

# Hearing Procedures

## Introduction

1. This document describes how the Board of Inquiry (**the Board**) intends to conduct the hearing on Contact Energy's Hauāuru mā raki Wind Farm proposal.
2. A summary of relevant statutory provisions relating to the hearing is in Appendix 1.

## Objectives and principles

3. The objectives of the hearing are:
  - To provide an effective and robust opportunity for the Board to consider and test the reliability of information relevant to the proposal.
  - To provide a fair and orderly opportunity for the applicant and all who made submissions on the proposal and stated that they wished to be heard to put their points of view before the Board and provide relevant information for its consideration.
4. To achieve these objectives, the following principles should guide the procedures adopted:
  - The procedures should be sufficiently formal to be fair to all parties and to allow the orderly presentation and testing of information, but not so as to inhibit lay people from taking part effectively.
  - The procedures should be robust, and should inspire confidence in the process by the applicant, submitters and the public.
  - The parties should know the evidence to be presented before the hearing commences.
  - The technical issues should wherever possible be resolved between relevant experts.
  - The procedures should be, so far as possible, similar to those adopted in Environment Court hearings.
  - The Board may hold parts of the hearing at different locations to suit the witnesses as much as possible.

5. When used in this document, these words are intended to have the meanings given:

**Submission** – the original submission made in response to the Public Notice.

**Submitter** – a person who made a submission.

**Evidence** – statements made at the hearing by a witness that tend to prove facts in issue, from which facts in issue may be inferred, including opinions by expert witnesses.

**Witness** – a person who gives evidence to the Board.

**Representations** – statements made to the Board at the hearing by or on behalf of a submitter stating what decision he or she wants the Board to make, and why.

**Rebuttal evidence** - evidence disputing evidence already circulated.

**Appearance** – the attendance to present the parties case at the Board of Inquiry hearing.

**MfE Project Manager** – Ministry of the Environment (MfE) staff member appointed to assist the Board.

### **Board of Inquiry site visit**

6. The Board intends to visit the site, traffic routes and surrounding area. This will involve the need for both a helicopter inspection of the site and a ground-based inspection by motor vehicle and on foot to the extent possible. It may also require the Board to consider a sea-based viewing depending on the nature of submissions and the evidence produced.
7. Given the broad nature of the site visit necessary, it is intended to address this matter with the applicant and submitters at the commencement of the hearing and a date will be fixed during the course of the hearing to undertake a site visit. It is intended that the applicant will provide vehicles/helicopter/boat as necessary for any viewing. Details should be provided at the commencement of the hearing.
8. Final arrangements will be made by the MfE Project Manager in consultation with the Board.

## **Board reports**

9. The Board has determined an analysis of submissions should be prepared. This analysis of the submissions is available to the parties via the Board's webpage. Parties may provide comment on it to the Board (with a copy sent to the applicant as well) until 21 January 2009.
10. The Board may also at any time commission further reports under sections 41 and/or 92 of the RMA. If so, copies of the report will be available on the Board website and made available to all parties who wish to be heard.

## **Location and venue**

11. The Board will select a venue for the hearing having regard to these factors:
  - Having suitable facilities
  - Being accessible for the Board, submitters and witnesses
  - Being as close as practicable to the site and/or participants
  - Being big enough to accommodate the numbers expected to attend
  - Being reasonably accessible by transport in and out of the venue location.

Given the various factors identified it is likely that a portion of the hearing will be held in Auckland given the greater availability of appropriate facilities. It is also likely the Board will sit at other venues in the Franklin district possibly in Pukekohe. The Board will investigate alternatives to a central Auckland location for the initial period of the hearing. The Board will also consider having some of the hearing at Raglan and/or marae, if an appropriate venue can be identified.

## **Representations**

12. All parties will be entitled to make additional representations to the submissions already filed. Representations can not go beyond the grounds of the submission. These can be presented by a party to the Board at the hearing. The Board would prefer a written copy of any representations to be provided. Representations do not constitute evidence to the Board and cannot be relied upon by them in reaching any factual conclusions.

## **Evidence**

13. The Board has concluded that all evidence in this matter will be pre-circulated and it will be lodged sequentially with the applicant giving their evidence first. All other parties are then to provide their evidence. There will then be an opportunity for the applicant and other parties to lodge any rebuttal evidence in respect of the evidence circulated prior.

## **Cross-examination**

14. The Board has concluded that cross-examination of witnesses will be allowed during the hearing provided prior notice has been given to the Board and the party concerned.

## **Report by expert witnesses**

15. The Board has concluded that should there be expert witnesses of the same discipline they will meet prior to the hearing and provide a report to the Board on any issues agreed and the extent of any dispute which remains. Any report prepared by expert witnesses is to be circulated to the Board and parties by 17 April 2009.

## **Evidence Requirements**

16. The Board will require five full hard copies and electronic copies of the evidence. This is to provide one for each Board member and a fifth for the Board's breakout room during the Hearing.
17. The required format for the hard copy evidence is as follows:
  - Evidence single-sided
  - Any piece of evidence that is substantial (over 10 pages) should be indexed
  - Appendices and attachments should be tabbed and paginated
  - Large maps should be in appendices, reduced to A3 size and folded down
  - Paragraphs and pages numbered sequentially
  - Evidence in clearly labelled folders
  - Good quality lever arch folders/files
  - Folders / files not over stuffed
  - Documents in folders not to be stapled (can be clipped)
  - Dividers between evidence etc
  - Holes punched - centred on the inside edge of the sheet
18. Electronic copies of all evidence will be made available to the MfE Project Manager who will arrange for the information to be available on the Board website from where it can be downloaded.
19. Copies of the evidence on a CD ROM are to be supplied to all parties unless a party requests a paper copy. Hard copies or electronic copies will be made available to any other party on request.

## Evidence exchange

20. Given that section 92 requests were made by the councils prior to the direction to call-in and subsequently repeated by the Board, it is intended that there should be sufficient time for full details of the application to be circulated as part of the evidence for the applicant. This will then require sufficient time for experts to consider the details and prepare evidence in response. Accordingly the Board proposes the following timetable:

- **11 February 2009** - the applicant is to circulate evidence, including the proposed consent and conditions<sup>1</sup>, to the MfE Project Manager (1 paper copy and an electronic copy), and to all submitters
- **13 March 2009** – all other parties to advise the Board and the applicant of the witnesses they are proposing to call.(see paragraph 28 below)
- **27 March 2009** - all other parties are to circulate their evidence to the MfE Project Manager (1 paper copy and an electronic copy), the applicant (including 5 additional paper copies for the Board) and all other submitters. The regional and district councils shall include in their evidence, analysis of the status of the activities and the relevant planning provisions of the district and regional plans.
- **9 April 2009** - the applicant is to circulate their rebuttal to the evidence of the other parties, to the MfE Project Manager (1 paper copy and an electronic copy), and to all submitters.
- **9 April 2009** - all other parties may circulate rebuttal to evidence of the other parties and the applicant, to the MfE Project Manager (1 paper copy and an electronic copy), the applicant (including 5 additional paper copies for the Board) and all other submitters.
- **17 April 2009** - any report prepared by expert witnesses on any issues agreed and the extent of any dispute which remains, to be circulated to the MfE Project Manager (1 paper copy and an electronic copy), the applicant and all other submitters.
- **17 April 2009** – the applicant to forward to the Board, five partitioned and indexed folders containing paper copies of all evidence and rebuttal evidence. The five folders of evidence shall be accompanied by a letter from the applicant advising the order in which it will call its witnesses, particularly during the first two weeks of the hearing
- **17 April 2009** - notice to cross-examine is to be given no later than this date, by any party wishing to cross-examine another party. This notice should be provided to the Board and also to the party calling the witness whose evidence is subject to cross-examination.
- **27 April 2009** - the hearing will commence on or after this date, at a place to be fixed by the Board. At this stage the hearing is likely to commence in Auckland.

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<sup>1</sup> This is to be the latest version of the proposed consent and conditions.

## The hearing

21. The Board proposes to commence with the opening submissions for the applicant and then any of the applicants witnesses whose evidence has been subject to notice of cross-examination.
22. The Board intends to pre-read the evidence prior to any witness giving evidence. For the most part the hearing will be arranged so as to provide adequate time for the Court to read the witness' evidence outside the time set for hearing. From time to time this may not be possible.
23. It is intended that the site visit will take place at a convenient time in accordance with an agreement reached with all the parties after the opening statement for Contact and prior to the close of the case. By preference the Board would prefer to undertake the site visit once it has heard the cross-examination of the applicant's witnesses. Further visits, or different aspects of the visit (say air or sea) may be undertaken at different times.

## Managing who appears, order of appearances and scheduling

24. The Board will pre-read evidence of witnesses prior to their appearance before the Board.
25. The hearing is currently expected to commence in April 2009 at Auckland. The hearing will begin with opening submissions from the applicant, Contact Energy.
26. The Board will then commence with hearing cross-examination of the applicant's witnesses.
27. The hearing will then continue with all previously provided evidence being taken as read. The Board may sit at alternative venues over the hearing period. These venues will be settled either prior to or during the hearing.
28. Every person who made a submission to the Board appointed by the Minister responsible for the call-in (**the Minister**), and who stated that they wanted to be heard, will be advised of the times and places of the hearing, and of the procedures to be adopted, and will be asked to confirm their wish to be heard and identify any witnesses they wish to call. To assist the Board to prepare for the hearing, other parties are to advise the Board of the witnesses they are proposing to call by 13 March 2009. The Board notes that the applicant will have supplied all their evidence on 11 February 2009.
29. From those responses, the Board will prepare an order of appearances and a provisional programme of the time periods and places where submitters are likely to be heard. This will be provided in advance to the submitters who wish to be heard, and will be published on the Board webpage. Because of

uncertainty about the length of presentations and questioning, it may not be practicable to allot in advance a specific time for the presentation by each submitter. The Chairperson will, at the outset, and at appropriate stages throughout the hearing, direct the order and timing of presentations.

## **Procedure at hearing**

30. Submitters are not obliged to attend the hearing. The original submission will be read and considered by the Board whether the submitter attends the hearing or not. In addition, a submitter may choose to attend the hearing and present a representation to the Board. The Board would prefer a written copy of the representation to be provided by the submitter.
31. A submitter who is being heard may highlight the main points of the submission, and of their evidence (if provided), and may respond to submissions made by others.
32. Every submitter who wants to speak to their submission (make representation) without calling evidence may do so without having to pre-circulate the submission again.
33. The order in which parties will present their evidence and the timetable for that will be addressed at the commencement of the hearing. It needs to be kept in mind that there can be many reasons for a change in the timing of a hearing due to parties either withdrawing or not appearing, issues being resolved, or witnesses taking longer under cross-examination than anticipated. The actual procedure for the hearing will be set by the Chairperson in consultation with the Board members at the commencement and during the course of the hearing.
34. Every witness will need to attend in person before the Board, and may make an oath or affirmation that the contents of the evidence is true and correct, but will not be obliged to read the statement of evidence to the Board. Cross-examination will occur where a party has given notice to cross-examine that witness and the witness may also be asked questions by the Board. Where there is no notice to cross-examination a witness, the Board may excuse the attendance of that witness on application to be made on or after the commencement of the hearing.
35. Submitters may make their own representations themselves, or they may choose to be represented by a lawyer or other agent.
36. A submitter who considers that some of the content of the submitter's representations or evidence should not be made public for any reason stated in section 42(1) of the Resource Management Act may apply to the Board for an order under section 42. The submitter must make an application at the time of filing that evidence with the board, in which case it will be withheld from the web until a decision is made. Any application for an order under that section should be made in writing, should identify the particular representations or

evidence to which the application relates, and should explain why it should not be made public.

37. A computer compatible projector and whiteboard will be available to submitters and witnesses at the hearing. Any party wishing to use visual aids must contact the MfE Project Manager prior to their representation.
38. Joint presentations (where one person makes a presentation on behalf of several submitters) are allowed, and are encouraged where the submissions are of a similar nature. Submitters may also combine to appoint one person to cross-examine witnesses for them all.

### **Te Reo and Tikanga Māori**

39. Any person who has made a submission stating that he or she wishes to be heard may if they choose make the representations at the hearing, and any witness may give evidence at the hearing in Te Reo Māori. Notice to the Board is to be given by 27 March 2009 identifying the person seeking to give evidence in Te Reo Māori and the party who is calling that witness. The notice will enable attendance of an interpreter to be arranged. However, any karakia, powhiri, or mihi, will not be translated into the English language unless the presenter wishes and has given such prior notice.

### **Leave to waive procedural requirement**

40. If any party wishes to depart from any time limit or other requirement, they should make a written request to the Board to waive compliance with that requirement. A request to waive compliance should contain a full explanation of why the party did not, or will not, comply.
41. Any application is to be served on all other parties in order that that may comment on the application for waiver.

### **Board Delegations**

42. The following Board functions may be delegated to the Chairperson of the Board:
  - The function of approving a brief for any reports the Board may wish to commission.
  - The function of deciding administrative and procedural matters relating to pre-hearing and hearing processes, including requests for additional presentation time, leave to cross examine, keeping submission material confidential and similar matters.

- Functions under s37 to waive compliance with requirements to extend time limits.
- Consider applications under s42 to keep information or evidence confidential.

### **Role of Ministry for the Environment staff**

43. The MfE Project Manager will make the necessary arrangements for the hearing on behalf of the Board, and will attend the hearing to assist the Board in the administration and conduct of the hearing.
44. The Ministry will contract a Hearing Manager to manage the logistics and administration of the hearing.
45. The Board may seek technical or other advice, and may require reports or information to be provided to it. The MfE Project Manager will arrange for preparation of those reports. They may be prepared by the Ministry, or by consultants engaged by the Ministry, or obtained from other persons or agencies. Any report or advice considered by the Board will be published on the Board's webpage and both the request and its availability notified to the parties.

### **Media participation**

46. The hearing will be in public (except to the extent that any order under section 42 applies), and representatives of the media are free to attend and report the proceedings. However, cameras, video-recorders and audio recorders may only be used in the hearing with the Chairman of the Board's prior consent.
47. Media kits (with information on the process, lists of submitters) will be available to the media. Interviews are not allowed in the hearing room. Board members will not be available for media interviews. Ministry for the Environment staff will be available to provide process information to the media.

### **Written record**

48. The Board will have the proceedings at the hearing recorded, and the recording transcribed. This is primarily for the Board's own deliberations, but only the transcript of witnesses evidence and Board rulings will be available on the webpage. The record of the proceedings will also include:
  - A summary record of proceedings including a list of the submitters who are heard, and witnesses they call, and a list of all documents submitted to the hearing
  - A reference set of all documents presented to the hearing.

## Decision

49. As soon as practicable after the Board has completed the inquiry, it will:
- Make a draft decision and produce a draft written report (in accordance with sections 148(1) and (2) of the RMA)
  - Send a copy of the draft report to all parties (section 148(3) of the RMA)
  - Invite the parties identified in section 148(3) to send comment to the Board within twenty working days (section 148(4) of the RMA). Comments on the draft report are to be circulated to all other parties by the party making the comments.
  - As soon as practicable after the twenty working days referred to in section 148(4) the Board will consider any comments received, make its decision and produce a final report (sections 149(1), (2), (3), (4) and (5) of the RMA).

## Legal aid

50. The Environmental Legal Assistance Fund may provide assistance to submitters. Submitters need to keep in mind that funding applications need to be made well before the hearing and applications are only considered at particular meetings of the Fund. For applications to be considered for the February 2009 funding round these would need to be filed well before February 2009. Further information can be obtained from the website <http://www.mfe.govt.nz/withoutyou/funding/ela.html>. A Not for Profit group which is a submitter to a case before the Board of Inquiry may be eligible for funding. Details of the fund criteria and method of funding are all available on the website link. The Board will not be allowing adjournments on the basis of pending applications for funding. Applications filed before the end of November 2008 may be considered in the December funding round.
51. The following information will be available for inspection on the Board's webpage:
- Contact Energy Ltd's resource consent applications
  - All submissions on the proposal
  - Summary of submissions report
  - Reports the Board has commissioned
  - All evidence (applicant and submitters) lodged with the Board
  - Transcript of witness examination
  - Rulings of Board in course of hearing.

## Preliminary consideration

52. The Board also intends to convene a pre-hearing conference at a date to be set prior to hearing (possibly March 2009) to consider progress on the evidence preparation and venues and final dates for hearing. All parties should be represented at that pre-hearing conference.

## Information

53. The MfE Project Manager can be contacted to discuss any of the matters outlined above. You can contact her as follows:

Kim Morgan  
Project Manager  
Telephone: 0800 836 444  
DDI: (04) 439 7447  
Email: [hmrcallin@mfe.govt.nz](mailto:hmrcallin@mfe.govt.nz)

56. All relevant information can be found on the Ministry for the Environment's webpage:

<http://www.mfe.govt.nz/rma/call-in-hmr/board-inquiry-hmr.html>

Any submitter who cannot access the webpage is invited to ask the MfE Project Manager for a convenient place where documents can be inspected, and copies made.

## Appendix 1

### Summary of statutory provisions relating to hearing

The following is a summary of the statutory provisions relating to the conduct of a hearing by the Board of Inquiry on Contact Energy's Hauāuru mā raki Wind Farm proposal.

*Note: Figures in brackets marked [RMA s.] refer to sections of the Resource Management Act.*

1. Section 147 of the Resource Management Act prescribes the conduct of the inquiry to be followed by a Board appointed under section 146. Sections 101(1) to (3) apply as if the Board were a consent authority.
2. Sections 39, 40 and 41 to 42 of the RMA apply as if the Board was a local authority [RMA s.147(5)] or a territorial authority [RMA s.147(8)(a)]. These sections set out powers and duties in relation to hearings.
3. The inquiry must be held at in public at a place near to the area to which the matter relates [RMA s.147(4)]. The applicant and any person who made a submission may speak at the hearing (personally or through a representative), and call evidence [RMA s.40(1)]. The Board can limit repetition, and if someone does not attend the Board can still proceed with the hearing if it considers it fair and reasonable to do so [RMA s.40(2) and (3)].
4. The Board must give at least 10 working days notice of the commencement date, time and place of the inquiry to the applicant and all submitters that wish to be heard [RMA s.101(3)].
5. The Board is to establish a procedure that is *appropriate and fair in the circumstances* that avoids unnecessary formality and recognises tikanga Maori and Maori language [RMA s.39]. The Board may permit cross examination and must keep a full record of its hearings [RMA s.147(5) and (8)].
6. The Commissions of Inquiry Act provisions relating to maintaining order, evidence, summoning witnesses etc apply [RMA s.41]. Sensitive information can be protected [RMA s.42].
7. The Board may give directions to provide evidence within time limits [RMA s.41B] and give further directions or make information requests before or at the hearing [RMA s.41C].
8. The Board has the same powers and duties as a local authority under the RMA when considering resource consent applications. The Board is to apply sections 37, 92, and 104 to 112 as if it were a consent authority [RMA s.147 (5)].
9. The Board has the same powers and duties as a territorial authority under the RMA when considering a notice of requirement. The Board is to apply sections 37, 169 to 171, and 175 as if it were a territorial authority [RMA s.147 (8)].
10. Reports requested by the Board under section 42A must be pre-circulated to the parties at least five days prior to the hearing commencing [RMA s.42A(3)]. Further

information requested under section 92 is to be available at the office of the Board at least 10 working days before the hearing commences [RMA s.92 (3A)].

11. As soon as practicable after the Board has completed the hearing it has to make a draft decision and produce a draft written report [RMA s.148 (1)]. The draft decision is to include the matters listed in section 148(2) and be send to the parties listed in section 148(3).
12. The parties that have received the draft report will have 20 working days to send their comments on any aspect of it to the Board [RMA s.148 (4)]. As soon as practicable after the 20 working days the Board will produce a final report. This report has to be made public [RMA s.149].