

BEFORE THE HEARINGS PANEL

UNDER THE

Resource Management Act 1991

IN THE MATTER OF

the Proposed Far North District Plan

**STATEMENT OF EVIDENCE OF DAVID ERIC BADHAM ON BEHALF
OF TOP ENERGY**

HEARING STREAM 13 (Hazards and Risks)

Planning

6 June 2025

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1 INTRODUCTION

- 1.1 My full name is David Eric Badham. I am a Partner and Northland Manager of Barker and Associates, a planning and urban design consultancy with offices across New Zealand. I am based in the Whangārei office, but undertake planning work throughout the country, although primarily in Te Tai Tokerau / Northland.
- 1.2 My qualifications, experience and involvement with Top Energy Limited (*Top Energy*) on the Proposed Far North District Plan (*PDP*) are set out in Attachment 1 to my evidence filed on 13 May 2024 which addressed planning matters in relation to Hearing Stream 1 – Strategic Direction. I have also filed planning evidence on behalf of Top Energy for the following hearing streams:
- (a) Hearing Stream 4 – Natural Environment Values and Coastal Environment - 22 July 2024;
 - (b) Hearing Streams 6 and 7 – General District-Wide Matters and Genetically Modified Organisms - 7 October 2024;
 - (c) Hearing Stream 11 – Energy, Infrastructure, Transport and Designations - 14 April 2025; and
 - (d) Hearing Stream 12 – Historic and Cultural Values - 12 May 2025.

Code of conduct

- 1.3 Although this is not an Environment Court proceeding, I have read and am familiar with the Environment Court's Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2023, and agree to comply with it. My qualifications as an expert are set out in Attachment 1 to my Hearing Stream 1 evidence filed on 13 May 2024. Other than where I state that I am relying on the advice of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

2 SCOPE OF EVIDENCE

- 2.1 My evidence addresses submission (#483) and further submission (#FS369) by Top Energy on the PDP, as relevant to Hearing Stream 13 – Hazards and Risks and in particular it addresses the following:
- (a) Supported recommendations of the Hearing 13 Section 42A Reports (*S42A Reports*) (Section 3).
 - (b) Natural Hazards provisions (Section 4).
 - (c) Section 32AA evaluation (Section 5).
 - (d) Concluding comments (Section 6).

3 SUPPORTED RECOMMENDATIONS OF THE S42A REPORTS

- 3.1 The S42A Reporting Officers for the Hazardous Substances and Natural Hazards chapters have recommended the acceptance of a number of Top Energy's submission points or have recommended amendments which are consistent with the relief sought by Top Energy. For the submission points outlined in **Attachment 1**, Top Energy has confirmed that it is satisfied with the recommendations. I do not address them further within my evidence.
- 3.2 The remainder of my evidence focuses on the areas in contention where I have a different opinion to that of the relevant Reporting Officer.

4 NATURAL HAZARDS

New Objective for the Operation, Maintenance, Repair and Upgrade of Existing Infrastructure

- 4.1 Top Energy sought a new objective as follows:¹

Operation, maintenance, repair and upgrade of existing infrastructure is enabled to ensure a resilient and reliable network.

- 4.2 The Reporting Officer has recommended rejecting this submission, stating:²

¹ Submission 483.110.

² Section 42A Report, Natural Hazards, paragraph [85].

I do not consider that it is necessary or appropriate to include a new objective relating to a resilient and reliable infrastructure network as requested by Top Energy. Firstly, as the reporting officer for the Infrastructure Chapter, I note that the general approach in the PDP is for the Infrastructure Chapter to contain the more generic provisions for infrastructure and other PDP chapters to include provisions relating to infrastructure when necessary for that particular topic. In that respect, I note that:

- a. I-O1 in the Infrastructure Chapter is for the Far North District to have *"safe, efficient and resilient infrastructure that services the current and future needs of people and communities in the district."*
- b. The Natural Hazards Chapter includes provisions specific to infrastructure (including NH-O3, NH-P10, NH-R1) to recognise that (among other things) the risk of natural hazards to infrastructure are often different to other land-uses/activities (e.g. compared to "vulnerable activities"), that infrastructure can generally be designed to be resilient to the risks from natural hazards, that infrastructure may have an operational need or functional need to locate in identified natural hazard areas, and that infrastructure can help mitigate the risk from natural hazards to communities.

4.3 While I do acknowledge that Objective I-O1 in the Infrastructure Chapter does already provide for safe, efficient and resilient infrastructure within the Far North District, I disagree with the Reporting Officer's recommendation for the following reasons:

- (a) Policy NH-P10 provides for the operation, maintenance and upgrading of existing infrastructure in identified natural hazard areas. As notified, this policy does not presently implement an objective - I-O1 does not address the relationship between infrastructure and natural hazard areas and NH-O1 is specific to managing the risks *from* natural hazards to infrastructure. It does not provide any direction for the provision of infrastructure in areas subject to natural hazards.
- (b) I consider that the Reporting Officer's recommendation is inconsistent with the approach that has been taken for Policy NH-P11, which clearly implements Objective NH-O3.

- (c) I consider it important that there is an objective which Policy NH-P10 implements as policies essentially provide the practical means for achieving the goals set out in the objectives.

- 4.4 I therefore recommend that a new objective providing for the operation, maintenance, repair and upgrading of infrastructure within identified natural hazard areas is included, as sought by Top Energy, and outlined in **Attachment 2** and below:

The operation, maintenance, repair and upgrade of existing infrastructure within areas subject to identified natural hazards is enabled to ensure a resilient and reliable network.

Standard NH-S1

- 4.5 Top Energy sought an amendment to NH-S1 to include a requirement to comply with NH-S1 where resource consent is required in the activities table.³

- 4.6 The Reporting Officer notes:⁴

... that NH-S1 is already included as a restricted discretionary activity condition in NH-R7, NH-R8 and NH-R9 which are the rules within the Natural Hazards Chapter that are likely to apply to most activities requiring resource consent (i.e. buildings and structures (including infrastructure) that do not comply with the permitted activity standards and changes in use to accommodate a vulnerable activity). I therefore recommend that this submission is accepted in part.

- 4.7 I agree with the Reporting Officer that there is now a requirement to comply with NH-S1 where resource consent is needed under NH-R7, NH-R8 and NH-R9.

- 4.8 In response to other submissions, the Reporting Officer further notes:⁵

I agree that the natural hazard rules and any associated requirement to prepare and provide an expert assessment under NH-S1 should only apply where the proposed land use is located in the mapped river flood hazard area not the entire site. The recommendation to refer to "River Flood Hazard Area" in the left-hand column effectively does this as that definition makes it clear

³ Submission 483.119.

⁴ Section 42A Report, Natural Hazards, paragraph [256].

⁵ Section 42A Report, Natural Hazards, paragraph [255].

that it only applies to mapped river flood hazard areas. In relation to NH-S1, I consider that this intent can be easily achieved through replacing the reference to "site" with "area" and I also recommend that the reference to matters of control is deleted from the standard as there are no controlled activities in the Natural Hazard Chapter.

4.9 I agree in part with the Reporting Officer's recommended amendments to the wording of NH-S1. I agree with the rationale behind these amendments to clarify that the requirement to prepare and provide an expert assessment should only apply where the proposed land use is located in the mapped river flood hazard area, not the entire site.

4.10 However, I consider that the recommended wording has the potential to add uncertainty as to how far an expert assessment has to go. More specifically I highlight that NH-S1:

- (a) Refers to all areas "potentially affected by natural hazards", whereas the rules that refer to the NH-S16 only relate to River Flood Hazard Areas.⁷ It is therefore logical, in my opinion, that NH-S1 should only refer to a "an area of the site that is located within a mapped River Flood Hazard Area."
- (b) Outlines that a suitably qualified and experienced engineer should address the "matters identified in the relevant objectives, policies..." It is inappropriate in my opinion to require an assessment of objectives and policies from an engineer, who is a technical expert providing a technical statement on engineering matters related to the performance standards and relevant matters of discretion. An assessment of objectives and policies requires an evaluative assessment that is best undertaken by an evaluative expert (e.g., a planner).

4.11 I therefore recommend the following further amendments to NH-S1 to provide additional clarification on this matter:

Any application for a resource consent in relation to **an area of the site** that is **located within a mapped River Flood Hazard Area** ~~potentially affected by natural hazards~~ must be accompanied by a report prepared by a suitably qualified and experienced engineer that addresses the matters identified in the

⁷ NH-R7, NH-R8 and NH-R9.

relevant ~~objectives, policies,~~ performance standards and matters of ~~control~~ discretion.

5 SECTION 32AA EVALUATION

5.1 Section 32AA of the Resource Management Act 1991 (*RMA*) requires further evaluation where changes to provisions are proposed since the original section 32 evaluation was undertaken. I have recommended two amendments to the Natural Hazards Chapter, which are outlined in **Attachment 2**.

5.2 I consider that the recommended amendments to the provisions that I have proposed will be the most appropriate way to achieve the purpose of the RMA in accordance with section 32(1)(a) for the following reasons:

- (a) Sustainable management (Section 5): The recommended amendments will better enable the use and development of existing infrastructure within areas subject to identified natural hazards, which are critical to the health, safety, and social, cultural and economic well-being of people and communities within the Far North District. The changes also provide for environmental protection by recognising the operational and locational constraints associated with these activities and managing potential adverse effects accordingly.
- (b) Enabling functional and operational needs: The recommended amendments better recognise and provide for the functional and operational needs of Top Energy's infrastructure, including flexibility for operation, maintenance, repair and minor upgrades to existing infrastructure within areas subject to identified natural hazards. These are essential to supporting the growth and resilience of electricity supply in the Far North District.
- (c) Appropriate management of effects: The recommended provisions provide an improved framework for managing the adverse effects of infrastructure, with appropriate information requirements in NH-S1. They recognise the need for both robust environmental outcomes and the efficient operation of existing essential infrastructure.

- (d) Costs and benefits: I consider that the benefits of the recommended amendments will outweigh the potential costs. This is because the operational and functional needs of infrastructure within the district (and the benefits they provide) will be better provided for through these amendments, while also ensuring that any adverse effects of infrastructure are appropriately managed.

6 CONCLUDING COMMENTS

- 6.1 I have addressed two outstanding submission points in my evidence. Otherwise, I acknowledge and support many of the recommendations made by the Reporting Officers that align with Top Energy's submission and my own opinion and analysis.
- 6.2 For the reasons outlined above and in the accompanying attachments, I recommend that the amendments proposed in my evidence are adopted. In my opinion, these changes are necessary to give effect to higher order policy documents, promote the sustainable management of natural and physical resources, and provide an enabling yet environmentally responsible framework for existing infrastructure in identified natural hazard areas in the Far North District.

David Eric Badham

6 June 2025

Attachment 1 – Areas of Agreement with the Reporting Officers

Hazardous Substances

- (a) S483.119 – While Top Energy still considers it unnecessary to include rules for the management of hazardous substances given recent direction from Ministry for the Environment and as outlined in the approval of PC91 by Whangārei District Council, it has decided at this stage, to no longer pursue its submission point on this matter.

Natural Hazards

- (b) S483.111 – support the amendment to NH-P10 which aligns with Top Energy’s submission.
- (c) S483.112 – support retention of NH-P11 as notified.
- (d) S483.114 – support amendments to NH-R1.
- (e) S483.115 – support the Reporting Officer’s explanation and wording for NH-R3.
- (f) S483.116 – Top Energy sought that this was retained as notified, but note that the changes recommended do not impact its interests in this rule. Therefore, it supports the Reporting Office’s revised wording.
- (g) S483.117 – Top Energy sought that NH-R6 was retained as notified, but note that the changes recommended do not impact its interests in this rule. Therefore, it supports the Reporting Office’s revised wording.

Attachment 2 – Track Change Version of Provisions

S42A recommended wording = additions underlined text and deletions ~~strikethrough text~~

David Badham recommended wording = additions underlined text deletions ~~strikethrough text~~

Natural Hazards

New Objective

The operation, maintenance, repair and upgrade of existing infrastructure within areas subject to identified natural hazards is enabled to ensure a resilient and reliable network.

NH-S1

Any application for a resource consent in relation to an area ~~site of the site~~ that is ~~potentially affected by natural hazards~~ located within a mapped River Flood Hazard Area must be accompanied by a report prepared by a suitably qualified and experienced engineer that addresses the matters identified in the relevant ~~objectives, policies,~~ performance standards and matters of ~~control/~~discretion.