

**BOARD OF INQUIRY**

**Turitea Wind  
Farm Proposal**

**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

**FURTHER DIRECTION IN RESPECT OF THE PROCEDURES  
AROUND S42A REPORT AUTHORS**

[1] This direction is in reply to Mighty River Power's (MRP) memorandum, dated 8 July 2009. In that document, MRP set out the dates for filing supplementary evidence on the s42 reports by all parties; together with its preference for cross-examination of the s42A authors at the end of the cross-examination of the expert witnesses in the hot tubbing exercise to be provided for throughout the call-in hearings.

[2] There are no memoranda filed in response to MRP's preference by any of the parties or submitters to the call-in, so the MRP document may be taken as the only one to shed further light on the fairness issue around the cross-examination of the authors of the s42A reports first raised by Mr Maassen, counsel for PNCC, at the end of the second day of the formal proceedings of the inquiry.

[3] Cross-examination is specifically provided for in s147(5) RMA, but it is a discretion afforded by the Board under s147(5)(a)(i) namely: **'the Board may permit cross-**

**examination**'. Mr Maassen among other issues correctly raised the question of fairness to the s42A authors being the subject of cross-examination as being the first witnesses to be questioned when the groups of witnesses appear before the inquiry on its resumption on 27 July. Further supplementary evidence by the parties would have already been filed in response to their s42A reports.

[4] The s42A report authors are not represented by legal counsel. The authors were briefed late in the proceedings through no fault of their own. Only a small pool of experts was available at such a late stage in the proceedings and they were given a very tight time frame in which to respond to the Board's request for further information.

[5] Under s42A(2) any report prepared under s42A(1) '**may be considered at any hearing**'... The section implies a much less rigorous testing of those reports than from cross-examination of the reports' authors, although the phrase 'may be considered' does not overcome the Board's discretion to permit or not permit cross-examination under s147(5)(a)(i). It needs to be remembered that both the consideration of a s42A reports and the cross-examination of witnesses are, however, discretionary.

[6] The parties have been given leave to circulate supplementary evidence in respect of the reports. On reflection that evidence will itself be open to cross-examination from the parties and questioning from the Board.

[7] At close of proceedings on 7 July the Board understood that the situation around the s42A reports was to be resolved in final directions from the Chair. And Mr Davidson requested that the question of how the s42A authors are questioned be kept open, depending on the circumstances.<sup>1</sup>

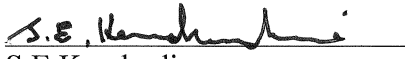
[8] After further reflection, in taking into account all of the above matters, it is our decision that in these circumstances leave will not be given to cross-examine the authors of the s42A reports. At the relevant time for the hot tubbing groups to be called, the s42A Report authors will be asked to be present. They will be called for questions put through (and from) the Board, only if it is considered necessary after all the further supplementary evidence

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<sup>1</sup> See Transcript of Proceedings (T/S) para 20, 144.

on their reports has been heard and those expert witnesses responsible for the supplementary evidence cross-examined.

**DATED** at Wellington this 14<sup>th</sup> day of July 2009



S E Kenderdine  
Environment Judge

Chair  
Turitea Board of Inquiry