

Genesis Power Ltd v Franklin District Council

Environment Court Auckland

A 148/05

7 September 2005

Judge Whiting, Environment Commissioners Prime and Oliver

Resource consent — Proposed wind farm — Whether development appropriate in coastal environment — Relevance of matters under s 7 of the Resource Management Act 1991 — Weight to be attached to positive effects and matters of national importance or need — Whether the proposed activity would have adverse visual and noise effects on equestrian activities — Extent to which consideration of alternative sites desirable — Resource Management Act 1991, ss 2(1), 5, 6, 7, 8, 104, 274.

These appeals concerned an application for land use consent by Genesis Energy – the trading name for Genesis Power Ltd (“Genesis”) – for the construction, operation, use and maintenance of structures and infrastructure required for operating up to 18 wind turbines for the purpose of generating electricity at a site on the Awhitu Peninsula, south of Auckland. The peninsula itself was a huge sand dune barrier which enclosed the Manukau Harbour and Waiuku River estuary from the Tasman Sea.

The Energy Efficiency and Conservation Authority (“the EECA”) also lodged an appeal which supported the grant of consent. In particular, the EECA was concerned to ensure that renewable energy matters were fully addressed before the Court and properly taken into account in the overall assessment of the proposal. The proposed wind farm was also supported by the Auckland Regional Council, the Environmental Defence Society, Mighty River Power Ltd and Greenpeace New Zealand Inc.

The Karioitahi Equestrian Environment Protection Society Inc, the Waiuku Wind Farm Information Group Inc, Te Iwi O Ngati Te Ata, and the Franklin District Council (“the respondent”) opposed the grant of resource consent for the proposed wind farm. They alleged that the proposed wind farm would have adverse effects on:

- the visual, landscape, natural character, amenity and cultural values in the environs of the site on the Awhitu Peninsula and the surrounding rural area; and
- the current lawfully established use of properties adjacent to the proposed wind farm site.

outstanding landscape and the visual and amenity effects on nearby properties and the surrounding area would not be more than minor. As a result of the deletion of one turbine and the repositioning of other turbines, the adverse effects of the proposed activity would not be significant. In most cases, only partial views of the turbines would be possible as a result of intervening topography and vegetation and the distance from which they would be observed. While the turbines would be visible they would not be invasive, and any changes to the landform or vegetation arising from construction could be adequately managed by consent conditions (see paras [108], [109], [110], [111], [212]).

(4) In particular, when determining whether the proposed wind farm would be “appropriate” in the coastal environment the following matters were relevant under s 7 of the RMA:

- The proposed wind farm and its use of wind to make efficient use of the wind power would promote the efficient use and development of natural and physical resources (s 7(b)).
- The proposed wind farm would generate electricity for supply directly into the local network at the point of demand resulting in the efficient supply of electricity, as there would be no transmission losses on the scale involved in the national high voltage network. It would therefore promote the efficient end use of energy (s 7(ba)).
- Whilst the proposed wind farm would give rise to some effects on amenity values, the positive effects of the proposal outweighed any effects on amenity, particularly when regard was had to appropriate conditions to mitigate adverse effects, especially noise and visual effects. It would therefore promote the maintenance and enhancement of amenity values (s 7(c)).
- The proposed wind farm would provide for the generation of sustainable and renewable energy and would assist New Zealanders to maintain and enhance the quality of their environment by encouraging and facilitating a move towards renewable energy and the reduction of greenhouse gases (s 7(f)).
- Amendments to the RMA in 2004 which inserted s 7(i) and (j) provided clear recognition by Parliament of the importance of the use and development of renewable energy and the need to address climate change, both of which were key elements in the proposed wind farm.
- Although the contribution which would be made by the proposed wind farm in achieving the matters set out in s 7(i) and (j) might be minimal in percentage terms, it would be wrong to discount such positive effects as *de minimis* because that could result in no account ever being taken of such matters in the present or future cases (see paras [220], [222], [223], [225], [226]).

(5) While noise from the turbines would be audible when compared against background levels, the noise would be at a low level and within relevant design limits with no more than minor effects, based on the guidance set out in NZS 6808 (see paras [125], [127], [128], [212]).

The parties focused on the potential adverse effects of the proposed activity on the visual amenity of the area, including effects on landscape and natural character; noise effects on areas of recreation and workplaces; various horse-related effects; and effects on tangata whenua.

The positive effects of the proposed wind farm on the environment were detailed in a statement of agreed facts which was put before the Court. The positive effects of the proposal included the benefits derived from renewable energy, namely, security of supply, reduction in greenhouse gas emissions, reduction of dependence on the national grid, reduction in transmission losses, reliability, development benefits and contribution to the renewable energy target.

The Court was required to weigh the various competing considerations when determining the application. In particular, the Court was required to consider competing expert evidence on landscape impact.

Held (allowing the appeals):

(1) The proper application of s 5 of the Resource Management Act 1991 (“the RMA”) (the statutory purpose) involved an overall broad judgment of whether or not a proposed activity (the wind farm in this case) promoted the sustainable management of natural and physical resources. Such a judgment allowed for a comparison of conflicting considerations and the scale or degree of them, and their relative significance in the final outcome

North Shore City Council v Auckland Regional Council [1997] NZRMA 59 applied. Where Part 2 matters competed among themselves (as in this case) the decision maker had to have regard to the statutory hierarchy as between ss 6, 7 and 8 of the RMA as part of the balancing exercise. However, notwithstanding their importance, these provisions were subordinate to the primary purpose of the RMA. They were not objectives which were to be achieved in their own right but must be balanced against other matters including questions of national importance, value and benefit

NZ Rail Ltd v Marlborough District Council [1994] NZRMA 70; *Auckland Volcanic Cones Society Inc v Transit New Zealand* [2003] NZRMA 316 and *Mighty River Power Ltd v Waikato Regional Council* (Environment Court, Hamilton A 146/01, 14 December 2001, Judge Newhook) applied (see paras [51], [55], [56], [57], [58]).

(2) Granting consent for the proposed wind farm would have numerous positive effects which were underlain by the national interest, and reflect recent legislative changes encouraging renewable energy and the benefits which would accrue from a “benign” source of energy (see para [212]).

(3) The adverse effects of the proposed activity on the visual amenity of the area would be significant because the scale of the turbines was such that they would dominate the surrounding area and undermine the visual integrity of the natural character and landscape of the coastal environment. However, the landscape, and amenity values of the surrounding area were not of such quality that the area should be protected in its current natural state, ie the subject site was not located within an

outstanding landscape and the visual and amenity effects on nearby properties and the surrounding area would not be more than minor. As a result of the deletion of one turbine and the repositioning of other turbines, the adverse effects of the proposed activity would not be significant. In most cases, only partial views of the turbines would be possible as a result of intervening topography and vegetation and the distance from which they would be observed. While the turbines would be visible they would not be invasive, and any changes to the landform or vegetation arising from construction could be adequately managed by consent conditions (see paras [108], [109], [110], [111], [212]).

(4) In particular, when determining whether the proposed wind farm would be “appropriate” in the coastal environment the following matters were relevant under s 7 of the RMA:

- The proposed wind farm and its use of wind to make efficient use of the wind power would promote the efficient use and development of natural and physical resources (s 7(b)).
- The proposed wind farm would generate electricity for supply directly into the local network at the point of demand resulting in the efficient supply of electricity, as there would be no transmission losses on the scale involved in the national high voltage network. It would therefore promote the efficient end use of energy (s 7(ba)).
- Whilst the proposed wind farm would give rise to some effects on amenity values, the positive effects of the proposal outweighed any effects on amenity, particularly when regard was had to appropriate conditions to mitigate adverse effects, especially noise and visual effects. It would therefore promote the maintenance and enhancement of amenity values (s 7(c)).
- The proposed wind farm would provide for the generation of sustainable and renewable energy and would assist New Zealanders to maintain and enhance the quality of their environment by encouraging and facilitating a move towards renewable energy and the reduction of greenhouse gases (s 7(f)).
- Amendments to the RMA in 2004 which inserted s 7(i) and (j) provided clear recognition by Parliament of the importance of the use and development of renewable energy and the need to address climate change, both of which were key elements in the proposed wind farm.
- Although the contribution which would be made by the proposed wind farm in achieving the matters set out in s 7(i) and (j) might be minimal in percentage terms, it would be wrong to discount such positive effects as *de minimis* because that could result in no account ever being taken of such matters in the present or future cases (see paras [220], [222], [223], [225], [226]).

(5) While noise from the turbines would be audible when compared against background levels, the noise would be at a low level and within relevant design limits with no more than minor effects, based on the guidance set out in NZS 6808 (see paras [125], [127], [128], [212]).

(6) Regarding horse-related matters, the topography of the site and the surrounding area would hide the majority of the wind turbines from any particular viewpoint on either of the two equine establishments, at some locations the turbines would not be seen at all and it was unlikely that the whole structure of one or more of the turbines would be seen. As a result the potential for aversive stimuli to be generated by the turbines at the proposed wind farm was (subject to appropriate conditions of consent and proper management) unlikely to cause more than minor effects (see paras [169], [170], [212]).

(7) The Awhitu Peninsula was of major cultural significance to Ngati Te Ata, However, most of the archaeological sites had been largely destroyed and were of low moderate archeological significance – as a result, this matter could adequately be covered by consent conditions. There had been a robust consultation process in accordance with best practice (see paras [200], [201], [202], [212]).

(8) There was no obligation under the RMA for a resource consent applicant to provide evidence on alternative locations unless there were significant adverse effects. Consideration of any relevant assessment criteria in the district plan was simply part of the overall assessment of effects and not a test.

Freilich v Tasman District Council [2005] NZRMA 410 approved. It would be difficult (if not impossible) to find a location where a wind farm would have negligible effects in terms of landscape, natural character and amenity on the Awhitu Peninsula (see paras [208], [210], [218]).

Cases referred to in judgment

- Aqua Marine Ltd v Southland Regional Council* 3 NRED 1
Auckland Volcanic Cones Society Inc v Transit New Zealand [2003] NZRMA 316
Canterbury Regional Council v Selwyn District Council [1997] NZRMA 25
Environmental Defence Society Inc v Auckland Regional Council [2002] NZRMA 492
Freilich v Tasman District Council [2005] NZRMA 410
Gill v Rotorua District Council (1993) 2 NZRMA 604
Independent News v Manukau City Council (Environment Court, Auckland A 103/03, 24 June 2003, Judge Whiting)
Kemp v Queenstown Lakes District Council [2000] NZRMA 289
LRG Investments Ltd v Christchurch City Council (Environment Court, Christchurch C 64/98, 11 June 1998, Judge Skelton)
McIntyre v Christchurch City Council [1996] NZRMA 289
Mighty River Power Ltd v Waikato Regional Council (Environment Court, Hamilton A 146/01, 14 December 2001, Judge Newhook)
Minister of Conservation v Western Bay of Plenty District Council (Environment Court, Auckland A 71/01, 3 August 2001, Judge Bollard)
Ngati Rangī Trust v Manawatu-Wanganui Regional Council (Environment Court, Taupo A 67/04, 18 May 2004, Judge Whiting)

[209] Mr Gould's reference to the decision of the Supreme Court in *Westfield v North Shore* is not helpful in addressing the issues in these proceedings. That case was an appeal in judicial review proceedings challenging a decision not to notify an application, which was determined on the basis of the insufficiency of information available on which the council could be satisfied that it could assess the likely effects of the proposal. Genesis' application was notified. And so the context of this case is quite different to the one in which the Chief Justice's remarks were made. In any event, the centrality of the plan in proceedings before the Environment Court is, as Mr Kirkpatrick says, manifest from many statutory provisions, not least s 104(1). That provision is subject to Part 2.

[210] Further there is evidence of alternative sites. Ms Butler backgrounded the sites considered and Exhibit 4 locates such sites. Mr Majurey also pointed to a lengthy exchange in relation to available sites during the cross-examination of Mr Brown. That exchange was in relation to natural landscape in which Mr Brown indicated that it would be extremely difficult, if not impossible, to find a location where a wind farm would have negligible effects in terms of landscape, natural character and amenity on the Awhitu Peninsula (see transcript, pp 12 – 13).

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

Summary of findings of fact on potential adverse effects

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

(i) Positive effects:

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

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

- We find that the turbines would dominate the surrounding area and undermine the visual integrity of the natural character and landscape of the coastal environment.
- We find that the visual and amenity effects on nearby properties and the surrounding area would not be significant – in other words not more than minor.
- We find that the land on which the turbines are to be located are not situated within an outstanding landscape.

(iii) Noise effects:

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

(iv) Horse-related matters:

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

(v) Tangata whenua issues:

- We find that the whole of the Awhiti Peninsula has historical and cultural significance to Te Iwi O Ngati Te Ata.
- However, we find that most of the archaeological sites on the land on which the proposed turbines would be situated have been largely destroyed and are of low moderate archaeological significance. Such sites could be adequately protected by appropriate conditions.
- A heritage survey will greatly assist Ngati Te Ata, but the evidence does not satisfy us that it should be other than a condition of consent.

Exercise of discretion

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

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

[215] On the other hand we have found that the scale of the turbines is such that they would dominate the surrounding area and undermine the visual integrity of the natural character and landscape of the coastal environment. Section 6 is therefore important in the circumstances of this case, particularly s 6(a), which requires us to recognise and provide for the preservation of the natural character of the coastal environment and its protection from inappropriate development.

[216] We are conscious of the emphasis expounded in *New Zealand Rail* at p 85 to the effect that preservation of natural character is subordinate to the primary purpose of the Act, and that "inappropriate" must be considered in the context of preservation of natural character in order to achieve sustainable management.

[217] In this regard we note the evidence of Mr Rackham at para 9.5 of his evidence-in-chief that it is important to consider the natural benefits of wind energy and the role it can play. He further noted that all the areas marked as areas with appropriate wind resources by the New Zealand Wind Energy Association have landscape qualities and he commented at para 9.8 of his evidence-in-chief that:

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

[218] He further noted that more modified areas with lesser natural character usually occur nearer to concentrations of people, raising other landscape and amenity issues; so-called "better" places of wind farms are likely to be extremely limited (Rackham, evidence-in-chief, para 9.10).

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

[220] Clearly, therefore, an analysis of what is “appropriate” development must also take account of s 7 matters. Section 7 provides for matters to which the consent authority shall have particular regard in achieving the purposes of the Act. These are matters to which the Court should pay particular regard; to be “on inquiry”, and the test is a high one. (See *Gill v Rotorua District Council* (1993) 2 NZRMA 604). Relevant, in the context of this case, to a consideration of an appropriate development in the coastal environment are the following s 7 matters:

- Paragraph (b) — “the efficient use and development of natural and physical resources”.

The wind farm proposal and its use of wind to make efficient use of the wind power will in our view promote the efficient use and development of natural and physical resources. The proposal in this instance is a discretionary activity. This raises an inference that the activity is an efficient use of resources. (See *L R G Investments Ltd v Christchurch City Council* (Environment Court, Christchurch C 64/98, 11 June 1998, Judge Skelton).)

- Paragraph (ba) – “the efficiency of the end use of energy”

While this proposal generates rather than uses energy, the evidence has shown that the electricity would be supplied directly into the local network at the point of demand, so there is an aspect of efficient supply of electricity, as there are no transmission losses on the scale involved in the national high voltage network. (Willetts, evidence-in-chief, para 40).

- Paragraph (c) – “maintenance and enhancement of amenity values”

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

- Paragraph (f) – “maintenance and enhancement of the quality of the environment”

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

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

The Resource Management Act was amended as from 2 March 2004 to explicitly include these matters. This is a clear recognition

by Parliament of both the importance of the use and development of renewable energy and the need to address climate change, both of which are key elements in the proposed wind farm.

[221] We also note that the Environment Court, before the amendments to s7 found in *Environmental Defence Society Inc v Auckland Regional Council* [2002] NZRMA 492 at para [65] that:

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

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

[223] This specific argument was made in, and comprehensively addressed by, the national board of inquiry into the Stratford power station in 1995 (“Proposed Taranaki Power Station Air Discharge Effects” (report and recommendation of the board of inquiry pursuant to s 148 of the Resource Management Act 1991, chairman David A R Williams QC, February 1995)) when the board said that:

7.101 We now turn to the question of whether the discharge of CO₂ from the proposed power station would result in or be likely to result in or contribute to significant or irreversible changes to the global environment, which s 140(2)(g) requires us to consider. On the world scale, the discharge from the combined cycle station would be negligible. By itself it would contribute only 0.007 % of the world’s total discharge, and as we have seen, its net contribution when considered in conjunction with existing thermal power stations would be even less.

7.102 An argument was put to us by Dr Tucker (F.v. P20) that the effect of the proposed combined cycle power station on climate change effects would be negligible. . . . An implication could be taken from this statement that, as the contribution of the proposed power station to the total world emission of CO₂ would be miniscule, then it would make no difference to any global warming effects whether the power station were to be built or not.

7.103 We do not accept the argument. To do so would imply that as the world’s CO₂ emission is composed of a great number of small emissions, the effect of any one of them could be discounted. But if one, why not more, or many, or, indeed, all? It is reminiscent of the old story of sugar being added to a cup of coffee. If one grain alone is added, the coffee will not become discernibly sweeter, nor will it if another is added. If enough grains a spoonful are added, though, the coffee will certainly become sweet. No one grain makes the difference.

That is the reason for the FCCC, that all parties, and at least as many countries as possible, should address the problem together. Without the Convention, and united efforts toward compliance, the situation becomes another example of what the economist Garrett Hardin called the “tragedy of the Commons” in his famous article bearing that title . . . Each man is locked into a system that compels him to increase his herd without limit in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.

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

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

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

[225] Section 5 concerns are to ensure present people and communities do not, in pursuit of their well-being, destroy existing stock of natural and physical resources so as to improperly deprive future generations of the ability to meet their needs: *Canterbury Regional Council v Selwyn District Council* [1997] NZRMA 25. Climate change is a silent but insidious threat that scientists tell us threatens to improperly deprive future generations of their ability to meet their needs.

[226] We accordingly do not accept the “de minimis” argument.

[227] We have also found that the Awhitu Peninsula is of major cultural significance to the Ngati Te Ata people. We found that there are

various types of rua on the Hull property. However, we concluded that most of the archaeological sites on the proposed wind farm site have been largely destroyed and are of low moderate archaeological significance. We are satisfied that the proposed conditions of consent adequately address the Maori cultural issues and the provisions of Part 2, which requires us to give effect to such issues.

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

Proposed conditions

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

- (i) Condition (i) – community consultation – requires the consent holder to establish a consultative group. We consider this condition should include a list of parties who are to be included in this group.
- (ii) Conditions (m) and (n) – construction management plan and rehabilitation plan – a number of the witnesses called by Genesis (K Butler, evidence-in-chief, para 6.14; A Marshall, evidence-in-chief, paras 10.13-10.15, 11.15, 11.16; J Hudson, evidence-in-chief, para 8.2; A Rackham, evidence-in-chief, paras 8.24, 8.25, 10.9; A Rackham, evidence-in-chief, rebuttal, para 30) highlighted the merits of, and the need to, stabilise exposed areas of sand on the site.
We are not satisfied that the proposed conditions adequately address these matters in relation to construction of the wind farm and rehabilitation/enhancement. We consider that the conditions should further detail the matters to be included in, and achieved by, these management plans. For example, the recommendations included in the statement of Mr D Burgin at ss 5 and 6 (statement of evidence by D Burgin dated 24 June 2004, attached to K Butler, evidence-in-chief, ss 5 and 6, paras 11–20). should be more fully reflected in the conditions.
- (iii) Condition (r) – register of bird fatalities – as proposed this register relates to any birds found within the wind farm site. It is unclear whether this applies to the area on which the turbines are to be located or to the whole of the legally defined properties affected by the application.

- (iv) Condition (t) – review of operation – the ongoing effectiveness and maintenance of the sand stabilisation and rehabilitation referred to above needs to be clearly included in this review condition. As proposed the review condition may be triggered two years after the commencement of this consent and at five-yearly intervals thereafter for a period of ten years. We think that the council should be able to be more responsive than as proposed and would suggest that the five-yearly intervals be reduced to say two years, and the ten-year limit be deleted.

Determination

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

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

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