

**BOARD OF INQUIRY**

**HAUAURU MA RAKI WIND FARM PROPOSAL**

In the matter of                    The Resource Management Act 1991

And

In the matter of                    Resource consent applications by Contact Wind Limited to the  
Franklin District Council in respect of the Hauauru Ma Raki  
Wind Farm Proposal

And

In the matter of                    Notices of requirement and a resource consent application  
by Contact Energy Limited to Franklin District Council for  
transmission infrastructure related to the Hauauru Ma Raki  
Wind Farm Proposal

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**BRIEF OF EVIDENCE IN CHIEF BY RICHARD JOHN GARD'NER**

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## **Introduction**

1. My name is Richard John Gardner. I hold the position of Regulatory Planning Co-ordinator: Landuse with Franklin District Council. I have 23 years planning experience working with local authorities with the last eight (8) being with Franklin District Council.
2. My academic qualifications are a Bachelor of Town Planning from Auckland University, Bachelor of Arts from Waikato University and a Secondary Teacher's College Diploma from the Auckland College of Education. I have been a full member of the New Zealand Planning Institute since 1989.

I have been the Franklin District Council's officer representative on the Technical Focus Group formed in July 2007 and have had an overseeing role for the Council with this project since that time.

3. I confirm that I have read the 'Code of Conduct for Expert Witnesses' contained in the Environment Court Consolidated Practice Note 2006. My evidence has been prepared in compliance with that Code in the same way as I would if giving evidence in the Environment Court, In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

## **Scope of Evidence**

4. My evidence will provide the Board Of Inquiry (BOI) with comments as to the regulatory and policy framework under the Resource Management Act 1991 (RMA) within which decisions regarding the resource consent applications by Contact Wind and Notices of Requirement by Contact Energy for the proposed Hauauru ma raki (wind farm) project with particular emphasis on how the project will sit within the auspices of the operative Franklin District Plan ( February 2000), (the District Plan) and Rural Plan Change 14 (PC 14) to the operative District Plan (decision version July 2006).
5. In preparing this evidence principal reliance has been placed on the Evidence in Chief (EIC)(February 2009) prepared by Mark Chrisp - planning consultant for the wind farm project, and the application documents lodged with the applications in June 2008. Reference is made to other documents from both the applicant and officers from the Technical Focus Group.
6. To assist the BOI I have attached to my evidence extracts from the appropriate parts of both the District Plan and PC 14 as they are referred to in my evidence. These are Parts 5, 15, 23, 50 and 53 of the District Plan and Parts 23 (Rule 23A and 23B), and Part 50 as amended by PC 14. To distinguish between the parts the District Plan is dated February 2000 and PC 14 dated July 2006.

## **District Plan Provisions**

7. The land on which the wind farm is proposed is zoned Rural under the District Plan and Coastal/Rural under PC 14. Within these zones resource consent is required for a range of activities associated with the wind farm.
8. On page 6 of the EIC, Table 1 sets out a summary of the RMA status of the activities for which resource consent is required. I note that this table does not differentiate between the District Plan rules and zones and those contained in PC

14 but rather focuses on the most onerous status of either planning document. This is not an unreasonable approach should one accept the principle of “bundling” as espoused in paragraphs 21 – 24 inclusive of the Chrisp EIC.

9. In general I concur with what has been set out in the table, however, I am of the opinion that not all the activities proposed under the auspices of the “Construction, operation and maintenance of a wind farm including turbines and internal access roads” are Discretionary Activities as suggested in the Chrisp EIC. I do not, however, consider that this is significant for the application in terms of outcome. My reasoning for this opinion is set out in the following paragraphs.

10. I note that in determining the status of the wind farm per se, reliance is placed on the provisions of Part 15 – Activities Throughout the District of the District Plan and in particular Rule 15.1 – Network and Other Utilities and Essential Services which form part of district wide rules. This part of the District Plan identifies a range of essential or public services including the generation of electricity. I concur that this activity is provided for as a Discretionary Activity under Rule 15.1.2.8 which states:

*“Electricity generation which is not a permitted activity or prohibited under Part 15.3.”*

11. Rule 15.3.2 – Prohibited Activities notes that the *“Use of radioactive material for the purposes of power generation or heat generation”* is a Prohibited Activity and that consent cannot be granted for those activities. The applicant’s proposal does not involve the use of radioactive material and accordingly is not a Prohibited Activity.

12. Under Rule 15.1.2.1 of the District Plan the generation of less than 1MVA of output electricity from a wind source is a permitted activity subject to compliance with the development and performance standards for the relevant zone. Clearly the wind farm proposal will generate more than 1MVA of electricity and accordingly does not enjoy the status of being a permitted activity.

13. An assumption has been made in the EIC that all the activities associated with the construction and operation of the wind farm and in particular the placement of the wind turbines fall under the Discretionary Activity status afforded by Rule 15.1.2.8. I refer to the requirement to remove vegetation to enable the construction and placement of the wind turbines, formation of access roads and the deposition of surplus material from the wind turbine sites.

14. It is my opinion that in terms of the application of Part 15 of the District Plan, the above identified activities, while acknowledging that they form an integral component of the construction and operation of the wind farm, do not enjoy status under this particular section of the District Plan.

15. In this regard I am guided by the introduction to Part 15.1.2 which states:

*“If an activity is specifically listed as permitted in the zone activity rules, the activity status in Rule 15.1 is overridden. However any activity which is permitted in the Rule 15.1 rules, and is not located in a road, has to comply with any specific activity status and the conditions/standards of the relevant zone unless Part 15 specifically provides for exemption.”*

16. I note that those activities mentioned in paragraph 12 above are not included in the range of activities that are provided for as permitted activities under Rule 15.1.2.1 and accordingly the status of such activities must be considered under the appropriate zones in which they are to be undertaken.
17. In terms of the rules contained in both the District Plan and PC 14 the following observations can be made:

A. District Plan

- i. a. Vegetation removal is permitted in the Rural zone of the District Plan provided the vegetation is not protected by some form of legal protection or is listed in Schedule 5A – Conservation of Outstanding Natural Features. For the latter there are no such features listed in the wind farm development envelope as described in the application.
- b. For the former there is one QE II National Open Space covenanted area of bush located in close proximity to wind turbines C009, C010 and C012 in Block C, however, the proposal will not impact on this area as confirmed in the G Kessels (EIC), page 7, paragraph 14. I note that there are other areas of bush or wetland legally protected by covenant with Franklin District Council within either the wind farm development envelope or within the areas identified as forming part of the Notices of Requirement for the transmission lines. Such areas have been carefully avoided by the applicant.
- c. Further it is noted that one of the permitted activities within the Rural zone relates to “Forestry” (Rule 23.1) which provides for the “... *planting, pruning, felling and removal from the SITE of trees,...*”. I note that the applicant has obtained the written approvals of all the land owners whose properties are identified as having wind turbines located upon them apart from Whareana Farm (property 1 on Plan 1(Exhibit MBC1)) in the EIC. It is understood that the applicant will have secured this last written approval by the time this matter comes to a hearing.
- d. Where the written approval of the landowner has been provided, it has been Franklin District Council’s historical convention and practice to allow the removal of the vegetation as a Permitted Activity under the above status of Forestry. I therefore conclude that under the District Plan no resource consent is required for the removal of vegetation in association with the wind farm project.
- ii. a. Earthworks associated with the construction of the wind farm would be a Permitted Activity subject to compliance with the General Performance Standards set out in Rule 23.6.4 - Earthworks of the District Plan viz:

*“General: Bare ground arising from EARTHWORKS shall be revegetated as soon as practicable.”*

Details submitted with the application implies that the site rehabilitation will be undertaken although this appears to be only specifically mentioned under sections 6.7.9 Soil Disposal Areas and section 6.7.10 Borrow Areas of the Hauauru ma raki – Waikato Wind Farm, Project Description, June 2008. I note, however, that proposed Condition 4.2 (n) as set out in the S Daysh EIC, Exhibit SGD2, page 000059 sets out the following:

n) *Procedures to ensure that all re-sowing and re-planting of cleared areas in the turbine consent areas and along road batters and cuts within existing indigenous existing indigenous vegetation sites comprise locally sourced indigenous grass and shrub species only. For the avoidance of doubt any replanting shall be designed so as to ensure the practical and efficient operation of wind turbines is not compromised”*

which would in my opinion address the matter of revegetation as required by the rule. Should this not be the case then resource consent for a Discretionary (Restricted Assessment) under Rule 23.3 of the District Plan would be required.

The second part of Rule 23.6.4 states:

*“Earthworks in development setbacks: EARTHWORKS in the Coastal Marine Area Development Setbacks and Lakes and Rivers Development Setback shall not exceed a total volume of 25 cubic metres or a total area of 250 square metres.”*

- b. I note that the Hauauru ma raki – Waikato Wind Farm, Project Description, June 2008, states on page 5 that no turbines will be located within 150 metres of Mean High Water Springs. In terms of this statement I believe it will be unlikely that there will be any earthworks undertaken within the 60 metre Coastal Marine Development Setback.
- c. While the level of detail has not been provided in the application to determine whether or not the earthworks will be located within the Lakes and Rivers Development Set Back (30 metres from edge of the water feature), should the final analysis determine that on site earthworks will infringe this set back, resource consent is required for a Discretionary (Restricted Assessment) under Rule 23.3 of the District Plan.
- d. It is noted that overall the volume of earthworks required for that part of the wind farm project located with Franklin District Council jurisdiction will amount to approximately 1,603,003m<sup>3</sup> – a figure extrapolated from Tables 6.5 to 6.9 (pp 40 -42) of the Hauauru ma raki – Waikato Wind Farm, Project Description, June 2008.
- e. In addition to these volumes of earthworks it is noted that there will be surplus fill generated which will have to be disposed of. Where such material is disposed on the site from where it came and the disposal areas comply with Rule 23.6.4, the activity would be provided for as a Permitted Activity. Where the disposal site is located off site, resource consent is required for volumes over 100m<sup>3</sup> under Rule 15.1.2.8 of the District Plan – with such an activity being considered a Discretionary Activity for “Cleanfill”.
- f. To cover the volume of earthworks including potential off site disposal the applicant has applied for resource consent for earthworks and land disturbance including vegetation clearance as required, cutting and filling, disposal of cuts, turbine foundation works, water storage ponds, establishment of construction lay down areas and construction of internal access roads.

- g. In my opinion such an all embracing application for the range of specified activities is an appropriate measure by which to give consideration to the overall effects of the intended earthworks associated with the construction and operation of the wind farm.

#### B. PC 14

- i. a. This planning document introduces the Coastal zone, incorporating the Tasman Coast Management Area, and prescribes a range of activities that are either permitted or require resource consent. In relation to vegetation clearance within this zone, the damage, clearance or destruction of indigenous vegetation within the Coastal Protection Setback is a Non Complying Activity under Rule 23B.1.5.
- b. The Coastal Protection Setback is described as *“Land within the Tasman Coast Management Area encompassing the area between Mean High Water Springs and 60 metres landward from the top edge of the coastal escarpments or ridgelines.”*(page 351 of PC14). The Hauauru ma raki – Waikato Wind Farm, Planning Assessment, June 2008 identifies on p14 that no activities associated with the wind farm project are located in the Coastal Protection Setback and *“...therefore do not give rise to the need for a resource consent application in this regard.”*
- c. I concur with this conclusion as it relates to vegetation removal in the Coastal zone.
- d. The balance of the wind farm project area is zoned Rural under PC 14. Within this zone the removal of vegetation is regulated by Rule 23A.1.1.4 (page 178 of PC 14) whereby Production Forestry is a Permitted Activity. I consider that the vegetation removal required for this project would also fall under this activity status under PC 14.
- e. In reaching this conclusion I am guided by the definition of Production Forestry which means *“...the ongoing management of trees or areas for the production of timber as defined under Forestry.”* Forestry as noted in paragraph 16A District Plan (i)(a) above includes the *“... planting, pruning, felling and removal from the SITE of trees,...”*. As such it is contended that the removal of vegetation to accommodate the activities associated with the wind farm is provided for under this general definition notwithstanding that the PC 14 Rural zone does not provide for Forestry as a specific activity in the permitted activity list set out under Rule 23A.1.1.
- ii. a. PC 14 introduces specific earthworks rules for both the Coastal and Rural zones. These are set out in Rules 23A.2.1.4 (Rural zone) and 23B.2.1.4 (Coastal zone). Where the earthworks do not meet the following permitted standards they require resource consent to a Restricted Discretionary Activity viz:
  - “(a) Maximum volume (m<sup>3</sup>) per site per 12 month period:250*
  - (b) Maximum face height (m) per site:3*
  - (c) Maximum area per site (m<sup>2</sup>):1000”*
- b. As noted in paragraph 17ADistrictPlan ii. d above the volume of earthworks will exceed these permitted performance standards and thus resource consent is required for such activities within either zone.

- c. Further to the above, the Coastal zone introduces a variety of consent statuses for earthworks in proximity to the cliff top above Mean High Water Springs. These are
- Where the earthworks exceed the permitted standards beyond 150 metres from the cliff edge above Mean High Water Springs consent is required for a Restricted Discretionary Activity.
  - Where the earthworks are between 60 to 150 metres from the cliff edge above Mean High Water Springs consent is required for a Discretionary Activity.
  - Where the earthworks are between 0 to 60 metres from the cliff edge above Mean High Water Springs consent is required for a Non Complying Activity.
- d. As the volumes of earthworks are likely to exceed the threshold for permitted activities within 150 metres of Mean High Water Springs, the applicant has correctly identified that resource consent will be required for a Discretionary Activity.
- e. No earthworks are proposed within 60 metres of the cliff edge above Mean High Water Springs and as such I concur that no earthworks will have the status of a Non Complying activity under the above rules.
- f. While it is acknowledged that the above provisions from PC 14 must be considered in terms of any assessment of the wind farm project, cognisance must be taken of the fact that there are a number of appeals lodged with the Environment Court to the July 2006 Decision Version of PC 14.
- g. Of specific relevance are the appeals to the Rural and Coastal zones per se and the more specific appeals relating to the earthworks provisions in either zones. Accordingly limited weighting should be placed upon the appealed provisions when determining the outcome of the wind farm application. Notwithstanding this, I am of the opinion that such provisions provide the BOI with a good guide as to how Franklin District Council proposes to deal with these issues through the PC 14 planning document. I do, however, acknowledge that the outcome of the appeal process may change the rules as set out in the July 2006 document.
18. Overall, apart from my observations set out in the preceding paragraphs, it is my opinion that Mr Chrisp has accurately captured the activity status of the various Landuse components of the wind farm project as they relate to the provisions of the District Plan. I concur with his assessment that the following components of the wind farm project are Non Complying Activities in terms of the Franklin planning documents:
- Re-opening and operation of the Whitford Quarry including rock crushing and processing facilities (PC 14)
  - Operation of concrete batching plants (District Plan/PC14)
  - Up to three viewing areas (including signage) and associated parking areas (District Plan/PC 14)
19. There is nothing in my opinion that would alter the status of the wind farm project from that of being a Discretionary Activity per se to one of a Non Complying Activity under the auspices of the District Plan. The rationale for the bundling of the Landuse activities as set out in the Chrisp EIC paragraphs 21 – 25 (inclusive)

is accepted. The three Non Complying components are either ancillary or incidental activities to the principal activity, which could in my opinion be undertaken without reliance on these components.

20. I note that Mr Chrisp has also set out in Table 1, page 6 of his EIC, the activity status for the various components of the electricity transmission lines and substations as if they were to be assessed under Rule 15.1.2.8 of the District Plan. Their status under the provisions of the District Plan has been correctly identified as being Discretionary.
21. Notwithstanding this, the applicant has chosen to utilise the provisions of Part Eight (8) – Designations and Heritage Orders of the Resource Management Act 1991 as the mechanism to advance these components of the wind farm project. A total of eight (8) Notices of Requirement have been lodged with both Franklin District Council and Waikato District Council of which five (5) have been specifically lodged with Franklin District Council. The contents of these Notices have been described in the Hauauru ma raki – Waikato Wind Farm, Resource Consent Applications, Notices of Requirement, Assessment of Environmental Effects, June 2008.
22. With regards to the use of Part Eight (8) of the Resource Management Act 1991, I agree with Mr Chrisp’s statement in his EIC (page 53, paragraph 198) that the above is the most appropriate mechanism for dealing with these components of the wind farm project.

#### **Applicant’s assessment of the wind farm project**

23. As set out in paragraph 3 of the EIC, he has had an active involvement in preparing a number of the planning documents supporting the wind farm project application including but not limited to
  - drafting the resource consent applications and Notices of Requirement (Parts A and B respectively) in relation to the Hauāuru mā raki Project;
  - author of the report entitled: “Hauāuru mā raki – Waikato Wind Farm: Planning Assessment” forming part of the AEE; and
  - contributing author writing sections of the AEE lodged with the resource consent applications and Notices of Requirement.
24. During these processes Mr Chrisp has sought the input from Franklin District Council officers in assisting him in identifying the applicable rules and appropriate objectives and polices from both the District Plan and PC 14 planning documents.
25. In paragraph 156 of his EIC, Mr Chrisp has identified those parts of the Franklin District Plan which he considers to contain objectives and policies considered to be of relevance to an assessment of the wind farm project. Having reviewed the same, it is my opinion that these have been correctly identified and set out in his exhibit MBC4 – Franklin District Council – Objectives and Policies appended to his EIC.
26. Paragraph 193 of his EIC deals with the principle objectives and policies as set out in PC 14 with further objectives and policies pertaining to the two management areas in which the wind farm project is proposed – the Tasman Coast Management Area and the Southern Rural management Area., set out in his exhibit MBC4 – Franklin District Council – Objectives and Policies appended to his EIC, pages 000048 to 000052 inclusive.

27. I note that while Mr Chrisp's conclusions in the EIC focus on how the wind farm project will not compromise or be contrary to the identified objectives and policies of either the District Plan or PC 14, an analysis of the specific objectives and policies of PC 14, as they relate to the Tasman Coast and Southern Rural Management Areas, appears not to have been undertaken.
28. As noted, in paragraph 16B.PC14.ii.g of this evidence, there are a number of outstanding appeals to PC 14 which include a number of appeals as identified through Mr Chrisp's EIC. While there are no appeals to the Southern Rural Management Area objectives and policies there are four (4) appeals to the Tasman Coast Management Area per se. There are, however, no appeals relating specifically to the Tasman Coast Objectives and Policies.
29. It is my understanding that where there has been no appeal to a provision in a proposed District Plan (PC 14), the rule or in this case, objectives and policies, become the effective rules and consideration should be had of them when assessing any proposal that requires resource consent.
30. While the lack of analysis of these particular objectives and policies does appear to constitute an omission in the EIC, I do not believe it constitutes a fatal flaw in the overall analysis as many of the issues raised have been considered indirectly in the analysis undertaken.
31. Overall I conclude that the all environmental effects of the wind farm project and the relevant objectives and policies of the District Plan and PC 14 have been identified in Mr Chrisp's EIC and the Hauauru ma raki – Waikato Wind Farm, Planning Assessment, June 2008.

### **Other Matters**

32. The District Plan contains a number of assessment criteria that are relevant to an analysis of the wind farm project and can be used as a guide in such an assessment. No specific reference has been made in the EIC to the assessment criteria contained in Rule 15.1.2.9 (*Assessment criteria for network and other utilities and other essential services which are discretionary activities*) of the District Plan or Part 53 - *Rule 53 – Assessment Criteria for Resource Consent Applications* of the same document.
33. Due to the size of the wind farm project it is not surprising that these specific matters have not been addressed when a thorough analysis of the effects of the development has been undertaken. While the majority of the assessment criteria of these rules have been covered in both the EIC or in the Hauauru ma raki – Waikato Wind Farm, Planning Assessment, June 2008. For completeness, however, a summary of the relevant District Plan assessments could be provided through rebuttal evidence.
34. Lastly I note that there appears to be a draughting error on the Contact Wind Limited - Hauauru ma raki, Plan 4, Block C, Turbine Consent Area – Geospatial plan Revision B, which depicts wind turbines C014, C015 and C016 and their consent areas as being outside of the property for which consent is sought.

## **Council involvement with the process**

35. As noted in paragraph 2 of this evidence, I have been a member of the Technical Focus Group (TFG) for Franklin District Council since its inception in 2007. The TFG was proposed by Contact Energy as a forum to enter into discussions with the regional and local authorities in whose jurisdiction the wind farm was proposed. Officers and consultants from both Environment Waikato and Waikato District Council represent the regional and local authorities.
36. For the Franklin District Council the team consisted of myself, a consultant planner and consultant engineer plus utilising in house council officers as required.
37. To avoid a repetition of evidence on the processes undertaken by the Council I would draw the BOI's attention to the EIC provided by Ms. AnaMaria D'Aubert on behalf of Waikato District Council (April 2009) and in particular the contents of paragraphs 80 to 96 inclusive. In that evidence she has set out a synopsis of the involvement of the TFG up to and including the "call-in" process and the subsequent discussions on proposed conditions of consent.
38. I have read her evidence in relation to the process entered into and consider that it is an accurate representation of the issues addressed by the TFG during that time.
39. Stephen Daysh – lead consultant for Contact Energy, has also set out in his EIC the rationale and the process that the applicant followed with its dealings with the various Councils and other statutory authorities. I support the approach taken as a practical means for Councils to become involved should the BOI approve the applications and accept the range of conditions proposed.

## **Consent conditions**

40. Having reviewed the proposed consent conditions for both the wind farm proposal (Landuse) and the Notices of Requirement as set out in the Daysh EIC, Exhibits SGD2 and SGD5, I am generally comfortable that the conditions proposed are practicable and enforceable. Some changes have, however, been suggested by the following persons as set out in their EICs. Such changes are acceptable to the Council and considered appropriate.
41. The Council's technical experts, Dr V Keesing and Mr Alasdair Gray, have provided comments as set out in their individual EICs. Subject to the conditions as proposed and their suggested amendments, they have also confirmed that they are satisfied that the proposed conditions would address the matters raised and commented upon as they relate to their specific areas expertise.
42. Overall the range of conditions put forward in the Daysh EIC is considered to be reflective of the types of conditions a local authority would be likely to impose on such applications.
43. With regards to the establishment and operation of the wind farm itself, the Environment Court imposed similar conditions (Decision No. A 203/2005), albeit not as technical, for the Genesis Wind Farm on the Awhitu Peninsula. Similarly, the Council imposed a range of conditions for a Counties Power designation to upgrade a 110 kVa power line from Tuakau to Pukekohe (2007). In both examples

the conditions imposed addressed a similar range of concerns as the Contact Energy applications have raised.

44. Subject to any matters being raised by other parties in relation to the proposed conditions, I am satisfied that the conditions proposed by the applicant are appropriate and that should they be imposed by the BOI in approving both the Landuse and Notice of Requirements, I consider that Franklin District Council has the expertise and the personnel to monitor and ensure compliance with the same.

Richard John Gard'ner  
30 March 2009