

IN THE MATTER of the Resource
Management Act
1991

AND

IN THE MATTER of submissions on
Proposed Plan
Change 22 to the
Horowhenua District
Plan

EVIDENCE OF RICHARD JONATHON TURNER

1. INTRODUCTION

- 1.1 My full name is Richard Jonathon Turner.
- 1.2 I hold the degree of Bachelor of Planning (Hons) from the University of Auckland, obtained in 2000. I am a senior resource management consultant with the firm Mitchell Partnerships Limited, which practices as a planning and environmental consultancy throughout New Zealand and has offices in Auckland, Tauranga and Dunedin. I manage the Tauranga office.
- 1.3 I am a full member of the New Zealand Planning Institute and also a member of the Resource Management Law Association.
- 1.4 I have been engaged in the field of planning and resource management for eleven years. My experience includes a mix of in-house planning responsibilities within the electricity industry (including Meridian Energy) and consultancy resource management work. My specialist areas of practice are regional and district plan development and undertaking statutory planning analyses. Additionally, I have a broad understanding of the objective, policy and rule frameworks relevant to the operation and development of electricity

generation infrastructure within a number of regions and districts in New Zealand.

- 1.5 I have also been involved in the scoping, pre-feasibility and consenting of renewable electricity development proposals throughout New Zealand.
- 1.6 A summary of my relevant experience is set out in **Annexure A** to this evidence.
- 1.7 I confirm that I have read the Environment Court's Code of Conduct (2011) for expert witnesses and this evidence has been prepared in accordance with that code. I agree to comply with the code's terms. In that regard, I confirm that the statements made in this evidence are within my area of expertise (unless I state otherwise) and I also confirm that I have not omitted to consider material facts which might alter the opinions stated in this evidence.
- 1.8 In preparing this evidence I have reviewed:
- Proposed Plan Change 22 (Outstanding Natural Features and Landscapes) to the Horowhenua District Plan ("**District Plan**");
 - Chapters 12, 19, 22 and 24 of the District Plan;
 - The further submissions by Meridian Energy Limited ("**Meridian**") on Proposed Plan Change 22;
 - The section 32 analysis accompanying Proposed Plan Change 22;
 - The section 42A report of Mr Thomas;
 - The relevant submissions of other submitters to Proposed Plan Change 22 (particularly Mighty River Power, Genesis Power Limited, the Energy Efficiency and Conservation Authority ("**EECA**"), and the New Zealand Wind Energy Association ("**NZWEA**");
 - The National Policy Statement for Renewable Electricity Generation 2011 ("**NPSREG**"); and
 - The relevant provisions of the Operative Regional Policy Statement for Manawatu – Wanganui ("**RPS**") and the Proposed Horizons One Plan ("**One Plan**").

2 SCOPE OF EVIDENCE

2.1 In this statement of evidence I canvas the following matters relevant to the further submissions on Proposed Plan Change 22 made by Meridian:

- Matters to be Considered;
- Objective 4.3;
- Policies 4.12 to 4.14D;
- Policy 4.14E;
- Rule 19.9.3 (Non-Complying Activities); and
- Assessment Criteria 24A.2.

2.2 This evidence is primarily limited to discussing only those provisions of Proposed Plan Change 22 where I do not agree with the recommendations of the officer.

3 MATTERS TO BE CONSIDERED

3.1 The officer has provided a useful summary in sections 3 to 6 of their section 42A report of the matters that need to be given regard in considering Proposed Plan Change 22. For the most part I agree with the officer's summation of the matters to be given regard and do not propose to repeat these. However, with respect to the consideration of the NPSREG and the relevant provisions of the RPS and the One Plan I do wish to comment on the advice offered by the officer.

National Policy Statement for Renewable Electricity Generation 2011

3.2 The officer has explained (Para 38) that Proposed Plan Change 22 is not intended to meet the Council's obligations with respect to the NPSREG and that the NPSREG will be addressed as part of the wider review of the District Plan which has recently commenced. The officer goes on to note (Para 40) that Policy C1 of the NPSREG (i.e. 'decision makers shall have particular regard to locational, resource or logistical practicalities associated renewable electricity

generation activities’) is likely to have policy implications for the Horowhenua District, but that this will be addressed as part of the wider plan review.

- 3.3 In effect, the officer is suggesting that the NPSREG be ‘parked’ for future consideration when it comes to decision making on Proposed Plan Change 22. In my opinion, the NPSREG cannot simply be set aside until a wider plan review is undertaken. There are two reasons for this. Firstly, the direction to local authorities to notify a plan change to give effect to the NPSREG by April 2013 (Policy H2) is subject to the caveat that “*unless already provided for within the relevant regional or district plans or proposed plans, plan changes or variations...*”. In my opinion, this caveat does envisage the NPSREG being given effect to as plan changes affecting renewable electricity generation activities (either explicitly or consequentially) are progressed prior to April 2013.
- 3.4 Secondly, and most importantly, Policies A, B and C1 of the NPSREG compel decision makers exercising functions under the RMA to have ‘particular regard’ to (i) the benefits of renewable electricity generation activities, (ii) the practical implications of achieving New Zealand’s renewable energy target, and (iii) the potential constraints associated with the development of renewable electricity generation activities. In my opinion, where a plan change affects the operation, maintenance, upgrading or development of new and existing renewable electricity activities (be that through controls around the use of resources or subdivision in close proximity to existing generation infrastructure) it is obligatory on decision makers to give effect to the NPSREG and give particular regard to the likes of Policies A, B and C1. In this regard, it is difficult to reconcile the position of proposed plan changes continuing to either restrict or not provide for renewable electricity generation activities when the Government has put in place a specific national policy statement that is designed to provide for the development and operation of renewable electricity generation activities so that national targets are met or exceeded.
- 3.5 In my opinion, Policies A, B and C1 of the NPSREG are particularly relevant to Proposed Plan Change 22 and should be considered in the decision making process. In this regard, the objective, policies and rules of the plan change seek to manage land areas which, in some circumstances, may have a potential renewable energy resource (i.e. wind) of particular quality. In seeking

to sustainably manage these land areas, regard should be given to how the management options proposed may impact on (i) the development of new renewable electricity generation activities to meet Government energy targets, and (ii) the practical and locational constraints associated with renewable energy infrastructure. Sustainable management cannot, in my opinion, be achieved if the policy and rule framework managing outstanding natural features and landscapes and high amenity landscapes does not also consider its implications for use and development and the social and economic wellbeing of communities. As I discuss later in this evidence, this approach does, in my opinion, require a broader policy framework than that currently recommended by the officer.

Regional Policy Statement and the One Plan

- 3.7 The officer also identifies (Page 9) the key objective and policies of the One Plan they consider to be relevant to Proposed Plan Change 22. The provisions identified come solely from Chapter 7 of the One Plan (Indigenous Biological Diversity, Landscape and Historic Heritage).
- 3.8 In my opinion Chapter 3 of the One Plan (Infrastructure, Energy, Waste, Hazardous Substances and Contaminated Land) is also relevant to the consideration of Proposed Plan Change 22 for the same reasons as outlined above. That is, the plan change is seeking to manage land areas which may have a potential renewable energy resource of particular quality and be suitable for development. In particular, I consider that Objectives 3-1 and 3-1A, and Policies 3-3 and 3-4 are applicable to Proposed Plan Change 22. These provisions are set out in **Annexure B** to this evidence.
- 3.9 Policies 3-3 and 3-4 are considered particularly relevant to Proposed Plan Change 22 given the direction they provide to local authorities to take into account the need for the infrastructure, operational and technical considerations, and that renewable energy activities need to locate where the energy resource is. In my opinion, these provisions are applicable to how the policies in Proposed Plan Change 22 should be seeking to determine whether development on an Outstanding Natural Feature or Landscape (“ONFL”) is

appropriate or not and how best to manage the potential adverse effects of development.

- 3.10 Furthermore, as the One Plan is still subject to a number of appeals and its final form is likely to be determined by the Environment Court consideration also needs to be given to the RPS. In particular, Proposed Plan Change 22 should be considered against Objective 8 and Policy 8.2 of the Operative RPS. Policy 8.2 of the RPS is pertinent as it states:

To protect regionally significant natural features and landscapes which are outstanding from inappropriate subdivision, use and development. In determining inappropriate subdivision, use and development the following will be taken into account:

- a. the degree to which activities would adversely affect the values specified in Policy 8.3 so far as those values provide a significant contribution to outstanding features and landscapes; and*
- b. the degree to which the activity provides for the social or economic well-being of people and communities, (including providing essential services to the public);*

while ensuring that, in all cases, adverse effects of any activity on the features or landscapes are avoided, remedied or mitigated.

- 3.11 In effect, Policy 8.2 provides policy direction to local authorities as to the factors that should be considered when determining whether a development on an ONFL is 'appropriate' or not. These include the degree of adverse effects on the outstanding values and the social and economic benefits provided by the proposed activity. Again, I consider this over-arching direction has relevance for the policies in Proposed Plan Change 22 (which I discuss later in this evidence).

4 OBJECTIVE 4.3

- 4.1 Meridian made further submissions either supporting or supporting in part the relief sought by the Aggregate and Quarry Association of New Zealand (050B), NZWEA (088D), and Genesis Power Limited (112A) in relation to Objective 4.3. Meridian also made a further submission opposing the request by the Department of Conservation (064F) for the objective to be retained as notified.
- 4.2 The key theme of the relief sought by the Aggregate and Quarry Association of New Zealand, NZWEA, and Genesis Power Limited was that Objective 4.3 should seek to protect ONFL from inappropriate development or manage activities to prevent inappropriate development on ONFL. I support this relief

as it provides a clear statement of intent for the management of ONFL and also reflects the matter of national importance in section 6(b) of the Resource Management Act 1991 (“RMA”).

- 4.3 With respect to the officer’s recommended amendment to Objective 4.3, I remain concerned with one aspect of the relief proposed. In this regard, the officer’s recommended version of Objective 4.3 refers to ONFL being protected from the “*adverse effects of inappropriate subdivision, use and development.*” In my opinion, this proposed wording is less effective than that sought by the Aggregate and Quarry Association of New Zealand, NZWEA, and Genesis Power Limited and creates confusion with respect to management of development on an ONFL. In particular, the proposed wording diverges from section 6(b) of the RMA and implies that the determinant factor as to whether development is ‘appropriate’ or not is purely based on its degree of adverse effects on an ONFL.
- 4.4 The assessment of ‘appropriateness’ must be made on case by case basis in terms of the overall purpose of the RMA. It is my understanding that a determination of ‘appropriateness’ requires consideration of the degree of impact on the values and characteristics of ONFL and also the value or benefit to be derived from a proposal – as suggested in Policy 8.3 of the RPS. The Courts have also provided useful direction as to how a determination of ‘appropriateness’ should be made. Direction provided by the Courts includes:

Clearly, therefore, an analysis of what is “appropriate” development must take account of section 7 matters...These are matters to which the Court should pay particular regard; to be “on inquiry” and the test is a high one...(para [220]).¹

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 effects on the local surrounding area. To grant consent would reflect the purpose of the Act as set out in s5 (para [230]).²

Given those views, can we say that the proposed developments, or either of them, are appropriate in the s6(b) sense? We have the clear view that the

¹ *Genesis Power Limited v Franklin District Council; A148/05*

² As above;

answer is Yes. The generation of a substantial output of electricity from a perpetually renewable source which emits no pollution, particularly in the form of greenhouse gases, is of such national importance and benefit that it clearly outweighs such site-specific adverse effects as there will be (para [79])³.

4.5 These decisions by the Environment Court clearly demonstrate that a multi-tiered approach to determining 'appropriateness' is required and that benefits and potential locational or technical considerations may be relevant in determining whether a proposed development is appropriate for the purpose of section 6(b) of the RMA.

4.6 In light of this, it is my opinion that Objective 4.3 should be amended to align with the relief proposed in the submissions of the Aggregate and Quarry Association of New Zealand and Genesis Power Limited. This approach would remove the inference that a determination of 'appropriateness' is determined solely by the degree of adverse effects and would also ensure that Objective 4.3 has greater synergy with the objectives concerning ONFL in the RPS and the One Plan. Specifically, it is my recommendation that Objective 4.3 be amended as follows (building upon the recommendations of the officer):

"Ensure that the District's Outstanding Natural Features and Landscapes are protected from inappropriate subdivision, use and development does not adversely affect outstanding natural landscapes and features and that also has regard is had to other landscapes having high amenity landscapes."

5 POLICIES 4.12 – 4.14D

5.1 This section of my evidence is structured to discuss Policies 4.12 to 4.14D collectively as, in my opinion, they are inter-related in seeking to achieve the intent of Objective 4.3.

5.2 Meridian made a number of further submissions supporting or supporting in part submissions which sought amendments to Policies 4.12 – 4.14D. In particular, Meridian supported or supported in part the following submissions of note:

³ *Unison Networks Limited v Hastings District Council; W058/2006;*

- Transpower NZ Ltd (027E) – sought policy recognition of locational and operational requirements of regionally significant infrastructure in outstanding natural features and landscapes;
- Genesis Power Limited (112C) – sought the amendment of Policy 4.13 to focus on giving particular regard to the maintenance and enhancement of amenity values;
- Telecom NZ (032B) and Genesis Power Limited (112D) – sought the deletion of Policy 4.14; and
- EECA (091I) – sought policy recognition of the local, regional and national benefits that may be derived from the use of renewable energy resources.

Outstanding Landscape Provisions

- 5.3 Policies 4.12, 4.14 and 4.14D are the three key policies relating to the management of ONFL. Policy 4.12 follows the direction of Objective 4.3 by referring to ONFL being protected from inappropriate development. It does not provide any direction to decision makers or consent applicants as to how a determination of whether a development is 'inappropriate' or not should be made.
- 5.4 Likewise, there is a conflict between the direction provided by Objective 4.3 and Policy 4.12 and the course of action established via Policy 4.14. Policy 4.14 (as recommended by the officer) seeks that the development of all buildings be avoided where they will adversely affect the values of ONFL. In contrast, both Objective 4.3 and Policy 4.12 only seek that ONFL be protected from development that is 'inappropriate'.
- 5.5 In my opinion, Policy 4.14 is not consistent with Objective 4.3 as it has been drafted on the premise that any building which adversely affects an ONFL will be 'inappropriate' and should be avoided. As I have already discussed, the determination of 'appropriateness' requires a case by case assessment under the broad framework of Part 2 of the RMA. Buildings or structures with some degree of adverse effects on ONFL may still be appropriate under the framework of section 6(b) of the RMA depending on their contribution to social and economic wellbeing or other balancing factors.

- 5.6 In light of this, it is my opinion that Policy 14.4 should be deleted (as submitted by Telecom NZ (032B) and Genesis Power Limited (112D)) and that the remaining policies following Objective 4.3 seek to provide guidance to decision makers as to how 'appropriate' development will be able to be distinguished from 'inappropriate' development and how the protection of the characteristics and values of ONFL will be achieved. I consider this outcome could be achieved in part by adopting the amendments requested by Transpower NZ Ltd (027E) and EECA (091I).

Amenity Landscape Provisions

- 5.7 With respect to the policies concerning areas with high landscape amenity, I note that the officer is recommending (Para 109) that Policy 4.13 be amended to reflect the need for subdivision, use and development to be undertaken in a manner that gives particular regard to the maintenance and enhancement of the amenity values of that landscape. This recommended amendment largely reflects the relief sought by Genesis Power Limited (112C) and which was supported by Meridian. I also support this recommended amendment as the policy would better reflect section 7(c) of the RMA and recognise that the management of adverse effects on amenity values are not the only matters to be considered when assessing resource consent applications.
- 5.8 Likewise, I am supportive of the officer's proposed amendments to Policy 4.14C (Para 117) with respect to clarifying that it is the landscape, rather than land uses, which is capable of accommodating development because of its characteristics. I, therefore, would support the adoption of these proposed amendments by the hearing panel.
- 5.9 In light of all of my comments on the policies supporting Objective 4.3, it is my opinion that Policies 4.12 to 4.14D should be amended as follows (again building upon the recommendation of the officer):

POLICY 4.12: Ensure that specified outstanding natural landscapes ~~and features~~ and landscapes are protected from inappropriate subdivision, use and development.

POLICY 4.13: ~~Ensure that~~ Subdivision, use and development affecting domains with in high amenity landscapes amenity shall be undertaken in a

manner that gives particular regard to the maintenance and enhancement of does not detract from the amenity values of that landscape.

~~POLICY 4.14: Avoid the development of large buildings where they will adversely affect the values of Outstanding Natural Features and Landscapes. And outstanding natural features.~~

POLICY 4.14A: Ensure that buildings within domains with dwellings on high landscape amenity landscapes ~~have~~ achieve low impact by siting and design and having particular regard to the Horowhenua Rural Subdivision Design Guide January 2009.

POLICY 4.14B: Have regard to any positive effects associated with landscape and biodiversity restoration.

POLICY 4.14.C: Have regard to the ability of existing land uses within landscapes ~~areas~~ to absorb appropriate ~~accommodate~~ subdivision, use and development which includes existing land uses, and also topography and vegetation ~~without adverse landscape effects.~~

POLICY 4.14D Have regard to the potential adverse effects on the landscape values of an outstanding natural landscape or feature from development on a nearby high amenity landscape.

POLICY 4.14X: Have regard to the locational and operational requirements of regionally significant infrastructure, located or proposed within an outstanding natural feature and landscape or domain with high landscape amenity.

Policy 4.14Y: Ensure that regard is had to the local, regional and national benefits (social, economic and environmental), to be derived from the use and development of renewable energy resources in the district.

6 POLICY 4.14E

6.1 Meridian was not a submitter or further submitter with respect to Policy 4.14E as it does not have any interest in primary production activities within the Foxton Dunefields. This said, I understand that the company does have a general interest in the coastal areas of the Horowhenua District. With that in mind, I am concerned with the changes recommended by the officer and whether there is scope to make such changes based upon the amendments sought to the policy by the original submitters.

6.2 As notified, Policy 4.14E exclusively related to primary production activities and the need to have regard to such activities within the Foxton Dunefields. Based on my review of the original submissions, three submitters sought relief specific to Policy 4.14E. These submitters were:

- Department of Conservation (064H) – who sought that Policy 4.14E be deleted and not be replaced with a new policy;
- Federated Farmers NZ (058H) – who sought that Policy 4.14E have regard to ‘existing and future’ primary production activities in all outstanding natural features and landscapes; and
- Horticulture NZ (059I) – who sought that primary production activities continue to be able to operate within outstanding natural landscapes.

6.3 In summarising the submissions on Policy 4.14E the officer has suggested (Para 123) that a submitter sought to change the policy to ensuring that historic and cultural heritage features are protected. While the NZ Historic Places Trust (011C) did refer to the need for policy recognition with respect to historic or cultural heritage features, its submission clearly seeks a new policy entitled Policy 4.14F. The submission makes no suggestion that Policy 4.14E should be amended.

6.4 The officer goes on to comment (Para 124) that the peer review process has determined that the Foxton Dunefields are not an ONFL and that the amenity values associated with the landscape are only moderate. This said, the officer highlights (Para 125) that the dunefields have areas of natural and scientific significance and that *“there is justification in ensuring the need for landform modification is justified”*. As a result, the officer has recommended that the focus on primary production activities in Policy 4.14E be deleted and that the policy now apply to all activities in the Foxton Dunefields.

6.5 My concern with this recommendation is that no party could have envisaged, based on the submissions received on Policy 4.14E, that its focus would move from being about the needs of primary production activities to one about avoiding, remedying or mitigating the adverse effects of all activities on the dunefields. As such, parties with a broader interest in the coastal areas / dunefields could not have reasonably concluded the likely direction for Policy 4.14E recommended by the officer. Parties such as Meridian are potentially prejudiced by the changes recommended by the officer. Even the submission by the Department of Conservation, which seeks the deletion of Policy 4.14E, does not suggest that the focus on primary production activities is too narrow.

6.6 Overall, it is my conclusion that Policy 4.14E can not be amended in the way recommended by the officer. In my opinion, the policy can either be retained as notified, deleted, or broadened to apply only to ONFL's.

7 **Rule 19.9.3**

7.1 Meridian lodged a number of further submissions supporting or supporting in part submitters seeking that the classification of Rule 19.9.3 be changed from non-complying to discretionary. The submissions supported included NZWEA (088G), Mighty River Power (087J), and Genesis Power Limited (112E).

7.2 These submissions generally stated that a non-complying activity status presumes that all utilities and earthworks are inappropriate on an ONFL and that what constitutes inappropriate development will vary from site to site and activity to activity. The submissions suggest that the use of a discretionary activity classification would ensure the protection of ONFL, while still enabling 'appropriate' development within these environments.

7.3 In my opinion, the activity classification for development on ONFL should be a consequence of the statement of intent in Objective 4.3 and the implementation framework in its accompanying policies. In this respect, I note that Objective 4.3, as recommended by the officer, seeks to protect outstanding natural features and landscapes from the adverse effects of inappropriate development. Quite clearly it is not seeking to preclude appropriate development on ONFL.

7.4 The policies accompanying Objective 4.3 also do not suggest that all development on ONFL should be precluded or restricted. In this respect, Policy 4.12 retains a focus on protecting ONFL from inappropriate development, while Policy 4.14D seeks to ensure regard is given to the effects of development in locations near to outstanding natural features and landscapes. Again, this policy is not seeking to preclude development – rather it is seeking that specific effects be considered in the decision making process.

7.5 That leaves Policy 4.14. The officer has recommended that this policy be amended by deleting reference to 'large' buildings and by providing context with

the words *“where they will adversely affect the values”* of ONFL. As I have already discussed in paragraphs 5.4 and 5.5 above, I consider this policy to be in conflict with Objective 4.3 and Policy 4.12 and should be deleted. In this respect, it appears to have been drafted on the premise that any building which adversely affects an ONFL will be ‘inappropriate’. As I have already discussed, the determination of ‘appropriateness’ requires a case by case assessment under the broad framework of Part 2 of the RMA.

- 7.6 In light of the above, I do not share the opinion of the officer (Para 205) that the policies in Proposed Plan Change 22 establish an express presumption against consent being granted for activities on ONFL’s and that a non-complying activity status is appropriate. Rather, I consider the policy framework establishes a clear presumption that development which is ‘inappropriate’ should be precluded. Unfortunately, the policy framework does not provide any guidance as to how a determination of ‘appropriateness’ should be made. As such, I agree with the sentiments in the submissions of NZWEA, Mighty River Power, and Genesis Power Limited that a full discretionary activity is appropriate in order to enable decision makers to make a case by case analysis of whether development on an ONFL is appropriate or not and whether the sustainable management purpose of the RMA will be achieved.
- 7.7 A discretionary activity rule would also recognise the direction provided by the NPSREG with respect to renewable electricity generation activities. In this regard, a discretionary activity status for such activities on ONFL would not preclude the potential development of new renewable electricity generation activities (as would a non-complying activity with no policy support for renewable electricity generation activities). Furthermore, a discretionary activity status would also recognise that locational or practical constraints may mean that development on an ONFL is appropriate and necessary.
- 7.8 Importantly, a discretionary activity rule would still enable the Council to decline any consent application if potential adverse effects were unacceptable and the sustainable management purpose of the RMA was not achieved.
- 7.9 I also disagree with the sentiment expressed by the officer (Para 208) that all relevant policies and effects will be taken into account in the assessment of

resource consent applications. This sentiment ignores the fact that if a network utility (which in this plan includes wind farms) is trying to pass through section 104D(1)(b) of the RMA that the objectives and policies in Chapter 12 of the District Plan provide no guidance or direction to consider positive social or economic effects. While Policy 22.1 refers to enabling 'essential' network utilities, the remaining policies all relate to measures to avoid, remedy or mitigate the adverse effects of network utilities. As such, in determining whether a network utility proposal will not be contrary to the objectives and policies of the District Plan no consideration will be given to policies that require the acknowledgement of the benefits or positive effects of a proposal.

- 7.10 On the basis of these points, it is my opinion that the relief sought by NZWEA, Mighty River Power, and Genesis Power Limited with respect to re-classifying Rule 19.9.3 as a discretionary activity is the most appropriate outcome and should be adopted in Proposed Plan Change 22. I also consider this is appropriate in the context of a cost benefit analysis applied in the context of section 32 of the RMA and the intent of the NPSREG.

8 ASSESSMENT CRITERIA

- 8.1 Meridian also supported a number of submissions seeking amendments to the assessment criteria in section 24A.2 of the District Plan. In particular, Meridian supported submissions by NZWEA (088H), Mighty River Power (087L) and EECA (091P), which sought to include consideration of social, economic and environmental benefits, and the extent to which locational or functional constraints affect the location or design of the proposed activity.
- 8.2 The officer appears to suggest that the additional criteria being sought by the submitters is not necessary as the assessment criteria in Section 24A.2 include reference to "*the extent to which the proposal is consistent with any relevant provisions in National Policy Statement...*". It, therefore, appears that the officer is suggesting that the amendments concerning the consideration of social or economic benefits or locational or functional constraints do not need to be considered in section 24A.2 because they are mentioned in Policies A and C of the NPSREG. The officer goes on to state that section 104 already requires all

positive effects to be considered, which apparently makes the proposed amendments unnecessary.

- 8.3 The NPSREG only requires decision makers to have particular regard to the benefits and locational and practical constraints associated with renewable energy generation activities. As such, the criteria requiring consideration of proposals against national policy statements are restricted to one particular type of infrastructure. It would be more effective, in my view, if the assessment criteria simply acknowledged the need to consider benefits and other constraints so that it applied to all infrastructure or applicable activities.
- 8.4 Furthermore, the statement by the officer that section 104 of the RMA already requires consideration of positive effects applies equally to adverse effects. As such, if there is limited value including reference to positive effects in section 24A.2 then surely the same logic applies to the criteria concerning the management of adverse effects or cumulative effects.
- 8.5 I, therefore, consider it is appropriate that the criteria to be used to assess land use applications be amended to include the following criteria as requested by NZWEA, Mighty River Power, and EECA:

The extent to which the activity will generate benefits relating to the social, economic, and environmental well being of communities;

The extent to which the location and design of the activity is constrained by functional, operational, and technical constraints."

9 CONCLUSION

- 9.1 As I have already discussed, this evidence has primarily sought to address only those issues where I do not agree with the recommendation of the officer. One of the key points of contention is the applicability of the NPSREG to Proposed Plan Change 22. While the officer contends that the NPSREG will be given effect to as part of the wider review of the District Plan, it is my opinion that as Proposed Plan Change 22 relates to the management of resources which potentially impact on the development of renewable electricity activities you, as decision makers, are compelled to give effect to the NPSREG and give particular regard to Policies A, B and C1. In my opinion, this has a bearing on

the matters captured by the policies accompanying Objective 4.23 and the associated rules.

- 9.2 Furthermore, the policies accompanying Objective 4.23 need to provide further direction to decision makers and resource users as to how a determination of 'appropriateness' with respect to development on ONFL will be made. As I have explained, case law and the policies of the RPS provide clear direction that a determination of 'appropriateness' requires the consideration of potentially conflicting factors – but particularly the scale of adverse effects and the potential wider benefits to people and the community. Factors such as locational or resource constraints may also be applicable in the decision making process. As a result, the additional policies sought by Transpower NZ Ltd and EECA should be included in Proposed Plan Change 22 so that greater guidance is provided on this matter.
- 9.3 Finally, I support those submissions which have sought to re-classify Rule 19.9.3 from non-complying to discretionary. The officer has suggested that the policies in Proposed Plan Change 22 create a presumption against consent being granted for activities on ONFL's. My analysis of the policies suggests that this presumption is incorrect and that the applicable policies are actually limited to protecting ONFL from development that is deemed 'inappropriate'. As a result, I consider that a non-complying activity classification is not justified and would not appropriately provide for the development of renewable electricity generation activities in accordance with the NPSREG.



R J TURNER

31 OCTOBER 2011

ANNEXURE A
SUMMARY OF RELEVANT EXPERIENCE

- Co-ordinated submission and drafting of evidence on Proposed National Policy Statement on Renewable Electricity Generation for Meridian Energy.
- Submissions and planning evidence on behalf of TrustPower on Proposed Taupo District Plan.
- Environmental scoping study for the Proposed Wairau Hydro-Electric Power Scheme, Marlborough.
- Project managed the Assessment of Environmental Effects report and resource consent acquisition process for the optimisation of lake storage capability at the Kaimai Hydro-Electric Power Scheme, Bay of Plenty.
- Assessment of Environmental Effects report for the re-development of the Omanu Surf Club in Mount Maunganui, Bay of Plenty.
- Assessment of Environmental Effects report for the re-development of Papamoa Domain in Papamoa, Bay of Plenty.
- Planning evidence on behalf of Meridian Energy on Proposed Plan Change 1 (Renewable Energy) to the Far North District Plan.
- Scoping study for the renewal of resource consents for the Patea Hydro-Electric Power Scheme, Taranaki.
- Project managed preparation of resource consent applications for the renewal of consents for the Brooklyn Wind Turbine, Wellington.
- Prepared application to vary the National Water Conservation (Rakaia River) Order 1999 on behalf of TrustPower, Canterbury.
- Assessment of Environmental Effects report for the Tararua 3 Wind Farm and presentation of planning evidence at hearing, Palmerston North.
- Submissions and appeals by TrustPower on Proposed Bay of Plenty Water and Land Plan.
- Submission by Ballance Agri-Nutrients Limited on Proposed Bay of Plenty Water and Land Plan.
- Submission and planning evidence on behalf of TrustPower on Geothermal Variation to Proposed Waikato Regional Plan.
- Mediation of appeal by Meridian Energy on Proposed Southland Regional Fresh Water Plan.

ANNEXURE B

PROVISIONS OF CHAPTER 3 OF THE PROPOSED HORIZONS ONE PLAN

Objective 3-1: Infrastructure and other physical resources of regional or national importance

To have regard to the benefits of infrastructure and other physical resources of regional or national importance by enabling their establishment, operation, maintenance and upgrading.

Objective 3-1A: Energy

An improvement in the efficiency of the end use of energy and an increase in the use of renewable energy resources within the Region.

Policy 3-3: Adverse effects of infrastructure and other physical resources of regional or national importance on the environment

In managing any adverse environmental effects arising from the establishment, operation, maintenance and upgrading of infrastructure or other physical resources of regional or national importance, the Regional Council and Territorial Authorities must:

- (a) allow the operation, maintenance and upgrading of all such activities once they have been established, no matter where they are located,
- (b) allow minor adverse effects arising from the establishment of new infrastructure and physical resources of regional or national importance, and
- (c) avoid, remedy or mitigate more than minor adverse effects arising from the establishment of new infrastructure and other physical resources of regional or national importance, taking into account:
 - (i) the need for the infrastructure or other physical resources of regional or national importance,
 - (ii) any functional, operational or technical constraints that require infrastructure or other physical resources of regional or national importance to be located or designed in the manner proposed,
 - (iii) whether there are any reasonably practicable alternative locations or designs, and
 - (iv) whether any more than minor adverse effects that cannot be adequately avoided, remedied or mitigated by services or works can be appropriately offset, including through the use of financial contributions.

Policy 3-4: Renewable energy

- (a) The Regional Council and Territorial Authorities must have particular regard to:
 - (i) the benefits of the use and development of renewable energy resources including:
 - (A) contributing to reduction in greenhouse gases,
 - (B) reduced dependency on imported energy sources,
 - (C) reduced exposure to fossil fuel price volatility, and
 - (D) security of supply for current and future generations,
 - (ii) the Region's potential for the use and development of renewable energy resources, and
 - (iii) the need for renewable energy activities to locate where the renewable energy resource is located.
- (aa) The Regional Council and Territorial Authorities must give preference to the development of renewable energy generation and use of renewable energy resources over the development and use of non-renewable energy resources in policy and plan development and decision-making, except with regard to providing for security of supply in "hydro dry" years.
- (b) The Regional Council and Territorial Authorities must generally not restrict the use of small domestic-scale renewable energy production for individual domestic use.