

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

DIRECTIONS

THE REBUTTAL EVIDENCE OF MIGHTY RIVER POWER

1. This is in response to the matters raised by Mr J W Maassen (counsel for Palmerston North City Council (PNCC)) in his memorandum dated 10 June 2009 in relation to the rebuttal evidence of Mighty River Power (MRP). In essence he has given notice that PNCC:
 - (i) does not accept the evidence of the new experts;
 - (ii) is not in a position to respond to that evidence or deal with it;
 - (iii) seeks a direction disallowing the evidence.

2. PNCC has issues over allowing new witnesses where much of the rebuttal evidence is in the nature of a peer review rather than rebuttal, some witnesses do not appear to rebut evidence provided by submitters' experts, and new witnesses expand on the primary evidence. These witnesses are listed as following:
 - a. Mr Tony Parsons;
 - b. Mr Scott Vaughan;
 - c. Mr Andrew Watson;
 - d. Mr Gavin Alexander;
 - e. Mr Christopher Shaw;

- f. Ms Deborah Burns;
- g. Dr Peter Phillips;
- h. Professor Ralph Sims;
- i. Mr Paul Baker; and
- j. Mr Brad Coombs.

There were other submissions from PNCC relating to caucusing and process issues which will not be discussed here.

3. The Difficulty With Pre-Trial Objections On Evidential Matters

The role of the trial Judge in considering pre-trial applications regarding the admissibility of evidence was succinctly put by McGechan J in *Donovan v Graham* (1991) 4 PRNZ 311 (HC) at 313-314:

Pre-trial objections as to evidential matters are not particularly common. The more usual situation is one where the Judge picks his way through the total material at ultimate trial stage, discarding the dross. Where, however, pretrial objection is indeed taken the Judge must act in a manner which will best promote the overall interests of justice given the facts of the particular case. The Judge must bear in mind risks involved in premature exclusion of evidence which on the more fully informed basis emerging at trial might be seen as admissible. He must keep in mind the desirability of the case being kept within bounds, and open to efficient disposal. It is important affidavits not be allowed to mushroom, with irrelevance piled upon irrelevance, accusation upon accusation, and with the parties becoming increasingly and unproductively inflamed. Having said that, it also is important the Court not become buried in extensive interlocutory battles over evidential points of relatively trivial importance, without time to decide substantive disputes. There is room for pretrial pragmatism, particularly over lesser matters. Each case must depend very much upon its own facts.¹

This is the state of the law which should be applied in this case.

¹ *Deutsche Finance Ltd v. Commissioner of IRD* (HC Auckland Registry CIV-2006-404-2535) cited by Whiting ECJ with approval in *Te Maru v. Bay of Plenty Regional Council* (Decision AO18/2008 dated 29 January 2008).

4. Peer Review

Counsel for PNCC draws attention to the fact that in a Minute to the parties on the Motorimu Wind Farm proposal, Judge Dryer objected to the filing of peer review evidence due to the fact that at best it can 'simply repeat and confuse the accuracy of evidence given by the principal witness ' and has the danger of providing extra weighting to the evidence of a witness when evidence weighing should be the function of the Board.

There is much truth in this. Peer review analysis is most valuable before evidence-in-chief of any expert witness is filed. In this application, however, there are a number of instances when peer review evidence is valuable, but equally several examples where it does not add anything to other evidence and in fact is prejudicial.

5. MRP's response

The challenge to PNCC's submission from counsel for MRP included the following:

- the lack of certainty at the outset around the evidence PNCC was to call;
- PNCC's submission on the applications to MRP's proposal and the lack of an indicative list of witnesses attached to that submission;
- a public meeting subsequently called by PNCC which did indicate a number of witnesses to be called (February 2009) but to which an additional 5 witnesses were added at a later date;
- an allegation that the public meeting was ostensibly called for educating the public on how to lodge submissions in opposition to the proposal despite the fact that PNCC was considered a partner to the application;
- an allegation that the evidence lodged by PNCC (May 2009) was entirely negative and adversarial in response to MRP's primary evidence which MRP considers appropriate or possible (on the basis of information then available to the parties).

MRP considers that the six briefs of evidence (noted above) were appropriately exchanged as rebuttal evidence in accordance with the Board's Directions as to *Preliminary and Hearing Procedures*.

6. Particular Witnesses of Concern:-

- **Ms Deborah Burns (social impact assessment)**

Ms Burns is a market research expert previously responsible for town planning research for the Wellington City Council. She is a specialist carrying out high specification projects requiring the measurement of public opinion on complex technical subjects. She was also

involved in finalising and peer reviewing Research New Zealand's (RNZ) Public Perceptions' Survey, its sampling methodology and questionnaire design.

Ms Burns evidence comments on and responds to a potential social impact of the Turitea Wind Farm (TWF). In particular she comments on the social impact assessment of James Baines, who gives evidence for PNCC. Ms Burns is challenged by PNCC because her evidence is not rebuttal and should be excluded. PNCC maintains her evidence should be read in conjunction with that of Mr Baines for PNCC and Mr Kalafatelis and Dr Phillips for MRP.

- **Dr Phillips (social impact assessment)**

Dr Phillips is managing director of Dialogue Consultants Ltd and holds a doctorate of philosophy. His field of expertise is in applied science research projects including a range of social surveys.

Dr Phillips' evidence comments on and responds to social impact matters, in particular he comments on the evidence of James Baines, Mr C Anstey and Mr J Baker where their evidence relates to social science methods in relation to the interpretation of qualitative information. Specifically he addresses the following matters:

- (i) bench marking the assessment;
- (ii) social aspects of effects;
- (iii) ad hoc versus objective measures;
- (iv) submissions over time;
- (v) undue focus on opinion;
- (vi) inappropriate interpretation of citizens panel results;
- (vii) the (alleged) tipping point;
- (viii) standards of objectivity;
- (ix) evidence of Mr Anstey related to social matters and focus groups;
- (x) inappropriate generalisation of focus group discussions in the evidence of Mr Anstey;
- (xi) inappropriate imputations in the evidence of Mr Baker.

Dr Phillips is challenged on the basis that his evidence rebuts a primary statement by a submitter (PNCC) but is not relevant in the accepted sense of that term and not evidence from a person who has undertaken a comprehensive assessment of the social impact assessment of the proposal. It is alleged his function is to critique the evidence of submitters who provide evidence on social impact.

MRP's response

MRP's response to challenge is that both Dr Phillips and Ms Burns respond to, and rebut, the evidence presented by Mr Baines. It accepts that MRP had notice that Mr Baines was to present evidence on social/cultural impacts. However, MRP had no prior knowledge as to the nature of the purported Social Impact Assessment outlined in Mr Baines' evidence, or that his evidence would even extend beyond addressing the Public Perception Study undertaken by Research New Zealand as outlined in the evidence in chief of Mr Emanuel Kalafatelis (for MRP). As Mr Kalafatelis is not appropriately qualified to comment on social impact assessments, it was necessary to engage Dr Phillips to prepare rebuttal evidence in this regard. PNCC was on notice from Mr Kalafatelis' evidence in chief that the Research New Zealand survey had been peer reviewed, and it was therefore appropriate and necessary for Ms Burns to be called to detail the nature of her review given the scope of matters raised by Mr Baines.

Evaluation

Ms Burns:

- challenges the cross analyses given in the Baines Citizen's Survey and the results these give of local public opinion;
- criticises the Baines' evidence for not providing introductory material used by researchers in eliciting opinions on a further survey of residents of the affected area – material Ms Burns considers critical for the results of the survey;
- criticises the results of the RNZ survey achieved through the use of small percentages or subgroups.

The rebuttal evidence of Mr Kalafatelis was examined in the light of that of Ms Burns. It appears that her material is what PNCC's counsel terms an example of 'corroborative peer reviews' – this time in relation to the RNZ survey.

It is agreed that this does not meet the definition of 'rebuttal evidence'. It tracks much of the evidence of Mr Kalafatelis – admittedly in finer detail and with the knowledge gained from Ms Burns who was herself involved in peer reviewing herself the RNZ survey. But it displays none of the 'exceptional circumstances test' set by the Directions of the Board justifying its introduction at this late stage. Allowing it to be presented would be of limited assistance.

Result

Ms Burns evidence is unnecessary and should be deleted.

Dr Phillips

Counsel for PNCC addresses what he terms the 'second class of evidence' sought to be introduced by MRP - that is evidence by experts that rebut a primary statement by a submitter (eg. PNCC) but is not rebuttal in the accepted sense of that term, and is not evidence from a person who has undertaken a comprehensive assessment of the relevant subject. Dr Phillips did not do a social impact assessment of the MRP proposal. It is submitted his sole function is to critique the evidence of submitters who provide evidence on social impact, a role which may be described as that of an "expert assassin". He does not make a positive contribution to the subject. PNCC alleges if such experts are entitled to give rebuttal evidence then this alters the fairness of the process from one where experts provide a body of helpful evidence, and then identify areas of disagreement, to one where the applicant is given the indulgence of additional experts whose sole function is to critique. This type of evidence, submits counsel, is particularly prone to a mushrooming of accusation upon accusation between experts and increasingly diminishing marginal returns in terms of probative material.

Evaluation

Dr Phillips' evidence contains a further 'robust assessment' of the evidence presented by Mr Baines on the social impact of the proposal – over and above that provided by Mr Kalafatelis. To make this assessment, Dr Phillips introduces six principles on social assessment and guidelines established by an Inter-organisational Committee on Principles and Guidelines for Social Impact Assessment. Mr Baines assessment is then measured against these principles. This is new evidence, even though Dr Phillips says it is against a framework which he is in no doubt Mr Baines is familiar with. Dr Phillips then critiques Mr Baines':

- failure to separate out social aspects of the proposal from the technical ones;
- use of distance from a turbine as proxy for noise exposure, disregarding a range of factors such as terrain and topography;
- use of noise modelling and field measurement techniques from the experts and some of it conflicts with Mr Anstey's evidence (also for PNCC);
- use of unattributed quotations from people about whom no information is supplied;

- results of a review of submission statistics undertaken by Mr Baker of PNCC, in the process discussing the growth and volume of submissions and change in balance of support and opposition for these applications.

Next Dr Phillips proceeds to question Mr Baines' 'undue focus on opinion' with a lengthy discussion on the social impact assessment Dr Phillips and his colleagues undertook on Transpower's Grid Upgrade Project, which again is new evidence. Interspersed with this are some observations on Mr Baines' statistics.

Dr Phillips further comments (briefly) on the evidence of Mr Anstey and Mr Baker where this relates to social science method in relation to the interpretation of qualitative information.

Result

Some of Dr Phillips' evidence may be useful to the inquiry. It needs to be extensively condensed and refocussed as rebuttal of the evidence of the 3 witnesses mentioned.

- **Mr Brad Coombs (landscape – Proposed One Plan (POP) issues)**

Mr Coombs is a senior landscape architect with ISTHMUS Group Ltd in Tauranga. As described by PNCC, Mr Coombs comments on and responds to matters raised in the evidence of Phillip Hindrup, on behalf of Horizons Regional Council (HRC), regarding the identification of the Tararua Ranges as an Outstanding Natural Features and Landscapes (ONFL) in the POP.

In particular, he addresses:

- (i) relevant assessment criteria for determining ONFL;
- (ii) the process undertaken for identification of ONFLs in the POP;
- (iii) the specific provisions relating to the skyline of the Tararua Ranges (and the proposed Turitea Wind Farm site in particular) under the POP.

PNCC's submission is that this evidence does not meet the definition of rebuttal evidence and should be excluded.

MRP's response

MRP's submission in reply identifies that Mr Coombs responds to issues regarding the outstanding natural landscape provisions of the POP raised in the evidence of Mr Phillip Hindrup on behalf of HRC.

Evaluation

Mr Coombs indicated he had been asked to review and present the work that he had (previously) undertaken in relation to MRP's submission on the POP and some of the evidence presented in support of TAG, PNCC, HRC and MRP.

In addition, reference is made throughout his evidence to Mr Anstey's S.42A Report provided to HRC: (Mr Anstey is a landscape witness for PNCC).

Mr Coombs' evidence is not evidence in rebuttal. In his introduction he sets out his qualifications including the fact that he has advised MRP regarding aspects of its submission to HRC and has since reviewed the submission lodged in respect of the POP. He states he is qualified to give rebuttal evidence on the MRP proposal because:

I have attended a prehearing meeting held by Horizons Regional Council (*Horizons*) on the Landscape Chapter (7) and Schedule F of the Plan, and a subsequent expert caucusing session. I also prepared evidence to be heard on the Landscape Chapter and Schedule F of the hearings for the Proposed One Plan.

Mr Coombs then details the work he carried out in relation to MRP's submissions on the proposed plan. But as far as the MRP proposal itself, while acknowledging he has reviewed some of the evidence presented by the parties on MRP's project, Mr Coombs states:

....I have not fully considered the proposed wind farm myself or the range of components which will comprise the project. I have been asked to review and present the work that I have undertaken in relation to Mighty River Powers' submission on the Plan. I do not have a detailed understanding of the proposed wind farm project; however I do consider that I have a good working understanding of Chapter 7, and Schedule F, and the process that has lead to their evolution within the Plan.

His rebuttal evidence therefore consists for the most part of a discussion of the landscape provisions in the POP identified in Mr Hindrup's evidence, as set out in PNCC's submission above. Mr Hindrup is mentioned by way of reference.

Mr Coombs then discusses the relevant assessment criteria for determining ONFLs and chiefly peer reviews with approval Mr Stephen Brown's landscape evidence on behalf of MRP. This is not rebuttal evidence.

Mr Coombs next turns to provisions in the POP relating to the Skyline of the Tararua Ranges (as they are presented in Schedule F to the POP). He again makes brief reference to Mr Hindrup, and then to Mr Anstey's S.42A Report on the Tararua-Ruahine ridgeline (which is not rebuttal of Mr Anstey's evidence). Mr Coombs does not agree with the proposed Skyline landscape area captured by its description in Schedule F. In this he notes his agreement on this subject with all other landscape witnesses other than Ms Lucas (who acts for a submitter).

Mr Coombs' summary and conclusion to his evidence do not assist him either. He states as follows:

Case law and recognised best practice methods in relation to the identification and assessment of ONFLs have been developed over time in line with the focus of the RMA and within a New Zealand context. As far as is possible, the Plan should acknowledge, support and draw from the decisions of the Court and the best practice methods in order to achieve the purpose and principles of the RMA.

Schedule F provides a list of identified ONFLs and maps them. The Schedule and its supporting text and reports are not clear as to what process has been undertaken to arrive at the identification or the setting of boundaries of the ONFLs. There appears to have been undue weight placed on the scenic and visual values of areas which have been identified as ONFLs, as indicated by the characteristics and values described in the Schedule F table.

Areas which are considered to be outstanding within the region lie outside of those areas mapped in Schedule F.

An assessment of the region's landscapes using the amended Pigeon Bay criteria, or a recognised version of them, has not been undertaken to assess and identify the locations or boundaries of the regionally significant landscapes within Schedule F.

I have considerable discomfort with the process which has led to the locations and boundaries of some of the areas identified in Schedule F and their subsequent recognition as outstanding natural features and landscapes.

The identification of a landscape area, such as a 'Skyline' is problematic in that it places predominant weight on the scenic and visual qualities of the feature, without acknowledging the balance of recognised landscape assessment criteria.

The concept of a 'Skyline' by its nature is inherently difficult to identify and protect due to the infinite combination of land and sky interface views which are generated by the complex topography of the landform and the locations of viewers throughout the region. In my view, the proposed Skyline northern extension to the Tararua Forest Park ONFL cannot be supported. My evidence to the relevant hearings panel on behalf of Mighty River Power in respect of this provision is therefore that it should be rejected.

In my opinion, because a full regional landscape assessment has not been completed, the lists of Characteristics and Values, and the mapped ONFLs contained in Schedule F of the Plan cannot be relied upon to provide any certainty of the actual values present, or their locations.

In other words, Mr Coombs is, in reality, providing material to the inquiry on the provisions of the POP – evidence which is more appropriate to plan change hearings on the POP or hearings on appeal of these issues to the Environment Court. It is not rebuttal evidence to that of Mr Hindrup or to that of Mr Anstey, (any challenge to the professional competence of the latter is more of a legal issue).

Result

There is prejudice arising from Mr Coombs' evidence. It is struck out.

- **Professor Ralph Sims (energy and climate change)**

Professor Sims is a professor of sustainable energy and director of the Centre for Energy Research at Massey University and is currently based with the renewable energy unit of the international energy agency, Paris, as a Senior Energy Analysis. He holds a BSc Ag Hons and MSc AG Eng and is a chartered engineer and fellow of the Institute of Agricultural Engineering. Professor Sims evidence is in response to that of Mr P Baker for MRP and Mr J Baker and Ms Molly Melhuish for PNCC. He also addresses climate change issues in the Manawatu and globally.

PNCC submits that Professor Sims is not giving rebuttal evidence because Ms Melhuish did not give evidence on climate change.

MRP's submission about Mr P Baker and Professor Sims is that they were both called primarily to respond to and rebut the evidence presented by Ms Melhuish. It is submitted Mr P Baker also responds to the evidence of Mr Leyland, and Professor Sims to the evidence of Mr J Baker. It submits both Mr P Baker's and Professor Sims' rebuttal evidence was necessary (in the sense that it could only be given as rebuttal evidence) given the lack of detail in PNCC's submission regarding the generic "energy context" issues that Ms Melhuish was to address. MRP also cannot have been expected to anticipate the lack of proper consideration of climate change issues in both Ms Melhuish and Mr J Baker's evidence, which Professor Sims also responds to. It is also submitted that as outlined in Mr Mark Henry's affidavit for MRP, it is also factually incorrect for Mr J Baker to state (as he has done at paragraph 7 of his affidavit) that Ms Melhuish did not address climate change issues because she does not have, and has never claimed, any expertise in this area.

Evaluation

Mr J Baker for PNCC notes that Professor Sims' evidence cannot be described as rebuttal to that of Ms Melhuish, given that she did not discuss climate change issues.

Mr Mark Henry, however, in his affidavit for MRP, as project manager for the Turitea Wind Farm, identifies Ms Melhuish as a well known energy consultant who has previously presented information in a number of public fora regarding climate change. Recognising climate change is an important consideration in this case, Mr Henry deposes there was a

reasonable expectation that the issue would be discussed by Ms Melhuish and when she did not, Professor Sims was asked to respond to this omission.

Mr J Baker also contends that climate change issues are outside of Ms Melhuish's area of expertise. Mr Henry's affidavit however identifies that she has previously made a submission to the Government's Finance and Expenditure Select Committee in respect of the Climate Change (Emissions Trading and Renewable Preference) Bill, and written an article in the New Zealand Medical Journal entitled "*Addressing the threat of climate change: is New Zealand lagging behind?*" (*Journal of the New Zealand Medical Association*, 23-March-2007, Vol 120 No 1251). In that article, it is acknowledged that Ms Melhuish is a member of the Climate Defence Network (New Zealand), a voluntary sector agency concerned with preventing destabilising climate change. Copies of these documents were supplied as Appendices F and G to Mr Henry's affidavit. Mr Henry also made mention of a Google search of Ms Melhuish's name associated with the words 'climate change', that includes reference to a number of other submissions she has made, seminars and conferences she has run, and reports she has written concerning the effects of climate change on New Zealand's energy market.

The issue around Professor Sims' involvement is a difficult one because Ms Melhuish did not hold herself out in her evidence as a climate change expert so strictly speaking, Professor Sims' evidence is not rebuttal.

But Ms Melhuish nevertheless states that she was commissioned by PNCC to give evidence to the Board of Inquiry on what might be known generally as the 'energy context' relevant to the MRP proposal². Under the heading "Key Issues" she notes "the economic cost of greenhouse emissions is increasingly recognised as being extremely high' with the cost being shared by the planet itself, consumers, taxpayers and emissions-producing industries. This may be taken as a veiled reference to climate change issues which are a relevant part of the Part 2 RMA provisions and which require analysis by the experts. Climate change per se is not discussed further by Ms Melhuish, whose expertise in energy related/climate change issues however is acknowledged here – and affirms MRP's support for her expertise. Ms Melhuish is in that category of witnesses identified in *R v Halmond* where the Court of Appeal acknowledged that in determining matters of expertise the judge must determine whether the witness has undergone a course or special study, or is so experienced in a particular field as to render that person expert in a

² Melhuish, evidence in reply, para 6, p3

particular subject³. Ms Melhuish is in the latter category. Professor Sims is therefore welcome in filling the climate change void which the Board may have wished independently addressed in any event. It is an exceptional circumstance.

Result

There is no prejudice arising from Professor Sims' evidence, although it must be acknowledged it would have been more appropriate as included in MRP's evidence-in-chief.

- **Christopher Shaw (Contract between MRP & PNCC)**

Mr Shaw is employed as commercial manager, generation development projects for MRP. Counsel for PNCC identifies Mr Shaw is providing rebuttal evidence in response to the evidence of Mr Naylor, Mr J Baker and Mr Taylor for PNCC regarding the contract (the contract for development of the Turitea Wind Farm and subsequent variation to that) between MRP and PNCC. Specifically he addresses the following matters:

- (i) issues relating to development of turbines on private land;
- (ii) provisions of the contract relating to water quality effects;
- (iii) the contractual requirements regarding development of the ecopark.

Mr Shaw attaches to his evidence a redacted version of the contract.

Evaluation

Mr Shaw's is rebuttal evidence and is largely factual. No significant issues are identified.

Result

There is no prejudice arising from the evidence of Mr Shaw.

- **Andrew Watson (water quality)**

Mr Watson has a BE (Civil) degree and a masters of engineering science (water engineering) degree. He is employed as technical director, water supply with BECA Infrastructure Ltd which is part of the BECA group of companies. In the late 1990s Mr Watson was the project manager and design leader on the design of the \$4m upgrading of the Turitea Water Treatment Plant. He provided rebuttal evidence to comment on and respond to the potential impacts on the supply of drinking water to the city of Palmerston North. In particular he responds to the evidence of Mr Chris Taylor on behalf of PNCC.

³ CA unreported, 305/89, 1990.

Specifically he addresses the following matters:

- (i) raw water quality and how this could be impacted by the TWF development;
- (ii) Turitea Water Treatment Plant process and how the quality of its treated water could be impacted by the TWF development;
- (iii) PNCC's public health risk management plan;
- (iv) protection of sources of drinking water;
- (v) water quality management from the catchment;
- (vi) risks to the public health protection provided by the Turitea Water Treatment Plant.

PNCC challenged Mr Watson's evidence for its absence at the time the council filed its application for directions rather than for its inappropriateness.

MRP's response is that Mr Watson's evidence primarily responds to, and rebuts, that of Mr Taylor. Again, MRP had no indication that Mr Taylor would be called as a witness, or the exact nature of the water quality and water treatment issues regarding the PNCC water supply that this would raise. To the contrary, MRP had received a copy of the report commissioned by PNCC entitled "Report for Proposed Mighty River Power Wind Farm: Turitea Water Quality Impact Assessment" dated February 2009 which did not identify any significant issues arising. MRP could therefore have reasonably expected that any evidence by those experts would be similarly benign. A copy of the GHD report is appended to the evidence of Mr Taylor.

Evaluation

Mr Watson's rebuttal evidence was not initially provided in full as he was apparently waiting on the receipt of outstanding information requested from PNCC. It was anticipated at the time of filing PNCC's application for directions that his evidence would be filed in the week commencing 8 June 2009 (two days before PNCC's application was filed).

In the event, Mr Watson's rebuttal evidence was filed on 12 June 2009. It is based first of all around raw water quality issues raised by PNCC which Mr Watson reported on in the upgrade of the Turitea Water Treatment Plant in the late 1990s. He considers PNCC's sample does not match his memory of the data set from that time and for which he sought historical information (a report) back in May 2009. Mr Watson also addresses the Turitea Water Treatment Plant process and how the quality of its treated water could be impacted upon by MRP project. The question of nutrients (nitrogen, phosphorous and algal blooms) in the water as a result of the wind farm proposal is also raised. He then further addresses paragraphs (iii)-(vi), of the issues identified above. Mr Watson's rebuttal evidence is not

the subject of any further challenge by PNCC. It presents as direct rebuttal evidence of the issues raised by PNCC.

Result

There is no prejudice arising from the evidence of Mr Watson.

7. Evidence of Gavin Alexander, Scott Vaughan, Anthony Parsons

The evidence of these witnesses are seen in the “third class of evidence’ by PNCC - that is, related to a primary statement and rebuttal in nature but by a new expert – in particular some of the evidence on water quality, climate change and geological issues.

Gavin Alexander (geotechnical)

Mr Alexander is a civil engineer with BECA. He provides evidence expanding on the geotechnical work embodied in the evidence of Christopher James in order to respond to geotechnical issues in the evidence of Dr Allan Palmer, in particular:

- (i) presentation of the preliminary geotechnical investigations and assessment carried out for the project;
- (ii) description of geotechnical considerations for the wind farm project generally, in particular relating the recommendations from his earlier work to the currently proposed scheme.

Scott Vaughan (geotechnical)

Mr Vaughan is a civil engineer and managing director of Riley Consultants Ltd. He was engaged by MRP in early May 2009 to undertake an independent peer review of the civil and geotechnical aspects of the resource consent application. He has met with the BECA team responsible for the geotechnical and civil engineering inputs and has been assisted by Don Tait, Riley director who was engineer to the contract for the construction of the stage 3, Tararua Wind Farm and principle design engineer for the lower Turitea dam upgrade. Prior to the Board of Inquiry he plans to undertake a detailed site inspection with the BECA geotechnical engineer. His evidence addressed the following documents and information:

- (i) preliminary geotechnical report;
- (ii) construction effects report;
- (iii) evidence of Chris James (BECA);
- (iv) evidence of Graham Levy (BECA);
- (v) rebuttal evidence of Gavin Alexander (BECA).

Anthony Parsons (civil engineering/water quality)

Mr Parsons is a civil engineer who provides rebuttal evidence to comment on and respond to the primary evidence relating to civil engineering, design, construction and environmental management matters. He was employed by MRP for 2 years to project manage the establishment, investigation and preliminary design development for the Turitea Wind Farm. In particular, he comments on the evidence of Mr James and Mr Levy who present evidence on behalf of MRP. Specifically he addresses the following matters:

- (i) civil engineering and construction effects;
- (ii) water quality, earthworks, erosion and sediment control for the project;
- (iii) construction environment management plan.

Evaluation

Counsel for PNCC notes that Mr Parsons does not comment on any evidence provided by submitters.

MRP identifies that the late involvement of Messrs Parsons and Vaughan was prompted to offset the difficulties raised in the Hauauru Ma Raki Wind Farm Board of Inquiry. The level of expertise of Mr James, who is giving evidence on behalf of MRP and who has an extensive background in civil design matters and in particular wind farm design, was challenged by the Board because he is not a qualified engineer or member of IPENZ. As Mr James was also briefed in the Turitea proposal, MRP considered it was appropriate to have Mr James' evidence peer reviewed by independent engineers.

PNCC accepts that the evidence from the BECA suite of witnesses on water quality and geology make a positive contribution to the total package of evidence and can be described as rebutting a subject their colleague (Mr Graham Levy) dealt with in his primary evidence. It is (now) considered simply a change of personnel to ensure relevant expertise is able to be considered by the Board.

The evidence of these three witnesses (including Mr Parsons who was involved as project manager by MRP in its preliminary investigations) which effectively peer reviews professional colleagues' evidence is accepted. PNCC's virtual concession that this professional evidence contributes to, rather than detracts from the issues to be resolved in the inquiry underlines the fact.

Result

There is no prejudice arising from the evidence of Messrs Alexander, Vaughan and Parsons.

Directions

Dated at Dunedin this 26th day of June 2009.

S. E. Kenderdine

S E Kenderdine

Environment Judge

Chair

Board of Inquiry

Turitea Wind Farm