

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a Board of Inquiry appointed under
s146 of the Resource Management Act
1991 to consider an application by
Mighty River Power Limited for resource
consents to construct, operate, and
maintain a wind farm at Turitea

**Representation of Wayne Johnson to the Board of Inquiry
2 September 2009**

MAY IT PLEASE THE BOARD

I have appeared before the Board already on the 6th of August however I wish to introduce myself again and then briefly outline my submission for today.

My name is Wayne Johnson, I am presenting today my individual submission as well as supporting Mr. John and Mrs. Rosemary Adams and Huatau Marae.

While I am legal counsel for Huatau Marae my role and approach for this "Call In" has been more in an advisory support capacity largely around procedural matters and processes, consolidating representations, and preparing questions for expert witnesses. I support Mr and Mrs Adams and Mr Paul Jones, chair for Huatau Marae all of which are more than capable of representing themselves and it is my preference that they tell their stories and experiences personally to the Board directly.

INTROUCTION - Submitter 332

My focus is a legal perspective in identifying processes that may assist submitters to maximize limited resources, reduce compliance costs, minimize opportunity costs, and optimise time productively.

The reason for this approach and the nucleus of my representation is to provide certainty and focus for submissions. I rely on consistency and clarity in processes, wherever possible whether informal and formal, to achieve this.

Where there is a lack of processes or precedent then transparency in rationale must be adopted albeit cautionary at best, my overriding concern is to assist submitters to effectively articulate their respective views, issues, and concerns before the Board.

There are three parts to my submission;

1. The "Call In" Process
2. The Submission Process
3. The Legal Process

1. THE “CALL IN” PROCESS

1. The Call In process is a relatively novel mechanism available to the Minister under the Resource Management Act. The novel nature of this process can quite easily be construed or perceived as Ministerial intervention or even political interference. I fully understand the necessity for the Minister to exercise this ministerial discretion available to him.

Having had regard to all the relevant factors, pursuant to section 141B(1) of the Resource Management Act 1991, I consider that the matters (listed in Appendix A) involved in Mighty River Power Limited’s proposed Turitea wind farm near Palmerston North, are of national significance and therefore direct those matters to be called in and referred to a board of inquiry for determination.

My reasons for calling in the matters involved in the proposal are as follows:

1. The proposal affects or is likely to affect or is relevant to New Zealand’s international obligations to the global environment;
2. The proposal affects or is likely to affect more than one region or district;
3. The proposal will contribute to the achievement of the national target of 90% of electricity generation from renewable energy sources by 2025;
4. The proposal will have national benefits deriving from the use and development of renewable energy in accordance with section 7(j) of the RMA.

“This is a very significant wind farm that traverses public land within the Manawatu-Wanganui Region, Palmerston North City and Tararua District and has widespread public interest.”

“I also believe there were risks of the Palmerston North City Council being open to claims of bias and appeal because of it being the owner of the reserve land where the wind farm is proposed.”

2. Of the Ministers reasons for the Call In, I fully support “The proposal affects or is likely to affect more than one region or district; and, equally, that there is widespread public interest.

3. I however, have some reservations, as to the specificity of New Zealand obligations to the global environment, the national target of 90% of electricity generation from renewable energy sources by 2025; national benefits deriving from the use and development of renewable energy in accordance with section 7(j) of the RMA. These national policy objectives including the Emissions Trading Scheme and proposed reforms in the energy sector are not clear, they are in a state of flux, and dogged with political uncertainty and support. New Zealand's position on Kyoto for example, is certainly not clear. Likewise with the Emissions Trading Scheme all of which have to be decided for Copenhagen later this year.
4. My concern is that under Section 147 (4) (b) of the RMA the Board is required to give consideration to the reasons for the "Call In" under section 141B (2) and 141C (b). With my concerns for the national policies mentioned there is limited case law under this section of the RMA to give some jurisprudential guidance, direction, or clarity at present. The recent decision in the Te Mihi Geothermal Geothermal Power Station while identifying and satisfying international obligations to the global environment namely Kyoto and significant use of a limited renewal resource there was no reasoning given in that decision. Likewise, there is little guidance or direction given in the Te Waka (Unison) decision on this section of the RMA.
5. Having said this I have confidence that the Call In process and decision will be formal and based on current Environment Court practice and procedures for determination.
6. With respect to the Board it is my submission that priority and weight is given to local communities and residents that have certainty in their direction, aspirations and commitment to their families and communities and less weight be given to matters of national significance in those areas of national significance policy that are in a state of flux and political uncertainty.

2. THE SUBMISSION PROCESS

1. Purpose and rationale for my examination of the submissions process is to first provide some background that the Adams and Huatau Marae and others opposing this application have had to endure over the last three years. The Adams in particular have been in the most unenviable position of defending themselves squeezed between two wind farm applications. The second purpose is to provide an introduction for Mr and Mrs Adams and Mr Paul Jones for Huatau Marae before they make their representations.
2. The legal arguments presented by counsel for the Palmerston North City Council and Mighty River Power have provided us with some dynamics that makes this application confusing both in form and substance. I have no comment to make about Mighty River Power. My concern is with the Palmerston North City Council and their elected officials who have created a situation, the merits of which I do not wish to comment on, that has seriously placed submitters opposing this application in an intolerable position. The dynamics that I refer to have completely undermined a normal consent application process and displays symptoms of a lack of consultation and due consideration to the ratepayers and residents of Palmerston North. I am critical of the governance leadership of Palmerston North City Council and I find it unacceptable that their local body functions have been left to the RMA process.
3. Moreover, the mess that the elected officials have created, indicative of three local body elections with three mayors, has on all accounts been delegated to legal counsel and council officers to defend the position of ratepayers and residents opposed to this application. We appreciate their support and empathise with their precarious predicament. It appears to be highly confusing that the PNCC is listed as a neutral party in these proceedings. The conduct and attitude of the Palmerston North City Council has created much frustration, angst, mistrust and betrayal amongst many submitters opposing this application, including Mr and Mrs Adams.

4. The position of the Horizon Regional Council is also disappointing. They too have responsibilities under local government statutes to the ratepayers and they too are listed as neutral. They have policy objectives, formed or in progress, around landscape and they chose not to represent constituent stakeholders. As to the Tararua District Council I prefer to make no comment at all. These have added to the frustration of submitters that are largely left to their own limited resources.
5. Expert evidence has been a truly grueling affair. Evidence in Chief, Rebuttal Evidence, Section 42A Reports, Supplementary Evidence and legal argument has amassed information overloads for most. In terms of submitters much of the scientific evidence is above them and confusing. Who do you believe?
6. Fortunately, that is the role of the Board but nevertheless local residents - submitters are powerless and marginalized throughout this process because they are not "experts". While the expert evidence is critical in determining adverse effects and matters of mitigation much of the evidence appears to be devoid or selective of local consultation and end result consideration.
7. It is disparaging to listen to expert witnesses talking past local residents, both for and against this application, particularly when their evidence will affect the people in the local communities that are ignored. To add insult to injury some experts do not reside in New Zealand let alone have an appreciation of local concerns and issues.
8. There has been a lot of time devoted to expert evidence and even more time for cross examination. It is hoped that this part of the process does not compromise or deny submitters time to present their submissions.
9. People are an important part of this process because they may well have to bear the consequences of experts and their evidence. All of this has added to disillusionment, dislocation and de-sensitivity of local residents.
10. There are real resource constraints that local submitters have had to absorb over the past three years. There has to be real empathy for local residents and

submitters that do not have the financial resources to oppose this application. They have to juggle work and family commitments and spend their own time that they would normally spend in the privacy and quiet enjoyment of their own homes and properties.

11. Many submitters have been subject to two wind farm consent applications and the attrition has taken its tolls on many. Nevertheless, many they have persevered and are testimony to a strong community spirit. Time has been the greatest constraint and the greatest loss for local residents through both resource consent applications. This is another adverse effect not recognized by the RMA – human cost and consequences.
12. Introducing Mr John Adams, he is certainly prolific but consistent in protecting his and his family's rights, interests and aspirations both at local body and national level forums. He has a technical appreciation across a broad range of disciplines and he can hold his own as good as any expert witness through his vocational skills and experience and local knowledge of 24 years on their property. He has been at the forefront of local council accountability and has a strong passion and commitment for natural justice. I have found he has considerable substance and qualification to what he has to say.
13. John Adams has been seriously frustrated because of his employment as a counselor for many at risk young people which impaired his ability to participate in this application process as he would have liked. There are many questions and points that he would have liked to ask particularly of expert witnesses. This is virtually the only opportunity that he has to express his issues and concerns. His representation is lengthy but thorough and I believe that there is real substance in the detail
14. Mrs Rosemary Adams needs no introduction to the Board. She has a very caring and maternal presence with strong nurturing family values, highly community minded, has serious concerns for the health, safety, and wellbeing of people, and is more than capable of standing up for what she believes in. Rosemary has made a visible commitment to this application process at considerable expense

in loss employment income and time. Her representation is a lengthy personal story and has substance in the human reality of how this whole application process has and may impact on her and her family

16. Introducing Mr Paul Jones, the chairman for Huatau Marae. Huatau Marae has over one hundred and forty whanau members that whakapapa or connect to the tupuna of Huatau. I have a special interest in the kaupapa and tikanga of Huatau Marae and RMA requirements. I am available if required to answer any questions. I wish to acknowledge the support of Dr. Robert Thorne for his time and energy that he gave voluntarily to Hautau Marae
17. I wish express our appreciation to submitters that follow in particular Mr Peter Te Rangi and Dr. Ian Christiansen and indeed to all submitters that oppose this application.

With respect to the Board it is my submission that weight is given to the submissions of local residents and they are afforded the right to appear and fully express their views, opinions, issues and concerns in forbearance for what they have endured throughout this whole application process.

3. THE LEGAL PROCESS

1. I am a strong advocate of the rule of law and justice. New Zealand jurisprudence has matured significantly and in the case of the RMA New Zealand law is well developed and specific to New Zealand environmental, social and cultural uniqueness.
2. I accept that most resource consent applications involving power generation are site specific however this should not in itself imply that rulings cannot provide legal precedent, wherever possible, to give certainty and clarity to the application of the RMA.

3. The application of rulings has been applied before the Board already, decisions that are transported from other regions that provide direction for the Board, Pigeon Bay for example.
4. I am not surprised by the Motorimu surrender. In fact I thought the surrender would have been negotiated before the hearing commenced not during the hearing.
5. Regardless of the surrender it is of little consequence to decisions determined in the Environment Court. The viability or non viability of construction was well signaled in the Environment Court decision. The economic viability is of no concern for most if not all submitters. This was a matter privy only to the Allco Board or whoever was behind them at the time. The fact that Motorimu is no longer on the radar for now does not remove the significance of the Environment Court decision and how that decision was reached.
6. There is an opportunity for the Board to benchmark against the Motorimu decision where there are striking similarities and parallels to the current application before this Inquiry.
7. The close proximity to the current application is the most significant point. For example, Motorimu turbines that were declined in close proximity to the Adams property and Huatau Marae were deemed so because of serious adverse effects, They were further away than the current Turitea turbines proposed, they were smaller, and at a lower elevation. The closest consented Motorimu turbines were 3-5 kilometres away from the declined turbines at 1200metres. Commonsense suggests that the current proposed Turitea turbines are going to have far greater adverse effects than those Motorimu turbines that were declined.
7. Other parallels that should be significant to this application including virtually the same parties involved with Motorimu are involved in this application. Other matters that should have a bearing include scientific uncertainty, the precautionary approach principle, cumulative effects, photomontages, and

amenity values – similar concerns and issues to this application. No doubt legal counsels will robustly argue similarities and distinctions respectively.

8. With respect to the Board it is my submission that the rulings of the Environment Court in the Motorimu Appeal be applied where appropriate on the grounds of providing consistency, certainty and jurisprudential application for the RMA.

CONCLUSIONS

In conclusion, I prefer a precautionary approach where scientific or technical evidence is not certain or in doubt and where local communities and residents affected by adverse effects find them objectionably intrusive and unwelcome.

I support those conclusions and recommendations of Mr and Mrs Adams and Huatau Marae.

Wayne Johnson