

15 November 2024

Dear [REDACTED]

LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT Request: 2024-51

Thank you for your email of 18 October 2024 to the Carterton District Council requesting attached as **Appendix A**.

Your request has been considered under the Local Government Official Information and Meeting Act 1987 (the Act). My response to your questions is in the number order of your questions below.

- 1. Did you notify the EPA that resource consent was granted for 107 Cornwall Road on 1 August 2024?**

Not at the time of the decision.

- 2. If not, will you notify them now, acknowledging that their proposal is under appeal?**

Council have notified the EPA.

- 3. Could you please tell us how the cumulative effects that the Panel notes of the Masterton Solar & Energy Project (RM240005) are being considered with respect to the consented 107 Cornwall Road proposal and the Harmony Energy Proposal now under appeal?**

This is a matter that will be considered by the independent planners processing the application and the independent commissioner who has been delegated the authority to determine the application. We have also flagged to the EPA that the Harmony decision placed cumulative effects in CDC jurisdiction, but given the appeal there is not now a granted decision, and depending on how long the appeal takes, an assessment of cumulative effects or a reconsideration may be required for Harmony – as there is now one granted solar farm in the vicinity, 25ha.

- 4. Will the Notice of Appeal for Harmony Carterton (as attached) be considered in the decision for the Masterton Solar & Energy Project (RM240005)?**

This will be up to the independent planner and the independent commissioner to consider; however, they are aware of the appeal.

5. *If not, what is the reason for this?*

There is no reason, refer to question 4.

Please note, the Council proactively publishes LGOIMA responses on our website. As such, we may publish this response on our website after five working days. Your name and contact details will be removed.

Thank you again for your email. You have the right to ask an Ombudsman to review this decision. You can do this by writing to info@ombudsman.parliament.nz or Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely



Geoff Hamilton
Chief Executive
Carterton District Council

Appendix A

Serah Pettigrew

From: Planning Team
Sent: Thursday, 17 October 2024 1:59 pm
To: LGOIMA Requests
Subject: Fw: Resource consents of the three solar farm proposals located around the Masterton Substation
Attachments: Notice of appeal Harmony solar farm at Carterton FINAL.pdf
Follow Up Flag: Follow up
Flag Status: Completed

Hi can you please lodge as a lgoima

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From: [REDACTED]
Sent: Thursday, October 17, 2024 1:47:03 PM
To: Planning Team <planning@cdc.govt.nz>
Cc: Geoff Hamilton <geoffh@cdc.govt.nz>; Mayor - Ron Mark <Mayor@cdc.govt.nz>
Subject: Resource consents of the three solar farm proposals located around the Masterton Substation

Caution: This email originated from outside the council. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To: Planning Department

For your consideration:

1. Under Cumulative effects in the decision and conditions - [Harmony Carterton solar farm - decision and conditions \(epa.govt.nz\)](#)

7.291 The AEE is silent on the issue of cumulative effects. The Panel therefore made the following inquiry of CDC: *“Has the Carterton District Council granted any resource consents for a solar farm in the vicinity of 510 Hughes Line, 271 Perrys Road and 303 East Taratahi Road, East Taratahi (i.e. in Waingawa, East Taratahi, Clareville or Parkvale).”*

7.292 In response, CDC advised that it is currently processing two proposals, being a 25ha proposal at 107 Cornwall Road and a 146ha proposal located at 3954A State Highway 2. These proposals are either adjacent, or very near to, the Site.
2. In yesterday’s (16/10/2024) Council agenda, it was recorded that the 25ha solar farm at 107 Norfolk Road was consented on 1 August 2024.
3. On 25 June 2024 the EPA inquired - *Has the Carterton District Council granted any resource consents for a solar farm in the vicinity of 510 Hughes Line, 271 Perrys Road and 303 East Taratahi Road, East Taratahi (i.e. in Waingawa, East Taratahi, Clareville or Parkvale).* - [EPA request for information under Schd 6 cl25-HES-Carterton.pdf](#)
4. On 25 June 2024 responded - *Carterton Council has not granted any solar farm in the vicinity, however we wish to note that we have two proposal currently lodged in the vicinity of this site a 25ha proposal at 107 Cornwall Road and a 146 ha located at 3954A State Highway 2 (this is about to be publicly notified*

Our questions are:

1. **Did you notify the EPA that resource consent was granted for 107 Cornwall Road on 1 August 2024?**
2. **If not, will you notify them now, acknowledging that their proposal is under appeal?**

Note: We understand that you are awaiting a decision on the Masterton Solar & Energy Storage (RM240005).

Note: That the EPA panel's comment in 7.295 "*The Panel notes, however, that cumulative effects of this Project and any other proposed solar farms may be considered as part of decision making on those applications*"

3. **Could you please tell us how the cumulative effects that the Panel notes of the Masterton Solar & Energy Project (RM240005) are being considered with respect to the consented 107 Cornwall Road proposal and the Harmony Energy Proposal now under appeal?**
4. **Will the Notice of Appeal for Harmony Carterton (as attached) be considered in the decision for the Masterton Solar & Energy Project (RM240005)?**
5. **If not, what is the reason for this?**

The reason for these questions is our concern about the cumulative effects of the proliferation of solar farms around the Masterton, Greytown, and Mangamaire substations with the limited capacity of the Transpower transmission lines through the Wairarapa that these renewable energy proposals are connecting to.

Kind Regards

South Wairarapa Whenua Advisory Group (SWWAG) Administration Team

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

NO. CIV-2024-

UNDER COVID-19 Recovery (Fast-track Consenting) Act 2020

IN THE MATTER OF An appeal of the decision of an Expert Consenting Panel
in relation to the Harmony Solar Farm - Carterton

BETWEEN **The Royal Forest & Bird Protection Society Inc**, an
incorporated society having its registered office at 205
Victoria St, Te Aro, Wellington

Appellant

AND **Harmony Energy NZ #2 Limited**, having its registered
office c/ Campbell Tyson Limited, Level 2, 1 Wesley
Street, Pukekohe

Respondent

NOTICE OF APPEAL

14 October 2024

Royal Forest and Bird Protection Society of New Zealand Inc.
Solicitors acting: M Downing
Address: 205 Victoria St, Te Aro
Wellington
Email: [REDACTED]
Ph: [REDACTED]

Counsel: P Anderson
Email: [REDACTED]
Ph: [REDACTED]

To: The Registrar of the High Court at Wellington

And to: The Environmental Protection Authority (EPA)

And to: Harmony Energy NZ #2 Limited

This document notifies you that –

The Royal Forest and Bird Protection Society of New Zealand Incorporated (**the Appellant**) appeals to the High Court against the decision dated 23 September 2024 (**the Decision**) of the Expert Consenting Panel (**the Panel**) appointed in relation to an application by Harmony Energy NZ #2 Limited for a solar farm at Carterton (**the Proposal**).

Parts of decision appealed

1. The Appellant appeals against the parts of the Decision that relate questions of whether the solar farm has a functional need to locate in wetlands.
2. In particular, the parts of the Decision appealed relate to the Panel's assessment of the Proposal against Regulation 45(6) of the the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**the Regulations**).¹ This includes the Panel's ultimate finding that each limb of Regulation 45(6) "has been met so that it does not stand in the way of a grant of consent,"² and the following findings:

7.77 The Panel did not consider that the "functional need" for the panels to be located in wetland areas was adequately addressed in the Application, which includes only a discussion of the reasons for site selection in general terms focussed on both functional and operational need. We therefore requested a more detailed explanation of why there is a functional need (rather than an operational need) for the Project to be located within natural inland wetlands on the Site. In response, HEL stated that:

"Of particular importance is that the site is located very near the Masterton substation, through which a connection to the grid is available. The need for renewable energy generation to locate in proximity to existing infrastructure and connect to the grid is recognised by the NPS-REG as a practical constraint that decision makers must have particular regard to. While it may technically be possible to locate a generation activity some distance from existing infrastructure and install a new transmission line, this would add significant additional costs to the project and result in energy losses that increase with distance. Likewise, not all substations or lines have the capacity to accept additional generation. Therefore, it is considered that there is a functional need for the solar farm

¹ Decision at [7.74]-[7.79]

² Decision at [7.84]

to be located in this particular environment for the purposes of grid connection.)”

... the dispersed, pocket like nature of the low-quality wetlands, means a ‘Swiss cheese’ design which effectively avoids the wetlands (along with a 10m buffer) would result in an inefficient layout, with less overall electricity generation. This is because panel arrays come in set lengths and avoidance of wetlands would effectively require a greater extent of non-developed area than just the wetland and buffers. Likewise, there is a need for uniform layout of cabling and access to allow for efficient operation of the farm. Again, it is re-iterated that the construction of panels over wetlands will not result in any loss of wetland extent or function.”

7.78 The Panel notes the set lengths of the panels and the dispersed nature of the low quality wetlands and agrees that it is unlikely to be possible to efficiently install a solar farm on the Site without placing solar panels in them.

7.79 The Panel has considered the information provided by HEL and finds that:

- (a) There is a functional need to locate on the Site, having regard to the reasons provided by HEL and in particular to the proximity of the Site to the Masterton substation;
- (b) There is a functional need to install the panels within and within 10 metres of natural inland wetlands.

3. These findings also infected the Panel’s later assessment of the proposal against the NPSFM, including Policy 6 and clause 3.22 of the NPSFM, when it referred to its findings on “functional need” above to justify the loss of natural inland wetlands:

8.43 In terms of the placement of a road over 104m² of Wetland 15, it is noted that the loss of part of this wetland does not meet Policy 6. However, clause 3.22 of the NPS-FM contemplates the loss of wetland extent for the purpose of the construction of specified infrastructure, provided that certain criteria are met. These criteria are the same as those set out in Regulation 45(6) of the NES-F. Our assessment of the proposal against those criteria, which confirms that those criteria are met, is set out at paragraphs 7.74-7.83.

Errors of law

4. The Appellant alleges that the Panel made the following errors of law:

- a. it failed to apply the proper interpretation of the term “functional need” as it appears in the Regulations and the National Policy Statement for Freshwater Management (**NPSFM**).
- b. Took into account irrelevant considerations by having regard to
 - (i) the quality of the natural inland wetlands;
 - (ii) the proximity of the site to the Masterton substation; and

- (iii) the inefficiencies that would be associated with the “Swiss cheese design” that would be required if wetlands were to be avoided.
- c. As a consequence, the Panel wrongly concluded that Regulation 45(6) of the Regulations had been met and that the Proposal could be granted consent and with associated conditions.

Questions of law to be resolved

- 5. The questions of law to be resolved are:
 - a. What is the proper interpretation of “functional need” as defined in the Regulations?
 - b. Do the solar panels have a functional need to locate at the subject site?
 - c. Is the quality of natural inland wetland relevant to the interpretation of “functional need”?
 - d. Is the proximity of the Proposed solar farm to the Masterton substation relevant to the interpretation of “functional need”?
 - e. Is the fact that avoiding the wetlands would result in an inefficient “Swiss cheese design” relevant to the interpretation of “functional need”?

Grounds of appeal

- 6. Regulation 45 of the Regulations nominally ascribes discretionary activity status to the Proposal as it would result in the following activities within or adjacent to wetlands:³

Construction of specified infrastructure

45 Discretionary activities

- (1) Vegetation clearance within, or within a 10 m setback from, a natural inland wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure.
- (2) Earthworks or land disturbance within, or within a 10 m setback from, a natural inland wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure.
- (3) Earthworks or land disturbance outside a 10 m, but within a 100 m, setback from a natural inland wetland is a discretionary activity if it—
 - (a) is for the purpose of constructing specified infrastructure; and
 - (b) results, or is likely to result, in the complete or partial drainage of all or part of the natural inland wetland.

³ Decision at [3.28]

7. Under regulation 45, consent may only be granted subject to the following requirements:

(6) A resource consent for a discretionary activity under this regulation must not be granted unless the consent authority has first—

(a) satisfied itself that the specified infrastructure will provide significant national or regional benefits; and

(b) satisfied itself that there is a functional need for the specified infrastructure in that location; and

(c) applied the effects management hierarchy.
(emphasis)

8. Policy 6 of the NPSFM directs that “there is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.” Policy 6 is given substance to by clause 3.22 of the NPSFM, which requires further direction be directly inserted in regional plans across Aotearoa New Zealand without undergoing the standard plan change process prescribed in Schedule 1 of the Resource Management Act 1991.⁴

9. As the Proposal is “specified infrastructure” it falls within the ambit of clause 3.22(1)(b) of the NPSFM. Clause 3.22(1)(b) requires the loss of extent of natural inland wetlands is avoided, their values protected, and their restoration promoted, except where:

...

(b) the regional council is satisfied that:

(i) the activity is necessary for the purpose of the construction or upgrade of specified infrastructure; and

(ii) the specified infrastructure will provide significant national or regional benefits; and

(iii) there is a functional need for the specified infrastructure in that location; and

(iv) the effects of the activity are managed through applying the effects management hierarchy

10. The Panel erred when it considered that the Proposal had a “functional need” to occur within or adjacent to natural inland wetlands. The Panel failed to properly interpret the meaning of “functional need” as it appears

⁴ RMA, s 55(2A)

in the Regulations, being “the meaning given by the National Policy Statement for Freshwater Management”. This is:⁵

Functional need means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment

11. The definition of “functional need” does not include consideration of “technical, logistical or operational characteristics or constraints” found in the definition of “operational need” under the National Planning Standards 2019:

Operational need means the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints.

12. “Operational need” is not referred in the Regulations (or NPSFM).

13. The Panel relied on the following information provided by the applicant to conclude there was a functional need to locate the solar farm within or adjacent to natural inland wetlands:⁶

- a. The need to be in proximity to existing infrastructure including the Masterton substation was “a practical constraint that decision makers must have regard to”.
- b. it would be technically possible to locate a generation activity some distance from existing infrastructure, but this would add significant additional costs to the project and result in energy losses that increase with distance.
- c. The nature of the “low-quality wetlands” on the site would mean a “Swiss cheese design” which avoids the wetlands (along with a 10m buffer) would result in an inefficient layout, with less overall electricity generation.

14. By adopting these reasons, the Panel treated “operational needs” as synonymous with “functional need.”

15. The High Court in *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* described the words “can only occur” as establishing a high

⁵ National Policy Statement for Freshwater Management 2020 at 3.21(1)

⁶ Decision at [7.77]

threshold,⁷ and the focus in the definition is the need for an activity to locate in a “particular environment,” rather than a particular location.⁸

16. The Proposal does not meet high threshold to meet the functional need definition. The Panel’s findings ultimately fit within the “operational need” definition as opposed to “functional need”. A solar farm is not functionally dependent upon occurring in wetlands, in the same way a marina (for example) is functionally dependent upon being located in the coastal marine area.
17. The construction of a solar farm is different because it can be located in other environments even if operationally less desirable or efficient. While solar farms might have operational needs to be located near the grid, this is not the same as a functional need to do so.
18. Neither the Regulations nor the NPSFM make a distinction on the quality of natural inland wetland. The Panel accordingly took into account an irrelevant consideration by having regard to information alleging the wetlands are of low quality.
19. The proximity of the proposed solar farm to the Masterton substation, the associated cost savings, and matters relating to the efficiency of the site layout are not relevant to whether the proposed solar farm can only locate and operate within the wetlands. Accordingly, they are an irrelevant consideration.
20. The Panel’s approach led to its erroneous finding that, despite the stricter threshold of “functional need” employed in both the Regulations and NPSFM, there is a functional need to install solar panels (and associated infrastructure) within and within 10 metres of natural inland wetlands. This error also tainted the Panel’s assessment of clause 3.22(1)(b) of the NPSFM, when it erroneously found that as the criteria in regulation 45(6) of the Regulations were met that the criteria in NPSFM clause 3.22 were also met.⁹ Further, as the Proposal does not satisfy the requirement that there be a

⁷ *Poutama Kaitiaki Charitable Trust and D & T Pascoe v Taranaki Regional Council* [2022] NZHC 629, at [48]

⁸ *Poutama Kaitiaki Charitable Trust and D & T Pascoe v Taranaki Regional Council* [2022] NZHC 629, at [53]

⁹ Decision at [8.40]-[8.43]

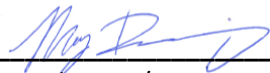
“functional need”, it was not open to the Panel to then consider whether the Proposal met the requirements of the effects management hierarchy.¹⁰

Relief sought

21. The Appellant seeks:

- (a) A finding (and associated declarations) that the Decision was unlawful;
- (b) An order quashing the Decision and associated conditions;
- (c) That the matter be referred back to the Panel for reconsideration in light of this Honourable Court;
- (d) Such further or other relief, including consequential relief, as the Court sees fit;
- (e) The costs of and incidental to these proceedings.

DATED this 14th day of October 2024



P Anderson / M Downing
Counsel for the Royal Forest and Bird Protection Society of New Zealand Inc

This document is filed by May Downing, solicitor for the Royal Forest and Bird Protection Society of New Zealand Inc. The address for service of the Appellant is at the offices of Royal Forest and Bird Protection Society being 205 Victoria St, Te Aro, Wellington 6011, provided that any document service is also effected by e-mail as set out below.

Documents for service may be posted or delivered to the address for service provided that e-mail copies are also provided as set out below.

Documents may also be served by e-mail to:

- [REDACTED]
- [REDACTED]

¹⁰ Decision at [7.80]-[7.83].