

6/7/2009

Mr N. Davidson

Ms K. Price

②

BEFORE THE BOARD OF INQUIRY

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a Board of Inquiry appointed under section 146 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.

**JOINT MEMORANDUM OF COUNSEL FOR MIGHTY RIVER POWER LIMITED
AND PALMERSTON NORTH CITY COUNCIL REGARDING REBUTTAL
EVIDENCE OF BRAD COOMBS**

Solicitor

ChanceryGreen
11 Bacons Lane Chancery Square
P O Box 106 202
Auckland Central 1143
p +64 9 357 0600
f +64 9 357 0340

Counsel: K R Price karen.price@chancerygreen.com

Solicitor

Cooper Rapley
240 Broadway Avenue
PO Box 1945
DX: PP80001
Palmerston North
p +64 6 353 5210
f + 64 9 356 4345

Counsel: J W Maassen jmaassen@crlaw.co.nz

MAY IT PLEASE THE BOARD:

- 1.1 This Joint Memorandum of Counsel relates to the rebuttal evidence of Mr Brad Coombs exchanged by Mighty River Power on 5 June and subject to challenge by Palmerston North City Council in its Memorandum dated 10 June 2009.
- 1.2 The Board of Inquiry made a ruling on that rebuttal evidence and issued Directions on 30 June 2009.
- 1.3 Further discussions have occurred between Counsel such that the objection which led to the ruling has been withdrawn on the basis that two paragraphs of Mr Brad Coombs' evidence are deleted. Both Counsel have agreed the substitution of new pages 12 and 13 with the relevant paragraphs deleted as shown in **Attachment 1** to this Memorandum.
- 1.4 On this basis both Counsel request the Board to allow the rebuttal evidence of Brad Coombs and invites it to issue a new Direction accordingly.



W Maassen
Counsel for Palmerston North
City Council



K R Price
Counsel for Mighty River Power
Limited
6 July 2009

ATTACHMENT 1

or natural feature to be considered to be outstanding in each of the criteria, however, similarly consideration should not be limited to merely visual, or indeed any other narrow set of values.

- 4.10 The decision of the Court in *Motorimu Wind Farm Ltd v Palmerston North City Council*⁴ provides further guidance, in particular in relation to the Tararua Ranges:

*"We agree with My Bray's view that within reasonably close proximity to the site, the ridgeline will form the skyline for many observers and residents. However we do not consider that factor of itself can make the ridgeline outstanding. We further agree with Mr Bray's observation that within the 4-5km distance he was talking about the skyline will be highly dominant and appear closer to the viewer. Again we do not consider that of itself makes the ridgeline outstanding in the sense referred to in s6(b) or identified in the Wakatipu decision."*⁵

- 4.11 The concept of a 'Skyline' is dependent on the consideration of both the landscape which is under assessment and also the location of the viewer. Given the vast area covered by the Tararua Ranges, the infinite number of viewing locations throughout the region, and the comments of the Environment Court in the *Motorimu* decision, in my view it is problematical and therefore poor practice to identify a 'Skyline' as an ONFL. As noted by a number of witnesses (including Messrs Brown, Wyatt and Anstey), the Tararua Ranges contain a number of characteristics and values represented within the Amended Pigeon Bay criteria, which will make parts of them outstanding. In my opinion, relying on the identification of the 'Skyline' weakens the identification and protection of the ranges as they are represented in Schedule F.
- 4.12 The mapped boundary of the Tararua Ranges follows cadastral boundaries, and as such are largely 'straight-lines' from point to point, much like a surveyors map. The area mapped within the Tararua Ranges is the Tararua Forest Park.
- 4.13 While the Regional Council have made it clear that they have not attempted to map the Skyline of either the Ruahine or Tararua Ranges, large areas of land which are outside of the mapped areas are captured by the description of the Skyline in Schedule F.

⁴ W067/2008.
⁵ *Ibid*, at p27.

[Redacted text block]

[Redacted text block]

[Redacted text block]

4.17 Regardless of whether I agree with the suggestion that the Skyline extension did have similar vegetation cover and elevation, the identification of ONFLs should be undertaken giving full regard to the entire suite of the amended Pigeon Bay criteria. Given that the justification for the inclusion of the extension is based on vegetation