

**BEFORE THE HEARINGS PANEL**

**UNDER THE**

Resource Management Act 1991

**IN THE MATTER OF**

the Proposed Far North District Plan

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

**HEARING STREAM 16 (Subdivision)**

Planning

14 October 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;
  - (d) Hearing Stream 12 – Historic and Cultural Values - 12 May 2025;  
and
  - (e) Hearing Stream 13 – Hazards and Risk – 6 June 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 16 – Subdivision and in particular it addresses the following:

- (a) Supported recommendations of the Hearing 16 Section 42A Report (*S42A Report*) (Section 3).
- (b) Subdivision 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 Officer for the Subdivision chapter has recommended the acceptance of a number of Top Energy's submission points or has 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 Reporting Officer.

## **4 SUBDIVISION PROVISIONS**

### **Objective SUB-02, New Policy – SUB-PX and Policy SUB-P11**

4.1 Top Energy sought amendments to Objective SUB-02, as follows, to ensure that existing electricity infrastructure is not compromised:<sup>1</sup>

Subdivision provides for the:

*a. Protection of highly production land; ~~and~~*

*b. Protection, restoration or enhancement of Outstanding Natural Features, Outstanding Natural Landscapes, Natural Character of the Coastal*

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<sup>1</sup> Submission 483.163.

*Environment, Areas of High Natural Character, Outstanding Natural Character, wetland, lake and river margins, Significant Natural Areas, Sites and Areas of Significance to Māori, and Historic Heritage; **and***  
 c. **Electricity infrastructure network.**

4.2 The Reporting Officer has recommended rejecting this submission, stating:<sup>2</sup>

"I do not consider the relief sought by Top Energy Limited, to specifically reference the electricity infrastructure network within SUB-O2, to be necessary. The Infrastructure Chapter is a district-wide chapter and provides sufficient policy direction relevant to subdivision applications. In particular, I-O3 protects infrastructure from land use, subdivision, or development that could result in reverse sensitivity, ensuring that it can continue to operate and be maintained effectively. Similarly, I-P6 seeks to ensure that infrastructure, including regionally significant assets, is protected from incompatible land use and subdivision that may compromise its operation or capacity. This includes managing reverse sensitivity effects, locating noise-sensitive activities away from airports, roads, and railways, safeguarding access and clearances for electricity lines and gas pipelines, and applying setbacks and design controls to maintain the safe and effective functioning of local, regional, and nationally significant infrastructure."

4.3 Top Energy also made a submission seeking a new policy as follows:<sup>3</sup>

**Ensure that subdivision and future land uses do not generate reverse sensitivity effects on the electricity network by:**

**Ensuring suitable setbacks are achieved from all electricity infrastructure including by requiring setbacks at the time of subdivision from mapped Critical Electricity Lines.**

4.4 The Reporting Officer has recommended rejecting this submission, noting:<sup>4</sup>

In response to Top Energy's submission, it is not considered necessary to introduce an additional policy within the subdivision chapter. The protection of infrastructure is already appropriately addressed through the objectives and policies in the Infrastructure chapter, particularly under I-P7, which provides sufficient direction. Duplicating this content in the subdivision chapter would be

<sup>2</sup> Section 42A Report, Subdivision, paragraph [443].

<sup>3</sup> Submission 483.165.

<sup>4</sup> Section 42A Report, Subdivision, paragraph [489].

unnecessary and may lead to confusion or inconsistency across chapters.

- 4.5 Top Energy made another submission seeking amendments to Policy SUB-P11 to include the following additional matter of discretion:<sup>5</sup>

**any potential for reverse sensitivity effects on electricity infrastructure.**

- 4.6 The Reporting Officer has recommended rejecting this submission, stating:<sup>6</sup>

The additional matter of discretion requested by Top Energy within SUB-P11 relates to potential reverse sensitivity effects on electricity infrastructure. In my opinion this is not necessary as these matters are covered within the Infrastructure chapter. In particular, as outlined above I-O3 protects infrastructure from land use, subdivision, or development that could result in reverse sensitivity, ensuring that it can continue to operate and be maintained effectively. Similarly, I-P7 seeks to ensure that infrastructure, including regionally significant assets, is protected from incompatible land use and subdivision that may compromise its operation or capacity. Specifically, clause (e) requires that a Critical Electricity Lines Overlay is identified on the planning maps and subdivision, and land use activities are managed in proximity to these lines. The purpose is to ensure network utility operators can access, operate, maintain repair and upgrade the lines, while also avoiding buildings, earthworks, planting, or construction activities that could compromise their operation or safe electrical clearance distances.

- 4.7 I acknowledge that Objective I-O3 and Policy I-P7 in the Infrastructure Chapter do provide for the protection of infrastructure from land use, subdivision or development that may lead to reverse sensitivity effects within the Far North District. Nonetheless, I disagree with the Reporting Officer's recommendations above for the following reasons:

- (a) As notified, there are no objectives or policies within the Subdivision Chapter that give effect to the strong directive in the RPS to "avoid" the potential for reverse sensitivity generally (Policy 5.1.1(e)) and to "avoid" reverse sensitivity on the operation, maintenance or upgrading of existing or planned regionally significant infrastructure (Policy 5.1.3(c)). The directive in section 75(3)(c) of the Resource Management Act 1991 (RMA)

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<sup>5</sup> Submission 483.166.

<sup>6</sup> Section 42A Report, Subdivision, paragraph [449].

is that the PDP **must give effect** to the RPS. While the Reporting Officer has recommended adding "*the potential for reverse sensitivity effects that would prevent or adversely affect activities already established on land from continuing to operate*" as a new matter for subdivision proposals to consider under Policy SUB-P11, I do not consider that this responds to and gives effect to the strong "avoid" directive in Policy 5.1.1(e).

- (b) As outlined in my Hearing 1 Evidence dated 13 May 2024, large components of Top Energy's electricity network meet the definition of 'regionally significant infrastructure' under the RPS. In my opinion the lack of objectives and policies within the Subdivision chapter ensuring that subdivision will avoid the potential for reverse sensitivity on these regionally significant assets clearly does not give effect to the direction sought within the RPS.
- (c) Additionally, Rule SUB-R10 (Subdivision of site within 32m of the centre line of a Critical Electricity Line Overlay) does not presently implement any objectives or policies within the Subdivision chapter. Section 32(1)(b) of the RMA directs examination of "whether the provisions in the proposal are the most appropriate way to achieve the objectives." The objectives of the PDP (and policies which implement the objectives), in other words, set the direction which the provisions must then implement.
- (d) Given the above, I consider it important that the Subdivision Chapter contains objectives and policies which ensure that existing electricity infrastructure is not compromised and the avoidance of reverse sensitivity because objectives and policies are critically important to rules given that they provide the policy intent and strategic direction that rules such as Rule SUB-R10 are designed to implement.

4.8 For these reasons, I have recommended several amendments to the wording of Objective SUB-O2, New Policy – SUB-PX and Policy SUB-P11 in **Attachment 2**, which are generally in alignment with the wording sought by Top Energy in its original submission. In short, these changes seek to ensure that the policy framework within the Subdivision Chapter

aligns with the clear “avoid” directive for reverse sensitivity within the RPS.

### **Rule SUB-R10**

4.9 Top Energy sought amendments to Rule SUB-R10, as follows:<sup>7</sup>

*SUB-R10 Subdivision of a site within 32m of the centre line of Critical Electricity Line*

*Activity status: Restricted Discretionary*

**Where:**

**PER-1**

**The proposed building platforms are identified outside of a 32m setback from the centre line of a CEL.**

**Activity Status where not achieved: Non complying**

4.10 In response to Top Energy’s submission, the Reporting Officer notes:<sup>8</sup>

“The report supports Top Energy’s proposed amendments to SUB-R10, which aims to apply more precise consent requirements for subdivision near **Critical Electricity Lines**. However, it recommends two adjustments: redefining the permitted setback condition as a restricted discretionary standard with a **10m setback** (rather than 32m) and applying a **discretionary activity status** when this isn’t met. These changes align with existing provisions in I-R11 and SUB-R9 and appropriately distinguish between the **national significance** of the National Grid and the **regional importance** of Critical Electricity Lines.”

4.11 I am having difficulty reconciling the Reporting Officer’s statement above, and the actual track changes in Appendix 1 of the Subdivision s42A and the Infrastructure Reporting Officer’s right of reply, which recommends amending Rule SUB-R10 to provide for the following:

- (a) Subdivision of a site within 32m of the centre line of a Critical Electricity Line Overlay (CEL) requires resource consent for a controlled activity, where proposed building platforms comply with the safe distance requirements in the New Zealand Electrical Code of Practice for Safe Electrical Distances (except where

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<sup>7</sup> Submission 483.168.

<sup>8</sup> Section 42A Report, Subdivision, paragraph [625].

allotments are for roads, esplanades, accessways and infrastructure); and

(b) Activity status where compliance is not achieved is Discretionary.

4.12 Notwithstanding the above, I have reconsidered the position I held on Rule SUB-R10 within Hearing 11<sup>9</sup> and confirm the following:

- (a) I now agree with the revised wording of clause 1 which specifically references the safe distance requirements in the New Zealand Electrical Code of Practice for Safe Electrical Distances (NZECP34:2001). On review, I consider that this wording is clearer and more appropriate than what was outlined in Top Energy's submission and my evidence in chief for Hearing 11.<sup>10</sup>
- (b) I oppose the revised controlled activity status, and consider that a restricted discretionary activity status should apply for SUB-R10. In my opinion, subdivision of new land within proximity to Critical Electricity Lines is a different consideration to new buildings. Subdivision often includes the creation of additional development rights, including the encroachment of sensitive residential activities to these existing lines that are recognised as regionally significant infrastructure within the RPS. That is why it is important that there is an overall restricted discretionary activity requirement within the 32m setback within this rule.
- (c) I oppose the discretionary activity status where compliance with the criteria is not meet. If a building platform is proposed to be located within the 32m setback that does not comply with the NZECP34:2001, then I consider that a non-complying activity status should apply because:
  - (i) This acknowledges the status of the Critical Electricity Lines Overlay as "regionally significant infrastructure" in the RPS, but also to give effect to the strong direction

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<sup>9</sup> Refer to my evidence in chief for Hearing 11 dated 14 April 2025, paragraphs 6.43 – 6.49 on pages 29-30, and my further summary statement dated 29 April 2025.

<sup>10</sup> Refer to Attachment 2, page 54 of my evidence in chief for Hearing 11.

within the RPS relating to reverse sensitivity, and the strong 'avoid' directive in policies 5.1.1(e) and 5.1.3(c) of the RPS which I have discussed earlier.

- (ii) I disagree that a different threshold should apply to the National Grid in SUB-R9 because of the national significance of the National Grid compared to the regional significance of the Critical Electricity Lines. The direction within the RPS, which must be given effect to in the PDP, applies to regionally significant infrastructure and reverse sensitivity broadly, without any specific reference or weight given to the National Grid over Critical Electricity lines or other regionally significant infrastructure.
- (iii) A non-complying activity status ensures that these proposals are subject to greater scrutiny, consistent with section 104D of the RMA, which sets a higher threshold for resource consents to be granted. This approach reinforces the importance of protecting infrastructure and aligns with the RPS's directive to avoid adverse reverse sensitivity effects that could compromise its ongoing operation.

4.13 For the above reasons, I therefore recommend that SUB-R10 is amended as outlined in **Attachment 2**.

### **SUB-S6 Power Supply**

4.14 Top Energy supported the requirement for connection to electricity supply at the boundary of the site area of the allotment for the zones specified, but sought additional zones are added and that SUB-S6 also included the following (or to similar effect):<sup>11</sup>

***"Easements shall be provided to the boundary of the site area of the allotment to facilitate future connection"***

4.15 The Reporting Officer has recommended the rejection of this submission point as follows:

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<sup>11</sup> S483.169.

*"The relief sought by Top Energy relates to SUB-R6. The submitter requests a provision is added to this rule in relation to all zones that requires easements to be provided to the boundary of the allotment to facilitate future connection. In my opinion this is not required because SUB-R6 requires compliance with the relevant standards including SUB-S7 (Easements for any purpose). This standard requires that easements must be provided where required for public works, utility services, or Council access, as well as for nominated allotments or adjoining titles. Easements (in gross or private) must be wide enough for service maintenance, repair, or replacement. Easements may also be needed for accessways, stormwater, wastewater, water supply, utilities, and for party walls or floors/ceilings."*

4.16 I consider that the Reporting Officer has not properly understood or considered Top Energy's submission point. For instance, no response has been provided to the request to add additional zones. Furthermore, as it relates to easements, these are for facilitating a "future connection" rather than just providing for an easement for an existing connection or utility as is addressed within SUB-S7.

4.17 In my opinion, SUB-S6 should be redrafted as outlined in **Attachment 2**:

- (a) To refer to all zones. In my opinion, the provision of a power supply is an important consideration for any zone, and I do not consider that any justification has been provided for this to only apply in certain zones as suggested by the Reporting Officer. If a power supply cannot be provided, then alternative provision of electricity supply can be considered as a restricted discretionary activity.
- (b) To refer to "Every new allotment (excluding any allotments for access, roads, network utilities or reserves)." This brings the exemption for these allotments into the wording of the rule, so that the exemption applies, rather than being an "advice note" that could be potentially ignored.
- (c) To state "provided with a connection, or easements to secure connection, to a reticulated electrical supply system at the boundary of the new allotment." This gives an applicant flexibility to either provide a physical connection or easement to

secure the future connection. This is also consistent with the approach taken in the Whangārei District Plan.<sup>12</sup>

## 5 SECTION 32AA EVALUATION

5.1 Section 32AA of the RMA requires further evaluation where changes to provisions are proposed since the original section 32 evaluation was undertaken. I have recommended several amendments to the Subdivision 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 protection of existing and planned infrastructure from incompatible land uses and reverse sensitivity effects, which is a physical resource that is critical to the health, safety, and social, cultural and economic well-being of people and communities within the Far North District.
- (b) The recommended provisions will specifically give effect to the RPS provisions, specifically regarding the directive for subdivision to “avoid” reverse sensitivity effects in policies 5.1.1(e) and 5.1.3(c) in accordance with the direction in section 75(3)(c) of the RMA.
- (c) 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

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<sup>12</sup> See SUB-R2 Any Subdivision in the Subdivision Chapter of the Whangārei District Plan.

- 6.1 Overall, I consider that there are several issues outstanding from Top Energy's submission relating to Subdivision that need to be addressed by the Hearings Panel. These primarily relate to ensuring that the existing electricity infrastructure is not compromised by incompatible land uses and that the potential for reverse sensitivity effects from subdivision on infrastructure is avoided.
- 6.2 While the Reporting Officer has made a number of amendments to assist with achieving these outcomes, I consider that further changes are needed as I have outlined in **Attachment 2** of this evidence statement.

**David Eric Badham**

**14 October 2025**

**Attachment 1 – Areas of Agreement with the Reporting Officer**

**Subdivision**

- (a) S483.164 – while Top Energy supported the objective as notified, support the amendment to Objective SUB-O3 which makes the wording of the objective clearer and more directive.
- (b) S483.167 – while Top Energy supported the rule as notified, support the rewording of the rule in accordance with the interests of Transpower and the National Grid.

**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~~**

## Subdivision

### Objective SUB-O2

Subdivision **recognises and** provides for the:

**~~a. Protection of highly productive land; and~~**

b. **P**protection, restoration or enhancement of Outstanding Natural Features, Outstanding Natural Landscapes, Natural Character of the Coastal Environment, **~~Areas of High Natural Character, Outstanding Natural Character,~~** wetland, lake and river margins, **~~Significant Natural Areas~~ areas of significant indigenous vegetation and significant habitats of indigenous fauna**, Sites and Areas of Significance to Māori, and Historic Heritage; **and**

**c. Protection of existing electricity infrastructure, in particular the mapped Critical Electricity Line Overlay.**

### Policy SUB-P11

**Consider the following matters where relevant when assessing and managing the effects of subdivision: Manage subdivision to address the effects of the activity requiring resource consent including (but not limited to) consideration of the following matters where relevant to the application:**

- a. **The potential for reverse sensitivity effects on that would prevent or adversely affect activities existing infrastructure, including electricity infrastructure, already established on land from continuing to operate;**
- b. Consistency with the scale, density, design and character of the environment and purpose of the zone;
- c. The location, scale and design of buildings and structures;
- d. The adequacy and capacity of available or programmed development infrastructure to accommodate the proposed activity; or the capacity of the site to cater for on-site infrastructure associated with the proposed activity;
- e. Managing natural hazards;
- f. Any adverse effects on areas with historic heritage and cultural values, natural features and landscapes, natural character or indigenous biodiversity values; and

- g. Any historical, spiritual, or cultural association held by tangata whenua, with regard to the matters set out in Policy TW-P6.

### **New Policy**

### **Policy SUB-PX**

**Ensure that subdivision and future land uses avoid the potential for reverse sensitivity effects on infrastructure and regionally significant infrastructure by:**

- a. Ensuring suitable setbacks are achieved at the time of subdivision from the mapped Critical Electricity Line Overlay.**

### **Rule SUB-R10 – Subdivision of a site within 32m of the centre line of a Critical Electricity Line Overlay**

Activity status: **Controlled** **Restricted Discretionary**

### **Where:**

### **CON-1RDIS- 1**

**Proposed building platforms are identified for each allotment can accommodate a building(s) that comply with the safe distance requirements in the New Zealand Electrical Code of Practice for Safe Electricity Distances (NZECP34:2001) (except where the allotments are for roads, esplanades, accessways and infrastructure).**

### **Matters of discretion are restricted to:**

- a. the safe and efficient operation and maintenance of the electricity supply network;
- b. the location of any future building and access as it relates to the critical electricity line;
- c. effects on access to critical electricity lines and associated infrastructure for inspections, maintenance and upgrading purposes;
- d. the extent to which the subdivision design allows for any future sensitive activity and associated buildings to be setback from the critical electricity line;
- e. the mature size, growth rate, location, and fall zone of any associated tree planting;

- f. including landscape planting and shelterbelts;
- g. compliance with NZECP 34: 2001 New Zealand Electricity Code of Practice for Electricity Safe Distances;
- h. effects on public health and safety; and
- i. the outcome of any consultation with the owner and operator of the potentially affected infrastructure.

Activity Status where not achieved **CON-1 with RDIS-1: Not applicable:**  
**Discretionary Non complying**

#### **SUB-S6 – Telecommunications and Power Supply**

**General Residential Zone**

**Medium Density Residential Zone**

**Town Centre Zone**

**Kororareka-Russell Township Zone**

**Mixed Use Zone**

**Light Industrial Zone**

**Heavy Industrial Zone**

**Settlement Zone**

**Rural Residential Zone**

**Horticultural Zone**

**All Zones**

**Every new allotment (excluding any allotments for access, roads, network utilities or reserves) is provided with a connection, or easements to secure connection, to a reticulated electrical supply system at the boundary of the new allotment.**

**Connections and easements shall be provided at the boundary of the site area of the allotment for:**

**1. Telecommunications:**

**i. Fibre where is available; or**

**ii. Copper where fibre is not available; and**

**2. Electricity supply through the local electricity distribution network.**

**Note: This standard does not apply to allotments used for a utility, road, reserve or for access purposes.**