changed to mitigate and minimise the potential adverse effects.

[16] The wind turbines would operate 24 hours a day, 7 days a week whenever the available energy is at an optimal level to generate electricity. While wind turbines would occasionally be shut down for maintenance, these activities can often be planned to coincide with times of low wind. Wind turbines are typically available for wind generation 97% of the time.

Appendix 2, EIC, Figure 5.



[17] The amount of electricity fed into the grid by the Awhitu wind farm would be approximately 63MWh per year (assuming 18 wind turbines of 1000kW, or 1MW, each), and would be sufficient to provide the energy equivalent to the annual electricity requirement of approximately 7500 homes. This is equivalent to about 37% of the homes in the Franklin District.

[18] Each wind turbine has a transformer associated with it that transforms the voltage to a higher level to reduce electrical losses. All of the Awhitu wind farm wind turbines would be connected to an underground cable network on the site, which would be placed at a depth of about 1m below ground level.

[19] The network system collects the energy and connects to a switchyard. This would include switchgear and, if required, a transformer to raise the wind farm network voltage to the local network voltage. The switchyard would be located on the Awhitu wind farm site, and contained in an area of approximately 10m x 10m with an appropriate security fence (such as a 2.5m wire fence) surrounding it. It would probably be located near the site entrance of Aldred Road.

[20] The current overhead lines serving the Taurangaruru area would be upgraded to carry a new 33kV overhead line as part of the Counties Power Plan upgrade, and this would provide the wind farm off site transition requirements. This upgrade may require installation of additional cables on existing lines, and may require new power poles to be installed. These would be located within road reserve where possible and would be consistent with existing power poles and lines in the area.

The proposed site

[21] An extensive description of the proposed site was set out in the evidence of Mr Rackham⁶. We summarise his description which reflects what we saw on our site visits.

[22] The site is situated above and behind (east of) the western facing coastal cliffs. These cliffs extend for some kilometres along the Awhitu Peninsula. The site lies to the west of the ridgeline formed by the coastal hills that run the length of the Peninsula. It straddles a gentle ridge that shelves to the west. The site itself is accessed from Aldred Road which comes off Kohekohe-Karioitahi Road at Taurangaruru. There are no public roads traversing the site, which lies between

⁶Rackham, EiC, paragraphs 6.1 to 6.18.



Aldred Road to the north-east and the Karioitahi Beach Road approximately 1km to the south.

[23] The proposed wind farm would be located on the plateau formed by the coastal hills, set back from the coastal cliffs and shorelines. The plateau extends for a distance of some 2km to the north and 3km to the south of the application site.

[24] The plateau is characterised by exposed coastal hills which are predominantly under pasture. There is limited taller vegetation cover and this is mostly confined to the deep coastal gullies, which dissect the plateau and are a feature of this coast. Beyond the site, there are several forestry plantations and wind break plantings.

[25] Various activities on the properties along this 7km strip of coastal plateau and hills have resulted in a patchwork of different vegetation types. These range from discrete pockets of regenerating indigenous shrubland to extensive areas of bare, windblown sand extending up to 1km inland from the head of the cliffs.

[26] The application site itself is largely covered by grazed pasture, divided by a number of post and wire stock fences. There is a small waterbody towards the eastern part of the site and occasional low scrub vegetation in the gullies. A substantial part of the pasture within the site is affected by windblown sand. Large areas of unstable exposed sand stretch linearly from the head of gullies and the sand cliffs from the western side boundary across the site almost to the rear of the site in the east. In an attempt to prevent further soil/sand loss, extensive "carpets" of tyres have been laid across several erosion areas.

[27] It would appear that farming practices and climatic conditions, coupled with severe wind erosion has resulted in the loss of the grass sward that overlays the unconsolidated sandy soils of the wind swept cliff top hills.

The hearing

[28] The hearing took place at Auckland on various days between 9 May 2005 and 29 July 2005. We made a day's site visit to the proposed site and the Peninsula on 10 May. This included walking over the site, a helicopter view of the site and the Peninsula and extensive views from the viewpoints used by the expert landscape witnesses.



[29] We made a site visit to the wind farms situated at Tararua and Te Apiti near Palmerston North on 11 May 2005. A further site visit was made to the site and the Peninsula on 29 July 2005. On that site visit we visited and viewed a number of places significant to the local iwi. We also visited the equestrian establishments nearby.

[30] During the course of the hearing we read and heard the evidence of a large number of witnesses including cross-examination of most of those witnesses. We were assisted by careful, focussed and detailed submissions of counsel.

The parties

Appellants

Genesis Energy

[31] Genesis Energy is a state-owned enterprise that commenced operation on 1 April 1999. It is the applicant seeking resource consent for the wind farm. It appealed the Council's decision declining consent.

The Energy Efficiency and Conservation Authority

[32] This authority was also an appellant and supported the application by Genesis. We were told that the purpose of the authority's appeal is to ensure that renewable energy matters are fully and clearly addressed before the Court and are properly taken into account in the overall assessment of the proposal.

The section 274 parties in support of the proposed wind farm

The Auckland Regional Council

[33] The Auckland Regional Council supported the appeals on the basis that the benefits of the proposed wind farm, particularly the use of a renewable energy resource, are supported by the policies in the Auckland Regional Policy Statement.



Environmental Defence Society

[34] The Environmental Defence Society's support for the proposal stems from their contention, that granting the application will result in electricity being generated in a manner that does not involve the emission of harmful greenhouse gases enabling a reduction in the discharge into air of greenhouse gases, either in absolute terms or relative to the use and development of non-renewable energy.

Mighty River Power Limited

[35] Mighty River Power Limited entered an appearance in these proceedings because of its own interest in the establishment of wind energy projects. It was concerned to see that the Court conducted an even evaluation of the project, correctly addressing the statutory criteria, and applying appropriate weightings to the evidence before it.

Greenpeace New Zealand Limited

[36] Greenpeace New Zealand Limited's support for the proposed wind farm was underlain by a submission that the proposed wind farm is urgently required in order to meet a national need for sustainable and renewable energy sources which are needed to reduce New Zealand's dependence on fossil fuels, and to meet its obligations under the Kyoto Protocol.

Section 274 parties opposed to the proposed wind farm

The Karioitahi Equestrian Environment Protection Society Incorporated and the Waiuku Wind Farm Information Group Incorporated

[37] These two organisations were opposed to the proposed wind farm because of a number of concerns over the potential adverse effects on the local community and area.

Te Iwi O Ngati Te Ata



[38] Te Iwi O Ngati Te Ata were opposed to the proposed wind farm in the main because of the cultural sensitivity of the site and the surrounding area.

The Council

[39] The Franklin District Council's decision to refuse consent to the application for the wind farm was the springboard for the appeals by Genesis Energy and the Energy Efficiency and Conservation Authority.

[40] The Franklin District Council appointed two Commissioners to hear and determine the application for resource consent by Genesis Energy for the Awhitu wind farm.

[41] There were three key issues outlined in the decision as the basis for declining to grant consent. Specifically:

- (i) adverse visual effects on the landscape;
- (ii) impact on tangata whenua; and
- (iii) adverse effects on equestrian activities.

[42] Subsequent to the lodging of the appeals, Council entered into negotiations with Genesis regarding the three key issues. As a result of those discussions, and further work by the Council's experts in conjunction with Genesis' experts, Genesis made amendments to the application. As a result of those amendments the Council concluded that it could not continue to defend the original decision to decline the proposal. Rather, Council resolved that it would take the position of "not opposing" the proposed wind farm.

The issues

[43] The parties were able to identify with some specificity the contested issues. Those opposed to the wind farm were not opposed to wind farms per se. Their opposition was based on the adverse impacts that they say the wind farm would have on:

- (i) The visual, landscape, natural character, amenity and cultural values in the environs of the site on the Awhitu Peninsula and the surrounding rural area; and



- (ii) The current, lawfully established, use of properties adjacent to the proposed wind farm site.⁷

[44] Accordingly the submissions and evidence addressed the anticipated effects that would occur if the proposal were to go ahead. The effects addressed were:

- (i) Positive effects – these were set out in an agreed statement of facts:
- (ii) Alleged negative effects on:
 - (a) natural character;
 - (b) the landscape;
 - (c) amenity of the surrounding area;
 - (d) the adjacent equestrian establishments;
 - (e) Te Iwi O Ngati Te Ata

[45] The relevant statutory instruments contain objectives and policies which generally reflect Part II matters. Specifically for present purposes, they address such matters as: protection of the coastal environment; natural character; landscape; Maori culture; and amenities. These are all matters that are alleged as being adversely affected by the proposal. Conversely they also contain objectives and policies relating to efficiency and the production of energy. These policies reflect many of the positive effects that all agree would emanate from the proposal.

[46] Our findings on the potential effects of the proposal will determine whether the proposal is, or is not, in accord with the relevant statutory instruments and Part II of the Act. We note that the experienced consultant planner, Mr Bhana called by the two Societies opposed to the wind farm, was of the view that the statutory instruments would be met if the Court decides the environmental effects are appropriate. Thus the evidence and submissions were focussed on the identified potential adverse effects which the statutory instruments address.

Legal basis for our decision

[47] As we have said it is common ground that the wind farm is to be considered as a discretionary activity under the Franklin District Plan. The relevant matters for us to consider in this case are:

_____ Paragraph 2 of Mr Gould's opening submissions.



- (i) Part II – section 104(1) “*subject to Part II*”;
- (ii) Any actual and potential effects on the environment of allowing the activity – section 104(1)(a);
- (iii) The relevant statutory instruments – section 104(1)(d).

[48] Having regard to the statutory direction, and within the confines of the issues and the evidence presented in this case, we have to broadly consider and determine:

- (i) First, as a matter of fact, the positive effects of the wind farm; and
- (ii) Secondly, as a matter of fact, the negative effects of the wind farm;
- (iii) Evaluate and weigh our findings in (i) and (ii) above, guided by the statutory instruments and the provisions of the Act, particularly Part II.

[49] Our task in this case is similar to the task that this division of the Court (although differently constituted), had in the TPD decision⁸. We thus reiterate what was relevantly said in that decision.⁹

[50] The cardinal and pivotal matter for us to bear in mind in weighing and evaluating the evidence and exercising our discretion, is the Act’s single purpose as set out in section 5.

Section 5. Purpose

- (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;
 - (b) safeguarding the life-supporting capacity of air, water, soil, and eco-systems; and



Mani Rangi Trust v Manawatu-Wanganui Regional Council, Environment Court Decision
 2004.
 paragraphs 59 to 72.

- (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

[51] The proper application of section 5 involves an overall broad judgment of whether or not a proposal promotes the sustainable management of natural and physical resources¹⁰. Such a judgment allows for a comparison of conflicting considerations and the scale or degree of them, and their relative significance in the final outcome¹¹.

[52] In *North Shore City Council v Auckland Regional Council*, the Environment Court held that where, on some issues, a proposal is found to promote one or more of the aspects of sustainable management, and on others is found to attain in part, or to attain fully, one or more of the aspects described in subsections 5(a), (b), or (c), it would be wrong to conclude that the latter overrides the former with no judgment of scale or proportion¹².

[53] The remaining sections in Part II, subsequent to section 5, inform and assist the purpose of the Act. We may accord such weight as we think fit to any competing consideration under Part II, bearing in mind the purpose of the Act. These subsequent sections must not be allowed to obscure the sustainable management purpose of the Act. Rather, they should be approached as factors in the overall balancing exercise to be conducted by the Court¹³.

[54] As would be expected in a case such as this, where there was a strong divergence of views as to the proposed adverse effects of the proposal, the respective parties emphasised one or more of the various matters to be considered under sections 6 to 8 of the Act. For example, Mr Majurey for Genesis, supported by Mr Kirkpatrick, Mr Burns, Mr Enright, Mr Cowper and Mr Currie emphasised sections (2), 2(a), 7(d), 7 (i), and 7(j). On the other hand, Mr Gould supported by Mr Minhinnick emphasised such matters as sections 5(2)(c), 6(a), 6(b), 6(e), 6(f), 7(a), 7(c), 7(f) and 8.

¹⁰ *Aqua Marine Limited v Southland Regional Council* 3 NREDI (C126/1997) at 141; recently endorsed in *Independent News v Manukau City Council*, Environment Court Decision A103/2003 and *Ngati Rangī Trust v Manawatu-Wanganui Regional Council*, Environment Court Decision A67/2004.

¹¹ *North Shore City Council v Auckland Regional Council* [1997] NZRMA 59 at 93; *NZ Rail Limited v Marlborough District Council* [1994] NZRMA 70 HC at 72.

See also *Aqua Marine Limited* at 141 and see *Ngati Rangī Trust* at paragraph [66]

See *Ngati Rangī Trust*, paragraph [67].



[55] Where Part II matters compete amongst themselves, we must have regard to the statutory hierarchy as between sections 6, 7 and 8 as part of the balancing exercise. However, notwithstanding their importance, all of those sections are subordinate to the primary purpose of the Act. The High Court laid down this principle in *NZ Rail*, in relation to section 6(a). The Court stated:

A recognition and provision for the preservation of the natural character of the coastal environment in the words of s.6(a) is to achieve the purpose of the Act, that is to say, to promote the sustainable management of natural and physical resources. That means that the preservation of natural character is subordinate to the primary purpose of the promotion of sustainable management. It is not an end or an objective on its own but is accessory to the principal purpose.¹⁴

[56] The Court went on to state that:

It is certainly not the case that preservation of the natural character is to be achieved at all costs. The achievement which is to be promoted is sustainable management...and questions of national importance, national value and benefit, and national needs, must all play their part in the overall consideration and decision.¹⁵

[57] The High Court reiterated this principle in *Auckland Volcanic Cones Society Incorporated v Transit New Zealand*¹⁶. In that case, the Court held that, while section 6 matters are to be recognised and provided for, this is in the context of achieving the purpose of the Act as is set out in section 5.

[58] The Environment Court stated in *Minister of Conservation v Western Bay of Plenty District Council*¹⁷, and a passage cited with approval in *Mighty River Power v Waikato Regional Council*¹⁸:

In weighing the evidence of the witnesses on all sides, we have borne constantly in mind the Act's single purpose of promoting the sustainable management of natural and physical resources. Section 6 matters, nationally important by prescription as they are, plainly need to be recognised and provided for in conjunction with the many other considerations contemplated by the legislation in the district planning process... . The sections subsequent to section 5 are designed more fully to inform and assist a body such as the Council in following through and applying Parliament's intents to achieve the Act's purpose for its district. Expressed in the reverse context, those sections are not intended to be

¹⁴ *NZ Rail Limited v Marlborough District Council* [1994] NZRMA 70 HC at 85.

¹⁵ *NZ Rail Limited* at 86.
[2003] 7 NZRMA 316.

¹⁷ Environment Court Decision A71/2001.

¹⁸ Environment Court Decision A146/2001 at pages 20-21.



applied as a series of competing considerations liable to undermine the achievement of the purpose laid down in section 5.

[59] We thus propose to consider the relevant evidential matters, make decisions on the facts, and then apply a balancing and weighing process to determine what best achieves the single purpose of the Act. In so doing, we are mindful of the fact that while adverse effects may involve Part II matters, it is still nonetheless proper that such effects may be mitigated, as opposed to being avoided or remedied under section 5(2)(c). As the Environment Court said in *Kemp v Queenstown Lakes District Council*¹⁹:

Some of the possible adverse effects related to national importance can be avoided or perhaps mitigated under section 5(2)(c). For example, the effects on the significant habitat for wrybills, banded dotterel and black fronted tern is only a potential effect and may be controlled by application of a monitoring condition with a review of the resource consent if the risk of harm is shown to exist and be significant.

[60] We now turn to a consideration of the alleged potential effects of the wind farm.

Potential positive environmental effects

[61] We are required to have regard to the positive effects of the proposal. They were not the subject of evidence, cross-examination or argument, and were set out in a detailed statement of agreed facts consisting of some 13 pages and 67 paragraphs together with a number of attachments.

[62] The positive effects of the proposal are not site-specific but have to be seen in the wider context of Part II of the Act and in a national context.

[63] The statement of agreed facts has been succinctly paraphrased by Mr Kirkpatrick and Mr Currie in their submissions and we respectfully adopt their summary.

[64] We identify the positive effects as follows:

- (i) Electricity is a vital resource for New Zealand. There can be no sustainable management of natural and physical resources without energy, of which electricity is a major component.



¹⁹ [2000] 7 NZRMA 289 at 323.

- (ii) New Zealand needs a more diverse electricity generation base, to avoid for example over-reliance on hydro which is susceptible to dry years; in any event new large hydro options are limited.
- (iii) More thermal generation will have adverse effects, including contributing to climate change and depleting fossil fuels.
- (iv) As a matter of national energy policy set in accordance with relevant legislation, New Zealand is pursuing options for renewable energy.
- (v) Wind is a source of renewable energy which is plentiful but which is best able to be utilised only in certain locations.
- (vi) Benefits of renewable energy include:
 - (a) **Security of Supply.** This is achieved through adding to and diversifying New Zealand's generating base. As we have noted a wind farm of the size of that proposed at Awhitu (18 turbines) with a capacity of 18 MW would generate 63 MWh annually, which is enough electricity to supply approximately 7,500 households per annum. This is equivalent to approximately 37% of the homes in the Franklin district. It will also contribute up to 0.18% towards New Zealand's annual electricity consumption.
 - (b) **Reduction in greenhouse gas emissions.** This is achieved through meeting New Zealand's need for electricity without emitting greenhouse gases during operation, that would otherwise be emitted through coal or gas generation, and thus directly assisting New Zealand's obligations under the Kyoto Protocol. According to the statement, a wind farm of the size of that proposed at Awhitu would avoid approximately 40,000 tonnes of CO² per annum that would have otherwise been produced by a coal fire power plant. Approximately 9200 petrol cars would have to be taken off the road for one year to save this amount of CO².



- (c) **Reduction in dependence on the national grid.** Wind energy farms may be installed relatively close to the source of electricity demand, thereby minimising load on the national grid and delaying the need for transmission upgrades. The location of the Awhitu wind farm makes this benefit particularly relevant, being located close to New Zealand's major load centre, Auckland.
- (d) **Reduction of transmission losses.** The further the distance the greater the loss of electricity through dissipation. The average loss is 5%, rising to 15% at very high transmission rates through the Cook Strait Cable. The proposed Awhitu wind farm will reduce supply requirements from more distant resources thereby materially reducing transmission losses which are effectively wasted supply.
- (e) **Reliability.** Wind is a relatively reliable resource, with a typical annual wind variation of 10%, compared to double that for rainfall, and a relatively reliable economic resource. Once a wind farm is built, it has no ongoing fuel price issues, and the cost of producing electricity from the wind depends primarily on the average, annual wind speed.
- (f) **Development benefits.** Wind energy initiatives result in industry development, profitable business opportunities and regional development. These include research, manufacturing, installation and distribution, and maintenance of facilities.
- (g) **Contribution to the renewable energy target.** It is estimated in para 67 that the Awhitu wind farm will contribute about 0.24 PJ per year or 0.8% of the New Zealand renewable energy target.

[65] In summary, climate change and renewable electricity generation are key issues for New Zealand. This project, if approved, would provide clean and renewable energy to provide essential electricity and to prevent CO² emissions that would have been created by generating electricity through the burning of coal or gas.



[66] These are all matters which need to be considered and put into the crucible containing the evidential material to be weighed against the alleged and more site-specific potential effects. The agreed statement of fact also underlays some recent changes to legislation in New Zealand including the addition of the provisions of sections 7(i) and 7(j) to the Resource Management Act. The positive effects that would result from the proposal reflect many of the provisions in the statutory instruments, particularly the regional instruments, which promote the benefits of infrastructural development and renewable energy.

Potential negative environmental effects

[67] As mentioned the potential negative environmental effects identified by the parties and the evidence consisted of:

- (i) effects on the visual amenity of the area - including effects on landscape and natural character;
- (ii) noise effects on areas of recreation and work places;
- (iii) various horse related effects; and
- (iv) effects on tangata whenua.

We deal with each in turn.

Effects on the visual amenity – including effects on landscape and natural character

Effects on natural character and the coastal environment

[68] Evidence on these matters was presented by three experienced landscape architects: Mr A M Rackham (called by Genesis), Mr S K Brown (called by the Regional Council) and Ms D J Lucas (called by the Societies).

[69] Four key areas were identified for assessment:

- The application site
- The cliffs and cliff tops



- Karioitahi Beach; and
- The Tasman Sea.

[70] Mr Rackham's analysis of the natural character values of the Awhitu Peninsula relied upon a study completed for Genesis by Boffa Miskell Limited. That study used two main classifications: a coastal dominance zone; and a coastal influence zone (generally located further inland). All of the wind turbines lie within the 'Karioitahi coastal influence unit' and the natural character of that unit was assessed as moderate. The adjacent shoreline and cliffs were classified as a 'coastal dominance area' and were assessed as having a high or moderate/high natural character, apart from where development (surf club, public toilets and car park, chalets and restaurant) reduces this to moderate at Karioitahi Beach. The wind farm would be visible from the adjacent shoreline and cliffs.

[71] It was Mr Rackham's opinion that the existing natural character of the application site is not of such a quality that its preservation and protection in its current state is of national importance²⁰. He acknowledged that the windfarm will visually dominate the application site itself and the immediately adjacent areas on the westward facing slopes of the coastal ridge.²¹

[72] Mr Rackham concluded that the coastal environment in this part of the Awhitu Peninsula has moderate natural character on the ridgeline and hill slopes backing the coast, and moderate to high character immediately along the coast and the inter-tidal area.²² Physical changes due to the windfarm will be restricted to the site itself²³. The wind turbines will affect the appearance of natural character over a wider area²⁴ with all of the turbines being visible from out to sea, and with some of them being visible from various standpoints along up to 5 kilometres of the beach.

[73] Mr Brown's assessment focussed on the wind farm's strategic landscape and natural character implications, with reference to key objectives in the Auckland Regional Policy Statement and the Auckland Regional Plan: Coastal.²⁵ Based on a



²⁰ Rackham, EiC, para 7.1.

²¹ Rackham, EiC, para 8.1.

²² Rackham, EiC, para 10.3.

²³ Rackham, EiC, para 10.5.

²⁴ Rackham, EiC, para 10.6.

²⁵ Brown, EiC, para 5.

1984 report²⁶, Karioitahi Beach is identified as a 'Regionally Significant' landscape in both of these regional statutory documents. Mr Brown noted:

However, neither the ARPS nor ARPC maps ... clearly define the physical limits to that landscape unit and appear to effectively constrain it to the beach area, perhaps as far inland as the upper edge of the line of eroding cliffs that directly frame the beach. Thus, most of the wind farm site (at least) appears to lie outside the bounds of the regionally significant landscapes identified in both documents despite the fact that the original 1984 maps show the relevant landscape unit extending almost as far inland as Kohekohe-Karioitahi Road.²⁷

[74] To provide additional guidance about the landscape values in the Awhitu/Waiuku area, Mr Brown referred to two more recent studies which he had been involved with: a 2001-05 re-assessment of the Region's landscapes; and a 2001 Franklin District Landscape Assessment²⁸. In the former regional study, part of the Karioitahi coastline was deemed to be 'Outstanding' and includes the beach foreshore and the cliffs, such that parts of the wind farm, around turbines 13 – 19, closest to the cliff-line, lie either within or on the cusp of the new coastal landscape unit. At the time of the hearing any change to incorporate this more recent analysis into the regional policy statement had not been notified.

[75] The second more detailed landscape analysis was a precursor to the recent Plan Change 14 to the Franklin District Plan and included assessment of the potential for future residential development, in one form or another, as part of the district growth management approach.

[76] The sites involved in the wind farm application, as legally defined, are bisected north-south by two landscape units in this district study: units C35 and T63. The part of the sites on which the turbines are to be located largely falls into the coastal unit C35, which follows Karioitahi Beach and its cliffed/ridge margins. Unit T63 is further inland and includes the eastern face of the coastal hills. Mr Brown, in summarising the detailed worksheets from this study, stated:

Landscape Unit C35 is identified as having high to very high values, low capacity to accommodate change and moderate to high residential 'appeal'. Overall, the unit is regarded as having very low development potential.²⁹

²⁶ "An Assessment of The Auckland Region's Landscape" (1984),

²⁷ Brown, EiC, para 28.

²⁸ Brown, EiC, paras 31 – 49.

²⁹ Brown, EiC, para 47.



[77] The boundary between these two landscape units is reflected in Plan Change 14, as notified, with unit C35 being in the new 'Coastal Zone', and unit T63 in the 'Rural Zone'.³⁰

[78] Mr Brown agreed with Mr Rackham that the proposed turbines would have an adverse impact on the natural character of Karioitahi's coastal environment.³¹ Further Mr Brown opined that "the turbines could be expected to erode some of the experiential values associated with a beach front that is presently largely devoid of development: including feelings of wildness, wilderness and remoteness."³²

[79] In the wider context of the Awhitu Peninsula, Mr Brown considered that the Karioitahi locality was of less significance than areas further north which had "significantly enhanced natural character values"³³ He concluded that:

The proposal might still, to some degree, conflict with the objectives in the Auckland Regional Policy Statement and the Auckland Regional Plan: Coastal addressing 'regionally significant landscapes' and the protection of 'key features, elements and patterns in the landscape'. Such policies clearly have relevance in terms of Karioitahi's coastal ridge. On balance, however, it is considered that this is less important than the protection of the Awhitu's core landscape and natural character assets further up Karioitahi Beach and north of Kopukanui Hill.³⁴

[80] Ms Lucas described the wind farm site and assessed the proposal as :

...at the interface of open coastal waters with an unconsolidated sand peninsula. It is an exceptionally dynamic place. A hazard area. The landforms are constantly changing, as the cliff front recedes and surface dunes migrate east. ...

I have assessed the proposal to build extensive roading and then fix permanently into the sand surface 18 very large kinetic structures at this coastal interface, and consider it to be inappropriate. The natural processes are such that the dynamic system needs to be recognised and respected. Very large, fixed structures constructed close to the regularly collapsing edge of an unconsolidated land mass would not form appropriate development in this highly natural coastal environment.³⁵

[81] In relation to the wider area, Ms Lucas stated:

The whole Awhitu Peninsula coast facing seawards is highly natural. There are very few disruptions evident for the full 36km length. From the pristine

³⁰ Plan Change 14, Map 22.

³¹ Brown, EiC, para 70.

³² Brown, EiC, para 71.

³³ Brown, EiC, para 53.

³⁴ Brown, EiC, para 77.

³⁵ Lucas, EiC paras 101 and 102.



waters of this coast, positioned on the clifftop, the number, form, pale colour and kinetic nature means the turbine complex would be a very large and prominent non-natural introduction to the highly natural coastal front to the sand peninsula. The proposal will very significantly affect the natural character of the seascape/landscape.

...
... The turbines will introduce large non-natural structures into an entirely pristine natural character coast. The important cliff landforms of this coast will be of reduced naturalness.³⁶

[82] In relation to 'natural character' Ms Lucas concluded that:

- The coastline area of the proposed wind farm was an area of high existing natural character; and
- The turbines will result in significant adverse effects on the natural character experienced from the inshore coastal waters and the beach.³⁷

[83] Several of the parties in support of the wind farm proposal, submitted that wind, by its nature, is an appropriate resource to be developed in the coastal environment, as that is one of the main areas where the resource is to be found. It was submitted that the wind was a part of the natural character of the coastal location.³⁸

[84] Dr M J Revell, a senior scientist who studies the dynamics of the atmosphere with the National Institute of Water and Atmospheric Research Limited called by the Energy Efficiency and Conservation Authority, gave evidence that the coastal environment is where most of the suitable wind resource is to be found.³⁹

Landscape and visual amenity effects

[85] In relation to landscape and visual amenity, Genesis called evidence from Mr J R Hudson, a landscape architect. Mr Brown and Ms Lucas also gave evidence on these matters.

³⁶ Lucas, EiC, paras 116 and 119.

³⁷ Lucas, EiC, paras 249 & 251.

³⁸ Mr Kirkpatrick (for EECA), Mr Currie (for Greenpeace NZ Inc), Mr Enright (for EDS), Mr Cowper (for Mighty River Power).

³⁹ Revell, paras 3.4, 4.8 and 7.2-7.3.



[86] The expert witnesses agreed that the Karioitahi coastline adjacent to the proposed wind farm is identified as a Regionally Significant Landscape in the Regional Policy Statement, and an Outstanding Natural Landscape under the Regional Coast Plan. The land on which the turbines are to be located, however, is not currently so defined.

[87] Mr Hudson acknowledged that in terms of effects on rural landscape character, wind farms have quite different effects to the other more common pressures on rural landscapes⁴⁰. His evidence was that this windfarm will be visible from distances greater than 10km from the proposed site⁴¹ including from a variety of locations within Waiuku township. Overall it was Mr Hudson's opinion that the proposed wind farm will have adverse effects on amenity values in parts of the Awhitu Peninsula but that they would not be significantly adverse.⁴²

[88] Mr Hudson considered that the proposed wind farm site is not an outstanding landscape⁴³. He considered that the landscape and amenity values of this part of the Awhitu Peninsula are not of such quality that the area should be protected in its current state and that the proposed wind farm is appropriate in this location⁴⁴.

[89] Mr Brown described the local landscape as having "... little in the way of identifiable signature aside from its connotations of an austere, at times attractively bleak and dynamic coastline."⁴⁵ He went on to state that:

Within this general setting, the wind turbines could well be visually intrusive simply because of their distinctive character, movement, and contrast with the more natural characteristics and qualities of the nearby coastline.⁴⁶ ...

The wind farm also appears likely to impact on the relatively 'natural' (though not necessarily native/endemic) character of both the site and its pastoral/ridge surrounds ... The local skyline and its landscape surrounds would assume an even more cultural mantle than at present.⁴⁷ ...

Assessed as a whole, therefore, it is my opinion that the proposal would inevitably have an appreciable impact on the general character and amenity of the Karioitahi area.⁴⁸ ...

⁴⁰ Hudson, EiC, para 7.4.

⁴¹ Hudson, EiC, para 7.6.

⁴² Hudson, EiC, para 9.3.

⁴³ Hudson, EiC, paras 2.2 and 2.4.

⁴⁴ Hudson, EiC, para 9.2.

⁴⁵ Brown, EiC, para 59.

⁴⁶ Brown, EiC para 60.

⁴⁷ Brown, EiC, para 62.

⁴⁸ Brown, EiC, para 64.



... I regard the proposal as acceptable, if less than absolutely ideal. My opinion would stand even if the Karioitahi Beach landscape should ultimately have its status up-graded in the relevant regional planning instruments.⁴⁹

[90] Ms Lucas also carried out a landscape assessment of the proposed wind farm site and surrounding area. She took a different view of the impacts of the proposed wind farm to those of Messrs Hudson and Brown. Ms Lucas considered that when assessed against the criteria referred to by the Environment Court in *Wakatipu Environment Society Incorporated v Queenstown Lakes District Council*⁵⁰, the west coast lands of the Awhitu Peninsula in total could be considered an outstanding landscaping feature⁵¹.

[91] Ms Lucas was critical of the flexible locations of the proposed turbines and consequent imprecise visual assessments presented by experts called by Genesis. She concluded that the proposal would have very significant visual and landscape effects, and very significant adverse effects on the uncluttered rural and natural qualities and amenity values of this landscape.⁵²

Statutory Provisions – natural character/landscape

New Zealand Coastal Policy Statement (NZCPS)

[92] Relevant policies in the New Zealand Coastal Policy Statement recognise that it is a national priority to preserve the natural character of the coastal environment by encouraging development in areas where the natural character has already been compromised, taking into account potential effects of development on values relating to the natural character of, and avoiding cumulative adverse effects on, the coastal environment.⁵³

[93] Another policy is to protect features which in themselves or in combination are essential or important elements of the natural environment, including landscapes, seascapes, landforms, characteristics of special spiritual, historical or cultural significance identified in accordance with tikanga Maori, and significant places of historic or cultural significance.⁵⁴ Further policies under Chapter 2 relate

⁴⁹ Brown, EiC, para 65.

⁵⁰ [2000] NZRMA 59, 61 [Case 7].

⁵¹ Lucas, EiC, para 152.

⁵² Lucas, EiC, paras 252, 253 & 255.

⁵³ Policy 1.1.1.

⁵⁴ Policy 1.1.3.



to the protection of characteristics of the coastal environment of special value to the tangata whenua.

[94] There is a policy for preservation of the natural character of the coastal environment. This includes dynamic processes arising from natural movement of sediments and water; natural movement of biota; natural substrate composition; natural water quality; natural biodiversity, productivity and biotic patterns; and intrinsic values of ecosystems.⁵⁵

[95] On amenity values⁵⁶, there is a policy that use of the coast by people should not have significant adverse effects on the coastal environment amenity values, nor on the enjoyment of the coast by the public.⁵⁷ On providing for appropriate development, there is a policy that adverse effects of development in the coastal environment should as far as possible be avoided and (where that is not practicable) mitigated, and provision made for remedying the effects to the extent practicable.⁵⁸

[96] The more specific provisions in the Regional and District planning documents reflect and give effect to the New Zealand Coastal Policy Statement.

Auckland Regional Policy Statement and Auckland Regional Plan: Coastal

[97] There are relevant policies in the Regional Policy Statement relating to the protection of rural amenities, the protection of outstanding and regionally significant landscapes and the protection of the natural character of the coastal environment.

[98] Description of relevant landscape management strategies, objectives and policies are contained within Chapter 6 – the Heritage section, including Policy 6.4.19 which relates to protecting the “elements, features and patterns which contribute to the quality of the landscape unit ... and to its amenity value” for areas defined as “regionally significant”.

[99] The coastal regional plan, relating to the Region’s coastal environment, includes within Chapter 4 – Landscape, an approach similar to the regional policy statement.⁵⁹

⁵⁵ Policy 1.1.4.

⁵⁶ The term ‘amenity values’ is defined in RMA s 2(1)

⁵⁷ Policy 3.1.1.

⁵⁸ Policy 3.2.2.

⁵⁹ RPC, 4.1 Introduction, Objectives 4.3.1 & 4.3.2, Policy 4.4.3.



Franklin District Plan

[100] Under the Operative Plan the bulk of the Awhitu Peninsula is undifferentiated and included in the district-wide Rural Zone. The area of public reserve around the road access to Karioitahi Beach is zoned Recreation.

[101] Proposed Plan Change 14 was publicly notified on 30 September 2003. The hearing of submissions is now in progress. This comprehensive plan change replaces the provisions relating to the rural and coastal areas of the district. The plan change is part of a district growth management process undertaken from the mid-late 1990s and has included numerous background papers and consultation procedures, including a discussion document for the plan change in 2002.⁶⁰

[102] On the Awhitu Peninsula the Rural Zone of the operative plan is replaced with two new zones: a Coastal Zone and a Rural Zone. In the area of the proposed wind farm the Coastal Zone is further described as the 'Tasman Coast Management Area' and includes the coastal cliffs and also extends inland to include most of the dune ridge area such that the proposed turbines would be located within this Coastal Zone. East of the proposed turbines, where the land contour drops down from the coastal hills towards Waiuku, the balance of the site is included in the new Rural Zone.

[103] There are two objectives for the Tasman Coast Management Area:

1. To ensure high natural values, landscapes and resources are protected from inappropriate use and development while providing for rural activities.
2. To recognise natural coastal processes and coastal hazards.⁶¹

[104] Under the Operative Plan, provisions for utilities throughout the district are included in Chapter 15. This chapter is not amended by Plan Change 14.

Findings

[105] We find that there is a considerable degree of consensus between the experts called by the parties. To summarise:



Proposed Plan Change 14, Section B – Evaluation pursuant to section 32 of the RMA.
Plan Change 14, 17.2.7.3.

- Mr Gould submitted that the visual/landscape experts agree that the proposed wind farm lies within the coastal environment and that it and adjacent areas display moderate to high natural character.⁶²
- Mr Majury, in his closing submissions, stated:

“It is accepted that the proposed wind farm development represents a significant land use change in comparison to its historical pastoral regime. Messrs Brown, Rackham and Hudson all acknowledge it will cause adverse effects to aspects of natural character and landscape.”⁶³

[106] The essential difference between Ms Lucas⁶⁴ and the other landscape experts was whether the land on which the turbines would be situated is part of an outstanding landscape and whether the adverse effects would be very significant.

[107] We have carefully considered the extensive evidence presented. The visual and graphic attachments included photosimulations, photomontages, video simulation, photographs and plans/maps. We were also assisted by our site visits.

[108] We find that although the actual foundations and site works associated with the turbines would largely occur outside of the area defined as ‘regionally significant’ or ‘outstanding’, the scale of the turbines is such that they would dominate the surrounding area and undermine the visual integrity of the natural character and landscape of the coastal environment. We consider this to be a significant adverse effect. In coming to that conclusion we think that the inland limit or boundary of the ‘significant landscape area’ has probably been selected with the potential impact of more conventional rural and residential buildings in mind, that is, structures to a maximum height of around 10 metres. In our view a more substantial buffer is required if the visual integrity of the natural character of the coastal landscape is to be protected in this case. The proposed turbines are of such a large scale, 90 metres high, that their visual impact cannot be adequately mitigated.

[109] As to whether the site is located within an Outstanding Landscape, we prefer the evidence of Mr Brown to that of Ms Lucas. We were unimpressed with some of the methodologies employed by Ms Lucas to underpin her evidence. We find that the landscape and amenity values of this part of the Awhitu Peninsula are not of such

⁶² Gould, para 37
⁶³ Majury C/S para 22, p8.
⁶⁴ Lucas, EiC, para 255.



quality that the area should be protected in its current state. We find that the wind farm site is “less sensitive”, to use the words of Mr Brown, to modification than many other locations on the Awhitu Peninsula.

[110] In considering the visual and amenity effects on the nearby properties and surrounding area, we accept that with the changes already made to the proposal, namely the deletion of turbine 1 and the repositioning of turbines 2 and 3, that the adverse effects would not be significant. In most cases the views of the turbines would be partial as a result of intervening topography and vegetation, or at such a distance that, although they would be visible, they would not be invasive.

[111] We accept that there would be direct changes to the landform and vegetation resulting from the construction of the turbines and service roading. This would be adequately managed through the proposed conditions of consent which include rehabilitation of the disturbed areas. The implementation of the proposed revegetation and ongoing site management will require monitoring to ensure that the benefits are achieved. If consent is to be granted these may be matters for further review conditions.

Noise effects

[112] In his opening submissions, Mr Gould submitted that the wind farm will result in noise effects from the wind turbines located in close proximity to numerous homes, areas of recreation and workplaces. No expert evidence was called to back up this contention. Evidence was adduced by two neighbouring residents, Ms Innes and Ms Murdoch, and a Mr Keall who is a resident of Ashurst near the Te Apiti wind farm near Palmerston North.

[113] Ms Innes told us that their intended house site would be within 650m of the nearest turbine, and although no wind turbines would be visible, she believed that the noise would have a significant impact on their lifestyle. Similarly, Ms Murdoch was concerned about the likely impact of noise on the houses on her property, as well as those working in and about her property.

[114] The concerns of the residents arose from:

- (i) their dissatisfaction with the noise assessment carried out by Mr Hegley on behalf of Genesis; and



(ii) evidence of Mr Keall's experience of the Te Apiti wind farm.

[115] The criticism of the noise assessment was satisfactorily answered by Mr Hegley in his rebuttal evidence and in cross-examination⁶⁵.

[116] With regard to Mr Keall's evidence, he told us that his home is 2.5km from the nearest turbine at Te Apiti. He said that easterlies bring varying degrees of audible sound annoyance – a sound he likened to a train or a jet that never arrives and is not unlike that which could be attributed to a heavy industrial manufacturing facility.

[117] In contrast to Mr Keall's evidence, we heard from another Ashurst resident Ms Craig. Her house is the same distance from the Te Apiti wind farm. She told us that she can hear the turbines from her home approximately once a month when strong winds are blowing from the direction of the wind farm towards her house. When this occurs, she considered that the noise is not invasive and that it is masked by normal household noises. She has not experienced any adverse noise from the Te Apiti wind turbines.

[118] In our view the evidence of Mr Keall and Ms Craig reflected their respective instinctive views of wind farms. Their respective instinctive views underlay their perception of such matters as visual, traffic and noise effects – each witness being at the opposite end of the spectrum. We accept that their evidence was given sincerely. However, we did not find it particularly helpful in coming to an objective conclusion.

[119] We thus turn to the expert evidence. As we have said the only expert evidence was the evidence of Mr Hegley. Mr Hegley carried out a comprehensive noise assessment and concluded that any noise effects will be no more than minor, provided the New Zealand Standard and proposed noise conditions are complied with. Despite some lengthy and searching cross-examination, we found Mr Hegley's evidence to be of considerable assistance to us.

[120] Mr Hegley referred to the New Zealand Noise Standard 6808 which he considered to be appropriate. He applied the Standard's methodology in this case.



Relevantly, the Environment Court has stated in relation to New Zealand Standards:⁶⁶

The Standards Act 1988 provides for the preparation and approval of New Zealand Standards (s.10), and also contains provision for regulations to be made by referring to or incorporating any New Zealand Standard (s.22). However neither that Act nor the Resource Management Act gives New Zealand Standards any status that would bind a consent authority to use them as a basis for deciding a resource consent application. In practice, relevant New Zealand Standards (eg NZS 6802:1991 Assessment of Environmental Sound) are commonly used for that purpose, and are also referred to in district plans... . The stated purpose of the New Zealand Standard NZS 6609 is, relevantly, to provide guidance, and to be used as a basis for the assessment of the efficacy of protective measures and practices.

A party to resource consent proceedings is entitled to rely on compliance with a relevant New Zealand Standard as tending to show that effects on the environment of a proposed activity should be acceptable because emissions would not exceed levels set in that document. Absent challenge by another party, a consent authority may treat the Standard as setting an appropriate level of emissions that would not have unacceptable effects on the environment.

However parties to resource consent proceedings are not bound to accept that compliance with a New Zealand Standard would avoid adverse effects on the environment that should be taken into account in deciding whether resource consent should be granted or refused. Because New Zealand Standards are not given particular status by law, parties must be free to assert that significant adverse effects on the environment would occur despite compliance with the Standard.

In practice, New Zealand Standards are prepared by committees of people well-qualified in the subject, and with consultation with interested sections of the community. The Standards are generally accorded respect. **So opposition to a resource consent application based on an assertion of significant environmental harm despite compliance with a relevant New Zealand Standard would usually need to be supported by expert opinion to be worthy of serious consideration. A mere assertion of harm, without such support, may not be a responsible exercise of a right of appeal.** [Emphasis added]

[121] Paragraph 1.1 of NZS6808 states:

This Standard covers the prediction of sound from wind turbine generators (WTGs), the measurement of sound from WTGs, and the assessment of the received sound. It is designed to provide a level of investigation and reporting that may be specified by land use planning procedures under any relevant legislation (eg an Act of Government/Bylaw of Territorial Government), particularly the assessment of environmental sound. For the purposes of this Standard, sound is defined as being air borne vibration within the audible frequency range.



Intrye v Christchurch City Council [1996] NZRMA 289 at 294-295.

[122] The Standard goes on to say in paragraph 1.3:

This Standard deals specifically with the measurement of sound from WTGs in the presence of wind, a situation which has high potential for fluctuations and errors due to both increased background sound levels and wind effects at the microphone. The measurement of sound in the outdoor environment can produce reasonably accurate and repeatable results if the recommended procedure is followed. Measurements conducted in accordance with other more general Standards (eg NZS6801) should not be used for the measurement of sound arising from WTGs themselves. However NZS6801 needs to be referenced for measuring background sound and other matters as described in 4.5 of this Standard.

[123] As Mr Hegley pointed out, the normal technique of specifying maximum environmental sound levels (as set out in NZS6802: 1991 – Assessment of Environmental Sound), adopts the L_{10} criteria. NZS6808 states that it is not appropriate to assess wind turbine sound on this basis. This is partly because it is not possible to exclude wind effects when measuring low level wind turbine sound in the windy environment, as sound from wind turbines in these conditions is similar to continuous background effects. The Standard recommends the use of L_{95} to measure and assess wind turbine noise.

[124] Paragraph 4.4.2 of the Standard states:

4.4.2 Acceptable Limit

As a guide to the limit of acceptability, the sound level from the WTG (or wind farm) should not exceed, at any residential site, and at any of the nominated wind speeds, the background sound level (L_{95} by more than 5 dBA, or a level 40 dBA L_{95} /whichever is the greater).

[125] Mr Hegley then went on to describe in some detail the methodology that NZS6808 says should be applied. He then applied that methodology. He then selected the closest houses to the wind farm – some 33 in number – and concluded that the noise will be within the requirements of NZS6808 at all times. That is, the noise will be below 40 dBA L_{eq} or the background sound level (L_{95}) plus 5 dBA. Houses further away than those listed in his evidence would experience noise levels well below 25 dBA and as such there would not be any noise impact. Mr Hegley concluded:

Although the predicted noise levels from the wind turbines as listed in Table 2 are either below the background sound or within the background sound plus 5 dBA requirement, this does not mean that the sound from the wind turbines will not be heard. Due to the different frequency composition of noise from the wind turbines to the frequency composition of wind generated noise, the turbine noise may be heard even below the background sound. However, if heard, the noise will be at a low level and



within the design limits with no more than minor effects based on the guidance set out in NZS6808.⁶⁷

[126] With regard to the farm working environment the following exchange took place between Mr Gould and Mr Hegley during cross-examination⁶⁸.

We are dealing here, although you've taken your measurement from the façade of the closest house – we are dealing here with farms, aren't we, where people typically throughout the day are out in the fields working? That's right, the farm is an industry.

The fact is that those owners and employees are out exposed in situations where the actual noise that they will be exposed to will be a lot greater than would you have measured from the façade of the closest house. Is not that correct? Yes, greater, but well within what we would consider two industrial activities together – well within a reasonable level for that.

Now you took no measurements down by the stables on the Isola property, did you? I did take measurements at the Isola property, sorry, at the isola?

At the stables? At the stables, yes, I took measurements at the stables at exactly the location I was requested.

Have you reported them? No, I've reported them, but not in here. It's not relevant for this particular one – well, I didn't think it was relevant, I should say.

Now you say it is not relevant because you say that noise levels, other than noise levels experienced at or in houses are not relevant for the consideration of the court. Is that right? In terms of the windfarm assessment that's my understanding. I've done the work, but I haven't reported it here because I didn't think animals was necessary when the noise wasn't an adverse effect. On my research on animals it was of any significance for the court, but I've got the information should the court wish to have it.

I suggest to you Mr Hegley, that is a working environment at the stables, where there are a number of horses, and where staff spend a lot of time throughout the day, and you have not reported to the court on the noise levels that those staff will be experiencing throughout the day? No, but I haven't reported anywhere where people work on farms throughout the day, your Honour. As I say, I look at the dwellings as being the most critical places. I can sum it up though, in saying that if it's okay at the houses, it's okay in the farm because if you take a dwelling, for instance, you normally would control any levels – at that time it's below 35 decibels. In an industrial environment you can normally go to 60 decibels without any concerns whatsoever and some district plans it goes to 70 decibels. There's just no way we will get to 70 decibels anywhere on any other farm, which as I say I believe is an industry in its own right, or commercial activity, whatever you want to call it – certainly not a dwelling.

[127] We agree with Mr Majurey that NZS6808:

Hegley, EiC, paragraph 8.19.
transcript, pages 266-267.



- is a New Zealand Standard⁶⁹
- was prepared by committees of people well qualified on noise and with consultation with interested sections of the community.⁷⁰
- the “plus 5dBA” component, is a scientific and careful formula that recognises that an essential ingredient of wind turbine operation is wind. Given wind’s inherent noise, a specific practical noise methodology is required⁷¹

[128] We accept the evidence of Mr Hegley. Moreover, Genesis Energy, on the advice of Mr Hegley, has proposed an elaborate and total set of noise conditions to ensure predicted noise levels would be achieved. We find that non-horse related noise effects would be, at most minor.

Horse related matters

[129] In his opening submissions, Mr Gould put the case for the Society thus:

The effects of the proposed wind farm on equestrian activities in the vicinity of the wind farm site is a key issue for the Society – it is also a key issue for the Court.

The evidence here will show that it is an absolute reality that the business conducted by Ms Murdoch (horse training for thoroughbred racing) and Ms Innes (equestrian centre for show jumping and related activities) will be totally at risk if this venture proceeds.

...

There are two elements to the risk to the businesses involved:

- The risk that the mere presence of the wind farm will put owners off sending their horses to Ms Murdoch, and others to avoid eventing and other activities at the Isola Equestrian Centre (Ms Innes).
- The second, and more insidious risk is that if some accident were to occur at either venue, that would effectively preclude the business from continuing.

[130] For Mr Gould’s submission to be upheld, it is necessary for us to make findings of fact which lay the basis for the submission. We accept as sincere the concerns expressed by Ms Murdoch and Ms Innes. We now examine the evidence to consider whether, as a matter of fact, those concerns can be substantiated.



⁶⁹ Hegley, EiC, paragraph 4.1.
⁷⁰ Hegley, EiC, paragraphs 4.6 – 4.7.
⁷¹ Hegley, EiC, paragraph 4.5.

[131] Ms Murdoch gave evidence. Ms Murdoch together with her husband, own and operate Isola Farms and Isola Racing Stables. The Awhitu wind farm will be located in the immediate vicinity of their property and adjacent to areas on their property where they train and ride horses.

[132] Ms Murdoch told us that Isola Stables had been operational for 35 years and she has been training horses there for 30 years. She has 28 to 30 race horses on her property at any one time. Their time on the property varies from 2-3 days (about 5 horses) to 1-3 weeks (10 horses) to 3-6 months (about 15 horses). They vary in age from first riders at 18 months to 5 year olds. Most are 2-3 year olds.

[133] She told us that it usually takes horses that are new to the property about 2-3 days to acclimatise. She emphasised the unpredictability of horses, particularly first ridden horses. Training and handling of horses is primarily undertaken on the farm and coastal property.

[134] Ms Murdoch was concerned about the conditioning and fitness work undertaken in areas particularly close to the proposed wind farm. Of particular concern was the use of a circuit known as the "Sea Farm Ride" which comes to within 80-120 m of the closest wind turbine.

[135] Ms Murdoch explained that they need to ride the horses on the local roads to access parts of their property. They also ride the horses on Karioitahi Beach for training. She uses the stretch of beach which is beneath the proposed wind farm site all year round for horses that are hard to work with or are fractious.

[136] According to Ms Murdoch the nearest wind turbine would be approximately:

- (i) 1km from their stables;
- (ii) 700m from their yards; and
- (iii) at the closest points, between 80 and 200m from where they ride their horses (on the Sea Farm and other parts of their property including exercising areas 1, 2 and 3).

[137] Ms Murdoch was concerned that the proposed wind farm will have the following effects on her equine establishment:



- (i) construction traffic and after construction, tourist traffic will make it difficult for them to cross the road with horses and may endanger horses and riders crossing Kohekohe-Karioitahi and Aldred Roads from their stables to the Sea Farm training area; and
- (ii) accidents may result in difficulty in recruiting staff and possibly prosecution by the Occupation, Health and Safety Department.

[138] Ms Innes, together with her husband, own and operate the nearby Isola Equestrian Centre. The Centre is a purpose-built complex for horse riding events. It offers visitors a wide range of equestrian facilities including:

- (i) the opportunity for riders to receive personal training from noted equestrian instructors;
- (ii) training days in the following disciplines:
 - (a) show jumping;
 - (b) dressage;
 - (c) cross-country;
- (iii) secondary school and pony club camps;
- (iv) adult riding group days;
- (v) riding lessons for children and adults;
- (vi) training schools and clinics for the following disciplines:
 - (a) show hunter;
 - (b) show jumping;
 - (c) dressage;
 - (d) cross-country;
 - (e) in hand classes
 - (f) horse and carriage; and



- (g) mounted games;
- (vii) ribbon days and prize givings for "riding for disabled"
- (viii) equestrian clubs and organisations, independently run gymkhanas, ribbon days, competition days and weekends;
- (ix) pony club camps;
- (x) squad training for up and coming Olympians; and
- (xi) New Zealand mounted games world cup.

[139] In addition the main arena is suitable for all disciplines of equestrian sports and it is anticipated that large shows, catering for national and international riders will be held approximately six times per year.

[140] The Centre caters for both experienced and inexperienced riders and it has access to part of the neighbouring "Sea Farm Ride" owned by Ms Murdoch, to which we have already referred.

[141] According to Ms Innes the nearest turbines would be located approximately:

- (i) 650m from the closest part of the IEC;
- (ii) 980m from the IEC's roadside paddocks;
- (iii) at the closest point, 80m from where visitors ride their horses on the Sea Farm; and
- (iv) 600m from the back paddocks that are used for lower grade competitions and the cross-country jumping course.

[142] Ms Innes expressed in some detail her concerns about the effect of the proposed wind farm on horses participating at the centre. These included:

- (i) the effects of ground shadowing;
- (ii) the effects of rotor blade movement; and



- (iii) the effects of noise.

[143] To address the concerns of Ms Murdoch and Ms Innes we heard evidence from a number of equine experts including veterinarians and expert trainers and riders of horses.

[144] Dr P McGreevy was called by Genesis. Dr McGreevy is a veterinarian with a world-wide interest in equine safety. He identified a number of stimuli from wind farms that could potentially affect horses. These included both visual and noise stimuli. With regard to noise stimuli, Dr McGreevy referred to the British Horse Society Policy Statement on Wind Farms. It refers to four stimuli associated with wind farms. Two of those are visual:

- (i) the sudden appearance in the horses' sight line of turning blades; and
- (ii) shadows sweeping the ground or bushes/trees in sunny weather.

[145] Dr McGreevy elaborated on the British Horse Society's Policy Statement. He listed the relevant and potential aversive visual stimuli as chiefly:

- (i) when viewed from a distance (approximately 200m), the entire stationary assembly;
- (ii) when viewed in close proximity (approximately 50m), the blades moving; and
- (iii) blades casting shadows that move on the ground.⁷²

[146] His starting point for consideration was the Society's statement, to the effect that a 200m safety margin should be recognised as being the absolute minimum for limiting the impact of wind turbines on horses. He then entered upon a site-specific analysis to assess the potential risk for the proposed wind farm.

[147] He proceeded to consider the varying distances at which horses in the vicinity of the proposed wind farm will be exposed to the turbines. He calculated the closest distance the proposed turbines would be to public roads and various parts of the Equestrian Centre and Isola Stables properties where horses would be ridden. This

McGreevy, EiC, paragraph 4.1.



varied from 120m at the closest point on the Sea Farm Ride to 980m to the closest point of any public road⁷³.

[148] He then analysed the potentially aversive aspects of the visual stimuli from wind farm turbines and concluded that some visual stimuli is possible close to the wind farm. However, it was his view that such stimuli is unlikely to cause alarm.

[149] Dr McGreevy then turned to consider potentially aversive auditory stimuli. In his opinion this stimuli would consist chiefly of:

- (i) wind impacting on the rotor blades and/or the tower (in the case of lattice work supports);⁷⁴ and
- (ii) the noise of the operating turbines themselves.

[150] Dr McGreevy told us that in his view the auditory stimuli from the wind turbines themselves would be subject to fluctuation as a reflection of changes in wind velocity. However, since these are constantly accompanied by natural wind noise he did not anticipate their constituting a significant aversive hazard to horses or personnel handling or riding horses. In his view, the operation of the turbines is very unlikely to cause a fright response in horses as a result of aversive noise stimuli.

[151] Notwithstanding his views on the likelihood of horses being aversely affected, he nevertheless considered it to be appropriate for the owners of the equestrian establishments to take some practical and prudent steps in the normal handling of horses in the areas closest to the wind turbines, such that any risks would be minor.

[152] He considered that established methods to manage perceived risks arising from horses being exposed to the wind farm could be applied when bringing naïve horses within 200m of the wind turbines. This will involve the naïve horses being introduced to, and habituated to, the wind turbines in a way that reduces the perception of any risk, and demonstrates that the turbines will not result in any harm. Such an habituation process, he said, would normally be used when introducing horses to other potentially aversive stimuli, such as training in the vicinity of other animals or issues such as crowd noise. In his view, horses could be quietly



⁷³ McGreevy, EiC, Table 1.

⁷⁴ Ms Butler told us that company do not propose to use lattice supports.

introduced to the presence of the wind turbines, just as they should be introduced to other potentially aversive stimuli on the beach, farm and surrounding roads.

[153] Dr McGreevy outlined management and habituation programmes and considered, that if they were followed, the presence of the proposed wind farm in the vicinity of the equine establishments would not result in adverse effects on horses.

[154] Dr McGreevy's conclusions were supported by Mr A McLean, Director of the Australian Equine Behaviour Centre. He stated:

In my opinion, the risks of blade shadows adversely affecting horses, as alleged by Mrs Innes (paragraph 48) and other witnesses is considerably overstated. My experience in professionally training and retraining hundreds of horses over 25 years tells me that solid dark shadows are more aversive to horses than rhythmically moving ones with blurry edges as would be the case with a far off generated shadow such as that generated by a turbine.⁷⁵

And

In conclusion, my opinion with regard to horse riding, management and training within the vicinity, any potential aversiveness is largely a question of the extent of exposure which in itself is a function of proximity to the turbines themselves to the horse-related activities, and the way that horses are habituated into their surroundings. ...

In summary, and subject to the habituation recommendations of Dr McGreevy and myself, my opinion is that the proposed wind farm poses minimum risks to horses, horse training or equestrian activities.⁷⁶

[155] Five expert witnesses were called by the equestrian establishments:

- Professor Doktor Erich Klug, a Surgeon and Professor of Equine Medicine from Hanover in Germany;
- Dr Timothy Pearce, a Veterinarian from Bulls, New Zealand;
- Dr Neil Houston, a veterinarian from Takanini, New Zealand;
- Mr Blyth Tait, an experienced rider and trainer of horses with vast international experience; and



⁷⁵ McLean, EiC, paragraph 2.5.
⁷⁶ McLean, EiC, paras 4.1 and 4.3.

- Mr Mark Todd also an experienced rider and trainer of horses with vast international experience.

[156] Professor Klug appeared via a video auditory link with Germany for the purposes of answering supplementary questions and cross-examination. He discussed in his evidence the general behaviour of horses, particularly the behaviour of horses exposed to unknown occurrences; the methods and effects of restriction on horses; and the impact of wind farms on horse behaviour.

[157] With regard to the effects of wind farms he considered that wind turbines cause substantial disturbances, most significantly noise, flickers and intermittent shadows which occur at different intensities and frequency depending on the operating status of the generators and the meteorological conditions, ambient temperature, time of day and sunbeam angle.

[158] Professor Klug commented that the most striking feature of both the properties affected by the proposal, is the frequent changing of the horse populations as a result of the type of activities undertaken on the properties. It was his opinion, that under no circumstances would the proposed wind turbines be compatible with the equine activities carried out on the properties in the immediate vicinity of the proposed wind farm site.

[159] During cross-examination Professor Klug stated in relation to safe distances for horses:

Interpreter: So the distance should be 1000m in order to avoid all adverse occurrences

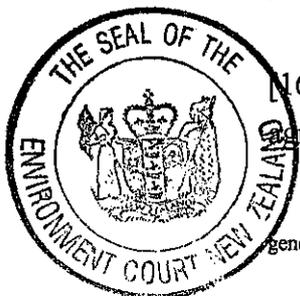
Witness: Yes.

Mr Majurey: So is it fair to say that you have derived the 1000m figure so as to avoid all risk?

Interpreter: That is correct.

[160] The result of that admission is that any distance in excess of 1000m from the turbines is not contentious as between the expert witnesses. We therefore have to assess Professor Klug's evidence against the evidence of Dr McGreevy and Dr Pearce in relation to horse activities within 1000m of the nearest wind turbine.

[161] Professor Klug told us that he had read the evidence of Dr McGreevy and agreed in principle with his opinions that:



- the effects associated with wind farms, such as noise and shadow flickers, may cause horses to react suddenly; and
- horses can become “habituated” to this changing environment.

However, he disagreed with his conclusion that all horses will habituate to the aversive stimuli generated by the proposed wind farm. In some cases, he said, habituation may not occur at all.

[162] Mr Blyth Tait described to us the short and long term effects of exposing horses to “aversive stimuli”, placing emphasis on the risks associated with training or riding horses in the vicinity of the proposed farm. He described in some detail the short term impacts of aversive stimuli on horses and emphasised the unpredictability of horses. He also discussed the long term effects of aversive stimuli on horses and commented on Dr McGreevy’s evidence. He concluded:

I consider that the proposed Awhitu Wind Farm will have a significant impact on the ability for Isola Racing Stables and the Isola Equestrian Centre to operate their equestrian businesses in a way which will minimise any potential risk of injury to horses.

In my experience, aversive stimuli, such as that expected to be generated by the proposed wind turbines, can have disastrous consequences. I do not believe that the acclimatisation proposed by Mr McGreevy will be an effective or practical method of mitigating injury at this location.⁷⁷

[163] Mr Mark Todd also gave evidence. He outlined the nature of thoroughbred horses, provided examples of how horses react in response to perceived threats of danger, and commented on the concept of acclimatisation and the potential effects of the wind farm on the activities run by Ms Murdoch and Ms Innes. He concluded:

On the basis of my extensive experience with horses, particularly thoroughbreds, I consider that the presence of wind turbines in a thoroughbred training environment would increase the risk of horses (and riders) being injured to a significant extent. In addition, the presence of unnatural movement or noise creating a stressful training environment has the potential to impact adversely on a horse’s ability to train effectively and ultimately perform well. I therefore consider the proposed wind farm will adversely affect horses being trained or ridden on the properties owned by Mrs Murdoch and Mrs Innes.⁷⁸



Tait, EiC, paras 41 and 42.
Todd, EiC, para 22.

[164] We have considered carefully the extensive evidence that we heard on the likely potential of the wind farm to produce effects that would adversely affect equine behaviour. We accept the concerns of Ms Murdoch and Ms Innes are genuine. We have regard to the experience of Mr Tait and Mr Todd that underlies their evidence. We also respect the evidence of Professor Klug. However at the end of the day we found the evidence of Dr McGreevy and Mr McLean to be the most compelling. We agree with Mr McLean when he says:

...I consider that the evidence of the KEEP'S witnesses considerably overstates the risks that the proposed Awhitu Wind Farm poses to horses.⁷⁹

And again when he says:

Ms Innes and Mrs Murdoch as well as other witnesses express concern that the turbines will adversely affect activities at the Isola Equestrian Centre. Dr McGreevy notes that Genesis Energy has now removed turbine 1 from the project, and has relocated the positions of Turbines 2 and 3 further away to the west. Dr McGreevy notes that "these changes significantly reduce the visibility of the turbines from the IEC, and from the IEC main arena almost completely".⁸⁰

[165] He concludes, and we agree that these refinements all but eliminate the potential effect the wind farm may have on horses at the IEC.

[166] Ms Murdoch's and Ms Innes' concerns relating to the effect on horses and stock by construction and tourist traffic were addressed by Mr M Apeldoorn, a consulting traffic engineer called by Genesis. He assessed the effects relating to the movement of stock, horses or persons along or across the public roads proposed to be accessed by Genesis Energy during construction and operation. The movement of persons, stock or horses within the road environment and the consent conditions for the proposed consent were considered by him in making this assessment. He pointed out that at the busiest times during construction, traffic movement on these roads is expected to involve one vehicle arriving and one vehicle departing the site every six minutes on average. This does not in his view represent a busy or congested traffic network.

[167] He accepted that Ms Murdoch and Ms Innes may encounter traffic more frequently during the construction period than at present. However with the public information procedures, local knowledge of construction activity, road widening,

⁷⁹ McLean, EiC, paragraph 1.7.

⁸⁰ McLean, EiC, para 3.3.



shoulder and visibility improvements that are recommended as conditions of consent, it was his view that the potential risk in relation to horse safety would be less than that which exists now in a visibility constrained environment.

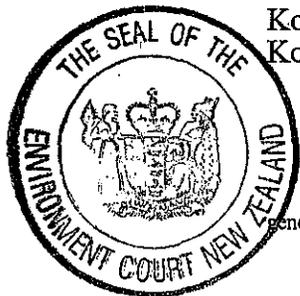
[168] This matter was also addressed by Mr McLean. He pointed out that it is true that wind farm construction traffic (involving heavy equipment) has potential to be aversive to horses that are ridden along public roads. However, he reminded us that this is a matter that can, with good communication between the parties, be managed within the context of the existing risk of encountering traffic when riding on roads in the area. We agree with the conclusions drawn by Mr Apeldoorn and Mr McLean.

[169] In coming to our conclusions on the evidence we have not only looked carefully at the evidence itself but have also looked at the various photographs, maps, aerial photographs and diagrams presented in evidence to us. They are too numerous to mention them all. We also have had regard to our site visits. We are conscious of the fact that the topography would hide the majority of the wind turbines from any particular point on either of the two equine establishments. The view of the turbines would be such, that at most locations, by far the majority of the turbines would be hidden from view. At some locations they would not be seen at all. At other locations one or more of the turbines may be seen, but generally speaking it is unlikely that the whole structure of one or more of the turbines would be seen.

[170] We accordingly find that the potential for aversive stimuli to be generated by the turbines at the proposed wind farm, subject to the proposed conditions of consent, and proper management by those involved at the centres, is unlikely to cause effects which are more than minor.

Tangata whenua issues

Ko Uenuku Te Atua	Uenuku the God
Ko Kaiwhare Te Taniwha	Kaiwhare the Guardian
Ko Huakaiwaka te Rangatira	Huakaiwaka the chief
Ko Whau Te Maunga	Whau the Maunga
Ko Waitemata Te Moana	Waitemata the Moana
Ko Waiohua Hei Toi Ake No Te Whenua	Waiohua the offspring of the land
Ko Huatau Te Tangata	Huatau the man
Ko Matukutukureia Te Tumu	Matukutukureia the battleground
Ko Manukau Te Moana	Manukau the Moana
Ko Te Ata Te Puna Ka Puta	Te Ata the spring that flows



Ko Te Ata i Rehia Te Wahine
Ko Puketapu Te Karangaranga
Ko Te Wairua Kei Waenganui
Ko Ngati Te Ata Te Iwi

Te Ata i Rehia the Women
Puketapu the Place of Calling
Surrounded by spirituality
Ngati Te Ata the people

Roimata Minhinick introduction

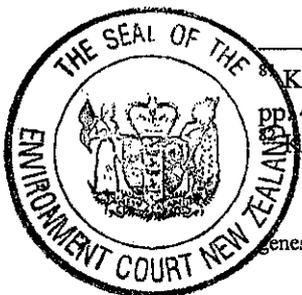
[171] The above whakatauki epitomises the Ngati Te Ata ancestral connection to the lands and waters in this area through their God Uenuku, their Guardian taniwha Kaiwhare and through the generations before.

[172] Ngati Te Ata exchanged evidence for 5 witnesses but only 3 were able to present to the Court. The common theme with each of the witnesses who presented, was the relevance and importance of having a “cultural values assessment” or “heritage survey” carried out⁸¹. There is no doubt that such an assessment would be of immense value to ascertain the cultural significance of many of the Awhitu Peninsula sites to Ngati Te Ata. Genesis, as part of the proposed conditions of consent, proposed to fund such an assessment. The question is – should such an assessment be carried out now, prior to considering the grant of consent?

[173] Mr Karl Flavell, a representative for Ngati Te Ata regarding environmental and resource management issues, was the first witness for Ngati Te Ata. He commenced his evidence by saying that they were not opposed to the wind farm but opposed to the site in the Awhitu Peninsula. In that vein he maintained that community consultation had not been centred and focussed around the actual appropriate siting of this development.

[174] He maintained that to allow development of this nature to take place would, “open the door for similar development along the entire west coast adversely impacting on both the natural and heritage values and resources”⁸².

[175] Mr George Flavell, a well respected kaumatua for the Ngati Te Ata people provided a comprehensive power point presentation on behalf of Ngati Te Ata pertaining to the entire Awhitu Peninsula. He provided information on the many Pa sites (both Pa whawhai and Pa taua), the wahi taonga, the rua, the kainga and other cultural areas of significance such as Te Ana a Kaiwhare (the lair of Kaiwhare).



⁸¹ K Flavell, EiC, paras 5, 12.; R Minhinic, EiC, pp. 9, 18, 20, 25, 28, 30, 31 and 34; G Flavell, EiC, pp. 41, 79.
⁸² K Flavell, EiC, paragraph 4.

[176] While this presentation provided ample evidence as to the manawhenua and tangata whenua status of Ngati Te Ata over the land mass between the Manukau Harbour and the mouth of the Waikato River, it did fall short of providing specific and compelling evidence regarding the cultural significance of the site, where the turbines are proposed.

[177] Mr Roimata Minhinnic was the third witness for Ngati Te Ata and also acted as their representative. He too provided comprehensive evidence on the cultural relevance of the Awhitu Peninsula to Ngati Te Ata. He presented 43 pages of 10 point font evidence, the first 15 pages of which addressed provisions of the Resource Management Act pertinent to Ngati Te Ata, and the remainder responded to points raised in Mr B Mikaere's primary evidence called by Genesis.

Pa Sites

[178] Mr George Flavell identified at least 25 Pa sites in his power point presentation. These Pa stretched from the southern most point near the mouth of the Waikato River to the northern most extremity of the Awhitu Peninsula, the Manukau Heads. While we acknowledge the cultural importance of the Awhitu Peninsula Pa sites to Ngati Te Ata we again reiterate the failure to focus our attention on the site and in particular the proposed turbine locations.

[179] Page 41 of Mr George Flavell's evidence in chief reads:

Ngati Te Ata heritage survey

A survey needs to be undertaken to determine the following;

1] That hill above the Hull Homestead is indeed a Pa and its historical significance and relationship to the battle of Taurangaruru. It is believed that human remains were found on the same hill...

[180] In response to a direct question from the Court:⁸³ "What's the name of the Pa site that was on the whole [Hull] property?". He replied "*Taurangaruru*". Mr Majurey in his closing submissions said "...such claim does not bear scrutiny. As at 12 April 2005, this was not the position of Ngati Te Ata – hence the stated need for a Cultural Values Assessment. Remarkably, the details of Taurangaruru, never previously mentioned, now appear to be known chapter and verse."



Transcripts pp.444, line 23.

[181] Mr Mikaere commented on the same matter thus:

...it is asserted that the hill behind the Hull homestead is a pa site and that it requires confirmation by way of the survey. Whether the pa site does or does not exist is beside the point. The fact is that there is no intention to site a wind turbine on this hill. In fact the nearest turbine is almost half a kilometre away.⁸⁴

[182] This was the only evidence that gave some indication as to the precise location of the Pa in relation to the project site.

[183] Our site visit on 29 July 2005 did confirm to the Court the likelihood of “the hill above the Hull homestead” being a Pa at some stage in the past. It also confirmed the distance to the nearest of the proposed wind turbines.

Wahi Tapu or Areas of Significance

[184] Mr Mikaere maintained that there were no wahi tapu on the project site, (as opposed to the project property) for the following reasons:

- There was a lack of evidence of such from Ngati Te Ata in respect of the current wind farm application, an earlier subdivision application and the earlier wind monitor trial;
- The current assertions that wahi tapu did exist on the project site were, in my opinion, tentative and displayed a lack of real knowledge of their existence;
- The existence of the Te Kete reserve showed that 19th century Ngati Te Ata had already identified the area important to them in the project vicinity and had had it reserved out of the Waiuku No 2 sale as a result.
- The correspondence on the sale of the wahi tapu reserves indicates that the sales of the wahi tapu were being urged by Ngati Te Ata themselves.⁸⁵

[185] He went so far as to suggest that “Ngati Te Ata were keen to sell wahi tapu...”⁸⁶ quoting excerpts of a letter from Commissioner H Turton to the Native Minister in January 1866.



⁸⁴ Mikaere, rebuttal statement, paragraph 4.9.

⁸⁵ EIC, paragraph 8.17.

⁸⁶ EIC, 8.18.

[186] While reading his evidence Mr Mikaere was asked by Mr Majurey to point out the location of the urupa (Te Kete Reserve) within the Hull property, which he identified within part of a pine forest on the north eastern part of the property⁸⁷.

[187] Mr Minhnic however was of the view that,

...their lack of 'real knowledge' based around "assertions" again fails to understand what Ngati Te Ata deem to be wahi tapu to Ngati Te Ata such as pa, or to take into account that a proper cultural values report has yet to be done and that in fact evidence has been presented to show that there are not only pa but as I will explain later in this submission tapu can include other physical things that were identified by Kaumatua George Flavell...⁸⁸

[188] While reading the 4th paragraph of the same page he interpolated and tabled a letter dated 19 September 1868⁸⁹ to support the notion that Ahipene Kaihau was writing to Donald McLean at the time "for further wahi tapu to be included in the transaction". Our reading of that letter did not draw the same conclusion. It appeared that the letter tabled was not the one referred to in his evidence. The last sentence of the letter dated 7 April 1865 from Shortland to Resident Magistrate Waiuku does imply such a request was being declined.

[189] Interestingly Mr George Flavell in his evidence did not readily use the word "wahi tapu" but "wahi taonga" and "urupa" when referring to sacred sites. When cross-examined by Mr Majurey:

Are there any wahi tapu anywhere near those whites shapes [the proposed turbine sites]?⁹⁰

In response Mr Flavell gave a prolonged answer which did not directly address the question.

[190] When pressed further by Mr Majurey:

...Mr Flavell, do you see the solid black lines [roading lines] on that figure?--
-Yep.

Are there any wahi tapu in those areas of those solid black lines?---The whole are, the whole area is a wahi tapu.

⁸⁷ Transcripts, p.208, lines 15-20.

⁸⁸ Minhnic, EiC, page 18, paragraph 2.

⁸⁹ Transcript, p.461.

⁹⁰ Transcript, p.435, lines 46-50.



The whole area?---The whole area...

...So it is your evidence that the entire Hull property is a wahi tapu?---It is a wahi tapu, until we have a look at it, until we have a look at it...⁹¹

[191] We find it difficult to reconcile this statement with the Ngati Te Ata evidence presented to the Court.

[192] Mr Mikaere in his second rebuttal statement said,

...we face the extremely odd situation of Ngati Te Ata requiring Genesis to fund a Cultural Values Assessment which is deemed necessary to "prove" the existence of wahi tapu on the project site.⁹²

Rua and Areas of Occupation (Kainga, Mara)

[193] Mr George Flavell in his power point presentation also provided detailed evidence of several areas of occupation such as kainga (unfortified living areas), mara (cultivations), rua kai (food storage pits), rua whare (house site pits), tool making areas and living areas around or near Pa sites throughout the Awhitu Peninsula. We observed during our site inspections, many of the rua indentations on the landscape were quite obvious even to the untrained eye.

[194] Mr Flavell presented 15 pages regarding cultural features on the Hull property landscape. Unfortunately these features were not presented with an overlay of the proposed turbine sites to facilitate a clearer understanding of the relationship between the proposed turbine sites and the areas of cultural significance. Under cross-examination Mr Flavell mentioned various types of rua around the proposed turbine sites 3, 6, 11, 12, 15, 16, 17, 18, 19.⁹³

[195] Mr Mikaere⁹⁴ felt that Mr G Flavell's material lacked "specificity in respect of the project property". He went on to say (3.2 First Rebuttal Statement),

What is noticeable about Mr Flavell's comments is the absence of historical and cultural comment specific to the project property. This is particularly so in terms of wahi tapu and runs counter to earlier claims that "we know that wahi tapu exist there" (see paragraph 8.4 of my primary evidence).

⁹¹ Transcript, page 437.

⁹² Paragraph 2.5.

⁹³ Transcript pp. 438-439.

⁹⁴ Mikaere, first rebuttal statement, para 3.1.



[196] In October 2003 Ms Vanessa Tanner, a qualified archaeologist, accompanied by members of Ngati Te Ata, undertook a survey of the wind farm site and prepared a detailed report. That report was adduced in evidence as an Appendix to the evidence of Mr R Clough, a qualified archaeologist with many years of experience.

[197] Mr Clough carried out a peer review of the report prepared by Ms Turner and also carried out a more detailed assessment along the routes of the proposed access roads and proposed locations of the wind turbine sites. He came to the conclusion that given the extent of erosion and the condition of the existing sites, most largely destroyed, it is considered unlikely that unrecorded important archaeological deposits would be exposed during construction⁹⁵.

[198] Mr Clough also referred to the fact that the Historic Places Trust granted authority on 8 December 2004 approving earthworks and construction of the wind turbines and associated works. It outlined requirements relating to any monitoring agreements resulting from consultation between Ngati Te Ata and the authority holder Genesis. Mr Clough concluded:

The results of the Turner survey indicate a low density of remains across the landscape and that other sites may have been lost to erosion. There is no indication of any large complex site such as a pa or open settlement and the remains relate to occasional low frequency use of the landscape including activities such as cooking, storage and tool maintenance/manufacture.⁹⁶

And:

Most of the sites have been largely destroyed and are of low moderate archaeological significance.⁹⁷

[199] Mr Clough concluded that the extent of erosion, general locational factors and the detailed assessment of the access road and wind turbine sites suggest that it is unlikely the project would impact on intact archaeological deposits. However, it was his view that as the area was previously used by Maori, there remains some possibility that unrecorded sites will be exposed during earthworks and therefore a cautious approach should be taken. This would include archaeological monitoring of earthworks in areas not completely exposed by erosion. It was for this reason that an authority was applied for and granted by the Historic Places Trust. This authority lays out the monitoring and requirements to be undertaken should material be



⁹⁵ Clough, EiC, paragraph 6.2.

⁹⁶ Clough, EiC, paragraph 8.4.

⁹⁷ Clough, EiC, paragraph 8.5.

unearthed during construction.⁹⁸ Such monitoring and requirements to be undertaken have also been addressed in the proposed conditions of consent.

Summary of tangata whenua issues

[200] In the light of the evidence presented and our site visit on 29 July 2005, we find that the Awhitu Peninsula is of major cultural significance to the Ngati Te Ata people and that there are various types of rua on the Hull property. We also recognise that because of their prolonged separation from their wahi tapu and other special sites, a heritage survey would greatly assist to determine the exact location of these areas of cultural significance. But the evidence does not satisfy us that a heritage survey or cultural assessment is required now, before considering whether a resource consent should be granted.

[201] We find that there are rua on the Hull property, and a cultural values assessment would assist in ascertaining the relevance of those features. However, we also conclude that most of the archaeological sites have been largely destroyed and are of low moderate archaeological significance. Notwithstanding, in view of the possibility that unrecorded sites may be exposed during earthworks, a cautious approach should be taken which would include archaeological monitoring of earthworks in areas not completely exposed by erosion. We consider the conditions of the authority granted by the Historic Places Trust (2004/250) and the proposed conditions of consent would adequately address this matter.

[202] The issue of an alleged lack of consultation raised by the Ngati Te Ata witnesses was addressed in some detail by Ms A Marshall and Mr Mikaere. We do not propose to prolong this decision by detailed reference to that evidence. Suffice it to say that we agree with Mr Mikaere when he concluded that in his opinion there has been a robust consultation process in accord with best practice⁹⁹

Alternatives

[203] It is common ground that generally there is no obligation under the Act for a resource consent applicant to provide evidence on alternative locations or methods unless there are significant adverse effects. However, Mr Gould submitted that in



⁹⁸ Clough, EiC, paragraphs 8.7 and 8.8.
⁹⁹ Mikaere, EiC, paragraph 6.1.

the present case rule 15.1.2.9 of the district plan applies. Rule 15.1.2.9 of the plan relevantly provides:

In addition to the criteria of section 104 of the Act and Part 53, a discretionary activity application will be assessed against the following criteria...

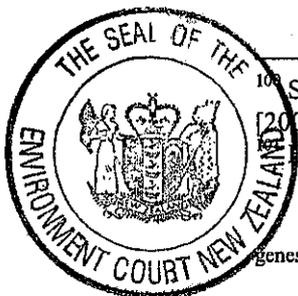
- Alternative routes and sites available, including underground or overhead locations;
- Reasons for particular choice of site or route; ...

[204] He submitted that these assessment criteria are an essential requirement for us to consider in determining the applications for resource consent for the proposed wind farm under section 104 of the Act. He pointed out that the Courts have accepted that “assessment criteria”, are a matter for the Court’s consideration under section 104(1)(d) of the Act (now section 104(1)(b)(iv)), if the specific assessment criteria are relevant to the resource consent application under consideration¹⁰⁰.

[205] He referred to the recent case of *Freilich v Tasman District Council* as a recent example of the Court’s willingness to take into account assessment criteria relating to alternative sites or locations under section 104(1)(b) when considering an application for discretionary resource consent for a network utility activity¹⁰¹.

[206] He submitted that rule 15.1.2.9 of the district plan applies to network utility activities throughout the district. Further that this provision provides a clear direction that the Franklin District Council intended to:

- (i) provide for such activities within the Franklin District without the need for designation; and
- (ii) require applicants to demonstrate that the effects of the activity at a chosen site are minor compared with other sites, and that these matters are relevant to the consideration of the application under section 104(1)(b) of the Act.



¹⁰⁰ See for example *Queenstown Lakes District Council v Lakes District Rural Landowners Society* [2002] NZRMA 81.
¹⁰¹ Environment Court Decision C015/2005, pages 23-26.

[207] He further submitted that in considering this application, we must bear in mind the statement of Elias C J in the recent Supreme Court decision of *Westfield New Zealand Limited and Northcote Main Street Inc v North Shore City Council and Discount Brands Limited*¹⁰². In that case, Elias C J stated:

The district plan is key to the Act's purpose of enabling "people and communities to provide for their social, economic and cultural well-being". It is arrived at through a participatory process, including through appeal to the Environment Court. The plan has legislative status. People and communities can order their lives under it with some assurance...a district plan is a frame within which resource consent has to be assessed.

[208] First of all, we agree with Mr Kirkpatrick and Mr Majurey, that the "alternative site criteria" is not a particularly bespoke item for this type of activity. It is not an activity that was envisaged at the time of the drafting of the district plan. Further, we agree with Mr Kirkpatrick when he submitted that in *Freilich v Tasman District Council*, the consideration of assessment criteria was simply part of an overall assessment of effects, not a test. After considering the relevant criteria, at paragraph [138] the Court asked itself whether such assessments showed any basis for influencing its decision against the proposal, and concluded it did not. Significantly, the primary question which the Court asked itself in determining whether to grant consent was whether the purpose of the Resource Management Act would be better served by granting consent or refusing it.

[209] Mr Gould's reference to the decision of the Supreme Court in *Westfield v North Shore* is not helpful in addressing the issues in these proceedings. That case was an appeal in judicial review proceedings challenging a decision not to notify an application, which was determined on the basis of the insufficiency of information available on which the Council could be satisfied that it could assess the likely effects of the proposal. Genesis application was notified. And so the context of this case is quite different to the one in which the Chief Justice's remarks were made. In any event, the centrality of the plan in proceedings before the Environment Court is, as Mr Kirkpatrick says, manifest from many statutory provisions, not least section 104(1). That provision is subject to Part II.

[210] Further there is evidence of alternative sites. Ms Butler backgrounded the sites considered and Exhibit 4 locates such sites. Mr Majurey also pointed to a lengthy exchange in relation to available sites during the cross-examination of



¹⁰² [2005] NZSC 17.

Mr Brown. That exchange was in relation to natural landscape in which Mr Brown indicated that it would be extremely difficult, if not impossible, to find a location where a wind farm would have negligible effects in terms of landscape, natural character and amenity on the Awhitu Peninsula¹⁰³.

[211] On potential adverse effects we consider that the question of alternatives is not really an important issue in the present case.

Summary of findings of fact on potential adverse effects

[212] We now summarise our findings of the effects of the proposal assessed subject to the draft conditions of consent.

(i) Positive effects-

We find that granting the proposal will have numerous positive effects which are underlain by the national interest. It will also reflect the recent legislative changes encouraging renewable energy and the benefits which would accrue from what was described by one witness as a benign source of energy.

(ii) Effects on the visual amenity – including effects on landscape and natural character-

We find that the turbines would dominate the surrounding area and undermine the visual integrity of the natural character and landscape of the coastal environment.

We find that the visual and amenity effects on nearby properties and the surrounding area would not be significant – in other words not more than minor.

We find that the land on which the turbines are to be located are not situated within an outstanding landscape.



See transcript, pages 12-13.

(iii) Noise effects-

We find that non-horse related noise effects will be, at most minor.

(iv) Horse-related matters-

We find that the potential for aversive stimuli is unlikely with proper management to cause effects which are more than minor.

(v) Tangata whenua issues-

We find that the whole of the Awhiti Peninsula has historical and cultural significance to Te Iwi O Ngati Te Ata.

However, we find that most of the archaeological sites on the land on which the proposed turbines would be situated have been largely destroyed and are of low moderate archaeological significance. Such sites could be adequately protected by appropriate conditions.

A heritage survey will greatly assist Ngati Te Ata, but the evidence does not satisfy us that it should be other than a condition of consent.

Exercise of discretion

[213] As we have said, the cardinal and pivotal matter for us to bear in mind, in weighing and evaluating the evidence and exercising our discretion, is the Act's single purpose as set out in section 5. We do not intend to reiterate what we said under the heading "Legal basis for our decision" in respect of the single purpose of the Act and its relationship with sections 6, 7 and 8 of the Act.

[214] We have found that granting the proposal would result in a number of positive effects associated with renewable energy, not to mention the positive effects from any increase in power generation.

[215] On the other hand we have found that the scale of the turbines is such, that they would dominate the surrounding area and undermine the visual integrity of the natural character and landscape of the coastal environment. Section 6 is therefore important in the circumstances of this case particularly section 6(a), which requires



us to recognise and provide for the preservation of the natural character of the coastal environment and its protection from inappropriate development.

[218] We are conscious of the emphasis expounded in *New Zealand Rail* to the effect that preservation of natural character is subordinate to the primary purpose of the Act, and that “inappropriate” must be considered in the context of preservation of natural character in order to achieve sustainable management.¹⁰⁴

[219] In this regard we note the evidence of Mr Rackham, that it is important to consider the natural benefits of wind energy and the role it can play¹⁰⁵. He further noted that all the areas marked as areas with appropriate wind resources by the New Zealand Wind Energy Association have landscape qualities and he commented that:

A decision to decline this wind farm on the grounds of adverse effects on natural character would have very serious implications for the wind farm industry as the majority of wind resource sites have similar or greater character issues to address.¹⁰⁶

[220] He further noted that more modified areas with lesser natural character usually occur nearer to concentrations of people, raising other landscape and amenity issues; so-called “better” places of wind farms are likely to be extremely limited¹⁰⁷.

[221] What constitutes protection and what constitutes inappropriate development is a judgment to be carried out by evaluating our findings of fact guided by section 5. The directions contained in sections 6, 7 and 8 are an elaboration of the single purpose of the Act, to be considered in the context of the particular circumstances.

[222] Clearly, therefore, an analysis of what is “appropriate” development must also take account of section 7 matters. Section 7 provides for matters to which the consent authority shall have particular regard in achieving the purposes of the Act. These are matters to which the Court should pay particular regard; to be “on inquiry”, and the test is a high one¹⁰⁸. Relevant, in the context of this case, to a consideration of an appropriate development in the coastal environment are the following section 7 matters:

¹⁰⁴ [1994] NZRMA, 70 at 85.

¹⁰⁵ Rackham, EiC, paragraph 9.5.

¹⁰⁶ Rackham, EiC, paragraph 9.8.

¹⁰⁷ Rackham, EiC, paragraph 9.10.

¹⁰⁸ See *Gill v Rotorua District Council*, Environment Court Decision W029/1993, 26.



- Paragraph (b) *the efficient use and development of natural and physical resources.*

The wind farm proposal and its use of wind to make efficient use of the wind power will in our view promote the efficient use and development of natural and physical resources. The proposal in this instance is a discretionary activity. This raises an inference that the activity is an efficient use of resources.¹⁰⁹

- Paragraph (ba) - *the efficiency of the end use of energy*

While this proposal generates rather than uses energy, the evidence has shown that the electricity would be supplied directly into the local network at the point of demand, so there is an aspect of efficient supply of electricity, as there are no transmission losses on the scale involved in the national high voltage network.¹¹⁰

- Paragraph (c) - *maintenance and enhancement of amenity values*

While amenity values would be to some extent affected we find that the positive effects far outweigh the effects on amenity particularly when regard is had to appropriate conditions to mitigate adverse effects on amenity values particularly such effects as visual effects and noise.

- Paragraph (f) - *maintenance and enhancement of the quality of the environment*

To the extent that this proposal would provide for the generation of sustainable and renewal energy, it would assist New Zealanders to maintain the quality of their environment, and to some extent, enhance it by encouraging and facilitating a move towards renewable energy and to reduce the emission of greenhouse gases.

- Paragraph (i and j) – *the effects of climate change and the benefits to be derived from the use and development of renewable energy*



¹⁰⁹ See *O R G Investments Limited v Christchurch City Council*, Environment Court Decision C06/1998, 20.
¹¹⁰ Willetts, EIC, paragraph 40.

The Resource Management Act was amended as from 2 March 2004 to explicitly include these matters. This is a clear recognition by Parliament of both the importance of the use and development of renewable energy and the need to address climate change, both of which are key elements in the proposed wind farm.

[223] We also note that the Environment Court, before the amendments to section 7 found that:

On the evidence presented to us, we find that the greenhouse effect and the possibility of climate change are matters of serious concern. It is difficult to assess the degree of concern because there are widely differing opinions as to the likely environmental consequences. However the weight of scientific opinion is such, that on balance, the threat posed by the enhanced greenhouse effect is sufficiently significant for us to conclude that the greenhouse effect is likely to result in significant changes to the global environment, including New Zealand and the Auckland region.¹¹¹

[224] With regard to the agreed benefits, Mr Gould emphasised in his cross-examination and his submission, the "*the de minimus*" argument: that the contribution of this proposed wind farm to reduce greenhouse gas input, or that the quantity of electricity that would be produced by the proposal, is in percentage terms minimal.

[225] This specific argument was made in, and comprehensively addressed by, the National Board of Inquiry into the Stratford Power Station in 1995¹¹² when the Board said that:

7.101 We now turn to the question of whether the discharge of CO₂ from the proposed power station would result in or be likely to result in or contribute to significant or irreversible changes to the global environment, which s140(2)(g) requires us to consider. On the world scale, the discharge from the combined cycle station would be negligible. By itself it would contribute only 0.007% of the world's total discharge, and as we have seen, its net contribution when considered in conjunction with existing thermal power stations would be even less.

7.102 An argument was put to us by Dr Tucker (Ev. P20) that the effect of the proposed combined cycle power station on climate change effects would be negligible. ...An implication could be taken from this statement that, as the contribution of the proposed power station to the total world emission of CO₂ would be miniscule, then it

¹¹¹ *Environmental Defence Society (Inc) v Auckland Regional Council* [2002] NZRMA 492, at page 19, paragraph 65.

¹¹² Proposed Taranaki Power Station Air Discharge Effects (Report and Recommendation of the Board of the Inquiry pursuant to section 148 of the Resource Management Act 1991: Chairman David R Williams QC, February 1995.



would make no difference to any global warming effects whether the power station were to be built or not.

- 7.103 We do not accept the argument. To do so would imply that as the world's CO₂ emission is composed of a great number of small emissions, the effect of any one of them could be discounted. But if one, why not more, or many, or, indeed, all? It is reminiscent of the old story of sugar being added to a cup of coffee. If one grain alone is added, the coffee will not become discernibly sweeter, nor will it if another is added. If enough grains a spoonful are added, though, the coffee will certainly become sweet. No one grain makes the difference. That is the reason for the FCCC, that all parties, and at least as many countries as possible, should address the problem together. Without the Convention, and united efforts toward compliance, the situation becomes another example of what the economist Garrett Hardin called the 'tragedy of the Commons' in his famous article bearing that title... . Each man is locked into a system that compels him to increase his herd without limit in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.

Here because there is no one owner of an exploitable common resource, in this case the air as a receiver of carbon dioxide, the resource becomes overused and ill-used or even destroyed.

- 7.104 Furthermore, even though the emission from the proposed power station is small by world standards, nevertheless the harm, or potential for harm, throughout the world is very large. A small proportion of a very large amount may itself be large. It was perhaps Dr Tucker's intention, in the evidence quoted above, to deny this on the grounds that, where a contribution is a small proportion of a vast total, then the direct effects of the contribution would not be sufficiently great to allow them to be measured, given the uncertainty with which the effects can be known. We disagree with his argument. We are concerned with the prediction of what might happen in the future, and not with experimental observation. We predict future effects by the use of conceptual, and occasionally quantitative, models. It is legitimate to suppress random variation in assessing the effects of individual variables on the whole. The main argument, that any emitter of CO₂ should be responsible for the global effects in proportion in its contribution to the global emission, is attractive, and cannot be faulted by Dr Tucker's criticisms of it. Thus on several grounds we conclude that the contribution of the CO₂ discharges of the proposed power station is indeed significant in terms of its contribution to significant changes to the environment.

[226] Since then, the Resource Management (Energy and Climate Change) Amendment Act 2004, and the amendments to section 7 in particular, have reinforced the intention of Parliament that this Court is to have particular regard to both the effects of climate change and the benefits to be derived from the use and development of renewable energy. Parliament has affirmed the conclusion of the Stratford Board of Inquiry that climate change must be addressed and has determined that one way it must be addressed is through renewable energy.



[227] Section 5 concerns are to ensure present people and communities do not, in pursuit of their wellbeing, destroy existing stock of natural and physical resources so as to improperly deprive future generations of the ability to meet their needs.¹¹³ Climate change is a silent but insidious threat that scientists tell us threatens to improperly deprive future generations of their ability to meet their needs.

[228] We accordingly do not accept the 'de minimus' argument.

[229] We have also found that the Awhiti Peninsula is of major cultural significance to the Ngati Te Ata people. We found that there are various types of rua on the Hull property. However, we concluded that most of the archaeological sites on the proposed wind farm site have been largely destroyed and are of low moderate archaeological significance. We are satisfied that the proposed conditions of consent adequately address the Maori cultural issues and the provisions of Part II which requires us to give effect to such issues.

[230] The ultimate question for us, is whether the purpose of the Resource Management Act would be better served by granting consent or refusing it. We find that the proposal meets the sustainable management purpose of the Resource Management Act. Notwithstanding the effects on the coastal environment we consider the proposal to be appropriate in the circumstances of this case. We find that the benefits of the proposal, when seen in the national context, outweigh the site-specific effects, and the effects on the local surrounding area. To grant consent would reflect the purpose of the Act as set out in Section 5.

Proposed conditions

[231] Mr Gould requested, that if consent were to be granted, that an interim decision be issued and submissions sought on the nature and form of conditions of consent. In adopting that course we make the following comments on some of the proposed conditions. The version referred is that attached in Mr Majurey's closing submissions.

- (i) Condition (i) – community consultation – requires the consent holder to establish a consultative group. We consider this condition should include a list of parties who are to be included in this group.



¹¹³ *Canterbury Regional Council v Selwyn District Council*, Environment Court Decision W142/1996 page 13, [1997] NZRMA 25.

- (ii) Conditions (m and n) – construction management plan and rehabilitation plan – a number of the witness called by Genesis¹¹⁴ highlighted the merits of, and the need to, stabilise exposed areas of sand on the site.

We are not satisfied that the proposed conditions adequately address these matters in relation to construction of the wind farm and rehabilitation/enhancement. We consider that the conditions should further detail the matters to be included in, and achieved by, these management plans. For example, the recommendations included in the statement of Mr D Burgin at sections 5 and 6¹¹⁵ should be more fully reflected in the conditions.

- (iii) Condition (r) – register of bird fatalities – as proposed this register relates to any birds found within the wind farm site. It is unclear whether this applies to the area on which the turbines are to be located or to the whole of the legally defined properties affected by the application.
- (iv) Condition (t) – review of operation – the ongoing effectiveness and maintenance of the sand stabilisation and rehabilitation, referred to above needs to be clearly included in this review condition. As proposed the review condition may be triggered two years after the commencement of this consent and at five-yearly intervals thereafter for a period of ten years. We think that the Council should be able to be more responsive than as proposed and would suggest that the five-yearly intervals be reduced to say two years, and the ten-year limit be deleted.

Determination

[232] For the reasons set out in this decision the appeals are allowed. The decision of the Council is set aside and the application for resource consent is granted. This is to be subject to conditions.

¹¹⁴ K Butler, EiC, paragraph 6.14; A Marshall, EiC, paras 10.13-10.15, 11.15, 11.16; J Hudson, EiC, paragraph 8.2; A Rackham, EiC, paragraphs 8.24, 8.25, 10.9; A Rackham, EiC, rebuttal, paragraph 3. Statement of evidence by D Burgin, dated 24 June 2004, attached to K Butler, EiC, sections 5 and paragraphs 11-20.



[233] The parties are allowed a further 30 working days from the date of the issue of this decision to finalise those conditions. If the conditions cannot be agreed upon by then, any party to the proceedings may apply to the Court for a hearing to determine the appropriate conditions of consent. However we would expect, having regard to the guidance given by this decision, that the parties can reach agreement.

[234] Costs are reserved. However, it is our tentative view that costs should lie where they fall.

DATED at Auckland this 7th day of September 2005.

For the Court:




Gordon Whiting
Environment Judge

List of Attachments

1. Map showing proposed location of wind turbines – Appendix 1.
2. Map showing indicative on-site road layout – Appendix 2.



100 0 100 200 300 Meters
Figure 5: Wind Turbine and Access Roading Layout (Indicative)