

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

**AND**

**IN THE MATTER** of a Board of Inquiry appointed under s146 of the Resource Management Act 1991 to consider an application by Mighty River Power Limited for resource consents to construct, operate, and maintain a wind farm at Turitea

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**REBUTTAL EVIDENCE OF CHRISTOPHER MICHAEL SHAW**

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## 1. INTRODUCTION

- 1.1 My name is Christopher Michael Shaw. I have been employed at Mighty River Power Limited (“Mighty River Power”) as the Commercial Manager, Generation Development (Projects), since April 2004. In this position I am responsible for all commercial arrangement and outcomes associated with securing, consenting and constructing new power station developments. I have had responsibility for the commercial aspects of investigating and developing the Turitea Wind Farm site since I began working at Mighty River Power.
- 1.2 In particular, I have been involved in all commercial negotiations that have occurred and agreements that have been reached with landowners regarding the wind farm. I am also familiar, from a commercial perspective, with the proceedings surrounding the change of purpose for the Turitea Reserve to allow for electricity generation, and the negotiations that led to the contract for development of the Turitea Wind Farm (and subsequent variation to that) between Mighty River Power and Palmerston North City Council (“the Contract”). A redacted copy of the contract (for commercial sensitivity reasons) is included as **Attachment 1**.
- 1.3 I am providing this rebuttal evidence in response to some of the primary evidence presented in respect of these applications on behalf of Palmerston North City Council (“PNCC”). In particular, I wish to comment on issues raised in the evidence of Mr Naylor, Mr Baker and Mr Taylor regarding the Contract. I confirm I am authorised to give this evidence on Mighty River Power’s behalf.
- 1.4 Specifically, I shall address the following matters:
- (i) issues relating to development of turbines on private land;
  - (ii) provisions of the contract relating to water quality effects; and
  - (iii) the contractual requirements regarding development of the Eco-Park.

## 2. DEVELOPMENT OF TURBINES ON PRIVATE LAND

- 2.1 At paragraph 23 of his evidence, Mr Naylor questions whether Mighty River Power’s selection of a number of turbine sites on private land that are “*close to adjoining*”

*properties*” meets the “*spirit and intent*” of PNCC’s October 2006 resolution to change the purpose of the Turitea Reserve. A copy of that resolution is included as **Attachment 2**. He notes in particular that part of PNCC’s resolution refers to Mighty River Power being directed to “*ensure that adjoining landowners’ enjoyment of their properties is not unreasonably adversely affected*” as a result of the location and number of turbines on private land outside the Turitea Reserve.

2.2 I consider this statement does not fully or accurately reflect my understanding of PNCC’s awareness as to the likely size and scale of the Turitea development. It is true that PNCC was not close to the specific detail of our negotiations and agreements with individual landowners. I also accept that the proceedings regarding change of purpose for the Turitea Reserve focused solely on development within the reserve, and did not specifically consider the turbines on private land, as it was not appropriate or necessary for them to do so.

2.3 However, I believe that PNCC has at all times been aware that Mighty River Power was speaking with adjoining landowners with a view to securing the right to develop turbines on private land. Indeed, the possibility of the wind farm being expanded beyond the Reserve boundaries was specifically identified and promoted in the request for tender document (“RFP”) that PNCC issued in March 2005. Paragraph 1.4 of the RFP (included as **Attachment 3**) states:

*“The Council has been approached and had dialogue with the adjoining landowners to the Turitea Reserve prior to the release of this RFP. These landowners could add up to a further 1,000 hectares of land to the development.*

*There is a desire particularly from Mr John Love to be included in any development. Mr Love’s land (Lot 7) provides an access way to the southern end of the Turitea Reserve off Green’s Road and overlooks the nearby Linton Substation.*

*Mr Andrew Day of Lot 25 (see appendix 1) has also indicated a willingness to provide access through his property which is on the boundary of South Range Road and the Tararua District Council side of the Pahiatua Track. This provides an alternate route to the site for construction purposes.”*

2.4 The RFP goes on to provide a list of adjoining owners that PNCC identifies as having “*been contacted and willing to be included*” in the wind farm proposal.

- 2.5 Subsequent to, and as a result of, PNCC's October 2006 resolution, Mighty River Power and PNCC executed the Variation to Turitea Wind Farm Generation Agreement ("the Variation") to contractualise, among other things, the requirements of the Council's October 2006 resolution. In my view this provided PNCC the opportunity to make clear in the commercial arrangements between the parties the spirit and intent in respect to turbine sites on private land. I note that this matter does not feature in the Variation.
- 2.6 Since submitting its tender document and being awarded the Turitea contract, several Mighty River Power personnel, including myself, have had ongoing engagement (generally at least weekly) with PNCC officers. From my involvement in various meetings and telephone discussions, I have no doubt that PNCC (via relevant officers and other personnel) has been fully aware of the likely extent and scale of the Turitea proposal, and in particular, that this would extend beyond the boundaries of the reserve itself.
- 2.7 Mr Henry comments further as to the extent to which neighbouring interests have been taken into account in the design and layout of the wind farm.

### **3. CONTRACTUAL PROVISIONS REGARDING WATER QUALITY EFFECTS**

- 3.1 At paragraph 11 of his evidence, Mr Naylor states that with respect to protection of water quality, clause 3.4 of the Contract places the following obligations on Mighty River Power:
- (i) No impact on effective functioning on the Council's water catchment;
  - (ii) No adverse effect on water quality;
  - (iii) Full monitoring of water quality.
- 3.2 Similar statements are made in the evidence of Mr Baker and Mr Taylor. For example, Mr Baker also refers to clause 3.4 of the Contract (at paragraph 41 of his evidence), and on this basis concludes (at paragraph 42) that Mighty River Power has accepted an "uncompromising" obligation that "*there must be no adverse effects on the water catchment or quality*". Paragraphs 37 and 60-61 of Mr Taylor's evidence are to the same effect.
- 3.3 I consider that these witnesses have not fully or fairly represented the true nature and intent of Mighty River Power's obligations under the Contract. In particular, in quoting

clause 3.4 of the Contract, the witnesses have failed to consider the following definition of “adverse effect” provided in clause 1.1:

*“Adverse effect means an adverse effect on water quality that cannot reasonably be mitigated and which will reduce water quality to below the applicable Ministry of Health guidelines for human consumption, and Adversely Affecting has a corresponding meaning.”*

3.4 I have therefore never understood or interpreted the Contract to mean that the project must not have any adverse effects on the functioning of the water catchment or water quality. Rather, Mighty River Power is required to undertake the development in a manner that ensures any potential effects on the water catchment and water quality are appropriately avoided, remedied or mitigated. These matters are therefore addressed in detail by several witnesses for Mighty River Power, in particular Mr James, Dr Levy and Mr Watson.

3.5 I consider my interpretation of the Contract is further supported by the recognition in clause 3.3 that, provided appropriate construction protocols and mitigation measures are in place, the parties see no inherent conflict between the use of the Reserve for water supply purposes and the construction, operation and maintenance of the wind farm.

3.6 I also note that by clause 3.6 of the Contract, PNCC and Mighty River Power have agreed that:

*“(b) if any issue arises regarding water quality levels, then as a matter of urgency (recognising the importance of the water supply):*

- (i) Council will notify Mighty River of that issue;*
- (ii) Council and Mighty River will jointly investigate the issue and its possible causes;*
- (iii) Council and Mighty River will agree on a mitigation plan to resolve that issue, with any disputes being resolved in accordance with clause 14;*
- (iv) Council will be responsible for implementing the agreed mitigation plan;*

- (v) *Council and Mighty River will meet to discuss the results of implementing the agreed mitigation plan and resolution of the issue;*
- (vi) *Mighty River will meet Council's reasonable costs in implementing the agreed mitigation plan, to the extent that Mighty River Power's activities were the cause of the issue."*

3.7 The Contract therefore explicitly recognises that the wind farm *may* cause adverse effects on the water catchment and/or water supply, and places the risk of this with Mighty River Power. This is one of the reasons Mighty River Power has done everything possible during development of the wind farm to ensure such risks can and will be appropriately managed. It is also why, in response to the Council's October 2006 resolution, Mighty River Power agreed to increase the amount of public risk insurance cover for the development from \$2,000,000 to \$20,000,000, as credit support to further assure Council that any mitigation plan could be funded.

3.8 For completeness, I note that even if the contract required that there be *no* adverse effects on the water catchment or water quality, this is a higher standard than that provided for under the Resource Management Act 1991 (which requires any adverse effects on the environment to be appropriately avoided, remedied or mitigated). As outlined by Ms Price in legal submissions, I therefore understand that whether Mighty River Power can meet such a strict obligation is a purely contractual matter as between the parties, and not something relevant to the Board's consideration of the present applications.

#### **4. CONTRACTUAL PROVISIONS REGARDING ECO-PARK**

4.1 As noted in paragraph 16 of Mr Naylor's evidence, given relevant legal constraints as to the use of royalties received from Mighty River Power under the contract, PNCC has for some time had an intention to use those royalties for the development of an "Eco-Park" concept. Indeed, as outlined by Mr Willie Shaw, PNCC commissioned a scoping study and a report on options for the Eco-Park in 2004. Mr Shaw also comments on the value of the Eco-Park as a significant ecological benefit of the project, while recognising that it does not form part of Mighty River Power's formal mitigation with respect to ecological effects.

4.2 However, I consider it is also important for the Board to have an appreciation of the contractual basis of the Eco-Park. In this regard, clause 5.1(b)(ii) of the Contract required Mighty River Power to provide to the PNCC in writing:

*“A report from an appropriately qualified ecologist identifying any potential adverse ecological effects associated with the construction of a Wind Farm on the Land. The ecologist shall also report following consultation with the Council, on practical measures (based on reasonable cost/benefit) to materially improve the ecological health of flora and fauna on the Land (and Hardings Park) including the enhancement of biological diversity using funds received by the Council from the revenue streams created by electricity generation under this Agreement and the Lease.”*

4.3 Clause 7.1 of the Contract is also relevant, and provides as follows:

*“7.1. Ecopark Support*

- (a) In partial consideration for the grant of the Investigation Rights, Mighty River agrees, in consultation with Council, to extend at Mighty River’s own cost the scope of the technical and other studies (including the studies referred to in clause 5.1(b)) required in support of Mighty River’s applications for Resource Consents, to include Hardings Park and other areas of land owned by the Council in the vicinity of the Land as requested by Council, to assist Council in developing the Eco-Park.*
- (b) Mighty River will not be required to pay more than \$200,000 plus GST for the studies referred to in clause 7.1(a).”*

4.4 PNCC’s commitment to the Eco-Park, as reflected in the Contract, was further outlined in its October 2006 resolutions regarding the change of Reserve purpose to allow for electricity generation. As relevant, PNCC recommended in its meeting of 18 October 2006 that the Chief Executive be directed:

- “(a) To work with the Department of Conservation to develop a comprehensive plan to achieve the best practicable ecological enhancement of the Turitea Reserve so that the indigenous biodiversity of the reserve is actively protected and enhanced for future generations if a wind farm is approved.*
- (b) To work with the Department of Conservation to develop legal mechanisms that entrench Council’s responsibility to ensure revenue streams from the wind farm are directed in the first instance to ensuring the plan prepared above is*

*achieved and ensure that the Department of Conservation has an auditing function in relation to the fulfilment of the objectives.*

- (c) *To ensure the mechanism described above will involve the following components:*

*In recognition of fact that anticipated annual receipts could be in the order of \$1million per annum and in recognition of the costs of an effective pest control programme being up to \$500,000 per annum, income from the Water Catchment turbines shall be applied in the first instance to:*

*(i) pest control access across the entire Eco Park comprising the Water Catchment, Hardings Park and Brown's Flat*

*(ii) progressive development of the EcoPark*

*until such time as the Department of Conservation is satisfied that pest control can be maintained and that the Council is satisfied the Eco Park is substantially established."*

- 4.5 While Mighty River has accordingly endeavoured to provide as much assistance with the development of the Eco-Park as possible, primarily through the engagement of Mr Shaw, this was always clearly understood by the parties as being PNCC's responsibility, as administrator of the Reserve. However, as outlined by Mr Baker (at paragraph 13), it is my understanding that the Eco-Park concept has not yet been progressed to the point where there can be a high level of certainty as to the ecological benefits it will provide. I am aware that Mr Shaw's draft Eco-Park concepts were forwarded to PNCC in mid 2008.

**Christopher Shaw**  
**5 June 2009**