
BEFORE THE HEARINGS COMMITTEE

IN THE MATTER

of hearings on submissions
concerning the Proposed One Plan
notified by the Manawatu-
Wanganui Regional Council

**SECTION 42A REPORT BY JOHN MAASSEN
FOR HORIZONS REGIONAL COUNCIL
REGARDING CHAPTER 7 – LANDSCAPES AND NATURAL FEATURES**

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COOPER RAPLEY
LAWYERS & ACCOUNTANTS
Palmerston North & Feilding

Solicitor: J W Maassen

Address: 240 Broadway Avenue
P O Box 1945
DX PP80001
Palmerston North

Telephone: (06) 353 5210

Facsimile: (06) 356 4345

Email: jmaassen@crlaw.co.nz

Terms

1. **POP** means the POP with the amendments recommended by Fiona Gordon in her S.42A Report.
2. **Palmerston North Tararua Backdrop** means the landscape unit comprising that part of the Tararua Ranges extending from Manawatu Gorge to Kaihinu in the south, which forms a backdrop to Palmerston North City.
3. **Pigeon Bay criteria** means the criteria based on the Environment Court decision *Pigeon Bay Agriculture Ltd v. Canterbury Regional Council* [1999] NZRMA209

Introduction

4. My name is John Maassen. I am a resource management lawyer. I have 20 years legal experience. I am a partner of the Manawatu and central region law firm Cooper Rapley. In the last decade I have undertaken work for at least six local authorities in the lower North Island and top of the South Island. I also regularly act as a commissioner. I have co-presented the *Making Good Decisions* Program on behalf of the Ministry for the Environment in the lower North Island for the last 3 years.
5. This report provides a legal overview of that part of Chapter 7 (part 1, POP) (Living Heritage) that deals with natural features, landscapes and natural character.
6. In preparing this report, I have read the technical report by the experienced landscape architect Mr Clive Anstey who has considerable knowledge of the Manawatu-Wanganui region. I have also read the policy evaluation by Fiona Gordon. I have read the summary of submissions relating to this part of Chapter 7.

General Comment on S.42A Reports

7. I consider that Mr Anstey and Ms Gordon have done an excellent job in responding to extensive submissions within the available timeframes and resources allocated. On the evidence available I endorse the approach taken by Ms Gordon.
8. To a large extent the treatment of landscape in POP was ordained by the previous Council which did not consider it to be a regional issue justifying detailed technical assessment of regional landscapes. The POP therefore carried over existing provisions of the RPS but set it in the context of and the current statutory framework. The regionally significant landscapes identified are plainly outstanding.
9. The approach recommended by Ms Gordon does not consider any special policy response to submissions concerned with effects of windfarming on the Palmerston North Tararua Backdrop. I consider

that effects of wind farming on landscapes close to urban centres within the region could qualify as a regional issue. The opportunity should be taken to consider this issue in the context of the hearing. Those submitters concerned with ongoing wind farm development on the Palmerston North Tararua Backdrop will carry an evidential burden not picked up by the Horizons Regional Council to justify a more robust regional planning framework.

10. Later in this report I provide a more detailed consideration of submissions concerned with the Palmerston North Tararua Backdrop.

Regional Context

11. My experience is that the quality of management of landscape and natural features in the district plans in the region has been variable.
12. Territorial authorities are aware of this issue and are seeking to address it in second generation plans and by means of plan changes. That is presumably why they have sought greater direction from Horizons. By way of example:
 - (a) the Palmerston North District Plan has few objectives and policies specifically related to landscape and natural features despite several background papers. These papers include a Boffa Miskell report on landscape elements in the Kairanga section of the plan (as it then was) and a report on Palmerston North ecology areas. PNCC has however commissioned a city wide landscape assessment to beef up landscape management in its forthcoming review;
 - (b) the Horowhenua District Plan was insufficiently robust to prevent ribbon development on the beach front at Waitarere and the District Plan eccentrically includes an outstanding landscape overlay to control earthworks that extends inland to the Foxton township. Most of the land covered would not meet the *Pigeon Bay* criteria¹. There is no comprehensive landscape assessment justifying the overlay. However, plan change 21 affecting the rural area is in part landscape driven and supported by good technical evidence;
 - (c) the Rangitikei District Plan has limited objectives, policies and rules governing the most scenic aspects of the Rangitikei River, its surface water and environs but is considering a full landscape assessment of that landscape as part of its District Plan review;
 - (d) the Manawatu District Plan does not have a detailed assessment of the scenic values of the Pohangina Valley.

¹ These criteria are based on the Environment Court decision *Pigeon Bay Agriculture Ltd v. Canterbury Regional Council* [1999] NZRMA 209

Predicted consequences of the POP

13. The regionally outstanding natural features and landscapes identified in Schedule F, Table F1 incorporate in narrative form the key regional landscape and natural feature resources.
14. Given the statutory direction to territorial authorities to ensure that district plans give effect to an RPS and the relevance of an RPS under S.104, it is reasonable to expect the policy suite in POP to have the following consequences:
 - (a) ensuring that second generation plans recognize those natural features and landscapes in Schedule F, Table F1 as outstanding and manage land use accordingly;
 - (b) the cataloguing in second generation district plans of the values of the regionally outstanding landscapes in accordance with the *Pigeon Bay* criteria summarised in Table 7.2;
 - (c) ensuring planning evaluations of resource consents by territorial authorities that are comprehensive in their assessment of impacts on values of regionally outstanding natural features and landscapes.
15. The POP provisions will, for example, go a long way to ensuring appropriate management of the coastal margin and outstanding landscapes such as the Rangitikei River and its margins.
16. The policy suite does not direct TA's to identify outstanding landscapes at a district level. However, to the extent that they are to be identified by a territorial authority the criteria for assessment are provided in Table 7.2. Whether or not the POP (which stops short of any further direction to TA's) is sufficient or appropriate remains to be seen from the evidence.
17. A RPS must identify regionally significant landscapes and natural features². POP does this. It has a narrative inventory which has a pedigree reaching back to the existing RPS. With regard to POP's proposed treatment of regionally significant landscapes and natural features, I make the following observations:
 - (a) the policy of avoidance as far as reasonably practicable is appropriate. This gives weight to the bias towards preservation in s.6 RMA without excluding the possibility that some uses can be appropriate and justified having regard to the overarching purpose of the Act. This is consistent with the *Pigeon Bay* interpretation of section 6(a) as follows (specifically in the coastal context):

² This is because of the function of regional councils, in s.30(1)(b) RMA

- “1. All coastal environments have natural elements;
2. It is important to identify those natural elements, patterns and processes;
3. That section 6(a) seeks to preserve those natural elements to protect them from:
 - (i) Inappropriate development; but
 - (ii) Subject to the overriding constraints of section 5.

[41] In short we have concluded that the preservation envisaged in the first part of section 6(a) is subject to the qualification as to inappropriate development in the latter part of that subsection.”

and is also consistent with the *New Zealand Rail* decision³ at page 85 where the Court said:

“...It is certainly not the case that preservation of the natural character is to be achieved at all costs. The achievement that is to be promoted is sustainable management and questions of national importance, national value and benefit, and national needs, must all play their part in the overall consideration and decisions. ...

That the preservation of natural character is subordinate to the primary purpose of the promotion of sustainable management...”

- (b) it is appropriate that cumulative effects are addressed explicitly as it is often the cumulative effects that undermine the values of landscapes and natural features;
- (c) the narrative inventory (with minor modifications) is based on the existing RPS. The status quo therefore for the purpose of evaluation under s.32 and the *Eldamos* tests is the existing provisions of the RPS. Any submitter contending for a different approach must present supporting technical evidence and an appropriate inventory methodology;
- (d) it has been made clear that the maps in Schedule F do not define the spatial extent of the landscape or natural feature and do not purport to be conclusive as to the presence or absence of outstanding landscapes or natural features. The plans are envelopes of values to assist plan users and in the future. More finely grained assessments at a boundary level will provide greater detail of the spatial extent of features and landscapes. This is particularly relevant for example in relation to coastal map Figure 11, Schedule F.

³ [1993] NZRMA 70

Submissions concerning management of Palmerston North Tararua Backdrop

18. A significant number of submissions are concerned with the impact of wind farming on the Palmerston North Tararua Backdrop. These submissions reveal concern at the absence of clear strategic direction in the existing RPS and Palmerston North District Plan. The rapid rise in demand for wind farm sites demonstrates how quickly resource demand can change and why a comprehensive inventory of resource values and good policy is essential.
19. In 2006 the Parliamentary Commissioner for the Environment produced a report called *Wind Power People and Place* that recognises concern at cumulative effects of wind turbines with a particular emphasis on the Manawatu experience.
20. Palmerston North City Council advanced the argument in 2007, that cumulative effects on the Palmerston North Tararua Backdrop were of sufficient concern to justify (on that ground and others) a limitation on the scale and spatial extent of a proposed windfarm known as Motorimu. Of particular concern to the Council was a 'limb' of turbines proposed that extended along what is known as the Te Mata ridgeline.
21. The Environment Court in its decision *Motorimu Windfarm Ltd v. Palmerston North City Council* (Decision no W067/2008) concluded that there is a legitimate basis for concern at cumulative visual effects. The following quote from paragraphs 196 and 197 is pertinent:

"... - Mr Lister contended in this evidence that...*In a broader context wind farms and wind turbines are part of the character of the Manawatu Region;*

- Mr Boffa Contended ... *With regard to potential sequential effects, I consider views of the wind farms are likely to be of particular public interest and will probably be seen as points and a feature of the Tararua foothill landscape;*
- We note from the Commissioners decision that Motorimu's then landscape witness described the wider landscape as having a ... *Rural wind farm hillside character.*
- The City Council's submission referred to concerns expressed by a very experienced Commissioner in his decision on the Te Rere Hau wind farm consent where he apparently expressed a view that the Tararua Ranges were reaching saturation point in terms of wind farms;
- Mr Rennie for Motorimu put to a number of the witnesses, various exhibits which used turbines as symbols of the Manawatu. The symbol of the Manawatu Turbos rugby team was one such example. We

understood it to be implied that this indicated that wind turbines were seen by many as a feature of the Manawatu landscape.

- The Parliamentary Commissioner for the Environment has signaled that cumulative effects of wind farms are a key issue for the Manawatu.

[197] Clearly, there is an issue as to the wider landscape implications of ongoing establishment of wind farms in the Manawatu region. We consider that any debate on that issue would need to be based on a wide ranging landscape study which went beyond consideration of the landscape effects of the additional turbines which was the focus of our hearing. Such a debate would raise policy issues which would need to be determined by the Regional and District Councils and ultimately reflected in their planning documents."

[Emphasis added]

The Palmerston North City Council and submitters collectively successfully restricted the spatial extent of the proposed windfarm and in particular 'saved' the Te Mata ridgeline and minimized impacts on Kaihinu.

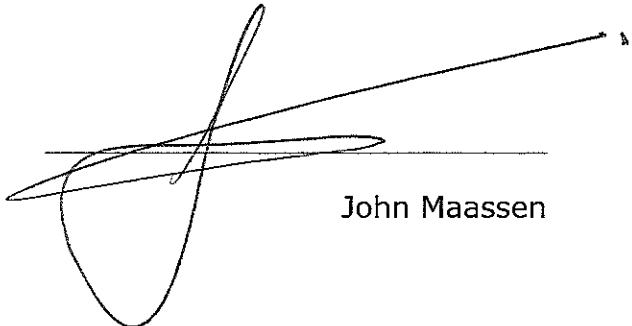
22. The Environment Court, while reaching a decision consistent with Palmerston North Councils' case, observed in the *Motorimu* case that there was insufficient information on cumulative effects. Palmerston North City Council will provide additional information on cumulative visual effects at the forthcoming Board of Inquiry hearing into the Turitea Windfarm. To some extent the measurement of these effects is novel in the New Zealand context. It appears that the aggregation of turbines in the Palmerston North Tararua Backdrop proximate to an urban centre is unusual, if not unique in an international context.
23. The Hearing Panel is encouraged to read, as preparation for the hearing on Chapter 7, the following documents:
 - (a) the decision of Alistair Aburn a commissioner hearing the Te Rere Hau Windfarm application;
 - (b) the *Motorimu* decision by the Environment Court; and
 - (c) the report of the Parliamentary Commissioner for the Environment.

In my opinion that is essential background reading to comprehend the reason for the numerous submissions expressing concern at the impact on the Palmerston North Tararua Backdrop.

24. The cumulative effects on the Palmerston North Tararua Backdrop could signal a regional issue which is the effects (both direct and cumulative) of the aggregation of turbines on landscapes close to

(and valued by) urban centres and fringe rural residential communities and may warrant specific policy in the RPS. Indeed the Environment Court decision in the *Motorimu* case explicitly identified that possibility.

25. There has been a consensus at a regional political level for sometime that landscape matters were best dealt with at a territorial level. Nevertheless, HRC recognized growing concern in the Manawatu community. That prompted a letter from the Chief Executive of HRC to the TA's dated March 2005 encouraging them to get to grips with the issue including perhaps by providing for windfarm zones.
26. PNCC considers the issue of the Palmerston North Tararua Backdrop significant and will issue a plan change later this year that will specifically address the landscape management of the Palmerston North Tararua Backdrop. That plan change will benefit from the technical information which is being gathered in respect of the Board of Inquiry hearing into the Turitea Windfarm.
27. It is especially pleasing to see the flow of information in the form of data and technical analysis from resource consent processing into policy development. I consider that the work undertaken in respect of the Turitea Windfarm will be invaluable in the preparation of a credible planning framework by PNCC for the Palmerston North Tararua Backdrop.
28. Nevertheless, the formulation of the RPS presents a special opportunity to be more specific about the cumulative effects of windfarm development intended to be avoided both generally in the region and specifically in the Palmerston North Tararua Backdrop where that development is close to urban centres and rural residential communities.
29. It is appropriate to leave open the possibility that the evidence will demonstrate that a more detailed policy in POP on these matters may be justified. In addition, it would seem sensible for Palmerston North City to provide to HRC information that it has gathered or will gather as part of the Turitea Windfarm analysis to assist the Hearing Panel with its deliberations. Palmerston North City is uniquely placed as the local authority with the greatest experience on this subject and specific knowledge of the Palmerston North Tararua Backdrop.



John Maassen