

BEFORE THE BOARD OF INQUIRY

IN THE MATTER OF: The Resource Management Act 1991

AND: 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

SUPPLEMENTARY EVIDENCE OF GREGORY FRANCIS POLLOCK

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1 INTRODUCTION

1. My name is Greg Pollock. My qualifications and relevant experience are set out in my evidence in chief (EIC). I confirm that I have prepared this supplementary evidence in accordance with the Environment Court Code of Conduct for Expert Witnesses (July 2006).
2. I am providing this supplementary evidence to comment on the revised proposal by MRP, the Section 42A reports that have been provided to the Board.
3. In preparing this supplementary evidence, I have relied on the following documents:
 - The revised project layout drawings attached to Mr James' supplementary evidence;
 - The six section 42A reports (excluding the URS report dated 20th May, which I comment on in EIC); and
 - The supplementary evidence of Messrs Alexander, Day, Henry, Hegley, James, Kalafatelis, Levy, Brown, Coombs and Wyatt and Dr's Clough and Phillips.
4. I have also reviewed the supplementary evidence provided by other parties, specifically:
 - Mr Baines (dated and received 15 July). However, for the reasons set out in the evidence of Dr Phillips and Mr Kalafatetlis, as well as the s42A report prepared by Ms Meade Rose, I do not find his evidence useful for assessment purposes, nor reliable. I therefore do not rely on it.
 - Ms Lucas (dated 15 July, received 21 July). I address relevant planning issues arising from this evidence in section 3.6 of my evidence.

2 REVISED PROPOSAL

5. Mighty River Power has revised its proposal in response to some of the issues raised in evidence of other parties, and having regard to an agreement with tangata whenua. The substantive amendments are as follows:
 - Turbine zone 55 has been deleted. In my original evidence, I considered this should occur if tangata whenua requested this course of action. As outlined by Mr Henry, an agreement reached between Mighty River Power and Tanenuiarangi Manawatu Incorporated now requires deletion of this turbine zone. Because I identified this issue in my earlier evidence, I do not consider that this alters the conclusions reached in my original planning assessment or EIC;

- The relocation of spoil sites out of the Turitea water supply catchment. This resulted in a review of spoil site locations and in one location, road layout. One consequence of these changes is that one regional consent (#104554, for stream works to construct the road between turbine zones 115 and 117) is no longer required. I have discussed this with Mr Hindrup, who agrees that the consent is no longer required.

3 SECTION 42A REPORTS

3.1 CONSTRUCTION AND DECOMMISSIONING EFFECTS

6. The issues raised in this report are largely of a technical or engineering nature. There are some implications for the construction methodology and resource consent conditions, and these issues are addressed in the evidence of Mr Levy.
7. In relation to decommissioning effects, I note that Mighty River Power has not sought consent for this activity as part of the current applications. While the regional consents will have a maximum period of 35 years, they largely relate to construction activities, and the relevant land use consents will (if granted) run with the land in perpetuity. In my opinion, it is therefore not necessary to consider the effects of decommissioning the wind farm, just as consent authorities do not consider decommissioning other land use activities. Rather, the effects of this activity will be considered in future if and when decommissioning is proposed, and in accordance with the relevant statutory and planning framework existing at that time.
8. Having regard to the evidence of other parties' relating to the sensitivity of the Turitea Water Supply catchment, and the supplementary evidence of Messrs Levy and James, it appears that there is agreement amongst the experts that removing spoil sites from this catchment will further reduce potential adverse effects on the PNCC water supply. While Mr Levy outlines the altered risks to other catchments as a result of relocated of spoil disposal to other areas, I consider that overall, the relocation of the spoil disposal sites will if anything reduce the project's overall level of adverse effects. As a result, this amendment does not affect the overall assessment or conclusion provided in my original planning assessment or EIC - except to the extent that the risk of the project causing adverse effects on the Palmerston North water supply has now been further minimised.

3.2 TRAFFIC EFFECTS

9. There are no specific planning issues that arise in relation to traffic effects. It is my understanding that traffic experts have undertaken caucusing and are in agreement on all

matters. My original conclusion in relation to traffic matters therefore remains, that is, the effects are acceptable and can be managed through appropriate resource consent conditions.

3.3 NOISE EFFECTS

10. Messrs Hegley and Day provide a more detailed review of Dr Trevathan's report from a technical perspective. However, there is one specific issue on which it is necessary for me to comment. At paragraph 3.14 of his report, Dr Trevathan notes:

"I also observe that under the Resource Management Act significant emphasis is placed on the concept of 'reasonableness'. It would seem overly bureaucratic, fastidious and ultimately unreasonable to insist on a course of action in strict accordance with a rule in light of evidence that suggested the underlying objectives of the RMA may be better served through an alternative approach. This is especially true in relation to matters which were not foreseen when the rule was put in place."

11. While I agree with the comment that decision making under the RMA must be reasonable, in relation to the interpretation and administration of rules in plans, in my opinion the approach recommended by the author is not tenable. It is my understanding that rules must meet certain criteria, and their application (provided they are unambiguous) is not a matter for pragmatism in relation to assessing resource consent applications.

3.4 CULTURAL EFFECTS

12. At paragraph 40 of her report, Ms Forbes report implies that my evidence has overlooked the relevant sections of the District Plans relating to cultural matters. This assessment was in fact provided in Appendix 10 of my EIC, where I have identified relevant objectives and policies from the District Plans (at pages 13,16 and 17).

13. In the same paragraph, Ms Forbes also provides an interpretation of the operative Regional Policy Statement (RPS) which differs from mine as to what would constitute "active protection". The term "active protection" is indeed the most important aspect of Policy 1.1 from the RPS. In my opinion, while consultation should not be discounted as a means to achieve active protection, this principle does require positive action. In this instance, I consider that such positive action has arisen as a result of best practice consultation undertaken by Mighty River Power, leading to the deletion of turbine zone 55 to actively avoid sites and areas of importance to Maori – that is by recognising and providing for

section 6(e) matters. Finally, the other aspects of the agreement between Mighty River Power and iwi as outlined by Mr Henry also give weight to the conclusion that positive action has occurred as a result of the consultation undertaken with relevant iwi. As far as I am aware, there are no further amendments to the overall design of the Turitea Wind Farm that would be required to demonstrate that such positive action has been taken.

14. Mr Henry's evidence provides the clarity that Ms Forbes seeks at paragraph 41 of her report in relation to agreements that have been reached with iwi. However, I do not consider there is, or has been, any divide between iwi submissions, and statements made by Mighty River Power or in my evidence. That said, I note that I am uncertain as to which submissions Ms Forbes is referring to when considering "iwi" submissions. I do accept that there is a clear difference of position between a number of submitters identified in the report who raise cultural issues, and Mighty River Power. However, Mr Henry has provided a clear response on each of the relevant issues raised by those submitters.
15. With respect to paragraph 42 of Ms Forbes report, I note that Mighty River Power has accepted a proposed condition that allows all the consent conditions to be reviewed as necessary on the basis of any future successful Waitangi Tribunal Claim. I further note that I have reached my conclusion that section 8 has been taken into account on the basis that consultation with iwi, as described by Mr Henry, has been appropriate, and issues raised have been appropriately responded to by Mighty River Power, and that relationships with iwi have been established to ensure they will have continued and ongoing input into the development and operation of the project.

3.5 SOCIAL EFFECTS

16. In terms of Ms Meade Rose's report, I note a comment at pg 6, that my EIC should have included reference to the Fourth Schedule of the RMA and that a brief assessment of social effects should have been included.
17. In my opinion the AEE process was undertaken in accordance with, and meets the requirements of, the Fourth Schedule. With respect to Ms Meade Rose's comment regarding the assessment of social effects, while not contained in a separate document, I consider this assessment was adequately undertaken in relation to various other effects in section 4 of my EIC and the original AEE.

3.6 LANDSCAPE, VISUAL AND CUMULATIVE EFFECTS

3.6.1 STATUTORY FRAMEWORK

18. I note that Ms Williams' report relies heavily on the planning evidence of Mr J Baker. My EIC has not been considered; Appendix 1 to the report notes that only a "brief scan" of my evidence was undertaken. In my opinion, the planning context for considering landscape issues is important, and given that Mr J Baker's evidence does not provide a summary of the relevant planning framework, nor reflect the position of the other consent authorities involved. I consider this is a significant gap in Ms Williams' report.

19. Dealing firstly with the statutory planning framework, and factual matters related to it, I note that the Planning Experts' Caucus Report (which was available to Ms Williams) identifies significant areas of agreement in this regard. In relation to the skyline provisions from the RPS, for example, the planning experts all agree as follows:

"... that the skyline provisions must be interpreted, as neither the RPS nor POP provides clear direction as to how these are to be interpreted or implemented in relation to this consent application."

20. Further, there are some errors in Ms Williams' Report which I would like to correct in relation to the statutory planning framework. At pg 6 of the Report, Ms Williams correctly notes that "the site is not identified as an outstanding natural landscape in either the PNCC or TDC District Plans". Then, on page 10, Ms Williams states that the Regional and District Plans identify the skyline of the Tararua Ranges as an outstanding natural feature. This is not correct. I note the following points in particular:

- No operative regional plan identifies the "skyline of the Tararua ranges" as an outstanding natural landscape. The RPS does include objectives and policies on this point, as I have discussed further elsewhere.
- The planning experts have jointly agreed that the Proposed One Plan objectives and policies are to be afforded very little weight.
- The PNCC District Plan is silent on this issue. There are no rules in it that relate to:
 - Defining the skyline, or where to view the skyline for the purpose of implementing the RPS;
 - Protecting the skyline; or
 - To guide Council in making decisions in relating to the RPS skyline provisions.
- The Tararua District Plan (Operative and Proposed) does not identify the skyline as an outstanding natural feature. Rather, Objective 2.6.4.1 and Policy 2.4.6.2(c) identify "important natural features" and "significant natural features" respectively.

The skyline is noted in this context, but is not considered “outstanding”.
Furthermore, there are no other rules in this plan explicitly relating to the skyline provisions.

3.6.2 OTHER MATTERS

21. On page 12 of her report, Ms Williams notes that the Eco-park cannot be offered as mitigation. In preparing my assessment, I did not consider the Eco-Park as part of Mighty River Power’s formal ecological mitigation. However, I consider the Eco-Park is a legitimate project benefit, and as such, that it can be taken into account in the overall consideration of the proposal under section 5 and Part 2. Both Mr Baker and I agree that the Eco-Park can be considered as a project benefit, or positive effect (see page 10 of the Planning Experts’ Caucus Report), although we disagree on the level of significance it should have. In my opinion, based on the evidence of Mr W Shaw and Professor Craig, the Eco-Park is likely to have a significant local benefit.
22. Ms Williams’ Report also provides a description of the existing environment in terms of the number of residences within 3km of the nearest turbine zone. In my opinion, the most accurate account of the existing environment is contained in the Planning Experts’ Caucus Report in relation to those agreed elements for both existing and permitted dwellings. On the basis of the above work, I consider the figures in the Caucus Report should be preferred to those addressed by Ms Williams.
23. On this basis, it is possible that Ms Williams has seriously overstated the potential effects on the existing environment. This is primarily because Mr J Baker considers the existing environment to include over 300 potential residential lots which are a discretionary activity, and for which a resource consent application has not yet been made, much less granted.

3.7 MS LUCAS’ SUPPLEMENTARY EVIDENCE

24. Ms Lucas’s evidence at para 24 correctly notes that the Tararua State Forest Park is identified as an outstanding and regionally significant site (see Policy 8.3(q)). However, she then asserts that the same values run north to Hardings Park and Turitea Reserve. In my opinion, if the RPS had intended to recognise and provide for these values and areas in the same manner, they would be expressly included in Policy 8.3.

Greg Pollock
3 August 2009