

BEFORE THE INDEPENDENT HEARINGS PANEL FOR THE PROPOSED WAIKATO  
DISTRICT PLAN

**IN THE MATTER OF** the Resource Management Act 1991

**AND**

**IN THE MATTER OF** Proposed Waikato District Plan, Stage 2: Hearing 27B  
(Objectives, Policies and General Submissions), Hearing 27C  
(Flood Hazards and Defended Areas) and Hearing 27F (Fire,  
Climate Change and Definitions)

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**PRIMARY STATEMENT OF EVIDENCE BY RICHARD MATTHEWS**

16 APRIL 2021

FOR GENESIS ENERGY LIMITED SUBMITTER # 2104

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## EXECUTIVE SUMMARY

1. The submissions and further submissions made by Genesis in respect of the natural hazards provisions of the Proposed District Plan: Stage 2 (“**PDP**”) seek to ensure that the ongoing operation, maintenance and upgrading of the nationally significant Huntly Power Station (as Regionally Significant Infrastructure and a Regionally Significant Industry) is provided for.
2. My evidence addresses the points where I recommend changes to the PDP in response to the submissions, further submissions and the various Section 42A Reports (“**s42A Report**”).
3. This statement of evidence addresses three of the s42A Reports for Hearing 27:
  - (a) The s42A Report for Hearing 27B: Natural Hazards: Objectives, Policies and General Submissions, prepared by Ms Yvonne Legarth.
  - (b) The s42A Report for Hearing 27C: Flood Hazards and Defended Areas, prepared by Ms Janice Carter.
  - (c) The s42A Report for Hearing 27F: Natural Hazards – Fire, Climate Change and Definitions, prepared by Mr Neil Taylor.
4. I consider that amendments are required to recognise and provide for the Huntly Power Station, which is a Regionally Significant Industry and Regionally Significant Infrastructure. The amendments include:
  - (a) The definition of “minor upgrading” to being amended to include “Infrastructure” as well as utilities;
  - (b) Policy 15.2.1.4 being amended to include “ancillary activities”;
  - (c) The rules within Chapter 15 providing for infrastructure as well as utilities; and
  - (d) The rules within Chapter 15 should be amended to provide for associated earthworks in High Risk Flood Areas in the same way as earthworks are provided for in the Flood Plain Management and Flood Ponding Area rules.

5. In my opinion, the amendments I have proposed are more effective and efficient than those in the section 42A Report because they will achieve similar environmental outcomes but do so in a manner that does not impact the ongoing operation and maintenance of the HPS and gives effect to the direction of the RPS.

## INTRODUCTION

6. My name is Richard John Matthews. I hold the qualifications of Master of Science (Hons) degree specialising in Chemistry and have been working on resource consent applications (and their former descriptions underlegislation prior to the commencement of the Resource Management Act 1991) since 1979 and advising on Regional and District Plan provisions since 1991.
7. I am a partner with Mitchell Daysh Limited, a specialist environmental consulting practice with offices in Auckland, Hamilton, Napier, and Dunedin. Mitchell Daysh Limited was formed on 1 October 2016, as a result of merger between Mitchell Partnerships Limited and Environmental Management Services.
8. I prepared evidence for various PDP: Stage 1 Hearings including:
  - (a) Hearing 2: All of Plan Matters and Plan Structure;
  - (b) Hearing 7: Industrial Zone and Heavy Industrial Zone;
  - (c) Hearing 8A: Hazardous Substances / Contaminated Land;
  - (d) Hearing 18: Rural;
  - (e) Hearing 21a: Significant Natural Areas;
  - (f) Hearing 22: Infrastructure; and
  - (g) Hearing 25: Rezoning.
9. I have been providing planning advice to Genesis Energy Limited (“**Genesis**”) with respect to Huntly Power Station (“**HPS**”) activities since 1999 and am familiar with the power station operations, the resource consents applicable to the site and the Operative Regional and District Plan provisions relevant to the site.

## Code of Conduct

10. While not directly applicable to this hearing, I confirm that I have read the “Code

of Conduct for Expert Witnesses” contained in the Environment Court Consolidated Practice Note 2014. I agree to comply with this Code of Conduct. 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**

11. My evidence discusses the Genesis Submissions (submitter ID 2104) and Further Submissions (submitter ID FS3006) on the PDP: Stage 2 with respect to the matters addressed in:
  - (a) The s42A Report (prepared by Yvonne Legarth) for Hearing 27B: Natural Hazards: Objectives, Policies and General Submissions.
  - (b) The s42A Report (prepared by Janice Carter) for Hearing 27C: Flood Hazards and Defended Areas.
  - (c) The s42A Report (prepared by Neil Taylor) for Hearing 27F: Natural Hazards – Fire, Climate Change and Definitions.

### **Genesis Energy Limited Background and Submissions**

12. Section 2 and Section 3 of the Genesis submission on the PDP: Stage 2, as well as the submission on the PDP: Stage 1, sets out the background to Genesis’ interests in the Waikato District.
13. Genesis owns and operates the HPS which is located on Heavy Industrial Zone land bordering Rural Zoned land. Activities related to the power station operation, such as coal receival and ash management activities, are located on Rural Zone land. All of these assets are forms of infrastructure and fit within the ambit of the Waikato Regional Policy Statement definition of “Regionally Significant Industry” and “Regionally Significant Infrastructure”.
14. The nature of the HPS is such that it relies on (and cannot avoid) access to and structures in, on and adjacent to the Waikato River, in areas that are identified as “Flood Plain Management Area”, “High Risk Flood Area”, “Flood Ponding Area” and “Defended Area” under Stage 2 of the PDP.
15. The submissions made by Genesis in respect of Stage 2 of the PDP seek to

ensure that the ongoing operation, maintenance and upgrading of the nationally significant HPS (which is also Regionally Significant Infrastructure and a Regionally Significant Industry) is provided for.

16. I have read the s42A Reports relevant to Hearings 27B, 27C, 27F. I do not propose to repeat the matters addressed in those reports other than to highlight particular points where I do not agree with the s42A report authors and focus on the aspects addressed in the Genesis submissions and further submissions.

#### **STATUTORY CONTEXT – WAIKATO REGIONAL POLICY STATEMENT**

17. The PDP is required to give effect to the provisions of the Waikato Regional Policy Statement (“RPS”). Central to Genesis interests are the objectives and policies in the RPS that recognise the benefits of electricity generation infrastructure and providing for their operation, maintenance, development and upgrading.
  18. The activities at the HPS fit within the ambit of the RPS definition of Regionally Significant Infrastructure (being “infrastructure for the generation and/ or conveyance of electricity that is fed into the national grid or a network”).
  19. The HPS is also an industrial activity, as demonstrated by the Heavy Industrial Zoning (under the operative Waikato District Plan and the PDP). It is therefore my opinion, that the definition in the RPS of Regionally Significant Industry equally applies to the HPS.
  20. Policy 6.6 in the RPS requires the management of the built environment to ensure that particular regard is given to:
    - Protecting the effectiveness and efficiency of existing and planned Regionally Significant Infrastructure; and
    - The benefits that can be gained from the development and use of regionally significant infrastructure and energy resources.
  21. It is in this statutory context that the Genesis submission sought the recognition and provision for electricity generation assets such as the HPS, which I also support.
- Regionally Significant Infrastructure and Regionally Significant Industry***
22. In the context of Regionally Significant Industry, RPS Policy 4.4 requires that

management of natural and physical resources provides for the continued operation and development of Regionally Significant Industry by undertaking measures such as:

- Recognising the value and long-term benefits of these industries to economic, social and cultural wellbeing;
  - Maintaining or enhancing access to resources (while balancing the competing demands for resources); and
  - Avoiding or minimising the potential for reverse sensitivity issues.
23. The policy also requires adverse effects from these activities to be appropriately managed, and positive outcomes to be promoted.
24. RPS Policy 6.6 (Significant infrastructure and energy resources) requires that the management of the built environment ensures that existing and planned Regionally Significant Infrastructure is protected.
25. RPS Policy 4.4 is more directive and requires councils (such as the Waikato District Council) to actively ensure the operation and development of Regionally Significant Industry is provided for in District Plans. Policy 6.6 sets out a management regime for the built environment whereby it does not adversely affect existing and planned Regionally Significant Infrastructure.
26. In my view, the RPS provisions relating to Regionally Significant Industry and Regionally Significant Infrastructure require that the PDP recognise and provide for these activities, including providing for them in areas that are subject to natural hazards, while also ensuring that the effects of such activities are appropriately avoided, remedied and / or mitigated and making sure that the risks associated with locating infrastructure in any hazard areas are appropriately managed.
27. As I have noted above, the nature of the HPS operations (such as the taking of water from and the discharge of water to the Waikato River) is such that areas identified as being subject to natural hazards (flooding) cannot be avoided. The HPS infrastructure has been in place for a long period of time, with Units 1-4 being commissioned in the early 1980's and Units 5 and 6 approximately 20 years later. The infrastructure must be maintained to provide for the HPS operation. In my opinion, the relevant rules applying to activities in the natural hazard areas

applicable to the HPS operations must provide for the ongoing operation and maintenance of the HPS facilities.

28. In respect to Natural Hazards, RPS Objective 3.24 sets out that:

The effects of natural hazards on people, property and the environment are managed by:

- a) increasing community resilience to hazard risks;
- b) reducing the risks from hazards to acceptable or tolerable levels; and
- c) enabling the effective and efficient response and recovery from natural hazard events.

29. Clause (c) of objective 3.24 is pertinent to the HPS in my opinion, as having a secure and efficient electricity supply assists in the effective and efficient response and recovery from natural hazard events. Providing an efficient electricity supply requires ongoing maintenance of the HPS infrastructure located in flood hazard areas.

## **ANALYSIS OF GENESIS' SUBMISSIONS**

30. The PDP: Stage 2 identifies the Waikato River frontage at the HPS east of Te Ohaaki Road and the entire Scott Farm as a “Flood Plain Management Area” and “High Risk Flood Area”. South of the HPS on the southern side of Hetherington Road, parts of Genesis’ landholding is identified as a “Flood Ponding Area” and “Defended Area”.
31. The provisions of the PDP: Stage 2 that apply to “Flood Plain Management Areas”, “High Flood Risk Areas”, “Flood Ponding Areas” and “Defended Areas” therefore should provide for HPS’s electricity generation infrastructure.

### ***Hearing 27B – Objectives, Policies and General Submissions***

#### ***Submission # 2104.3 – Policy 15.1.4***

32. Genesis sought that Policy 15.2.1.4 be amended to include reference to “ancillary activities”. Ms Legarth (at paragraph 246) recommends rejecting this on the basis that the term ancillary activities is too broad:

246. Genesis Energy Limited [2104.3] seeks to amend Policy 15.2.1.4(a) to add “ancillary activities” to the activities enabled by the policy. Transpower New

Zealand Limited [FS3003.3] and PowerCo Limited [FS3007.6] support.

247. Ancillary activities as defined in the National Planning Standard “means an activity that supports and is subsidiary to a primary activity”. The definition is very broad and adding this to the policy could have unintended consequences, for example it could extend to earthworks, access tracks and structures. The policy provides for infrastructure that cannot be located elsewhere, subject to meeting criteria. I consider that the resilience of the community is promoted by locating ancillary activities away from an area of risk associated with natural hazards. I recommend that submission [2104.3] be rejected.

33. I do not agree with this rationale. Inserting “ancillary activities” to a policy in the PDP will not result in unintended activities such as earthworks, access tracks and structures being enabled. Such works would still need to be related to the primary infrastructure / utility activity and enabling “the construction of new infrastructure...” [Rule 15.2.1.4(a)] without recognising that activities such as “earthworks, access tracks or structures” are not similarly provided for would mean that such new infrastructure is not enabled. The construction of new infrastructure, and associated ancillary activities, would still need to meet the permitted activity standards within the PDP or for the proposal to be assessed through a resource consent process.
34. I agree with Ms Legarth that the policy is for infrastructure that cannot be located elsewhere (such as the HPS infrastructure for the taking of water from and discharge of water to the Waikato River). Following that logic, it is my view that ancillary activities associated with that infrastructure would therefore need to be located or undertaken in that same place.
35. It is my view that the policy could also be simplified to include the proposed new clause (b) recommended in the s42A report in clause (a) so that the upgrading of infrastructure and utilities is provided for alongside the construction of new infrastructure and utilities.
36. My proposed amendments to the policy (using Ms Legarth recommended policy as the base) are as follows (with my suggested insertions in red underline and deletions in red ~~strikethrough~~):

Policy 15.2.1.4 - New and upgrading of infrastructure and utilities in areas subject to significant risk from natural hazards.

- (a) Enable the construction of new infrastructure and utilities, and associated

ancillary activities, and the upgrading of infrastructure and utilities, in areas at significant risk from natural hazards, including High Risk Flood, High Risk Coastal Hazard (Inundation) and High-Risk Coastal Hazard (Erosion) areas only where:

- (i) the infrastructure and utilities are technically, functionally or operationally required to locate in areas subject to natural hazards, or it is not reasonably practicable to be located elsewhere; and
- (ii) any increased risks to people, property and the environment are mitigated to the extent practicable; and
- (iii) the infrastructure and utilities are designed, maintained and managed, including provision of hazard mitigation works where appropriate, to function to the extent practicable during and after natural hazard events.

~~(b) Enable upgrading of infrastructure and utilities in the areas mentioned in (a), where (a)(i), (ii) and (iii) are complied with.~~

### ***Hearing 27F – Fire, Climate Change and Definitions***

#### *Submission #2104.10 – Definition of “Minor Upgrading”*

37. Genesis seeks an amendment to the definition of “minor upgrading” to include infrastructure alongside utilities so that the minor upgrading of infrastructure would be a permitted activity. The s42A report addresses this matter as follows:

240. Genesis Energy Limited [2104.10], supported by Transpower New Zealand Ltd [FS3003.4], seeks to amend the definition for Minor Upgrading as follows:

“For the purposes of Chapter 15 means an increase in the capacity, efficiency or security of existing infrastructure and utilities where this utilises existing structures and networks and/or structures and networks of a similar scale and character.

Transpower New Zealand Ltd [FS3003.4] supports this.

241. If agreed to, this amendment would have the effect of extending permitted activity status to the minor upgrade of infrastructure as well as utilities. This would reverse a specific decision made in the design of Chapter 15.

242. The term utility was used instead of infrastructure in Chapter 15 rules, due to the broad nature of the infrastructure definition in Chapter 13 of the Proposed District Plan. Some infrastructure and utilities will be included by both definitions, so some infrastructure upgrades will enjoy the permitted activity status under the Chapter 15 rules.

243. I consider that if a change to that approach is found to be desirable, it would be better implemented by amending rules to give appropriate activity status to named activities, instead of by amending a definition. Submissions to that effect are considered in other reports.

244. I recommend that Energy Limited [2104.10] and Transpower New Zealand Ltd [FS3003.4] be rejected.

38. The proposed definition of “Utility” for the purpose of Chapter 15 includes the *“Transformation, transmission, generation or distribution of electricity...” but is limited to the generation of electricity by “network utility operators or requiring authorities”*. Electricity generators, such as Genesis, are not network utility operators nor are they requiring authorities meaning that rules applying to utilities would not apply to electricity generation infrastructure within the Waikato District.
39. In my opinion, it is apparent from the objectives and policies that it is intended that Chapter 15 applies to infrastructure (as defined in the PDP) and not just to utilities. For example, Policy 15.2.1.5 explicitly provides for the operation, maintenance and **minor upgrading of existing infrastructure** and utilities in all areas subject to natural hazards [emphasis added].
40. The definition of “minor upgrading” not including reference to infrastructure would frustrate the implementation of Policy 15.2.1.5 which provides for the minor upgrading of infrastructure. In the case of Genesis’ electricity generation assets, the fact that it is not a network utility operator means that the definition of “Utility” does not apply to its electricity generation activities. The definition of “Utility” as stated in paragraph 38 above, clearly contemplates that the generation of electricity is a utility but errs in limiting this to generation by network utility operators.<sup>1</sup> There is no valid effects-based reason, in my opinion, why Genesis should not have the benefit of permitted activity status for minor upgrading of its electricity generation infrastructure simply due to it not being a registered network utility provider.
41. As I have noted above, the HPS activities rely upon and cannot avoid areas identified as being subject to natural hazards (flooding), so in my opinion, the relevant rules applying to utilities in these areas must also provide for the ongoing operation and maintenance of the HPS facilities.
42. I note that “Infrastructure” is explicitly defined in the PDP as [with my emphasis added in bold]:

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<sup>1</sup> The Electricity Industry Act 2010 prohibits anyone who is involved in the distribution of electricity (i.e., a network utility) from being involved in a generator of electricity, other than in some limited circumstances where exemptions can be granted.

*Infrastructure*

Means:

- (a) pipelines that distribute or transmit natural or manufactured gas, petroleum, biofuel or geothermal energy;
- (b) a network for the purpose of telecommunication, as defined in section 5 of the Telecommunications Act 2001;
- (c) a network for the purpose of radiocommunication, as defined in section 2(1) of the Radiocommunications Act 1989;
- (d) **facilities for the generation of electricity**, lines used or intended to be used to convey electricity, and support structures for lines used or intended to be used to convey electricity, excluding facilities, lines, and support structures if a person:
  - (i) uses them in connection with the generation of electricity for the person's use; and
  - (ii) does not use them to generate any electricity for supply to any other person;
- (e) a water supply distribution system, including a system for irrigation;
- (f) a drainage or sewerage system;
- (g) structures for transport on, under or over land by cycle ways, rail, roads, walkways, or any other means;
- (h) facilities for the loading or unloading of cargo or passengers transported on land by any means;
  - (i) an airport as defined in section 2 of the Airport Authorities Act 1966;
  - (j) a navigation installation as defined in section 2 of the Civil Aviation Act 1990;
  - (k) facilities for the loading or unloading of cargo or passengers carried by sea, including a port-related commercial undertaking, as defined in section 2(1) of the Port Companies Act 1988; or
  - (l) anything described as a network utility operation in regulations made for the purposes of the definition of network utility operator in section 166 of the Resource Management Act 1991.

43. It is therefore my opinion that this definition of infrastructure appropriately limits the nature of infrastructure that the rules in Chapter 15 apply to. I see no reason why the rules in Chapter 15 that apply to utilities should not also apply to infrastructure (as defined in the PDP), especially given that the proposed objectives and policies in Chapter 15 apply equally to infrastructure and utilities.
44. In my opinion, the definition of “minor upgrading” should be amended as follows to include infrastructure as defined in PDP (with my suggested insertions in red

underline and deletions in red ~~strikethrough~~):

For the purposes of Chapter 15 means an increase in the capacity, efficiency or security of existing infrastructure and utilities where this utilises existing structures and networks and/or structures and networks of a similar scale and character.

45. Should “Infrastructure” not be included in the minor upgrading definition as sought by Genesis then it is my opinion that either (with my suggested insertions in red underline and deletions in red ~~strikethrough~~):

- (a) The definition could be amended to refer specifically to electricity generation infrastructure, as follows:

For the purposes of Chapter 15 means an increase in the capacity, efficiency or security of existing electricity generation infrastructure and utilities where this utilises existing structures and networks and/or structures and networks of a similar scale and character.

Or

- (b) Explicitly refer to Regionally Significant Infrastructure (with a cross reference to the RPS definition of Regionally Significant Infrastructure).

For the purposes of Chapter 15 means an increase in the capacity, efficiency or security of existing regionally significant infrastructure (as defined in the Waikato Regional Policy Statement) and utilities where this utilises existing structures and networks and/or structures and networks of a similar scale and character.

### ***Hearing 27C – Flood Hazards and Defended Areas***

*Submissions #2104.6 and #2104.7 – Rules 15.4.1 P5 and 15.4.1 P6*

46. As I discuss earlier, the objectives and policies of Chapter 15 relate to both infrastructure and utilities, however several permitted activity rules only apply to utilities. There is no effects management reason in my opinion why the objectives and policies should provide for both infrastructure and utilities equally, but some permitted activity rules only apply to utilities.
47. For the reasons as I outline above (in paragraphs 37 – 43 of my evidence), I consider that permitted activity rules 15.4.1 P5 and 15.4.1 P6 should be amended to include reference to “infrastructure” alongside utilities and can rely on the PDP definition of “infrastructure” to limit the breadth of activities that the permitted

activity rules provide for, as per the following suggested amendments (with my suggested insertions in red underline and deletions in red ~~strikethrough~~):

**Rule 15.4.1 P5:**

Construction, replacement, repair, maintenance, minor upgrading or upgrading of infrastructure and utilities.

**Rule 15.4.1 P6:**

Earthworks associated with construction, replacement, repair, maintenance, minor upgrading or upgrading of infrastructure and utilities, and the formation and maintenance of access tracks.

48. I agree with Ms Carter that rehabilitation does not need to be explicitly provided for given that the words “repair” or “replacement” would cover the rehabilitation of infrastructure and utilities.
49. Alternatively, these rules could be amended to specifically include “electricity generation infrastructure” if the panel considers that the phrase “infrastructure” (as defined in the PDP) is too broad (with my suggested insertions in red underline and deletions in red ~~strikethrough~~):

**Rule 15.4.1 P5:**

Construction, replacement, repair, maintenance, minor upgrading or upgrading of utilities and electricity generation infrastructure.

**Rule 15.4.1 P6:**

Earthworks associated with construction, replacement, repair, maintenance, minor upgrading or upgrading of utilities and electricity generation infrastructure, and the formation and maintenance of access tracks.

*Submissions 2104.8 and 2104.9 – Rules 15.5.1 P1 and 15.5.2 RD1*

50. In addition to seeking that the construction, replacement, repair, maintenance, minor upgrading or upgrading of infrastructure be provided for as well as utilities in Rules 15.4.1 P5 and P6, the Genesis submission also seeks similar amendments to Rules 15.5.1 P1 and 15.5.2 RD1 which relate to activities within a High Risk Flood Area. For the same reasons I outline above, I consider that the rules should also reference “Infrastructure”.
51. In addition, the Genesis submission seeks to explicitly permit earthworks

associated with the construction, replacement, repair, maintenance, minor upgrading or upgrading of infrastructure in a High Risk Flood Area. I note that the Flood Plain Management Area and Flood Ponding Area rules explicitly provide for earthworks activities.

52. Ms Carter addresses this matter a paragraph 294 - 295 of the s42A Report for Hearing 27C (in relation to Rule 15.5.1 P1):

294. Three submissions seek that earthworks associated with the repair and maintenance of existing utilities be included in Rule 15.5.1 P1. These are Transpower New Zealand Limited [2101.18] opposed by a further submission from Spark New Zealand Trading Limited [FS3002.1] and supported by WEL Networks Limited [FS3014.6], Genesis Energy Limited [2104.8] supported by PowerCo Limited [FS3007.7] and WEL Networks Limited [2106.1] supported by PowerCo Limited [FS3007.10] and Genesis Energy Limited [FS3006.3].

295. Overall, I do not consider that this addition is required. Earthworks associated with utilities are provided for in Rule 15.4.1 P6 in the Flood Plain Management Area and Flood Ponding Areas, with no additional regulation added in the High Risk Flood Area. I therefore recommend that the submission by Transpower New Zealand Limited [2101.18], Genesis Energy Limited [2104.8] and WEL Networks Limited [2106.1] be accepted in part to the extent that the relief they seek is provided elsewhere. The further submissions in support by PowerCo Limited [FS3007.7, FS3007.10], WEL Networks Limited [FS3014.6], and Genesis Energy Limited FS3006.3 are also accepted in part. Opposition from Spark New Zealand Trading Limited [FS3002.1] is recommended to be accepted as I agree with its further submission that earthworks are not regulated in the High Risk Flood Area.

53. The same reason for not including earthworks is provided in the discussion related to the restricted discretionary activity rule 15.5.2 RD1 (at paragraph 309).
54. While I acknowledge the introduction to the High Risk Flood Area rules states that *“the High Risk Flood Area is located within the Flood Plain Management Area. The rules in this section are to be read in conjunction with the rules for the Flood Plain Management Area and Flood Ponding Areas (Rule 15.4)”*, I consider there could be some confusion if earthworks are not explicitly listed as part of the High Risk Flood Area rules in the same way that the Flood Plain Management Area and Flood Ponding Area rules explicitly provide for earthworks activities.
55. In addition, if earthworks are not explicitly provided for in the High-Risk Flood Area rules, in my opinion, it could be interpreted that earthworks associated with the

construction, replacement, repair, maintenance, minor upgrading or upgrading of infrastructure and utilities within a High Risk Flood Area will require a resource consent for a discretionary activity under section 87B of the RMA for an activity requiring resource consent but does not have a classification within the relevant plan or would default to other rules in the plan for earthworks activities.

56. Ms Carter does not discuss the merits of having such a permitted activity rule in the High-Risk Flood Area, rather she appears to rely on earthworks activities being explicitly provided for elsewhere. To remove any potential for misinterpretation of the proposed rules and to ensure that the rules can be implemented as intended (that is, to provide for the operation and maintenance of utilities and infrastructure that must be located in a High Risk Flood Area), I consider that earthworks should be explicitly provided for in the High Risk Flood Area rules as requested in the Genesis submission. Using the s42A version of the rules as a base for my proposed amendments (with my suggested insertions in red underline and deletions in red ~~strikethrough~~) to Rules 15.5.1 P1 and 15.5.2 RD1 are as follows:

**Rule 15.5.1 P1**

- (1) Repair, maintenance or minor upgrading of existing infrastructure and utilities, and any associated earthworks.
- (2) Construction, replacement or upgrading of telecommunication lines, poles, cabinets and masts/ poles supporting antennas.
- (3) Construction, replacement or upgrading of electricity lines, poles, cabinets, and supporting structures.

**Rule 15.5.2 RD1**

- (1) New infrastructure and utilities not provided for in Rule 15.5.1 P1(2) or P1(3),  
and any associated earthworks.
- (2) Upgrading of existing infrastructure and utilities not provided for in Rule 15.5.1 P1(1), and any associated earthworks.

**SECTION 32AA**

57. Section 32AA of the RMA, requires that:

**Requirements for undertaking and publishing further evaluations**

- (1) A further evaluation required under this Act—
  - (a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the

- proposal was completed (the changes); and
- (b) must be undertaken in accordance with section 32(1) to (4); and
  - (c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and
  - (d) must—
    - (i) be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement or a national planning standard), or the decision on the proposal, is notified; or
    - (ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.
- (2) To avoid doubt, an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).
  - (3) In this section, proposal means a proposed statement, national planning standard, plan, or change for which a further evaluation must be undertaken under this Act.
58. In my opinion, the amendments I have proposed are more effective and efficient than those in the section 42A Report because they will achieve similar environmental outcomes but do so in a manner that does not impact the ongoing operation and maintenance of the HPS and gives effect to the direction of the RPS.
- ## **CONCLUSION**
59. In my opinion:
- (a) The definition of “minor upgrading” should be amended to include “Infrastructure” as well as utilities;
  - (b) Policy 15.2.1.4 should be amended to include “ancillary activities”; and
  - (c) The rules within Chapter 15 should be amended to provide for infrastructure as well as utilities, and to provide for associated earthworks in High Risk Flood Areas in the same way as earthworks are provided for in the Flood Plain Management and Flood Ponding Area rules.

Richard Matthews

16 April 2021

## **Appendix One: Summary of Proposed Changes**

### **Hearing 27B Evidence Changes Recommended (Richard Matthews, 15 April 2021)**

#### **1. Policy 15.2.1.4**

Amend the policy as follows (changes from the s42A report recommendation in red underline and red strikethrough):

Policy 15.2.1.4 - New and upgrading of infrastructure and utilities in areas subject to significant risk from natural hazards.

(c) Enable the construction of new infrastructure and utilities, and associated ancillary activities, and the upgrading of infrastructure and utilities, in areas at significant risk from natural hazards, including High Risk Flood, High Risk Coastal Hazard (Inundation) and High-Risk Coastal Hazard (Erosion) areas only where:

(iv) the infrastructure and utilities are technically, functionally or operationally required to locate in areas subject to natural hazards, or it is not reasonably practicable to be located elsewhere; and

(v) any increased risks to people, property and the environment are mitigated to the extent practicable; and

(vi) the infrastructure and utilities are designed, maintained and managed, including provision of hazard mitigation works where appropriate, to function to the extent practicable during and after natural hazard events.

~~(d) Enable upgrading of infrastructure and utilities in the areas mentioned in (a), where (a)(i), (ii) and (iii) are complied with.~~

### **Hearing 27F Evidence Changes Recommended (Richard Matthews, 15 April 2021)**

#### **2. Rule 15.4.1 P5 and Rule 15.4.1 P6**

Amend the rules as follows (changes from the s42A report recommendation in red strikethrough and red underline):

##### **Rule 15.4.1 P5:**

Construction, replacement, repair, maintenance, minor upgrading or upgrading of infrastructure and utilities.

##### **Rule 15.4.1 P6:**

Earthworks associated with construction, replacement, repair, maintenance, minor upgrading or upgrading of infrastructure and utilities, and the formation and maintenance of access tracks.

### **3. Rule 15.5.1 P1 and Rule 15.5.2 RD1**

Amend the rules as follows (changes from the s42A report recommendation in red strikethrough and red underline):

#### **Rule 15.5.1 P1**

- (4) Repair, maintenance or minor upgrading of existing infrastructure and utilities,  
and any associated earthworks.
- (5) Construction, replacement or upgrading of telecommunication lines, poles, cabinets and masts/ poles supporting antennas.
- (6) Construction, replacement or upgrading of electricity lines, poles, cabinets, and supporting structures.

#### **Rule 15.5.2 RD1**

- (3) New infrastructure and utilities not provided for in Rule 15.5.1 P1(2) or P1(3),  
and any associated earthworks.
- (4) Upgrading of existing infrastructure and utilities not provided for in Rule 15.5.1 P1(1),  
and any associated earthworks.

### **Hearing 27F Evidence Changes Recommended (Richard Matthews, 15 April 2021)**

#### **4. Definition of Minor Upgrading**

Amend the definition as follows (changes from the s42A report recommendation in red strikethrough and red underline):

For the purposes of Chapter 15 means an increase in the capacity, efficiency or security of existing infrastructure and utilities where this utilises existing structures and networks and/or structures and networks of a similar scale and character.