

	<ul style="list-style-type: none"> • Gavin Lister (Landscape, Visual, and Natural Character) • Stephen Fuller (Ecology) • Peter Clough (Economics) • Richard Turner (Planning) <p><u>For the Submitters</u></p> <p>Department of Conservation</p> <ul style="list-style-type: none"> • Shona Bradley and Lisa Sutherland (Legal Counsel) • Rhys Burns (Ecology – avifauna) • Tertia Thurley (Ecology - bats) • Emma Williams (Ecology – bittern/matuku) • Stephen Soole (Operations Manager) • Maggie Burns (Planning) <p><u>For the Council:</u></p> <ul style="list-style-type: none"> • Warren Bangma (Legal Counsel) • Dwayne Daly (Senior Planner – Resource Consents and the Section 42A report author) • Ueli Sasagi (Major Projects Leader and Principal Planner) • Della Bennet (Ecology – avifauna) • Jamie MacKay (Ecology - bats) • Jon Styles (Acoustics and Vibration) <p><u>Council Technical Support Officers</u></p> <ul style="list-style-type: none"> • Angela Mellsop and Jodi Tollemache (Planning Technical Support Officers)
Parties who filed expert evidence but were not in attendance:	<p><u>For the Applicant:</u></p> <ul style="list-style-type: none"> • Simon Orgias (Geotechnical) • Marcus Herrmann (Contaminated Land Assessment) • Glen Farley (Archaeology) • Jules Jobin (Shadow Flicker) • Brian Whelan (Aviation) • Jason Hills (Communication Services)
Commissioner site visit:	16 August 2021
Hearing closed:	8 March 2022

Introduction

1. This decision is made on behalf of the Kaipara District Council (“the Council”) by independent hearing commissioners Greg Hill (Chair), Ms Sheena Tepania and Councillor Victoria del la Varis-Woodcock (as a Commissioner) appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (“the RMA”).
2. This decision contains the findings from our deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
3. The application was publicly notified on the 6 April 2021 at the request of the Applicant. At the close of the submissions 6 May 2021, 16 submissions had been received of which 8 were in opposition and 8 in support of the proposal.
4. The submissions opposing the proposal raised a range of matters including:
 - The visual and noise effects of the proposal, particularly in relation to Kai Iwi lakes;
 - The effects from shadow flicker;
 - The effects on telecommunications;
 - Roading effects from increased traffic, particularly during the construction period;
 - The ecological effects, particularly on indigenous biodiversity (specifically avifauna, bats and herpetofauna) and on the Maitahi wetland. This was both during construction and the operation of the wind farm.
5. Written approvals were also provided to the application. These were from:
 - Landcorp Farming Ltd, the owner of the application site; and
 - The owners and occupiers of Lot 3 DP 211866 at 320 Babylon Coast Road.
6. Pursuant to Section 104(3)(a)(ii) of the RMA, we have not had regard to any actual or potential adverse effects of this application on those persons who have given written approval.
7. The only submitter to appear at the hearing and present legal submissions and evidence (corporate and expert) was on behalf of the Director-General of Conservation (Director-General or DoC). DoC strongly opposed the grant of consent on a number of grounds, particularly the adverse effects on long tailed bats and bittern (matuku)¹ – with the case essentially being there was insufficient information/evidence before us to make a decision. In broad terms the relief sought was to refuse consent, or adjourn the hearing and seek that the Applicant provide further

¹ For the rest of this decision we refer to bittern as matuku

(survey) information to enable an appropriate assessment of the effects on biodiversity to be made.

8. At the end of the hearing TWP (or the Applicant) stated that they would like 3 weeks to file the Reply Submissions. One of the reasons for this was that discussions were to be held between representatives of TWP and DoC (on a confidential basis). After the 3 week period we agreed to a further 2 week extension to file the Reply Submissions due to the ongoing discussions between TWP and DoC.
9. On the 2 March 2022 we received a Memorandum of Counsel for the Applicant along with the Reply Submissions and a set of revised consent conditions. The Memorandum of Counsel set out, among other things²:

The purpose of this Memorandum of Counsel is to update the Hearing Panel on discussions that have been occurring between representatives of Tararua Wind Power Limited (“TWP”) and the Director-General of Conservation (“DoC”). Whilst the discussions have been held on a confidential basis, we are pleased to advise the Panel that the parties have reached an agreement such that DoC has amended its position and is no longer in opposition to the grant of resource consent to the Kaiwaikawe Wind Farm (“KWF”). TWP and DoC have also reached agreement on a (limited) number of changes to the TWP condition set dated 21 January 2022. For the avoidance of doubt, DoC is no longer seeking the imposition of its 21 January 2022 condition set (or any earlier version). (Underlining is our emphasis)

10. On this basis, we accepted that the Director-General no longer opposed the grant of consent, and sought, along with the Applicant, the imposition of an agreed suite of conditions. We also understood from that Memorandum that the Council also ‘accepts’ the proffered conditions should consent be granted.
11. This decision, in relation to the matters raised by the Director-General is based on the position as set out in the Memorandum of Counsel dated 2 March 2022.

Summary of proposal

12. TWP has sought the consents necessary to establish, operate and maintain the Kaiwaikawe Wind Farm (the “KWF”, or “Proposal” or “the wind farm”) consisting of up to 19 wind turbines within a defined project envelope on the property at 379 Maitahi Road on Omamari Station.
13. The KWF project site is approximately 2,380 hectares, being a beef and sheep station operated by Pamu Farms. It is situated approximately 12km north west of Dargaville and is 3–4km inland from the Tasman Sea. Within the project site is the Project Envelope which is 315 hectares.
14. The proposal was comprehensively described in the Applicant’s Assessment of Environmental Effects (AEE) and in its evidence. Accordingly we have not set this out in detail here, but provide a summary of the key features which include:

² Paragraph 1.1 of the Reply Submissions

- Up to 19 turbines within the Project Envelope, with no turbines located within the “No Turbine Overlay” area;
 - Up to eight turbines to be located in the northern cluster of the Project Envelope and up to 11 turbines located in the southern cluster of the Project Envelope;
 - Each turbine would have a maximum height of 220m (to blade tip);
 - Ancillary infrastructure, including an operations/maintenance building, a substation/switchyard, and a network of 33kV underground electricity cables are to be located within the Project Envelope;
 - Internal access roads;
 - Two temporary concrete batching plants on site;
 - A 33kV underground cable linking the northern cluster of the Project Envelope to the southern cluster which will be contained within the Connection Envelope; and
 - An installed generation capacity of approximately 73MW² which will generate in the order of 230G Wh³ electricity a year.
15. The envelope approach adopted by TWP was discussed in detail in the AEE and in the evidence of Messrs Pearson and Turner. In summary, TWP is applying for resource consents for up to 19 turbines within a project “envelope” – as opposed to applying for fixed or indicative turbine locations and/or specific turbine types – so as to retain some degree of flexibility over final “micro-siting” of turbines, and turbine type.
16. We accept that having flexibility over turbine ‘micro-siting’, but subject to the constraints relating to the Project Envelope and “No Turbine Overlay”, and spacing restrictions, will ensure the KWF can be fully optimised using the best available turbine technology and also ensuring the most efficient use is made of the available wind resource. As set out to us, we also accept that a non-fanciful indicative layout of turbines within the KWF Project Envelope was used to demonstrate the viability of the proposal.
17. We note that post-notification changes were also made to the proposal. These were characterised by the Applicant to further reduce the effects of the proposal. Those changes include:
- Imposing a No Turbine Overlay to avoid a hill face north of indicative turbine 4 and the trig west of indicative turbine 5;
 - Trimming the Connection Envelope and Project Envelope to ensure avoidance of the extent of some stock ponds;
 - Trimming the envelope to ensure avoidance of the Homestead Garden; and

- Changes to proposed conditions to respond to issues raised, principally by DoC but also the section 42A Report³.
18. We also note, as set out in the Memorandum of Counsel dated 2 March 2022, the proposal was further ‘modified’ in terms of the agreement with the Director-General.
19. We find that none of these changes result in any jurisdictional issues regarding the scope of TWP’s applications, as they
- have not materially altered the scale or intensity of the proposal, and have reduced or constrained the project envelope;
 - have not altered the character of effects, and have decreased the level of adverse effects; and
 - are not of a nature that may have altered who would have submitted on the applications.
20. The Applicant’s legal counsel set out in the Reply Statement that⁴:
- The KWF is entirely consistent with the Government’s commitment to renewable energy, including as contained in the National Policy Statement for Renewable Electricity Generation 2011 (“NPSREG”) – being the only national policy statement of relevance to this Proposal. KWF is a significant opportunity to meet our national challenge of providing increased electricity generation capacity and security of supply in an environmentally sustainable manner, whilst contributing to the country’s decarbonised future. The Proposal is consistent with the Northland Regional Policy Statement (“RPS”) and Kaipara District Plan, and both documents provide considerable policy support.*
21. For the reasons that follow we agree with the Applicant’s Reply Submissions, and have, accordingly, granted consent subject to the attached suite of conditions.

Procedural matters

Reconvening the hearing after Covid lockdown, adjourning and closing the hearing

22. The hearing of this application commenced on the 17 August 2021. It was adjourned at the end of that day due to the Government’s announcement of the level 4 ‘lock down’ at 11.59 on the 17 August 2021 due to the positive Covid case discovered in Auckland. Given this we issued a Memorandum dated 19 August 2021 relating to re-convening the hearing.
23. In response to the request in the Memorandum, the hearing was re-convened on the 25 and 26 January 2022 at Mangawhai. The hearing was adjourned on the 26 January 2022, with the Applicant requesting time in which to file its Reply Submissions, as we have already addressed earlier.

³ These were the conditions set out in Mr Turner’s evidence-in-chief

⁴⁴ Paragraph 1.2 of the Reply Submissions

24. The Reply Submissions were received on the 2 March 2022. Having reviewed those submissions, and being satisfied we had sufficient information to make the decision, we closed the hearing on the 8 March 2022.

Expert Conferencing

25. Due to the adjournment of the hearing, and as all of the expert evidence had been pre-circulated and read, the Applicant, DoC and the Council experts agreed to expert conferencing. On this basis we issued a Direction requiring expert conferencing to be led by the planners, with input from the ecologists; and that this would be around the conditions of consent with an aim to set out what conditions were agreed or not agreed. Ms Marlene Oliver was appointed as the independent facilitator of the conferencing sessions.
26. We received 7 Joint Witness Statements (JWSs) from the various experts. Six of the JWSs related to avifauna, bats and planning by the Applicant's, DoC's and the Council's technical and planning witnesses. The JWSs set out those conditions that had been agreed and those that were not⁵.
27. The 7th JWS was prepared by Mr Turner and Mr Daly. They held an expert conferencing session, and produced a JWS on 8 September 2021. The purpose of that session was to identify those conditions of consent not relating to the matters of bats and avifauna. The JWS recorded that Mr Turner and Mr Daly had agreed all of the conditions that were the subject of the conferencing session.
28. We have had regard to the JWSs in making our decision. However, we note that the outcome of the biodiversity JWSs (where some conditions were agreed and some not) have been somewhat overtaken by the agreement made between DoC and the Applicant (and the Council) on the recommended conditions of consent.

Waiver of time to accept the Noise Peer Review in relation to the section 42A report

29. Mr Styles provided a noise peer review statement (as part of the section 42A reporting) that was late. With the agreement of the Applicant this was accepted by us and a waiver granted to enable Mr Styles' peer review to form part of the section 42A report. We address the issue relating to noise later in this decision.

Waiver of time in which to assess, hear and issue a decision on these applications

30. Section 103A(2) of the RMA requires notified resource consent applications to be completed within 75 working days from the closing date for submissions.

⁵ We note that at the reconvened hearing there was a lot of discussion and contention about the nature of the conditions set out in the JWS vis-à-vis the position of DoC; and whether the conditions 'supported' by DoC were those of the DoC experts or those of its legal counsel. Given that DoC is no longer pursuing the conditions attached to its legal submissions (dated 21 January 2022) we no longer need to resolve this issue; and accept the suite of conditions lodged with the Applicant's Reply Statement are those agreed between the parties

31. The period for completion of this matter has now exceeded twice that maximum timeframe. Accordingly, we are required to consider an extension of time pursuant to section 37A(5) of the RMA which requires the Applicant's consent, together with consideration of those matters set out in s37A(1), namely:

- the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and
- the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and
- its duty under section 21 to avoid unreasonable delay.

32. In relation to this matter the Council asked the Applicant if it would give its consent as set out above. In giving consent, Mr Welsh set out the following⁶:

On behalf of Tararua Wind Farm Limited, we confirm that it consents to the extension of time. Additionally we note the following:

- *Other than Tararua Wind Farm Limited, we do not consider any person to be directly affected by the extension. Only the Department of Conservation requested to be heard. The Department was aware of the progress of the application, did not oppose engaging in conferencing or Tararua Wind Farm's adjournment request, and in fact originally sought that the application be adjourned for a further period.*
- *The adjournment was driven by various factors including:*
 - *The Prime Minister announced the COVID-19 Alert Level 4 national lockdown in the evening of the 17 August 2021. This meant that the remaining hearing days needed to be vacated. The Level 4 lockdown was followed by a lengthy period of Level 3 and 2 restrictions and the closure of the Auckland boundary. Many of the participants in the hearing were Auckland based and resuming in-person hearings was not practicable until late December 2021. The duration of the lockdown restrictions was unknown for much of the period August – December 2021.*
 - *A comprehensive expert conferencing process conducted over a lengthy period (August-December) was useful in refining issues and conditions.*
 - *The applicant was of the view that the completion of its spring bittern and bat surveys would greatly assist the Panel in its assessment of evidence on effects. Analysis of the surveys was not possible until early January 2022.*
 - *Witness availability also reduced options for dates in December 2021 and January 2022.*
- *The KWF application is for a project of regional and national significance, and permitting sufficient time to undertake further assessment of effects and to allow time for conferencing to be completed was entirely appropriate. Presently, the Panel has not contributed to the delay in issuing its decision.*

33. On this basis we are of the view that the matters in section 37A(5) of the RMA have been appropriately addressed, and the Applicant has agreed to the extension. We thank the Applicant

⁶ Email dated 15 March 2022

for this. We have, accordingly, granted a waiver pursuant to section 37 of the RMA extending the time period until the decision issued.

Consents required in terms of the Kaipara District Plan and activity status

34. The Applicant sought resource consents in relation to the following rules in the Kaipara District Plan (KDP):
- Rule 10.11.5 - Maximum Height – Lighting structures and lightning arrestors would be over 18.5m in height. Consequently, resource consent is required as a **restricted discretionary activity**.
 - Rule 10.11.10 – Maximum Volume – Substation and switchyard buildings would be larger than 6.5m³. Consequently, resource consent is required as a **restricted discretionary activity**.
 - Rule 10.11.11 – Maximum Dimension. Substation and switchyard buildings would be larger than 3m. Consequently, resource consent is required as a **restricted discretionary activity**.
 - Rule 10.11.13 – Landscaping – Landscaping is not proposed. Consequently, resource consent is required as a **restricted discretionary activity**.
 - Rule 11.10.2 – Road Construction Not Undertaken by Council - Earthworks in the road reserve would exceed 5000m³. Consequently, resource consent is required as a **restricted discretionary activity**.
 - Rule 12.10.1a – Excavation and Fill – Earthworks in the project envelope would exceed 5000m³ and may occur within 6m of a wetland. Consequently, resource consent is required as a **restricted discretionary activity**.
 - Rule 12.10.5 – Maximum Height – Turbines and masts would be in excess of 10m in height. Consequently, resource consent is required as a **restricted discretionary activity**.
 - Rule 12.10.6 – Height in Relation to Boundary. Turbines would intrude into recession planes. Consequently, resource consent is required as a **restricted discretionary activity**.
 - Rule 12.10.7 – Setbacks – Buildings may be within 30m of a wetland. Consequently, resource consent is required as a **restricted discretionary activity**.
 - Rule 12.10.15 - Construction Noise and Temporary Activities. Consequently, resource consent is required as a **discretionary activity**.
 - Rule 12.10.19 – Potentially Contaminated Land. Consent is sought under the NES for soil disturbance. Consequently, resource consent is required as a **discretionary activity**.

- Rule 12.10.20 – Contaminated Land Remediation. Consent is sought under the NES for soil disturbance. Consequently, resource consent is required as a **discretionary activity**.
 - Rule 12.10.21 – Hazardous Substances. Volumes of hazardous substances on-site would not comply with the limits in Table 1 (Permitted Quantities) in Appendix 25D of the District Plan. Consequently, resource consent is required as a **discretionary activity**.
35. The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES) – is relevant. Although there is no record of “Hazardous Activity and Industries List (HAIL) activities having occurred within the project envelope, the potential for works to disturb former HAIL activities could not be discounted. In light of this, and as reported by the Applicant, taking a precautionary approach the Applicant also sought resource consent for soil disturbance within the project envelope as a **discretionary activity** under Regulation 11 of the NES.
36. As the activities for which resource consents are sought are inextricably linked, the applications have been “bundled” resulting in the overall activity status being a **Discretionary Activity**. No party disputed this.

Relevant statutory provisions considered

37. As required, we have considered the applications in terms of the matters set out in section 104 of the RMA which requires us to, subject to Part 2, have regard to –
- (a) any actual and potential effects on the environment of allowing the activity; and
 - (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and
 - (b) any relevant provisions of —
 - (i) a national environmental standard:
 - (ii) other regulations:
 - (iii) a national policy statement:
 - (iv) a New Zealand coastal policy statement:
 - (v) a regional policy statement or proposed regional policy statement:
 - (vi) a plan or proposed plan; and
 - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
38. Section 104 is subject to Part 2 of the RMA. The Court of Appeal in the *RJ Davidson* case stated, among other things⁷:

"Having regard to the foregoing discussion we agree with Cull J's conclusion that it would be inconsistent with the scheme of the Act to allow regional or district plans to be "rendered

⁷ *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, paragraph 83

ineffective” by general recourse to pt 2 in deciding resource consent applications, providing the plans have been properly prepared in accordance with pt 2. We do not consider however that King Salmon prevents recourse to pt 2 in the case of applications for resource consent. Its implications in this context are rather that genuine consideration and application of relevant plan considerations may leave little room for pt 2 to influence the outcome”.

39. In our view that judgment (in summary) says that notwithstanding the King Salmon judgment, decision makers need to consider Part 2 when making decisions on resource consents. However, where the relevant plan provisions have clearly given effect to Part 2, there may be no need to do so as it would not add anything to the evaluative exercise.
40. For the reasons that follow, we have specifically considered Part 2 of the Act, but find that we have not had to ‘rely’ on Part 2 to determine these applications. That is - it has not been determinative in our decision to grant consent. This is because we have been able to rely on the provisions of the National Policy Statement for Renewable Electricity Generation 2011 (NPSREG), the Northland Regional Policy Statement (RPS) and the Kaipara District Plan (KDP), noting that we have placed greater weight on the NPSREG and the RPS for the reasons we outline later.
41. Mr Welsh, in his opening legal submissions, addressed Part 2 in some detail. He also attached to his legal submissions Annexure A: Application of Part 2. He submitted, in his section “Approach to section 104 and Part 2” that⁸:

For the avoidance of any doubt, we do not consider an “overall broad judgment” – involving general recourse to Part 2 to decide the applications – is appropriate in this case, nor is TWP’s case in any way reliant on such an approach. We do not invite the Panel to adopt such an approach. We submit that the key point is that any reference to Part 2 confirms the appropriateness of the Proposal.

42. Mr Welsh also addressed this in his Reply Submissions at Section 4 – Approach to s104 and Part 2⁹.
43. We agree with Mr Welsh’s submissions and agree that recourse to Part 2 did not add significantly to our evaluative exercise in determining these applications, and that our reference to Part 2 is to confirm the appropriateness of the proposal in terms of the purpose of the RMA.

Relevant standards, policy statements and plan provisions considered

44. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant policy statements and plan provisions of the following documents:

⁸ Paragraph 7.10 of the Applicant’s Opening Legal Submissions

⁹ Pages 8 and 9 of the Reply Submissions

- National Policy Statement for Renewable Electricity Generation (2011) (NPSREG);
- New Zealand Coastal Policy Statement (2010) (NZCPS) - but we find the provisions of the NZCPS are not relevant to this proposal as the site is not within the coastal environment;
- National Policy Statement for Freshwater Management (2020) (NPSFM) - we did not find the provisions of the NPSFM relevant as the wetlands/ponds 'at issue' are not natural but constructed;
- Northland Regional Policy Statement (2016) (RPS);
- Kaipara District Plan (2013) (KDP).

Summary of evidence and legal submissions heard

45. We record that given the agreement that has been reached between the Applicant and DoC we have not needed to provide a detailed summary of the extensive evidence in relation to avifauna (mainly matuku) and bats. We address this in the reasons for granting consent.

The Council (section 42A team)

46. The Council reporting planner's section 42A report was pre-circulated and assessed the application in terms of the statutory requirements. Having considered the effects of the proposal and the relevant objectives and policies of the KDP (and other statutory documents), having participated in expert conferencing and heard all of the evidence and legal submissions presented at the hearing, Mr Daly¹⁰ recommended that the application be granted consent, subject to a suite of conditions.
47. Prior to the start of the hearing we received opening legal submissions from Mr Bangma, Counsel appearing for the Council, along with a revised set of conditions that Mr Daly supported. We also received further legal submissions from Mr Bangma prior to the re-convened hearing. Mr Bangma presented these to us at the hearing – with the conclusion being¹¹:

Mr Daly, the author of the section 42A report, supported by advice from Dr Bennet and Dr Mackay, continues to recommend consent be granted, subject to the conditions attached to these legal submissions.

48. Dr Bennet (avifauna) essentially supported the position and opinions of Mr Fuller with respect to the potential effects on matuku. In a nutshell she agreed with Mr Fuller's opinions rather than those expressed by Dr Williams on the implication for matuku should the proposal be granted consent.

¹⁰ Including the input from a number of experts (addressed in the Section 42A report)

¹¹ Paragraph 5.1 of the Council's Opening Legal Submissions

49. Dr Mackay (bats) agreed that long tailed bats were not present at the site (as had Mr Fuller and Ms Thurley). However, Dr Mackay recommended that the suite of conditions proposed in relation to bats (from the JWS) be retained in case bats did at some stage come to the site. He said he was not wedded to the conditions as proposed but wanted to ensure they were protected should they be identified on site in future. We note the parties have now agreed that most of the conditions relating to bats should be deleted.
50. Mr Styles appeared at the 17 August 2021 hearing to respond to questions from the Panel regarding noise; and provided a more detailed explanation of his evidence with suggested amendments to conditions he recommended.

Applicant – Legal and Witnesses

51. Mr Welsh provided opening legal submissions. His submissions put the applications and evidence into context by addressing the relevant legal and policy issues under the RMA. He briefly introduced the Applicant, the proposal and the witnesses who would be presenting evidence in support of the proposal. He also addressed the statutory context and relevant legal issues before commenting on certain issues raised by submitters with a particular focus on the Director-General's submission. Mr Welsh also addressed the proposed consent conditions and confirmed the Applicant relied on the amended conditions proposed by Mr Turner (attached to his evidence-in-chief). Mr Welsh provided further legal submissions¹² in relation to the various JWSs and the supplementary evidence of Mr Fuller¹³.
52. Mr Welsh also provided Reply Submissions, as already addressed above, setting out the Applicant's case; that we should rely on the expert evidence it presented, and that agreement had been reached with the Director-General – that she no longer opposed the application and that an agreed suite of conditions had been proposed.
53. Mr Pearson provided an overview of TWP, the site selection process and the KWF site and explained the complex set of factors that are required to advance a wind farm application. He described the key features of the proposal, the envelope approach adopted in the application with respect to turbine locations and summarised the positive effects the KWF will have for the Kaipara District and beyond. Describing his experience with other wind farms Mr Pearson provided an overview of the recently completed Waipipi Wind Farm project in South Taranaki to provide context on construction, stakeholder engagement and project initiatives.
54. Ms Cook explained the engagement/consultation undertaken by TWP and the approach to notification and engagement. Her evidence described how TWP values its relationship with Te Roroa and detailed the parties' engagement over several years.
55. Mr Gordon presented evidence regarding the construction of the KWF and confirmed that construction can be completed using widely accepted construction and engineering practices,

¹² Dated 21 January 2022

¹³ Dated 21 January 2022

similar to those used to construct other New Zealand wind farms with any adverse construction effects appropriately managed. Mr Gordon also confirmed that best practice stormwater management principles will be implemented through an Earthworks and Construction Management Plan; and all erosion and sediment control practices during construction of the tracks, turbine platforms and foundations will comply with earthworks guidelines.

56. Mr Carlisle's evidence concluded that the KWF can be constructed in a manner that enables potential adverse transportation effects to be appropriately managed, and which has only minor effects on the convenience and safety of other road users. He considered that a Construction Traffic Management Plan (as required in the proposed conditions) will facilitate the movement of construction traffic in accordance with best practice and recommended specific measures, such as upgrading at the SH12 intersection, which were adopted by TWP.
57. Mr Clough's evidence concentrated on three broad economic consequences of KWF being built, its contribution to community wellbeing, its effect on resource use efficiency and development, and its contribution to the benefits to be derived from the use and development of renewable energy. He noted that the KWF will have a positive effect on the electricity system in the region, improving efficiency of electricity supply into Northland by reducing the transmission losses that arise with supplying from more distant generation, and also by reducing the economic externality of greenhouse gas emissions that are contributing to climate change. He acknowledged that while the KWF may produce some adverse effects on its surroundings, the adverse effects are unlikely to have appreciable adverse economic effects.
58. Mr Lister (landscape, visual and natural character), Mr Halstead (Noise), Mr Fuller (Ecology) and Mr Turner (planning) also presented expert evidence and answered questions during the hearing. The expert evidence of these witnesses is addressed below.

DoC, Legal and Witnesses

59. We received legal submissions from the Director-General on Tuesday 24 August 2021 and further legal submissions on 21 January 2022¹⁴. The earlier submissions focused on the key areas of disagreement the Director-General and her expert witnesses had in relation to the Applicant's submissions and its expert witnesses as well as those of the Council (Mr Bangma's submissions and the section 42A report).
60. In DoC's further legal submissions Ms Bradley set out¹⁵:

In the Director-General's submission, it cannot be consistent with Part 2 of the Act to focus on Policy 4.4.1 of the NRPS which, on its face, appears to allow adverse effects to occur in respect of a critically endangered species on one side of the coastal environment line, and avoid effects on the same species on the other side of the line.

¹⁴ The further legal submissions were also accompanied by a set of track changed conditions recommended by DoC should consent be granted

¹⁵ Paragraphs 3.9 and 3.10 of the Further Legal Submissions of the Director- General

This also reinforces the Director-General's submission that the more stringent policy framework of the Kaipara District Plan should be applied, and that this is a case where it is appropriate, and perhaps necessary, to refer back to Part 2 in accordance with the guidance by the High Court in Davidson in order to decide the appropriate level of environmental protection warranted, and whether consent should be granted or declined.

61. In respect of the legal submissions, we note that DoC's planning witness, Ms Burns, disagreed with her legal counsel's submissions on the weight to be applied to the provisions of the RPS and that of the KDP. Ms Burns' opinion was (as was all of the planning experts) that greater weight should be placed on the provisions of the RPS. We address this matter later in the decision.
62. We received evidence of five witnesses on behalf of the Director-General. We also received supplementary evidence from Dr Williams on 21 January 2022.
63. Mr Soole, the Operations Manager for the Kauri Coast District, appeared as a representative of the Director-General of Conservation and an adjacent landowner, in this matter. He provided context on the regional importance of the Maitahi Wetland Scientific Reserve and the Omamari Government Purpose Wildlife Reserve individually; and as part of a network of habitat that has regional conservation significance. He discussed engagement with the Applicant as described in the evidence of Ms Cook and he attached a set of conditions reflecting the Department's position. He also addressed what predator control work DoC was doing in Northland, including in this area.
64. Ms Thurley provided evidence as an expert on critically endangered long-tailed bats. She addressed the wind farm proposal and the potential effect on bats such as; vulnerability of the species to threats including wind farms, known bat colonies in the vicinity of the proposed wind farm, adequacy of baseline monitoring by the Applicant and the Applicant's proposed management of potential effects. Ms Thurley described baseline monitoring that in her view may reduce some uncertainty.
65. With respect to long-tailed bats, the Applicant had undertaken further monitoring of these in October and November 2021, and had advised that no bat passes were recorded during the survey. Ms Thurley requested the GPS locations, dates and number of nights that the recorders were out, so she could understand what ground the survey covered to check that coverage of the survey was adequate.
66. At the January 2022 hearing, Ms Thurley accepted the long-tailed bat baseline survey provided sufficient evidence that bats were not present within the Project Site and that the previously recommended conditions dealing with bats were no longer required. From the Reply Submission and the joint letter from the Applicant and DoC¹⁶ we understand the remaining concerns of DoC have been fully addressed through the discussions between the parties. We also understand that the Council does not oppose not including conditions relating to bats.

¹⁶ Attached to the Memorandum of Counsel dated 2 March 2022

67. Given that all parties accept that there are no bats present at the site, it has been accepted that no specific conditions are required in relation to bats. We agree, and do not further address bats in any detail in this decision.
68. Dr Burns, an expert on avifauna and herpetofauna, discussed potential effects on up to 17 threatened bird species at the site. He described the risks of siting a wind farm within a network of habitat where the use of the site by local and migratory birds, is uncertain. Dr Burns described his view of measures that may improve the proposal, including a Bird Strike Monitoring Plan.
69. At the reconvened hearing, Dr Burns sought to introduce new expert evidence, essentially seeking to rebut Mr Fuller’s supplementary evidence in relation to the Band Modelling and its assessment. After a discussion with the parties, the Hearing Panel resolved not to accept this evidence on the basis that it would introduce supplementary evidence which had not been pre-circulated as required¹⁷, and which would cause significant prejudice to the Applicant. Had we accepted the evidence, we would have had to adjourn the hearing for the Applicant’s experts to review it, provide any rebuttal to it, and then re-convene the hearing. We did not think this reasonable given the length of time the hearing had been adjourned and we had specifically enabled expert supplementary evidence to be provided.
70. Dr Williams is an expert on matuku. Her evidence discussed the conservation status of matuku, their threats and ecological requirements, the significance of the area of the proposed wind farm for matuku, the potential effects of placing a wind farm there and the adequacy of information provided by the Applicant on this including their conclusions on risk posed by the wind farm and the measures proposed to manage this risk.
71. Dr Williams’ supplementary evidence, in summary, was that matuku are critically endangered, highly mobile and there were numerous threats to them. She cited – predators, water quality, water depths, lack of food, disturbance and weeds. However, she also set out that collisions with turbines were potentially an additional threat. It was Dr Williams’ opinion that the area and site was a “strong hold” for matuku and that the death of one Matuku (due to the wind farm) was unacceptable, and due to their threat status, the loss of one matuku could be catastrophic to the population in this area.
72. Dr Williams stated in her supplementary evidence that¹⁸:

Matuku are critically endangered. Based on the evidence I have seen so far; it is still my opinion that it is preferable not to locate a windfarm in the middle of a matuku habitat network. If mortalities occur, birds cannot confidently be replaced with current technology and knowledge, and this would contribute significantly to the decline of this critically endangered species and could reduce or prevent recovery efforts. The magnitude of the

¹⁷ We had directed (Direction dated 22 November 2021) that further supplementary evidence could be filed and exchanged by 5pm 19 January 2022 given that the further monitoring data was still being analysed and collected, together with the intervening Christmas/New Year holiday period

¹⁸ Paragraphs 6.4 and 6.5 of Dr Williams’ supplementary evidence

effects could potentially be catastrophic for the Northland matuku population if displacements and collisions occur. Given rates of decline are steep for matuku in other parts of the country, a catastrophic loss in Northland could be irreversible.

In my opinion, it would be very unwise to introduce a new threat of an unknown magnitude (i.e. collisions with turbines) to a stronghold site of a critically endangered species. Such an additional threat would be in place for a long period of time (the life of the wind farm) at a time when national recovery methods for the species are still in their infancy.

73. Up until receiving the Reply Submissions, the impact of the wind farm on matuku was the only remaining issue in contention between the Applicant and DoC; based on the evidence of Drs Williams and Burns and Ms Burns. While DoC maintained its concerns about matuku, it has now accepted that with the agreed conditions of consent any potential adverse effects on matuku can be appropriately managed.
74. Ms Burns provided planning evidence-in-chief. However, it is our view that her evidence did not cover the full extent of the applicable planning framework necessary to fully assess the application. Notwithstanding this, Ms Burns fully engaged in the expert conferencing sessions and formed a clear view, and agreement with the other planning experts, on the appropriate planning framework to assess and determine this application¹⁹. That framework, in summary, was that any adverse effects needed to be avoided, remedied or mitigated such that the adverse effects were “no more than minor”²⁰; and that there was not an “avoid” policy imperative.
75. In applying the policy framework, it was Ms Burns’ opinion, relying on and agreeing with Dr Williams, that the death of one matuku due to the wind farm was unacceptable and would have more than minor adverse effects. In this respect she adopted the “zero mortality” approach opined by Dr Williams and reflected in the conditions attached to Counsel’s submissions. This was despite Ms Burns’ view (and that of the other DoC experts) that better predator control, as embodied in some of the Applicant’s recommended conditions of consent, would likely ensure fewer matuku deaths.
76. It was Ms Burns’ overall opinion that with the current level of information provided, including the additional survey work and supplementary evidence from Mr Fuller, it was not possible to determine if the proposal appropriately avoided or mitigated adverse effects in accordance with the policy framework. Her Summary Statement was that²¹:

Ecological evidence identifies a level of uncertainty and level of risk associated with the application, even with the additional monitoring undertaken. I therefore consider gathering

¹⁹ In this respect Ms Burns had a different view to her legal counsel, and maintained this difference of view and explained it (which we set out later in relation to our substantive decision)

²⁰ Noting that the DoC legal submissions did not accept this – paragraphs 3.3 and 3.4 of the DoC Further legal submissions dated 21 January 2022

²¹ Paragraph 1.10 of Ms Burns’ Summary Statement

further information would be the most appropriate approach to ensure avoidance, remediation and mitigation measures are wholly understood and considered before introducing an additional potential threat from the wind farm. (Underlining is our emphasis).

77. Notwithstanding DoC's revised position (as set out in the paragraphs above), we consider it necessary to record some misgivings we have regarding Dr Williams' and Ms Burns' evidence. This relates to their not having undertaken a site visit prior to expressing the opinions they did in their respective evidence-in-chief; and that the site visit they subsequently undertook was "to" the site (viewing it from public viewing points) and not "on" the site.
78. Dr Williams stated, "*I acknowledge that at the time of writing, I had not visited the KWF site. However, the habitat photos in the EclA and evidence of Mr Fuller are very clear, and along with using photos provided by my colleague, Dr Rhys Burns, I have assessed some of the potential habitats visually*"²². On this basis Dr Williams formed, what we consider to be, very firm opinions about the wind farm proposal in relation to matuku. Examples include, "*The project area of the Kaiwaikawe Windfarm (KWF) is clearly significant for matuku*"²³ and "*The general site of the proposed windfarm contains significant habitats for matuku, both in terms of the mosaic of wetlands and ponds in the area, the types of habitats present and the air spaces between them*"²⁴. (Underlining is our emphasis)
79. When asked at the re-convened hearing if she had, since preparing her evidence-in-chief, undertaken a site visit, Dr Williams said she had been to the site and this had confirmed her opinions in her evidence-in-chief as well as in her supplementary statement. When questioned further on this matter, she accepted she had not been on the site but had driven through it on the public roads and had viewed the site from public view points. She maintained this was sufficient in terms of her evidence and the opinions she expressed.
80. The Hearing Panel undertook a detailed site visit which took the better part of a day. We were transported in four wheel drive vehicles, over farmland often steep and hilly, to see the site including the location of the turbines and the ridge and saddle areas which are not (easily) visible from public viewing points. On this basis Dr Williams and Ms Burns would not have seen the three farm ponds potentially to be removed, or the no turbine build areas (or if they could see the no turbine build areas it would have been in the order of at least 1km from the Project Envelope in the Southern Cluster).
81. Dr Williams had categorical opinions on the effects of the wind farm on matuku, particularly in relation to the significance of the site as a "stronghold" for them, and the collision risk with the turbines. She maintained these opinions throughout the hearing. Ultimately, we did not accept her opinions compared to those of Mr Fuller. This was in part due to her not having been onto the site, and therefore not being able to give a site-specific assessment of the topography, including ridges and saddles (Mr Fuller's opinion being that if matuku do fly across the project

²² Paragraph 14.1 of Dr Williams' evidence-in-chief

²³ Paragraph 4.5 of Dr Williams' evidence-in-chief

²⁴ Paragraph 18.4. of Dr Williams' evidence-in-chief

envelope they would be much more likely to fly over the saddle where no turbines were to be located, than the ridges). We do not accept “*habitat photos in the EclA and evidence of Mr Fuller ..and photos provided by ..Dr Rhys Burns*” as a substitute for a site visit similar to that which we undertook.

82. We find Dr Williams’ lack of a detailed site visit is unfortunate and is not consistent with what is expected of expert witnesses. Dr Williams also advised that this was her first RMA hearing, and we accept she may not have been advised of, or was unfamiliar with, how important a thorough site visit was to inform or ground-truth her opinions.
83. Given the above, and noting Mr Fuller’s significant experience in assessing the impact of wind farms, we have greater confidence in his evidence compared to Dr Williams’. We have, accordingly, placed greater weight on Mr Fuller’s evidence. Mr Welsh addressed this in his Reply Statement²⁵:

In contrast, Mr Fuller has extensive wind farm experience (as described in paragraphs 6-13 of his evidence in chief) and we submit is one of the pre-eminent wind farm avian ecologists in the country. As we noted in our opening submissions, he has prepared ecological impact assessments and presented evidence for eight commercial wind farms in New Zealand, with avifauna collision or displacement risks being key considerations in each case²⁶. Mr Fuller has also been involved in the design and implementation of bird studies at ten wind farm sites (in addition to KWF);²⁷ and has been involved with post construction monitoring at five sites where his predictions of likely species effects have been tested and confirmed.²⁸ The Panel will recall in the August 2021 hearing, Mr Fuller confirmed that his post construction experience at operational wind farms including the Waipipi and West Wind provided him confidence in his assessments. He also outlined his extensive ecological experience beyond wind farm applications.

84. Furthermore, the avian assessments undertaken by Mr Fuller and his team included²⁹:
- *onsite surveys for nearly 50 days, with vantage point surveys carried out by two teams, one week a month for 10 months (400 hours on site, or a total of 1500 person hours of survey effort) totalling nearly 400 hours³⁰*
 - *followed by an additional 55.5 hours of dawn and dusk surveys (excluding set up/travel/training and the 747 hours of recorder data analysis) over 10 days for the 2021 spring Australasian Bittern baseline survey.*

²⁵ Paragraph 2.9 of the Reply Submissions

²⁶ Paragraph 8 of Mr Fuller’s Evidence-in-Chief

²⁷ Paragraph 9 of Mr Fuller’s Evidence-in-Chief

²⁸ Paragraph 10 and annexure E of Mr Fuller’s Evidence-in-Chief

²⁹ Paragraph 2.5 of the Reply Submissions

³⁰ Paragraphs 134 and 128 respectively Mr Fuller’s Evidence-in-Chief

85. Ms Burns did not reveal in her written evidence or orally (until asked) that she had not undertaken a site visit prior to completing her evidence-in-chief and forming her opinions. As we understand it, Ms Burns and Dr Williams went to the site together and drove 'through' it on the public road.
86. As we stated in relation to Dr Williams, we also find Ms Burns' lack of a site visit unfortunate particularly given her opinions regarding the status of the site and its ecological significance in reliance on Dr Williams' evidence; noting our lack of confidence in Dr Williams' evidence as expressed above. This is not consistent with what is expected of expert witnesses. This, as well as Ms Burns' evidence not providing a comprehensive assessment of the applicable planning framework, means we have placed less weight on her evidence, compared to Mr Turner's. We also note Mr Turner has 21 years' experience as a planner with prior experience in consenting other wind farms and large/complex projects.

Principal issues in contention and our findings on them, and the reasons for granting consent

87. The entire proposal was (initially) in contention with respect to the concerns of the submitters who opposed the proposal and sought that it be refused consent; in particular the Director-General. However, after the 17 August 2021 hearing, the expert conferencing and the additional survey work undertaken by the Applicant during the hearing adjournment period, the only remaining issues in contention were the potential adverse effects on bats and matuku.
88. Eight submissions supported the proposal with two submitters pointing to the benefits of the proposal in relation to energy independence for the District as reason for their support. Opposing submitters raised a number of issues including the adverse effects related to: noise pollution at night and on health; visual effects including on the Kai Iwi Lakes; noise and amenity effects on the Kai Iwi Lakes; adverse effects of shadow flicker; harmful interference effects to licensed radio communication services; adverse effects on indigenous biodiversity, specifically avifauna, bats and herpetofauna and Maitahi wetland; disputed economic benefits to the community; and the effects of construction traffic and tourist traffic on Babylon Coast Road / Omamari Road. The only submitter who appeared at the hearing was DoC.
89. While we acknowledge the submitters' concerns about the effects from the proposal as addressed above, there was little, and in some case no, matters in contention between the 'technical' experts for the Applicant and the Council in respect of those issues. On this basis, and as we did not hear from submitters (other than DoC) we have briefly set out the evidence we heard in relation to those 'uncontentious' matters. Based on the expert evidence before us, we are satisfied that any effects in relation to those matters could be appropriately avoided, remedied or mitigated, including by the recommended conditions of consent.
90. Given the paragraph above, we adopt aspects of Mr Daly's section 42A report and the corresponding sections of the Applicant's AEE pursuant to section 113(3)(b) of the RMA. That is - in relation to those matters we accept the adverse effects have been appropriately avoided,

remedied or mitigated and that they are consistent with the relevant objectives and policies of the statutory planning documents.

91. The major issues in contention related to noise and ecology (bats and matuku) and we set out our findings on those matters in some detail below.

Cultural

92. The Applicant recognised³¹ that the project site lies within the rohe of Te Roroa and was cognisant that the site and surrounds of the Kaiwaikawe Wind Farm (the name of which was changed from the “Omamari Wind Farm” at the suggestion of Te Roroa) formed an intrinsic part of Te Roroa’s culture and heritage.
93. The Applicant provided evidence of consultation with Te Roroa; Ms Cook describing in her evidence how the Applicant valued its relationship with Te Roroa and detailed the parties’ engagement over several years. Counsel submitted that the Applicant’s actions to date, demonstrated a strong commitment to open and ongoing discussion with Te Roroa, to ensure that all relevant cultural issues were identified, considered and addressed. The Applicant also confirmed that it remained committed to advancing its relationship with Te Roroa in a spirit of good faith and cooperation.
94. Te Roroa provided a Cultural Impact Assessment (CIA) in support of the application, subject to a series of recommendations contained within Section 9 of it. The Applicant confirmed its agreement with and support in principle of all the recommendations in the CIA, also confirming it had committed to address each of Te Roroa’s recommendations either in proposed consent conditions (as incorporated into the conditions proffered by the Applicant) or via the proposed Mana Enhancing Agreement (“MEA”) which the parties had been progressing as part of their engagement.³²
95. The CIA explains that the MEA was posed by Te Roroa to articulate the relationship objectives and guiding principles with the applicant, the intent of the MEA to enable the applicant and Mana Whenua to engage in a meaningful relationship that clarifies each other’s roles and responsibilities and to provide the applicant with a clear understanding of Te Roroatanga in the Kaipara District. It states that, “Te Roroa recognised that this would be beneficial in terms of a collective voice to express and advocate for positive post construction benefits for whanau, hapu and iwi within the rohe.”³³
96. As set out in the Reply Submissions, Mr Welsh stated³⁴:

³¹ Paragraph 7.58 of the Opening legal submissions

³² Paragraph 7.60 of the Opening legal submissions

³³ CIA, section 3.1, p. 7

³⁴ Paragraph 8.1 of the Reply Submissions

Following the August 2021 hearing, TWP entered into a Mana Enhancing Agreement with Te Roroa. Following that, Te Roroa provided their written approval to Council. TWP looks forward to its partnership with Te Roroa and the initiatives that the KWF will provide.

97. Moreover, a condition has been included enabling cultural monitoring (condition 41).
98. The CIA also detailed the methodology undertaken by the authors of the report confirming that a 'Kaupapa Māori' methodology approach has been undertaken to support the assessment of mana whenua values including consultation with key whānau and marae within the proposed wind farm area such as Waikaraka Marae (Te Roroa) and non-Te Roroa Marae, Taita, Ahikiwi and Tama te Uaua.³⁵
99. We noted the proximity of the non-Te Roroa marae to the project site³⁶ and during the hearing asked Ms Cook whether each of these marae had also been contacted separately by the Applicant. She confirmed they had been and that the position was as set out in the CIA.
100. We were advised that the Applicant and Te Roroa continue to engage constructively regarding the Proposal. Counsel submitted that,
- “...the Panel can be confident that, including in the context of the planning framework for cultural matters set out in the RPS and KDP:*
- (a) TWP’s consultation effort has been robust and genuine; and*
- (b) All cultural effects – as identified and described by Te Roroa – have been appropriately addressed in the application.”³⁷*
101. In his section 42A report Mr Daly recorded that the Applicant had provided a memorandum adopting the recommendations of the CIA and detailing additional conditions of consent to reflect the recommendations. Additional proposed conditions also required consultation with Te Roroa in the event of any previously unidentified archaeological site being uncovered during works associated with the proposal.
102. On the basis of the above, we accept and agree with Mr Daly’s conclusion that having regard to the CIA, and subject to the conditions of consent, any adverse effects on cultural heritage and the cultural values of Te Roroa are considered to be adequately addressed.³⁸ We acknowledge in particular the positive steps taken by the Applicant to recognise and provide for the relationship of Te Roroa insofar as it is affected by this application.

Landscape, visual amenity and character

³⁵ CIA, section 3.6, p.9

³⁶ Taita Marae is located 4km east of the eastern boundary of the site in Mamaranui; Ahikiwi Marae is 6km north east of the northern boundary of the site, in the Kaihu Valley; Tama te Uaua is 9km north east of the northern boundary of the site, in Kaihu

³⁷ Paragraph 7.61 of the Opening Legal Submissions

³⁸ Paragraph 116 of the section 42A Report

103. The Applicant submitted an Assessment of Landscape, Visual and Natural Character Effects (LVA) prepared by Mr Lister of Isthmus Ltd. The LVA assessed adverse effects of the proposal, including construction, on landscape character and amenity, natural character, outstanding natural features and outstanding natural landscapes. The LVA described the following mitigation strategies:
- Appropriate site selection, project envelope and turbine location;
 - Turbine design including a non-reflective surface and off-white colour scheme;
 - Matters to be considered at the time of the detailed design, such as micro-siting, location of access roads and earthworks.
104. The Council engaged Ms McLaughlin-Brown of Evolve Planning and Landscape Architecture Limited (Evolve) to undertake a peer review of the LVA. Ms McLaughlin-Brown's initial review concluded that the LVA was detailed and used an appropriate methodology and in her final review confirmed that she concurred with the findings within the LVA and supplementary memo.
105. In response to Ms McLaughlin-Brown's peer review, Mr Lister provided further information on amenity values from a landscape and visual perspective with respect to shadow flicker, blade glint, lights and noise. He concluded there would be negligible visual effects from blade glint and aviation safety lights. He considered that the wind farm would comply with shadow flicker guidelines at all houses (relying on the WSP assessment and proffered conditions).
106. Mr Lister's evidence addressed the KWF's potential visual, landscape and natural character effects and confirmed the site is an appropriate location for a wind farm from a visual effects perspective. He noted that the site consists of unremarkable hills that avoid sensitive natural coastal landscapes and the landscapes of Kaihu River valley. In his view the rural character and amenity will be maintained, the KWF will not detract from the natural character of the coastal environment or the Kai Iwi Lakes and will not have adverse effects on outstanding natural features and landscapes in Kaipara District.
107. In relation to effects on the natural character of the coastal environment Mr Lister's evidence was the KWF will be well inland of the coastal environment and the wind turbines will be screened from Ripiro Beach, apart from occasional glimpses along gullies from where the wind turbines will be seen three to four kilometres (or more) away as part of a different rural landscape.
108. Mr Lister acknowledged that the KWF would be visible from surrounding areas and would affect views from nearby properties, with the nature and magnitude of such effects on amenity values influenced by proximity and personal perceptions towards wind farms. He observed that in this case, the number of affected properties is limited by the settlement density and the distance from settlements and that while turbines are prominent structures, they are anticipated in appropriate rural landscapes such as that proposed. He noted, the Kaipara District Plan provides for utilisation of the wind resource in such rural areas.

109. Four submitters³⁹ questioned the visual impact of the KWF on Kai Iwi Lakes and suggested that there will be significant adverse effects on the landscape. Another submitter⁴⁰ raised general concerns about effects on the wider landscape (i.e., beyond Kai Iwi Lakes), describing the wind farm as an 'industrial eyesore'. However, as also identified by Mr Daly, no submitters raised issues with the proximity of the wind turbines to their dwelling and associated effects on their visual amenity.

110. In terms of potential adverse effects on the Kai Iwi Lakes, Mr Lister stated⁴¹:

“Some wind turbines will be visible from parts of Kai Iwi Lakes, but they will be roughly 6km away, well beyond the skyline ridges that enclose the lakes. Such views of distant structures will not affect the lakes’ landscape values which overwhelmingly relate to the lakes themselves and their immediate setting.”

111. Ms McLaughlin-Brown reached the same conclusion as Mr Lister and stated⁴²:

“..... the turbines cannot be seen from a number of public vantage points around the lake due to intervening landform and vegetation. Whilst the turbines will be visible from (viewpoint 1), the ONL attributes are confined to generally the lake edge and immediate environs, as experienced within this view, the turbines will be seen at a distance of 6.8km away and within a wider viewing context in the background with features such as pine trees, pasture, built development, attributes which vary from those ONL qualities inherent in this landscape. Therefore I concur that the wind farm will result in a low change and have no adverse effects on the landscape values (valued features, characteristics and qualities (including scenic) of the Kai Iwi Lakes.”

112. The Hearing Panel's site visit also provided us the opportunity to consider the above evidence and drawings from various vantage points within the landscape.

113. In relation to the submission from Kate Smith and Stephen Fredrick (C10), the LVA considered and assessed the degree of prominence of the turbines and concluded the degree of prominence on the submitter to be 'moderate' with topography and existing vegetation providing a degree of mitigation on the submitter.

114. Mr Daly recorded that another twenty-two properties were considered to experience moderate prominence while another fifteen are considered to experience a greater (mod-high / high / very high) degree of prominence. No submissions raising concerns about the prominence of the turbines and/or any adverse visual effects were received from these parties.

115. In terms of remediation of the site,⁴³ the Applicant offered a condition of consent requiring removal of all above-ground structures associated with the wind turbine, including the turbine

³⁹ Hamish Douglas (C1); Dale Ellen Schick & Roger Kevin Schick (C11); Lara Clement (C12); Danya Hewetson (C16)

⁴⁰ Kate Smith and Stephen Fredrick (C10)

⁴¹ Paragraph 6(a) of Mr Lister Summary Statement

⁴² Paragraph 72 of the section 42A report

tower, wind turbine generator and externally housed transformer unit, in the event that any turbine ceases operations for more than 24 months. The site of each wind turbine generator would be required to be restored and re-vegetated as pasture within 12 months of any wind turbine being removed.

116. Mr Daly, relying on the Isthmus and Evolve reports, the proposed conditions of consent and the small number (one) of submissions against the proposal with respect to adverse visual effects beyond the Kai Iwi Lakes, considered any adverse visual effects were acceptable. We agree with that conclusion.
117. We are satisfied that the KWF will not detract from the scenic, recreational, or natural values of the Kai Iwi Lakes and will not have adverse effects on the natural character of the coastal environment or inland natural water bodies and their margins. We are also satisfied that the KWF will not have adverse effects on the outstanding natural features and landscapes in the Kaipara District.

Shadow flicker

118. Submitters Kate Smith & Stephen Frederik (C10) raised general concerns about shadow flicker. They did not attend the hearing to address their concerns – noting they had indicated that they did not wish to attend the hearing.
119. The Applicant did address in some detail the issues of shadow flicker caused by the turbines. This was included in the AEE - Shadow Flicker Assessment (Section 5.4) by WSP and in Mr Jobin's evidence. This assessed the adverse effects of shadow flicker on the five dwellings within 1,145m of the wind farm site.
120. The WSP report identified that several dwellings were estimated to exceed annual shadow flicker limits for both theoretical worst-case and realistic scenarios. As a result, the Applicant considered a shutdown curtailment strategy for turbines causing this level of shadow flicker. It was their view that subject to the curtailment strategy, the level of shadow flicker experienced at all dwellings would be less than the maximum level of acceptable shadow flicker exposure in the theoretical worst-case scenario (30 hours per year) and less than the maximum level of acceptable shadow flicker exposure in the realistic scenario (10 hours per year).
121. The Council engaged Roaring 40s Wind Power Ltd (Roaring 40s) to undertake a peer review of the Shadow Flicker Assessment prepared by the Applicant. Roaring 40s' initial review concluded that the overall approach adopted to assess the effects of shadow flicker was appropriate but recommended changes as follows:
 - The proposed condition is altered such that it limits the number of shadow flicker hours to 10 hours per year.

⁴³ A concern raised by submitters Hamish Douglas (C1), Lara Clement (C12) and Danya Hewetson (C16)

- The shadow flicker assessment should include an assessment of all dwellings within an area 10 times the turbine rotor diameter or 265 times the maximum blade chord, which is greater than the area assessed and would likely encompass more dwellings.
122. In response, the Applicant revised their Shadow Flicker Assessment Report to include dwellings within 1,620m of the proposal. This assessment identified another dwelling and included revised levels of shadow flicker at the previously assessed dwellings. The revised report again recommended a curtailment strategy to ensure shadow flicker is reduced to acceptable levels.
123. In our Hearing Direction dated 9 August 2021, we addressed the issue of which of the Applicant's witnesses needed to attend the hearing. We noted in that Direction "*We are happy that the other witnesses are available by phone or video-link as required, but note at this stage we have no specific questions for those witnesses (including Mr Jobin (Shadow Flicker))*". Given there were no real issues in contention between the experts, we did not (need to) hear from Mr Jobin.
124. Given the above, and having regard to the AEE (and the WSP report), the evidence, the Roaring 40s review, and subject to the conditions of consent proposed by those parties; the adverse shadow flicker effects are, in our view, appropriately addressed and will ensure any shadow flicker effects are avoided or mitigated.

Traffic and Transportation

125. The majority of the traffic generated by the proposal will occur during the construction period when the internal access roads, turbine foundations and internal transmission infrastructure are being constructed and when the turbines are being erected. These tasks are expected to be completed within a period of approximately 24 months.
126. The key features of the construction phase are as follows:
- An average of 200 vehicle movements per day over the busiest construction period and approximately 62% of those vehicles will be trucks;
 - Importing pavement aggregate for internal road construction and local road works, as far as the state highway network, as required;
 - Delivery of materials for turbine foundations including aggregate, reinforcing steel, cement and sand for on-site concrete production, and aggregate for turbine foundation hardfill;
 - Transport of turbine components including over-dimension and overweight loads from port to site;
 - Overweight Feasibility Permits have been obtained from Waka Kotahi for three routes (Figure 3);
 - Delivery of substation and reticulation infrastructure including the conductors for the on-site underground cabling;
 - Other construction materials, plant and on-going service and maintenance visits; and

- Regular movement of construction personnel with up to 40 personnel expected on site during civil works, and up to 100 personnel when there is an overlap between the civil phase and the equipment installation phase.
127. A number of submitters raised the issue of the effects of additional traffic on the roading network. DoC also raised transport/traffic effects, but in relation to the effect the additional traffic may have on matuku.
128. Traffic and transportation matters are considered in Section 5.7 of the Applicant's AEE. The Applicant submitted a Transportation Assessment prepared by Stantec Ltd (Stantec) dated August 2020. Stantec had assessed the potential transportation effects arising from construction and operation of the proposal, including road widening, the transportation of the numerous oversize wind turbine components and the transportation of materials and workforce associated with the civil and structural works.
129. The report included a draft Construction Traffic Management Plan Framework (CTMP) and confirmed that a finalised CTMP would be submitted to Council before physical works began. The Applicant also offered conditions of consent to reflect the conclusions and recommendations of the Stantec report.
130. The Council engaged Flow Transportation Specialists Ltd (Flow) to undertake a peer review of the Stantec report. In their initial review Flow sought a tracking assessment of Babylon Coast Road and Maitahi Road for over-dimension vehicles and comment on the feasibility of any required widening, taking in consideration constraints/requirements such as legal road boundaries, vertical geometry, retaining structures, and Kaipara District Council Engineering Standards.
131. The Applicant engaged Riley Consultants Ltd (Riley) who provided additional comments in response to Flow's queries. Flow reviewed the response from Riley and concurred that the effects on the safe and efficient operation of the transport network during the construction phase could be appropriately managed through suitable conditions of consent, concluding that the proposal would have negligible effects on the safe and efficient operation of the transport network once construction activities were completed.
132. Having considered the AEE, reports from Stantec, Riley and Flow, the expert evidence before us, submitters comments, and subject to the conditions of consent agreed between the Applicant and the Council (which we have imposed), we find that adverse effects on the roading network can be appropriately avoided or mitigated.

Engineering and Contamination Matters

133. Engineering and contamination matters were considered in the Applicant's AEE (Riley Consultants Ltd). This included:

Civil Engineering Matters;

- A plan combining all major features
- Access tracks
- Stormwater management systems
- Wastewater disposal site location and discharge rates and/or volumes
- An Operation & Maintenance Plan

Geotechnical Engineering Matters;

- Clarity on turbine location
- Details of stormwater and erosion control
- Cut slope angles
- Compliance with Council Engineering Standards for internal roads / tracks

Contamination;

- Specific information on each of the identified 'potential HAIL' activities
- Commentary on the potential for farm dumps and offal pits to be present
- A draft Site Management Plan (SMP).

134. The Council engaged AWA Environmental Ltd (AWA) to undertake a peer review of the Riley work.
135. Having considered the AEE, reports from Riley and AWA, and the evidence before us; subject to the conditions of consent agreed and as imposed by us, any adverse effects on the surrounding environment in relation to civil engineering and contamination issues will be appropriately avoided or mitigated.

Noise

136. Mr Halstead provided expert evidence in relation to noise. He confirmed that construction noise within the project site and construction noise from upgrades to external roads (with mitigation) can comply with the District Plan requirements. In his opinion the noise levels will remain within construction noise limits and are considered reasonable in the context of temporary noise activities. However, Mr Halstead noted that there is one location (701 Babylon Coast Road) where the noise limits in NZS 6803 were predicted to be exceeded for several days if mitigation was not put in place.
137. In relation to operational wind farm noise, Mr Halstead confirmed that the predicted noise levels at the notional boundaries of all identified dwellings will be within the requirements of NZS6808:2010 Acoustics – Wind Farm Noise for all potential wind farm design options.
138. Mr Styles, who provided technical advice to the Council, agreed with Mr Halstead's assessment of construction effects, operational (non- turbine) effects and operational wind turbine effects, subject to matters of concern he identified including:

- That while he supported the assessment method set out in Mr Halstead's evidence (the assessment of effects is undertaken based on the ambient sound environment and the predicted noise levels from KWF), the proposed conditions allow for the noise from the KWF to reach (in some cases) much higher levels, capped by the recommended noise limits in NZS6808.
- That the effects on vacant land surrounding the Site exposed to noise levels greater than the 40dB LAeq noise limit are clearly understood, particularly if the proposed 'date stamp' conditions are imposed.
- That the potential noise effects beyond the boundaries of the Site are clearly defined based on the final conditions attached to the consent, and that plans showing these areas of land are made easily available to current and future owners of the affected properties. This is to ensure the owners can quickly and easily identify the extent of their land that would be unsuitable for development based on unreasonable noise levels (greater than 40 dBA).

139. Mr Styles considered the implications of the proposed conditions need to be clearly understood if consent was to be granted on the basis of the conditions proposed. He observed that proposed resource consent conditions (originally 41 and 42) only required compliance with the recommended noise limit regime adopted from NZS6808 at the notional boundary of dwellings existing or consented at the date of the decision of granting this consent, essentially providing a 'date stamp' approach to the conditions and guarantees the consent holder, the right to use neighbouring land as a buffer for their noise effects.
140. In response to submissions Mr Styles agreed with Mr Halstead that based on the predicted noise levels, the noise from the KWF would be very low, and 'negligible' at the Kai Iwi Lakes with the closest existing receivers to the northern cluster of turbines (that would influence the noise levels at the Kai Iwi Lakes) predicted to receive noise levels significantly lower than the limits proposed in the consent conditions. On that basis Mr Styles considered the conditions of consent would need to restrict the noise output of the turbines to be generally no greater than what has been predicted.
141. In relation to the submission of D Cooper, Mr Styles considered that many of the issues raised in this submission had been covered adequately by either the assessment and evidence of Mr Halstead, or by the points covered in Mr Styles' review. It was his view that overall the noise effects of the KWF would range from barely noticeable or unnoticeable during windy conditions or at great distances from the Site, to clearly noticeable and the dominant noise source in the environment at moderate wind speeds and at the existing dwellings closer to the KWF.
142. Mr Styles considered it important to note that the noise of the KWF will at times be the dominant source in the environment, and that it might exceed the background sound levels by 10-15dB in some cases, particularly during easterly wind conditions or calmer conditions when coastal noise is lower at the receiving dwellings.

143. Having reviewed the proposed conditions of consent, Mr Styles considered some amendments to those conditions were required. He suggested amendments to (the original) condition 41 to ensure wording was clearer, more certain and technically correct and recommended an alternate version of condition 42 which would limit the effects to that described in the application generally, and will result in noise effects extending over neighbouring land to a degree generally consistent with that described in his evidence.
144. In his response Mr Halstead disagreed with the change to condition 42 noting that the noise limit described in NZS6808:2010 applies at the notional boundary in the rural environment, rather than at the property boundary and that this is stated both in that Standard and in the District Plan, with the intention that rural land may be used productively without restriction of activity where no benefit to noise sensitive activities is gained. In his view it would be unreasonable to restrict productive activity such as electricity generation, to protect farming or forestry land which has no noise sensitivity.
145. Mr Halstead also noted that the noise predictions he had produced demonstrate that the noise limits can be met with a practicable turbine configuration, but are not provided in order to suggest that the recommended noise limits should be abandoned and replaced by an adhoc set of limits.
146. In their JWS statement concerning planning matters, Mr Turner and Mr Daly agreed no amendment was required to condition 41 and that the drafting of the condition as proposed is consistent with Rule 12.10.16 of the Kaipara District Plan and “NZS6808:2010 Acoustics – Wind Farm Noise”. They also agreed no amendment was required to Condition 42 on the basis that the drafting of the condition as proposed provides for monitoring and compliance to be undertaken in accordance with “NZS6808:2010 Acoustics – Wind Farm Noise” and provides for compliance monitoring to be clearly understood.
147. On the basis of the above agreement, the recommendations proposed by Mr Halstead and accepted by the Applicant as proposed conditions of consent, including the establishment of a Construction Noise Management Plan and an Operational Noise Management Plan, preparation of a Noise Prediction report prior to construction, and a compliance assessment report following commencement of operation, the Hearing Panel is satisfied that the proposed conditions will ensure that the noise emissions from the KWF will comply with the relevant noise rules and limits.
148. Comprehensive noise conditions have been included – both construction and operational. These are conditions 44 to 53 in the conditions set out in Appendix 1 to this decision.

Other Effects/Matters

149. We are satisfied that all other matters that were the subject of expert evidence for the Applicant, including from Mr Orgias (Geotechnical), Mr Herrmann (Contaminated Land Assessment), Mr Farley (Archaeology), Mr Whelan (Aviation) and Mr Hills (Communication Services), have been appropriately addressed and any likely or potential adverse effects avoided or mitigated.

Positive effects

150. The Applicant identified positive effects in section 5.2 of the AEE and in the evidence of Mr Pearson (corporate) and Mr Clough (economic). These are:
- The generation of up to approximately 230 GWh of renewable electricity per annum from an installed generation capacity of approximately 73 MW¹¹ (doubling the currently installed electricity generation capacity in the Northland Region). This is enough electricity to power approximately 25,000 homes each year;
 - A positive contribution towards the Government's objective of increasing the share of renewable generation from its current share of around 80% to 100% by 2030, and its longer-term target of achieving zero net carbon emissions by 2050. Further, the KWF will not produce any greenhouse gas emissions in generating electricity and will assist in displacing emissions from electricity that could have been generated from thermal sources;
 - The location of the KWF will have a positive effect on the electricity system, as it will be able to despatch electricity to large urban loads to the south. It will also increase the generation capacity north of Auckland and will make the region's electricity demands less reliant on long transmission from generation points further south;
 - The construction of the KWF will generate approximately \$150 million of capital expenditure over an 18-month period, and will require a construction workforce of between 70 - 80 people at varying stages over this period; and
 - The land on which the KWF will be established will continue to be able to be utilised for agricultural activities. As such, the existing economic benefits generated by existing land uses on the project site will be able to continue.
151. Mr Turner's opinion was that the KWF would have positive effects for the Northland Region and the electricity system of New Zealand that are measurable, and consistent with the outcomes sought by the Government with respect to increasing the proportion of renewable electricity and de-carbonising the environment.
152. The Applicant's Economic Assessment of Omamari Wind Farm, prepared by the New Zealand Institute of Economic Research Incorporated (NZIER), supported the assessment of positive effects. The Council engaged ME Consulting Ltd to undertake a peer review of the NZIER report. Their initial review queried several matters which NZIER subsequently addressed such that ME Consulting then accepted the additions and fuller discussion provided by NZIER to support their conclusions.
153. Submitters H Douglas (C1), L Clement (C12) and D Hewetson (C16) raised concerns over adverse economic effects from decreased tourism at the Kai Iwi Lakes. The NZIER memorandum dated 11 June 2021 also commented on effects on the Kai Iwi Lakes. The memo stated⁴⁴:

⁴⁴ Paragraph 43 of the section 42A report

“I would expect the impact of the (proposal on the Kai Iwi Lakes) to be less than minor or negligible: even if some people might be deterred, some others might be attracted by the new wind farm. The things that attract people to Kai Iwi lakes, their physical characteristics, would remain the same, and there are no close substitutes for their mix of freshwater dune lakes and nearby coast. So as an economist I would not expect the lakes destination to lose their attraction for bringing people to the district and any net effect would be very small.”

154. Mr Daly concluded that, having considered the assessment from NZIER and ME Consulting Ltd and submitters comments, the positive economic effects as described in Section 5.2 of the AEE, and those set out in Mr Clough’s evidence, are accepted and the adverse economic effects on tourism to the Kai Iwi Lakes are considered negligible. We agree.

Ecological Impacts

155. We now turn to the main issue that was in contention prior to the receipt of the Reply Submissions; that relating to ecology and the impact of the wind farm on matuku. We firstly set out the statutory policy framework in which we have addressed this proposal, with particular regard to the ecological matters (ie matuku).

National Policy Statement for Renewable Electricity Generation 2011 (“NPSREG”)

156. The objective of the NPSREG is to:

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

157. In terms of the overall objective, and to matters relating to this application and effects on matuku, Policy C2 is relevant and states:

When considering any residual environmental effects of renewable electricity generation activities that cannot be avoided, remedied or mitigated, decision-makers shall have regard to offsetting measures or environmental compensation including measures or compensation which benefit the local environment and community affected. (Underlining is our emphasis)

158. We address this policy as part of the overall assessment after we have set out the (particularly) relevant provisions.

Northland Regional Policy Statement (RPS)⁴⁵

⁴⁵ Note - we cross reference to Mr Turner’s detailed assessment of the various chapters of the RPS in section 7 of the AEE and his evidence and conclusions with respect to how the KWF aligns with the various outcomes sought in the RPS

159. Objective 3.9 of the RPS seeks to provide for secure and reliable energy supplies and supports generation that benefits the region, particularly when it uses renewable sources. It also directs that particular regard be given to the significant social, economic, and cultural benefits of regionally significant infrastructure and the benefits of renewable electricity generation activities. (Policies 5.3.2 and 5.4.1).

160. In addition to the broader provisions outlined above, there was a focus on Policy 4.4.1(1) – Maintaining and protecting significant ecological areas and habitats. It states:

In the coastal environment, avoid adverse effects, and outside the coastal environment avoid, remedy or mitigate adverse effects of subdivision, use and development so they are no more than minor on:

(a) Indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;

(b) Areas of indigenous vegetation and habitats of indigenous fauna, that are significant using the assessment criteria in Appendix 5; (Underlining is our emphasis)

161. This policy has an “avoid, remedy or mitigate” approach such that any adverse effects are “no more than minor”. This approach was accepted by the planners for the Applicant, DoC and the Council as the site is not within the coastal environment as spatially identified in the RPS, but matuku are listed as threatened species. We agree, and the main issue before us became - *are the adverse effects on matuku no more than minor?*

162. Policy 5.3.3(3) – Managing adverse effects arising from regionally significant infrastructure – was also considered highly relevant by the planners. That policy states:

“Allow adverse effects arising from the establishment and operation of new regionally significant infrastructure and the re-consenting of existing operations where:

(a) The proposal is consistent with Policies 4.4.1(1) [the policy set out above],”

(d) In addition to the matters outlined in 1) (a) – (c) above, other adverse effects are avoided, remedied or mitigated to the extent that they are no more than minor.” (Underlining is our emphasis)

163. Of significance is that the policy seeks to “allow adverse effects” and that they be “avoided, remedied or mitigated to the extent that they are no more than minor”, repeating and reinforcing the provisions of Policy 4.4.1. (Underlining is our emphasis)

164. Furthermore, Policy 5.3.3(3) provides for a broader consideration of potential effects setting out a list of matters for decision-makers to give weight to when managing the adverse effects of regionally significant infrastructure. Relevant matters to this application include: whether the activity must be recognised and provided for as directed by a national policy statement (ie the

NPSREG); constraints on the design and location of the activity; and the extent to which the adverse effects of the activity can be practicably reduced.

165. These RPS policies (and that of the NPSREG listed above) became the key provisions discussed at the hearing. The key difference between the planners was that the opinions of the Applicant and Council planners were that the adverse effects on matuku (with the recommended consent conditions) would be no more than minor; while DoC's planner, maintained her view, relying on Dr Williams' opinions, that unless there was zero mortality of matuku, then the adverse effects on that population would be more than minor.

Kaipara District Plan

166. District wide Objective 2.4.14 relating to renewable energy generation is relevant and is:

To encourage and promote the efficient use of energy and enable the greater use, development, operation and maintenance of renewable energy resources whilst managing potential adverse effects.

167. District wide Policy 2.5.10 to achieve Objective 2.4.14, and its explanation states:

By providing for and promoting the efficient use of energy and the greater use and development of renewable energy resources in all areas of the District, where the potential adverse effects can be appropriately avoided, remedied or mitigated.

The District Plan seeks to recognise and promote the appropriate development of significant renewable energy resources in the District, recognising the range of positive effects and benefits this may have for the community while acknowledging that such development needs to be undertaken in a manner that avoids, remedies or mitigates adverse effects on the environment. (Underlining is our emphasis)

168. The potential development of renewable electricity generation activities in the Rural Zone of the Kaipara District is clearly envisaged and provided for which aligns with the NPSREG and RPS. While the positive effects of regionally significant infrastructure are clearly recognised (as we have set out), its development is not 'unconstrained' by the NPSREG, RPS or KDP; with all of the policies requiring avoidance, remediation or mitigation of adverse effects.
169. The district wide objectives and policies addressed above need to be read alongside the relevant Ecological Area objectives and policies in Chapter 6, including Objectives 6.5.1 and 6.5.2, and Policies 6.6.2, 6.6.2b and 6.6.3.
170. The main policy of the KDP that was the focus at the hearing was Policy 6.6.2b:

Where disturbance of significant indigenous vegetation and significant habitats of indigenous fauna cannot be avoided, it should be undertaken in a way that, minimises and/or mitigates adverse effects as far as practicable, by: ·

Ensuring that any disturbance:

- a) minimises any edge effects;*
- b) avoids the removal of specimen trees;*
- c) does not result in linkages with other areas being lost;*
- d) avoids adverse effects on threatened species;*
- e) minimises disturbance of root systems of remaining vegetation;*
- f) does not result in the introduction of exotic weed species or pest animals; and*
- g) does not result in the intentional or unintentional release of weeds or pest animals or the abandonment of domestic pets; (Underlining is our emphasis)*

171. The Planners for the Applicant, DoC and the Council all agreed that limited weight should be placed on this policy. This was for two reasons - the heading section of the policy seeks that where adverse effects cannot be avoided they are to be minimised and/or mitigated as far as practicable. However, clause 'd' requires "avoidance" and this is inconsistent with the policy header. The second reason is that Policy 6.6.2b does not 'give effect' to the RPS or the NPSREG, which as we have set out have an "avoid, remedy or mitigate" thrust and not one of absolute avoidance. The RPS is a more recent document than the KDP, and we have accorded it more weight in this context.
172. We agree with the opinions expressed by the planning witnesses in relation to policy 6.6.2b, and have placed little weight on it, preferring the more recent RPS policies which we find give effect to those of the NPSREG. We note in passing that legal counsel for the Director-General did not agree with the planners' policy interpretation as set out above, submitting that Policy 6.6.2b provided a strong policy direction that adverse effects on significant habitats of indigenous fauna were to be avoided. As said, we agree with the planning evidence.
173. Having regard to all of the above, we turned our minds to the question – are the adverse effects on matuku avoided, remedied or mitigated such that they are no more than minor.
174. In relation to this matter we had extensive evidence from Mr Fuller including his evidence-in-chief, rebuttal evidence and his supplementary evidence, and Drs Williams and Burns which we have set out. As we have already set out we have placed greater weight on Mr Fuller's evidence than that of Dr Williams. This position was reinforced having read and heard Mr Fuller's supplementary evidence where he discussed the additional monitoring undertaken over the spring period; work which he had had peer reviewed both internal to his organisation and externally. This included two baseline surveys being:
- An Australasian Bittern baseline survey (undertaken between September - October 2021); and
 - A Long-tailed Bat baseline survey (undertaken between October - November 2021).

175. In addition to these Mr Fuller reviewed data associated with a census for Australasian Bittern on land adjacent to the Project Site undertaken by DoC between October and November 2021.
176. As a result of those baseline surveys, eight reports/plans had been prepared which either summarised the baseline survey results or used those results to inform the various management and monitoring plans that would be required by the consent conditions proposed by the Applicant. These reports/plans were as follows:
- Baseline Australasian Bittern Survey Report;
 - Band Model Validation Report (which is an annexure to the Baseline Australasian Bittern Survey Report);
 - Australasian Bittern Monitoring and Management Plan;
 - Baseline Long-tailed Bat Survey Report;
 - Long-Tailed Bat Monitoring and Management Plan;
 - Bird Collision Monitoring Plan.
177. We accept that the surveys were comprehensive and detailed, and had enabled Mr Fuller to prepare comprehensive management plans. We also record that Mr Fuller's Australasian Bittern Survey Report involved:
- 55.5 hours of observations were carried out over a 10-day period;
 - 13 Acoustic Recording Devices ("ARD") were deployed for 28 days;
 - Observations and ARDs covered Omamari Station, Maitahi and Pamu West wetlands;
 - Infra-red cameras were installed at two sites at the Maitahi Road crossing capturing 1477 image (including of pests/predators);
 - The surveys were complemented by seven ARDs deployed by DoC outside of the Project Site in the Maitahi Wetland Reserve and Omamari Wildlife Management Reserve.
178. As set out in the reply submissions⁴⁶:
- The baseline surveys were additional to the extensive assessments Mr Fuller and his team at Boffa Miskell undertook prior to lodgement which amounted to nearly 50 days of onsite surveys, with vantage point surveys totalling nearly 1500 person hours. In totality, the evidence (and associated reports) of Mr Fuller demonstrates a significant body of scientific assessment undertaken by Mr Fuller and his colleagues which is more than sufficient for the Panel to rely upon and make a decision under s104. As noted above, Dr Bennett provided additional comfort to the Panel on the sufficiency of information before the Panel, and both Dr Bennett and Mr Mackay acknowledged the comprehensive nature of Mr Fuller's additional surveys and draft management plans.*
179. Mr Fuller's conclusions in his supplementary evidence essentially sum up his opinions in relation to the effects of the wind farm. He stated under the heading of - *Do the baseline surveys change my conclusions?* the following⁴⁷:

⁴⁶ Paragraph 6.5 of the Reply Submissions

The baseline surveys have confirmed my original assessment of this site.

With regard to bats, after a survey of potential roost trees in 2019 did not record any bats we were confident that bats were not present within the Project Envelope. Now with a second survey which covered the full Project Envelope as well as wetlands and habitat features outside the Project Envelope, finding no presence of bats, our original conclusion has been confirmed.

With regard to bittern, the number of individuals located are not surprising, and the observations made during the baseline study have confirmed for me that the greatest risk to bittern on this site remains potential collision with construction traffic as detailed in my Ecological Impact Assessment (EclA). The survey has provided more information on bittern activity at and adjacent to this access road which will greatly assist in management of this risk.

The results of the baseline survey have also increased my confidence that the wetland enhancements and predator control proposed at those sites will have a positive effect on the local bittern population.

With regard to validation of the Band Model, this process has strengthened my opinion that bittern will not be put at risk of collision with turbines on the high ridgelines.

180. Mr Turner provided evidence-in-chief as well as rebuttal evidence and a summary statement. In his evidence he addressed all of the actual and potential adverse effects of the proposal, as well as a full assessment of the proposal against the relevant statutory planning framework. He also attended the expert planning conferences and was the key person to develop the recommended conditions of consent. These have already been addressed earlier in this decision.
181. With respect to the ecological effects, it was Mr Turner's opinion that the project envelope approach, and no turbine area overlays, would result in the avoidance of the number of effects in the first instance. He also opined, relying on the evidence of Mr Fuller, that any potential effects, including on matuku, could be avoided, remedied or mitigated by the issues set out above (the design of the wind farm) but also by the conditions offered by the Applicant, including those relating to matuku. He supported those conditions.
182. Mr Turner also confirmed at the reconvened hearing that the results of the additional baseline survey; the validation of the Band Model; the wetland enhancements; and the Australasian Bittern Management Fund (discussed below) reinforced his planning view that these would ensure any adverse effects (including on matuku) would be no more than minor. He also considered that the wetland enhancements and the Australasian Bittern Management Fund would likely have positive environmental effects.

Wetland Enhancements and the Australasian Bittern Management Fund

183. We find that the wetland enhancements and the Australasian Bittern Management Fund offered by the Applicant, and agreed to by DoC, will make an important contribution to ensuring any

⁴⁷ Paragraphs 54 to 58 of Mr Fuller's Supplementary Evidence

adverse ecological effects, particularly in relation to matuku, are not more than minor, and in fact are likely to have positive effects.

184. With respect to the wetland enhancements the Applicant has proposed:

- 2 hectares of wetland habitat (with predator control) - condition 79(c);
- a further 2.2 hectares of created or enhanced wetland habitat aimed at pied stilt, black shag, and dabchick (also with predator control) is required - condition 123(a); and
- In addition to those 4.2 hectares, other areas also require additional habitat creation or enhancement and predator control if the collision risk mortality is greater than that specified in condition 80; or if there is a trend of displacement from Omamari Station, Maitahi or Pamu Farm West wetlands - condition 80(e).

185. At the reconvened hearing the Applicant offered an Australasian Bittern Management Fund of \$250,000. In the Reply Submissions this fund had been increased to \$640,000. We accept that in the context of the limited funding outlined by Mr Soole available to the Omamari Wetland Reserve, the Australasian Bittern Management Fund (which is to go towards DoC and iwi initiatives/programmes) and the wetland enhancements will be a significant contribution to matuku and other avifauna and their environments.

186. More than doubling the Fund from that originally offered will provide the ability to better support and achieve positive conservation outcomes. This is especially the case if (at least) some of that money goes to greater predator control, which we understood from the experts (including Dr Williams) would have a more significant impact on matuku mortality than the wind farm itself, as the counterfactual was - if consent was refused, the environment would not benefit from any of the substantial enhancements and predator control and the flora and fauna would remain under constant threat from pests.

187. The applicant also provided a map and evidence on matuku in Northland. In the Reply Submissions Mr Welsh stated⁴⁸:

Figure 2 in our 21 January 2022 further submissions (Map 1930 of Mr Fuller's supplementary evidence dated 21 January 2022) is illustrative of the potential Australasian Bittern habitat in Northland. The figure places the KWF site into context and confirms that much of Northland would not be capable of hosting a wind farm if the approach adopted previously by DoC was applied consistently throughout the region (or any forms of infrastructure if zero mortality is required).

188. Dr Williams confirmed to us that she agreed with Mr Fuller's potential habitat maps, noting that there are significant areas of potential matuku habitat in Northland. She maintained the KWF was proposed within a "hotspot" and "stronghold"⁴⁹, but appeared to accept that much of Northland was a "hotspot" and "stronghold" and on this basis Northland would not be capable of having a wind farm if the zero mortality approach adopted by DoC was applied consistently

⁴⁸ Paragraph 7.1 of the Reply Submissions

⁴⁹ We questioned whether these terms had any scientific definition. Both Dr Williams and Mr Fuller said they did not

across the region. We do not think that Dr Williams' position, nor that of Ms Burns, can be supported by the policy framework we have outlined.

189. As Mr Fuller has stated he is confident that the impact on the matuku can be managed such that the risk to them is very low. We agree with him based on the evidence before us. It is our view, and that expressed by Mr Welsh in his Reply Submissions, that to exclude wind farm development from large parts of Northland simply because matuku are also present in the region is not a scientific approach to ecological impact assessment, is not supported by the statutory policy framework and would not now, as we address below, give effect to Part 2 of the RMA. Moreover, we are satisfied any adverse effects would be avoided, remedied or mitigated such that they were no more than minor.

No application for transmission line

190. We address for completeness the issue relating to there being no application for the transmission line before us. We were advised that the provision of a transmission line from the wind farm site to the national grid was not part of the application before us, is a discrete and separate activity and was in fact a permitted activity under the KDP. Legal counsel for the Director- General raised this as an issue; noting concerns that the line could have adverse effects on matuku, and that all the effects of the proposal should be assessed.
191. Mr Welsh addressed this matter in his opening legal submissions, but more fully in the Reply Submissions in response to the submissions of legal counsel for the Director-General. We are persuaded by Counsel's explanation and those arguments set out at section 5 (5.1 to 5.12) of the Reply Submissions. We are satisfied that this fully addresses this matter in relation to the application.

Part 2 of the RMA

192. As we have set out earlier, we have been able to rely on the provisions of the relevant statutory planning documents to determine this application. On this basis we do not think that recourse to Part 2 adds much to the evaluative and determinative process we have undertaken to make our decision. That said, we confirm our view that the application satisfies Part 2 of the RMA.
193. It is our finding that the wind farm is entirely consistent with the Government's commitment to renewable energy, including as contained in the NPSREG – being the only national policy statement of relevance to this Proposal. The wind farm provides a significant opportunity to meet New Zealand's 'challenge' of providing increased electricity generation capacity and security of supply in an environmentally sustainable manner, while contributing to the country's decarbonised future.
194. In this respect consenting the wind farm, subject to the conditions of consent, will enable the Northland community to better provide for its social, economic, and cultural well-being and for their health and safety. The wind farm will also sustain the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;

and safeguard the life-supporting capacity of air, water, soil, and ecosystems. We have already addressed at some length how any adverse effects have been avoided, remedied or mitigated.

195. We are satisfied, based on the evidence before us, that there are no outstanding matters that have not been addressed or would 'call into question' any of the matters set out in sections 6, 7 and 8. In summary, we state again, we are satisfied that granting the applications sought satisfies Part 2 of the RMA and meets its sustainable management purpose.

Decision

196. In terms of section 104 we have had regard to the effects of the proposal and the relevant objectives and policies of the relevant statutory planning documents. For the reasons set out above, and subject to the conditions we have imposed, we find that:

- the wind farm proposal is consistent with the relevant objectives and policies of the relevant statutory planning documents (as we have addressed earlier in this decision);
- There are considerable positive effects from the proposal (as we have addressed earlier in this decision); and
- Any actual and potential adverse effects from the proposal can be appropriately avoided, remedied or mitigated by the design and operation of the wind farm, and by the conditions of consent we have imposed.

197. In exercising our delegation under section 34A of the RMA and having regard to the foregoing matters, including section 104 the RMA, and having evaluated the proposal against Part 2 of the Act, we have determined that the resource consent application by is **granted** for the reasons set out above.

198. The conditions of consent are attached as Appendix 1 to this decision.



Greg Hill

Chairperson – Independent Hearings Commissioner, on behalf of the Hearing Panel.

23 March 2022