

BOARD OF INQUIRY

**Turitea Wind
Farm Proposal**

TRANSCRIPT OF PROCEEDINGS

BOARD OF INQUIRY

Turitea Wind Farm Proposal

Hearing

HEARING at PALMERSTON NORTH on 7 AUGUST 2009

BOARD OF INQUIRY:

Environment Court Judge S.E. Kenderdine

Mr D. Bunting

Mr R. Heerdegen

Mr J. Hudson

Mr C. Shenton

APPEARANCES

MR J. MAASSEN appeared on behalf of Palmerston North City Council

MR N. DAVIDSON, MS K. BELL and MS K.R. PRICE appeared on behalf of Mighty River Power Limited

MR K. JOHNSTON appeared on behalf of Ngawai Farm Limited and Mr J. Poff

MR L. DOME appeared on behalf of Tararua-Aokautere Guardians Inc (TAG)

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[10.14 am]

5 HER HONOUR: Yes, good morning ladies and gentlemen. Now, I understand that this morning we are hearing from Mr Naylor first, is that correct, Mr Maassen?

10 MR MAASSEN: Yes, it is correct, ma'am. Thank you for accommodating the mayor.

HER HONOUR: It is a pleasure.

15 MR MAASSEN: It is quite busy at the moment and I appreciate you fitting him in.

Your Honour, this witness has not been involved in any caucusing obviously. His role is, as the first citizen of Palmerston North, to set a context or a background to this matter and give a general overview. It is not his role to caucus on particular expert matters, so it is not intended that he make an opening statement. What we propose is that he simply be sworn and then made available for questions.

HER HONOUR: Thank you.

25 <JONATHAN MARK NAYLOR, affirmed [10.05 am]

<EXAMINATION BY MR MAASSEN [10.05 am]

30 MR MAASSEN: Mr Naylor, do you confirm that your full name is Jonathan Naylor?

MR NAYLOR: Yes, there is a "Mark" in the middle but we normally ignore that.

35 MR MAASSEN: Well, we put that in just for the sake of the record. And you prepared a statement of evidence for the purpose of these proceedings?

MR NAYLOR: Indeed.

40 MR MAASSEN: And do you confirm that that statement is true and correct?

MR NAYLOR: Yes.

45 MR MAASSEN: Now, would you please answer any questions from my friends or the Board?

HER HONOUR: Yes?

<CROSS-EXAMINATION BY MS PRICE

[10.06 am]

5 MS PRICE: Thank you, Mayor Naylor, for coming today and making
yourself available. Your Worship, I would like to take you back a few
years. In 2006, leading up to the Reserves Act change when you were
still a councillor, you were very supportive of the wind farm proposal,
were you not?

10

MR NAYLOR: Absolutely.

MS PRICE: And you can recall the media reports at that time?

15

MR NAYLOR: Some of them, yes.

MS PRICE: What is your view now?

20

MR NAYLOR: What is my view generally on wind farms or on this proposal
or otherwise?

MS PRICE: On this wind farm.

25

MR NAYLOR: My view has not changed. I think that there are benefits to be
gained for the city from a wind farm development in this area but, as I
have said all along, I would reserve my final opinion – well, not so
much final opinion, I trusted that the RMA process would actually
deliver the appropriate outcome for the community.

30

MS PRICE: Thank you. At paragraph 12 of your evidence you state that,
“While the prospect of development on private land was identified as a
possibility this was never considered in any meaningful sense by the
council as through its processes the councils interest was limited to the
land ownership of the Turitea Reserve”. I want to explore today your
35 words “never considered in any meaningful sense by the council”.

40

Yesterday, and I appreciate you were not here but hopefully you have
been briefed by counsel, Commissioner Hudson was questioning
Mr Henry, from Mighty River Power, wanting to know whether
councillors - that is the politicians - knew about the larger proposal on
the private land. Mr Henry replied that he did not know the mechanism
and how it worked for transferring information from the Palmerston
North City Council officers to advisors and the politicians.

45

And that is what I would like to explore with you today because it is
Mighty River Power’s evidence that certainly there were almost weekly

5 meetings occurring with the Palmerston North City Council officers and that those meetings were always discussing the larger wind farm layout. What do you think the mechanism between politicians and officers should be for transmitting information about projects within your district?

MR NAYLOR: Well, in terms of “should be”, what we normally have is council officers providing councillors with information as they require it to make the decisions that they are about to make.

10 MS PRICE: Thank you. At paragraph 22 you state, “Since the challenge in the High Court Mighty River Power has proceeded to prepare an application for resource consent and virtually all the decision making in that regard has been without any input from the council”. Were you expecting, Mayor Naylor, that Palmerston North City Council would be involved in the RMA process or did you think that Mighty River Power should be appropriately responsible for that?

20 MR NAYLOR: It was my understanding that the Palmerston North City Council would always be involved in the RMA process as we are with all RMA processes within our territorial boundaries.

25 MS PRICE: Your statement, at paragraph 22, was that you had been left out of virtually all the decision making in the application for resource consent being prepared. So in terms of decision making do you think that the council should have been involved in the decision making as MRP prepared that application?

[10.10 am]

30 MR NAYLOR: I think we need to get a little bit of definition around the word “council”. When I am referring to the council in that regard I am meaning the elected council. I think it is not unreasonable that anybody when preparing any kind of resource consent would be consulting with our planners or otherwise, so I do not have an issue with that. But certainly I think that the elected council’s job was to, obviously, look through the process of changing the purpose for the reserve and then, at that point, we said that ultimately any final decision about the location of turbines or otherwise would be decided through this RMA process.

40 MS PRICE: Okay, thank you. That is an important distinction, the elected council. I want to now remind you of an intention of council - and we will have to clarify whether that means elected council but I assume it will – included in the request for proposal for tenders earlier in this process. And at paragraph 1.9, on page 8 of that request for proposal – have you got that there?

MR NAYLOR: I do not have the request for proposal.

5 MS PRICE: Okay, I would like to table a set of documents, and I will do it all
in one go so that you have got them up there, and then we can get
exhibits on them as we go along.

MR NAYLOR: Sure.

10 MS PRICE: At paragraph 1.9 of the scope of proposal, and I will read it out
so we have it for the transcript, it says, "It is intended that the proposer
will confirm its role in obtaining resource consents, building consents
and all other legal requirements for this project within its proposal". It
15 then goes on to state, "The council is prepared to consider a joint
consenting process if adjoining properties are included in a larger
development". What do you think the council meant by that clause?
What do you think it was supposed to signal to proposers?

20 MR NAYLOR: I think it is pretty apparent that we would have thought that it
was entirely possible that there would be a request for turbines to be
located outside of the reserve and that they would not necessarily need
to be seen as two applications.

25 MS PRICE: Thank you.

MR NAYLOR: I do not think it has ever been in doubt that the council
thought that there may be some turbines requested for the proposal
outside the reserve. I do not think we have ever tried to say anything
different.

30 MS PRICE: Thank you. And just on that council RFP document, are you
aware of the selection criteria that Palmerston North City Council used
in the tender process?

35 MR NAYLOR: I think I was probably aware in 2006 but have not read it
recently to remind myself.

MS PRICE: Can you recall at all the reasons why Mighty River Power was
the successful tenderer based on that criteria?

40 MR NAYLOR: I do not recall the reasons but based on those criteria Mighty
River Power, obviously, was chosen.

45 MS PRICE: Okay. Well, I understand that the criteria that they won on was
because of their social and environmental performance but that is okay,
I accept that - - -

MR NAYLOR: If that is what we have said then I am sure that is true.

MS PRICE: Okay, thank you.

5

MR NAYLOR: I do not think we have changed our mind since we made the decision.

MS PRICE: Okay, at paragraph 23 of your evidence, and I will just give you time to get there.

10

MR NAYLOR: Yes.

MS PRICE: You raise some doubts you have as to whether the site selection for the private turbines “meets the spirit and intent of the October 2006 council resolution”, and you refer to part 8 of that resolution, and I will read it out for the purpose of the transcript.

15

MR NAYLOR: Sure.

20

MS PRICE: “That the council direct the chief executive to advise Mighty River Power that the council expects that in selecting the location and number of turbines on any private land outside the reserve Mighty River Power will ensure that adjoining landowners enjoyment of their properties is not unreasonably adversely affected.” My question to you is what do you understand the word “adjoining” to mean?

25

[10.15 am]

MR NAYLOR: I would have thought pretty similar to most peoples that adjoining means next to.

30

MS PRICE: Right, which is pretty similar to what Mighty River Power thought too and just for the sake of completeness I will give you an Oxford English Dictionary which says, “adjoin is a verb meaning to be next to and to be joined with” so I think we are all on the same page.

35

Mighty River Power says, “It has ensured that adjoining landowners’ enjoyment of their properties is not unreasonably adversely affected by its selection of the location and number of turbines on private land”. So to get to the differences between us I would like you to show me on the maps which adjoining landowners you are concerned about that caused you to write that paragraph in your evidence. And, as I am not that mean, I am going to direct you to map 4A where we have conveniently shadowed all the adjoining properties.

40

45

MR NAYLOR: That is very considerate of you, thank you.

5 Firstly, what I need to say is, obviously, I am not an expert in terms of these matters and what I want to clarify is that I said I have some doubts about it. I am not saying that there are any particular turbines which are definitely doing that because I am not in a position or am I qualified to say so. So I think we need to preface it with that.

10 MS PRICE: In your evidence you have got concerns that Mighty River Power has not met the spirit and intent of that council resolution and you have pulled out a particular part of the resolution which relates to adjoining landowners.

15 MR NAYLOR: Yes.

MS PRICE: Did you have in your mind, when you wrote that part of your evidence, a group of landowners or a particular area that you were concerned about? I am assuming it is not on the backside of the
20 Tararuas because those are not the people in your district.

MR NAYLOR: Sure. I mean I think, in particular, what I have thought of is particularly residents in the Ngahere Park area.

25 MS PRICE: And do you think, looking at that map, that they are adjoining property owners?

MR NAYLOR: It is difficult to tell from this map to be honest because I am not sure exactly where the boundaries are. In the strictest Oxford
30 Dictionary meaning of the word "adjoining" it could be possible that I am incorrect but I think, you know, I cannot tell from this map but I think that, yes - at the risk of sounding like I am in a castle, it is the vibe - but, no, really to me it is actually I cannot really identify off this map, it is not that clear, even though you have been very kind to shade these
35 for me. I think what you have done actually, now I am looking at this map more clearly, you have highlighted the adjoining properties to the Turitea Reserve, not the adjoining properties to the properties that all turbines are located on.

40 MS PRICE: No, that is map 4. Map 4A is showing the adjoining properties to the private turbines.

MR NAYLOR: Well, I am looking at 4A and at the moment you have got shading on all sorts of peoples land that do - - -
45

MS PRICE: Yes, and the reason it is shaded is that they are what we refer to as “the section 94 parties”. Those are parties that have given their consent to the wind farm.

5

MR NAYLOR: Yes.

MS PRICE: And the reason we went and got their consent was expressly to keep within the spirit and intent of this resolution, to go and sort out any adverse effects on the adjoining landowners to the private turbines.

10

MR NAYLOR: Sure, but it - - -

MS PRICE: So what I am putting to you is if your concern in your paragraph 23 is the Ngahere Park residents, looking carefully at that map, and I suppose using the strict Oxford Dictionary definition of “adjoining” because we did establish what we all probably thought adjoining meant. The Ngahere Park residents are, in fact, not adjoining those private turbines or, indeed, the reserve turbines so - - -

15

20

[10.20 am]

MR NAYLOR: No. Well, they are certainly not adjoining the reserve turbines. Whether or not there may be small strips but I think you will find that there are property owners who are adjacent, but it is not the Ngahere Park in terms of the residential development, I think you will find that there are landowners who are adjoined to properties that have got wind turbines who, it would seem to me in layman’s terms, to possibly be adversely affected by some of those turbines.

25

30

MS PRICE: Okay. So we have established that your concern relates to Ngahere Park residents.

MR NAYLOR: No, you have established that my concern is with any residents of Palmerston North who are close enough to be adversely affected.

35

MS PRICE: Ah, but that is not what your resolution talks about and your concern in paragraph 23.

40

MR NAYLOR: No.

MS PRICE: So I just want to take you back to understand that paragraph.

MR NAYLOR: Okay. So, yes, in terms of the adjoining landowners to the property – I think this is the clarity here – it is adjoining landowners,

45

that I have said that that refers to, is not necessarily adjoining landowners to the reserve but adjoining landowners to any property that has turbines located on it.

5 MS PRICE: Right, and I am just putting to you that that has been met.

MR NAYLOR: Sure.

10 MS PRICE: What I am trying to establish here is that Mighty River Power at no point went out not to meet the spirit and intent of those October resolutions. And we have heard a lot in this hearing, much has been made of the fact that MRP simply disregarded the resolution and, if you like, went off on their own to come up with a larger proposal and council was taken by surprise. That is the opening submission, a horse
15 and coach analogy was used by Mr Maassen in his opening submission, and that is simply not the case.

20 What I am trying to establish with you is that Mighty River Power has been meeting on a weekly basis with your officers. They have been discussing, on an almost weekly basis, the larger layout of the private turbines and they have done everything they can to meet the spirit and intent of the clauses that were drafted in October 2006. And in respect of this clause, which is talking about adjoining landowners enjoyment of their properties to the private turbines, they have, in fact, gone out
25 there and got the majority of those landowners.

MR MAASSEN: Ma'am, this is - - -

30 MR NAYLOR: Is there a question there or - - -?

MR MAASSEN: This is a monologue, it is not a question.

HER HONOUR: Yes.

35 MR MAASSEN: This is getting out of control. The Mayor is the senior member of the council, he has a lot of matters. If there are specific questions he can answer then he will of course do so but my friend is confusing making statements with asking questions.

40 HER HONOUR: Ms Price?

MS PRICE: Thank you.

45 HER HONOUR: Ms Price, do you think that you could give the mayor some opportunity to reply to the questions but Mr Maassen is right, you are running on with a statement and somewhere in there is a question and

then there is a statement again. There is no chance for the mayor to respond on the way through.

5 MS PRICE: Yes, ma'am.

HER HONOUR: So please could you slow down and do what you are meant to do, which was ask questions.

10 MS PRICE: Your Worship, is it Mighty River Power's case that it, indeed, made council officers aware of its larger proposal? There were weekly meetings, very regular meetings, were you aware of those?

15 MR NAYLOR: I have no reason to doubt that there could have been regular meetings with our staff but I do not recall ever having been told "we are having weekly meetings with MRP".

20 MS PRICE: You refer in your evidence to the ecological and landscape reports that Mighty River Power helped prepare to support the process. Were you aware, at the time those reports were being prepared, that Mighty River Power was very concerned about providing information which should be publicly consulted with by Palmerston North City Council and that it was not showing the full extent of the proposed development and potentially prejudicing its own RMA consultation, were you aware of that?

25 MR NAYLOR: I am just going to ask you to repeat the question because it was a little confusing.

30 MS PRICE: Okay, I will break it down. Mighty River Power was very concerned about providing those pieces of information, the ecological and landscape reports, which it knew were going to be publicly consulted as part of the council's reserve change process.

35 MR NAYLOR: Yes.

MS PRICE: It was concerned because they were showing only the reserve layout and did not show the full extent of the turbines that it knew and Palmerston North knew were in existence at the time. Were you aware of Mighty River Power's concerns?

40

MR NAYLOR: I do not recall being aware of it.

MS PRICE: And so I take it that you were also not aware that your council officers in 2005 and 2006 were fully aware of the wider proposal?

45

[10.25 am]

MR NAYLOR: I am not sure. I have no basis for commenting.

5 MS PRICE: Okay, I would like you to turn to the documents in that bundle
and there is an email dated Friday, the 16th of December 2005 from
Mighty River Power's Lorraine Marsh and it is going to a number of
council officers, Chris Kepa, and it was also copied to Mr Maassen.

10 MR NAYLOR: I think you have got a different bundle than I have.

MS PRICE: In my bundle it is document number 3.

MR NAYLOR: Here we go, yes.

15 MS PRICE: Now, what Lorraine Marsh was attaching was the minutes of a
meeting that was held on the 2nd of December 2005, and I do not expect
that you will have ever seen these minutes because they only went to
your council officers and your legal advisor. But if you turn to the third
20 page there, which is talking about the meeting as it occurred between
2.30 and 3.30. You will see that under the topic "Supporting
Documentation" that Mr Maassen envisaged a folder containing certain
information and that is set out on the page. Right at the bottom of the
last paragraph it says "Mighty River Power expressed concern that the
25 information which would eventually end up in the public domain did
not show the full extent of the proposed development. This could cause
problems with consultation". Then I want to take you to the next part -
were you aware of that?

30 MR NAYLOR: No.

MS PRICE: Thank you. Now, I want to take you to the next document, which
is another email later, the 3rd of February 2006, again from Lorraine
Marsh to Chris Kepa. She says "We are keen to be upfront with
35 councillors about consenting a large windfarm beyond the boundaries
of the reserve". The final document is another email from Lorraine
Marsh where she is referring to a discussion with Mr Maassen and it
says "Yes, John Maassen offered to put together a disclaimer, a
qualifier, in response to our concerns about focusing on the reserve part
40 of the wind farm". Would you accept on the basis of those emails that
it is fairly clear that your officers did have knowledge of the wider
windfarm and Mighty River Power was raising its concerns about not
showing the full proposal?

45 HER HONOUR: Could you give the mayor time to read these please?

MS PRICE: Sure.

MR NAYLOR: I am happy to accept that council officers and indeed council
itself was aware of the fact that there would be a proposal to put
turbines outside of the reserve. But to me there is nothing in these to
indicate the entire and exact scope of the application that was finally
submitted.

MS PRICE: If we need to establish this, would you be happy to make some of
your staff available to this hearing if we make an application to have
them summonsed as witnesses?

MR NAYLOR: That would be outside of my bounds of control. That would
be entirely up to the chief executive.

15 [10.30 am]

MS PRICE: Thank you. Now, I know in your evidence you say you are not
familiar with every clause in the contract between the parties, but I
would just like to take you to one that we think is quite an important
clause, given some of the issues that you raised in your evidence. Mr
Registrar, can you - Your Worship, I would like you to read clause 3,
and I will give you some time to do that.

If the Board is looking for the contract, it was appended to Mr Chris
Shaw's evidence.

MR NAYLOR: Excuse me, what clause number are you referring to?

MS PRICE: I am going to take you through clause 3 and I am particularly
referring to 3.1, 3.2 and 3.3. But I am going to slowly take you through
what I think those clauses mean. Clause 3 is entitled "Reconciling
Mighty River's and Council's Respective Interests and Rights". Clause
3.1 is Mighty River acknowledging the important functions that the
reserve serves. Clause 3.2 is council acknowledging Mighty River
Power's rights to construct, operate and maintain the windfarm project.
Clause 3.3, this is the important one, then says that "Both parties
acknowledge that provided appropriate construction protocols and
mitigation measures are in place" and the first thing in sub-clause (a) is
"There is no inherent conflict between the matters addressed in clause
3.1 and the exercise by Mighty River Power of its rights under clause
3.2". Then sub-paragraph (b) says "If any conflict between the matters
in clause 3.1 and Mighty River Power's rights under clause 3.2 arises,
council and Mighty River will work together to reach a reasonable
resolution of those conflicts".

45

So my question to you is do you think that is an appropriate contractual mechanism between these parties?

5 MR NAYLOR: I would like to think that I would have thought it was appropriate before council signed the agreement. So, yes.

MS PRICE: Thank you.

10 MR NAYLOR: We would be irresponsible if we signed something that we thought was inappropriate I think.

MS PRICE: Was there any reason then that council and its advisors did not come to Mighty River Power under clause 3.3 to try to resolve their water quality concerns? You have raised this in your evidence.
15

MR NAYLOR: Can you point to me where I have raised it in my evidence? I have written a number of paragraphs and I cannot remember exactly which point is which. So if you could highlight that to me I would happily address it.
20

MS PRICE: You talk about it in paragraph 11 of your evidence.

MR NAYLOR: I do not - I have just highlighted it to draw it to the Board's attention, which is exactly what you have just done as well. I am just not sure where the question - - -
25

MS PRICE: My question is if the council held concerns about water quality protection vis a vis the construction of the windfarm - - -
30

MR NAYLOR: I do not think I have highlighted concerns in my evidence.

MS PRICE: Well, the council has, in terms of the water quality evidence that it has presented before the Board in this hearing - - -
35

MR NAYLOR: Great, and I think the appropriate place for you to ask the question would be of the water quality expert, not of me because I am not a water quality expert.

40 MS PRICE: The water quality expert though has not been involved in the contractual obligations between Palmerston North City Council and Mighty River Power. So on that basis it is appropriate for me to ask the contractual witness put up by the council in relation to the contract, and unfortunately that is you.
45

[10.35 am]

5 MR NAYLOR: Certainly. Well, I will draw you to 3.3 in the contract, which
 says that “Council and Mighty River Power each agree and
 acknowledge that provided appropriate construction protocols and
 mitigation measures are in place”. So provided appropriate
 construction protocols and mitigation measures are in place, I do not
 have a concern about water quality.

10 MS PRICE: Last year council engaged GHD to start undertaking an analysis
 and assessment of the potential water quality impacts of the windfarm
 and Mighty River Power was given a draft copy of that report in around
 September 2008. That report did not alert Mighty River Power to any
 15 significant issues. But the evidence that was filed in this hearing
 suggests that a five year base line monitoring of water quality might be
 needed prior to constructing the windfarm. If council had received such
 important advice, don’t you think that that, a five year base line
 monitoring requirement, is significant enough to have triggered clause
 20 3.3 well before the council filed its evidence?

MR NAYLOR: I have got no basis for knowing. Your client is speaking in a
 different language.

25 MS PRICE: Thank you. I am just getting a document that has only reached
 me as I started this exercise this morning. Your Worship, I would like
 to bring you now to October 2007, or in fact it is late September 2007.
 It is just before the local government elections on October the 13th.
 You attended a special meeting of the Wellbeing Committee I think it is
 30 referred to, which was held to ratify the Reserve Act change following
 the successful High Court decision. The date of that meeting is the 24th
 of September. It is Mighty River Power’s contention that at that
 meeting, which you attended, councillors were fully informed of the
 full and final layout and the reason Mighty River Power states that is
 35 that in the weeks leading up to that meeting it was asked to prepare
 laminated full layouts for presentation to the councillors at that
 meeting. Do you have any recall of seeing the wider layout at that
 meeting of the politicians?

40 MR NAYLOR: No, I have no record of seeing that.

MS PRICE: Okay, thank you.

45 MR NAYLOR: I have a recall of making the decision because I remember at
 the time that it had effectively got to the stage by that point where we
 had done everything that we needed to do and ratifying it was simply

following through on what we had said we would do. So there was - it was kind of one of those decisions that we as politicians get to make, which has sort of half been made for us already.

5 MS PRICE: Yes, sure, and you do have a lot of meetings. At paragraph 9 you talk about - this is of your evidence - council not being aware of other windfarm applications and developments in the area and you specifically refer us to Motorimu and it was clearly a concern for you in your evidence. If Motorimu ceases to exist, does that change your view
10 on Turitea at all?

MR NAYLOR: Personally, I think it does not. I am still not even sure what my views on Turitea are so I do not know how they would be changed. I am very interested in the outcome of this process which ultimately
15 will decide how I feel about it.

MS PRICE: Thank you, your Worship, I have no further questions.

20 HER HONOUR: Ms Price, do you wish to introduce this as exhibit 18, "Turbines Backed"?

MS PRICE: Yes, thank you, ma'am.

EXHIBIT #13 – "TURBINES BACKED" NEWSPAPER ARTICLE

25

HER HONOUR: Yes, Mr Johnston? Mr Registrar?

MR JOHNSTON: May, may I trouble you for a **(INDISTINCT 10.40.08)** I feel a bit, ma'am, as though I have been put to the back of the class.
30

HER HONOUR: Oh, by no means. It is just a gentle progression.

MR: I would not be offended, it is always the troublemakers they stick under the teacher's nose
35

<CROSS-EXAMINATION BY MR JOHNSTON [10.40 am]

MR JOHNSTON: Mr Naylor, just before I start I want you to know that I am asking you some questions on behalf of four of the larger private landowners whose land may be affected by the outcome of this hearing and one or two of the questions that I have for you relate to matters that you have already traversed to some extent with Ms Price.
40

Now, if I could just begin by referring you to paragraph 4 of your evidence and I will give you a moment to look at it, but the aspect of it that I am particularly interested in is your indication that wind farming
45

has only occurred – well, has occurred comparatively rapidly and I infer relatively recently in the Tararua region around Palmerston North.

5 My first question for you is this; it is correct, is it not, that the prospect at least of harnessing the exceptional wind resources which the Palmerston North area has available to it has been a matter of public discussion and debate for a long, long, time?

10 MR NAYLOR: I do not think anyone would dispute – well, when you say a long, long, time I guess that is a matter of definition but there has obviously been some discussion about it for a reasonable length of time, yes.

15 MR JOHNSTON: Well, let us try and put some definition around it then, shall we – you and me?

MR NAYLOR: Go on then.

20 MR JOHNSTON: Has your attention been drawn at all to the unchallenged evidence of Brian Waters that as a local landowner he has been aware of plans or discussions about wind farming in the area for over 25 years?

25 MR NAYLOR: Brian has obviously been in the area longer than I have, I have not even been here 25 years so I would not have been aware of that. I think when we are talking about – if we are just coming back to my evidence, which is probably more relevant than trying to debate how much is a long, long, time. To give you some clarity, when I say wind farming has occurred comparatively rapidly in the Tararua Ranges
30 I do not think anyone would dispute that comparative to anywhere else in New Zealand the Tararuas have developed a lot quicker and with a far larger number of turbines than any other region in New Zealand and that is what I am particularly referring to rather than how long we may or may not have in this region talked about wind farming.

35 MR JOHNSTON: Yes, that is very interesting, but I would appreciate it if I could just focus on the question I have asked you, which is the length of time that there has been debate and discussion about it. And I will ask you again, has anybody referred you to Mr Waters' unchallenged
40 evidence that he has been aware of debate about that subject for 25 years?

MR NAYLOR: I have neither read Mr Waters evidence or had it brought to my attention.

45

MR JOHNSTON: So the answer is no?

MR NAYLOR: Well, if it is a yes or no question then no would be the answer.

5

[10.45 am]

MR JOHNSTON: Have you, for example, and I take it from your previous answer that you have not had an opportunity to review the article from the Manawatu Standard of the 22nd of September 1981, which Mr Waters produces, which talks about the possibility of wind farming in the ranges adjacent to Palmerston North.

10

MR NAYLOR: No.

MR JOHNSTON: No. And similarly I take it then that you are unaware of, or at least unfamiliar with a survey carried out in 1985 to gauge public views about wind farming in the area?

15

MR NAYLOR: No.

20

MR JOHNSTON: Are you aware that the Palmerston North City Council was approached by another developer in 1999 about the prospect of that developer building a wind farming operation in the Tararua?

MR NAYLOR: I do not recall, although I guess that might have come up in some of the discussions that we had early on, but I do not recall it, but it does not mean that I did not hear it at some point and had forgotten it.

25

MR JOHNSTON: Well, that is a fair enough response, but are you aware that that approach led to a working group in the relevant ward and meetings and discussions at the time about a development?

30

MR NAYLOR: I would have to have the same answer for that.

MR JOHNSTON: Which is no.

35

MR NAYLOR: Not that I can recall. Someone may have told me that at some stage. People tell me a lot of things which I subsequently forget, unfortunately.

40

MR JOHNSTON: Of course, I think everybody is understanding of that. So that if I were to show you a photograph montage of a possible wind farm above and around the Turitea Reserve which resulted from those discussions within the ward at the time, you would be unfamiliar with that, as well, would you?

45

MR NAYLOR: Yes.

MR JOHNSTON: But you would accept, would you, that such a photo
montage was prepared in the mid 80s in the context of that discussion?

5

MR NAYLOR: I have no reason to suspect that you would be lying to me.

MR JOHNSTON: Well, I can show you if you like but - - -

10

MR NAYLOR: I am happy to take your word for it, that is fine.

MR JOHNSTON: And the debates and discussions that I have just asked you
about occurred long before the extensive subdivision and proliferation
of small holdings in the foothills below the Turitea Reserve, did it not?

15

MR NAYLOR: I guess so.

MR JOHNSTON: Now, I am changing topics now. Could I ask you to refer
briefly to paragraph 5 of your evidence where you say that as the mayor
of this city you are reasonably close to the heart of the community and
you go on to give your impressions, I suppose, of public attitudes to
windfarms in the area, is that a fair way of putting it?

20

MR NAYLOR: Yes, I think that is well documented.

25

MR JOHNSTON: And what you are really describing there is your intuitive
sense of things, is that right?

MR NAYLOR: Yes.

30

MR JOHNSTON: And you do not claim, do you, that those particular views
that you have expressed are based on any empirical analysis or anything
else, it really is your sense of things?

35

MR NAYLOR: Certainly it is my sense of things and I certainly get talked to
by a huge range of people throughout the community.

MR JOHNSTON: I expect so. You will understand that these are not
challenges, they are just enquiries to elucidate more information?

40

MR NAYLOR: Sure.

[10.50 am]

45

MR JOHNSTON: At paragraph 9 of your evidence you mention that at the
time of this particular proposal when it was first mooted, the

Palmerston North City Council did not know of the Motorimu proposal, and I am taking it that that application was made statement of evidence time later, was it?

5 MR NAYLOR: I think so, I certainly do not recall Motorimu being on the books at that stage, but I am sure history will either show me to be correct or incorrect. I do not recall the exact date of Motorimu, but I do not believe we were aware of Motorimu at the time this was first mooted.

10 MR JOHNSTON: So again, this is your sense of things, your best recollection, rather than any researched view?

MR NAYLOR: Yes.

15 MR JOHNSTON: Now, has anybody discussed with you the evidence which the Board has already heard, to the effect that the prospects of Motorimu proceedings are now minimal?

20 MR NAYLOR: Sorry, can you just rephrase that? I lost it in translation a little.

MR JOHNSTON: I will repeat it rather than rephrase it.

25 MR NAYLOR: Sure.

MR JOHNSTON: Has anybody discussed with you before you came to give evidence today the evidence that this Board has already heard that the prospect of Motorimu proceeding is now minimal?

30 MR NAYLOR: I am not aware of that being put to the Board, no.

MR JOHNSTON: But I think I correctly understood you to respond to a question from Ms Price to the effect that although you have no fixed views about it, whether Motorimu proceeds or not would certainly influence your views about this proposal?

MR NAYLOR: I think certainly in terms of issues of, you know, saturation then obviously it will. But until such time as it has been officially cancelled then I guess we have to work on the basis that it is a consented thing, but I do not know what evidence has been put before the Board.

MR JOHNSTON: No, and it would be unfair for me to ask you any more about it given your very frank acknowledgement that you have not been told about that. But I take it from what you say to me that just in terms

of numbers and to use your term “saturation” it would have, you would expect, an effect on your views?

5 MR NAYLOR: Certainly, and those would be personal views rather than the views of the council, I think it is important to acknowledge.

MR JOHNSTON: Of course.

10 MR NAYLOR: Yes.

MR JOHNSTON: And that response allows me to move on fairly rapidly. At paragraphs 10 - - -

15 MR NAYLOR: Sorry to interrupt you. I just need to get some clarification, your Honour, on how much longer we are likely to continue here because I have got another engagement at 11 o'clock which I will need to make other arrangements for if I am going to be held up much longer.

20 HER HONOUR: Well, I think you probably are likely to be held up I am sorry, your Honour.

MR NAYLOR: Okay, could we just take a couple of minutes for me to go and make a phone call, is that all right?
25

MR JOHNSTON: If your Honour pleases, that is the first occasion in my 30 years at the bar that the witness has adjourned the hearing.

30 HER HONOUR: We are a very informal Board if you had not noticed, Mr Johnston.

MR JOHNSTON: I beg your pardon, ma'am?

35 HER HONOUR: We are a very informal Board if you had not noticed.

MR JOHNSTON: So I see.

[10.55 pm]

40 HER HONOUR: It does not mean we will give an informal decision.

MR NAYLOR: Thank you, your Honour, I appreciate that and thank you counsel, for allowing me the time to do that.

45 MR JOHNSTON: Can I resume now?

MR NAYLOR: It would be over to her, I think.

MR JOHNSTON: As your Honour pleases. Mr Naylor, at paragraphs 10 and
5 11 of your evidence you refer to various provisions of the contractual
arrangement between the counsel and Mighty River Power. Again,
these are matters which Ms Price has already discussed with you, so I
do not need to dwell on them. But again, you are really providing your
broad understanding and I think you very fairly say that you do not
10 have a detailed grasp of the contractual arrangements. That is right, is
it not?

MR NAYLOR: It is a long contract.

MR JOHNSTON: And you would I accept I would imagine that a thorough
15 understanding of the contractual arrangements would necessitate the
kind of detailed study which you have not been able to apply to them?

MR NAYLOR: Sorry, could you repeat that?

MR JOHNSTON: Of course. I am asking you to accept that a thorough
20 understanding of the contractual arrangements between these two
parties would require a more detailed study of them, of the sort that you
have not been able to apply?

MR NAYLOR: Sure, yes.

MR JOHNSTON: Immediately after that at paragraph 12 you refer to the fact
that this proposal involves the siting of turbines on private land as well
as on the council land. Am I correct in understanding, and please just
30 tell me if am not. Am I correct in understanding that your evidence is
not that the council did not know about these turbines, it is just that it
was unnecessary for the council to study them in great detail at any
stage for the purposes, for example, of the change to the purpose of the
reserve that the council could leave the consideration of all of the
35 turbines to the RMA process? Sorry, that was a very long - - -

MR NAYLOR: There were a few double negatives in that, so perhaps if I
answer with statement rather than a yes or no, it might be easier to get
some clarity. The council concern obviously in the first place was with
40 the change of status for the Turitea Reserve. At that point it was only
turbines in the reserve that had any impact on that consideration. Then
from that perspective on, I guess, council's role had been that of
landowner. So then in terms of our contract with Mighty River Power
it would be over what turbines would be located on our land. So that is
45 where council was concentrating its energy and therefore leaving - in
terms of the final location of any turbines to this RMA process.

MR JOHNSTON: Yes, and I think that gives me the answer to my question. But just to clarify it, you are not saying the council did not know about these turbines, what you are saying is that the council did not focus its attention on them because it did not need to?

5

MR NAYLOR: No, that is correct to a point. But when you say did not know about these turbines I am not sure exactly which turbines you are referring to.

10 MR JOHNSTON: Well, I am talking about the turbines not on the council's land.

MR NAYLOR: Certainly we were aware that there would be turbines located not on the council's land in the application. But it would be fair to say that from my perspective I had no knowledge of the size and the extent of the development outside of the reserve.

15

[11.00 am]

20 MR JOHNSTON: But that is not to say that others within the council did not have such knowledge.

MR NAYLOR: You would need to ask them.

25 MR JOHNSTON: Yes, right. Now, at paragraph 16 of your evidence you talk about the revenue, which this project could generate and which could be employed to enhance the reserve. Now, Mr Naylor, just as an aside, I hope I am not being inappropriately casual in calling you Mr Naylor, it is just easier because I can remember - - -

30

MR NAYLOR: That is quite all right.

MR JOHNSTON: This may sound like an odd question, but can I ask you as the Mayor of this city whether the prospect of significant funding being available for the purpose of enhancing the reserve or for the development of what the council has chosen to call the Eco Park concept, is something which you find exciting?

35

MR NAYLOR: I think I would use the word attractive. So I think I have been on quite public record and I am sure all of these are all clips that we have had from the media table today, will probably show the types of comments that I have made in the past about this. I have never shied away from the fact that I think the economic and financial benefits and the enhancement of reserve benefits that the city would receive from income from this project would be indeed beneficial. I have always said that would be a great thing for the city.

40

45

MR JOHNSTON: Because the enhancement which will be available comes in a number of ways, does it not? Even if - and I say this entirely respectfully, even at the level of understanding that you have had time to achieve with the contract, MRP has significant commitments to the enhancement of the reserve area does it not? Significant contractual commitments?

MR NAYLOR: I certainly know that there are contractual commitments - no you are right because there are issues of extra plantings and that kind of thing so - - -

MR JOHNSTON: Yes.

MR NAYLOR: Yes.

MR JOHNSTON: And then on top of that there is the in which the council would derive which it has long earmarked for enhancement of the reserve. Over and above that there are all the peripheral financial benefits to the city of the work going ahead. It is right, is it not, that there is no other obvious source of funding in the foreseeable future to do the kind of work that this reserve needs done on it?

MR NAYLOR: I guess it comes down to the word "need". But certainly what we have identified that with significant extra funding there would be money available for enhanced pest control and planting and the likes. So there is no other funding to that magnitude plan within our ten year plan, no.

MR JOHNSTON: No. Looking in the other direction for a rather longer period of time, the last hundred years of - and this is not a criticism it is just a suggestion to you and I want you to accept it if you think it is correct. The last 100 years have seen a relentless deterioration in this reserve as a result of pests and the like?

MR NAYLOR: I think "relentless" would be your word but I think I would happily acknowledge that there has been some deterioration in the reserve.

MR JOHNSTON: Why do you not like the word "relentless"?

MR NAYLOR: Well, it is an ambiguous word that people attract all sorts of different meanings, so relentless to me sounds incredibly aggressive, constant and probably a little stronger than I would have chosen.

MR JOHNSTON: Well, I would hate to be thought to have been relentlessly aggressive, Mr Naylor. So let us say lots of it, that is to say deterioration?

5

MR NAYLOR: I am not an ecologist so I can only go by the advice that I am given that there has been some deterioration and we could argue about the semantics all day I guess.

10

[11.05 am]

MR JOHNSTON: Well, I do not want to argue about semantics with you but you seem to be shying away from it. Do you accept that there has been a great deal of deterioration in the reserve over the last 100 years?

15

MR NAYLOR: I accept there has been deterioration, I do not know the exact magnitude of it so I do not want to be, therefore, having to state something specific about the level of that deterioration but I am happy to acknowledge there has been deterioration.

20

MR JOHNSTON: Just as a matter of interest were you given any information about the affidavit evidence that was put before his Honour, Baragwanath J in the High Court proceedings about deterioration in the reserve or was that not something that you were close to?

25

MR NAYLOR: I may have seen it, I do not recall what was in there.

MR JOHNSTON: Do you recollect that the council called expert evidence about deterioration in the reserve?

30

MR NAYLOR: Again, I do not have a huge recollection of exactly what we did at the time.

MR JOHNSTON: So you do not recall any of the photographs that became exhibits in that case?

35

MR NAYLOR: No, sorry.

MR JOHNSTON: All right. Well, I do not want to be unfair so I will not pursue it with you then. But what I am going to suggest to you and I would ask you to give some careful thought to this, as I know you will before you answer it. If there has been a – I am going to change my word here – significant deterioration in the reserve over the last 100 years and if there is nothing in the council's 10 year plan as an alternative to the resources, which would be made available by this project, to turn that around is it too extravagant, do you think, to

45

describe this application, and what will fall out of it if it is successful, as a once in a generation opportunity to turn the reserve around?

5 MR NAYLOR: I think it provides an opportunity to turn the reserve around, whether it is once in a generation, it is a once in three year opportunity because every three years the council reviews its long term council community plan. There will be an election next year and there could be a different make up around the council who decide, when they put their long term council community plan together, to invest a significant amount of ratepayer funding into upgrading the reserve should they choose. So I think we have always got to look at these things in the light that they fall.

15 MR JOHNSTON: You do not like my adjectives, do you, Mr Naylor?

MR NAYLOR: Ah, well, I have missed my appointment now – no, seriously, that is what I think about it. I think it is a good opportunity and we have said that all along. It is a good opportunity for us to do something with the reserve beyond - really at the moment what we have is a relatively minimal amount of money going into trying to maintain the reserve and so I certainly do not doubt that but, like I say, it is only the political will of council that could or would change that might decide to put that money in. Having said that the sources of funding are somewhat limited and normally come down ratepayers or giving up on doing something else that council is currently doing.

MR JOHNSTON: Thank you, Mr Naylor.

30 HER HONOUR: Mr Low? No longer, Mr Low, thank you, you are?

MS DOME: Leigh Dome, representing the community case, and for the record I am an unshaded, directly adjoining, landowner.

35 HER HONOUR: Thank you.

<CROSS-EXAMINATION BY MS DOME [11.09 am]

40 MS DOME: Good morning, your Honour, and members of the Board and good morning, Mr Naylor.

MR NAYLOR: Hi, there.

45 MS DOME: Following on from this eco park discussion. According to your evidence 24C, if we can refer to that paragraph, “Any decision may not be able to be entrenched and therefore subject to review by any subsequent council subject to any specific statutory restrictions”. Now,

my question, it is following on from this funding issue, should the Palmerston North City Council gain revenue from turbines in the reserve, can the present council commit future councils to spending the revenue stream on eco park in the Turitea Reserve?

5

[11.10 am]

MR NAYLOR: My understanding is that the council cannot do that. The absolute legal – this is, again, just my interpretation of the legal position – the legal position is that the money must be spent on reserves within the city because that is legally - you know, we cannot derive income from a reserve and then not spend it on reserves. I think that if any subsequent council, if it did derive some money from there and did not invest in this reserve, it would show quite a lack of faith in terms of the community and I would say that they would do so at their own peril. But, as far as I am aware, there is nothing legally to stop them but I think they would be acting in bad faith if they did not do work in the reserve with the proceeds from this.

MS DOME: So there would be nothing written down to commit further councils from or prevent further councils from - - -

MR NAYLOR: No, unfortunately, it is one of the, I guess, the positives and the negatives of the local government system is that you cannot bind any further body with things such as this.

MS DOME: So the rules could change, the goalposts could move in 18 months time?

MR NAYLOR: I guess, potentially, but, as I say, I think it would be in poor taste and a lack of judgement of any council that would seek to not invest money back into this reserve with income derived from it.

MS DOME: Thank you.

HER HONOUR: Any further questions? Thank you. Mr Maassen?

<RE-EXAMINATION BY MR MAASSEN

[11.12 am]

MR MAASSEN: Yes, thank you, your Honour, just some brief re-examination. Your Worship, you referred to exhibit 13, which was a bundle of material, and included within that material were some records of meetings and two names stand out, Mike Manson and Chris Pepper. Can you tell the Board their functions in council and their roles in relation to this process?

MR NAYLOR: I am not too good on exact titles of people but Chris Pepper is the water services manager, in terms of dealing with freshwater, wastewater and stormwater and the like – actually, no, he does solid waste as well. So, anyway, in terms of his water, his responsibility for the water catchment is his role here. And Mike Manson is the business development officer, so any particular business options that come council's way he is normally involved in those.

MR MAASSEN: Do either of those individuals have any relationship with the regulatory functions of the council?

MR NAYLOR: No, they do not.

MR MAASSEN: What is your understanding of their involvement once the application for resource consent is lodged by Mighty River Power?

MR NAYLOR: I would imagine that their relationship with Mighty River Power would be in terms of ongoing dealings around contractual issues and ongoing – yes, I guess, the issues that are to do with the contracts rather than anything to do with the resource consent process.

MR MAASSEN: Thank you. And, in relation to the regulatory functions, you mention, I think in your evidence, that that has been insulated from other arms of council, does that remain your understanding?

MR NAYLOR: That is certainly my understanding, the council is in kind of an interesting position in that we have two roles in this. One is as a landowner and the other has been, until such time as this process was called in, a consenting authority. So I think there has been some confusion at times in our community about the two very separate functions that council has in this. I have always been very clear that they are two very separate roles and we have ensured to make sure that that is the way we have conducted ourselves.

MR MAASSEN: Thank you. I just now want to ask you about – you were referred to a wellbeing meeting by Ms Price and I want to show you a document - unfortunately, I do not have any further copies but I can make them available – and I will just get you to look at that. What I am going to show you is the report to the Community and Wellbeing Committee. Can you just take a moment please to read through that document?

[11.15 am]

MR NAYLOR: I think it was the Finance and Economic Wellbeing as it was called back then but - - -

MR MAASSEN: All right, I am sorry.

MR NAYLOR: That is all right.

5

MR MAASSEN: So to put it on the record, what is the correct name it should be?

MR NAYLOR: The correct name, back then, for that committee - because we changed our committee names, it is one of the things that we are allowed to change each time - it was the Finance and Economic Wellbeing Committee.

10

MR MAASSEN: Does that report contain any references to turbines on private land?

15

MR NAYLOR: Not that I can find, no.

MR MAASSEN: Would you please produce that as exhibit 14.

20

MR.....: Just before my friend produces I wonder if I might have a quick look at it because we have not been able to get copies and because I have not seen it - - -

MR MAASSEN: I am happy to do that. Mr Naylor, when you are finished with it, if you could hand it back to me and I will provide it.

25

MR.....: Thank you, ma'am.

MR MAASSEN: Do you recognise that document as a report from the council?

30

MR NAYLOR: Yes, it seems to look exactly like one.

MR MAASSEN: And the recording officer was who?

35

MR NAYLOR: Chris Pepper.

MR MAASSEN: Could you please produce that document as exhibit 14 please. Thank you, your Worship. Thank you, your Honour.

40

EXHIBIT #14 – EXTRACT FROM FINANCE AND ECONOMIC WELLBEING COMMITTEE

HER HONOUR: Yes, Mr Heerdegen?

45

MR HEERDEGEN: Mr Naylor, I am going to refer to paragraphs 26, 27, and 28 in your statement. I will not pursue the line of questions I was going to about the original scale of the development because that has already been dealt with. But at the top of page 11 you say that this development would - - -

5

MR MAASSEN: Ma'am, I am just concerned that this question in relation to which page because I only have page 10.

10 HER HONOUR: Yes, I do too.

MR MAASSEN: And I am confused as to where - - -

MR HEERDEGEN: This is called "Opening statement for Palmerston North City Council".

15

HER HONOUR: And it is your submission, I think. It is Mr Maassen's submission, Mr Heerdegen?

MR HEERDEGEN: Oh, I have turned the page too many pages, have I? I apologise.

20

HER HONOUR: It is Mr Maassen's submission?

MR HEERDEGEN: Yes, and I apologise for that, I have been reading the wrong one. Flag me away, thank you.

25

MR.....: Yes, Mr Naylor, I have just one question.

MR NAYLOR: Yes.

30

MR.....: And that is in your term as a councillor, and you have been a councillor since 2001, has the city considered the need for a plan change to set the framework for wind farm developments for the Tararuas and for this area in particular?

35

[11.20 am]

MR NAYLOR: There has been certainly some discussion about it in recent months and there has been, I think the general consensus and my understanding is that we are having to do a district plan review and we are looking to incorporate that into our district plan review rather than undergoing a specific plan change. I think that is what we are doing, yes. My chief executive is giving me the nod so hopefully I have got that right.

45

MR.....: Given the intention for wind farms for such a long time, is this the first time that such a consideration has been taken by the council for a plan review or plan change, whatever form that may take?

5 MR NAYLOR: Yes, I cannot recall it being brought up before as part of a need for a district plan review. That might have been the subject of discussion amongst officers but I do not recall it coming to any kind of committee or otherwise.

10 MR.....: Okay, thank you, very much. Thank you, ma'am.

HER HONOUR: Yes?

MR.....: No, I do not have any questions.

15

HER HONOUR: Mr Hudson?

MR HUDSON: Your Worship, my understanding is that you could divide the council position up into three parts. May I suggest there is the officers, there is the elected representatives and then council has delegated its position in terms of submissions to this Board to independent experts, is that fair?

20

MR NAYLOR: I mean those separations do exist but in relation to what I am not sure. I mean in terms of the separation between officers and elected members there is separation but, at the end of the day, the council is an entity so it is - - -

25

MR HUDSON: Yes, I am aware of that but where I am heading is that the submissions which we are receiving are not necessarily the views of staff nor of the councillors because council has separated itself from the assessment and submission process to be advised by independent experts?

30

MR NAYLOR: Yes, that is right.

35

MR HUDSON: And one of the experts which you have engaged, or council has engaged, is a landscape architect, Clive Anstey, who will be giving us evidence next week and one of the issues which he draws attention to is the effect on character, and I will just make reference to one paragraph which he has written, and it is paragraph 95 in his evidence-in-chief. And it includes the statement, "The appeal of rural living is in the escape from the containment and constraints of urban living. In rural environments trees are used in a functional way to provide shelter et cetera".

40

45

5 And then he goes on to say in paragraph 96, “The development of a wind farm of this scale and intensity would significantly change the whole experience of living, working and just being in the foothills environment. For most of those who live in the foothills it is not only views from their houses that make the environment attractive it is the character and quality of the land and its surrounds, roads and streams et cetera” and he goes on.

10 Now, my purpose in reading that was just to try and put it in context to what you said at the start in relation to adjoining properties and that you had a concern for the effect on those.

15 Now, first of all, if we talk about adjoining, if we can move away from the strict cadastral sense of who shares a common boundary, would it be adjoining – it could be visually adjoining?

MR NAYLOR: I guess it could be, yes.

20 MR HUDSON: Is that the type of thing that you would mean when you were saying adjoining?

25 MR NAYLOR: Yes, I mean I am just trying to think exactly what was in my head when I wrote those words but I think – well, actually I did not write them because I refer to them, they are actually in the contract. But I think, yes, I guess that would be a broader interpretation of it, it would be visually adjoining and so, yes, that could be a fair interpretation of it.

[11.25 am]

30 MR HUDSON: So the properties in Ngahere Park are quite close to Bryant’s Hill?

35 MR NAYLOR: Yes.

MR HUDSON: And there is a number of turbines on Bryant’s Hill, and are those the ones that you have got concerns about when you were writing that, the dominance of them in terms of adjoining?

40 MR NAYLOR: I think so and I think to me – I think in terms of doubts around that adjoining issue and I think, you know, we could get caught up into the exact dictionary meaning of adjoining and likewise, but I think if somebody feels like something is next to them then it is adjoining them really. Whether or not they do not own the 20, or 30, or 45 50, or 100 metres strip of land in between perhaps is a little inconsequential and I think it is interesting. You know, I have just been

asked a question by a fellow submitter who is adjoining and does consider themselves to be adversely affected. And certainly my doubts around this that I have outlined in my evidence has been as a result of listening to those people who consider themselves adversely affected and who consider themselves adjoining, even if it is not through a directed boundary line.

5
MR HUDSON: Well, as the mayor and as you say in your paragraph 4 or 5, I think, you have got your finger on the pulse of the feeling of the city?

10
MR NAYLOR: I would like to think I have.

MR HUDSON: And what are those concerns that you are being told and that you interpret them as being?

15
MR NAYLOR: I think there are people who are concerned that if turbines are situated too close to them, and again I would leave the exact distance or otherwise to experts to devise, but if people perceive that they are being crowded in or are going to be adversely affected through noise or otherwise I think that their voice deserves to be heard and I think it is my responsibility as the leader of the community to ensure that those voices were heard, and that is the rationale for me putting that in my evidence.

20
MR HUDSON: And I can appreciate that nobody is able to give us an exact distance because it is all site specific.

MR NAYLOR: Yes.

25
MR HUDSON: But I am just wanting to get an indication from you of the areas that you have either personally got concerns about or - - -

30
MR NAYLOR: I mean, I think the things that I have been specifically made aware of would be I guess, you know, it is tricky to say but I guess the turbines sort of numbered probably 82 through to 88, and again this is kind of – I guess those would be some specific ones that have certainly be highlighted to me by people in that area. I probably would not want to get too specific exactly about – but, you know, in general terms I think it is that spur in particular that people have highlighted to me as being of concern to them.

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MR HUDSON: Have there been similar concerns on what is being called West Ridge, which is further south and it is on your map – it has got, “Love, Shilton and Gurk (PH 11.28.31)” as names on land properties beside it - turbines 133 down to 134, that ridge?

45

MR NAYLOR: Yes. Certainly I have heard a number of concerns, I guess, about those as well. And again we are only talking anecdotally but I think I would have heard more concern about the ones further north, although I think some people have been concerned about the ones that you have just referred to, as well.

MR HUDSON: And what about the final group which is in the Love property, numbers 125 through to 120?

MR NAYLOR: My understanding is the concerns there have been more to do with sediment running into the Kahuterawa Stream rather than in terms of the visual and kind of imposition on people's housing. But again I have not followed all of this to the letter of reading every document.

MR HUDSON: So just to get that like in an order of priorities, it is highest priority towards the north – highest concerns?

MR NAYLOR: Yes, I think so, but I am just sort of reticent to sort of be tied down to specifically what I think should or should not be there. I can only sort of give you my impression of feedback that I have given, but -
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MR HUDSON: There's voters in the south, too, are there?

[11.30 am]

MR NAYLOR: Yes. But it is not so much about trying to impress voters, because I think there are – you know, as we see across the board, it is very kind of split through our community who is for them and who is against them. So certainly my thoughts are not political survival motivated but really trying to highlight the concerns that have been raised to me.

MR HUDSON: No, I was not meaning to do that. What it appears, looking at those, is it is very much related to proximity and to the type of development which is adjacent?

MR NAYLOR: Sure, yes, and I would also say in terms of density of housing, I think is an issue and while – you know, I think we always need to weigh these things up and it should not be that we, you know, adversely effect anybody unduly, but I think we need to keep into consideration density of development, as well, and proximity to that.

MR HUDSON: Right. Well, the other thing that Mr Anstey talks about, along with the other missives we will get, is cumulative effects and he draws

a conclusion on that, but what is your view on the character of your city in terms of its wind farm presence?

5 MR NAYLOR: I am not quite sure what you mean by character of the city?

MR HUDSON: Has it become a wind farm city? I know it is part of your logo.

10 MR NAYLOR: There is no doubt that the level of wind farm development that we have had in our city has brought benefits to this community in terms of economic benefits or otherwise, I do not think anyone would question that and I guess the thing that we are trying to figure out between us all is really where is the appropriate amount of development and when is it time to stop, and I think that is an exceptionally complex
15 question to answer and really I am not sure how much I could add to that, other than to say that, you know, this is why we employ experts and spend weeks on end figuring that out.

20 MR HUDSON: Well, let me put it another way, there is some evidence coming to us that the wind farm development on the ranges has gone beyond the tipping point, that it is already an energy landscape, so a bit more is okay, and there is evidence coming the other way that south of the track is special and it is in the reserve et cetera. What is your view on cumulative effects?

25 MR NAYLOR: I am not sure that I am really qualified to have an opinion. I guess at the end of the day this is why we have an RMA process and we have, you know, you people sitting there to help make that decision for us and I am happy to sort of work with that. I do not have a – yes, I
30 remain kind of unconvinced either way to be fair.

MR HUDSON: I can understand that – I am trying to draw a distinction here between – I do not want you to have to make an assessment which is our job to do.

35 MR NAYLOR: Yes.

MR HUDSON: What I am trying to get a feel from you as the representative of the city.

40 MR NAYLOR: Yes.

MR HUDSON: Is it already an energy city?

45 MR NAYLOR: You know, undoubtedly I think we are recognised, you know, around the country and I think, you know, to some degree around the

world, as being a sort of at the forefront of wind energy. There is no question that there is a recognition that is associated with that because of the high quality of the wind resource here and the number of turbines and that sort of thing. So yes, Palmerston North is recognised as that.

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MR HUDSON: Yes, I appreciate that. The character of the city, for example, I think of Palmerston North and I think of Massey University.

MR NAYLOR: Sure.

10

MR HUDSON: It is a characteristic. It is a learning centre.

MR NAYLOR: Yes.

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MR HUDSON: Has it got to the point where it is also, from your observations and finger on the pulse, that it is also from a local perspective, an energy city?

[11.35 am]

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MR NAYLOR: I don't know that it is necessarily something that people strongly associate with, and I think some people would and some people wouldn't and I think if we look through the surveys that have been done, it shows that there is actually quite a split or diverse kind of sense of it. And so, because there isn't necessarily a wholesale buy-in to something, then I don't think we can say that that has therefore changed the character or the identity of the city per se because, yes.

25

MR HUDSON: Okay. Well I won't pursue that, I can see the position you are in.

30

MR NAYLOR: Yes.

MR HUDSON: Well, a final question then. Is the backdrop to the city on the east as rural?

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MR NAYLOR: Mm'hm.

MR HUDSON: Apart from as it heads south towards the Tararua Ranges and the reserve. Do you, in your opinion, do you think that it retains that rural character?

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MR NAYLOR: I think people will look at the ranges and see to some degree what they want to see. Some people will look and see industrial windsite and visual pollution. Others will look at it and see graceful turbines swirling pleasantly in the wind. Some will look past the

45

5 turbines and see the sheep and say that that is a rural farm, others will see structures and say it is like an office block, it is an industrial area or otherwise. And so you know, I can't say I have ever stopped to ponder is that rural or is that not. It is not something I have actually ever kind of stopped to ponder in that sense.

MR HUDSON: Well, Mr Anstey has, and I have read you what his thoughts are.

10 MR NAYLOR: Yes. That is why we paid Mr Anstey lots of money to bring you that evidence rather than getting me to provide you with it.

MR HUDSON: Well, your evidence is very valuable to us because you, as you say, have got your finger on the pulse.

15

MR NAYLOR: Sure.

MR HUDSON: As to what the feeling of the community is.

20 MR NAYLOR: Yes.

MR HUDSON: And from what I hear you say it is not dominated yet and there is a diversity.

25 MR NAYLOR: I think basically, if we were to characterise, and I think my personal kind of anecdotal feeling is that prior to reading any of these surveys my gut feeling was that there is about a third of the community love turbines, about a third of them don't like them, and about a third of them really don't mind either way. That is anecdotally been the feel and I think that is probably, without quoting the exact percentages, sort of seems to line up with what some of the surveys are telling us.

30

MR HUDSON: Right. It is interesting, isn't it?

35 MR NAYLOR: Mm.

MR HUDSON: Thank you.

40 HER HONOUR: Mr Naylor, the question of the understorey of the reserve has been raised by Mr Johnston to you, and I think because of where we are at in the proceedings, and we have had ecological evidence on the recovery of the understorey, I just wondered if you were aware that the council employs on contract a pest control officer who works consistently in the reserve?

45

MR NAYLOR: Yes, I am aware of that.

HER HONOUR: Do you know of the results that he is obtaining?

5 MR NAYLOR: No, I probably have had them presented to me, but I don't recall what they are.

10 HER HONOUR: I am simply raising it here because I think it probably needs to be pursued as a result of Mr Johnston's questioning. But the Board went on a site visit all day earlier in the week in the reserve, and one of the people who took us was the pest control officer and we saw for ourselves the recovery that the reserve is making and the results that he is obtaining with two of his officers as well working together. I must say that we were considerably impressed at the results that you are achieving. I just say that publicly so that - - -

15 MR NAYLOR: I mean, there is significant resource that currently goes into that. I just don't remember the numbers, but that is a considerable resource that goes into pest control in the area.

20 HER HONOUR: Yes. The other question relates to the – when people write up your council resolutions, is that a secretary, is that somebody legally trained or, on the basis of your paragraph 30-23 which has been the subject of some cross-examination and the word “adjoining” which to lawyers has quite specific meanings, would that resolution have been written up by someone with legal training or just a council officer or a secretary?

25 MR NAYLOR: Ordinary practice is that council officers who are providing reports would write the recommendations and they would normally go through the chief executive. I think it would be likely in this situation that there may well have been some legal input as well, given the nature and the magnitude of the results. So it is not normally secretaries who would write them, it would be the officers who have the area of expertise, and on occasion there is, where required, legal advice sought around those resolutions. Of course, it is up to the meeting itself to decide what the exact wording would be, which they can change by amendment or otherwise.

30 HER HONOUR: So really you don't know?

35 MR NAYLOR: Yes. So sorry, that is giving you a background, and I can only presume that there would have been some legal advice given at the time of putting this together.

40 HER HONOUR: But equally there may not have been?

MR NAYLOR: True enough. Yes.

5 HER HONOUR: Right. Thank you very much. Your knowledge of when
Motorimu was on the council's radar, I have here the decision of the
Motorimu Wind Farm decision Wellington 67/2008, an Environment
Court decision, and that states that in a decision dated – and this is the
10 first paragraph – 25 June 2007, commissioners jointly appointed by
Palmerston North City Council Horowhenua and Manawatu Wanganui
Regional Council, granted Motorimu Wind Farm, the applicant, various
district and regional council consents.

15 Now that was 25 June 2007, so presumably Motorimu was on the
council radar at about the same time as Mighty River Power's
application was being perhaps discussed in a preliminary way. Would
that be correct?

MR NAYLOR: Yes. In terms of the application, but not in terms of the
request for proposal or the change of reserve status.

20 HER HONOUR: No. But you would have had knowledge of these
applications generally or these windfarm entities having discussions
with your officers together if not with the council?

25 MR NAYLOR: Yes. I mean, I just don't recall the exact timing around
events, but obviously at the time that this RFP (**ph 11.43.33**) was sort
of put out and the Turitea Reserve purpose change going on, there was
obviously all sorts of stuff going on in terms of – no, I can't remember
how that is associated with the other T3 and Te Rere Hau and all those.
I just don't recall the timing of them all.

30 HER HONOUR: Yes. Right. Well, thank you very much for attending.
Thank you.

35 MR NAYLOR: No problem.

<THE WITNESS WITHDREW [11.43 am]

HER HONOUR: We will take the morning adjournment. Thank you.

40 **ADJOURNED [11.43 am]**

RESUMED [12.04 pm]

45 HER HONOUR: Yes?

MR DAVIDSON: Your Honour, may I have leave to address the Court on a matter of principle?

5 HER HONOUR: Yes, indeed, thank you.

MR DAVIDSON: I have put copies with the registrar of this very short submission I wish to put to you but I have not put behind you a short amount of material which backs it up and I do not ask you to read that material at the moment at all.

[12.05 pm]

15 HER HONOUR: Yes?

MR DAVIDSON: Your Honour and members of the Board. Thank you for allowing me to address you on this issue and may I introduce it before turning to the small text by putting the position I am in, in context. I have come to this case quite late. Some of what has gone on the record occurred well before I was involved and I have had to address an issue which arises from that in this memorandum.

25 Yesterday, on a couple of occasions, issues were raised which are really going to crop up as a matter of law and the way the hearing runs when the hot tub witnesses appear and they particularly concern Mr Stephen Brown but are not so confined. The issue of principle, which underlies this memorandum, is the status of advice given to Mighty River Power by persons consulted during the process of deciding whether to and how to proceed with the Turitea project.

30 And may I just put that in context because there is a big issue with lies behind this - big in the context of this hearing and all resource management processes – and it is the circumstance in which material is properly privileged in the communication between an applicant or a submitter, advisors, technical expert, and the involvement of legal counsel and lawyers in the process.

40 Now, I just want to put that in context. That if, for example, from my own practice over the years, and I am sure many other people in this room are aware of it, people get consulted about whether they can or cannot support a particular project on a particular issue, for example ecology.

45 Of course if they do not support a project, they are not called to give evidence in support of an applicant and the law requires no disclosure in an application or, indeed, a case for a submitter of people who have

been approached and who do not assist or choose not to assist the Courts. That material is, in my submission and traditionally, privileged. There are certain fences around privilege which I will come to.

5 The second and related issue is the obligation of a witness when giving evidence regarding other material generated by that witness and relevant to the issues before the Board. And this flows directly from the consolidated practice note of this Court, the code of conduct in the High Court and the obligation to a Court which transcends all those
10 written requirements.

The timeline which backgrounds this memorandum is at 1.4 and I ask the Board to consider this sequence. The proposals for development were called for in March 2005 and Mighty River was selected in
15 September, contracted in that month. Since that time Mighty River has engaged experts regarding a potential role in advising on the project and/or - usually "and" - as potential witnesses.

Stephen Brown produced reports in 2006, which you have before you, and may I say right now that when Mr Maassen asked me if there was
20 any objection to that material going before this Board there was none. There was no proper basis to suggest it was privileged, it is a matter of record and, even though it may have been called "confidential" at the time, Mr Brown's reports relevant to the Turitea Reserve are before the
25 Board. There was no reason, at any stage, they should not go before the Board and they offer his opinion on certain effects associated with the proposed reserve development.

[12.10 pm]

30 When you look at those two exhibits, 9 and 10, you will see in the précis, as the easiest point of reference, discussion about the landscape setting, landscape values, amenity effects, 15 viewpoints. It refers to cumulative effects - and I am getting to the heart of the factual issues which drive me to the submission - it refers to the Turitea proposal
35 being an incremental step closer to the forest park. It refers to amenity landscape and puts a question, which is identified, as to ascertaining at what point appropriate balance between natural and modified landscapes is reached, then set a conclusion out. And my submission
40 very properly identified that question as others have done before this Board.

45 Following that, an application for judicial review saw everything, in a sense, held but the judgement of the High Court came in July 2007. The AEE was not filed until over a year later and Motorimu, which your Honour has raised in a question of the mayor, was filed in October

2006, heard by commissioners who delivered their decision in June 07 and, on appeal, September 2008.

5 And this is relevant to what I am about to say because Motorimu has cast a shadow across the whole process of assessment of effects of landscape, and has been in play in different ways at different times. If you go back to the time that the council made the contract regarding Turitea, Motorimu had not been filed, it was still an idea.

10 By the time the decision is concluded in the Environment Court, when the Court refused to increase the turbine numbers in September 2008, this Turitea proposal was underway. And now, a year later, you have some evidence before you and no doubt more will be adduced simply through effluxion of time during this process as to where Motorimu really sits as a matter of fact and, therefore, as a matter for this Board to determine as a matter of law as to whether it is an existing environment.

15 Now, the issue regarding Mr Brown is this at 1.11. Leading up to preparation of the assessment Mr Brown was engaged to advise through ChanceryGreen, through solicitors, and he made a draft report which brought to account the effect of Motorimu and more but, of course, it is beyond that which you have seen in the two exhibits in 2006. It goes to Turitea, in this proposal before you, and he identified Motorimu as a significant complicating factor in his expert opinion. Now, the Board has not heard this, it is now hearing it for the first time with the implications that carries.

20 And it was to the extent, and you are going to have the evidence of this for reasons I will come to, that the cumulative effect of Motorimu with Turitea recruited (**ph 12.13.40**) his support on that issue. He has not offered his support in this Board on the evidence on that issue. His evidence goes to the regional or subregional landscape.

25 Now, while the fate of Motorimu is said by Mighty River to have been effectively sealed by the scale of the consent, the numbers of turbines, unless it can be removed from the existing environment, as a matter of principle by this Board, it is a complicating factor for the Mighty River case. We are facing up to that in a number of respects. It was Mr Brown's opinion, at that stage, as one expert. His draft report for the assessment was never concluded into final form but I want to make the point that its import was clear enough. Mr Wyatt was engaged and has supported the project in the cumulative assessment.

35 Now, the question which arose for Mighty River Power, well before my engagement as counsel, was as a potential applicant moving through stages of development from inquiry to a case, and finally to the AEE

and then into a hearing process, it takes decisions based on evidence available to its cause. It does not expect experts to support its projects in all respects. Often, as most of this Board know well, people are approached and say, “No, I cannot help you”, either in principle for what you want or through unavailability, sometimes both.

[12.15 pm]

Advice shapes the case. The advice from experts shapes the case that can be run. Without the expert evidence you have not got a case in support or in opposition to a project. ChanceryGreen, the lawyers for Mighty River, was directly involved in reviewing versions of what may have become Mr Brown’s report for the AEE but which is not formally concluded. I am not shying away from the fact of where he got to, as you will hear, as I have said.

Mighty River chose to call Mr Brown but not in relation to his view regarding cumulative effects. He does not provide support on the basis of cumulative effects with Motorimu included, that is not his evidence before this Board. Mr Wyatt does give such evidence. Mr Brown’s evidence was thus filed on this limited basis and the rebuttal process began. He did not say, “I support it in terms of the regional landscape assessment but not on effects”. He did not say that, that was not the way the evidence was filed.

Now, the position in law is well recognised at 1.15 that while privilege could properly be claimed, and that is my advice to Mighty River and I say so in front of this Board, Mr Brown’s views could not be so privileged, are not so privileged when he comes into the witness box. He is there to answer any question put to him by counsel, submitters, Board exactly on the matters put to him. Mighty River cannot hide behind a claim to privilege, which extends only to the draft work he did, only to the written material and the advice so conveyed in that.

But when he steps into the witness box or sits in the witness box he has to say what his opinion is. Thus, in this case, he would have to say what his opinion is regarding cumulative effects. And, as such, it was expected he would be properly cross-examined on his reports made in 2006, his opinion would become known. The fact of his giving advice would have been understood, as Mr Henry said in evidence yesterday we have a report from him.

There was nothing to preclude or close down the evidential inquiry in terms of the witness’ opinion. Mighty River made a decision to claim privilege on that draft report or work but cannot claim privilege as to the opinion. At the opening of hot tubbing counsel, in my position,

would have advised that privilege would have been claimed and he will be cross-examined, no doubt adversely to Mighty River, on cumulative issues.

5 Two issues appear to arise. The first is the witness' obligations. Mr Brown has not filed evidence called to advance the case on cumulative effects, not an effects based brief. He has been called for a different and discrete purpose as described. If it is suggested he had to go further and disclose his report of June 2008, or his opinion
10 expressed, then that is incorrect in my submission. He would have to answer the question of what his view is but he does not have to disclose, nor does Mighty River have to disclose, that report.

15 In the same way applicants and other parties do not routinely disclose the information received from expert or other evidential responses as they build their case. That has never been the case and nor is it required in the context of contemplated litigation. This is a jealously regarded right in law. People can consult freely, take the advice available to them and use it or not use it as the case may be. The law has never
20 known an affirmative obligation to say, "Here is our one witness in support and I must tell you nine other witnesses are against us here".

Mighty River, and this is paragraph 1.19, did not take any point regarding the use of Mr Brown's reports in the context of Reserves Act
25 challenge. Mr Maassen, I thought courteously, asked me if they could be used. I think that was an unnecessary inquiry, he was entitled to use them as he wished to cross-examine any witness he chose, and you have those before you. And counsel and any other party can build on those and any other questions Mr Brown properly might be thought to
30 have a view about.

[12.20 pm]

35 Now, the decision taken – what I have said is submitted to correctly analyse the legal position and there is no element of impropriety in producing evidence which did not refer to Mr Brown's "contrarian" view – that is my word – expressed in 2008. But the nature of questions put to Mr Henry yesterday and raised in re-examination, regarding the apparent contest over obligations to provide Mr Brown's
40 other view, has resulted now in Mighty River Power choosing to waive privilege.

45 In other words the technical argument or issues I am raising to explain the reason for claiming privilege are abandoned by Mighty River in respect to Mr Brown's report. It is a big step for the company to take because it introduces into the case the record of Mr Brown's expressed

view which, at least in the respect I have referred to, is adverse as expressed at the time. And so there is no skirting the point. I have told the Board now of the relevance of Motorimu in the material you are going to see as privilege is waived.

5

HER HONOUR: Mr Davidson, I am not sure really about all the issues swirling around about this because right at the beginning of the case Ms Price or you, I am not quite sure who, indicated that Motorimu was really off the consideration list because of the fact that it is not close to transmission facilities, and for a whole host of other reasons, and that

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Mighty River, including other energy companies, had come and investigated whether they should take up the consents or not.

And as far as the Board, at this stage, is concerned there the matter lies and we have had no evidence so far to dispute that approach. So I am a bit at a loss as to know quite what the fuss about all of this is except, if I can just say to you, that it was interesting to me that Mr Wyatt was actually looking at the – I think it was, I mean one has read so much evidence – but when I read the landscape evidence I think it was Mr Wyatt and I raised it yesterday with Mr Henry.

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MR DAVIDSON: Yes, you did.

HER HONOUR: That he was looking at Motorimu as a cumulative effect in that respect and my thoughts were going on about something other else in relation to that. Whether, if we are discounting Motorimu entirely, what this might mean in terms of if we are readjusting turbines and so on, so I am at a bit of a loss to know what this scrap is about.

25

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MR DAVIDSON: Well, ma'am, the reason that I am on my feet is that I have an obligation for candour with the Board, as we all have.

HER HONOUR: Sure.

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MR DAVIDSON: And we consider the fact that the issue of reports has been raised and is there another report not brought into evidence, it has been acknowledged by Mr Henry as, indeed, he has acknowledged other reports made available which are not in evidence either for the reasons I have been through.

40

And we have had a very real concern that this not be taken as a negative against Mighty River Power, that this is in fact a proper stance to have taken, but in the context of it being suggested that there are other reports which should somehow have come before the Board – and that is what we have taken or inferred from some of the questions that have been put – we have chosen to take this course, and particularly because

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we have another point to raise, and I have had the advantage in this case, in the last few days Mr Maassen and I were able to debate in a relatively congenial way, issues between us.

5 We have an issue between us regarding the fact that Mr Brown's evidence is restricted and does not move to a territory of the kind I have just described, and that goes to the code of conduct for expert witnesses and whether, when an expert steps into the witness box they are bound to say everything they know about the topic or if they are entitled to be called for a purpose.

[12.25 pm]

15 My submission is – and because this has been raised with me I have to protect this **(INDISTINCT 12.25.09)** Mr Brown, Mighty River and council because we present the case.

20 So we have taken this what may seem a quite dramatic step, to say right, well, if this is really an issue then we are going to give you this material and you will see exactly what it is. We wouldn't have taken the privilege point had we not preferred the alternative course, but we have chosen to do so because we want this board to understand that we are honouring the obligation we have **(INDISTINCT 12.25.34)** in this particular respect, and to dispel any notion that something is withheld for an improper reason which I have considered was coming from the Board.

So I am grateful for your Honour's comment a moment ago.

30 Now, it doesn't quite end there because at 1.21, and I have already touched on this, Mr Henry made an incorrect statement at the end of a long day. He advised there was no other advice from landscape architects. There was some other advice, exactly of the kind I have just described. It was privileged, it is not employed in the case, and I have been through the practice in which advice is received and used or not used.

40 So we may have over-read the concern, your Honour, members of the Board, but I am not going to be here and have Mighty River accused of acting in some improper way. That is the basis of it.

45 At the back of this short statement there is a point on privilege, that evidence of expert witness notice, and I have dealt with the point I anticipated from my learned friend under evidence of expert witnesses, the statement, the practice note requires that there be no other material facts known which may alter or detract from the opinions expressed.

Mr Brown's opinion of the views he expresses are not affected by his opinions on other issues and that is true, and that remains the case. There is no **(INDISTINCT 12.27.07)**

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HER HONOUR: Well, thank you very much, Mr Davidson for your candour and your approach. It is what we would have probably expected from Mighty River Power if we had been concerned about this particular issue, but I don't think we were.

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MR DAVIDSON: It is dealt with now.

HER HONOUR: Thank you.

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HER HONOUR: Yes, Mr Maassen?

MR MAASSEN: Yes. Well, the first comment I wish to make is to express gratitude to my friend for his leadership in relation to these issues. I found him extremely helpful and receptive to these sorts of concerns and I would like to extend my appreciation to him for that.

20

I do acknowledge though that there is a difference between him and I as to the import of the Board's or the Court's practice note in terms of the obligations of experts.

25

My position is that once an expert is called across the threshold from having given a report to actually coming before the Board, taking an oath and giving evidence, that a gateway has passed. And once that witness accepts the obligations implied in that practice note, complete candour on all material facts is required of that witness.

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My friend says, no, he is entitled – or she is entitled – to only call evidence on the purpose for which they are called, but then answer honestly in relation to questions.

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The difficulty with that is that unless there is a searching and testing cross-examination, the presence or absence of this other information may never be known, and my submission is that that is not the intent and spirit of the code of conduct for experts, that there is a special privilege accorded to people who say "yes, I will accept this obligation". They don't have to, but once they accept it, it is a serious and onerous obligation and I, with all due respect to my friend, think that any pruning of that obligation has some quite serious repercussions for the administration of justice. So I am not with him on that point, but in this specific issue, this particular matter, we have resolved that with this specific witness, in terms of the disclosure of that report.

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5 While the Board may not at this stage have any particular concern about the quality of the AEE and the visual impact assessment the council does and the reason for that is that it received confidentially reports from Mr Brown that identified a 63 turbine wind farm as having moderate to high impact.

[12.30 pm]

10 Now, when Mighty River chose then to double the size of the wind farm, which was its privilege, the council quite reasonably expected an assessment of visual effects of similar quality and similar results. That is not what happened, and that raised great suspicion within the community and the council as to the voracity and quality of that
15 evidence and that remains the position. What we do with that, the council does not want to sit and kick Mighty River Power over those matters, its interest is in bringing all the relevant information before the Board because ultimately it was anticipated by everybody that this Board, highly competent, with respect, as it is would be able to make a
20 good decision and the council's interest is that all relevant information is before the Board.

25 And I also want to acknowledge my friend that he understands the spirit from which the council is coming, it is not to embarrass a crown owned entity or anything of that nature, but it is to serve justice and transparency and that is the objective. So I am grateful to my friend and I think that with that disclosure the spirit with which we can conduct this hearing will be, as I said, one of transparency and forthright information.

30 Thank you, your Honour.

HER HONOUR: Yes, thank you, Mr Maassen, with one caveat that you have no idea what the Board thinks about the AEE.

35 MR MAASSEN: No.

HER HONOUR: At this point.

40 MR MAASSEN: Oh, okay.

HER HONOUR: Thank you.

45 MR DAVIDSON: I think there was some evidence from Mr Maassen on that, ma'am.

HER HONOUR: Yes. A feature of this case and not necessarily just in respect of Mr Maassen.

MR DAVIDSON: No.

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HER HONOUR: Thank you. Now, I think it is Dr Clough, is that right?

MS PRICE: Ma'am, my junior counsel, Ms Bell, will lead this witness.

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HER HONOUR: Yes, good afternoon, Dr Clough. Welcome.

DR CLOUGH: Good afternoon, members of the Board, it is good to be here finally.

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HER HONOUR: Yes, Ms Bell?

MS BELL: Your name is Rodney Edward Clough?

DR CLOUGH: It is.

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MS BELL: You are a professional archaeologist?

DR CLOUGH: I am.

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MS BELL: You were engaged by Mighty River Power to assess the effects of the Turitea wind farm on archaeological values?

DR CLOUGH: I was.

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MS BELL: And you have prepared evidence-in-chief and supplementary evidence on behalf of Mighty River Power?

DR CLOUGH: Yes, I have.

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HER HONOUR: Ms Bell, I am sorry, could we just pause there. Apparently the witness has not been sworn in. I am sorry. Thank you.

<RODNEY EDWARD CLOUGH, affirmed [12.33 pm]

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<EXAMINATION BY MS BELL [12.33 pm]

MS BELL: Would you like me to repeat, your Honour?

HER HONOUR: Yes, thank you.

45

MS BELL: Your name is Rodney Edward Clough?

DR CLOUGH: It is.

MS BELL: You are a professional archaeologist?

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DR CLOUGH: I am.

MS BELL: And you were engaged by Mighty River Power to assess the potential effects of the Turitea wind farm on archaeological values?

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DR CLOUGH: I was.

MS BELL: And you have prepared supplementary evidence and evidence-in-chief in that regard?

15

DR CLOUGH: I have.

MS BELL: Thank you. And you confirm the contents of those brief of evidence as being true and correct?

20

DR CLOUGH: Yes, with one minor change, for my sins in paragraph 1 of my evidence-in-chief I am now the president of the New Zealand Archaeological Association, so a minor change and it is a probably a burden more than a privilege.

25

MS BELL: Thank you. You have a brief opening statement to make?

DR CLOUGH: Yes, it is just a brief one. As you know from my evidence I was brought on in April 2008 to take over the work from archaeology north and expand on that work with further archival research and additional fieldwork including survey of the transmission route. That was put into our final AEE report. Subsequently I have reviewed the section 42 report of Susan Forbes (**PH 12.35.01**) and responded to that and in addition I have reviewed Susan Forbes's summary of the caucusing. And subsequent to that I have also had further discussions with Ms Forbes.

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[12.35 pm]

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The outcome of the caucusing and the discussions which you are probably not so much aware of is that we are in broad agreement that the effects on archaeology are less than minor and that there is slight differences in the way we approach historic heritage landscapes, but I am – well, Ms Forbes and I have sort of agreed that her concerns here are primarily cultural and that providing these are addressed through consultation or meeting iwi concerns then her concerns are also met and

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that the MoU with Rangitaane O Manawatu and other ongoing discussions to meet those concerns would appear to satisfy Ms Forbes that her concerns are being met.

5 MS BELL: Thank you, please make yourself available for questioning.

HER HONOUR: Mr Maassen?

MR MAASSEN: No, thank you, your Honour.

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HER HONOUR: Any other parties?

MS BELL: Thank you, Dr Clough – unless the Board – sorry.

15 HER HONOUR: Thank you.

MR SHENTON: I just have a few questions for you Dr Clough. Just in your research work that you carried out subsequent to the archaeology north work, was there any Maori land plans sited in that research, mapping research and so forth?

20

DR CLOUGH: We certainly came across one plan with information on – I think it is the Maungahau (**PH 12.37.11**) block.

25 MR SHENTON: Right.

DR CLOUGH: And I believe that is incorporated into the AEE report, and subsequently I have had discussions with Peter McBurnie (**PH 12.37.21**) who prepared the Rangitaane O Tamaki report and he was quite pleased to get hold of a copy of that plan because it established that that block was not really a major part of this proposal.

30

MR SHENTON: Just a follow up question to that, there were no – sometimes with Maori land plans, early ones, there might be tracking marked on those plans but there was none – was there any of that on - - -

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DR CLOUGH: None that we noticed, no, and I had a close look at them for tracks, because of course tracks – I mean I have been aware of tracks because the Rangitaane O Manawatu mentioned tracks through the area up to Tirohanga Peak and I would expect also to Arawaru where the signal station was. So tracks would be expected. But no, I did not observe any tracks marked on the plans.

40

MR SHENTON: Okay, thank you. Just another one in regard to – there seems to be four very important sites of significance to Maori in the area.

45

DR CLOUGH: Yes.

5 MR SHENTON: You have mentioned those in your report. The site Arawaru is noted as being a recorded site and could you just explain, you know, what is the material, how is that recognised as an archaeological site?

10 DR CLOUGH: I think it was identified initially as a signal site by Rangitaane and I am not – I mean I assumed it was identified on traditional information and the area recorded. I am not sure what physical remains – it is actually outside of the area of the proposal so I am not sure actually what physical remains are there today to identify it as such.

15 MR SHENTON: So in terms of it being registered it is just based on traditional information, it is not based on any like analysis to say there is remains - - -

20 DR CLOUGH: I have not seen any analysis so I cannot confirm one way or the other.

25 MR SHENTON: Okay, thank you. Just a question in regard to the accident discovery protocol process – I just wanted to be assured that in terms of a person being briefed on detection and things like, just briefed on it – you are happy with that? Is that sufficient to identify, you know -?

30 DR CLOUGH: It depends on the sensitivity to the area what level of briefing and what level of archaeological presence is preferred or required. In this particular instance the probability of archaeology turning up during earthworks is pretty low and so it would not be just a briefing of contractors, it would also be a meeting with Rangitaane, because they are looking at the protocols that are being developed with them, would be actively involved in monitoring of earthworks and so that sort of archaeological understanding and briefing would be shared by both the iwi and the contractors.

35 MR SHENTON: Okay. I think, yes – no, that is all the questions I have.

DR CLOUGH: Thank you.

40 HER HONOUR: No, I have no questions either. Thank you, Dr Clough.

DR CLOUGH: Thank you.

45 HER HONOUR: Ms Bell?

MS BELL: No further questions, your Honour.

<THE WITNESS WITHDREW [12.41 pm]

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HER HONOUR: Ms Susan Forbes? I am sorry, Mr Horton, is he prior? I am sorry, Ms Forbes, if we could call Mr Horton first. Thank you, they have changed the order of people, I am sorry, Mr Horton.

10 **<PAUL HORTON, affirmed [12.42 pm]**

HER HONOUR: Mr Horton, you do not appear to have a representative with you. Would you like to summarise where you have got to in terms of the cultural assessment of effects in respect of this proposal?

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MR HORTON: Yes.

HER HONOUR: Would that be the best thing to do?

20 MR HORTON: If it pleases the hearing, I would like to just do a quick visual presentation of the process that we have – and to signal who is the organisation that I represent and I think it may be helpful for the members in the gallery, too, it may present some of the questions that may follow the process.

25

HER HONOUR: Yes.

MR HORTON: So I am the **(INDISTINCT 12.43.38)** environmental officer for Rangitaane O Manawatu and I compiled the evidence that is before the hearing to date. So greetings to your Honour and members of the panel and the wider audience to the rohe of Rangitaane O Manawatu and the material I will be presenting in this Powerpoint are basically the maps that were included in our submission that maybe helpful in signalling on both the relevance of the area and the culture effects that were derived and presented in our submission and just the concluding statements about where we are with the negotiations and the consultation process with Mighty River Power.

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[2.45 pm]

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So here we have the two maps. I have outlined the Rangitane rohe and signalled by the Rangitikei River across to **(INDISTINCT 12.45.07)** to the crest of the Ruahine range, down the spine through the Manawatu gorge and down here to - I cannot remember the name of the peak - but across to the Manawatu River and each one of those points on that map are significant sites to Rangitane and this area here signalled by the red

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and yellow, which is reproduced in this other map here, signals our area notified in our heads of agreement with the Treaty negotiations which covers the Turitea reserve and the significant sites that that area contains.

5

So the Turitea reserve is designated by the broken yellow line and the blue smaller line is the South Range Road and the Browns Flat road that terminates at the Love property. So in signally the Rangitane connection to the site, we derive from - well, Rangitane derived from the **(MAORI CONTENT 12.46.46)** waka, navigated by Whaitanga. So he explored the Manawatu region, up the Manawatu River, got to Ashurst, which is in the top left hand corner or right hand corner - wherever you are seated - and discovered that he could send his scouts back through the Manawatu gorge to bring a larger force into the Manawatu with the view of conquest.

15

But that group were blocked by the resident Ngati Mamoe, which prompted them to journey down the far side of the Tararua range and come across what is now basically the Pahiatua track and this is the area that Rangitane first established in the Manawatu. So, as you can imagine, we have - or they have quite significant feelings about the Turitea reserve with it being right next door to their migratory region to the Manawatu.

20

This is just a similar photograph, the same boundary is outlined in the roading so that I can signal the South Range Road, contains several significant sites and four of these are the proposed turbine sites that were covered in our submission that we had discussions with Mary Henry and Mighty River Power over and our concerns or connection to Browns Flat, which is now part of - we are told - pasture and the **(MAORI CONTENT 12.49.03)**. So basically all of the work to sustain and maintain a military force on these sites, other sites of significance, were all derived from within the Turitea reserve and Browns Flat.

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Then one of the things that was not represented in our designation in front of the Board was our ecological concerns, but nonetheless we have them, and so this is just another view signalling that we have some concerns about the wider water quality issues that we have reasonable assurances that they will be accommodated.

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[12.50 pm]

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But some of the other elements that were not covered in any of the submissions or evidence that we have read to date were the occurrence of a native lizard population here that we are really concerned about the extinguishment of and my own personal observations of a flightless

crane fly in this - there is a turbine site just here that has not been recorded due to lack of environmental - ecological mapping in the reserve.

5 So just in conclusion, and hopefully in our submission we have cleared demonstrated that we have had, or Rangitane have had, about 700 years connection with the Turitea and the growth in that area. We have consulted quite extensively with Mighty River Power and we are at a stage now where we have a memorandum of understanding and we also
10 compiled a CIA, or a Cultural Impact Assessment, and redrafted that following the consultation on and the conclusion or the firming up of turbine sites.

15 So at this stage we had an assurance that the turbine on Tirohanga will be removed and that proximal impacts on the wahi tapu and wahi taonga have been suitably addressed in the formation and the acceptance of the MOU.

20 The other significance of this - well, the significance of the (**INDISTINCT 12.54.03**) culture and the historical landmarks outside it or that are further impacted by proximity to turbines has been suitably addressed and - sorry.

25 So the interactions that we have had with Mighty River Power have also given us a mechanism to express our tiaki tangata role via the acceptance of our cultural monitoring plans, which cover not only the archaeological but ecological and aquatic environments. We are at the stage now where we are quite keen to be involved and I have, in my role prior to coming into the employment of Rangitane, was involved in
30 developing this eco park Mainland Island sanctuary concept for Palmerston North City Council. So I am really keen for us and with the backing of Rangitane to have a major input into this, if the proposal goes ahead.

35 So that is basically where we are at with regard to this proposal.

HER HONOUR: Thank you. Have you anything further to add?

40 MR HORTON: No, I will just wait and see if there is any comments that come through.

HER HONOUR: Thank you. Ms Price?

45 MS PRICE: No questions from Mighty River Power. Thank you.

MR: No questions, thank you, your Honour.

HER HONOUR: Any other submitters?

MR: No.

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HER HONOUR: Thank you. Mr Heerdegen?

MR HEERDEGEN: Just one.

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Mr Horton, on paragraph 51 you basically are critical of the relationship that you have or don't have with Palmerston North City Council, but in your verbal submission I believe that you said that you have been involved with the development of the Ecopark proposal?

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MR HORTON: Yes

MR HEERDEGEN: And I just wondered how these two fitted, you know?

[12.55 pm]

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MR HORTON: On October 2008 I was involved with developing the work plan for the – as part of what may have come out of the Turitea Wind Farm was this concept of a mainland island, and I was doing that just as a environmental consultant under Chris Pepper and in consultation with Mike Manson. And then at the end of that short-term contract I then became involved or was employed by Rangitane and Manuwatu or Tanenuiarangi Manawatu Incorporated as their environmental officer.

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So that was how that situation came about and it was basically that I was unaware at the time of that earlier paragraph, the script that there was no – and I was under the assumption that there was some interaction between ROM (ph 12.56.21) and PNCC, but I subsequently found out that there wasn't and that we had still been excluded from that consultation process in that we have quite a significant connection and are notified under the heads of agreement that the Turitea was or had been a focus of our Treaty settlement.

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MR HEERDEGEN: On paragraph 53, and also I think in an earlier one, you talk about some mitigation measures with respect to either removal – I think removal of certain turbines. Are you happy, given what you have said in here, that those issues have now been addressed by Mighty River Power?

45

MR HORTON: Yes. In the time between the original submission we had nothing concrete.

MR HEERDEGEN: Right.

MR HORTON: But we have subsequently included that in the application.

5 MR HEERDEGEN: Putting aside all those things, those concerns have been addressed?

MR HORTON: Yes.

10 MR HEERDEGEN: Right. Well, that is good. Fine. Thank you very much.

HER HONOUR: Chris?

MR SHENTON: Tena koe, Mr Horton.

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MR HORTON: Kia ora.

MR SHENTON: I have just got, in terms of your brief of evidence that you have put in here, you have got some specific concerns about a Fijian subspecies that is mentioned in Mr Coffey's evidence.

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MR HORTON: Yes.

MR SHENTON: Could you just explain what your concerns are there?

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MR HORTON: In taking a holistic view of the flora and faunal elements within the reserve and our connection to the reserve, Mr Coffey had suggested that we could, if through a decline in water quality the polykete worm that is endemic to that ecological region and the Turitea, could be supplanted by a Fijian species, and that is totally outside our te aka tangata view that it is already there, why, you know – we need to manage to make sure that it remains there rather than rely on being able to supplement its population by a subsequent introduction of a foreign species.

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MR SHENTON: And those concerns, are you satisfied that you have articulated those clearly to Mighty River Power now and you know, had it recognised, or are you still in the process?

MR HORTON: We still have, but like I say, in the adoption of the cultural monitoring plans we have now satisfied, to a certain extent, that concern. But in the evidence and the subsequent documentation there is still no inclusion of Rangitane in any of the ecological discussions. But now that we have a mechanism to do those, that monitoring ourselves we can be satisfied that.

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[1.00 pm]

5 MR SHENTON: I just thought I would say, for your information, I mean when Mr Shaw, Willie Shaw, was giving evidence I asked him a question about whether Rangitane's involvement with ecological decision-making, management and design and things like that, you know, your involvement or Rangitane's involvement in that – he was quite open to that.

10 MR HORTON: Yes.

MR SHENTON: So I mean, the thing is that you know, are you satisfied that the mechanisms you now have are going to be able to facilitate what your concerns are in that area, in ecology?

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MR HORTON: Yes.

MR SHENTON: Yes, you are?

20 MR HORTON: Yes, we are reasonably satisfied.

MR SHENTON: Now, in terms of your MOU you have with – memorandum of understanding – with Mighty River Power, you have talked about some of the turbines, which have been mentioned by Mr Heerdegen, 55 has been removed, turbine 55 at Tirohunga has been removed.

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MR HORTON: Yes, that is the - - -

30 MR SHENTON: With the **(INDISTINCT 1.01.00)** there, and the other ones are just in terms of monitoring earthworks, is it, or?

MR HORTON: Yes. The Mahinga and a couple of the other ones, they were – and we outlined in our CIA that they were within 50 to 100 metres of turbine sites, so it was more proximal effects rather than direct placement of a turbine on the actual peak itself of Tirohanga.

35

MR SHENTON: Right.

40 MR HORTON: So yes, we have satisfied that as well under the adoption of the MOU.

MR SHENTON: I think somewhere written in your evidence, I am just trying to remember where it was, but you talked about a whole list of concerns you had at that point in time, and I am just wanting to know whether all of those concerns have been met or whether there are some that have fallen off the list in terms of the effects of this - - -

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MR HORTON: No. We had signalled, because there are – well, Rangitane hold a taonga species list, and where the current wind mast is there is a substantial population of tutukiwi orchid that was mentioned in the species list, and so through the adoption and acceptance of our Cultural Monitoring Plan for heavy traffic movements along South Range Road we have satisfied those concerns as well, and with the other species that we mentioned.

MR SHENTON: Can I ask, in terms of the Cultural Monitoring Plan that you have got in your – come to, is that prior to construction?

MR HORTON: Yes. Prior to and a year after completion.

MR SHENTON: A year after.

MR HORTON: So that we can be assured that as the environment rights itself after the earthworks, that any ongoing issues are addressed.

MR SHENTON: And that is terms satisfactory to you and Rangitane?

MR HORTON: Yes.

MR SHENTON: It is. Okay. Just a question – I think you have talked about the heads of agreement that Rangitane have with the Crown in terms of a settlement there. It is just actually for my information I suppose. Is the reserve owned by – to your knowledge – is it owned by Palmerston North City or is it owned by the Crown?

MR HORTON: The segment of the reserve from just east of South Range Road to down into the – well, to the private boundary is owned by PNCC.

MR SHENTON: Right. And of course you are satisfied with that clause, I think, have you seen a clause that is in Mr Henry's supplementary evidence. I presume it may part of your agreements but he has proposed a clause to do with within 12 months of - this is 2.3 in Mr Henry's supplementary, 2.3 page 4, of the Crown settling with any claim of Rangitane Manawatu under the provisions of the Treaty of Waitangi Act 1975. The council may, following service of notice from the consent holder, commence a review of the conditions of this consent pursuant to section 128.1A of the RMA. Are you aware of this clause?

MR HORTON: Yes.

MR SHENTON: Yes, and that satisfies your concerns in that area?

MR HORTON: Yes, it would have been Danielle Harris our CEO and Morris Takarangi that went over that. Yes it was acceptable to them.

5 MR SHENTON: Okay, that is all the questions I have, thank you.

HER HONOUR: Thank you, I have no questions either. Thank you very much for coming, Mr Horton.

10 MR HORTON: Thank you.

<THE WITNESS WITHDREW [1.05 pm]

15 HER HONOUR: Before we will take the luncheon I would like to return at two, we are running slightly late - if that might assist perhaps seeing more of the witnesses this afternoon. I think that after lunch we have Ms Forbes and then Mr Torrens and Mr Clarke and hopefully Ms Rapson and Ms Mead-Rose. I am not sure that we will get quite that far, but we will try. Thank you very much we will see you at two
20 o'clock.

ADJOURNED [1.05 pm]

25 **RESUMED [2.05 pm]**

HER HONOUR: Yes, Ms Forbes, thank you.

<SUSAN FORBES, sworn [2.04 pm]

30 HER HONOUR: Welcome Ms Forbes would you be kind enough to give to us your summary of events to this point and how you see things being shaped in the future?

35 MS FORBES: Kia ora, your Honour. Kia ora koutou e nga rangatira (**Maori content 2.05.20**). Thank you, your Honour, I am aware that the instructions for hot tubbing directed us to prepare a verbal summary. But I have taken the liberty of - during our discussions so far to prepare a written summary which I have got copies which I have here. But I
40 wanted to - and I am pleased that Mr Horton preceded me because I wanted to make sure that I had heard him and some of the other comments prior to giving this.

45 The written summary is a reflection of the hot tubbing caucusing process that Mr Henry described yesterday, it seems like a while ago, and also that Dr Clough mentioned just earlier. We have had a phone conversation and Dr Clough and I have had several meetings and talks

5 since and I have now heard from Mr Horton. As a result of that, most of my primary concerns I feel have been addressed and this is largely a feature of what I consider to be quite significant progress with the MoU arrangements that have occurred between Mighty River Power and Rangitane.

10 I would note, however, that Paul had said, I think his words were, with regard to the ecological matters, I think Rangitane had raised quite a few interesting points species management, water quality that sort of work, he said that they were reasonably satisfied. I would like to hope that an inquiry process - we could aim for higher than reasonable satisfaction. So I am hoping that the ongoing work in MoU between those two parties will get greater satisfaction.

15 I think too that I had left one recommendation in my summary which you have before you now related to Huatau Marae. Now, that was primarily with regard to noise effects. After listening to comments yesterday about Huatau Marae and particularly with regard to kaitiakitanga I would like to elaborate my recommendation to go just
20 past noise and hope that their concerns for their role is kaitiaki of at least the land that they own are taken into account. It is my understanding that they are going to present evidence to the Board on the 27th.

25 Dr Clough also - I think Rod's summary of our agreements is a reflection of my view as well. But I would like to stress that we do differ on the matter to do with adverse visual effects on a heritage landscape. We have slightly different views on how you interpret heritage landscapes, which is not unusual in our profession but I think
30 that without stressing it too much, my opinion is that it will have an adverse visual effect on a heritage landscape. I am saying - that was my opinion in my first report and I have not resiled from that at all.

35 There is just one other matter that has come to my notice just today and that is, apparently a report on archaeology was prepared by another archaeologist, Ms O'Keith, and I have not seen that. I was not aware of it and I would just like to just - so that you know that my opinion was made without seeing her work.

40 Yes, I think that is probably the full reflection.

[2.10 pm]

45 HER HONOUR: There is nothing you want to read from this report?

MS FORBES: Well, just perhaps for the benefit of those who do not have it, the report talks about just very briefly - our caucusing opportunities and then I cover the supplementary evidence of Mr Henry where he very helpfully addressed the MoU situation. In my paragraph 5 I still note that I feel that iwi have - I still feel they are constrained slightly by the culture silo, that definition that seems to slot tangata whenua concerns primarily into a cultural box. They still seem to be absent from evidence on ecology and landscape species recovery and so on. Those matters have been brought up in the last two days, so I think that is something that is obviously before this Board.

I stay with my thoughts that section 8 of RMA is not simply about addressing settlement processes but to include the principles of active protection, partnership, iwi autonomy and so on. I think that if you take into account the principle of active protection that gets to you on the right track to having regard to kaitiakitanga as an example. That is another area where I have not changed my views. Again, the matter of iwi authorities as far as I am concerned the submissions from groups like Huatau Marae do need to be treated as affected parties, they most clearly are.

I think Dr Clough's supplementary evidence we have probably covered that. There are no areas - there never was any areas where we strongly differed in terms of the physical archaeological evidence. So that I think has been well addressed. The development now of iwi cultural monitoring protocols is a great step forward.

HER HONOUR: Would you like to read out paragraph 16 because I do not think cultural values or cultural landscapes are easily understood by many people.

MS FORBES: Certainly, your Honour.

I would like to stress again that cultural values do need to be considered in a broad framework if not by the archaeologist then at least by other experts and tangata whenua. The New Zealand Historic Places Trust guidelines for preparing archaeological assessments, they are from June 2006, state that archaeological values, and I give examples such as condition, rarity, contextual value, information potential, amenity value and cultural associations, should be assessed along with other relevant values such as historical, technological, architectural and cultural.

Cultural associative values include heritage landscape and relationship to settings, linkages to events and people, ongoing functions and associative meanings. Social values cover spiritual, political and

cultural values and the extent to which heritage contributes to a sense of place.

5 These are part of the archaeological set of values and when they are omitted from an assessment there is a risk that significance will be inappropriately assigned.

HER HONOUR: Yes, thank you. Ms Price?

10 <CROSS-EXAMINATION BY MS PRICE [2.15 pm]

MS PRICE: Just one small matter for clarification, ma'am, if I may, and it does relate a little to what went on this morning, is Ms Forbes, do you know who commissioned Mary O'Keefe's archaeology report?

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MS FORBES: No, I do not.

HER HONOUR: Mr Maassen?

20 MR MAASSEN: No thank you, your Honour.

HER HONOUR: Any other submitters? Mr Johnston?

MR JOHNSTON: No.

25

HER HONOUR: Mr Heederger?

MR HEERDEGEN: I have got one question. Ms Forbes, in this document that you have just given to us, in paragraph 7, you talk about section 8 matters. What I want to ask you is in relationship to your primary evidence, that report that we have got, in paragraph 66 you talk about things and then you say, "That this problem is, in part, connected with the reliance on consultation as the main means of mitigating effects".

30

35 And given what section 8 says, and what we generally believe to be the case about section 8 matters, what is your view about consultation as being a process of mitigation rather than being a process that ought to be or could be considered as being a primary process?

40 MS FORBES: My view is that consultation is a means to an end, it is not the end in itself. Naturally, if you do not establish relationships of trust and understanding and good sharing of information it is very difficult to move towards any kind of satisfactory outcome in terms of part 2 matters of the RMA.

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5 So consulting and working co-operatively together, in fact, embodies one of those principles of the treaty and that is the principle related to sharing information in good faith. However, as many of the people in this room will know, the Environment Court is littered with cases that relate to a breakdown in consultation or moments and situations where consultation is carried out by a party but completely unsatisfactory from the other parties point of view.

10 I have taken in my report I think a fairly conservative stance with regard to consultation and relationships because parties change, opinions change and misunderstandings occur. I have advocated a more robust development of agreements rather than just saying, "Look, we have consulted with this group, we think we have understood their case".

15 MR HEERDEGEN: Yes, I understand all that, but my question really is should we be considering that consultation, as you have mentioned it here, is a main area of mitigation of effects of this proposed consent?

20 MS FORBES: No, I think the outcomes of the consultation will lead to developing means for mitigation.

25 MR HEERDEGEN: Okay, I understand, thank you.

HER HONOUR: Commissioner Bunting?

30 MR BUNTING: I have one question. Having got to this point, are you comfortable now to step aside and feel that the other people involved in this process can take it forward satisfactorily?

35 MS FORBES: Kia ora. Yes, with the probable exception of the case for Huatau Marae because I am not sufficiently conversant with the depth of their concerns about noise and impacts, and I am sure they can present their case quite adequately, but there has not been the kind of relationship development or any kind of formal agreement with that group that there has been with the other tangata whenua groups.

[2.20 pm]

40 MR BUNTING: And do you think that can happen?

45 MS FORBES: Well, from what I heard yesterday it certainly seems that it has started off so there is the potential for that to happen. Mr Henry did indicate that he subsequently contacted the group there.

MR BUNTING: Thank you very much, ma'am.

HER HONOUR: Chris?

5 MR SHENTON: I have just a few questions. Tena koe, Ms Forbes.

MS FORBES: Kia ora.

10 MR SHENTON: Thank you, your evidence has helped a lot in this process I
must say, I want to say that first of all. Initially, of course, you had
some concerns about some unknowns in the process and I just wanted
to make sure that some of the – like the MOU with TMI, for example -
is going towards or it is a written form of an understanding between the
15 two parties. Maybe it has got a bit more to go but are you satisfied with
the status in terms of some of your initial concerns about a lack of
written agreement?

MS FORBES: Well, naturally, I have not - I am not privy to the agreement
20 but the representative from Rangitane is happy and so I think that that
does answer your question, yes.

MR SHENTON: Have you seen the supplementary evidence of Mr Henry?

25 MS FORBES: Yes.

MR SHENTON: He mentions just a few of the points in there - yes, that
probably covers a few of the - - -

30 MS FORBES: I think there has been substantial development since the
presentation of evidence-in-chief.

MR SHENTON: The other issue I was just going to ask about was this
35 heritage landscape, the differences between, say, yourself and
Dr Clough. He talks about, in his supplementary evidence, that it is –
well, my explanation of it is, is that when there is a lot of sites around it
seems that that is when this methodology or this discussion paper that
you are referring to is applied. Is that what the difference is, do you see
that differently?

40 MS FORBES: In part and you are quite correct that is his opinion, is that
heritage landscapes are defined when there is an abundance of physical
evidence. I do disagree with that because there are lots of reasons why
we have a presence or absence for physical evidence. Sometimes it is
45 because they have already been destroyed or lost through natural
processes or human interaction.

5 There are other times when we have highly significant heritage
landscapes by virtue of associative values. In New Zealand
mountaintops are clearly examples of that and, in this particular case, it
is not just a place of significance for the iwi in terms of their
relationship to the geographical features. The geographical features are
directly connected through whakapapa, Tara was the uncle of
Rangitane. The people here are shaped by their landscape just as
people of the Whanganui River, **(INDISTINCT Maori content
2.23.51)** it is not I am related to the river, I am the river. And that is
10 something that archaeologists are beginning to work more sensitively
with. It is certainly an international trend and I am hoping that we
come up to speed more in New Zealand as well.

15 MR SHENTON: Yes, great, thank you. The other question I just have is in
terms of the scenario with Huatau Marae, in your experience have you
come across a resource management based process where there may be
potentially marae that – sometimes you have urban based marae, that
might be a pan tribe or – their participation in these processes and that
kind of thing, have you come across that thing?

20 MS FORBES: Often, and also with bigger iwi authorities and smaller whanau
trusts or perhaps kaitiaki groups, it is very common occurrence, and I
do not see that as being a conflicting situation at all. But often because
they are not recognised as iwi authorities in one sense they get, perhaps,
25 left out sometimes in the process, that commonly occurs.

[2.25 pm]

30 MR SHENTON: Okay. Yes, that is all the questions I have, thank you.

MR HUDSON: Good afternoon, thank you for doing this report which the
Board requested, and I know you did it in a relatively pressure
timeframe, so thank you for that and the same will apply to all the other
42 reports.

35 Just picking up on the point that Commissioner Shenton asked, and you
raised too, regarding the visual effects on heritage landscapes, and I
note that you do cover that at 35 and 36 in your report. Can you just
expand on that for us, not necessarily those paragraphs, but just what
40 you have highlighted as your concerns?

MS FORBES: Well, this proposal would provide for physical structures on
what could be termed to be an ancestral person or the equivalent of so it
is not just the visual effects on a skyline, there is visual effects on, if
you like, the whole whakapapa and the genealogy of people associated
45 with this area. And we talked earlier about natural character and it is

certainly related to notions of that, of how you might define the character of an area. I think that probably sums it up.

5 MR HUDSON: Well, I am interested that you, in your summary that you have just given, you limit it to visual effects. Would it also be the associative ones that you have listed here?

10 MS FORBES: Indeed, and they are, perhaps, less easy to quantify or describe because they vary, there is associative events such as people, people in history, wars, some of the things that Paul described earlier today when he did his presentation. The fact that the ranges are not just a place of connectivity in relationship but they are also a place of divide, they mark transition places in a tribal sense. So, yes, they are all of those.

15 MR HUDSON: And my impression from when you were talking about that and your disparity with Dr Clough, was that there was – and correct me if I am wrong here – there is not a significant difference between your views, did I interpret that rightly?

20 MS FORBES: Yes, I think so. Perhaps where we vary is that Dr Clough is talking about physical, tangible archaeological evidence and I am referring to natural landscapes that have significant heritage values.

25 MR HUDSON: So the resulting assessment of effects may be similar but the way that you get there could be different?

MS FORBES: No, I think the outcome is different as well. I firmly believe that there would be visual effects on an ancestral landscape.

30 MR HUDSON: And how would you describe those visual effects?

35 MS FORBES: The landscape will become – it will change the whole structure of the landscape from an eyesight perspective and also it is akin to – it is almost like acupuncture in a human body, there will be an impact in that sense.

MR HUDSON: And could you give some indication of the significance of it?

40 MS FORBES: That probably more properly rests with tangata whenua.

MR HUDSON: Right.

45 MS FORBES: But I am aware that these ranges do represent a very important landscape for Maori and that is acknowledged by not just those who mana whenua in this area, but anyone travelling through it, just as we do for our other important maunga, Aorangi, Ruapehu and so on.

[2.30 pm]

5 There is a respect that is afforded this place by all who pass through it.

MR HUDSON: And is there any relative greater importance of, say, the more eastern ridge top which is the higher one and covered in native vegetation and part of the reserve compared to, say, the pastoral ridges on this more closer to us.

10 MS FORBES: From a heritage perspective, no.

MR HUDSON: Right. And is there any mitigation beyond avoidance?

15 MS FORBES: I have struggled with this. I was actually out at sea two weeks ago looking at the Makara landscape and thinking exactly the same thing and wondering if a different colour would help, if the turbines were in some way disguised, and I came to the conclusion personally that it would not help because still they are there on that landscape and I just want to note that I do not have any particular difficulty with wind farms, I think they are, you know, important. But when they are placed in these kinds of landscapes the mitigation – there is nothing other than avoidance.

20 MR HUDSON: And is it complete avoidance? And what I am thinking of there is if some turbines are not present does that actually make any difference or is the fact that they are there, they have this effect?

25 MS FORBES: I think there could be situations where avoiding key areas will make a difference, but that is probably for tangata whenua to best advise on. Certainly, peaks are going to have more importance than other parts of the landscape, but given that I have talked of the landscape as a whole, if you like, an embodiment of ancestral importance then it is difficult to say no, just avoiding the head will make a difference.

30 MR HUDSON: Yes.

35 MS FORBES: The heart, the rest of the body is there, too.

40 MR HUDSON: You are presenting the picture of it as an integrated dynamic living being with these affecting different parts of the body?

45 MS FORBES: I am, yes.

MR HUDSON: Is there anything else you would like to tell us?

MS FORBES: No, I think that is - - -

MR HUDSON: That is all from me, thank you.

5

HER HONOUR: Following on from Mr Hudson's questions, you will be familiar with the definition of historic heritage under the RMA?

MS FORBES: Yes.

10

HER HONOUR: And do you consider that that covers all the facets of your conception of the cultural landscape other than archaeological sites?

MS FORBES: Yes, your Honour, yes, it does. I struggle sometimes with the wording "historic heritage" because for me heritage is something that we gift to those yet to come and it is not merely something that is of the past, it is something that is created and developed all the time, as we acknowledge with our buildings and so on. But that is possibly a semantic argument.

15

20

HER HONOUR: And is it your impression that perhaps the Maori representatives who have come before the Board do not fully understand the visual effects of what is going to happen to this landscape if we approve?

25

MS FORBES: I have only had the privilege of hearing Paul earlier today, so I do not – I cannot answer that. I think all I can say is on the basis of the submissions and the evidence I have read, it has come up as a concern but most of those submissions, probably apart from the one from Rangitaane, were put in a very general context, they did not flesh out their specific concerns.

30

[2.35 pm]

35

HER HONOUR: Because you have brought out, just even in your oral evidence to us now, more aspects than they have touched on. Mr Horton's presentation was really probably the most graphic we have had. I did not quite understand before now the boundaries of what you term the corpus, I guess, of the heritage area and the ramifications of this. I think there was a case, EDS v Maunganui County Council, Justice Corcoran (ph 2.35.59) gave the decision where the Maori people there – it was an approval to build a large lodge in very sensitive Maori territory. It was not necessarily Maori land but I think the term was that the whole development would run over Maori values and heritage values and cultural values. Is that the sense that you have is going to happen here?

40

45

MS FORBES: It is the sense I had when I began this section 42A work because of the nature of the evidence and the submissions. However, there has been I think a substantial development in terms of relationship building and agreements that, whilst it might not address my own personal thoughts as a heritage practitioner, seem to have allayed the concerns of tangata whenua, or at least for Rangitaane. So I am qualifying my answer slightly there.

10 HER HONOUR: Yes, and I think that is fair. Well, thank you very much, indeed.

MS FORBES: Pleasure, thank you, your Honour.

15 HER HONOUR: And thank you for undertaking the report at such short notice.

<THE WITNESS WITHDREW [2.37 pm]

20 HER HONOUR: Mr Torrens, I think. Thank you.

<STEVE TORRENS, affirmed [2.38 pm]

25 HER HONOUR: Good afternoon and welcome, Mr Torrens, for waiting so long for your turn.

MR TORRENS: That is no problem.

30 HER HONOUR: Thank you. And would you like to summarise for the general environment in which your conclusions on this proposal are?

35 MR TORRENS: Yes, sure. First of all, my name is Steve Torrens, I represent the Energy Efficiency and Conservation Authority. I just briefly introduce the Energy Efficiency and Conservation Authority in paragraph 5 of my evidence. I say that "EECA is a crown entity established by the Energy Efficiency and Conservation Act 2000. EECA's statutory mandate is to encourage, promote and support energy efficiency, energy conservation and the use of renewable sources of energy".

40 EECA's support for the proposal lies in the fact that it is a renewable energy development that will result in significant benefits associated with improving security of supply and reducing greenhouse gas emissions, and in our evidence we also consider section 104.1C and we also outline some results of a survey concerning public support for renewable energy.

45

5 So turning to security of supply, in paragraph 9 I state that over the long terms if electricity demand continues to grow at its recent historical rate of two percent per annum we require between 105 and 240 megawatts of new capacity per annum.

[2.40 pm]

10 And in paragraph 14 I note that this proposal will contribute to meeting demand for electricity with an installed capacity of between 280 and 336 megawatts and that will be sufficient to supply approximately enough electricity for approximately 120,160 households per annum.

15 In paragraph 15 I also note of significance that the proposal will contribute to ensuring that sufficient electricity can be generated to meet demand over the winter season and will also ensure that there is a enough generation capacity to meet instantaneous peaks in demand.

20 In terms of other security of supply issues, in paragraph 20 I state that wind is a relatively reliable economic resource, while all primary fuels for thermal powered electricity generation have been subject to significant price increases and volatility over the last few years, there is no cost for the primary fuel of a wind turbine which is wind and therefore once a wind farm is built it has not ongoing fuel price issues.

25 Turning to the effects of climate change, in paragraph 25 I state that in recent years New Zealand's energy related emissions have increased significantly and in particular in 2007 approximately 6.6 million tonnes of CO₂ were emitted into the atmosphere from electricity generation compared with approximately 3.5 million tonnes of CO₂ in 1990. This represents almost a doubling of New Zealand CO₂ electricity related emissions over the past 17 years.

35 And in paragraph 29 I state that the proposed wind farm with a maximum capacity of 336 megawatts will avoid approximately 0.52 and 1.2 million tonnes of CO₂ per annum, depending on whether coal or gas generation is avoided.

40 Turning to section 104.1C considerations, I state in paragraph 38 that it is my opinion that the government's objectives in relation to energy and climate change, including the 90 percent renewable electricity target and the proposed national policy statement on renewable electricity are particularly relevant considerations to the determination of this application because they are a recognition of the national level at which renewable energy is being addressed.

45

With regard to the renewable electricity target, in paragraph 49 I state that – sorry, in paragraph 40 I state that the government’s target is that 90 percent of the country’s electricity will be generated from renewable sources by 2025 provided it is not at the expense of security of supply.

5 In terms of meeting the target in paragraph 43 I state that modelling led by EECA jointly commissioned with the Ministry of Economic Development and Electricity Commission was instrumental in setting the renewable electricity target and this modelling predicted that to achieve the 90 percent renewable electricity target an increase in

10 renewable generation of 3750 megawatts is required by 2025.

In terms of the role of wind in meeting the target, I state in paragraph 47 that EECA’s modelling indicates that wind generation is predicted to provide almost 30 percent of the new annual generation to meet the

15 renewable electricity target.

In terms of the effects of the renewable electricity target on emissions in paragraph 54, I state that modelling completed by EECA shows that to return annual electricity related emissions to 1990 levels the

20 proportion of renewable electricity needs to be over 90 percent by 2025.

Moving on to the proposed national policy statement on renewable electricity, I state in paragraphs 58 to 60 to further assist the achievement of the renewable electricity target and national policy

25 statement on renewable electricity generation under the RMA has been developed.

Its objective is to recognise the national significance of renewable electricity generation by promoting the development, upgrading, maintenance and operation of new and existing renewable electricity

30 generation activities such that 90 percent of New Zealand’s electricity will be generated from renewable sources by 2025. I also note in paragraph 60 that this proposal is consistent with the subjective.

35 [2.45 pm]

Moving on to the public support for renewable energy, we conducted a survey and, as I state in paragraph 64, we found that in the 2008 survey results, we found that over 90 percent of respondents seen renewable

40 energy as something New Zealand needs to focus on for the future. And in paragraph 65 I further note that renewable energy sources are favoured highly over fossil fuel sources, and wind energy is identified as the most supported type of electricity generation with 86 percent

45 support.

5 So, to summarise, as I state in paragraph 68, EECA supports this proposal because it is a renewable energy development and such developments are vitally important for the production and delivery of electricity in an efficient, secure, affordable and environmentally sustainable manner. It will contribute to improving security of supply for the current and future electricity demand, including winter and peak demand, will contribute to geographic diversity of the electricity system as a whole, adding to its resilience and will help to maintain a reliable robust and sustainable electricity system.

15 Finally, it will increase the supply of renewable electricity hereby being well aligned with New Zealand's renewable electricity target and its commitment to the Kyoto Protocol and its efforts to reduce electricity related CO₂ emissions.

20 Finally, I would just like to point out an error in our evidence in paragraph 16 where we say, "in this regard, the proposal will contribute 67 megawatts to the North Island capacity margin, which in 2012 is forecast to be 662 megawatts". It should actually be 1187 megawatts. Apologies for that.

25 HER HONOUR: Thank you very much. Thank you. Ms Price, have you any questions?

MS PRICE: No questioning from Mighty River Power.

HER HONOUR: Thank you. Mr Maassen?

30 MR MAASSEN: Thank you, your Honour.

<CROSS-EXAMINATION BY MR MAASSEN [2.47 pm]

35 MR MAASSEN: Good afternoon, Mr Torrens.

MR TORRENS: Good afternoon.

40 MR MAASSEN: I am appearing for the Palmerston North City Council, which has an interest in this matter for a range of reasons. And what I will require from – for you to look at is some documents in agreed bundles. So if I could ask for the witness to have agreed bundle volume 1 – sorry bundle PNCC bundle, volume 1, and PNCC bundle 3.

45 So the first volume I would ask you to look at is volume 1 and turn to tab 6, please. This is a report from the Parliamentary Commissioner for the Environment, specifically in relation to wind power.

MR TORRENS: Mm'hm.

MR MAASSEN: I presume that you are familiar with this report?

5 MR TORRENS: I have read it, though that was some time ago. Maybe when it was first published.

MR MAASSEN: Can I ask you please to turn to page 117 of that report.

10 MR TORRENS: Yes.

MR MAASSEN: This is a recommendation from the Parliamentary Commissioner for the Environment recommending that the Minister of Energy directs EECA to continue regular reporting and to supply information on a number of subjects. Are you familiar with that recommendation?
15

MR TORRENS: I have read it before, so I would have to say yes.

20 MR MAASSEN: Are you aware whether or not such a direction has been given to EECA?

MR TORRENS: No, I am not, I do not think that we did receive a specific direction to do that. We do conduct regular surveys but I do not know if we fully comply with this recommendation.
25

[2.50 pm]

MR MAASSEN: Is it true that your surveys, for example, do not test attitudes to different types of windfarms but deals more with generically windfarms?
30

MR TORRENS: I am not entirely conversant with our surveys but I think that that is the case. I mean I can confirm that with you if you wish.
35

MR MAASSEN: Yes. Well, if I am not correct, then certainly let us clarify that. And do you know whether or not there has been any condition testing about the locations for turbines with the public in the surveys?

40 MR TORRENS: Yes, as I say I am not entirely conversant with the questions that we ask. I think we do ask from memory if – we do ask the attitudes to wind if you can hear the wind turbine, or if you can see it.

MR MAASSEN: Right, well okay, I will come to that, but you do not condition test in terms of particular landscape qualities presumably, as opposed to their visibility and audibility?
45

MR TORRENS: Not that I am aware of, yes.

MR MAASSEN: Now, the final point that the Parliamentary Commissioner raised was the attitudes of communities to existing windfarm developments, which the council would describe as post-construction social monitoring. Are you aware that EECA does any of that sort of analysis?

MR TORRENS: No, I do not believe we do.

MR MAASSEN: If there was a wider community concern about post-construction effects and the adequacy of the prediction of effects of wind turbines, would that not be a concern that EECA would have?

MR TORRENS: I think primarily our concern is around the benefits that renewable energy provides to the country, specifically around the section 7 issues that were talked about in our evidence and I do not think specifically EECA's role is to consider environmental effects. I think we think that the place for that to happen is in the RMA process where the relative benefits of renewable energy can be weight against environment effects.

MR MAASSEN: I read the Energy Efficiency and Conservation Act 2000. That is the statutory enactment that you are operating under.

MR TORRENS: Yes.

MR MAASSEN: And in section 6 it says that in achieving the purposes of that Act, all persons exercising responsibilities and powers must take into account the health and safety of people in communities. Do you recall that provision?

MR TORRENS: Yes, I do, yes.

MR MAASSEN: And the need to maintain and enhance the quality of the environment as matters relevant to the exercise of the functions

MR TORRENS: Mm.

MR MAASSEN: Do you say that EECA does not see its role as being focused on that but more the promotion of renewable energy?

MR TORRENS: I think we do – for every project that we do consider supporting, we do go through a process of considering environmental effects as much as we can, taking into account that we do not have any expertise in that particular area.

5 And we also consider the benefits that the proposal will provide, and we also consider the sustainability principles, two of which you have outlined. And then on the basis of that consideration we decide whether to support or not the proposal.

10 But, having said that, we do – we take into account that in terms of weighing up the benefits of –the positive benefits of renewable energy against the environmental effects, that really is – we acknowledge that that is done by the Board of Inquiry or whoever the consenting authority is.

[2.55 pm]

15 MR MAASSEN: Yes. Has EECA developed any expertise or done any expert evaluation of the appropriate proximity of turbines to residential populations, for example?

20 MR TORRENS: No, we have not, no.

MR MAASSEN: I just want to turn you to the previous page – 115.

MR TORRENS: Yes.

25 MR MAASSEN: That was a recommendation that the Minister of Energy and the Minister for the Environment direct your organisation to provide guidance to local authorities in managing tensions related to landscape and visual amenity, and to assist with specific objectives and policies and assessment criteria.

30 The Palmerston North City Council has, perhaps more than any other local authority, had to deal with the tensions and issues in this type of arena of development and has recently made a remit to the local government association about the lack of central government direction.
35 Are you aware that EECA has ever implemented this recommendation or directed to do it?

MR TORRENS: I am not aware – I do not believe we have.

40 MR MAASSEN: Thank you. I just want to now briefly ask you some questions about surveys and to do that I would invite you to look at tab 5 in volume 3.

45 Now, initially when you open that tab, you will see some conditions from another case, and I am not going to ask you about those. So I would ask you to turn over that document and then there are some

separate documents, and I would just like you to familiarise yourself with them. The documents comprise results from EECA's surveys and the first document is sort of a compilation of those results in a graphical form.

5

So just take a moment to familiarise yourself with that because I want to ask you some questions about – in a little bit more detail about the survey results that EECA has obtained.

10 MR TORRENS: Okay, I mean, yes.

MR MAASSEN: All right, so after the compilation document which analyses that data are three documents bearing the logo of either EECA or MRL Research Group.

15

MR TORRENS: Okay.

MR MAASSEN: And they are variously dated 1994, 2004 and 2008. Okay? Is that your understanding of the dates when surveys were done by EECA?

20

MR TORRENS: As I say, I am not fully conversant with the surveys that we have done but I am assuming that this is correct.

25 MR MAASSEN: Yes.

MR TORRENS: I would have no reason to doubt it.

MR MAASSEN: Yes. Well, just before I go into this, and it may be that you are not the right person, but do you actually know much about the surveys and what they mean?

30

[3.00 pm]

35 MR TORRENS: No. I mean, I have not familiarised myself in depth with the surveys that we have done.

MR MAASSEN: Right. So it seemed to me that you had picked out on one point which was the general community's response to renewable energy, but in fact your organisation would be aware that there is greater subtlety in the answers that people give depending on the condition testing that they are given.

40

MR TORRENS: Mm.

45

MR MAASSEN: I am just wondering, is that something that people are aware of in the office?

5 MR TORRENS: Yes, we are, and we are also aware that there has been other surveys by other organisations as well. So, yes, that is something that we were aware of.

10 MR MAASSEN: Well, let me just take you then to the sixth page in, I think, which is the national survey analysis for October/December 2008, and people were tested for their attitudes to windfarms under the following three conditions – within two kilometres of their home, they can see from their home, and that they can hear from their home. And those results have been plotted on the next page and what appears to be
15 interesting is that when people are asked what their view is if they can hear them from their home, that the people in favour – percentage of people in favour is actually lower than people who are against. Is that your understanding of the outcome of the results of the 2008 survey?

20 MR TORRENS: I was struggling to find the page that you were referring to when you were going over that – can you just repeat the last couple of sentences of your - - -

25 MR MAASSEN: Yes, I am certainly happy to do that. So the document I am talking about is this document here which is the analysis of the results, and I am really looking at the last two pages.

MR TORRENS: Yes.

30 MR MAASSEN: And in the survey industry they talk about condition testing the survey population, in saying “Interesting that you support renewable energy” but then testing the conditions on which they support it and how the response varies. So when I use the term condition testing, that is what I am referring to.
35

MR TORRENS: Okay, yes.

40 MR MAASSEN: And as I said, there was condition testing, as I think you observed earlier in your evidence, based on whether people could see turbines from their home, they could hear them from their home, or they were within two kilometres. And these have been plotted in the graph at the bottom of that page, and it appears that when people are asked whether they are in favour if they hear them from their home, that the population – there is a greater number of the population against than
45 in favour.

MR TORRENS: Yes.

MR MAASSEN: Now, I am asking you whether that is something you are aware of.

5

MR TORRENS: I was not particularly aware of that precise point that you made. I certainly was aware that the more that the wind turbine has an impact on the person, the less they would be willing to provide support for wind, so yes.

10

MR MAASSEN: Yes. And when you ask the population, you can hear it, that is the simple question, is it? It is not referring to any particular level of annoyance, it is just the ability to hear it?

15

MR TORRENS: Yes.

MR MAASSEN: Yes, thank you, Mr Torrens.

MR TORRENS: No problem.

20

MR MAASSEN: Thank you, your Honour.

HER HONOUR: Thank you, any further questions? Mr Heerdegen?

25

[3.05 pm]

MR HEERDEGEN: Mr Torrens, in paragraph 35 of your evidence, you say at the end talking about the utilisation of wind “Largely the underlying character of the windfarm site will remain. At the end of the economic life of a windfarm turbines can be removed which may allow for the reversal of environmental effects”. What I would like - you to expand on is what you mean by the “underlying character of the windfarm site will remain”, what is the underlying character that you are talking about? Secondly what are the environmental effects that would be reversed when the turbines are removed?

30

35

MR TORRENS: I have to confess, I am not quite sure what I meant by an underlying character of windfarm site will remain. In terms of - at the end of their economic life turbines can be removed which may allow for reversal of environmental effects. Particularly we are talking about the fact that if the turbines are removed then, I guess - in terms of the visual amenity effects we would expect that they would - if they were removed that those visual amenity effects would be largely reversed.

40

45

MR HEERDEGEN: To expand on that you are suggesting really that the only environmental effects that are of any consequence the visual effects of

having a turbine in the landscape that there are no other environmental effects?

5 MR TORRENS: I do not think I would agree with that statement. As I say, we are not really here to provide on environmental effects or give any expert advice on that.

10 MR HEERDEGEN: Except of course that, as Mr Maassen point out to you, section 6 of the act under sustainability principles says “The need to maintain and enhance the quality of the environment” which is one of the principles of the act. So therefore it would seem to me that in suggesting that there are these very narrow range of effects when in fact this hearing is discussing a whole lot of other effects as well, could be regarded as being a very narrow view. That is why I want to ask about
15 what EECA’s view is of environmental effects. But if you feel you have answered that that is fine. Thank you, that is all.

HER HONOUR: Yes.

20 MR BUNTING: Yes, Mr Torrens, I have just one question.

MR TORRENS: Okay.

25 MR BUNTING: And it is really, are you aware of any proposed windfarm developments in New Zealand for which EECA has not given it some qualified support?

30 MR TORRENS: I believe there is one in - the name escapes me. I can provide you with that information, yes.

MR BUNTING: Do you know the reasons for that?

35 MR TORRENS: I believe it was because - it was a particular culture concern, yes.

MR BUNTING: So apart from one it is generally unqualified support is it?

MR TORRENS: Generally.

40 MR BUNTING: Okay, thank you very much. Thank you, ma’am.

HER HONOUR: That is fine. So you do get involved in effects?

45 MR TORRENS: As I was replying to the council over there. When a consent is lodged we do go through a process of considering - an internal process of considering the environment effects and the benefits

obviously, taking into account the principles that we work under we do. Then we make a decision on whether we should support or not that particular proposal.

5 HER HONOUR: And how can you come to a decision if you do not have anybody within the organisation that can look at effects?

[3.10 pm]

10 MR TORRENS: Basically, I guess, we do what we can internally and then we acknowledge the final - then we acknowledge the fact that the consenting body will take into account the benefits and the environmental effects and that they will do the weighing of those benefits rather than us. I guess, the thing is, if we did undergo - for
15 example, went to the extent of employing experts to look at the various effects we would be replicating the work that the consenting authority will be doing.

20 HER HONOUR: So you do not do any monitoring at all of what happens after the windfarms are erected?

MR TORRENS: No, we have not done so - - -

25 HER HONOUR: And whether your terms and conditions of the act are met?

MR TORRENS: I think that is fair to say, yes.

HER HONOUR: Well, thank you very much Mr Torrens, thank you.

30 <THE WITNESS WITHDREW [3.12 pm]

HER HONOUR: Mr Clark?

35 <FRASER ROSS CLARK, affirmed [3.12 pm]

MR CLARK: Thank you, your Honour.

HER HONOUR: Good afternoon, Mr Clark.

40 MR CLARK: Good afternoon.

HER HONOUR: Would you mind doing very much the same as the previous witness and paraphrasing what is in your submission and telling us how you feel about the - - -

45 MR CLARK: Sure.

HER HONOUR: Thank you.

5 MR CLARK: My name is Fraser Ross Clark. I am the chief executive of the
New Zealand Wind Energy Association. The association is a
membership based industry association that works towards developing
wind as a reliable, sustainable, clean and commercially viable energy
source. We have been incorporated since 1997 and had around 80
member companies and organisations.

10
From our perspective the evidence that we have presented has been
focussed largely on the benefits of the project to ensure that those are
recognised in the decision. That evidence focussed largely on
recognising that the wind energy industry now well established in
15 mainstream technology with lots of experience and history behind it
with which we can refer to in making this decision.

We recognised that the project was aligned with government, energy
and climate change policy. Many of the policies and issues raised just
20 before by Mr Torrens, I probably do not need to go to deeply into those,
sought recognition of the significance of the natural resource, the wind
which is often under recognised and that that wind resource in this
instance would be highly regarded on both a national and global scale.

25 Also recognised the contribution of the his particular project to security
of supply, or security of electricity supply noting that enables people in
communities to provide for their social economic and cultural
wellbeing and for their health and safety as per the act. So I think that
probably hopefully covers things.

30

HER HONOUR: Yes.

MS PRICE: No questions, ma'am.

35 HER HONOUR: Mr Maassen.

<CROSS-EXAMINATION BY MR MAASSEN

[3.14 pm]

40 MR MAASSEN: Yes, thank you, your Honour. Hopefully you have still got
a counsel bundle in front of you and it is number 3.

MR CLARK: I was going to ask if I needed those.

MR MAASSEN: Number 3.

45

MR CLARK: I have 12 and 4.

MR MAASSEN: Sorry, yes, counsel bundle 3. Have you got that one?

MR CLARK: Yes.

5

MR MAASSEN: So it is tab 1?

MR CLARK: Tab 1.

10 MR MAASSEN: I will just ask you some questions and I will orientate you to this document. Is it true that Auswind is the equivalent of your association in Australia?

15 MR CLARK: Auswind no longer exists, actually Auswind merged a year or so - with the - I forget the name of the entity but they are now called The Clean Energy Council which incorporates a wind director but there is no equivalent body at the current time to a wind energy association as such in Australia.

20

[3.15 pm]

MR MAASSEN: Are you familiar that Auswind has produced a good practice guide for windfarm developers?

25

MR CLARK: I am.

MR MAASSEN: And are you able to confirm that the document in front of you is in fact a series of appendices from that document?

30

MR CLARK: It looks like the document I have seen before, yes.

MR MAASSEN: Does the Wind Energy Association of New Zealand support the contents of this good practice guideline.

35

MR CLARK: I have to say - well, it is quite a different context in terms of Australia. In fact even these guidelines, the federal government in Australia has subsequent to these being published, initiated a process of its own to develop federal guidelines for windfarms. In terms of their contents they potentially have some relevance to New Zealand, they also cover areas and elements of policy and governance that are not relevant to the New Zealand context.

40

MR MAASSEN: Would you agree that Australia is at various government levels are producing wider and more comprehensive documentation on the guidance of windfarm development that exist in New Zealand?

45

MR CLARK: They have produced guidance and certainly there is various
guidance documents that have existed here. Whether they are more
comprehensive and provide a result that is different to what might be
5 experienced here, I could not say.

MR MAASSEN: Has your association ever produced a document as wide
ranging and comprehensive as the Auswind guidelines?

10 MR CLARK: We have not, we have currently in process moves towards
investigating with the industry development of some good practice
guidelines. But at this stage their extent and content is unclear, we are
still developing that project.

15 MR MAASSEN: In the appendix six to this document which deals
specifically with landscape values there is an emphasis, you may
recollect this or you may not, on community participation throughout
the development phase. I am referring specifically to appendix 6, but it
goes further. If you start at appendix 6 and go approximately four pages
20 in there is a summary table of the steps. Are you familiar with that?

MR CLARK: All right. Okay, I have seen this before.

MR MAASSEN: Yes.
25

MR CLARK: But - - -

MR MAASSEN: Do you recollect that it has quite a strong emphasis on the
developer identifying potential community and stakeholder interests
30 and scoping the community values that exist within an area?

MR CLARK: My recollection is that does form part of the component or
certainly a strong component of the approach. But it has been a while
since I have read this in detail so I would not be able to report too much
35 on that.

MR MAASSEN: Does the energy association endorse the types of views that
are contained within this document?

40 MR CLARK: I would have to have read it more thoroughly recently to be
able to comment on that.

MR MAASSEN: The New Zealand Wind Energy Association was involved
in presenting evidence of a similar type for the evidence you have just
45 presented to the Environment Court in Motorimu?

MR CLARK: Correct.

MR MAASSEN: I think you were the witness?

5 MR CLARK: Correct.

MR MAASSEN: Do I take that in presenting your evidence you had a reasonably good understanding of the proximity of turbines proposed in Motorimu in that particular case?

10

MR CLARK: I was aware of that being a principal concern for local residents and that was also reflected, I thought, in the decision.

MR MAASSEN: So you have read the decision?

15

MR CLARK: I have read the decision, yes.

MR MAASSEN: Well, that is a body that has tried to strike a balance in the range of interests, only 10 kilometres south of the site. My question is, given that there is a proximity of turbines of a greater or equivalent magnitude here, why is it that your evidence has not touched on that as an issue which the Board needs to consider as well?

20

MR CLARK: I guess two components of that; one is that this is a different project, different turbines, different location, different landscape – whole range of different factors in that sense.

25

[3.20 pm]

Secondly, we are not and do not profess to be experts in landscape and landscape assessment, and for me to offer an opinion on that I do not think would be appropriate in that context. We have identified that we recognise that there are issues that need to be considered and that is one of them, and I understand there is a significant group of evidence to come on those sorts of issues that will enable the Board to make a decision of that type.

30

35

MR MAASSEN: Yes, so to wrap up, your position is we need to emphasise the benefits but respect the fact that the Board has a much wider task to undertake?

40

MR CLARK: Sure. There is a wide range of issues even beyond landscape that the Board has to consider here and we recognise that those all have to be taken into account in the decision.

45

MR MAASSEN: Thank you Mr Clark. Thank you, your Honour.

HER HONOUR: Any other questions? Mr Heerdegen? No, I have no questions either thank you.

5 MR CLARK: Thank you.

<THE WITNESS WITHDREW [3.21 pm]

10 HER HONOUR: Now, I wonder please if I could call Mrs Meade-Rose, thank you. And we may have to call Ms Rapson when we reconvene next as the first witness because we are running out of time. We are meant to adjourn at 3.30 but obviously we are not going to do that. We feel we should get through Mrs Meade-Rose because she has been here two days. Thank you. So I apologise to Ms Rapson.

15

<JULIE MEADE ROSE, sworn [3.21 pm]

HER HONOUR: Good afternoon and welcome, Mrs Meade-Rose.

20 MRS MEADE ROSE: Good afternoon, ma'am.

HER HONOUR: And thank you for undertaking this section 24A report at very short notice. Thank you. Would you like to present a summary of where you have got to – with the conclusions you have made.

25

MRS MEADE ROSE: Thank you, Ma'am, and good afternoon Commissioners and good afternoon Mr Hudson.

30 Ma'am and Commissioners, you should now have in front of you a summary of findings – it is a brief summary of findings and also there is a page there of some minor corrections and some clarifications which I hope will assist you.

35 HIS HONOUR: Thank you.

MRS MEADE ROSE: If I could read out the brief summary of findings please. First of all, I start with a summary of section 42A social report which I wrote.

40 The assessment of environment effects, in short, AEE, did not include a social assessment report. I identified the absence of a social assessment report as a gap in information provided. Some social effects assessment was untaken in the AEE. Social effects assessment was in discussions and planning and that is in section 6.2.1, in figure 6.1, consultation in section 8, noise in section 6.8, visual in 6.3.2 and public health in 6.12

45 in the AEE.

[3.25 pm]

5 In my professional opinion I concur with conclusions made in the evidence-in-chief and rebuttal evidence relating to social effects by Mighty River Power. However, the absence of an assessment of social effects would have provided more robustness to discussion on the social environment and social effects and to conclusions drawn.

10 I noted also a statement in the visual rebuttal evidence did not have supporting documentation and I refer you to Mr Wyatt's evidence at 4.12.

15 Of the submitters' evidence given for review, a social assessment was provided by Mr Baines for Palmerston North City Council. In my opinion there are flaws in sources of information and inappropriate interpretation of data in the social assessment. Flaws in sources of information include the citizens panel survey which is not a random sample that is representative of the population of Palmerston North. This is mainly because the sample was selected from the telephone book, and in the 2006 census 11 percent of households in Palmerston North City did not have a telephone. Also the panel survey was conducted over the internet and from the 2006 census data, well over a third of the population of Palmerston North did not have access to the internet. In fact it was 41 percent, and thus may not have been included in the sample.

20 Inappropriate interpretation of data includes discussions about tables 5, 17, 18, 20 and 23, as Mr Baines has over-emphasised results where small numbers are involved. Also, statements are made without statistical certainty as a result of the random sampling methods used. I refer to 2.5.(15) which reads, "I interpret this to mean that the wider community of Palmerston North is saying "enough is enough", 2.5 (16), and I quote, "that in a cumulative sense the balance of public attitudes is clearly at a tipping point" and 9.1.9.

25 Social effects discussion was also included in the Palmerston North City planning evidence. Some of this information has questionable validity as it is based on the flawed information in the social assessment. I refer to Mr Baker's evidence at paragraphs 60 and 93.

30 Some comments on supplement social evidence. In reference to Mr Baines' supplementary evidence, paragraph 4, my report states, "There is an absence for social assessment report in the applicant's AEE, but there is some discussion about social effects in the AEE documentation." And I refer you to page 5, paragraph 1, in my report.

5 These references to social assessment work are not contradictory. Points raised by Mr Baines in paragraphs 21 and 22 concerning my statements, “flaws in some of the data Mr Baines has used”, and in paragraphs 23 and 24, “inappropriate interpretation of data includes the following” have been considered above.

10 Concerning the point raised by Mr Baines in paragraph 30, my statement “overall the conclusions are sound” refers to work that has been done. I cannot comment on conclusions that are yet to be made. But what I can state, and have stated is that a social assessment which is absent in the AEE would provide more robustness to conclusions made.

15 Concerning the point raised by Mr Baines in paragraph 35 about shortcomings and social effects information, my approach has been consistent throughout my report. I have formed an opinion about the AEE and all evidence in chief and rebuttal evidence in my review about additional information that would assist the understanding of the point in question and discuss this where appropriate. My opinion is made from my experience and expertise in social assessment of over 30 years.

[3.30 pm]

25 As I state under 4 paragraph 3 in my report, I do not comment on every point raised concerning social effects, but rather focus on the more significant matters in the applications and evidence reviewed. Thus this reasoning applies to the applications and all evidence including Mr Kalatatis’ evidence and Mr Baines evidence. In reference to Mr Pollock’s supplementary evidence, at 3.5, I restate that a social assessment would have provided more robustness to discussion on the social environment and social effects and to conclusions drawn. And again I refer you to my report at page 5 paragraph 1.

35 Inclusion of a social assessment would have benefited both Mr Pollock’s evidence in chief, and the AEE. In light of all the recent evidence, there are no further concerns.

HER HONOUR: Yes, thank you very much, thank you. Ms Price?

40 MS PRICE: Sorry, ma’am, no questions. Thank you.

HER HONOUR: Mr Maassen?

45 MR MAASSEN: No questions for clarification, thank you, ma’am.

HER HONOUR: Thank you. Anyone else? Mr Hudson?

MR HUDSON: Just a small point. I note in your second paragraph the second sentence starting “however”. Is that - am I reading that right? Can you just check that that is actually what is says is “however the absence of an assessment of social effects would have provided more robustness”. Is that what you - you mean absence or presence?

MS MEADE-ROSE: No, I do mean the absence. That is restating from my report.

MR HUDSON: And I see you have got that same again at the last paragraph where you say, “I restate that a social assessment would have provided more robustness”?

MS MEADE ROSE: Yes, that is correct. I do.

MR HUDSON: Right. Now that gives us a useful summary and like the other 42s, thank you for doing it in a limited time. It has been quite a discussion point, prior to your arrival at the hearing, so thank you.

MS MEADE ROSE: Thank you.

MR HUDSON: Thank you.

HER HONOUR: Yes, I join Mr Hudson in saying that, and I like the way that you have pulled it all together because when you look at it, it is a disparate spread with the amount of evidence that we have had in. It is sometimes very difficult to get a very clear overview. So thank you.

MS MEADE ROSE: Thank you very much.

<THE WITNESS WITHDREW

[3.33 pm]

HER HONOUR: Well, ladies and gentlemen, you may step down thank you. This brings to a close this session of the board of inquiry into the Turitea Wind Farm. And it has again been a very interesting and informative week, and we are very grateful for the way again that everyone has conducted themselves. It is very difficult in big hearings like this, to get it right all the time, but you have been exceptional as you were last week, and we are very grateful for that.

I hope that we are keeping up to the time schedules that you all anticipate and that we are not missing anything that you hope that we might see or meet or enquire about. We are going on another site visit on Monday, which will be on the private properties of the people who have most requested us to go and we will meet you again on Tuesday

morning, and I think if we start with Mrs Rapson and then go to Christopher Shaw, is that correct? Or have we got an entirely new change?

5 I see, so it is Gillian Rapson, James Baine, Allan Wyatt and then Steven Brown. Oh, Christopher Shaw after Gillian Rapson, and then James Baine, Wyatt and Brown, and so on. The landscape witnesses. All right, are there any issues you wish to raise counsel? Thank you very much.

10

**MATTER ADJOURNED AT 3.35 PM UNTIL
TUESDAY, 11 AUGUST 2009**