

BEFORE THE HEARINGS PANEL

UNDER

the Resource Management Act
1991 (**RMA**)

IN THE MATTER OF

the Proposed Far North District
Plan (**PDP**)

STATEMENT OF EVIDENCE OF DAVID BADHAM ON BEHALF OF TOP ENERGY

PLANNING

22 July 2024

1. SUMMARY OF EVIDENCE

- 1.1 This evidence has been prepared on behalf of Top Energy Limited (**Top Energy**) as it relates to its submission and further submission on the PDP - Hearing Stream 4, Natural Environment Values & Coastal Environment. My evidence focuses on responses to the recommendations in the Natural Character, Natural Features and Landscapes, Coastal Environment and Ecosystems and Indigenous Biodiversity Section 42A Hearing Reports (**s42A**).
- 1.2 The spatial extent of these overlays across the Far North district is extensive, and there are significant overlaps with Top Energy's electricity distribution network as demonstrated in the maps provided in **Attachment 1** and **Attachment 2**. From Top Energy's perspective, it is imperative that the provisions of the applicable chapters adequately provide for the operational and functional need for infrastructure and network utilities to be located within these areas.
- 1.3 In summary, I consider that the Reporting Officers¹ for Far North District Council (**Council**) on these topics have made a number of constructive recommendations, including several that agree or agree in part with Top Energy's submission. Despite this, a number of areas remain where I disagree with the recommendations of the Reporting Officers, and consider that further amendments or analysis are required. These specifically relate to:

¹ I note there are two authors for the four separate s42A for Hearing Stream 4.

- (a) **Additional objectives and policies.** Given the importance of Top Energy's network to the economic and social wellbeing of business and communities within the Far North district, it is imperative that there is adequate recognition and provision for that network in the applicable objectives and policies. The Reporting Officers have opined that such objectives and policies are more appropriately included in the Infrastructure Chapter. If that is the structural preference of Council, then Top Energy's submission points in this regard should be deferred to Hearing 12 – Energy, Infrastructure and Transport, where they can be considered on their merits alongside Top Energy's other submission points on that topic. In the meantime, I recommend that an advice note is included in each of the chapters highlighting that objectives and policies for infrastructure are located in the Infrastructure Chapter.
- (b) **Issues associated with the Ecosystems and Indigenous Biodiversity Chapter.** This relates to inconsistent references to infrastructure in policies compared to the other chapters and the use of the term "minimum necessary."
- (c) **Rules relating to new buildings or structures, and extensions or alterations to existing buildings or structures.** This includes issues associated with the imposition of restrictions relating to a 10m height limit, the replacement of single poles with pi-poles and 20% gross floor area. I also consider that there are further issues relating to the inconsistent use of terminology, matters of discretion and activity status.
- (d) **Repair and maintenance rules.** The Reporting Officers have recommended that these be deleted across the four chapters, which I disagree with, and consider should be retained.
- (e) **Earthworks and indigenous vegetation clearance rules.** There are issues in terms of cross references to other rules, activity status and reference to "minimum necessary".
- (f) **Other matters.** In my opinion, all of the rules across the four chapters would benefit from more consistent and logical use of numbering conventions and the use of "and" and "or".

1.4 Rather than seeking to comprehensively redraft the provisions within my evidence, I consider that it would be of greater benefit to the Hearings Panel if the Reporting Officers and any other planning experts, including myself, who have circulated

evidence on the infrastructure related provisions, undertake expert caucusing, either prior to the hearing, or following the hearing to allow evidence to be heard on these matters. I confirm that I am available to participate in expert caucusing on these matters as directed by the Hearings Panel.

2. INTRODUCTION

2.1 My full name is David Eric Badham. I am a Partner and Northland Manager of Barker and Associates (**B&A**), 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.

Qualifications and experience

2.2 I have a Bachelor of Planning with Honours (1st Class) from the University of Auckland (2010). I have been a Full Member of the New Zealand Planning Institute since April 2015.

2.3 I prepared a brief of evidence dated 13 May 2024 which addressed planning matters in relation to Hearing Stream 1 – Strategic Direction, Tangata Whenua and Part 1 / General / Miscellaneous on behalf of Top Energy. I have the qualifications and experience as set out in my evidence for Hearing Stream 1 and further detail on my experience and expertise is set out in Attachment 1 to that brief of evidence.

Purpose and scope of evidence

2.4 This evidence addresses the submission (#483) and further submission (#FS369) by Top Energy on the PDP.

2.5 My evidence addresses the following topics:

- (a) My involvement with the PDP on behalf of Top Energy (Section 3).
- (b) The relationship between Top Energy's network and the Overlays (Section 4).
- (c) Additional objectives and policies (Section 5).
- (d) Ecosystems and indigenous biodiversity (Section 6).
- (e) New buildings or structures, and extensions or alterations to existing buildings or structures rules (Section 7).

- (f) Repairs and maintenance rules (Section 8).
- (g) Earthworks and indigenous biodiversity vegetation clearance rules (Section 9).
- (h) Other matters (Section 10).
- (i) Section 32AA evaluation (Section 11).
- (j) Conclusion (Section 12).

Code of conduct

2.6 I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023. Although this is not an Environment Court hearing, I have complied with the Code of Conduct in preparing this statement of evidence. My qualifications as an expert are set out in my brief of evidence dated 13 May 2024 for Hearing Stream 1. 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.

2.7 B&A staff have previously assisted the Council with the formulation of section 32 evaluations for a number of PDP topics prior to the notification of the PDP. That engagement did not carry forward post notification of the PDP. In regard to these matters, I confirm the following:

- (a) B&A is an independent planning consultancy providing planning and resource management advice and services. B&A act on behalf of a number of private and public clients throughout the country.
- (b) I was not involved in the preparation of provisions, the section 32 evaluation or any advice following notification for the Natural Environment Values and Coastal Environment Topics that are part of Hearing Stream 4.

2.8 Noting the above, I have no conflict of interest to declare in regard to the preparation of this evidence, the hearing of these topics, or my future engagement in relation to those topics as part of the PDP review.

3. INVOLVEMENT WITH PDP ON BEHALF OF TOP ENERGY

3.1 I have been engaged by Top Energy since early 2021 to provide independent planning evidence on the PDP, including assisting with:

- (a) preparing written feedback on the draft PDP;
- (b) preparing Top Energy's original submission on the PDP;
- (c) preparing Top Energy's further submission on the PDP; and
- (d) ongoing planning advice associated with those submissions and the hearings relating to those submissions.

3.2 I confirm that I have reviewed the Natural Character, Natural Features and Landscapes, Coastal Environment and Ecosystems and Indigenous Biodiversity s42A reports.

4. THE RELATIONSHIP BETWEEN TOP ENERGY'S NETWORK AND THE OVERLAYS

4.1 As outlined in Mr Doherty's Corporate evidence statement for Top Energy filed in respect of Hearing Stream 1, Top Energy's current electricity network in the Far North district is extensive, with total system length of 4,228km.²

4.2 The Far North district is one of the largest and most dispersed district's in New Zealand. As such, Top Energy's network services a wide range of communities and business throughout the Far North, which inevitably coincide with the various Natural Environment and Coastal Environment Overlays and areas of indigenous biodiversity, that are the focus of Hearing 4. In my opinion, it is important to understand this context, as it forms the basis for Top Energy's interest in the relevant provisions and the desire to ensure that they adequately provide for the operational and functional need³ of infrastructure and network utilities to be located within them.

4.3 To visually depict the extent of this relationship, Top Energy has prepared the following maps:

- (a) **Figure 1** – This depicts the various Natural Environment Overlays as they relate to Top Energy's 110kV, 33kV and 11kV electricity lines. At a high level,

² See paragraph 3.2 – 3.3 and Figure 1 of Mr Doherty's evidence statement filed on 13 May 2024.

³ Noting that Top Energy's submission supported the proposed definition of "Functional Need" in the PDP (see S483.005) and sought a new definition of "Operational Need" to be added (see S483.020).

it is clear from this map that there is a significant overlap between Top Energy's existing assets and these Natural Environment Overlays.

- (b) **Figure 2** – This depicts the various Natural Environment Overlays as they relate to Top Energy's 110kV, 33kV and 11kV electricity lines. At the scale of the map, the relationship is harder to demonstrate clearly, but there is a high level of interaction between Top Energy's network and the Coastal Environment Overlay in the various coastal settlements throughout the Far North.

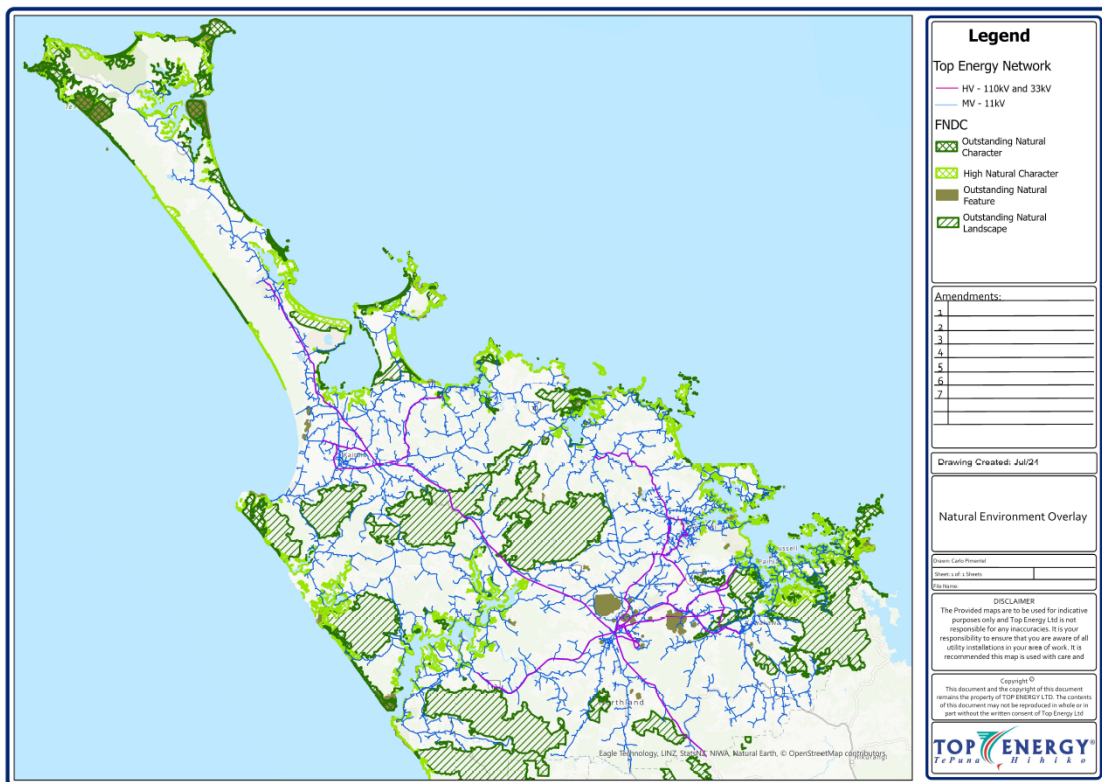


Figure 1: Natural Environment Overlays as they relate to Top Energy's Network (Source: Top Energy – full scale version available in **Attachment 1**).

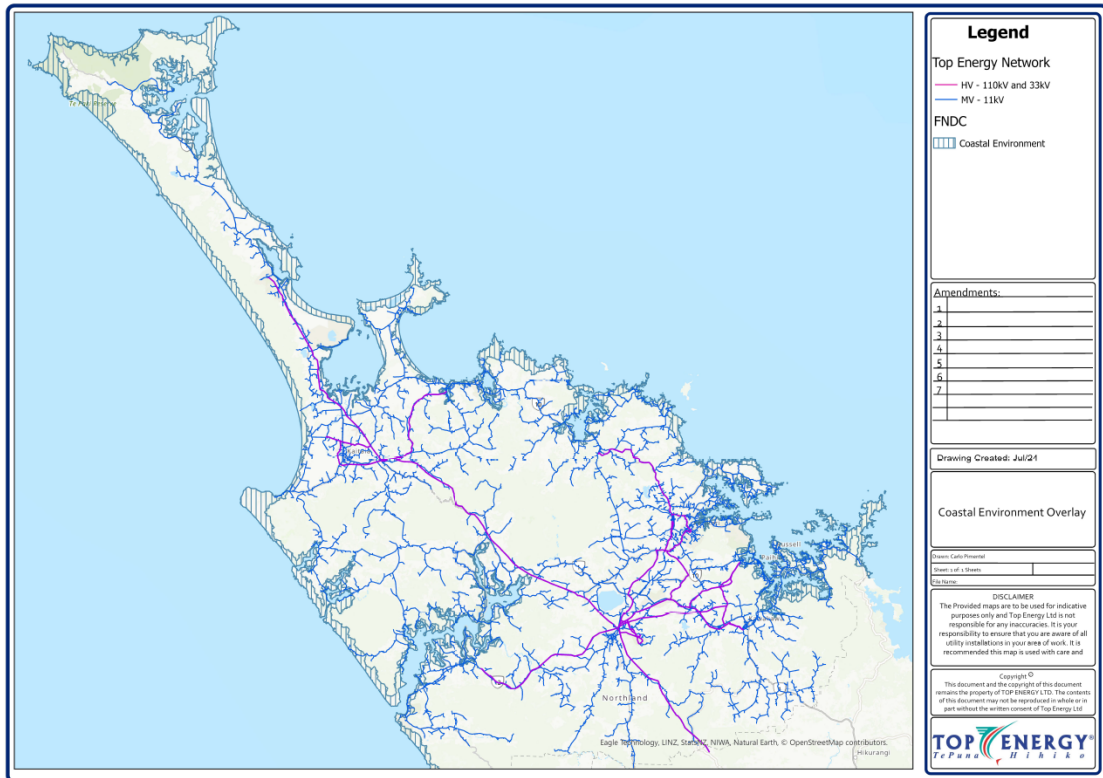


Figure 2: Coastal Environment Overlay as it relates to Top Energy's Network (Source: Top Energy – full scale version available in **Attachment 2**).

4.4 In terms of the Ecosystems & Indigenous Biodiversity chapter and provisions, there is no spatial mapping as Council had not mapped Significant Natural Areas (**SNAs**) as part of the PDP. As such, it is not possible to currently display spatial the relationship between Top Energy's network and areas of significant ecosystems and indigenous biodiversity. Nevertheless, based on the large extent of such areas throughout the Far North, it is inevitable in my opinion that there will be a significant overlap with Top Energy's network.

5. ADDITIONAL OBJECTIVES AND POLICIES

5.1 Top Energy made a number of similar submissions⁴ seeking the inclusion of additional objectives and policies to provide for the operation, maintenance, repair and upgrading of the electricity distribution network in the various Natural Environment Values, Coastal Environment and Ecosystems and Indigenous Biodiversity chapters. The primary reasoning for these submissions is that it is critical that the existing network can

⁴ Natural Character S483.151 – 252; Natural Features and Landscapes S483.032 – 054; Coastal Environment S483.032 – 052; Ecosystems and Indigenous Biodiversity S483.145 – 146.

operate without unnecessary constraints, and can be maintained, repaired and upgraded to ensure the continued resilience of the lifeline service to the district.

- 5.2 The Reporting Officers have accepted in part these submissions but have not recommended any changes or additional objectives and policies, on the basis that they consider objectives and policies relating to infrastructure are best located in the Infrastructure chapter, and that the objectives and policies will be relevant to infrastructure activities regardless of their location in the PDP.⁵
- 5.3 I accept and agree that objectives and policies for infrastructure are best located in the Infrastructure Chapter.
- 5.4 Hearing Stream 4 does not include the Infrastructure chapter as an applicable topic. Top Energy's submission⁶ identifies a number of issues with the objectives and policies of the Infrastructure chapter, however there is no scope to consider amendments to those provisions within this hearing. In my opinion, this is symptomatic of the approach that Council has elected to take to the hearings timetable being split across a large number of topics and extended timeframes. In my view, this makes it challenging to achieve integration across the PDP, in particular the chapters in the Part 2 District-Wide Matters Section which deal with a number of matters which often conflict with one another.
- 5.5 The Reporting Officers have recommended that Top Energy's submission points be "accepted in part." I do not consider that the recommendation to "accept in part" is applicable to Top Energy's submissions requesting additional objectives and policies. No changes have been recommended by the Reporting Officers to the objectives and policies on the basis that these are better addressed in the Infrastructure chapter. On this basis, it is my view that these submissions are actually better deferred to Hearing 12 – Energy, Infrastructure and Transport, where they can be considered on their merits alongside Top Energy's other submission points on that topic, and appropriate revisions can be made.
- 5.6 In the meantime, noting how crucial these objectives and policies are in order to adequately recognise and provide for the operational and functional need for infrastructure in the Natural Features and Landscapes, Natural Character, Coastal Environment and Ecosystems and Indigenous Biodiversity chapters, I consider that a

⁵ Natural Character s42A Report paras 119 – 122.

⁶ Namely S483.032 – 483.052 of Top Energy's original submission.

clear advice note should be added to the overview or notes section of each chapter as outlined below. I note that similar notes and cross references are used throughout the PDP, including within the proposed chapters.

5.7 My recommended wording is:

“Objectives and policies for infrastructure as it relates to *[insert applicable term e.g., natural character]* are located within the Infrastructure Chapter”

6. ECOSYSTEMS AND INDIGENOUS BIODIVERSITY

Deletion of references to Significant Natural Areas

6.1 Top Energy’s submission⁷ sought the deletion of references to “Significant Natural Areas” within the Ecosystems and Indigenous Biodiversity chapter in the absence of these being mapped as part of the PDP. The Reporting Officer has recommended this, and I am supportive of this recommendation given the context of the mapping not yet being finalised.

Objectives and Policies

6.2 I have generally addressed the Reporting Officer’s position⁸ that Top Energy’s submissions relating to the objectives and policies relating to infrastructure should be addressed in the Infrastructure chapter in section 5 above. Notwithstanding that, I note that the IB-P5 does include reference to infrastructure as I have highlighted below:

“Ensure that the management of land use and subdivision to protect areas of significant indigenous vegetation and significant habitat of indigenous fauna ~~Significant Natural Areas~~ and maintain indigenous biodiversity is done in a way that:

a. does not ~~impose~~ unreasonable restrictions on existing primary production activities, particularly on highly productive land ~~versatile soils~~;

b. recognises the operational need and functional need of ~~some activities, including~~ regionally significant infrastructure, to be located within areas of significant indigenous vegetation and significant habitat of indigenous fauna ~~Significant Natural Areas~~ in some circumstances;

c. allows for maintenance, use and operation of existing structures, including upgrading of regionally significant infrastructure; and

⁷ S483.148.

⁸ See paragraph 117 of the Ecosystems and Indigenous Biodiversity s42A.

d. enables Māori land to be used and developed to support the social, economic and cultural well-being of tangata whenua, including the provision of papakāinga, marae and associated residential units **and infrastructure.**”

- 6.3 I support the recognition of infrastructure, including regionally significant infrastructure, in this policy. However, it seems contrary to the Reporting Officer’s position that the Infrastructure chapter is where specific provisions relating to infrastructure should be located, rather than across numerous chapters in the PDP. If this recognition of regionally significant infrastructure is included in the Ecosystems and Indigenous Biodiversity chapter but not elsewhere, then future readers of the PDP may interpret that as a lack of support for infrastructure in other chapters/overlay areas.
- 6.4 For that reason, I consider that this approach should be consistently applied across the other chapters to include a similar recognition of the operational and functional need of infrastructure. Furthermore, given the direction in SD-IE-O1, I consider that this direction should recognise both infrastructure and regionally significant infrastructure.

IB-R1 Specified Activities

- 6.5 Alongside existing clause 14, I support the inclusion of a new clause 13 to PER-1 of this rule which states:

PER-1 It is the minimum necessary for any of the following:

13. The upgrade of lawfully established existing infrastructure:

~~14. It is for t~~The operation, repair and maintenance of the following activities where they have been lawfully established:

- i. fences;
- ii. infrastructure;
- iii. buildings;
- iv. driveways and access;
- v. walking tracks;
- vi. cycling tracks; or
- vii. farming tracks.

- 6.6 In my opinion, the above two clauses provide for the necessary operation, repair, maintenance and upgrading of infrastructure to the extent that requires indigenous vegetation pruning, trimming and clearance and any associated land disturbance.

“Minimum necessary”

- 6.7 I do not support the addition of “minimum necessary” at the start of PER-1. I question the “vires” of this, and consider that this language is simply unworkable in a permitted activity standard. This appears to be acknowledged by the Reporting Officer:⁹

While this is somewhat subjective and will need to be determined on case-by-case basis, it will help to reduce the risk of IB-R1 being used to undertake excessive indigenous vegetation clearance and also sends a clear message to landowners on the intent of the rule to minimise the amount of clearance undertaken.

- 6.8 I consider that there is significant ambiguity within the wording and how a plan user would be able to reasonably determine, without an element of discretion or judgement, that an activity complies with this clause. In my opinion, a case-by-case assessment as suggested by the Reporting Officer, is entirely inappropriate within a permitted activity requirement, and will therefore risk significant additional time, cost and delay associated with interpretation, litigation or enforcement of activities undertaken in reliance on this rule. It is best practice when drafting plan provisions to ensure that rules are worded clearly enough to enable the plan user to judge the meaning and effect of the rule at face value, e.g., without having to resort to seeking advice from those who wrote it – in my opinion, this drafting fails to adhere to that principle.
- 6.9 On this basis, I recommend that “the minimum necessary” is deleted from the clause.

7. NEW BUILDINGS OR STRUCTURES, AND EXTENSIONS OR ALTERATIONS TO EXISTING BUILDINGS OR STRUCTURES RULES

- 7.1 Top Energy’s submission¹⁰ sought amendments across the Natural Features and Landscapes, Natural Character and Coastal Environment chapters to allow for network utilities of an appropriate scale to locate and operate within these Overlays. Each of these chapters include a rule relating to new buildings or structures, and extensions or alterations to existing buildings or structures within these identified Overlays.¹¹ The primary reasoning for this is that electricity infrastructure is a critical component to ensuring a resilient, well-connected community.

⁹ Paragraph 275 of the IB s42A.

¹⁰ Natural Character S483.154; Natural Features & Landscapes S483.158; Coastal Environment S483.172.

¹¹ See NFL-R1, NATC-R1 and CE-R1.

7.2 While there is nuance among the submission points raised and the wording of each of the applicable rules, below I first discuss the matter generally given the consistency in response and recommended changes of the Reporting Officers. I then raise specific issues with the drafting of the applicable rule as they relate to each chapter.

Examples of New Restrictions

7.3 The Reporting Officers have helpfully accepted that the Overlay provisions should better recognise and enable network utilities given the economic and community benefits of such infrastructure, but that this recognition must be balanced with other policy directives regarding potential adverse effects on these sensitive Overlays. With reference to the Melean Absolum Limited (**MAL**) Report, the Reporting Officers have recommended a number of consistent restrictions across the applicable rules in each chapter, including:

- (a) A 10m height limit for upgrades to network utilities¹² and infrastructure within a road corridor.¹³
- (b) Not replacing a single pole with a pi-pole¹⁴ or a steel lattice tower.¹⁵
- (c) A restriction of no greater than 20% Gross Floor Area of the existing lawfully established building or structure.¹⁶

7.4 I consider that there are a number of practical issues with the limits recommended by the Reporting Officers based on the advice within the MAL Report. In my opinion, the recommended limits will inappropriately constrain the operational and functional needs of Top Energy and other infrastructure providers.

10m Height Restriction

¹² Coastal Environment CE-R1 PER-4.b.iii, Natural Character NATC-R1 PER-2.11.a and Natural Features and Landscapes NFL-R1 PER-3.3.c.

¹³ Natural Features and Landscapes NFL-R1 PER-3.2.

¹⁴ Coastal Environment CE-R1 PER-4.b.v, Natural Character NATC-R1 PER-2.11.c and Natural Features and Landscapes NFL-R1 PER-3.3.e.

¹⁵ See Natural Character NATC-R1 PER-2 8(b), Natural Features & Landscapes NFL-R1 PER-3 2(b).

¹⁶ Natural Character NATC-R1 PER-2 11(b), Natural Features & Landscapes NFL-R1 PER-3. 3(d), Coastal Environment CE-R1 PER-3. 1.

- 7.5 By way of example, the 10m height restriction is an arbitrary maximum height with no consideration of the needs of any network utility provider. The recommended limit appears to be based solely on the statement in the MAL Report that this would be “acceptable”,¹⁷ with no detail or technical basis provided to demonstrate why this acceptable, e.g., why structures above that limit would result in an unacceptable effect that outweighed the functional needs of the network.
- 7.6 More specifically, Top Energy has advised that a standard replacement pole height is 12.5m, based on recent specifications and operational and functional requirements for electricity infrastructure. In my opinion, establishing a permitted height rule that does not accommodate a standard pole height simply imposes an unnecessary consenting requirement, adding cost and delay despite the absence of alternatives.

Poles and Pi Poles

- 7.7 While I understand that Top Energy replaces pi-poles with singular poles on most occasions, there are situations where a pi-pole replacement is required from a structural and operational perspective e.g., such as to allow a greater span distance between poles. Where that occurs, I understand that this generally results in less poles being required in a landscape, reducing overall effects. Where there is already the presence of an electricity line in an existing environment, and there is a clear operational and functional need to replace that with a pi-pole of the same height in a similar location, imposing an additional consenting requirement again simply adding unnecessary cost and delay without a clear effects based justification for doing so.

20% GFA Limit

- 7.8 It is not clear in my opinion, how and whether the recommended 20% GFA limit would be applied to existing network poles. The definition of Structure and GFA are relevant to consider. Structure is proposed to have the same meaning as the RMA:

means any building, equipment, device, or other facility, made by people and which is fixed to land; and includes any raft.

¹⁷ See third paragraph on page 51 of the MAL Report.

7.9 Gross Floor Area:

means the sum of the total area of all floors of a building or buildings (including any void area in each of those floors, such as service shafts, liftwells or stairwells), measured:

- (i) where there are exterior walls, from the exterior faces of those exterior walls;
- (ii) where there are walls separating two buildings, from the centre lines of the walls separating the two buildings;
- (iii) where a wall or walls are lacking (for example, a mezzanine floor) and the edge of the floor is discernible, from the edge of the floor.

7.10 In my opinion, the definition of “structure” is broad and a power pole would fit within this definition. Yet when looking at the definition of GFA, it is difficult to consider how this would be applied to a power pole structure, which will generally only have a small footprint, and an increase in excess of 20% would be difficult to discern from the wider environment in my opinion. I also consider there will be a number of other structures that will encounter the same difficulty. In my opinion, power poles, transformers, equipment cabinets and other such infrastructure for network utilities should be specifically excluded from this rule.

Use of terminology

7.11 The rules also include inconsistent use of terminology across the chapters with no clear reasoning as to why different terminology is necessary.

7.12 For instance, the various rules refer to the upgrading of an “existing network utility”,¹⁸ “existing electricity network utilities”¹⁹ and “above ground network utility”.²⁰ It is not clear in my opinion why each of these rules, which seek to manage similar matters, use slightly different terminology and this inconsistency may result in unintended consequences for future interpretation of the PDP. I consider that the terminology should be consistent across all of the provisions, and simply refer to “above ground network utilities” as “network utility” is the relevant defined term, and within the

¹⁸ Coastal Environment Chapter – CE-R1-PER-4.b.

¹⁹ Natural Features and Landscape Chapter – NFL-R1-PER-3.3.

²⁰ Natural Character Chapter – NATC-R1-PER-2.11.

applicable overlays below ground network utilities would not result in any visual and landscape effects.

- 7.13 There is no definition of “upgrade” currently proposed within the PDP. Top Energy sought a definition of “upgrading” in its submission.²¹ The submission noted the importance of the term for the infrastructure related provisions throughout the PDP, and Top Energy’s preference for the inclusion of a definition to avoid confusion and improve consistency in application. The definition sought is:

Means an increase in the capacity, efficiency or security of existing infrastructure.

- 7.14 I am supportive of the use of term “upgrade” within the applicable rules. My preference would be that this term is defined as sought by Top Energy or consequentially amended based on further consideration. If this is not defined, then I consider that further amendments to the provisions throughout the PDP may be necessary. While I understand that submissions on definitions will not be heard until Hearing 18 Interpretation & Mapping scheduled in August 2025, I consider that this is relevant in the context of the consideration of these rules, and other provisions that will be heard in other topics (such as the Infrastructure chapter).

Matters of discretion

- 7.15 In my opinion, the matters of discretion when compliance is not achieved do not adequately provide for the operational and functional need of infrastructure and network utilities. Each of the rules has recommended that the matters of discretion include:
- (a) Reference the matters in NATC-P6, CE-P10 and NFL-P8.
 - (b) The positive effects of the activity.
- 7.16 I consider that the additional recognition of “the positive effects of the activity” is appropriate to balance the consideration of potential adverse effects on the relevant Overlay.
- 7.17 Regarding the reference to NATC-P6, CE-P10 and NFL-P8 I consider that this is also useful as each of these policies generally include a matter that states:

²¹ S483.021.

the operational or functional need of any regionally significant infrastructure to be sited in the particular location.

- 7.18 However, this only refers to “regionally significant infrastructure” and not “infrastructure”. There is a proposed definition of “regionally significant infrastructure” in the PDP with reference to the definition provided in the Northland Regional Policy Statement (**RPS**). Given that SD-IE-O1 refers to “infrastructure” more generally, I consider that it would be more appropriate that this policy, or the applicable matter of discretion within the rules refer to:

the operational or functional need of **infrastructure** to be sited in the particular location.

Natural Character NATC-R1

- 7.19 The title of the rule includes “new buildings or structures” however, it does not clearly specify new network utilities or infrastructure. This is despite the PER-2 of the rule itself including the addition of clause 8 which states:

The building or structure, or extension or alteration to an existing building or structure on wetland, lake and river margins is:

...

8. Infrastructure less than 10m high within a road corridor, provided any pole

a. is a single pole (monopole), and

b. is not a pi-pole or a steel-lattice tower.

- 7.20 This rule appears to cover new infrastructure, but is unclear given that the leader sentence refers to a “building or structure”. I consider that this overlap needs to be clarified.

Lighting pole

- 7.21 This is further complicated by the addition to clause 9 which states:

9. a lighting pole by, or on behalf of the local authority.

- 7.22 In my opinion, there is a clear inconsistency between clause 8 and clause 9. More specifically, I do not understand the effects-based rationale for including a 10m restriction for infrastructure within a road corridor in clause 8, while also including a permitted activity for a lighting pole in clause 9 with no height restriction and no requirement for it to be the roading corridor. Both provisions relate to poles, the only

difference appears to be that one is for electricity supply, and the other is specifically for lighting from the local authority. In my opinion, there should be consistency between these requirements, ideally being no height limit for both, or at least the same.

Natural Features and Landscapes – NFL-R1²²

Residential and non-residential activities

- 7.23 The Reporting Officer has recommended in NFL-R1 PER-1 differentiating between residential activity buildings and non-residential activities for new buildings and has included maximum areas depending on whether buildings are located within a Outstanding Natural Landscapes (**ONL**) or Outstanding Natural Features (**ONF**), and its category and location outside or inside the coastal environment: ²³

PER-1

Any new building or structure if it is:

1. not used for a residential activity, and
2. complies with NFL-S1 and NFL-S2, and
3. no greater than:
 - a. 50m² in ONL in the coastal environment, and
 - b. 100m² in ONL outside the coastal environment, and
 - c. 50m² in category 'A' ONF in the coastal environment, and
 - d. 100m² in category 'A' ONF outside the coastal environment
 - e. 25m² in ONF (excluding category 'A' ONF)

- 7.24 I generally support the Reporting Officer's recommendation to extend the rule to new buildings other than those ancillary to farming (as notified), and the use of "residential activity" in this rule because this is a defined term. In my opinion, this provides greater scope for the inclusion of "non-residential buildings" which will include electricity infrastructure (such as transformers, equipment boxes etc.).
- 7.25 However, I consider that there is an overlap issue between PER-1 and PER-3 (see below) of NFL-R1 as it relates to Top Energy's electricity infrastructure:

PER-3

Any new building or structure, and extension or alteration to an existing building or structure not provided for by PER-1 or PER-2 and is:

1. a stock fence, or

²² Natural Features & Landscapes S483.158.

²³ Natural Features & Landscapes S42A para 246 – 250.

2. infrastructure less than 10m high within a road corridor provided any pole:

- a. is a single pole (monopole), and
- b. is not a pi-pole or a steel-lattice tower, or

3. an upgrade of existing electricity network utilities:

- a. outside the coastal environment,
- b. in a ONL or category 'A' ONF,
- c. no greater than 10m high or the height of the existing structure
- d. no greater than 20% of the GFA of the existing lawfully established building or structure, and
- e. not replacing a pole with a pi pole.”

7.26 This is because a criterion of PER – 1 requires that Standards S1 and S2 are complied with. S1 imposes a standard of 5m height which is not practicable for power poles, noting my previous comments in paragraph 7.5 – 7.6 above. PER-3 also applies to new buildings, and provides the more permissive 10m height limit, albeit only for infrastructure in the road corridor. In my opinion this is inconsistent and will not adequately provide for the operational and functional need for Top Energy’s infrastructure to be located within ONLs or ONFs; instead introducing another unnecessary consenting requirement. I consider that a consistent height limit should be applied to infrastructure and network utilities throughout NFL-R1.

Activity Status

7.27 I consider that there is also an issue with the non-complying activity status in NFL-R1. Under the Reporting Officer’s recommended wording, if compliance is not achieved with PER-1 then the following controlled activity criteria applies:

CON-1 The building is a residential unit on a defined building platform, where the defined building platform has been identified through an expert landscape assessment and approved as part of an existing subdivision consent.

7.28 If compliance with CON-1 is not achieved outside of the coastal environment, the activity status becomes restricted discretionary. Within the coastal environment, the activity status becomes non-complying. In my opinion, this will have potentially severe implications for infrastructure and network utilities. Any new building or structure for infrastructure or a network utility not complying with PER-1 and CON-1 (which is unlikely to have a defined building platform) within the coastal environment will become a non-complying activity. A non-complying activity resource consent would require

passing the Section 104D gateway tests in the RMA, which may be challenging given the current wording of the objectives and policies and the effects that such infrastructure may have. This is a perverse outcome in my opinion, and does not adequately reflect that there will more than likely be an operational and functional need for the infrastructure or network utility to be in that location.

- 7.29 In my opinion, a restricted discretionary activity status would be more appropriate for infrastructure or network utilities given that the relevant effects of such infrastructure can be easily identified and addressed by way of corresponding matters of discretion.

Coastal Environment CE-R1

- 7.30 Top Energy's submission²⁴ opposed CE-R1 on the basis that no provision has been made to allow for new network utilities of an appropriate scale within the coastal environment. Top Energy also sought the inclusion of a new rule that specifically provides for upgrades to network utilities as a permitted activity. Top Energy's submission highlights that the inclusion of this rule results in better alignment with the New Zealand Coastal Policy Statement (**NZCPS**) specifically Policy 6.1.a, as well as the RPS Policies 5.2.2 and 5.3.2 in particular.

PER-4

- 7.31 Noting my earlier discussion regarding the 10m height limit, 20% GFA and pi pole, the Reporting Officer has recommended additional restrictions²⁵ in CE-R1 PER-4 as follows:

"PER-4

Any new building or structure or an extension or alteration to an existing building or structure not provided for by PER-1, PER-2 or PER-3, where it is:

...

b. an upgrade of an existing network utility where this is:

i. Outside high or outstanding natural character areas; and

ii. Permitted by I-R3²⁶

iii. ..."

²⁴ S483.172.

²⁵ Coastal Environment S42A Para 253-255.

²⁶ CE-R1 PER-4.b.ii.

Within the coastal environment and a high or outstanding natural character area

- 7.32 My interpretation of PER-4.b.i. above, is that there would therefore be no permitted basis for the upgrade of an existing network utility within the coastal environment within a high or outstanding natural character area. This would immediately default to either a discretionary activity status (in a high natural character area) or a non-complying activity status (in an outstanding natural character area). In my opinion, this is a perverse outcome. In practice, it means that an upgrade to network utility that is already present within coastal environment and high natural character area or outstanding natural character area will immediately trigger at least a discretionary resource consent or worse, a non-complying activity resource consent. This will not provide for the operational and functional need for the existing network utility to be in that location. On this basis, I recommend that PER-4.b.i is deleted.

Cross Reference to I-R3

- 7.33 I consider that the cross reference to I-R3 is unnecessary. By my reading, an upgrade to an existing network utility will have to comply with I-R3 irrespective of a cross reference within this Rule. Furthermore, the Top Energy submission²⁷ has sought the deletion of I-R3 and replacement with a new rule. As outlined previously, we have no scope to consider the wording of I-R3 in Hearing 4, and as such it is inappropriate in my opinion to recommend including a cross reference to the rule now when the final wording of that rule is still to be considered. On this basis, I recommend that PER-4.b.i is deleted.

Activity Status

- 7.34 Similar to my analysis of NFL-R1 activity status I consider the non-complying activity status for the upgrade of an existing network utility within the coastal environment and an outstanding natural character area is inappropriate and unnecessarily onerous. Where compliance with the PER-4 criteria is not achieved, I agree that it is appropriate that a consenting process is needed. However, I consider that this should specifically acknowledge the existing network utility that clearly has an operational and functional need to be in its existing location. In my opinion and experience, a non-complying activity status generally indicates that a particular activity or built form is not anticipated or provided for, which cannot be the case for existing infrastructure. As such, I consider

²⁷ S483.059 & S483.060.

that a restricted discretionary activity status would be more appropriate for an upgrade of an existing network utility that does not comply with PER-4, again for the reason that the effects of upgrading such infrastructure can be easily identified and addressed by way of corresponding matters of discretion and assessment criteria.

Other matters

- 7.35 I consider that there should be an “or” between PER-4 clause a and clause b. This is important, as if read as “and” it will mean that it would have to both be “fencing for the purposes of stock exclusion” and “an upgrade of an existing network utility” in order to be considered a permitted activity.

8. REPAIR OR MAINTENANCE RULES

- 8.1 Top Energy’s submission²⁸ supports the inclusion of NFL-R2, CE-R2 and NATC-R2 which allowed for (amongst other activities) the repair or maintenance of network utilities.
- 8.2 The Reporting Officers have recommended the deletion of rules relating to repairs and maintenance, stating that the preclusion of activities specified in the chapeau of the rule is not intended to preclude those activities from being permitted.
- 8.3 I disagree with deletion of these rules as they relate to the repair and / or maintenance of network utilities. In my opinion, it is important that there is an explicit provision within this chapter for repair or maintenance, especially of network utilities, and therefore consider that these rules should remain as notified.

9. EARTHWORKS AND INDIGENOUS VEGETATION CLEARANCE RULES

- 9.1 The Natural Features and Landscapes, Natural Character and Coastal Environment chapters all include specific rules²⁹ relating to earthworks and indigenous vegetation clearance.
- 9.2 Similar to my analysis in Section 7 above, while there is nuance among the submission points raised and the wording of each of the applicable rules, below I first discuss the

²⁸ S483.155, S483.159 and S483.173.

²⁹ CE-R3, NFL- R3 and NATC-R3.

matter generally given the consistency in response and recommended changes of the Reporting Officers. I then raise specific issues with CE-R3.

Amendments to provide for network utilities

- 9.3 The Reporting Officers have made a number of amendments which provide allowance for the operation, repair, maintenance and upgrading of network utilities. This includes the inclusion of:
- (a) clause 2 and 12 in NFL-R3;
 - (b) clause 1 and 8 in CE-R3; and
 - (c) clause 1, 9 and 10 in NATC-R3.
- 9.4 In principle, I support these amendments, and consider that they provide the necessary ability for Top Energy to operate, repair, maintain and upgrade its existing network utilities with respect to earthworks and indigenous vegetation clearance within the three chapters. There are however some issues with the wording that I identify below.

Cross reference to R1

- 9.5 All three rules include a cross reference to R1 of each chapter as it relates to upgrading of existing electricity network utilities. In each instance, R1 of these chapters includes a number of permitted criteria, which deal with a range of matters, many of which seem totally irrelevant to the consideration of upgrading of electricity network utilities. In my opinion, the reference to R1 in each rule should simply be deleted, or more specificity provided as to the elements of R1 that need to be complied with for the purpose of these activities.

Activity Status

- 9.6 I agree with the restricted discretionary activity status in NATC-R3 when compliance with the permitted activity criteria is not achieved.
- 9.7 As it relates to network utilities, I disagree with the non-complying activity status that applies in CE-R3 when located inside an outstanding natural character area and NFL-R3 when located within the coastal environment. Where compliance with the applicable criteria is not achieved, I agree that it is appropriate that a consenting process is needed. However, for the same reasons set out in paragraph 7.34 above, I consider that a restricted discretionary activity status would be more appropriate for

the operation, repair, maintenance and upgrading of an existing network utility that does not comply with the applicable permitted activity standards.

Natural Character NATC-R3

- 9.8 Similar to the recommendation in IB-R1 the Reporting Officer has recommended the inclusion of the term “minimum necessary” at the start of NATC-R3-PER-1. I have already addressed this in paragraphs 6.7 – 6.9 above, and for the same reasons recommend that this addition is deleted on the basis that it is “ultra vires.”

Coastal Environment CE-R3

- 9.9 Clause 8 of CE-R3-PER-1 states:

8. for any upgrade of existing network utilities:

a. outside high natural character and outstanding natural character areas; and

b. ...

- 9.10 I disagree with the inclusion of clause a of this rule and consider that it should be deleted. This makes the upgrade of any existing network utility immediately default to restricted discretionary (if outside an outstanding natural character area) or non-complying (if inside an outstanding natural character area). For the same reasons as outlined in paragraph 7.32 above, I consider that Clause 8a of CE-R3-PER-1 should be deleted in its entirety.

10. OTHER MATTERS

Numbering Conventions

- 10.1 In my opinion, all of the rules across the four chapters would benefit from more consistent and logical use of numbering conventions. For instance, in CE-R1, PER-1 uses numbers 1., 2., 3. and then a., b., c. But then PER-2 uses a.b. and then a.b.c again. I have highlighted this below. There appear to be similar issues across all of the chapters. In my opinion, this makes correctly referencing provisions challenging.

“PER-1

If a new building or structure is located in the General Residential Zone, Mixed Use Zone, Light Industrial Zone, Russell / Kororareka Special Purpose Zone, Māori Purpose Zone – Urban, Oronga Bay Zone, Hospital Zone, or Kauri Cliff SPZ - Golf Living Sub-Zone, an urban zone it is:

1. is no greater than 300m²; and
2. is located outside high or outstanding natural character areas; and
3. complies with:
 - a. CE-S1 Maximum height;
 - b. CE-S2 Colour and materials; and
 - c. CE-S4 Setbacks from MHWS.

...

PER-2

If a new building or structure is not located within any of the zones referred to in PER-1 an urban zone it is:

- a. ancillary to farming activities (excluding a is not used for a residential activity unit);
- b. is no greater than:
 - a. 25m² within an outstanding natural character area;
 - b. 50m² within a high natural character area; and
 - c. 100m² in all other areas of the coastal environment.”

Use of “and” and “or”

- 10.2 I also consider that the use of “and” and “or” within all of the rules needs to be carefully revisited. This is important in my opinion, as the addition or absence of these terms can have significant implications on the application of the rules. I have indicated some instances within my previous evidence where I consider that this creates issues.

11. SECTION 32AA EVALUATION

- 11.1 Section 32AA of the RMA provides that further evaluation is required when changes are made to a plan since the original evaluation was completed. While I have not attached specific track changes to this evidence, I have recommended a number of amendments to the provisions above that warrant consideration pursuant to section 32AA. I have assessed the recommendations set out in my evidence in accordance with section 32AA and I consider that the amendments to the provisions that I outline above will be the most appropriate because they more efficiently and effectively provide for the operational and functional needs of infrastructure, in particular electricity infrastructure, while balancing the need to protect natural character areas, natural features and landscapes, the coastal environment and areas of indigenous biodiversity from inappropriate land use and development.

12. CONCLUSION

- 12.1 In conclusion, I consider that there are a number of issues outstanding from Top Energy’s submission that need to be addressed by the Hearings Panel. These primarily

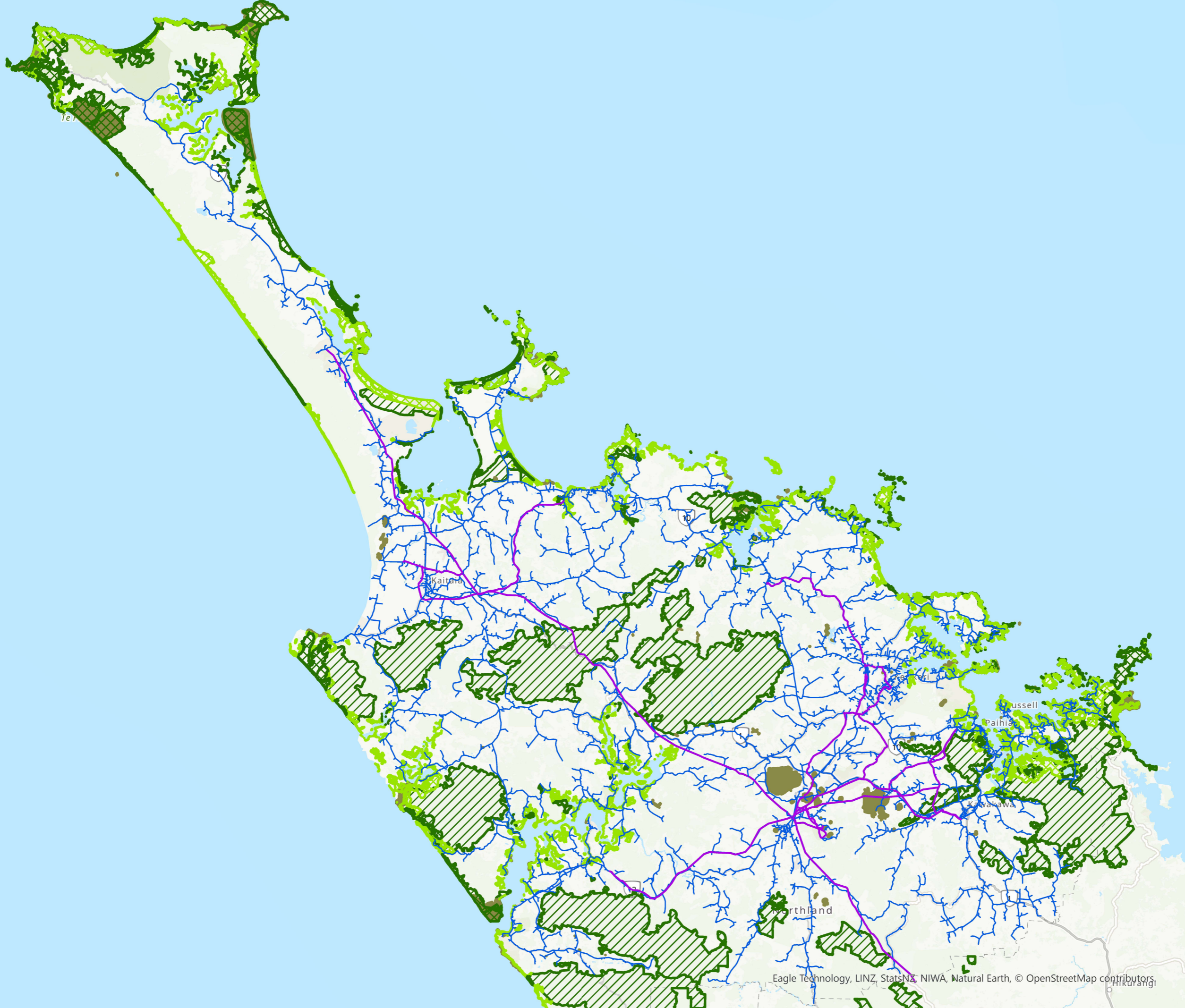
relate to ensuring the recognition and provision for the operational and functional need for infrastructure and network utilities to be located within natural character areas, natural features and landscapes, the coastal environment and areas of indigenous biodiversity. Furthermore, it is important to recognise and provide for the efficient and effective operation, repair, maintenance and upgrading of existing infrastructure already located in these areas.

- 12.2 While the Reporting Officers have made a number of helpful amendments to assist with achieving these outcomes, I consider that further changes are needed which would be most efficiently canvassed in expert caucusing between the relevant experts.

David Eric Badham

Date: 22 July 2024

**Attachment 1 – Relationship of Natural Environments Overlays to Top Energy
Electricity Network**



Legend

Top Energy Network

- HV - 110kV and 33kV
- MV - 11kV

FNDC

- Outstanding Natural Character
- High Natural Character
- Outstanding Natural Feature
- Outstanding Natural Landscape

Amendments:

1	
2	
3	
4	
5	
6	
7	

Drawing Created: Jul/24

Natural Environment Overlay

Drawn: Carlo Pimentel

Sheet: 1 of: 1 Sheets

File Name:

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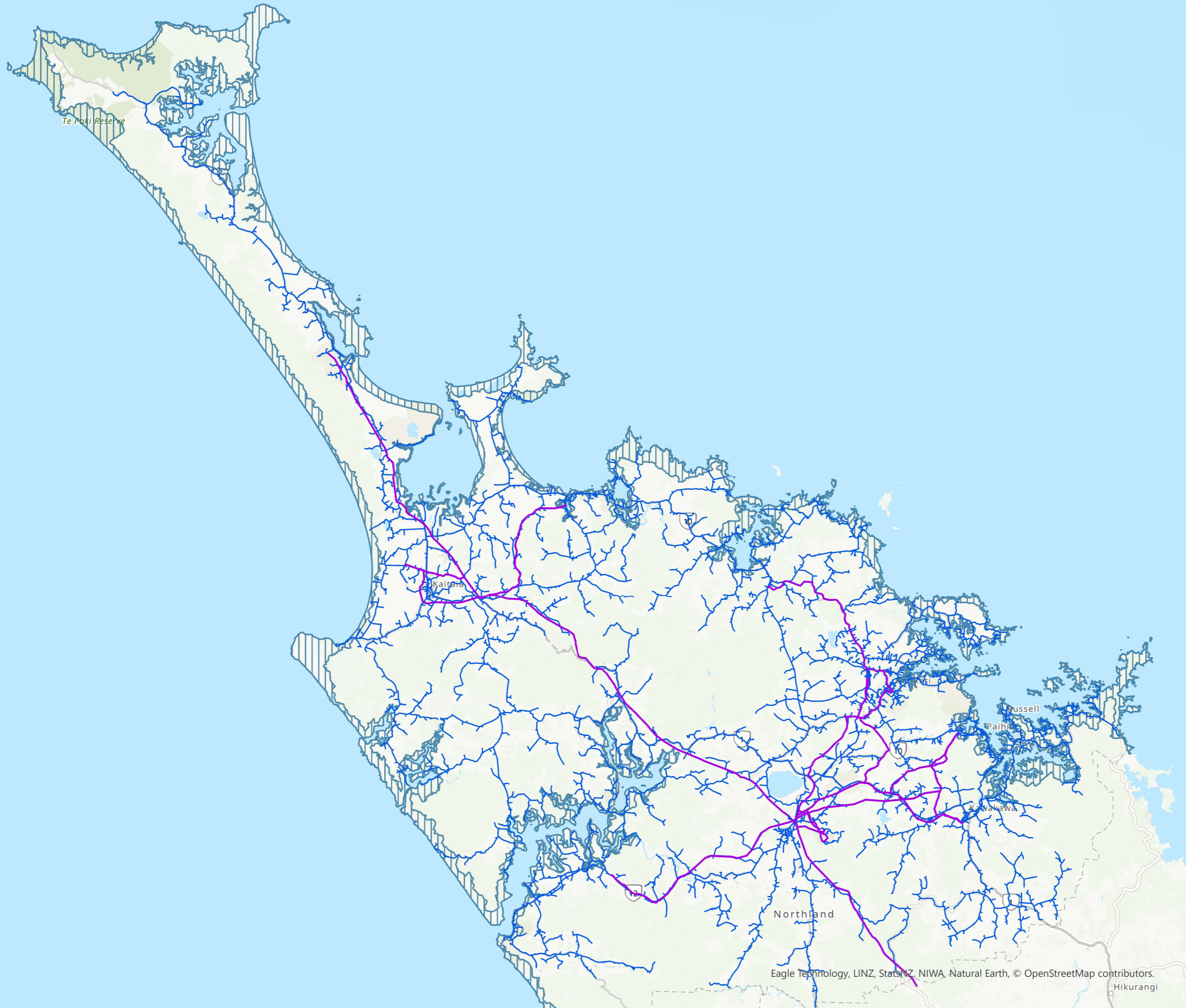
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Attachment 2 – Relationship of Coastal Environment Overlay to Top Energy Electricity Network



Legend

Top Energy Network

- HV - 110kV and 33kV
- MV - 11kV

FNDC

- [Hatched Box] Coastal Environment

Amendments:

1	
2	
3	
4	
5	
6	
7	

Drawing Created: Jul/24

Coastal Environment Overlay

Drawn: Carlo Pimentel

Sheet: 1 of: 1 Sheets

File Name:

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