

Submission on behalf of Shaun Erickson.

These submissions are in written form due to unavailability of both submitter and his representative/advocate for the hearing. Please read them into the proceedings.

A. The submitter confirms his original submission points (in italics) and now elaborates on them:

*1. The AEE does not adequately and fully address the actual and/or probable effects on neighbouring properties, animals, biodiversity and flora and fauna* – It is noted that no additional evidence has been provided as to mitigation of the effects identified (and further discussed below). Effects and cumulative effects are defined in section 3 of the RMA and this definition is relied upon in full whenever ‘effect(s)’ is used.

*2. The AEE does not acknowledge the ‘heat island’ effect created by such a power plant of this size or the effects of an increase in ambient temperature. These effects have been documented overseas since 2016, but no effort has been made to consider New Zealand conditions such as the current site* – the evidence that the submitter relies upon are contained in scientific reports and after discussions with NIWA scientists (see also 3 below). The purported rebuttal by the planner (at para 158) to the submitter’s submission is incorrect in that the current site is vastly different to the Waerenga site. The passage quoted acknowledges “heat island effect” exists. The explanation in the Waerenga case resulted in changed conditions (if the decision is read in full) and those decisions included a review and complaints procedure similar to what is being proposed below in this submission.

*3. The AEE does not consider the micro-climatic effect of a rise in ambient temperature across the site (including but not limited to wetlands and the drying out of soils/sands in summertime. Due to the rises in ambient temperature and the natural features of the site evapotranspiration will be higher than currently experienced. The resultant change is likely to cause hail to be heavier and more frequent.* - This is natural consequence of the rise in temperatures and climate change which is now an active/live consideration under the RMA. The evapotranspiration effect has not been answered and is likely to create an effect similar to “sea breeze” which occurs in coastal water areas (as here). At times it is likely that it will increase the “sea breeze” effect. The warmer the effect the higher the droplets of water go and the greater the opportunity for hail at an increase in size.

4. *The application covers multiple sites and the AEE does not look at the effects on each "site". When considering "regionally significant infrastructure" each site must be analysed.* – The definition of site is contained in the Regional Plan and refers to individual titles. There is no attempt to consider the effects that emanate from individual titles/sites. It is noted that the Council report supports this requirement.

5. *There is a flooding risk* – The Climate change section requires this to be taken into account and it has not been properly assessed despite the rebuttal evidence produced recently.

6. *There are better areas to undertake a power plant such as this* – This is shown by the large numbers of solar power plants now being applied for (including one already operating in Northland and providing power to the national grid). There are also larger areas away from the built-up areas adjacent to the proposed sites

7. *The AEE shows that the proposal cannot meet the policies and standards of the Northland Regional Councils Policy statement and operative regional plan with respect to wetlands and in particular the full range of effects* – the submission filed has highlighted the deficiencies in the AEE lodged with the application and although some additional evidence has been produced certain areas such as climate change and the heat island effect have not been addressed and no mitigation proposed. Thus, there is a requirement for the precautionary principle to be applied.

8. *The NPS for freshwater management and concerns (above) as to heat and risk of effects and contamination into waterways, water courses and wetland areas*- again this highlights the need for the precautionary principle to be applied. In the original AEE all the effects are not identified and addressed and are still not covered by appropriate conditions so the application should at this stage be declined (or hearing adjourned pending satisfactory evidence and/or conditions to mitigate sufficiently the effects identified). It is noted that a minor rise in water temperature will be an effect and is one unlikely to be mitigated under proposed current conditions. No evidence has been adduced to show how to mitigate this climate change and heat island effect.

9. *The planting proposed is insufficient to mitigate the effects on neighbouring properties* – the boundary planting requires growth and density to provide mitigation. If not fully in place at time the power station commences then the mitigation is not in place There is insufficient detail as to size of plantings

proposed and sufficient depth of plantings to effectively mitigate the heat island effect and the resultant “spill” of heat across the boundary. The “spill” of heat effect is similar to a particulate spill or discharge and is an effect that only the regional council can control as it effects air/atmosphere. The District Council land use consent did not and could not consider this effect.

10. *There is a cumulative effect of the effects both those detailed in the AEE and those now raised as not covered* – cumulative effects are important. They turn relatively minor matters into much more serious overall concerns and must be taken into account when assessing the overall effects and the provisions of sustainability and in particular the requirements of sections 5 of the RMA. An overall objective view requires either that the application be declined or the mitigation conditions strengthened.

11. *The “precautionary principle should be applied* – when looking at the need to apply the precautionary principal the decisions indicate that if there is too much risk the application should be declined. The submitter considers there is risk and that the mitigation of the risk (utilising the precautionary principle) that a review clause and a requirement to measure heat increments at the boundary would at the very least be appropriate and that if the heat increment (as advised by the applicant to the Council on a monthly basis) showed an increment of 1 degree or more then the power plant should be shuttered until agreed mitigation measures were implemented. It is noted there are additional wetlands, the ocean, animals and human inhabitants adjacent or in close proximity who/which would be affected by a heat rise.

12. *The AEE fails to comply with (and there is no attempt to analyse) the Tikanga common law (the first law of New Zealand as set out by the Supreme Court in the Ellis case and subsequently in the Smith case against Fonterra and others) as to individual and overall effects. The application must not be just viewed through a euro-centric lens and policies.* – This is quite recent law – “Tikanga is the first law of New Zealand” and “must be considered in appropriate cases”. This is an appropriate case and Tikanga requires that under Kaitiakitanga proper consideration of the environment and the prevention of degradation of the range of ecosystems and that the climatic effects be considered and mitigated. No evidence has been produced to show that Tikanga has been fully taken into account.

13. *The application fails the overall test required under section 5 of the Resource Management Act 1991.* - This is the final balancing test required on any application. It has not been addressed in the documents provided and

the effects detail in the submission need to be considered in that overall assessment and it follows any conditions imposed to assist in mitigation should be clear and able to be enforceable at the request of any person affected.

14. *There should be individual site modelling undertaken to show the full effect on neighbours of the heat island effect and micro-climatic effects –* As this has not occurred - this is covered in the proposed conditions set out below.

15. *The application has effects on neighbours rights under the New Zealand Bill of Rights Act 2000 (in particular , but not limited to section 9) –* All legislation in New Zealand must be read in conjunction with the New Zealand Bill of Rights Act. The reference to section 9 is a reference to everyone having the right not to be subject to cruel treatment. The submitter considers that if the heat island effect occurs then this will create a situation where the neighbours will be subject to disproportionately severe treatment (i.e. the rise in temperature will affect their living, health and amenity disproportionately to others). This meets the standard for cruel treatment.

16. *The mitigation proposed is inadequate –* for all the reasons set out above it is submitted that proper mitigation requires stronger conditions for the consent to be granted.

The submitter proposes that if the Commissioners consider that the consent should be granted there be two additional conditions attached to the consent in addition to the conditions proposed in the staff report.

The proposed conditions are:

1. That the Applicant set up at least 4 monitoring stations at the boundary of the sites involved in the consent to record the ambient temperature and one monitoring station on a roadside site at least 100 m away from the boundaries of the sites and provide the Regional Council with the results of that monitoring on a monthly basis. In the event that the ambient temperature of the sites at the boundary are 1 degree above the roadside site ambient temperature then the Applicant shall have 20 working days to provide the Council with mitigation measures to the Council's satisfaction Provided however that if the mitigation measures are not satisfactory to the Council or once in place do not reduce the ambient temperature to match the roadside site ambient temperature then the consent shall be cancelled and the activity discontinued.

2. The Applicant shall give notice to the Council when the consent is to be activated (following installation) and the conditions of consent shall be reviewed 2 years after the date of activation. The Council shall invite all current submitters and other persons or entities as they consider may be affected to comment as part of the review.

### **Legal Submissions**

It is submitted that:

- a) The Applicant has failed to properly address all the effects that will result from the proposed activity and as such at present the application should not be approved. The addition of suitable conditions may mitigate the proposal sufficiently so that a consent could be granted.
- b) The decision made by Commissioners in the Northport case (currently under appeal and being heard at present) where it was held that: "the magnitude of the adverse cultural effects (tikanga effects) will be significantly adverse and that such cultural impacts will not be sufficiently mitigated by the proposed condition" should be followed to provide consistency OR the hearing not closed pending the outcome of the appeal giving additional guidance.
- c) The global warming and likely increase in water temperature should also be monitored. An increase of 2 degrees in global warming (or in an area) is deemed to have an effect on animals and humans. While this may be considered an effect of low probability it is an effect of high potential impact. It has not been assessed. It is the requirement to have regard to potential effects, that inherently requires a precautionary approach. The RMA is not a "no risk" statute but any risk must be assessed, and this has not occurred.
- d) The concept of cumulative effect was described in *Gargiulo v Christchurch City Council* "... any one incremental change is insignificant in itself, but at some point in time or space the accumulation of insignificant effects becomes significant" [C137/00].
- e) Care must be taken as to the precedent effect under section 104(1)(c).
- f) It would be a dereliction of sustainable management if consideration could not be given to the other possible effects as identified and expanded upon above
- g) The effects of a proposed activity for which it is found that there is a permitted baseline do not count towards the S104 assessment and the burden of proof is on the applicant – this has not been displaced with regards to the additional effects raised above.
- h) The Section 104(D) test commonly called the gateway test under either limb is not met:

*The adverse effects of the activity on the environment will be minor –*

- a. the test is whether the adverse effects as proposed to be remedied and/or mitigated are more than minor. The threshold test relates to adverse effects and therefore while mitigating factors can be considered, wider beneficial effects cannot. The mitigation does not cover the heat island effect or the micro-climate effect.
- b. 'Minor' is not defined and there is no absolute yardstick for what might constitute a minor effect; whether an effect will be more than minor is a matter of fact and degree. The acceptance of the heat island effect by the applicant's planner with no additional mitigation conditions makes the effect more than minor.
- c. It is not permissible to substitute a numeric test (e.g. loss of less than 25% of available industrial land) for the statutory test of 'minor'. It is fact and context specific.

*The activity will not be contrary to the objectives and policies of the relevant plan and any relevant proposed plan –*

- a. the word contrary contemplates being opposed in nature, different, or opposite to.
- b. An absence of support is not sufficient to meet the test of 'contrary'.
- c. The relevant objectives and policies "as a whole" must be considered, however a decision may be based upon a single objective.
- d. Where there is a conflict between objectives and policies, the specific ones should be preferred over the general ones.

The submitter considers that the applicant has not shown that there is a specific provision that applies and that the government policies must still be read in conjunction with the Regional Council's objectives and policies.

The submitter's position is that the application does not fulfil the sustainable management overall test without there being additional conditions imposed.

Shaun Erickson by his advocate

Murray Osmond LLM(Envir)(hons)