

**BEFORE THE BOARD OF INQUIRY**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of a Board of Inquiry appointed under section 146 of the Resource Management Act 1991 to consider an application by Mighty River Power Limited for resource consents to construct, operate, and maintain a wind farm at Turitea.

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**MEMORANDUM OF COUNSEL FOR MIGHTY RIVER POWER LIMITED REGARDING  
EVIDENCE ON REDESIGN**

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***Solicitors Acting***

ChanceryGreen  
11 Bacons Lane Chancery Square  
P O Box 106 202  
Auckland Central 1143  
p +64 9 357 0600  
f +64 9 357 0340

Solicitors Acting: K R Price/ HC Andrews/KM Bell

***Counsel Acting***

Nicholas Davidson QC  
Bankside Chambers  
Level 22, 88 Shortland Street  
Auckland 1010  
PO Box 825  
Christchurch 8140  
p + 64 3 366 1467  
f +64 3 366 7653

**MAY IT PLEASE THE BOARD:**

1. Her Honour Judge Kenderdine issued Directions on 30 November 2009 regarding the procedure to be followed in respect of making submissions and exchanging evidence on the redesign of Mighty River Power's Turitea Wind Farm. Those Directions required that evidence address the revised design. Mighty River Power accordingly limited its evidence strictly to those areas and filed only two briefs relating to landscape and visual issues.
2. Evidence and submissions on the redesigned Turitea Wind Farm were received from the Other Parties on 22 February 2010 or the following few days. On Wednesday 10<sup>th</sup> March a proposed Hearing Schedule was circulated to all Parties and published on the MfE website. Counsel makes the following submissions in respect of five persons scheduled to appear:
  - (a) Helen (Isobel) Gabites;
  - (b) Gillian Rapson;
  - (c) Douglas Pringle;
  - (d) Jeffrey Baker; and
  - (e) Paul Blaschke.

*Isobel Gabites*

3. The evidence from TAG included a brief from Ms Isobel Gabites. Ms Gabites had provided evidence to the Board on behalf of TAG, and appeared before the Board on 30 July 2009. Rather than specifically addressing the redesign, Ms Gabites' supplementary evidence predominantly includes passages that merely reiterate her earlier evidence, and raises concerns that have already been addressed, with solutions agreed to, during the ecological caucusing that she has been party to. That ecological caucusing was filed with the Board on 22 February 2010.
4. It is submitted that Ms Gabites has had ample opportunity to present the concerns raised in her evidence to the Board. Further, many of those concerns have already been specifically addressed (as set out in the ecological caucusing report of 22 February 2010).
5. In the context of no ecological evidence being filed by Mighty River Power, it is therefore respectfully submitted that it is unnecessary and of no additional assistance for Ms Gabites' to be heard during the revised hearing, and to keep

costs under control for all Parties, the hearing schedule should be amended accordingly.

*Gillian Rapson*

6. Dr Rapson appeared before the Board on 11 August 2009. She made a submission on the Turitea Wind Farm (dated 23 February 2009) and circulated evidence on 20 May 2009 regarding terrestrial ecology issues. There was considerable doubt at that time as to whether Dr Rapson offered herself as an expert to the Inquiry or not. Certainly she decided she did not wish to participate fully in expert caucusing. In the event, she addressed the Inquiry at some considerable length.
7. On 22 February 2010, Dr Rapson made a further submission on the Turitea Wind Farm, which was sent to both Mighty River Power and the Turitea Project Co-ordinator, but was not circulated amongst legal counsel as 'evidence'. The submission is silent as to whether Dr Rapson wishes to be heard by the Board again.
8. In the Directions of 30 November 2010, Her Honour required all submitters to restrict their submissions to new matters relating to the redesign, and not to repeat information contained within their original submissions. Dr Rapson's submission does not do this. Instead, it reiterates her concerns regarding revegetation and comments on the revegetation reports provided to the Board in 2009.
9. On this basis, Mighty River Power submits that Dr Rapson's submission does not conform with directions as to the scope of submissions that may be made on the redesign. It is further submitted that Dr Rapson should not be granted further hearing time, as she has made a further submission rather than a statement of evidence which does not conform with the requirements in the Board's Directions of 30 November 2009.

*Douglas Pringle*

10. Mr Pringle made a submission on the Turitea Wind Farm as notified in February 2009, subsequently filed evidence in May 2009, and appeared before the Board on 27 August 2009. Mr Pringle's evidence addressed matters relating to noise and potential health effects relating to noise, and sought that no turbines be placed within 3km of residential properties.

11. Mr Pringle then made a further submission on the redesigned Turitea Wind Farm on 25 February 2010, which was accepted as a late submission. The submission was again made in the form of evidence, but was not served on all legal counsel, as required for all evidence by the Board's Directions. It was accompanied by a submission form, and an email apologising for the submission being late. As such, Mighty River Power submits that Mr Pringle's submission should not be considered to be evidence, but rather remain a submission.
12. Mr Pringle's submission does not accord with the Board's Directions of 30 November 2009, as it merely reiterates Mr Pringle's concerns relating to uncertainty about noise monitoring, the adequacy of NZS6808:1998 (and its replacement), and health concerns, and does not introduce any new information specifically relating to the redesign.
13. Mighty River Power submits that Mr Pringle's submission does not conform with the Board's directions as to the scope of submissions that may be made on the redesign. It is accordingly submitted that Mr Pringle should not be granted further hearing time, as he too has made a further submission rather than statement of evidence, and that as a submission, it does not conform with the requirements in the Board's Directions of 30 November 2009.

*Jeff Baker*

14. The evidence from PNCC included a further brief of evidence from Mr Jeff Baker, the planner appearing for PNCC. This brief is very wide-ranging in scope, and addresses many matters both beyond the redesign, and Mr Baker's own experience and qualifications as a planner.
15. Mighty River Power does not challenge Mr Baker's evidence in respect of the planning matters he discusses. However, as outlined in the opening submissions presented for Mighty River Power, it is a well accepted principle that making statements of evidence is a privilege afforded only to experts in a particular field<sup>1</sup>. Further, despite a person not needing to possess specialist qualifications to be deemed to be an expert, they must possess specialist knowledge and experience outside of the common knowledge to appear before a Court as an expert witness. It goes without saying that Mighty River Power accepts Mr Baker as an expert planner. However, Mighty River Power cannot discern Mr Baker's expertise in

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<sup>1</sup> Mighty River Power Opening Submissions, paragraphs 5.23-5.31.

matters of landscape architecture and visual effects, ecological effects, noise and acoustic engineering, and wind farm development. In his supplementary evidence, Mr Baker professes extensive opinions on all of these topics.

16. Mighty River Power accepts that Mr Baker has, through his position as senior planner at PNCC, developed knowledge about wind farm developments. That is quite different to expressing opinions that in many cases contradict PNCC's own expert witnesses, on matters for which he is not qualified to as an expert.
17. Examples of these statements include: *"in my view the addition of approximately 12km lineal width containing up to 104 turbines would create significant and undesirable visual impacts"*<sup>2</sup>; *"I remain concerned that the TWF was not built on a strong foundation of landscape design considerations"*<sup>3</sup>; *"I consider there is a larger envelope of development within which a substantial windfarm could be constructed"*<sup>4</sup>; *"South of turbine 15 any additional turbines will, in my opinion create adverse cumulative and visual amenity effects"*<sup>5</sup>; *"Expert evidence reinforced my assessment that the natural vegetation contained within the Turitea Reserve was part of a significant ecosystem except for those parts contained within the envelope that I have identified which is mainly characterised by rolling pasture, pine plantations or harvested areas"*<sup>6</sup>; *"The only opinion I can venture at this stage is that if a significant amount of turbines, or all turbines were consented, then such infrastructure would likely be viewed as less intrusive than the turbines themselves"*<sup>7</sup>; *"While I agree with Mr Anstey that incursion into the Turitea Reserve can affect the character of the Turitea Reserve internally, I consider that the internal natural qualities of the Reserve do not become dominant until beyond Turbine 15"*<sup>8</sup>; *"I consider that the evaluation of amenity effects from MRP's acoustic consultants...is not consistent with the actual experience of residents next to TRH"*<sup>9</sup>.

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<sup>2</sup> Supplementary Statement of Jeff Baker, paragraph 5(c).

<sup>3</sup> Ibid.

<sup>4</sup> Ibid at paragraph 5(d).

<sup>5</sup> Ibid

<sup>6</sup> Ibid at paragraph 8.

<sup>7</sup> Ibid at paragraph 19.

<sup>8</sup> Ibid at paragraph 23(a).

<sup>9</sup> Ibid at paragraph 29(d).

18. Such statements are matters of opinion either original or adopted, which Mr Baker is not qualified to make. Statements on landscape matters, noise effects, what he considers to be an appropriate wind farm scale and size, and ecological effects are outside his compass. While Mr Baker does include a letter from Dr Blaschke as Appendix Three to his supplementary evidence, the opinions proffered by Mr Baker that relate to ecological matters are not replicated in this letter.
19. A planner's role includes making reference to the different types of evidence presented by experts and using this to undertake the balancing exercise required by Part 2 of the Resource Management Act 1991. However, Mighty River Power does not accept that a planner is qualified to contradict that evidence, nor provide alternative evidence.
20. Accordingly, it is submitted that large parts of Mr Baker's supplementary evidence, as circulated on 22 February 2010 (and indeed much of his evidence in chief, for the same reason) should be disallowed. If that submission is accepted by the Board, then Mighty River Power will only need to cross examine Mr Baker on those parts of his evidence that properly reflect his opinions, qualifications and position as PNCC's expert planning expert witness. This would be undertaken by marking up his briefs of evidence on what is accepted as within his expertise.

*Paul Blaschke*

21. Dr Blaschke has been listed in the hearing schedule as being due to appear on 17 March 2010, although it appears unlikely that that was the intent of Counsel for PNCC. However, Dr Blaschke has not provided any evidence in respect of the redesign, merely a letter that was attached to Mr Baker's supplementary evidence, which does not raise any new issues regarding the redesign.
22. Mighty River Power submits that there is no need for Dr Blaschke to appear before the Board. This is because there is no ecological evidence filed by Mighty River Power to which he needs to respond, and he has not provided a brief of evidence in respect of the redesign (the letter being merely a description of the caucusing he has undertaken).

**Cross Examination Notices**

23. Mighty River Power filed its notice to cross examine witnesses as required on 1 March 2010. Out of an abundance of caution, it included Ms Gabites, Dr Rapson, Mr Pringle, and Dr Blaschke as it was not certain whether the Board would either

hear from them, or accept their status as experts. In the event that these persons do not appear, or are not classified as expert witnesses, Mighty River Power will withdraw its notice to cross examine these people.



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K R Price

**Counsel for Mighty River Power Limited**  
12 March 2010