

BEFORE THE BOARD OF INQUIRY

IN THE MATTER of the Resource
Management Act

AND

IN THE MATTER of resource consent
applications by Mighty River
Power Limited ("MRP") to
construct, operate and
maintain a wind farm at
Turitea

CLOSING SUBMISSIONS OF COUNSEL FOR HORIZONS REGIONAL COUNCIL

INTRODUCTION

- 1 Manawatu-Wanganui Regional Council ("Horizons") would like to take the opportunity to:
 - 1.1 Respond briefly to concerns expressed by the Judge and Commissioners about the evidence called by Horizons;
 - 1.2 Provide a response to a question Commissioner Heerdegen asked of Mr Hindrup regarding proposed condition 13.9; and
 - 1.3 Draw together the evidence that has been given in relation to the interpretation of "the skyline of the Tararua Ranges" as that term is described and defined in the operative Regional Policy Statement ("RPS").

STANCE TAKEN BY HORIZONS

- 2 After Mr Hindrup had given evidence, the Board expressed concern that Horizons had not been proactive in trying to answer the question: what is the skyline of the Tararua Ranges?

- 3 The position taken by the regional council and the limited role it would play in this hearing process was signalled at the outset – in the evidence prepared by Mr Hindrup and in the opening statement presented to the Board on 7 July 2009.
- 4 That opening statement identified that issue as a key one requiring determination.
- 5 In their caucusing statement, Messrs Pollock, Baker and Hindrup agreed the following:¹

All experts agree that the skyline provisions must be interpreted, as neither the RPS or POP provides clear direction as to how these are to be interpreted or implemented in relation to this consent application.

Mr Hindrup agrees that interpretation is required around “what is the skyline of the Tararua Ranges?” and he leaves that interpretation to Messrs Pollock and Baker, and the landscape experts appearing before the Board.

- 6 That Horizons could have presented more fulsome evidence on the interpretation of the RPS is accepted. However the evidence presented by Mr Hindrup complies with the initial direction issued by Judge Thompson which stated that:²

The regional and district Councils shall include in their evidence an analysis of the status of the activities and the relevant planning provisions of the district and regional plans.

Mr Hindrup:

- 6.1 Identified the provisions of the operative Regional Policy Statement and the Proposed One Plan³ relevant to the decision that the Board will be making, with a particular focus on the chapters of those documents relating to natural landscapes and energy.
- 6.2 Confirmed the resource consents required under the various operative regional plans and the Proposed One Plan and the activity status of those consent applications.
- 6.3 Identified the objectives and policies relevant to those applications;

¹ Page 11.

² Paragraph [20] on page 6.

³ A second generation planning document which incorporates the Regional Policy Statement with its regional plan

- 6.4 Reviewed and commented on the regional consent conditions proposed by Mighty River Power (“MRP”) for the revised design.
- 7 There was opportunity for the landscape experts to address this issue – it having been signalled as an issue as far back as June 2009. Some took that opportunity (Ms Lucas, in her supplementary evidence⁴) and Commissioner Hudson gave others (such as Mr Brown and Mr Pollock) an opportunity to express a view on this issue. Ms Williams also commented on the landscape expert’s differing views of the skyline in her report.
- 8 So, while the Board does not have the regional council’s view on the interpretation of the RPS, it has the views of Mr Anstey, Ms Williams, Ms Lucas, Mr Brown and Mr Pollock.
- 9 In an attempt to assist the Board, I later draw together the evidence of those witnesses (including the various exchanges between the Board members and those witnesses) on that issue.

COMMUNITY LIAISON GROUP CONDITION

- 10 Commissioner Heerdegen asked Mr Hindrup to explain why a distance of 3.5 km had been selected to define possible members of the Community Liaison Group.
- 11 Based on discussions between Messrs Hindrup and Pollock, I am instructed that the distance of 3.5km is based on the zones of influence or viewsheds identified by the landscape experts and as summarised in Ms Williams’ report.
- 12 3.5km is the distance from the nearest turbine where the potential for visual impacts ranging from more than minor to severe is significant.⁵ The landscape experts are agreed that there are at least 250 houses within 3km of the nearest turbine and over 500 within 3.5km of the nearest turbine with the potential to be highly prominent or potentially dominant in the landscape.⁶

⁴ Mr Anstey addressed this issue in his evidence-in-chief, referred to later.

⁵ Page 30.

⁶ Page 23 of Ms Williams’ report

- 13 Condition 13.9 requires the applicant to invite the residents of those 500 or so houses to nominate at least one representative to the CLG.

THE SKYLINE OF THE TARARUA RANGES

- 14 Some of the landscape evidence presented at this hearing has focussed on:
- 14.1 Whether “the skyline of the Tararua Ranges” which is identified in the Proposed One Plan as an outstanding natural landscape and feature ought to be so categorised;
- 14.2 The problems associated with identifying and defining “the skyline” as an outstanding natural feature in planning documents.⁷
- 15 With respect, those issues are better debated (and have been debated) in the context of the One Plan hearings on the landscape chapter.
- 16 Under cross-examination by Mr Maassen, Mr Coombs stated that his evidence was not directed at the operative regional policy statement; it was about the process which had been undertaken by Horizons to identify potential outstanding natural features and landscapes within the proposed One Plan.⁸ As the Board has said more than once, the final form of that document has not yet been decided by the Council’s hearing panel, and any decision they make may be altered on appeal.

Operative RPS

- 17 The Operative Regional Policy Statement was notified in 1993 and made operative on 21 July 1998. It pre-dates the wind farms which have been consented or constructed on the Tararua Ranges. It is, as Ms Williams pointed out, a document with values that are essentially pre-wind farm.⁹
- 18 Notwithstanding its obvious age, it remains the only regional policy statement which has been publicly consulted on and subject to all of the First Schedule

⁷ Mr Coombs expressed concern about the identification of a skyline as an outstanding natural feature or landscape as “problematical” (page 1969, line 46) and, in his view, poor practice (page 1970, lines 26 – 27).

⁸ Page 1972, lines 43 – 46.

⁹ Transcript, page 2165, line 1.

processes under the RMA. It tells us that the community regards the skyline of the Tararua Ranges as an outstanding and regionally significant natural feature.¹⁰

19 The “skyline” is defined in the RPS in the following way:¹¹

The skyline is defined as the boundary between the land and sky at the crest of the highest points along the ridge. The skyline of the Tararua Ranges is the land/sky boundary as viewed at a sufficient distance from the foothills so as to see the contrast between the solid nature of the land at the crest at the highest points along the range and the sky.

20 For his part, Mr Brown accepted that:

20.1 The Turitea Reserve could be an outstanding natural feature when viewed from within.¹²

20.2 The image shown in attachment 18 to Ms Lucas’s evidence formed part of the area which the RPS identifies as being an outstanding natural landscape.¹³

20.3 The proposed wind farm will have a “significant impact on the skyline of the Tararua Ranges if constructed.”¹⁴

He went on to say:

...but I do not consider that the effects of the redesign proposal are such that they warrant declining the present applications. In this regard I essentially concur with Mr Wyatt’s assessment that this is an appropriate environment for a wind farm of some scale.”

21 Mr Pollock accepted that he had relied upon the evidence of Mr Brown in reaching his conclusions in relation to whether the wind farm was located in an area which was an outstanding natural landscape or feature.

¹⁰ Objective 8 (clause 22.3) and Policy 8.3(p) (clause 22.3.1) of the RPS and transcript, page 2164, lines 5 – 14.

¹¹ Page 112 of RPS, Clause 22.3.4 in Appendix C of Phillip Hindrup’s evidence.

¹² Paragraph 72 of his evidence-in-chief.

¹³ Transcript, page 3077, lines 1 – 6.

¹⁴ Transcript, p 2998, line 19.

22 Mr Pollock expressed concern that Mr Brown's comment in relation to the Turitea Reserve was qualified and limited to views within the Reserve. However, he accepted that:

22.1 The view shown in VP2 showed the internal part of Turitea Reserve,¹⁵ which appeared to fit the description of the skyline in the RPS.¹⁶

22.2 If the Reserve (or part of it) was an outstanding natural feature, section 6(b) came into play, and it must be protected from inappropriate subdivision, use and development.¹⁷

23 For guidance, he looked to the regional policy statement's provisions on landscape; provisions which he frankly admitted he found a challenge to apply.¹⁸ The definition of the skyline he found particularly difficult to interpret, stating:¹⁹

[I]t is a policy and you have to figure out how to apply it. And I cannot make top or tail of this in terms of where is the skyline? Is it the foothills? Is it the highest ridgeline? Is it some other position when viewed from the north?

...

And then you come to the issue, which I think some of the landscape witnesses have traversed as well, which is where do you view it from? Do you view it up close? Do you view it from far way? Do you view it from down in one of the valleys or up on one of the ridgetops? I am not trying to be difficult here, I am just pointing out that this policy, unlike a number of others, is extremely difficult to interpret.

24 Because of the difficulty he had interpreting the policy, Mr Pollock concluded that he did not "place great stock on it".²⁰

25 Mr Anstey's evidence-in-chief dealt with the issue of "what is the skyline?" indirectly while noting his support of the definition of the skyline in the proposed One Plan. He stated:

... I believe [this definition is] preferable to that in the current Regional Policy Statement which only recognises the "highest ridge" rather than ridges. The landform on the 'skyline' at the top of the Turitea Reserve is not simple and its patterns illustrate the practical problems of interpretation. There are in fact a series

¹⁵ Transcript, page 3836, line 19 – 20.

¹⁶ Transcript, page 3836, lines 27 – 34.

¹⁷ Transcript, page 3790, lines 22 – 39.

¹⁸ Transcript, page 3792, lines 37 – 38.

¹⁹ Page 3794, lines 27 – 30 and 38 – 43.

²⁰ Page 3795, line 17.

of ridges and spurs all of which have points of a similar altitude (although they vary in height along their length). There is no one ridge that is clearly 'highest'. When viewed at a sufficient distance (from the western side) one sees a series of overlapping ridges and spurs of varying heights which move, each in relation to the others, as the eye passes along the ranges. ...

As a viewer moves away from the ranges they see an increasing number of equally high ridges and spurs, all of which are prominent and appear on the skyline at some point along their length.

26 Mr Anstey considered that if the revised proposal was developed it would have serious and adverse effects on the foothills and the ranges that form the backdrop to Palmerston North City.²¹ His view is that the development of the wind farm would seriously undermine the integrity and coherence of the skyline of the Tararua Ranges.²²

27 Ms Lucas considers that the "skyline" is the summit of the main range.²³ Her Appendix 2 shows the centreline to the highest crest (the Tararua summit watershed). She considers that the skyline is "the summit land surface of the range as viewed from beyond",²⁴ and includes, as a core component "the skyscape" or space above the junction of land and sky.²⁵

28 In relation to the revised design she notes:²⁶

Considering the hill back-drop to the city grid, valued vistas such as east on Fitzherbert Avenue (my primary attachment 19), none of the turbines shown on that Tararua skyline are proposed to be moved at all. There has been no design revision.

29 In her report, Ms Williams stated:²⁷

The experts fail to agree on the definition of skyline, which ridgelines are 'highest' and which ridgelines are 'skyline', although there is agreement that parts of the skyline of the Tararuas qualify as ONFLs. Regardless of definition, elements of the proposed windfarm are visible on a skyline or the Skyline in every photomontage supplied by the applicant.

²¹ Paragraph 15.

²² Paragraph 16 of his supplementary statement of evidence dated 22 February 2010.

²³ Paragraph 16 of her supplementary evidence.

²⁴ Paragraph 16.

²⁵ Paragraph 17.

²⁶ Paragraph 6 of her evidence on the revised design.

²⁷ Page 10.

30 As an outstanding and regionally significant feature, Policy 8.3 requires that specified values associated with those Ranges (also identified in Policy 8.3) be protected from inappropriate subdivision, use and development. Those specified values are “its scenic qualities provided by its prominence throughout much of the Region and its backdrop vista in contrast to the Region’s plains”.

31 Policy 8.2 provides some guidance to decision makers on the issue of “inappropriate subdivision, use and development”. It states:

In determining inappropriate subdivision, use and development the following will be taken into account:

- a. the degree to which those activities would adversely affect the values specified in Policy 8.3 so far as those values provide a significant contribution to outstanding features and landscapes; and
- b. the degree to which the activity provides for the social or economic well-being of people and communities, (including providing essential services to the public);

while ensuring that, in all cases, adverse effects of any activity on the features or landscapes are avoided, remedied or mitigated.

32 Mr Brown was questioned about the RPS provisions by Commissioner Hudson and their exchange is at page 3077 (onwards) of the transcript.

33 Mr Brown accepted that the image shown in attachment 18 to Ms Lucas’s evidence formed part of the area which the RPS identifies as being an outstanding natural feature and landscape. Commissioner Hudson then asked how, in terms of Policy 8.1(a)(ii), “the scenic characteristics, including views, vistas and backdrops” and the “visual prominence” are preserved.

34 Mr Brown replied:

As I have already acknowledged the proposal would have an impact on the skyline of the Tararuas. That is recognised and accepted. And it says, of course, “in determining appropriate subdivision use and development you will take into account the degree to which such activities would have an adverse effect and you will also take into account the degree to which the activity provides for the social or economic wellbeing of people and communities”.

35 He accepted that the visual prominence and the scenic characteristics, including views, vistas and backdrops would be modified,²⁸ and that the effects of that

²⁸ Transcript, page 3078, line 25.

modification would be moderate to moderate high²⁹ in the particular location shown in attachment 18.³⁰

36 Addressing the question of what was “inappropriate” (without conceding that it was necessary for him to do so), Mr Pollock accepted that the following factors would be relevant:

36.1 All of the relevant circumstances of the wider environment, including the location of people, how much of the skyline is being considered, where it is located,³¹

36.2 The fact that parts of the skyline are a focus of Palmerston North city;³²

36.3 The fact that approximately 13km of the ridgeline has been occupied by turbines;³³ and

36.4 The extent to which the proposed development affects the scenic qualities that led to the skyline being identified as regionally significant.³⁴

CONCLUSION

37 When assessing the skyline, one has to be far enough back to see the interface between the main highest ridgeline (described as the very highest skyline in the *Motorimu*³⁵ decision) and the sky.³⁶

38 Both Mr Pollock and Mr Brown agree that the image shown in attachment 18 of Ms Lucas’s evidence or VP2 of Mr Anstey’s evidence show part of the area that the RPS identifies as being an outstanding natural landscape.

39 The revised design has not altered the number of turbines that will be visible on the skyline from that viewpoint.

²⁹ Page 3078, line 35 – 36.

³⁰ Page 3079, line 19.

³¹ Page 3798, lines 9 – 15.

³² Page 3798, lines 19 – 22 and page 3802, lines 22 – 24.

³³ Page 3802, lines 31 – 33.

³⁴ Page 3803, lines 9 – 13 and page 3804, lines 37 – 42.

³⁵ *Motorimu Wind Farm Limited v Palmerston North City Council* W67/2008

³⁶ Page 3837, lines 5 – 16.

40 The factors listed in paragraph 36 are relevant to the issue of whether the proposed wind farm was inappropriate, together with the matters identified in Policy 8.2 of the RPS.

29 March 2010

A handwritten signature in black ink, appearing to read 'L. Blomfield', written over a horizontal line.

Lara Blomfield
Counsel for Horizons Regional Council