

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

Sent via Email: turiteacallin@mfe.govt.nz

**DIRECTIONS TO ALL PARTIES
TURITEA CALL-IN - FURTHER PROCEEDINGS**

- **Background**

[1] The Board is advised that two residents without legal representation have signalled that they are concerned as to what are the terms of reference for a Board of Inquiry. The subject of their concerns arise from the issues stated in MRP's memorandum to the inquiry dated 4 September 2009 in which the company set out a number of matters it was responding to which had arisen in the hearing or wished to consider further. In particular, MRP advised that because of the concerns expressed at the hearing over the layout of the wind farm that it is reconsidering the turbine layout to see how it could be better redesigned to fit with the landscape. The residents expressed interest on how the Board proposes to go forward in such circumstances.

[2] Particularly, the residents wish to know where they stand in relation to any changes in the evidence. They say that at the end of that day, they were left without matters being made clear as to the exact implications, reasons for, and potential ramifications of MRP's memorandum.

[3] The Board was however, unable to respond to MRP's memorandum immediately because there were other submitters to hear. We also needed time to reflect upon two of the issues raised, in particular shortening the tower length and turbine and transmission layout. We also wanted to visit the Makara wind farm site to observe at first hand some of the issues which have arisen there which may be relevant to Turitea.

- **The MRP Memorandum**

[4] In the memorandum of 4 September, MRP indicated its response to a number of issues which had arisen during the past weeks of hearing of its Turitea Wind Farm proposal namely:

- turbine dimensions
- redesign of the turbine layout
- social
- noise issues
- wider caucusing

[5] The Board responded formally by way of memorandum to MRP on 15 September 2009 to the issue of the Turbine Dimensions, as it was an issue discussed on our Makara site visit; this is yet to be responded to by MRP.

[6] In this memorandum, we formally acknowledge also MRP's information on Noise Issues, Wider Caucusing, and Social Issues and like MRP see these matters as ongoing.

- **Re-design of Turbine Layout**

[7] While the Call-in process differs in some ways from the normal Environment Court process, it has many close parallels and at all times a Board must work within the provisions of the RMA. It does not make up the rules as it goes along.

[8] During Environment Court (and Board) hearings, matters may be adjourned for an applicant or others to provide further or different information, issues may be sent off for further caucusing when the evidence changes, or they may be sent to mediation for resolution if that appears a reasonable solution at any point in a hearing. This frequently occurs. And importantly for this case, s41C(3) RMA, which relates to powers and duties to hearings and requests before or at hearings, provides: **At the hearing, the authority** (ie the Board in this case) **may request the applicant to provide further information.**

[9] This was done in the *Makara* wind farm case when the Court issued a memorandum to Meridian when the hearing was almost completed seeking possible relocation of some of the turbines, despite the applicant maintaining it had already culled as many turbines as it could economically do so.¹ If the response from the company had not been satisfactory, consent to that proposal would not have been granted, the intent of any such request by a Court (or in this case the Board) being in such cases either to diminish the scale or the intensity of the activity, thereby mitigating its perceived impacts. It is an iterative process which can be helpful on such large projects.

[10] In this case, the Board, as a result of on-going concerns expressed by most of the landscape experts, some ecologists, some of the noise experts, and the residents themselves, signalled that it too had concerns around such issues if the proposal went ahead as currently designed. By producing its memorandum when it did, MRP signalled it had heard the concerns and offered to consider whether a better redesign might relieve some of the pressures on the Turitea environment and its community.

- **On-Going Issues**

[11] The Board met on 11 September, conducted a site visit to Makara, and held a telephone conference with counsel for the parties on the various matters raised in MRP's memorandum.

[12] Having considered all the issues arising from that document, the Board requests MRP under s41C(3) RMA to file details of its redesign as they come to hand. This process has

¹ See *Meridian Energy Ltd v Others v Wellington City Council and Others* Decision No W031/2007, see particularly paras [460] – [523]. See also *Upland Landscape Protection Society Incorporated v Clutha District Council and Others*, Decision No C 85/2008.

already been signalled by MRP in para 3.2 of its memorandum and also again on the conference call on 11 September.

[13] When hearings resume on 12 October 2009, those submitters/presenters still not heard will complete their representations to the Board; it is essential for all parties to have a complete overview of current concerns. Those expert witnesses yet to give evidence, or submitters scheduled to make a presentation (with the exception of the planners), will therefore provide their evidence in the time allocated. We make an exception of the planners at this stage because any redesign of the turbine layout by MRP may mean the planning evidence could be altered.

[14] As to further steps in the proceedings as a result of the intended reconsideration of the layout redesign by MRP, that design work will be iterative and complex and we are unclear yet as to its timing. MRP have however advised it will keep all parties informed as to progress of the issue. It is not anticipated at this stage that any completed (new) information will be available before the resumption of hearings on 12 October.

[15] MRP signalled in the conference call however that it may be possible to formally present its redesign at a hearing on 7 December and this date is being considered. Opportunity will be available then for cross-examination of the expert(s) and questions from the residents. We note here the Board has the authority to establish a procedure that is appropriate and fair in the circumstances: see s39(1) RMA and in determining an appropriate procedure shall avoid unnecessary formality: see s39(2)(a). We consider this procedure to be appropriate and fair.

- **The Draft Report and Submitters Responses**

[16] Meanwhile we note for the residents that s148(1) RMA requires the Board to produce a written draft report on Turitea as soon as practicable after the Board has completed the inquiry.

[17] Section 148(2) of the Call-In procedures requires that the draft report-

- (a) **must state the board's draft decision; and**
- (b) **must give reasons for the decision; and**
- (c) **must include the principal issues; and**

(d) must include the findings of fact.

[18] Section 148(4) provides:

The board must invite the persons to whom the draft report is sent to send their comments on any aspect of it to the board within 20 working days of the date of the invitation.

The draft report will be sent to all submitters.

[19] Section 149(1) provides:

- (1) As soon as practicable after the 20 working days referred to in section 148(4), the board of inquiry must -**
- (a) consider any comments received; and**
 - (b) make its decision; and**
 - (c) produce a written report.**


The submitters thus have the opportunity to make further comments on the draft report before the Board finalises its decision. This was the outcome also of the *Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* which was also a Call-in project.

[20] Finally, as with Environment Court proceedings under s274(1) RMA, s149(3) provides for an appeal to the High Court on questions of law and that also includes those who made submissions to the inquiry.

- **Terms of Reference**

[21] As requested the Terms of Reference for this Board of Inquiry are attached marked Appendix A.

DATED at Wellington this 16th day of September 2009


 S E Kenderdine
 Environment Judge

Chair
 Turitea Board of Inquiry

Attached: Appendix A

Appendix A

Terms of Reference

Board of Inquiry for Mighty River Power's proposed Turitea wind farm.

Board of Inquiry for Mighty River Power's proposed Turitea wind farm

1. Establishment of a Board of Inquiry

- 1.1. On 17 December 2008 the Hon Dr Nick Smith decided to exercise his powers of intervention in respect of Mighty River Power's proposed Turitea wind farm (the proposal). The Minister decided that the matters involved in the proposal are of national significance and the resource consent applications should be called in under section 141B of the Resource Management Act 1991 (RMA).
- 1.2. Pursuant to section 141B the Minister decided that he will refer the matter to a Board of Inquiry for consideration and a decision.
- 1.3. The Board of Inquiry (Board) comprises :
 - Judge Shonagh Kenderdine (chairperson)
 - John Hudson (member)
 - Vivian Kloosterman (member)
 - Chris Shenton (member)
 - Richard Heerdegen (member)

2. Role of the Board

- 2.1. The role of the Board is to consider and decide the matters that have been called in. (See attached Appendix for the call-in direction and the list of resource consent applications).
- 2.2. The Board will hold public hearings in the area and will produce a draft and then a final report stating the Board's decision and the reasons for the decision. The draft and final reports must include the principal issues and the findings of fact.

3. Scope of the Inquiry

- 3.1. The Board must conduct an inquiry in accordance with the provisions of the RMA and in particular sections 147 to 149 of the RMA.
- 3.2. The factors to which the Board must have regard include the Minister's reasons for calling in the matter under section 141B(2). These are:
 - The proposal affects or is likely to affect or is relevant to New Zealand's international obligations to the global environment.
 - The proposal affects or is likely to affect more than one region or district.
 - The proposal will contribute to the achievement of the national target of 90% of electricity generation from renewable energy sources by 2025.
 - The proposal will have national benefits deriving from the use and development of renewable energy in accordance with section 7(j) of the RMA.

4. Procedures for the Board

- 4.1. Subject to the RMA and the Terms of Reference the Board will determine its own procedures.
- 4.2. The Board should carry out its functions, powers and duties as promptly as is reasonable in the circumstances in accordance with section 21 of the RMA.

5. Administrative support to the Board

- 5.1. The Board will be serviced by the Ministry for the Environment and communications to the Board will be via that office. The Ministry will use the support and processing systems previously established by the councils where appropriate.
- 5.2. At the request of the Board, the Ministry will arrange for work to be done for the Board and for information to be supplied to the Board. It will provide secretarial services to the Board (such as agendas, minutes, meeting arrangements) and will provide any advice to the Board that it may require.

6. Term of the Inquiry

- 6.1. The Inquiry will run from the date of appointment set out in the letters of appointment until the final report has been produced in accordance with section 149.

Appendix: call-in direction and the list of resource consent applications and notices of requirement

Ministerial direction for call in


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.

Before reaching my decision to direct call in of the proposal, I sought the views of the local authorities that would have processed and decided the matters if I had not called them in.

Dated at Wellington this 18th day of Dec 2008


.....
Hon Dr Nick Smith
Minister for the Environment

Appendix A: Matters involved in the Turitea wind farm proposal:

Manawatu- Wanganui (Horizons) Regional Council

Mighty River Power applied for the following resource consents from the Manawatu-Wanganui (Horizons) Regional Council:

Land Use Consents:

- **104553:** for vegetation clearance and land disturbance in rare or threatened habitats, near streams and on hill country highly erodible land in the areas generally shown on the attached map; and
- **104554:** for the construction of a double culvert on an un-named tributary of the Kahuterawa Stream as shown on the attached map.

Discharge Permits

- **104555:** for the discharge of dust to air from the concrete batching plants to be located as generally shown on the attached map;
- **104556:** for the discharge of dust to air from the mobile crushing plants to be located as generally shown on the attached map;
- **104557:** for the discharge of wastewater from two operations and maintenance facilities to land to be located as generally shown on the attached map;
- **104558:** for the discharge of stormwater from substations to land to be located as generally shown on the attached map;
- **104559:** for the discharge of cleanfill to land within the road and turbine platform areas, and the spoil disposal sites as generally shown on the attached map; and
- **104560:** for the discharge of stormwater from roads, turbine platforms, spoil disposal sites and other areas to land.

The consent applications, the Assessment of Environmental Effects, and associated plans are specified in a document entitled *Turitea Wind Farm, Resource Consent Applications and Assessment of Environmental Effects, August 2008* prepared and lodged by Mighty River Power with the Manawatu-Wanganui (Horizons) Regional Council in August 2008. The consent documents have subsequently been further refined and amended by:

- Mighty River Power's responses to requests for further information under section 92 of the RMA;
- a letter dated 14 October 2008, following Mighty River Power's responses to requests for further information under section 92 of the RMA (with respect to the consents required for the project from Horizons); and
- the plan attached to this notice, together with an explanation of associated amendments to the AEE, revised photomontages and an updated noise report (with respect to the deletion of 9 of the turbine zones originally applied for).

Palmerston North City Council

Mighty River Power applied for the following resource consents from the Palmerston North City Council:

Land Use Consents (reference RC0068):

- to establish and operate a wind farm in the areas within the Palmerston North City jurisdiction as generally shown on the attached map;
- to undertake earthworks associated with tracking and roading, turbine construction and associated buildings in the areas within the Palmerston North city jurisdiction as generally shown on the attached map;
- for the western side of Pahiatua Aokautere Road not meeting access requirements at the location shown on the attached map;
- for the storage of diesel (10,000 L) in bunded areas outside the Turitea water supply catchment, generally located at the two substation laydown areas shown on the attached map, that exceeds the 0.2 effects ratio maximum in the rural zone; and
- for the construction of a 220 kV electricity transmission line and substations as shown on the attached map.

The consent applications, the Assessment of Environmental Effects, and associated plans are specified in a document entitled *Turitea Wind Farm, Resource Consent Applications and Assessment of Environmental Effects, August 2008* prepared and lodged by Mighty River Power with the Palmerston North City Council in August 2008. The consent documents have subsequently been further refined and amended by:

- Mighty River Power's responses to requests for further information under section 92 of the RMA; and
- the plan attached to this notice, together with an explanation of associated amendments to the AEE, revised photomontages and an updated noise report (with respect to the deletion of 9 of the turbine zones originally applied for).

Tararua District Council

Mighty River Power has applied for the following resource consents from the Tararua District Council:

Land Use Consents (reference 1448):

- for a wind farm (which is not listed as a permitted or controlled activity) in the areas within the Tararua District as generally shown on the attached map;
- for land disturbance of more than 200m³ of soil and cleanfill material associated with tracking and roading, turbine construction, spoil disposal and other associated works in the areas within the Tararua District as generally shown on the attached map;
- for upgrades to South Range Road and the construction of new site access at the location shown on the attached map;
- for turbine and wind monitoring mast structures not meeting height requirements within the Tararua District;
- for the modification of a Significant Natural Feature in Schedule 3.3 (i.e. Tararua Ranges Ridgeline);

- for not meeting noise requirements; and
- for clearance of indigenous vegetation in the areas within the Tararua District as generally shown on the attached map.

The consent applications, the Assessment of Environmental Effects, and associated plans are specified in a document entitled *Turitea Wind Farm, Resource Consent Applications and Assessment of Environmental Effects, August 2008* prepared and lodged by Mighty River Power with the Tararua District Council in August 2008. The consent documents have subsequently been further refined and amended by:

- Mighty River Power's responses to requests for further information under section 92 of the RMA; and
- the plan attached to this notice, together with an explanation of associated amendments to the AEE, revised photomontages and an updated noise report (with respect to the deletion of 9 of the turbine zones originally applied for). It is noted that for the Tararua District, there have been no modifications to the proposal since lodgement on 8 August 2008.