

**BEFORE THE HEARINGS PANEL
APPOINTED BY THE TE TAI O POUTINI JOINT COMMITTEE**

UNDER THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Te Tai o Poutini Plan

**Topic: Subdivision, Financial
Contributions and Public Access.**

**STATEMENT OF EVIDENCE OF STEPHANIE STYLES
ON BEHALF OF MANAWA ENERGY LIMITED (S438)**

DATED: 13 March 2024

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1.0 SUMMARY

- 1.1 My evidence focusses on the Subdivision, Financial Contributions and Public Access provisions of the Proposed Te Tai o Poutini Plan (**pTTPP**) relevant to the renewable electricity generation (**REG**) operations of Manawa Energy Ltd (**Manawa**) across the West Coast Region, and renewable electricity generation generally.
- 1.2 Renewable energy is a matter of national significance, and the pTTPP is required to:
- a) have particular regard to the benefits to be derived from the use and development of renewable energy under s7(j) of the Resource Management Act 1991 (RMA); and
 - b) give effect to the policy directions in the National Policy Statement for Renewable Electricity Generation (NPSREG), including to recognise and provide for renewable electricity generation activities.
- 1.3 Manawa (submitter ID number **S438**) made numerous submissions points that are related to this topic and raised issues of concern associated with the transparency, equity and subjectivity of the proposed provisions. These concerns extend from the manner in which financial contributions are proposed to be taken (as they apply to land use activities), the way in which these will be calculated, the purpose for which they will be used, and the way in which contributions are held and distributed.
- 1.4 Overall, I am of the view that the chapter (both as notified and as recommended to be amended by the reporting officer) does not meet the requirements of Sections 76 (2), 77E or 108 of the Resource Management Act or basic plan drafting requirements (in the case of FC–R12 in particular). In addition I do not consider that a full and comprehensive Section 32 analysis has been undertaken that supports the provisions proposed.

2.0 INTRODUCTION

- 2.1 My name is Stephanie Styles. I hold the position of Senior Resource Management Planner with the environmental consultancy firm Boffa Miskell Limited, based in the firm's Christchurch office. I have been employed by Boffa Miskell since 2004.
- 2.2 In my brief of evidence dated 2 October 2023, in relation to the Introduction and Strategic Direction hearings, I provided an outline of my experience, my role advising Manawa, my involvement in the pTTPP process to date, and the key policy issues of relevance to Manawa.

- 2.3 I reiterate that I have read the Code of Conduct for expert witnesses in the Environment Court Practice Note 2023. I agree to comply with this Code. This evidence is within my area of expertise, except where I state that I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.
- 2.4 I have provided extensive evidence to the Panel on the Proposed TTPP to date and consider that I have a comprehensive overview of the specific provisions as they relate to renewable electricity generation activities.

3.0 APPROACH TO EVIDENCE

3.1 My evidence below is approached as follows:

- a) General matters, and
- b) A brief summary of the Manawa position as it relates to financial contributions, and
- c) Specific policy provisions proposed.

4.0 GENERAL MATTERS

- 4.1 I consider the s42A report contains two key flaws which relate to the issues relevant to the Manawa submission, namely:
- a) the Strategic Directions provisions of the pTTPP are referred to¹, but this does not extend to referencing the Connections and Resilience provisions. The Connections and Resilience provisions are critical to the manner in which Manawa operates within Te Tai o Poutini / West Coast, and emphasise the role of regionally significant infrastructure, critical infrastructure, lifeline utilities and renewable electricity generation activities. This lack of recognition of these relevant provisions results in an inadequate consideration of the application of financial contributions provisions within the S42A report.
 - b) Section 4.3 of the S42A report identifies 'Any Other Relevant National Planning Instruments'² which are considered to be relevant to submissions received on this hearings topic. This does not include reference to the National Policy Statement for Renewable Electricity Generation (NPS REG). I consider that this is a fundamental shortcoming of the report in not recognising this matter of national

¹ Te Tai o Poutini Plan, Section 42A Officer's Report, Subdivision, Financial Contributions and Access, paragraph 28, page 12.

² Ibid p14.

importance. I have included key policies from the NPS REG in Appendix 1 of my evidence.

5.0 MANAWA POSITION ON FINANCIAL CONTRIBUTIONS

5.1 The Manawa submission raised a number of fundamental concerns associated with the provisions of the pTTPP as they relate to financial contributions for land use activities. These concerns are focussed on the approach to using financial contributions as a means of achieving environmental offsetting and compensation – in particular Policies FC–P2 and FC–P6, and Rules FC–R1, FC–R2 and FC–R12.

5.2 The general concerns raised are summarised below:

Financial contributions are only one method of managing the adverse effects of activities

5.3 The premise for taking financial contributions appears to be based on dealing with ‘residual adverse effects’ - a term used in the effects management hierarchy approach. The effects management hierarchy is only a construct applied to some types of effects and through some higher order documents³. The Panel will be aware that the effects management hierarchy is not contained in the Resource Management Act. I am concerned at using such an approach in dealing with any residual adverse effects of an activity. As has been raised in previous hearings, I do not consider that the full effects management hierarchy can be appropriately applied to residual adverse environmental effects on values such as ONLs, ONFs and natural character as I do not see how it is possible to financially offset or compensate for changes in effects in such situations e.g. how will a financial contribution be used to compensate for a visual effect?

5.4 This issue is further confused by inconsistent use of terminology within these provisions. The terms “significant indigenous biodiversity”, “significant indigenous vegetation”, “areas of significant habitat of indigenous fauna”, and “outstanding natural character” are all used in various places. These terms do not necessarily equate to those terms used in other chapters of the Plan, the associated schedules to the Plan or District Plan mapping. This inconsistent approach does not assist in interpretation or application of the provisions.

5.5 I am also concerned that the approach proposed to take financial contributions may lead to a situation where contributions are imposed as a requirement of a consent

³ Primarily in relation to freshwater and indigenous biodiversity through the NPSFM and NPSIB.

process to manage residual adverse effects but where such effects are also addressed in other ways (such as mitigation) – essentially leading to duplication or double dipping.

Provisions need to be transparent, fair, and equitable

- 5.6 Section 32 of the Act requires an assessment of the appropriateness of, necessity for, and costs and benefits associated with, the implementation of proposed provisions. In this case, I do not consider that the implications of the proposed provisions have been fully thought through and assessed. In saying this, I strongly believe that the introduction of such provisions directly conflicts with the requirements of higher-level policy instruments which require plans to recognise the benefits of, and provide for, renewable electricity generation activities.
- 5.7 By way of example, I refer you to the provisions of the NPSREG contained as Appendix One of my evidence, and Section 6 of the West Coast Regional Policy Statement which states:

Objective 1:

‘Enable the safe, efficient and integrated development, operation, maintenance, and upgrading of regionally and nationally significant infrastructure’.

- 5.8 The RPS also acknowledges the nature of the regionally significant infrastructure and the areas in which these are often required to be located:

‘When considering regional and district plan development and resource consent applications for regionally and nationally significant electricity transmission, distribution and renewable electricity generation infrastructure, have particular regard to the constraints imposed by the locational, technical and operational requirements of the infrastructure, including within areas of natural character (including outstanding natural character), outstanding natural features or landscapes, or areas of significant indigenous vegetation and significant habitats of indigenous fauna’⁴

- 5.9 I consider that the proposed financial contribution provisions are likely to come into direct play when consent applications are lodged for the development and operation of new regionally significant infrastructure and renewable electricity generation, and potentially could also be applied to works associated with the upgrading or maintenance of existing assets. Accordingly, this could have significant implications for

⁴ West Coast Regional Policy Statement, Chapter 6, Policy 3.

Manawa operations on Te Tai o Poutini / West Coast and could impose an impediment to undertaking work and development to operate and develop renewable electricity generation activities. This would undermine the ability to give effect to higher order documents and could impact on the resilience of the Region.

- 5.10 In looking at the way the provisions have been approached, I consider that the inclusion of the type of provisions proposed (dealing with significant residual adverse environmental effects) appears somewhat untested. I am not aware of this approach being adopted elsewhere or if it is able to be equitably applied. I am also concerned about the potential inconsistent application of the proposed financial contribution provisions on Te Tai o Poutini / West Coast. This plan will be administered by three different District Councils. The nature of the provisions is such that the wording is subjective and therefore open to interpretation. I am concerned therefore that the rule could be inconsistently applied, and that this will then have far reaching implications for development in the Region – particularly where activities/ projects/ assets transcend territorial boundaries.
- 5.11 Section 76(2) of the Act provides that rules have the effect of a regulation. They must conform to common law principles and principles regarding validity. Rules must be certain, reasonable, not unlawfully reserve direction nor be ultra vires⁵. I consider these to be fundamental requirements associated with Plan drafting, which are not met here as the rules are uncertain and unclear in their implications. They reserve discretion to the three Councils, but it remains unclear what the parameters of the discretion are – is it in applying a financial contribution at all? Or in the quantum of contribution? Or in the effects under consideration? Not clearly stating these matters in the plan means that the provisions cannot be clearly understood.
- 5.12 Section 77E of the Act requires that a rule requiring a financial contribution must specify:
- a. *the purpose for which the financial contribution is required (which may include the purpose of ensuring positive effects on the environment to offset any adverse effect); and*
 - b. *how the level of the financial contribution will be determined; and*
 - c. *when the financial contribution will be required.*

⁵ Writing Effective and Enforceable Rules | Quality Planning (www.qualityplanning.org.nz)

It does not appear to me that these requirements have been met as the pTTPP does not appear to contain any methodology or process that sets out contribution levels or values.

- 5.13 Section 108 of the Act requires that a consent authority must not include a condition requiring a financial contribution unless:
- a. *The condition is imposed in accordance with the purposes specified in the plan or proposed plan (including the purpose of ensuring positive effects on the environment to offset any adverse effect); and*
 - b. *The level of contribution is determined in the manner described in the plan or proposed plan.*

Again, the plan provisions do not meet this requirement as they do not set out the level of contribution, methodology or process for consideration.

- 5.14 I do not consider that the recommendations made by the reporting S42A Officers sufficiently address these concerns. On this basis, I continue to support the Manawa position outlined in the submission that these provisions should be deleted.

6.0 FINANCIAL CONTRIBUTION PROVISIONS

- 6.1 If the Panel decides that the financial contribution provisions should be retained in the Plan, the assessment below addresses my concerns in relation to some key provisions (noting that some submission points have been recommended to be accepted by reporting officers).
- 6.2 I again request the consistent use of terminology relating to regionally significant infrastructure (not critical infrastructure) and renewable electricity generation activities (not energy activities)⁶.
- 6.3 Manawa requested that the structure of the Plan be altered to include the financial contribution provisions as a stand-alone chapter as these apply to land use activities in addition to subdivision (S438.113). The S42A Officers have accepted this aspect of the submission and stated that these provisions would sit more naturally into the general district wide matters⁷. I support this recommendation.

⁶ For example, Policy SUB -P6 (S438.120).

⁷ Te Tai o Poutini Plan, Section 42A Officer's Report, Subdivision, Financial Contributions and Access, paragraph 436, page 140.

Policy FC – P2 (S438.116)

- 6.4 Manawa sought that Policy 2 be amended to refer to considerations of reasonableness and appropriateness in Clause (a), and to allow consideration of ‘financial benefits’ associated with holding, taking and allocating the financial contributions’ in Clause (d). The S42A Officers have recommended that this submission point be rejected.
- 6.5 Manawa raised this issue for reasons outlined earlier in this evidence. I consider that the reporting officers have misunderstood the intention of the proposed change to Clause (d)⁸. This was requested to ensure that a District Council should not hold financial contributions taken through resource consents for long periods of time without using the funds, and that then the benefits of such holding of funds (ie interest incurred) should also be taken into account. I continue to consider that such wording should be included in the policy for transparency.

FC- R1 and FC – R2

- 6.6 I note that Manawa did not specifically submit on these rules, however I consider that the changes proposed to these rules firmly fall into the scope of the issues raised generally by Manawa in terms of the lack of certainty, transparency and appropriateness of these provisions. Specifically, I am concerned about the recommended amendment to the start of each rule changing them such that they state “A condition ~~may~~ shall be imposed...” and “Financial contributions ~~may~~ shall, at the relevant District Council’s discretion, take the form of...”. This change to the wording appears to require that all land use consent applications must impose financial contributions and it is not appropriate for such a requirement to be applied in all cases without due consideration. If these rules are not deleted, I would support retention of the wording in the notified version, which would give flexibility to Councils in how financial contributions are applied.

FC – R12 (S438.119)

- 6.7 Proposed Rule 12 deals with offsetting and compensation for adverse environmental effects on outstanding natural landscape values or biodiversity values. Manawa strongly opposes this rule for the reasons outlined earlier in my evidence, and do not consider that the changes recommended by the S42A Officers sufficiently address these concerns. I reiterate Manawa’s request that this rule be deleted.

⁸ Ibid, paragraph 471, p150.

- 6.8 In addition to the obvious limitations of the rule (such as lack of certainty, transparency and subjectivity in application of the rule) I do not consider that the way in which the rule has been drafted is appropriate or would withstand scrutiny. I find it difficult to envisage how an applicant can determine whether they require resource consent under the provisions of this rule, and if so, how the activity status would be determined. Rules need to be clear so that all persons know when they apply or do not apply, and the current wording is too subjective meet such a test of clarity. It implies that every land use consent would need to include application for consent under this rule to then have a financial contribution condition applied and I cannot see that there is any basis for such an approach.
- 6.9 I also strongly oppose the concept that such a rule introduces a minimum contribution for such purpose (a wording change proposed by the Department of Conservation (S602.117) and recommended to be accepted by the S42A Officers⁹). I interpret this to mean that the Council may impose other conditions on consent in addition to which the payment of additional funds would also be applied. I do not consider that this is appropriate.
- 6.10 I acknowledge the outcomes sought to be achieved by the Plan, however I consider that the inclusion of this rule (and the wider financial contribution provisions) could be achieved by other regulatory and non-regulatory methods and mechanisms. These include bonding, the establishment of community trusts, payments to other parties to undertake works such as regeneration, and the like. A number of these involve detailed collaboration between an applicant and stakeholders. I consider that these are not matters which are appropriate to include or predetermine through the inclusion of rules in a District Plan. Simply put, there is no necessity to have rules to require a financial contribution through a condition of consent on all application, and such methods to address effects can be managed through good consenting processes. As such, this rule should be deleted.

7.0 PART 2, DISTRICT WIDE MATTERS – NATURAL ENVIRONMENT VALUES – PUBLIC ACCESS

- 7.1 Manawa requested the inclusion of a policy relating to public access (S438.102). The Plan as notified includes one public access objective, and no supporting policies. I acknowledge that the proposed policy is similar to the wording of the objective, however

⁹ Te Tai o Poutini Plan, Section 42A Officer's Report, Subdivision, Financial Contributions and Access, paragraph 584 page 185.

it goes a step further and acknowledges the need to take into account public safety and maintenance activities in the provision of public access.

- 7.2 I consider that the proposed policy sought by Manawa addresses valid and legitimate resource management concerns and is consistent with matters raised by Manawa in relation to other chapters of the Plan. I also note that it is important to have the wording in the policy make it clear that public access cannot be unfettered in all circumstances.

8.0 CONCLUSION

- 8.1 I consider that there are a range of inherent problems associated with the proposed financial contribution provisions as they purport to address environmental effects. I do not consider that the provisions proposed are fair, equitable, justifiable, or transparent; meet the relevant statutory requirements, or reflect the basic fundamentals of plan drafting. I reiterate that the financial contribution rules in relation to management of adverse effects should be deleted.
- 8.2 As outlined in my evidence on other chapters, I consider that there is a necessity to ensure integration across the plan in the application of provisions that deal with renewable electricity generation activities as a matter of national significance. The proposed financial contributions provisions seem to be disconnected from other provisions of the Plan, and concerningly do not give effect of the requirements of higher order documents (such as the NPS REG).

APPENDIX ONE: KEY POLICIES FROM THE NPSREG

The particular policies that are most relevant to the development of the pTTPP (emphasis added):

POLICY A

Decision-makers shall recognise and provide for the national significance of renewable electricity generation activities, including the national, regional and local benefits relevant to renewable electricity generation activities. These benefits include, but are not limited to: ...

POLICY B

Decision-makers shall have particular regard to the following matters:

- a) maintenance of the generation output of existing renewable electricity generation activities can require protection of the assets, operational capacity and continued availability of the renewable energy resource; and*
- b) even minor reductions in the generation output of existing renewable electricity generation activities can cumulatively have significant adverse effects on national, regional and local renewable electricity generation output; and*
- c) meeting or exceeding the New Zealand Government's national target for the generation of electricity from renewable resources will require the significant development of renewable electricity generation activities.*

POLICY C1

Decision-makers shall have particular regard to the following matters:

- a) the need to locate the renewable electricity generation activity where the renewable energy resource is available;*
- b) logistical or technical practicalities associated with developing, upgrading, operating or maintaining the renewable electricity generation activity;*
- c) the location of existing structures and infrastructure including, but not limited to, roads, navigation and telecommunication structures and facilities, the distribution network and the national grid in relation to the renewable electricity generation activity, and the need to connect renewable electricity generation activity to the national grid; ...*

POLICY C2

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

POLICY D

Decision-makers shall, to the extent reasonably possible, manage activities to avoid reverse sensitivity effects on consented and on existing renewable electricity generation activities.

POLICY E2

Regional policy statements and regional and district plans shall include objectives, policies, and methods (including rules within plans) to provide for the development, operation, maintenance, and upgrading of new and existing hydro-electricity generation activities to the extent applicable to the region or district.

POLICY G

Regional policy statements and regional and district plans shall include objectives, policies, and methods (including rules within plans) to provide for activities associated with the investigation, identification and assessment of potential sites and energy sources for renewable electricity generation by existing and prospective generators.