

ORIGINAL

Decision No. W 24 /2007

IN THE MATTER of the Resource Management Act 1991  
AND

IN THE MATTER of appeals under s120 of the Act

BETWEEN THE OUTSTANDING LANDSCAPE  
PROTECTION SOCIETY INC  
(ENV-2006-WLG-000477)  
MAUNGAHARURU-TANGITU  
SOCIETY INC and NGATI HINEURU IWI  
INC  
(ENV-2006-WLG-000483)  
HAWKES BAY WIND FARM LIMITED  
(ENV-2006-WLG-000481)  
Appellants  
AND THE HASTINGS DISTRICT COUNCIL  
Respondent  
AND UNISON NETWORKS LIMITED  
Applicant

BEFORE THE ENVIRONMENT COURT

Environment Judge C J Thompson

Environment Commissioner W R Howie

Environment Commissioner K A Edmonds

Heard at Napier on 19 – 21 March 2007; site visit 22 March 2007

Counsel:

A McEwan and J P Matthews for Unison Networks Ltd

M F McClelland for The Outstanding Landscape Protection Soc Inc

J A N Patuawa and E Toleman for Maungaharuru-Tangitu Soc Inc & Ngati Hineuru Iwi Inc

D J Turley for Hawkes Bay Wind Farms Ltd – s274 Party

M E J Macfarlane for M and D King and the Hawkes Bay Rata Society Inc – s274 Party

J G A Winchester for the Energy Efficiency and Conservation Authority – s274 Party

Gilmour for the Hastings District Council



## DECISION

*The application*

[1] Unison Networks Limited proposes to construct and operate a windfarm comprising 37 turbines on a site of some 600ha to the south and west of the feature known as Te Waka, about 2km south of the Titiokura saddle, between Te Pohue to the east and the Mohaka River to the west. The Titiokura Saddle is traversed by SH 5 (the Napier – Taupo Road), and Transpower dual circuit 220kv transmission lines carried on large pylons. It is some 4.5km northwest of the village of Te Pohue, and about 35km northwest of Napier City.

[2] Indicatively only at this stage, the turbines to be installed will be Vestas 90 machines having 85m towers, with a rotor diameter of some 90m, giving a maximum height with the rotor blade vertical of about 130m. There will also be about 20km of access roading, meteorological masts and, during construction, a concrete batching plant. Total earthworks could be of the order of 450,000m<sup>3</sup>. The Hastings District Council granted the necessary resource consents for the construction and operation of the proposal in its decision of 9 June 2006.

[3] The proposal is Stage 2 of Unison's total project. Stage 1 comprising 15 turbines and a substation on the north side of SH 5 was discussed, and the Council's decision granting consent was confirmed, in our decision of 17 July 2006 (Decision W58/2006).

*Site description*

[4] Te Waka is a very distinctive landform. From a point close to the Titiokura Saddle it runs south along the ridgeline, and the skyline, for nearly 2kms. From any distance, particularly from the east, that piece of the ridgeline appears flat and straight. It has no structures or high vegetation on it. For reasons to become apparent later, this is the *hull* of the Waka. The landform then rises in a steep curve for 100m – this is the *sternpost* of the Waka. At the peak of the sternpost is a 30m distinctly visible Telecom communications tower. Beside it is a shorter and much slimmer Vodafone communications mast which is much less visible, certainly from a distance. Running away from the sternpost is another ridgeline which is also relatively straight and flat, although not as distinctively so as the *hull*. Some witnesses referred to this as the *wake* of the Waka. This is all high ground, forming the northwestern



skyline of Hawkes Bay. It is readily visible from many points in and around the rural areas to its south and east, from many points around Napier, and as far south as Havelock North. From the west, it is visible from points well beyond the Mohaka River. The Titiokura Saddle is 762m asl – but the sternpost of Te Waka rises to 1021m.

[5] Save for the possibility of forming an existing legal but unformed road along the line of which, possibly above ground in places, conductor cables will be run, there will be no turbines or other infrastructure on the feature of Te Waka itself. The turbines closest to the peak of the sternpost, to the south and to the west, will be of the order of 400m from it. There is proposed to be a line of 10 turbines running south along or close to the *wake* ridgeline. On a ridgeline about 800m to the west, running parallel to and at about the same elevation as the *wake* ridgeline, will be another line of eight turbines, with three further turbines on spurs to the east of it. After running south for about 1.8km, this line splits into three, carrying the balance of the turbines along separate and descending ridges. It is important to note that because the western ridgeline is slightly higher the two lines of turbines, when viewed from a distance to the east, will largely appear as one. From points to the west they will be likely to appear more as a broken formation. In total, from the peak of the sternpost to the southernmost turbine, the project will extend over a length of about 4.5km. Unison does not own the land, but has arrangements in place with the three farming landowners for access and for the siting of the turbines and supporting infrastructure.

#### *Parties' positions*

[6] Unison Networks Limited (formerly Hawkes Bay Power Limited) naturally supports the Council's decision to grant the resource consents. It points to the benefits of using renewable resources to generate electricity at a site that is close to its consented Stage 1 project, the existing transmission facilities, and to centres of electricity consumption.

[7] The Outstanding Landscape Protection Society Inc (OLPS) opposes the Unison application. Its core position is that all, or at least a substantial part of, Te Waka should be regarded as an outstanding natural landscape and/or natural feature in terms of s6 RMA and thus should be protected from what it contends is the inappropriate use and development of a



[8] The Maungaharuru-Tangitu Society Inc and the Ngati Hineuru Iwi Inc are the entities through which the Iwi and Hapu they represent have advanced their *take*, or causes, before such bodies as the Council, the Waitangi Tribunal, and now this Court. Ngati Hineuru have mana whenua on the western side of the Maunga, and Marangatuhetaua (or Ngati Tu) have mana whenua on the eastern side. They are united in their opposition to the Unison proposal, and see no room for compromise by way of conditions which might make the proposal acceptable to them. The whole ridgeline, and the feature of Te Waka in particular is, for them, an area rich in lore, history and spiritual significance. They hold that the presence of turbines and related infrastructure along it would desecrate a place that is sacred for them.

[9] Hawkes Bay Wind Farms Limited already holds resource consents for a large wind farm on Maungaharuru, mostly on the northern side of SH 5. It has, as something of an adjunct, an extension of five proposed turbines on the southern side of SH 5, close to the northern end of Te Waka. It opposed the Unison application.

[10] Mr Murray King and Mrs Delia King, and the Hawkes Bay Rata Society Inc, are s274 parties and advance concerns about possible ecological effects of the proposal. They also have concerns about Unison's proposed use of what is known as Richmond Road -- an unformed but legal road vested in the Council which runs partly over the King property on or close to the Te Waka ridgeline between SH 5 and the Stage 2 site, along which Unison proposes to run conductor cables and to form an access road, joining its two Stages.

[11] The Energy Efficiency and Conservation Authority (EECA) is a s274 party. It is a body established under the Energy Efficiency and Conservation Act 2000 to promote, as its name suggests, ... *energy efficiency, energy conservation, and the use of renewable sources of energy*. It supports the proposal, on the basis that the benefits to be derived are strong and nationally important. We do note though that its statute actually requires a broader view than just issues of energy. Section 6 provides:

In achieving the purpose of this Act, all persons exercising responsibilities, powers, or functions under it must take into account—

- (a) the health and safety of people and communities, and their social, economic, and cultural well-being; and
- (b) the need to maintain and enhance the quality of the environment; and
- (c) the reasonably foreseeable needs of future generations; and



(d) the principles of the Treaty of Waitangi

[12] The Hastings District Council granted resource consents for the proposal and is content with its decision to do so. We discuss the Council's decision at a later point.

*Planning status. – non-complying*

[13] It is common ground that in terms of the Hastings District Plan, operative since 2003, the proposal is a *non-complying* activity and must therefore be able to cross one of the two thresholds in s104D before it could be considered for a resource consent under s104 and Part 2 RMA. That is, we must be satisfied that either the proposal has adverse effects on the environment that are not more than minor, or that it is not contrary to the objectives and policies of the District Plan.

*Section 104D - adverse effects – more than minor?*

[14] For the reasons we will traverse in discussing the actual and potential effects of the proposal, we cannot possibly agree with the witnesses who hold that the adverse effects on landscape and visual amenity of this proposal will not be more than minor. That being so, the issue to be resolved at this point is whether the proposal can pass the *...not contrary to Objectives and Policies...* threshold, and we can move straight to that.

*Section 104D - contrary to objectives and policies?*

[15] It is self-evident that a non-complying activity will rarely, if ever, find direct support in the objectives and policies of a Plan, but an absence of support does not equate to the activity being *contrary* to those provisions. *Contrary to* in this context means *...repugnant to...* or *...opposed to...* the objectives and policies considered as a whole: - see *Monowai Properties Ltd v Rodney DC* (A215/03). Bearing that in mind, we move to the provisions of the Plan which seem particularly relevant, with findings to be made about Objectives and Policies.

*Rural Resource Strategy and Rural Zone*

[16] The District Plan has a Rural Resource Strategy. That has objectives and policies, reflected in the Rural Zone. Relevant provisions are:

Objectives 2.8.3

RO1 To promote the maintenance of the life-supporting capacity of the Hastings District's rural resources at sustainable levels.



- RO2 To enable the efficient, and innovative use and development of rural resources while ensuring that adverse effects associated with activities are avoided, remedied or mitigated.
- RO3 To enable the effective operation of land based production activities within established amenity levels in the rural areas of the Hastings District.
- RO4 To ensure that the natural, physical, and cultural resources of the rural area that are of significance to the Hastings District are protected and maintained.

#### Policies 2.8.4

- RP1 Reflect the various characteristics and distribution of the rural resources, to enable the sustainable management of these characteristics.
- RP3 Provide for a wide range of activities to establish which complement the resources of the rural area, provided that the sustainability of the natural and physical resources of the area is safeguarded.
- RP4 Establish mechanisms within the District Plan that will address the protection of outstanding landscape and natural areas, and items or areas of heritage or cultural significance but which also maximise the opportunity to sustainably utilise the resources of the rural area.

The explanation to RP4 states:

The District Plan will adopt a variety of mechanisms to recognise and protect Outstanding and Significant landscapes . . . . The District Plan will endeavour to avoid blanket controls that stymie the utilisation and development of the Hastings District's natural and physical resources, by the use of innovative mechanisms and carefully targeted controls, that enable activities to effectively avoid, remedy or mitigate their potential impact on the elements to be protected.

[17] There is also a policy on industrial zones (IZP3 in Section 10.4) which recognises that not all activities can locate in an existing industrial area, as follows:

New industrial development will be encouraged to locate and utilise existing industrial areas unless special circumstances, such as proximity to raw materials, infrastructure or transport nodes or requirements for very large sites, dictate the need for a site outside of the existing industrial areas.

The policy is consistent with the explanation to Policy RP1 which states that *...a small number of discrete industry specific zones are included in the District Plan to accommodate established industrial nodes in the rural area.*

[18] The Rural Zone recognises the increasing diversification of use of the rural land resource as important in adding diversity to the rural economy by providing additional



employment and economic opportunities to the community. It also sees commercial and industrial activities as providing services to the rural area and helping to diversify and strengthen the rural economy. The Plan identifies a number of issues, with the potential to work against sustainable management of the land resource, and then deals with these in its objectives, policies and anticipated outcomes, so we therefore now review these.

[19] The Plan has two objectives for the Rural Zone and a number of relevant policies, as well as anticipated outcomes, as follows:

Objectives: 5.3

- RUO1 To safeguard the life-supporting capacity of the rural land resource for present and future generations.
- RUO2 To enable the rural land resource to be used for a wide range of activities while avoiding, remedying or mitigating adverse effects of land use activities on the rural community, adjoining activities, marae, and the environment.

Policies: 5.4

- RUP1 To enable the establishment and efficient operation of Land Based Primary Production by safeguarding the life-supporting capacity of the rural land resource and ensuring the management of adverse effects on the environment.
- RUP4 Recognise that industrial activities can be appropriately located in the Rural Zone where the scale and intensity of effects is limited, where necessary, to ensure the sustainable management of the soil resource.
- RUP6 Monitor the development of new Industrial and Commercial Activities to assess their cumulative effects on the rural land resource and rural community, as well as on the Commercial and Industrial Zones of the Hastings District.
- RUP7 Control the adverse effects of buildings and activities on the community, adjoining activities and the environment.
- RUP10 Ensure that the outdoor storage areas of commercial and industrial activities are screened, and that the outdoor display areas and parking areas of commercial and industrial activities are landscaped, to mitigate their visual impact on adjacent or opposite activities, where this is necessary to protect the visual amenity of the rural area.
- RUP13 Monitor the effects of land use activities in the Rural Zone to determine the on-going appropriateness and necessity of development and Performance Standards included in the District Plan, to avoid, remedy or mitigate adverse effects on the environment.

Anticipated Outcomes (5.6)

- The life supporting capacity of the rural land resource will be safeguarded.
- Diversification of activities occurring in the Rural Zone.



- No significant adverse effects of different activities on each other.

*Landscape Areas Resource Management Unit*

[20] The Plan contains objectives, policies and anticipated outcomes for its Landscape Areas Resource Management Unit, as follows.

Objectives: 12.2.3

- LSO1 To ensure that building development, earthworks and plantations do not visually compromise outstanding natural features and landscapes, and where it is essential that network utility operations be located in an Outstanding Natural Feature and Landscape that the effects are mitigated so as not to have a significant adverse visual or landscape effect.
- LSO2 To ensure that a range of different landscape types, best representing each of the inland and coastal landscape units identified for the Hastings District, are retained and enhanced.
- LSO3 To ensure that the effects of subdivision, use and development throughout the Hastings District are avoided, remedied or mitigated so as not to have an adverse visual or landscape effect.

Policies: 12.2.4

- LSP1 Identify the Outstanding Natural Features and Landscapes and Significant Landscape Character Areas in the Hastings District.

Explanation

In implementing its Landscape Areas Policy the District Plan will target those landscapes which are considered to be pre-eminent in the District. The District Plan will schedule both Outstanding Natural Features and Significant Landscape Character Areas, identified as a result of the Outstanding Landscape Assessment carried out by the Council, as well as listing the key elements, patterns and character that contribute to their significance. These are listed in Appendix 12.2-1 and 12.2-2, and are shown on the Planning Maps.

- LSP2 Protection of the present landscape qualities of Te Mata Peak will be afforded the highest priority throughout the District Plan.
- LSP3 Buildings, Plantations, Earthworks and Network Utilities will be restricted on identified Outstanding Natural Features and Landscapes throughout the District.

Explanation

The impact of different activities on the Outstanding Landscapes and Natural Features identified in Appendix 12.2-1 will vary depending on both the ability of the activity to integrate into the receiving landscape and the sensitivity of that landscape. The Plan addresses each activity differently for each of the landscape features in the District.





[21] Relevant anticipated outcomes (Section 12.2.6) are:

- No outstanding natural features and landscapes are visually compromised by building development, earthworks and plantations.
- New building development and earthworks in outstanding landscape areas are sensitively integrated into their landscape surroundings.
- Maintenance and enhancement of a range of contrasting landscape types, providing a rich mixture of landscape amenity throughout the District.
- Buildings will not visually intrude on the natural form of rural ridgelines and spurs.
- Larger scale earthworks will not visually intrude on the natural form of rural ridgelines, spurs, and hill faces.

[22] For completeness, we should add that what is described as *Maungaharuru Range – Titiokura Saddle – Te Waka Range* is an Outstanding Natural Feature and Landscape, ONF7, listed in Appendix 12.2-1 and shown as an overlay on Planning Maps 4, 5, 7 and 8. The significance of ONF 7 is listed as:

- Visual coherence and integrity of landforms
- Visual continuity of skyline ridge of Maungaharuru Range and Te Waka Range
- Open character of Maungaharuru Range ridgeline (approx. 40 metres vertical below ridge line).

There are specific land use rules that apply to ONF 7, as with each of the outstanding natural features and landscapes.

[23] But the description of ONF 7 is misleading – it does not in fact cover the area described. As depicted on the Planning Maps (which reflect the Council's decisions following submissions on the Plan) it falls well short of Te Waka itself, and further short still of the Stage 2 proposed turbines. Had the ONF remained as originally proposed, it would have encompassed the northern-most 11 proposed turbines. So, strictly, the Rules that apply to ONF 7 are really of no more than academic interest, but that is not to say that the topic of Outstanding Natural Landscape is irrelevant. It is not, and we shall return to it.

[24] The Plan contains these provisions about: Indigenous Vegetation and Habitats of Indigenous Fauna District Wide Activity

Objective: 13 10.3



INO3 To protect and encourage the protection of areas of significant indigenous vegetation, significant habitats of indigenous fauna and significant geological sites.

INO4 To maintain and enhance the biodiversity of indigenous species and their natural habitats and ecosystems that support them.

Policies: 13.10.4

INP4 Maintain and protect areas of significant indigenous vegetation and habitats of indigenous fauna (including wetlands) (as identified in Appendix 13.10-1) from being adversely affected by vegetation clearance activities.

INP6 Control the adverse effects of exotic species on the indigenous vegetation and fauna within the District.

The explanation to the Policy says that identifying an area as *significant* does not automatically mean that no activity can take place, and the Council may place conditions on an activity and the use of a significant area through the resource consent process in order to achieve this policy.

[25] The site affects a significant vegetation, habitat and geological site, a recommended area for protection (RAP) under the Protected Natural Areas Programme. RAP46 Te Waka Bush I is identified as: *Gentle sideslope dissected by small streams with steep gullies. A number of plants unusual for the ecological district.* Goats, fire and selective logging are listed as threats or modifiers. There are Rules for indigenous vegetation clearance and modification.

[26] Anticipated Outcomes from these provisions (13.10.6) include:

- Improved protection of areas of significant indigenous vegetation, significant habitats of indigenous fauna, and significant geological sites.
- Maintenance and enhancement of the biodiversity of indigenous plant and animal species within Hastings District and the natural habitats and ecosystems that support them.

For the reasons given in paragraphs [91] to [96] the proposed windfarm is not contrary to these objectives and policies.

### *Findings*

[27] In our decision on the Stage 1 and Hawkes Bay Wind Farm appeals, we found that neither proposal was contrary to the objectives and policies of the District Plan. There was nothing put forward by way of planning evidence, or submissions, in this hearing to bring



about a change of mind on that issue. We can repeat some of what we said then to capture the essence of our views.

[38] Not only does the Rural Zone specifically anticipate energy production, but also the Plan recognises circumstances for locating industrial activity in it. A windfarm would meet the circumstance of a need for a very large site. It would also meet the circumstances of proximity to raw materials, as a high wind speed site, and to infrastructure, with its access to the roading network for the delivery of components to the site and the national electricity grid.

[39] The Plan also encourages uses that are efficient and innovative, diverse and complementary to rural resources. A windfarm would be an efficient means of producing electricity, particularly in a location in close proximity to consumers and the national grid. In addition, a windfarm would add to the diversity of uses in the rural area, making use of the wind, a natural resource, without significantly impacting on more traditional forms of production from rural land. A small area would be taken up by turbines, roading and service buildings, with the remainder of the land used as before. Also there would not be any long-term adverse effect, with soil and the land able to be re-instated for other future rural uses if in the future the technology or economics meant the windfarms were no longer required.

[40] Furthermore, we find that both windfarm proposals are consistent with the policy behind the outcome sought by the gross floor area control. The windfarm proposals would displace soil from a small fraction of the total land area, and the land need not be lost to production forever. The life-supporting capacity of the rural land resource would therefore be safeguarded.

[41] We also find both proposals would not be contrary to the overall thrust of the landscape objectives and policies of the Plan. Firstly, we note that these are not against change in the landscape. This is not surprising given the emphasis on maximising the opportunity to sustainably use the resources of the rural area, identified in the Rural Resource Strategy and other places in the Plan.

[28] That said, the evidence we heard did lead us to accept that there are also objectives and policies the proposal is not *consistent* with. In terms of the Rural Resource Strategy objectives, there would be a major impact on established amenity levels from the turbines (RO3) and also on a significant natural landmark and cultural values (RO4). The Rural Zone objective RUO2 refers to enabling *the rural land resource to be used for a wide range of activities while avoiding, remedying or mitigating adverse effects of land use activities on the rural community, adjoining activities, marae, and the environment*. The proposal has adverse effects on the environment that cannot be adequately mitigated, let alone avoided or remedied.

But that is not to say that the proposal is *contrary to* the objectives and policies of the Plan when they are considered as a whole.



*Conclusion on s104D*

[29] Our conclusion therefore is that the proposal can pass one of the s104D thresholds, and can therefore be considered under s104 and Part 2 RMA.

*Section 104 - actual and potential effects*

*Permitted baseline*

[30] At paras [53] to [56] of the Stage 1/HBWF decision we discussed the permitted baseline for the zone. We concluded that, in all except ONF 7 ... *at least the earthworks and access roads would be permitted activities*. With the exception of the removal of trees within RAP 46, we did not hear anything in the course of these appeals to change that view.

*Positive effects*

[31] Unison's proposal is for 37 wind turbines each with a capacity of 3MW making a total generating capacity of 111MW. In energy terms the annual generation is expected to be 405Gwh. That is enough electricity for 50,000 households or about 150,000 people. The wind resource is sufficient to permit a commendable availability factor (the actual generation as a percentage of the theoretical maximum from the turbines running to capacity all the time) of about 40%.

[32] Output from the proposed windfarm will contribute about 1% of the annual national electricity demand and some 65% of the annual growth in demand for electricity. It will avoid the discharge of 253,000 tonnes of carbon dioxide equivalent or the equivalent of removing 73,000 cars from the road. And being a renewable source of energy it can continue indefinitely without depleting the wind resource. The proposal is significant on a national scale. Coupled with the two consented windfarms, Unison Stage 1 and HBWF, the generation will be sufficient for the demands of up to 500,000 people, not including any industrial or commercial demand.

[33] It is even more significant on the regional scale. Electricity demand in Hawkes Bay and Gisborne is 2070Gwh per year so the proposal will contribute almost 20% of that demand.

Coupled with Unison Stage 1 and HBWF, generation from the renewable wind resource on the ranges will total 1340Gwh or 65% of the regional electricity demand. The Tuai hydroelectric scheme at Lake Waikaremoana is another renewable source of electricity in the



region and it produces about 500Gwh per year meaning that with this project 89% of the regional electricity demand would be supplied from local renewable resources. This is the averaged position over a year and at peak demand times electricity will be imported while at times of low demand electricity can be exported.

[34] Achieving a balance between regional electricity consumption and regional generation from renewable resources is a worthy target and one that eases some pressures on the transmission system and the losses that are incurred. It also internalises the environmental effects - the region suffers the effects but gains the benefits.

[35] There are aspects of positive effects that are further discussed in considering s7 factors – see paras [89] to [101].

[36] In summary under this head, clearly the project would use the renewable natural resource of the wind in away that enables the community to supply itself and its future generations with electricity for its social and economic wellbeing and for its health and safety. Whether it does so in a way that safeguards the life supporting capacity of ecosystems and has effects that are acceptable are matters analysed and discussed later.

#### *Adverse effects*

##### *Archaeological and Palaeobiological*

[37] Ms Cathryn Barr and Mr Rod Clough, qualified and experienced archaeologists, gave evidence for the applicant and the tangata whenua respectively. Both agreed that the one recorded archaeological site, the rock shelter and moa hunting site (V20/178 on the NZ Archaeological Association site recording scheme) approximately 80m from Turbine 35, can be avoided and protected during the development stage of the project. While there are no other indications of historic activities or occupation of the area, there could be other similar small sites of temporary use relating to gathering the resources of the area. Given such an expectation and because of the cultural significance of the area to tangata whenua, it is important that a more detailed field assessment, a series of protocols and monitoring requirements, are included by way of conditions if the proposal is given consent. Ms Patuawa submitted that the suite of conditions proposed by Mr Clough should be the minimum in that

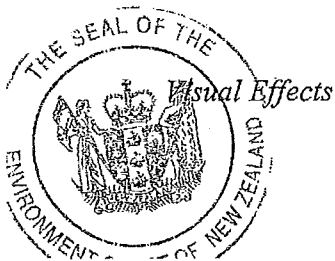


[38] Professor Richard Holdaway, a qualified and experienced palaeobiologist, gave evidence for OLPS. Palaeobiological sites contain fossil and other materials recording the former presence of birds, other vertebrates, invertebrates, or plants in an area, and the environmental conditions and climates they lived in. Such sites differ from archaeological sites in not having been accumulated as a result of human activities. Te Waka V20/178 is a mixed archaeological and palaeobiological site, but its contents are overwhelmingly natural in origin. Professor Holdaway said they had found 2,000 years old fossilised weta faeces there. He considered it should be recognised and protected as a natural resource of national and international standing, providing a continuous record of environmental and faunal changes from before the coldest part of the Last Ice Age to the present. He said that it is highly probable other such *biological gold mines* exist on the Te Waka Range, and the Maungahuru Range to the northeast. However, Professor Holdaway had no inherent objection to the presence of a windfarm on the Te Waka Range on the basis of the palaeobiological record in the area provided any sites were located, investigated and interpreted and disturbance minimised. Unison proposed that his concern for the Te Waka palaeobiology site, and any other sites that might be located on the project area, would be the subject of conditions including surveys, investigation, interpretation and monitoring by trained people.

#### *Landscape and Visual*

[39] The main visual and landscape effects would arise from the turbines, and we therefore concentrate on them. We accept that there are design elements to reduce landscape and visual effects, for the roading as well as the location and look of the turbines, but these would not remove the main objection - the presence of the turbines.

[40] We heard from Ms Di Lucas, and Mr Gavin Lister (who appeared under subpoena) for OLPS, both of them qualified and experienced landscape architects. Mr Boyden Evans, also a qualified and experienced landscape architect, was called for Unison. Mr Lister was responsible for preparing the 1995-96 *Isthmus* report *Outstanding landscapes-landscape assessment of Hastings District, revised report July 1996*, which proposed *Te Waka-Titokura-Maungaharuru* as an Outstanding Natural Feature. We were provided with a copy of that report. Mr Lister also presented his peer review and subsequent notes presented to the Council hearing on the Stage 2 application.



[41] Mr Evans gave evidence of a visibility and visual effects assessment using representative views and simulations of all three windfarms (the proposal plus the two consented windfarms): sequential views as seen from SH5 when travelling east and west between Bayview and Te Haroto, and static views from 27 representative public viewpoints. Mr Evans concluded that the proposed turbines would be dominant (ie the feature has a defining influence on the view and is a focus in the view) from 5 locations and prominent (ie the feature is clearly visible in the view and forms an important but not defining element of the view) from 7 locations. However, he considered locations like Napier Airport and Bluff Hill lookout to have negligible (ie the feature is visible but may go unnoticed as a minor element in the view, or is not visible) visual effects.

[42] In summary Mr Evans accepted that the proposed windfarm would have significant adverse visual effects from some close locations (ie 3-5 km) such as Te Pohue, sections of SH5 and some adjoining properties. From these viewpoints turbines will be dominant elements in the landscape occupying a length of ridgeline where none of the Stage 1 or HBWF turbines would be visible.

[43] But with increasing distance, he considered the visual effects would be minor. He said in evidence: *For most people views of the windfarm will be distant ones. From a distance turbines ... will appear as minor objects on the skyline.* And in his rebuttal evidence he said: *However, with increasing distance, despite more turbines being visible, the windfarm is able to be seen in a broader landscape context and the vast scale of the surrounding landscape appreciated.*

[44] He pointed out that approximately 80% of the Hawkes Bay population is concentrated 35-50km from the site, a distance from which the turbines would be indistinct. He also considered social and perceptual studies recently carried out in New Zealand and overseas to support his thesis that once a wind farm is built the level of public opposition, and therefore presumably the perceived visual effects, decrease significantly. Overall Mr Evans was of the opinion that the visual effects would be minor.

[45] The other landscape witnesses did not agree. Given the scale of the project and the sensitivity of the site Mr Lister did not believe it is credible to consider the visual effects as minor and neither do we. Ms Lucas considered the Te Waka summit to be high in



naturalness and natural character values, and to have ridges that could absorb some visual change but not 37 turbines, each 130m high.

*Landscape Effects*

[46] There seems now to be consensus that *landscape* comprises more than the purely visual, and encompasses the ways in which individuals and the communities they are part of perceive the natural and physical resources in question. Those perceptions can be coloured by, as the Court put it in *Wakatipu Environmental Society Inc v Queenstown Lakes DC* [2000] NZRMA 59, ...*social, economic, aesthetic and cultural conditions*. In the case of Te Waka and its surrounds Ms Lucas and Mr Lister had the view, with which we are inclined to agree, that when one knows something of the lore and legends, the landscape becomes the more significant and memorable.

[47] Mr Lister considered the turbines would affect the natural character and disrupt the coherence and continuity of the skyline ridge, a key element of the landscape. In particular he believed the turbines would detract from the form of the Waka despite the fact the turbines would not be located on the hull itself, partly because of the scale of the nearby turbines compared to the scale of the Waka (130m compared with the approximately 100m height of the Waka's sternpost), and the fact that the Waka would be *book-ended* by turbines at either end. He also said while distance might mitigate visual effects, it would not mitigate effects on landscape values. *For instance the wind turbines will appear small, distant and faint from Napier, but the Te Waka skyline or profile itself is small and distant but still an important landscape feature from Napier.*

[48] Mr Evans was of the view that the turbine location, set back from and outside the profile of the Waka, would not disturb this distinctive landmark. He also considered the integrity of the Te Waka Range already compromised, with the siting of the Telecom communications tower on the very edge of the Waka formation. In his opinion the overall legibility of that part of the Te Waka Range ridgeline would remain, with the turbines (and communication towers) seen as part of an extensive working rural landscape. He also drew attention to the reversible and temporary nature of the effects, with the future removal of the turbines, when and if the windfarm is decommissioned, leaving little visible evidence of their former presence





[49] While not approving the siting of the Telecom mast, Ms Lucas considered its location, sitting on the very tip of the Waka's sternpost, accentuates the prominence of the Waka. She thought that the proposed turbines, given their number and height, would provide strong visual competition to the Te Waka summit. When pressed on the question of whether there was a location back from the sternpost of the Waka, where the aesthetic effects on the Waka might be acceptable, she mentioned the possibility of a starting point for the turbine lines as being the length of the Waka south from the sternpost. We note in passing that this would see no turbines in the area (broadly) defined as the ONF in Mr Lister's original *Isthmus* report.

#### *Cumulative effects*

[50] The definition of *effect* in s3 of the Act includes *...any cumulative effect which arises over time or in combination with other effects...regardless of the scale, intensity, duration or frequency of the effect...* If an existing activity (or, in terms of *Queenstown Lakes DC v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299, a consented and probable activity), has adverse effects, and the proposed activity also has an adverse effect which would add to the existing effects, then to comply with the definition one would have regard to the combined effects of both. That is because the proposal will have an impact *in combination with other effects* even if its *... scale, intensity, duration or frequency...* is not, of itself, more than minor. That would comply with the ordinary meaning of *cumulative*.

[51] There is a passage in the Court of Appeal's Judgment in *Dye v Auckland Regional Council* [2001] NZRMA 513 which, taken literally, appears to hold that *cumulative effect* can only be one that arises from the proposed activity: *...All of these are effects which are going to happen as a result of the activity which is under consideration.* [para [38]]. The consequence of that would be that only adverse effects emanating from the proposal itself could be brought to account. There could be no cumulative effects [properly so called] created by combining existing or permitted effects with effects arising from the proposal. In turn, that would mean that so long as the adverse effects of the proposed activity are not of themselves more than minor a consent authority could never say *...This site has reached saturation point; it can take no more*

[52] That interpretation would, we think, be contrary to the plain meaning of *effects* in s3 and contrary to the purpose of the Act, as set out in s5 – the sustainable management of natural and physical resources. If a consent authority could never refuse consent on the basis that the



current proposal is ...*the straw that will break the camel's back*, sustainable management is immediately imperiled. It is to be remembered that all else in the Act is subservient to, and a means to, that overarching purpose.

[53] Logically, it is an unavoidable conclusion that what must be considered is the impact of any adverse effects of the proposal on ...*the environment*. That environment is to be taken as it exists or, following *Hawthorn*, as it can be expected to be, with whatever strengths or frailties it may already have, which make it more, or less, able to absorb the effects of the proposal without a breach of the environmental *bottom line* – the principle of sustainable management

[54] The proposed windfarm would add to the 90 turbines already granted consent, resulting in the combined three wind farms, with 127 turbines, extending for about 15km along the ridge tops and upper slopes of Te Waka and Maungaharuru Ranges.

[55] Mr Evans concluded that the cumulative visual effects would be minor. In his view the large scale working rural landscape can absorb the turbines of the 3 windfarms. In his view the layout and distribution of the turbines in the already consented windfarms would effectively appear as one windfarm. He considered that the 1.8km separation means that Stage 2 would visually appear as a single entity, a discrete and separate windfarm when viewed from the east or the west. Mr Lister did not agree that the three windfarms would read as two separate features, except from close quarters. From most places he considered the three windfarms are likely to be seen as all part of the same skyline and that the 1.8km gap would be insignificant in the total 15 km length.

[56] Mr Lister said:

In my opinion the cumulative effects of this application in conjunction with the two earlier windfarms crosses a threshold beyond which a balance between windfarm and landscape will be lost. The wind turbines will extend for 15km of the approximate 23km of the range (including the 1.8km gap at the 'waka'); and will extend over three of its four landforms (Maungaharuru mid plateau, Titiokura Saddle, Te Waka).

Although the windfarm will avoid the distinctive 'waka' profile, it will 'bookend' and visually compete with it.



[57] He considered that the extension of the wind turbines would affect the perception of the skyline profile, with wind turbines spread along the Maungaharuru-Titiokura-Te Waka Range with little apparent regard for underlying landform. He said the skyline is divided into components, giving the ridgeline its character and distinctiveness, of:

- The highest bulky mass of the Maungaharuru Range north of Ahuateatua
- The mid-level plateau of the Maungaharuru Range (corresponding to the bulk of the Unison Stage 1 and HBWF projects)
- The 'bite' of the Titiokura Saddle
- The distinctive flat-topped profile and scoop of the Te Waka Range.

When considered in conjunction with the Stage 1 and HBWF sites, the Te Waka windfarm would result in wind turbines extending across three of the four distinctive components of the skyline

[58] Mr Evans was of the opinion that Mr Lister was overstating the situation. He considered the windfarm would affect people's perception of the landscape, with the turbines providing a contrast to the naturalness, but they would not change the Range. In his view the enclosing ridgeline takes in a sweeping view that runs right around the Bay from high points and plains as well and extends well beyond 23 km. Also the scoop of the Te Waka Range would not contain turbines, only the ripple topped profile of the Waka's wake.

[59] Ms Lucas also considered the addition of a further 37 turbines would have significant adverse cumulative visual and landscape effects. She described the addition of the Te Waka turbines as resulting in a sprawl across the ranges both north and south of the distinctive Titiokura saddle.

### *Findings*

[60] Mr Evans contended it is better to consolidate windfarms than have them sprawl across the entire countryside. He said: *For Te Waka, an additional 37 turbines along a defined portion of a vast ridgeline that encloses the plains is preferable than having three (or more) wind farms spread throughout the district.* We do not agree, given the location, design and layout of the proposal and its effects in the sensitive landscape of Te Waka. It may be that there is the potential, in at least visual and landscape terms, to site a windfarm further south, well away from the Waka. However, we do not have any such proposal in front of us.



[61] In short, we prefer the evidence of Mr Lister and Ms Lucas to that of Mr Evans. We do not consider that turbines at either end of the Waka would *frame* it, as suggested by counsel for Unison. We conclude that the proposed windfarm would have significant adverse visual and landscape effects, both individually (if built first, or by itself) and cumulatively with the other two consented windfarms.

#### *Richmond Road*

[62] Mr and Mrs King oppose the use of Richmond Road (see para [10]) by Unison. Mr Macfarlane advised us that he had instructions to bring proceedings in the High Court to prevent it doing so, but also advanced arguments attempting to persuade us that we had the ability to make some orders or findings in respect of it. It is accepted that Richmond Road is a legal road, vested in the Council. As we see it, a legal road is a legal road and, for so long as that status subsists, the public has a right to use it. Unison also holds a Certificate of Compliance issued by the Council under the RMA confirming that its proposal to run conductor cables along the line of Richmond Road is a permitted activity under the Act. That Certificate was not in issue before us, and could only have been so at the behest of Unison.

[63] Hawkes Bay Wind Farm's opposition to the proposal was based partly on the ground that Unison's conductor cables along the line of Richmond Road to the substation on the northern side of the road would interfere with HBWF communication equipment. It called no evidence to support that assertion and in cross-examination Mr Ken Sutherland, Unison's Chief Executive, described the possibility as *mythical* and *impossible*.

[64] Tangata Whenua object to the use of Richmond Road for any purpose. It runs along the hull of Te Waka, which they regard as tapu. We have included that concern in our overall consideration of their position under sections 8, 7(a) and 6(e). There is nothing more we can say about Richmond Road, except to note that if there is no Stage 2, there will be no more demand for its use than presently exists.

#### *Section 104 – planning documents*

[65] There are no applicable National Policy Statements, and the New Zealand Coastal Policy Statement is not relevant to activities on this site.



*Proposed Regional Policy Statement*

[66] Mr Gilmour, for the Council, drew our attention to Sections 2.3 and 3.13 of the Proposed Regional Policy Statement which identify that sustainable management of the region's infrastructure, and energy infrastructure in particular, is of major importance. He submitted that there was nothing in the proposal which is inconsistent with any objective or policy of the PRPS, which are general in nature, and there was no suggestion to the contrary from any other party.

*District Plan*

[67] We have discussed the provisions of the District Plan at paras [16] to [28] and there is nothing to be added at this point.

*Part 2*

*Section 8, 7(a) and 6(e) – the concerns of Maori*

[68] The provisions of the Resource Management Act specifically dealing with Maori issues are sections 8, 7(a) and 6(e). In nominating those, we do not overlook other more general provisions relating to landscape, amenity values, heritage and so on, which are also of importance to Maori: - we deal with those elsewhere. The three nominated provisions are as follows:

Section 8 Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Section 7 Other matters

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

(a) Kaitiakitanga: ....

Section 6 Matters of national importance

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

(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.



[69] The principle of the Treaty particularly advanced in this appeal is that of *active protection*. This Court has recognised that principle in the Resource Management sphere in *Beadle & Ors v Minister of Corrections & Northland RC* (A074/02). At para [671] the Court said:

The person making a decision on a designation requirement or resource consent application has to take into account the principle of the Treaty by which the Crown has an obligation of active protection of Maori property and taonga, which are not limited to physical and tangible resources but extends to spiritual and intrinsic values. The Crown's obligation is not absolute, being qualified by its other responsibilities as the Government, but is to take such action as is reasonable in the circumstances prevailing at the particular time. It may, in some cases where they are significant, require decisions to be made according to tenets of Maori spiritual belief. It does not necessarily require preserving the status quo and prohibiting development of a resource. It does not imply a veto of development by those asserting Maori interests.

[70] As Ms Patuawa points out, principles of the Treaty, including that of active protection, are recognised in the Hastings District Plan at paragraph 3.3.2:

**The Principle of Active Protection and Consultation**

The spirit of the Treaty calls for Maori to have a much greater say in the management of the environment. Effective, early and meaningful consultation is an integral and necessary component and forerunner to greater participation by Maori in resource management decision-making.

**The Principle of Active Protection**

The guarantee of Te Tino Rangatiratanga given in Article II is consistent with an obligation to actively protect Maori people in the use of their lands, ... and other protected taonga, to the fullest extent practicable. In the context of resource management, the various elements which underlie and are fundamental to a spiritual association with the environment may all fairly be described as taonga that have been retained by Maori in accordance with Article II of the Treaty. The principle of active protection therefore extends to the spiritual values and beliefs of Maori.

[71] We first deal with the arguments about consultation. We were referred to s36A RMA, introduced in 2005, as dealing with the argument that tangata whenua should have been consulted, or better consulted, about this proposal. The section provides:

Section 36A No duty under this Act to consult about resource consent applications and notices of requirement

(1) The following apply to an applicant for a resource consent and the local authority:



- (a) neither has a duty under this Act to consult any person about the application; and
- (b) each must comply with a duty under any other enactment to consult any person about the application; and
- (c) each may consult any person about the application.

As we so often find in hearing such matters, there is no common ground between Unison and the Tangata Whenua as to whether there was adequate and effective consultation. As, in our experience, is usual for an applicant Unison says that its people made every possible effort to explain its proposal and to obtain information and views. Equally usually, Tangata Whenua say they were presented with inadequate information, and that in any event it came in the form of a *fait accompli*. Alternatively, or as well, it is almost always argued that important groups or individuals were not included ... *in the loop*. It is our experience that neither an applicant nor an affected group can win this sort of argument and there is no way we can resolve it. The only practicable course is to put the issue of consultation aside and deal with the evidence presented to us by both sides. It is to be borne in mind that our jurisdiction is not one of judicial review. We are required to make our own substantive decision based on the evidence put before us and the process leading up to the Council's decision is not relevant to that. As is to be discussed shortly, we had a good deal of evidence from the Tangata Whenua and came away with no doubt at all about their position on the issues.

#### *Past Treaty breaches*

[72] Ms Patuawa mounts an argument that ... *the need to recognise and provide for the Tangata Whenua in regard to their cultures and traditions with their ancestral lands, waahi tapu and other taonga is amplified having regard to the Waitangi Tribunal's findings in the Mohaka ki Ahuriri Report regarding the Crown's breach, and having regard to the fact that the site is part of a disputed purchase. And that ...the Treaty obligations owed to Tangata Whenua must be placed into context with the circumstances and history which has effected the Tangata Whenua and their ancestral lands to date.*

[73] The Tribunal's *Mohaka ki Ahuriri Report* of 2004 includes findings that in its dealings over the Ahuriri purchase of 1851, which included the land to the south of the Titiokura saddle; including Te Waka and the land on which Stage 2 is to be sited, the Crown was in breach of its Treaty obligations in a number of respects. In 1867 large tracts of land north of the saddle, including the high ground of Maungaharuru itself, were confiscated under the New Zealand Settlements Act 1863 on the grounds, now accepted to be baseless, that various hapu



and iwi, including Ngati Hineuru, were *...engaged in rebellion against Her Majesty's authority*. The Tribunal's view is that that too was a plain breach of the Crown's obligations. We understand that there has not yet been agreement about appropriate resolution and redress for those breaches.

[74] It is the Tangata Whenua's argument that where there is an established breach, there is a heightened awareness on their part that they have been parted from their land in, at best, dubious ways, that they are thus less able to act as Kaitiaki, and that what they regard as the desecration of places of such spiritual importance is even more keenly felt. We have no difficulty in accepting that.

[75] Whether that translates into an onus upon decision makers under the Resource Management Act to take account of Treaty principles; to pay particular regard to kaitiakitanga, and to recognise and provide for the relationship of Maori with their ancestral land, sites, waahi tapu and other taonga, to a greater degree than they otherwise would, is a proposition we regard with some reserve. The Act expresses them as absolute obligations – there is, for instance, no sliding scale of national importance. Could it possibly be argued that if the Crown had always acted entirely in accordance with its Treaty obligations, the obligation on an RMA decision-maker to recognise and provide for the relationship was lessened? We think not. The RMA based obligations remain simple and clear and the decision-maker should apply the same law and the same standard, whether the history be good or bad. The Crown's obligation to attempt to make redress for past breaches stands apart from the RMA process.

#### *Section 8*

[76] Taking account of s8 and the Plan provisions incorporating Treaty principles (see para [70]) the principles of particular relevance are the overarching requirement of acting reasonably and in good faith, and the principle of active protection. The first is self-evident and the second finds expression in this case in s6(e), which we shall come to shortly.

#### *Section 7(a)*

[77] The s7(a) requirement is to have particular regard to *kaitiakitanga*, a concept defined in the Act as meaning *...the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes*





*the ethic of stewardship.* It is, as mentioned, part of the tangata whenua's concern that because they no longer have ownership of the land, they cannot exercise guardianship over it in a direct, practical, sense. Nevertheless they can attempt to protect what are for them its spiritual values and attempt to prevent it being despoiled by what they see as developments incompatible with those values.

*Section 6(e)*

[78] Tangata whenua's real issues come into focus in considering s6(e). We heard evidence from eight representatives of tangata whenua. They were:

Ms Tania Hopmans – of Marangatuhetaua (Ngati Tu) and Ngati Hineuru

Mrs Hine Campbell – of Ngati Hineuru

Mr George Sullivan – of Ngati Hineuru

Mr Whetu Tipiwai – of Te Whanau a Apanui – and Chairperson of Ngati Hineuru Iwi Inc.

Mrs Connie Gilbert – of Tuhoe, Ngati Kurahikakawa and Ngati Pahauwera

Mr Fred Reti – of Ngati Hineuru, Marangatuhetaua (Ngati Tu), Ngai Tatara and Ngati Kurumokihi

Mr Bevan Taylor – of Marangatuhetaua (Ngati Tu)

Mrs Waiata Brown-Sullivan – of Ngati Hineuru

There may be some predominance of witnesses from Ngati Hineuru, whose heartland is at Te Haroto, to the west of Te Waka – Maungaharuru and across the Mohaka River, but we were assured that the issues for both groupings having mana whenua are the same. There are no rivalries or differences between them.

[79] In addition to those witnesses, we heard from Mr Patrick Parsons, who has written a great deal about the pre and post Treaty history of Hawkes Bay, and from Mr Buddy Mikaere who, as he has done in many other situations, undertook a cultural assessment of the proposal and its impacts. From their separate and independent points of view, they strongly confirmed the matters raised by tangata whenua, both about fact and about perception

*The lore attaching to the Maunga*

[80] Some of the history and lore of the area is described in the evidence of Mr Reti. We hope that we can do justice to the essentials of it by citing these passages:

Maungaharuru (the Mountain that rumbles)



When the Takitimu canoe travelled southwards down this coast, the high priest of the Takitimu, Tupai, cast the staff Papaumu (which embodied the life force of birdlife) high into the air. It took flight and landed on the maunga. The maunga rumbled and roared on receiving this most sacred of taonga, and the maunga was proliferated with birdlife. The mountain that rumbled and roared, hence the name Maungaharuru.

#### Te Waka a Ngarangikataka (The canoe of Ngarangikataka)

[When Maui caught his great fish, the North Island] ... the waka that they were on became stranded on top of the mighty fish. At the time, Maui warned his Uncle, Ngarangikataka and others, not to touch or cut up the fish. But they did not listen. They began to cut up the fish, creating the peaks and valleys that we see today. Maui was angry, and turned his Uncle and the waka to stone. ....

#### Pirinoa

Pirinoa is a Pa belonging to Tauria. This Pa is recorded in the tribal archives as being situated at the prow of the Waka o Ngarangikataka.

#### Taurua o Ngarengare

This is the Pa of Ngarengare. He is one of the sons of Tauria and Mateawha. Tribal archives refer to this Pa being on the south end of Te Waka Range.

#### Titiokura

This is the pass where the titi flew over Maungaharuru. Te Mapu and his son Te Okura camped there while crossing over the maunga. Te Okura and his father caught titi by building and lighting a fire at night attracting the birds towards its light and became snared by a net attached between two poles held high by them in front of the fire and towards the flight path of the titi. Hence the name Titi a Okura (the mutton birds of Okura).

#### The yellow lake

This lake is unnamed. It was discoloured and thought to be paitini (toxic). Our people believe that there is a burial site beneath that lake.

#### Pari o Mateawha

Mateawha was one of the Turehu people. She was not human. The Turehu people abided by certain rules. They were nocturnal and did not prepare or eat cooked food, nor did they clean up tutae (faeces). One day they had visitors, and sadly, Tauria forgot himself. He told his wife to clean up after their baby who had become soiled. Tauria also told his wife to cook their



food. As his wife, she obeyed her husband. However, the effect of this work was to nullify her sacredness. The implication was that Mateawha was unable to return to her own Turehu people. She became alienated from them. She became so distraught at the situation, that she took her own life by throwing herself off the cliff face. She hit the side of the rock and fell down into what is known today as Hell's Hole. The stain of her blood was left on the rock face. Since that time, whenever that stain congeals, our people recognise it has an *aitua* – a bad omen. It usually means one of two things. An omen foretelling the death of a direct descendant, or that a disaster is about to befall the district. At these times, not only does the cliff face become *tapu*, the whole of the *maunga* is *tapu*. Further, the blood stain on the cliff face is viewed by we, her descendants, as the bloodline link of the Turehu world to us.

Te Mauri o Te Mara a Taurira (the lifeforce of the garden of Taurira)

Taurira's line of descent is from Tangaroa (the Lord of the Sea) who begat Oruamano, the great whale that guided the *waka Takitimu* across the *Moana Nui a Kiwa*, the great Pacific Ocean. Descending from Oruamano is Pania (of the reef) and her son More More, the great white shark *kaitiaki* that patrols the foreshore of *Tangitu*. From More More descends Tunui-a-rangi the great Tohunga Wizard whose Pa is at Heipipi near Bayview. His tribe there was known as Ngai Tangaroa. From him descended Taurira.

The *maunga* and in particular its ridges, are known as the garden over which the power of Taurira's spiritual essence still remains. This eponymous ancestor founded Ngai Taurira, who once inhabited Te Waka Range. It was where Taurira lived, hunted and snared birds. The *maunga* was a source of sustenance for his descendants over many generations. It was a *taonga*. The ridges, in particular the Pa sites, were clearly occupied by the *tangata whenua*. This is what our history tells us. For his descendants, the *mauri* or the power of Taurira's essence still exists along the tops and ridges of Te Waka range.

[81] As that summary demonstrates, the area of Te Waka – Maungaharuru has all of the features mentioned in s6(e) – ... *land, water, sites, waahi tapu and other taonga*. It was impossible not to absorb some of the depth of emotion expressed in the evidence about the attachment of the people to this area. It not only defines one of the boundaries of their tribal *rohe*, or districts. It also helps define them as individuals and as tribal and family groups. The relationship they have with it, despite no longer owning it, must be, we think, just the kind of relationship ... *of Maori, their culture and traditions*... that the drafters of the section had in mind, and which the legislation requires to be recognised and provided for as being of national importance.



[82] We should make separate mention of the issue of waahi tapu. As Mr Reti's recounting of lore indicates, parts of the Maunga are regarded as waahi tapu and, at times, the whole of it is so regarded. Other witnesses asserted that the whole ridgeline was regarded as tapu. The Plan has provisions about waahi tapu:

WT01 To recognise waahi tapu sites in the Hastings district as being of cultural significance to Maori and ensure their protection from damage, modification or destruction from land use activities.

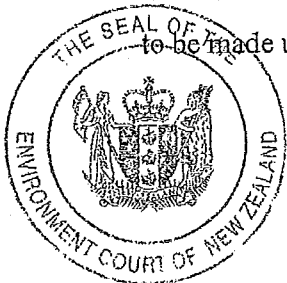
WT02 To promote the protection of waahi tapu sites in a way which is sensitive to the cultural needs and aspirations of Tangata Whenua.

WT03 To encourage the partnership of the Council, landowners and Tangata Whenua in the management of waahi tapu sites.

[83] For understandable reasons, it is not uncommon for Maori to seek to protect waahi tapu by keeping their location and nature a closely guarded secret. This can, for equally understandable reasons, lead to frustration on the part of Councils, landowners and developers who point out that they cannot take account of, and protect, places and things they do not know about. There is no ready solution to this dichotomy. The places we heard about are not, for whatever reasons, recorded as waahi tapu in the District Plan. But now that they have been claimed as waahi tapu (and there was no challenge to that) the Plan provisions just mentioned, and the Treaty principle of active protection, would seem to bring them clearly within the ambit of s6(e).

[84] In her submissions, Ms Patuawa summarises their distress (and it is as strongly felt as that) that their *...relationship with their ancestral lands, water, sites, waahi tapu and other taonga...* will be harmed because of *...the loss of the mana of their maunga, it being a significant and inherent part of both Maori culture and of the whakapapa of the Tangata Whenua. Tangata Whenua see the maunga as an Outstanding Natural Feature, iconic for its spiritual and historical importance but also for its sheer beauty.*

[85] The issues raised under these provisions are powerful, but not of themselves necessarily decisive. As do all factors arising under sections 6, 7 and 8, they inform the overall decision to be made under s5: - whether the proposal promotes *sustainable management*.



*Section 7*

[86] Section 7 lists matters to which the Court is to have *particular regard* in coming to a decision. The following paragraphs of s7 appear relevant, and we shall discuss them in turn.

[87] (a) *Kaitiakitanga*: We have discussed this separately at para [77].

[88] (aa) *The ethic of stewardship*: It is valid to see *stewardship* in two ways in this context. First, that it would be best achieved by preserving these visual, landscape and other amenity values unaltered, and that change to them should be avoided. Alternatively, that we will be better stewards of the planet's resources for the benefit of future generations if we accept some compromise of those values for the purpose of at least slowing climate change, by taking advantage of non-polluting and renewable sources of energy. The issue here is whether the compromise required for this proposal, whether alone or cumulative upon that already accepted to allow Stage 1 and the HBWF proposal, goes beyond the point of what is appropriate and acceptable.

[89] (b) *The efficient use and development of natural and physical resources*. There are two pertinent issues here. First, a good deal of the land on which Stage 2 is to be established is presently used for pastoral farming. After construction, farming operations will be able to continue as before. The ability to use the land for both primary production and the production of energy is clearly an efficient use of that land resource. Secondly, the energy in the wind is a presently untapped resource, and the use of that resource to produce electricity by a process which does not emit pollutants is at the heart of this project. It would plainly be an efficient use of the resource, which will otherwise be *wasted*.

[90] (c) *Maintenance and enhancement of amenity values*: *Amenity values* are defined in the RMA as:.... *those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes*. There are those who find the sculptural form of these turbines attractive, and an appealing contrast to the landforms on which they stand. But for the reasons discussed in paras [41] to [61], we accept that for most, there will be adverse effects on amenity values as presently seen or experienced from private and public spaces both close to and at a distance from the site. Overall, those collective values will not be *maintained* (if



*maintained* is taken to mean, as the Concise Oxford has it, ...*[kept] at the same level or rate*), and, still less, *enhanced*.

[91] *Ecology – s7(d) Intrinsic values of ecosystems: and s6(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:* Although it will of course not always be so, in the context of these appeals it is convenient to deal with these two factors together. Mr Stephen Fuller was the only qualified ecologist to give evidence, and was called by Unison. In summary, he considers that some of the beech-dominated higher altitude forest (about 25% of the site) is untouched and of high ecological value. The regenerating shrublands (about 15% of the site) contain a diversity of native species, some of which are unusual or rare, and also of high ecological value. The site generally, with its diversity of habitat, supports an equal diversity of bird species, both native and introduced. He did note that what was, on a preliminary assessment, thought to be a pair of native falcon present on the site has now proved to be a single male.

[92] There are three streams with headwaters in the site, and a number of upland lakes, both permanent and ephemeral, but there is no indigenous wetland vegetation of note. Mr Fuller is confident that sediment control measures proposed during construction will ensure that any effects on water bodies will be temporary and minor.

[93] The project affects one area of significant indigenous vegetation, noted as a Recommended Area for Protection (RAP) in the District Plan. It is not presently fenced or actively managed, but is protected by the terms of the Plan. RAP 46 poses what Mr Fuller describes as ...*the most difficult ecological issue of this project*... because of the proposal to upgrade an existing access track through it to bring oversize turbine components onto the site during construction. This will require the removal of up to 86 mature beech trees, and that will have effects that Mr Fuller acknowledges as ...*more than minor*.

[94] As mitigation for that loss, Mr Fuller has recommended, and Unison and the landowner have agreed, that representative vegetation within RAP 46 should be fenced and protected, particularly by the control of wild goats which he says are causing significant damage presently. A fenceline for the protected area was agreed between the landowner and DOC in 2006. It is Mr Fuller's belief that this will result in improved habitat and provide enhanced corridors for safe wildlife movement. It will, he says, have positive effects on the local



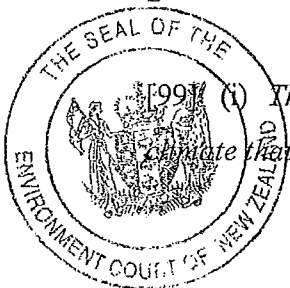
ecology by protecting several hundred hectares of forest and shrubland, providing adequate mitigation for the localised effects along the line of the access road.

[95] Possible effects on avifauna cannot presently, in Mr Fuller's view, be adequately assessed. A detailed monitoring process has been agreed and included in the draft conditions. Results of this will inform the final design of the windfarm layout, which will require account to be taken of avifauna corridors. There will be ongoing monitoring for three years after construction. The appeal notices of HBWF, the Tangata Whenua and the Hawkes Bay Rata Society raised ecological issues. To the extent that anyone reasonably can at this stage, Mr Fuller has responded to them, and we see nothing in the concerns raised that would require refusing consent, or imposing further or different conditions.

[96] We accept the thrust of Mr Fuller's views that the potential adverse effects on ecology can be managed and mitigated to an acceptable level.

[97] (f) *Maintenance and enhancement of the quality of the environment*: Again, we discuss the issues which contribute to the ...*quality of the environment* ... elsewhere under their various discrete heads. There seem to be two not necessarily compatible scales on which to consider this factor. Firstly the production of energy from a non-polluting and renewable source must contribute to the quality of the environment in the broad sense. Secondly though, in much the same way as there can be said to be a diminution of amenity, it can certainly be argued that there will be a loss of the quality of the environment from a natural character/visual/landscape perspective.

[98] (g) *Any finite characteristics of natural and physical resources*. Fossil fuels are a finite resource. Assuming that its costs are at least competitive, the production of electricity from this proposal may replace, or at least be likely to slow the rate of, burning fossil fuels to produce electricity. A high quality wind resource is a finite and valuable characteristic. The land on which it is proposed to build it is a finite resource also. Largely, its underlying characteristics will remain, and when and if the windfarm is decommissioned its above ground structures can be removed, leaving little trace of their former presence.



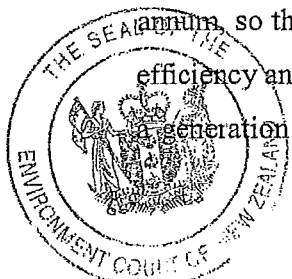
[99] (i) *The effects of climate change*: The RMA defines *climate change* as ...*a change of climate that is attributed directly or indirectly to human activity that alters the composition of*

*the global atmosphere and that is in addition to natural climate variability observed over comparable time periods.* New Zealand is a party to the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol. The obligations under those documents have been reflected in domestic law in the Climate Change Response Act 2002, and in amendments to the RMA, specifically s7(ba), (i) and (j). Some of the parties to these appeals were able to agree upon some background material (virtually identical to that produced in the Stage 1/HBWF appeals) which was referred to as the Statement of Agreed Issues. The appellants, Hawkes Bay Wind Farms, Mr and Mrs King and the Hawkes Bay Rata Society did not join in this document, but nor did they call evidence to dispute any of it. In that it largely summarises and recites passages from publicly available documents, many of which have been before the Courts before, it conveniently summarises what we understand to be the mainstream thinking on the issues in this way:

... the world is likely to experience a rise in temperature, resulting in increasing sea levels, more frequent extreme weather events and a change in rainfall patterns. These climatic changes will potentially impact on New Zealand native ecosystems, industries, infrastructure, health, biosecurity and economy. In the long term, if unchecked, climate change increases the risk of major and irreversible changes to the earth. For example, even for relatively moderate warming, the Greenland ice sheet is expected to melt completely over the next several thousand years which would lead to a sea-level rise of as much as 6 – 7 metres. The cost of doing nothing about climate change could be severe and the impacts on our environment, economy and society are likely to get steadily worse if greenhouse gas emissions are not reduced significantly over the coming decades.

That summary speaks for itself. This is an issue that must be taken seriously, and the avoidance of carbon dioxide emissions is a necessary part of the response to it.

[100] (j) *The benefits to be derived from the use and development of renewable energy:* The RMA defines renewable energy as *...energy produced from solar, wind, hydro, geothermal, biomass, tidal, wave, and ocean current sources.* The Statement of Agreed Issues records that between 1974 and 2000 total use of electricity in New Zealand's industrial sector increased by approximately 142 per cent, that electricity generation has doubled in the last two decades, and that electricity demand is growing at about 1.2 to 1.8 per cent, per annum. That means that between 100 and 150 megawatts (MW) of new electricity generation is required per annum, so there is a pressing need to build new generating capacity, while also implementing efficiency and conservation measures to meet that growth in demand. This proposal will have a generation capacity of some 111MW. We need not go into the detail of the obligations





under the UNFCCC and its Kyoto Protocol. It can simply be said that curbing and eventually reducing the emission of greenhouse gases, principally CO<sub>2</sub> from the combustion of fossil fuels, is a priority if we hope to reduce the human activity component of climate change and avoid its effects on this country, and others.

[101] The New Zealand Government's primary means of achieving the outcomes sought in the Sustainable Development Programme of Action for Energy is the National Energy Efficiency and Conservation Strategy (NEECS). The NEECS identifies two key policy directions that support a movement towards a sustainable energy economy. First, ongoing improvement in energy efficiency and, secondly, progressive transition to renewable sources of energy. In respect of the second limb, the target is for the generation of an additional 30 petajoules (PJ) per annum of consumer energy from renewable resources by 2012. As at March 2004 New Zealand had an additional 4 PJ of energy coming from renewable sources each year. It is estimated that this windfarm would contribute about 1.5 PJ per annum, or 5% of the renewable energy target.

#### *Evaluation of s7 factors*

[102] The factors of kaitiakitanga, stewardship, the maintenance of landscape and visual amenity values and the quality of the environment in our view lean towards preserving this landscape, particularly when the adverse effects of this proposal are considered cumulatively with the other consented windfarms. The ecology factor is largely neutral. The factors of effects of climate change, and the benefits of the use of renewable energy will, as almost always, fall on the side of operating a windfarm.

#### *Section 6*

[103] Section 6 deals with matters which the RMA prescribes to be of *national importance*, and which are to be recognised and provided for in all decisions about the use, development and protection of natural and physical resources. There are seven s6 factors, but only four are arguably relevant here. One factor, that in para (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga* has already been discussed: - see para [78] to [84]. We shall discuss the remaining three in



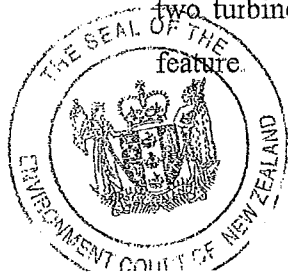
[104] (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development* The first issue to resolve is whether this is ...*an outstanding... landscape*. As mentioned at para [46] there seems now to be consensus that *landscape* comprises more than the purely visual, and encompasses the ways in which individuals and the communities they are part of perceive the natural and physical resources in question, and those perceptions can be coloured by ...*social, economic, aesthetic and cultural conditions*.

[105] The *Wakatipu* case also further refined criteria for assessing the significance of a landscape, earlier discussed in *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council* [1999] NZRMA 209. The criteria were originally developed for the *Canterbury Regional Landscape Study* (Boffa Miskell Ltd and Lucas Associates, October 1993). They have become known as the *Pigeon Bay* criteria, although they might more accurately be called *factors*. As since refined, they include:

- the natural science factors – the geological, topographical, ecological and dynamic components of the landscape;
- its aesthetic values including memorability and naturalness;
- its expressiveness (legibility): how obviously the landscape demonstrates the formative processes leading to it;
- transient values: occasional presence of wildlife; or its values at certain times of the day or year;
- whether the values are shared and recognised;
- its value to tangata whenua;
- its historical associations.

They are now widely accepted, and we adopt them here.

[106] The witnesses differed as to the extent of an outstanding natural feature or landscape. Mr Lister was comfortable with his original assessment, taking in 11 of the turbines, even though it pre-dated the formalising of the *Pigeon Bay* factors. Ms Lucas concluded that the upper slopes and summit of the Te Waka Range comprise an outstanding natural feature or landscape. Mr Evans considered that only an area extending from SH 5 to close to the second two turbines within the ONF originally identified by Mr Lister was an outstanding natural feature.



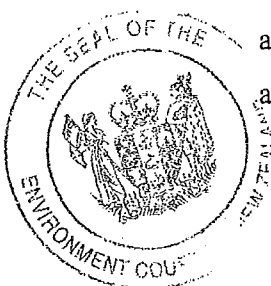
[107] We consider the *Pigeon Bay* factors:

- *the natural science factors – the geological, topographical, ecological and dynamic components of the landscape.* Mr Lister and Mr Evans considered these to have a moderately high rating, and Ms Lucas a high one. Of particular note are the limestone formations, with the outcrops and escarpments, a large beech forest area, sub-alpine bluff vegetation and open shrublands, and several tarns or wetlands. Ms Lucas also included the presence of the falcon and the palaeobiological record and its potential to provide information on our changing environment.
- *its expressiveness (legibility): how obviously the landscape demonstrates the formative processes leading to it.* Ms Lucas and Mr Lister rated these as high, a view Mr Evans did not agree with. Mr Lister considered the range as a whole is expressive of rapid uplift along plate boundaries, including the rawness of the landform, the evidence of marine deposition, the saw-tooth escarpment and dip-slope pattern, and the fact the rising range has diverted the Mohaka River along its base. Ms Lucas also referred to the vegetation sequences with altitude, with forest lower and non-forest above in the sub-alpine area.
- *its aesthetic values including memorability and naturalness,* are rated as high by Ms Lucas and Mr Lister; Ms Lucas because of the apparently simple but distinctive form and skyline, and its landmark quality, and the natural landform and land cover diversity and patterning. Mr Lister said:

It is a particularly memorable skyline with its clean lines and very distinctive 'scoop'. Te Waka is named for the shape of a 'waka' that is evident in the skyline, with the 'scoop' forming the stern post, and the flat hull extending to the north. It is the skyline backdrop from Hawkes Bay that one's eyes are naturally drawn toward. It is also in a strategic landmark location in relation to the Napier-Taupo highway.

Mr Evans considered this factor to be high only around the Waka area.

- *transient values: occasional presence of wildlife; or its values at certain times of the day or year,* are rated as high by Ms Lucas, moderate by Mr Lister and fairly low by Mr Evans. Ms Lucas is influenced by the changing seasonal, light and atmospheric effects and consequent varying definition and character of the range, and of particular components, and the meanings and associations these conjure; and the experience and knowledge of the occupation by falcon. Mr Lister



considered that elevation and landforms accentuate the play of the light, and catch snow occasionally.

- *whether the values are shared and recognised*, are rated as high by Ms Lucas and moderately high by Mr Lister. Ms Lucas because Te Waka has long been recognised as a key landmark, in myth and legend, in whakapapa, in art, literature and imagery. She provided two examples of paintings dating back to the early 1900s to illustrate the point. Mr Lister considered Te Waka does not have the same recognition as the more iconic features such as Cape Kidnappers and Te Mata Peak. However the north-western skyline, in particular the Te Waka scoop, is a recognisable landmark to Hawkes Bay people.
- *its value to tangata whenua*, rated as high by Ms Lucas and Mr Lister. Mr Evans said as it was outside his area of expertise, he could not comment. A high rating reflects our findings elsewhere in this decision.
- *its historical associations*, rated as high by Ms Lucas and moderate by Mr Lister, a view Mr Evans could not support. Mr Lister considered the historical associations to be with the broader range and not Te Waka Range itself. Ms Lucas referred to the significance of the evidence of natural history; key associations for iwi as a part of local history; the colonial history in the area; the historic settlement and transport route associations.

[108] We conclude that the area identified in the original *Isthmus* report (and in the Proposed District Plan as notified) as ONF 7 is an outstanding natural feature or landscape. Unison's counsel, Ms McEwan, in closing sought to distinguish the decision in *Chance Bay Marine Farms Ltd v Marlborough DC* [2000] NZRMA 3, 37 on the basis that it did not involve an operative District Plan or *zoning* of areas of landscape value, as was the case here. She submitted that what is contained in the Plan is full and final and we cannot go beyond that in terms of looking at outstanding landscape features, as that would be unfair to users of the Plan.

[109] Earlier, Mr Matthews drew to our attention the record of the Council Committee considering the extent of ONF 7 in the Proposed Plan, as follows:

The majority of the committee felt the features in this area were not so significant as to warrant it being included as an outstanding natural feature area.



It was further noted that the location of this land was so far removed from the general public eye and that removal of the ONF7 would make it possible for activities such as wind farming and forestry to be carried out there.

We make no comment on the reasons for that decision, although we note it did not carry through into the schedule to the District Plan describing ONF 7. It is appropriate that we consider, in the light of the evidence of the landscape witnesses, the importance of the natural landscape that would be significantly adversely affected by the windfarm. We should consider also effects on people in the region who live in Napier City and outside Hastings District.

[110] (f) *The protection of historic heritage from inappropriate subdivision, use, and development* There is little relevant European history on the maunga. For a short time there was a redoubt close to the Titokura saddle -- one of a line established to protect the road to Taupo in the 1860s. The King family has farmed land in the vicinity for 130 years. That aside, the history of the area has been woven around the activities of Maori over the centuries and, to the extent that there might be issues different from those arising under s6(e), they are to be given weight under this head.

#### *Evaluation of s6 factors*

[111] There is no doubt that this is an *outstanding* landscape. We have a clear view that the adverse effects of the proposal on this landscape, particularly considered as cumulative on what has been given consent, would be such that the development would be *inappropriate*. The proposal's effects, both alone and cumulatively, on Maori and their relationships with their maunga and its values are also against the proposal.

#### *Section 290A*

[112] We must have regard to the Council's decision in considering the outcome of the appeal. Our hearing of the Stage 1 and HBWF appeals was in late May 2006, with the decision being issued on 17 July 2006. The Council's hearing of the Stage 2 application began on 1 May 2006 and concluded on 6 June, so the two hearings proceeded in parallel. On the major issue of landscape and visual effects, the Council said that it accepted what it understood as the view of all four landscape architects (including Mr Evans, although he considers that to be a misunderstanding of his view) that the Te Waka range is an outstanding natural landscape in terms of Part 2 RMA. It went on to hold that: *The Committee considers*



*that the effects of the turbines themselves on the landscape are no more than minor.* On the issue of cumulative effects (which it took to be those of Stage 2, plus Stage 1 and the HBWF proposal) it agreed with Mr Evans' view, and considered that they *...will be minor.* We agree on the point of whether this is an outstanding landscape, but not on the degree of adverse effects.

[113] The other major issue is that of the concerns of Maori about the proposal. On the face of the decision, the Council was somewhat dismissive of the *cultural impact* evidence from Mr Reti and Mr Ratima. It expressed the view that neither were Kaumatua, and that there had been adequate consultation with Tangata Whenua through persons who were Kaumatua but who did not appear at the hearing. We do observe that the Minutes of the Committee meeting indicate a quite detailed discussion of the issues with Mr Reti and Mr Ratima, and that Mr Reti was acknowledged as appearing with the mandate of those who were Kaumatua. Nevertheless, the decision is the record of the Council's reasoning, and the impression remains that the evidence was substantially discounted. The decision also recorded that the turbines would not be constructed *...on the Waka ... itself*, with the plain implication that their impact was the less significant because of that. There seemed to be no acknowledgement by the Council of the value Maori place on the skyline of the Maunga as a whole.

[114] For the reasons we have outlined we disagree with the Council's assessments of the degree of adverse effects. That is not a criticism of its decision making processes; the evidence we had put before us was significantly more fulsome and detailed on those issues.

#### *Section 5*

[115] In concluding our decisions on Stage 1 and the HBWF proposals, we expressed the view that, for those sites, the balance fell on the side of use of the land for electricity generation from renewable resources, notwithstanding the adverse effects. We added this rider:

That said, we should not be understood as indicating that electricity generation from renewable sources will always be favoured in the balancing exercise. We make this decision on a site-specific basis. It may well be that other sites, perhaps for example more iconic in character, or closer to houses or clusters of population, will call for a different result.

The term *iconic* is somewhat overused, and we refrain from it here. But the feature of Te Waka, and the skyline to the south of it, is quite different from the high, broken-topped massifs of Te Tiokura-Maungaharuru. The starkly flat and straight profile of the hull of the Waka, the



sharp lift of the *taurapa*, or sternpost, and the rippling and extended wake running away to the south, are clearly visible from both the east and the west. Of the whole of the northwestern skyline of Hawkes Bay, it is the most distinctive feature, and the feature on which structures above the skyline will be the most obtrusive. Where we considered that Titiokura-Maungharuru had the ability to absorb the 90 Stage 1/HBWF turbines, we do not consider that to be so for Te Waka and Stage 2. Many of the concerns of Tangata Whenua reflect that issue of interference with the skyline view, but with the cultural and spiritual overlays we have attempted to capture.

[116] Important as the issues of climate change and the use of renewable sources of energy unquestionably are, they cannot dominate all other values. The adverse effects of the proposal on what is undoubtedly an outstanding landscape, and its adverse effects on the relationship of Maori with this land and the values it has for them, clearly bring us to the conclusion that the tipping point in favour of other values has been reached. When those adverse effects are considered as cumulative upon the Stage 1/HBWF effects, the conclusion is the more profound. In the terms of s5, the proposal would help enable people and communities to provide for their economic wellbeing and their health and safety, and would help sustain the potential of natural and physical resources, in the context of power generation from renewable sources. But it would not help people and communities provide for their cultural, and possibly social, wellbeing. Nor would it sustain the landscape, visual and cultural amenity resource for future generations. It also would fall well short of avoiding, remedying or mitigating adverse effects on the environment.

[117] We considered the possibility of declining part of the proposal – those turbines within the equivalent of the length of the Waka (ie roughly 1.8km) south of the Waka sternpost (see para [49]). But the proposal is for the layout of 37 turbines and that is what the evidence related to. We have no evidence as to the effects of a major change on the viability, layout and practicability of what would remain of the project, or whether a more extensive project extending to the south might be preferred by the applicants. Nor do we have evidence about the acceptability of the different landscape, cultural and other effects from such an altered proposal. While relocating some turbines or even eliminating a few might fall within the ambit of this hearing it is not open to us to embark on a major redesign of the project. Redesign of the project would need to be undertaken by Unison and fresh applications made.



*Result*

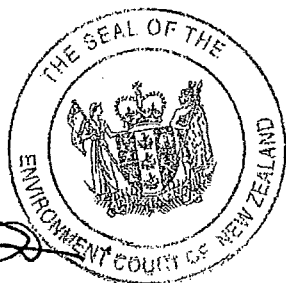
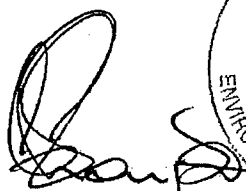
[118] For all of those reasons we have concluded that this proposal does not promote the sustainable management of natural and physical resources, as that phrase is explained in s5 of the Act. We therefore do not confirm the Council's decision. The consent should be declined.

*Costs*

[119] Any application for costs should be lodged within 15 working days of the date of issue of this decision, and any response within a further 10 working days.

Dated at Wellington this 13<sup>th</sup> day of April 2007

For the Court



C J Thompson

Environment Judge

Issued: