
BEFORE THE BOARD OF INQUIRY

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 and operate a Windfarm at Turitea

**AFFIDAVIT OF VIRGINIA SHAW
FOR PALMERSTON NORTH CITY COUNCIL**

Dated: 22 June 2009

COOPER RAPLEY

Palmerston North & Feilding

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I, **VIRGINIA SHAW**, principal planner for Palmerston North City Council, swear:

1. I am the principal planner at Palmerston North City Council. This affidavit is in response to the affidavit of Mark Henry, dated 16 June 2009.
2. The intention of the Palmerston North City Council to undertake an independent review by experts of the MRP application has been made plain since October 2006. The evidence filed by PNCC is a peer review of the application and the AEE. MRP cannot have been surprised that the independent assessment occurred or that it responded to matters raised in the AEE including perception surveys and their relevance to the Palmerston North context. Nor could it have been surprised that assessment methodologies and significance assessments applied in PNCC's evidence in the Motorimu case before the Environment Court (and in which MRP was a participant) would be applied consistently across the relevant sections of the Tararua Ranges.
3. I accept that the ultimate outcome of that peer review assessment could not have been known by MRP until it was completed. That was also true for the political and operational arms of the Council as the independent peer review process was iterative and only commenced following Council resolution in February 2009. It is not unusual for an applicant to receive independent peer reviews through the RMA process. The same situation would have arisen if the Council had supplied S.42A Reports if it was still the consent authority.
4. The evidence for the Council and the various experts is unequivocal as to the independence of the process and it is plain that the outcome of the evidence was not known until all experts had completed their assessments. I reject adjectives that describe the Council's position as adversarial or otherwise imply that the assessment was not



undertaken other than in accordance with the processes identified by the relevant experts. The characteristic of independence was achieved by:

- (a) selecting experts without requiring a preliminary assessment of their view;
- (b) selecting experts with proven track record;
- (c) the Council accepting the content of their evidence irrespective of the outcome;
- (d) encouraging solution finding where appropriate and desirable.

I was the primary person involved in selecting the experts and monitored the briefing and caucusing amongst them.

5. A public meeting on 12 February 2009 was held at the instigation of councillors' and staff because many members of the public had expressed a desire to participate, but were not certain as to the means of doing so and the appropriate means of identifying their concerns. The meeting was intended to be informative and fulfills part of the statutory function of the Council to assist members of the public to fully participate in relevant processes. The implication in paragraph 2.14 of the Memorandum of Counsel on behalf of MRP is that the meeting and its purpose was unusual in light of the contractual arrangement between MRP and PNCC. In my opinion there is no inconsistency (given the statutory requirement for separation of functions) and MRP cannot have reasonably expected (as it implies) that the Council should ignore the requests for help by the public merely because of the existence of the contract.
6. Mr Maassen was asked to assist with the presentation to the community. The content of his presentation was approved by the Council's regulatory and strategic planning team. The content and

weighting of content reflected the indications of public responses to the proposal and the likely nature of the concerns. The presentation was well received by a large section of the community and I believe fulfilled its purpose of assisting members of the public to articulate their concerns and identify the effects that they wished to bring to the attention of the Board. Mr Maassen informed the audience that PNCC would undertake its own assessment and the outcome of that assessment would only be known at the conclusion of the evaluation by the relevant experts.

7. Mr Henry has observed that the version of the presentation by Mr Maassen posted on PNCC's website was not the same as that presented at the meeting. Mr Maassen made it clear at the meeting that his secretary had inadvertently not included his final version of the presentation and that this would be made available on the website.
8. While PNCC has jealously guarded its regulatory function, it has experienced an increasing level of criticism and attack from MRP once the nature of its experts assessment became known. This was not unexpected and it has not deflected the Council in its commitment to participating in accordance with its submission.
9. I attach marked "A", "B", "C" and "D" the following:

Document	Date	Exhibit Number
Email Di Buchan, social impact analyst	12 June 2009	"A"
Email Chancery Green to Cooper Rapley Lawyers	10 June 2009	"B"
Email Chancery Green to Cooper Rapley Lawyers	14 April 2009	"C"
Email Dr. Phillips to James Baines	14 June 2009	"D"

6

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10. In relation to exhibit "A". It appears that MRP instructed at least three social impact analysts in anticipation of the social impact analysis of Mr Baines. Of those, Dr Phillips and Dr Burns have given so called rebuttal statements of evidence. However, PNCC is aware of at least one other expert, Ms Buchan, who provided a report on Mr Baines evidence but who has not been asked to give evidence. The email dated 12 June 2009 is in response to an enquiry from Mr Baines as to whether or not Ms Buchan had reviewed Mr Baines statement.
11. Exhibit "B" is an email received from MRP's lawyers after advice from PNCC that it objected to the additional and new evidence of MRP. The third paragraph demonstrates that MRP's approach in light of the content of PNCC's independent assessments. It threatens to remove PNCC's submission and also, and perhaps more alarmingly, claims to know the response of the Board to PNCC's position and its likely regard for it. I consider this response from MRP inappropriate.
12. Exhibit "C" is an email from MRP's lawyers to Cooper Rapley lawyers. This followed a meeting on 26 March 2009 that I attended at Cooper Rapley lawyers. Also in attendance were Ms Price and Mr Nagel for MRP. In attendance for Cooper Rapley were John Maassen, Barbara Pearse and John Reardon. There was constructive discussion about caucusing and Mr Maassen provided some indicative ideas about how this could be achieved. The nature and extent of the Councils evidence was also outlined but for reasons already explained not the outcome of those assessments. It took three weeks for Ms Price to respond as she acknowledges in exhibit "C". By that time, the Council was heavily involved in completing its assessments, preparing to respond to MRP evidence that was to be received shortly thereafter. PNCC did endeavour to get agreement between landscape architects as to the grouping of turbines without success. I consider that Mr Henry is wrong in his assertion that PNCC has not been constructive in regarding caucusing.



13. MRP did not seek consent to call its new evidence but has nevertheless insisted that its new experts participate in caucusing. MRP has, in one case, implied that any failure by PNCC's experts to caucus with new experts despite PNCC's objection is a breach of the directions. Exhibit "D" is the example, where I infer Dr Phillips has sent an email ghost written by MRP making that threat.
14. I consider that MRP are demonstrating an increasingly irrational response to what has ultimately turned out to be a negative assessment by some but not all of PNCC's independent experts.



Virginia Shaw

SWORN at Palmerston North this 22nd day of June 2009 before me:



A solicitor of the High Court of New Zealand
~~Justice of the Peace~~
Registrar

R. P. GOODMAN

12 June 2009

>
>I did do a review of your SIA. MRP and their lawyers have read it. I
>have been advised that they are unlikely to be requiring any further
>services from me on this matter.

>
>Di

>
>*****

>Corydon Consultants Limited
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This is the document marked "A" referred to in the annexed
affidavit of **Virginia Shaw** Sworn at Palmerston North on the
22nd day of June 2009, before me:




A Solicitor of the High Court of New Zealand

John Maassen

From: Nicola Thwaites [Nicola.Thwaites@chancerygreen.com] on behalf of Karen Price [Karen.Price@chancerygreen.com]
Sent: Wednesday, 10 June 2009 18:19
To: John Maassen
Subject: RE: Caucusing
Categories: IDM

This is the document marked "B" referred to in the annexed affidavit of **Virginia Shaw** Sworn at Palmerston North on the 22nd day of June 2009, before me:

Good heavens John. You've had our rebuttal for : 
 A Solicitor of the High Court of New Zealand
 arriving in New Zealand for caucusing.

Indeed you are wrong about us having the rebuttal experts lined up and I will be able to prove this to the Board. For your information, the new rebuttal experts we called, and the evidence they are responding to, are as follows:

- Gavin Alexander: Dr Palmer [TAG/FOTR]
- Paul Baker: Molly Melhuish [PNCC]; Bryan Leyland [TAG/FOTR]
- Deborah Burns: James Baines [PNCC]
- Brad Coombs: Phil Hindrup [Horizons]; Clive Anstey [PNCC]
- Tony Parsons: Peer review of Chris James
- Peter Phillips: James Baines, Clive Anstey, Jeff Baker [PNCC]
- Chris Shaw: Jono Naylor, Jeff Baker [PNCC]
- Ralph Sims: Jeff Baker, Molly Melhuish [PNCC]
- Scott Vaughan: Peer review of Beca
- Andrew Watson: Chris Taylor [PNCC]

However, you will also be aware that a number of your witnesses came as a complete surprise to us as you had never mentioned them to us in any meeting. Similarly your strategy of filing a neutral submission and then to file evidence that is far from that has come as a surprise to the Board as well as us but in the event you challenge our additional rebuttal evidence be on notice we will challenge much of your evidence in chief as this was the primary driver for most of the new rebuttal witnesses. We will also challenge the vires of PNCC's original submission. In my view there are a number of documents to support the contention that PNCC has never intended to take a neutral position and that rather it was merely a tactic employed by you to obfuscate your client's true position. We consider that the Board is unlikely to consider your approach assists its enquiry.

We also note that you have refused to meet with us since last March despite numerous attempts on our part. You have also failed to respond on the memorandum of counsel and even our last request for a telephone conference call.

With respect to the landscape caucusing, we have never proposed not including any other party's experts. TAG experts were simply not available on the same days Mr Anstey was and given time was so tight we

22/06/2009

thought two sessions was at least likely to result in some reports of assistance to the Board. In my experience this approach has worked before for the Environment Court. If you now prohibit your expert attending due to your rebuttal objection your experts are not endeavouring to meet the Board's present Directions. We are more than happy for Mr Anstey to meet excluding Mr Coombs if that is your particular issue.

And to correct you we never proposed non landscape experts being involved in caucusing. Rather that was a suggestion from your team to demonstrate the visual simulations prepared by both sides. If you now do not wish to do so at the landscape session that is fine but we consider both should be demonstrated before the hearing commences.

I urge you to reconsider your position and allow Mr Anstey to caucus with Mr Wyatt tomorrow.

Karen Price
Partner

ChanceryGreen

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Before printing this email, please consider the environment.

Julie Jackson

From: Karen Price [Karen.Price@chancerygreen.com]
Sent: Tuesday, 14 April 2009 20:03
To: John Maassen
Cc: John Reardon; Barbara Pearse; Julie Jackson
Subject: Revised Memorandum of Counsel for review
Attachments: Memo Between Counsel - redlined.doc

Dear John,

Please find **attached** for your review and comment a revised draft Memorandum of Counsel regarding the Turitea project – with my apologies for the delay in coming back to you on this. On further reflection, we thought that it may be simpler, and avoid any potential confusion, to have a single memorandum covering all expert caucusing issues. We have therefore taken the relevant parts of the transportation and ecology/Eco-Park memoranda you prepared, and incorporated them into the **attached**. We are, however, happy to discuss the appropriateness of having one overarching document with you as necessary (as well as the substantive content of the memorandum), once you've had an opportunity to consider that further.

Cheers, Karen.

Karen Price
 Partner

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This is the document marked "C" referred to in the annexed affidavit of Virginia Shaw Sworn at Palmerston North on the 22nd day of June 2009, before me:


 A Solicitor of the High Court of New Zealand

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15/04/2009

This is the document marked "D" referred to in the annexed affidavit of Virginia Shaw Sworn at Palmerston North on the 22nd day of June 2009, before me:


A Solicitor of the High Court of New Zealand

Dear James,

Thank you for your response.

Yes, I appreciate the lawyers have been in discussions. As we understand it, PNCC's lawyers have challenged MRP's rebuttal evidence and MRP has not yet had the opportunity to file its response.

My understanding of the position is that the Board has not made any new Rulings relating to

Page 2 of 5

the rebuttal evidence and may not be able to do so prior to the caucusing deadline. Therefore, I am advised that the present Directions of the Board remain in force. These incorporate the Environment Court's consolidated practice note and make clear that the obligation to the Court to caucus is a *personal obligation* on each of the experts, and that they may not be instructed by any other person in that respect. I would therefore urge you to reconsider your position.

For your information, you should be aware that other PNCC experts have considered their own obligations and decided to proceed to caucus in the last few days despite the instructions of PNCC's lawyers.

As for caucusing only with Emanuel, as he is not a social impact assessor this would not be appropriate in the circumstances for matters beyond the opinion surveys.

We would be delighted to caucus as a group in the event you change your mind but note time is of the essence if we are to meet the Board's deadline of 19 June.

Regards

Peter