

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.

SUPPLEMENTARY EVIDENCE OF MARK ALAN CLIVE HENRY

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1. INTRODUCTION

Qualifications and experience

- 1.1 My name is Mark Henry. My qualifications and relevant experience are set out in my evidence in chief.
- 1.2 I am authorised to give this supplementary evidence on behalf of Mighty River Power.

Purpose and scope of evidence

- 1.3 I am providing this supplementary evidence to respond to the Section 42A Report (the Report) entitled Turitea Wind Farm: Assessment of Cultural Effects by Ms S Forbes of Kotuku Consultancy Ltd dated 22 June 2009.
- 1.4 I shall respond to the following matters as raised in the Report:
- (a) Mighty River Power's assessment of effects;
 - (b) Matters raised in submissions;
 - (c) Mighty River Power's evidence;
 - (d) Submitters' evidence;
 - (e) Section 42A report prepared by URS New Zealand Ltd;
 - (f) Adequacy of information; and
 - (g) The Section 42A recommendations.
- 1.5 I recognise that it is not likely that the author has had the opportunity to confirm the positions of the various iwi representatives through any consultation of her own. I therefore respect that her assessment has been limited to the matters made available to her, and as listed in paragraph 4 of her report.

2. MIGHTY RIVER POWER'S ASSESSMENT OF EFFECTS

- 2.1 The Report discusses sections of Mighty River Power's Assessment of Environmental Effects (AEE) (dated August 2008) that are considered relevant to the author's

assessment of cultural effects. At paragraph 9 of her report, the author notes that the section of the AEE on cultural effects should reflect submissions from iwi. However, I note that submissions closed in February 2009, six months after the AEE was lodged.

- 2.2 At paragraph 10 of the Report, it is suggested that there is a difficulty with reliance on the human elements of relationships that are based on mutual goodwill, and instead promotes more formality in those relationships. I note that the nature of Mighty River Power's relationships with the various iwi groups reflects the nature of our discussions and the preferences of those groups and only in some instances has formality been sought.
- 2.3 In paragraph 14 of the Report, it is suggested that Mighty River Power has not explicitly safeguarded tangata whenua interests in relation to future treaty settlements. I note that in reviewing material the author considered pertinent to her assessment of cultural effects (her Section 4), Ms Forbes has not reflected on the proposed conditions of consent that were circulated with Mighty River Power's evidence in chief on 1 May 2009. Contained therein is a proposed review clause that reads:

"Within twelve months of the Crown settling any claim with Rangitaane o Manawatu under the provisions of the Treaty of Waitangi Act (1975), the Council may, following service of notice on the consent holder, commence a review of the conditions of this consent pursuant to section 128(1)(a) of the RMA, for the purpose of ensuring that this consent is in alignment with the provisions of any such settled claim."

- 2.4 I believe this is an appropriate response to safeguarding tangata whenua issues in relation to future treaty settlements with respect to the proposed wind farm development.
- 2.5 In paragraph 15, the author proffers that there is no discussion regarding consultation with Huatau Marae nor He Kupenga Hao i te Reo, being parties that "could be considered to be iwi authorities in a RMA context". I understand the RMA context for an iwi authority to be that set out in Section 2 of the RMA and described thus:

Section 2 – Interpretation

...

"Iwi Authority" means the authority which represents an iwi and which is recognised by that iwi as having authority to do so."

2.6 My understanding of Huatau Marae is that it is a private family marae, and not one affiliated to the local iwi (Rangitaane). In this regard, I have written to Huatau Marae seeking clarification, but I have not yet received a response. My understanding of He Kupenga Hao i te Reo is that it is an educational service provider, specialising in Maori education. For the purposes of the RMA, these parties are not considered to be iwi authorities, nor do their submissions make claim to be representing the views of iwi.

3. MATTERS RAISED IN SUBMISSIONS

3.1 In Section B of the Report, there is discussion of matters raised in a number of submissions. I further discuss several of these below, and will return elsewhere to specifically update the positions of the following parties:

- (a) Rangitaane o Manawatu (represented by Tanenuiarangi Manawatu Inc);
- (b) Rangitāne o Tamaki nui a Rua; and
- (c) Huatau Marae.

3.2 At paragraph 19 of the Report, there is reference to a submission in support received from Te Rangimarie Marae Trustees contained in my evidence in chief, even though this submission has been disallowed due to receipt out of time. I note that my evidence in chief was circulated on 1 May 2009. I received advice of the decision to disallow the submission from Te Rangimarie Marae Trustees on the same day as the evidence was exchanged and therefore it was not possible to reflect this change.

3.3 At paragraph 22, the author expresses concern that the submission of He Kupenga Hao i te Reo (submission 544) was not described in my evidence when considering concerned iwi groups. As I described earlier, I understand He Kupenga Hao i te Reo to be an education service provider.

3.4 At paragraphs 23-27 of the Report, the author suggests that any use of any term such as “cultural” in a submission immediately warrants a fulsome response in relation to cultural values. Whilst I accept that people are entitled to express their views, I do not agree that this approach guides any assessment of cultural effects. However, for completeness I will respond to matters raised by those five submitters (of approximately 700) as identified by Ms Forbes.

- 3.5 At paragraph 23, the submission of Ms Mullany (submitter 306) is described. This submitter, who does not wish to be heard, has expressed a view that the applications should be declined in their entirety based (amongst other reasons) on the cultural significance of the Tararua Ranges to the local iwi. Ms Mullany does not offer her affiliation to any of the iwi groups and therefore is assumed to be an individual perspective. Her input is therefore acknowledged and considered as an individual perspective.
- 3.6 At paragraph 24 and 25, the submissions of Mr S. and Mrs J. Lang (submitters 502 and 293 respectively) are identified, which cite concerns about failure to address Treaty of Waitangi issues and Mighty River Power's attempts at consultation with iwi as a "*blatant example of 19th century colonialism.*" The submissions of Mr and Mrs Lang note that they are not aware of consultation taking place between Mighty River Power and iwi, but nevertheless consider that the level of consultation undertaken has been inadequate. I respectfully suggest this may be because they have not been party to the many discussions that have occurred. Further, they decry the lack of consultation that in their view should have been held jointly between themselves as "Treaty partners" and local iwi. I regret that they did not avail themselves of such an opportunity.
- 3.7 At paragraph 26, the submission of Mr P. Te Rangi (submitter 457) is identified. The author acknowledges that Mr Te Rangi does not elaborate on his concerns. In fact Mr Te Rangi cites two words in his reasons for his submission, being "cultural" and "landscape".
- 3.8 For completeness, I note that prior to the receipt of submissions, I met with Mr Te Rangi at a hui held at the Huatau Marae on 29 November 2008. I understood Mr Te Rangi was present at the hui to offer his support to those affiliated to the Marae. Mr Te Rangi otherwise described himself as being of Rangitaane descent although did not offer any affiliation to any of the identified Rangitaane groups. I therefore understood his comments to reflect a personal perspective. Notably, he raised his cultural and spiritual connection with the Tararua Ranges and his concern about the possible loss of the creative inspiration contained therein from the proliferation of wind farm developments in the area. Mr Te Rangi's views were and still are acknowledged and respected.
- 3.9 In paragraph 27, the submission of Ms W. Henare (submitter 613) is identified. Ms Henare states as her reason for her submission that the wind farm "*has an impact on the terrain visually and environmentally. In maori terms it takes the ihi out of the whenua*". Ms

Henare does not offer her affiliation to any of the iwi groups and therefore is assumed to be an individual perspective. Her input is therefore acknowledged and considered as an individual perspective.

4. MIGHTY RIVER POWER'S EVIDENCE

Mighty River Power Evidence of Nevil Hegley - Noise

4.1 At paragraph 43 of the Report, the author describes what she considers as a "significant oversight" that Mr Hegley has not assessed the effects of noise on the Huatau Marae or on the Hautika Retreat. As has been described by Mr Hegley in Section 3 of his rebuttal evidence, the effects of noise on both Huatau Marae and the Hautika retreat have been assessed. Background noise monitoring has been undertaken in direct consultation with representatives of the Marae. I note that the results and the analysis of this monitoring have been provided directly to those representatives.

5. SUBMITTERS' EVIDENCE

Rangitaane o Manawatu (represented by Tanenuiarangi Manawatu Inc)

5.1 At paragraphs 45-50 of the Report, there is discussion on the evidence of Mr Horton called on behalf of Tanenuiarangi Manawatu Incorporated (TMI). I note that Mr Horton is to appear before the Board of Inquiry and is therefore best placed to confirm TMI's position. However, as signalled in the opening submissions by Counsel for Mighty River Power, I can now confirm that Mighty River Power has entered into a Memorandum of Understanding (MOU) with TMI that satisfies matters raised in our earlier consultations and in their submission. The key elements of that memorandum include:

- (a) Undertaking blessing ceremonies prior to construction of the Turitea Wind Farm;
- (b) Removing turbine zone 0055 given its potential effects on Tirohanga, being a site of cultural significance;
- (c) Implementing accidental discovery protocols and agreement on appropriate wording of conditions of consent to cover these;
- (d) Developing and funding a cultural monitoring programme as will be developed between Mighty River Power and TMI;

- (e) Establishing a tertiary scholarship; and
- (f) Commissioning of a pou whenua to be erected at the entrance of the Turitea Wind Farm.

5.2 The MOU therefore serves to promote environmental and cultural management that is of mutual benefit to Mighty River Power and TMI with respect to the Turitea site. It also provides a forum for on-going consultation to ensure that the needs of both parties are met in respect of that environmental and cultural management, and particularly with regard to sites of significance to Rangitaane o Manawatu.

5.3 I note that Mighty River Power is very pleased to have reached this agreement that recognises and provides for matters of importance to both parties. The agreement also establishes the basis for an enduring and meaningful relationship with TMI.

Huatau Marae

5.4 At paragraph 51, there is reference to the “Hautika Retreat” as being associated with the Huatau Marae. From my numerous discussions with the land owners (Mr J. and Mrs R. Adams, being submitters 258 and 536 respectively) and with representatives of Huatau Marae, I am not aware of any cultural connection between Huatau Marae and the Hautika Retreat. Indeed, the submission of Mr Adams simply refers to the retreat as his “cottage”. I note matters relating to the status of the cottage have been previously described in my evidence in chief (paragraphs 10.18 – 10.19).

5.5 Also at paragraph 51, it is noted that Mr Thorne has been called to give evidence in relation to the effects of noise on Huatau Marae. This is addressed in the rebuttal evidence of Mr Hegley.

5.6 On the matter of Huatau Marae, I return briefly to paragraph 21 of the Report. Ms Forbes suggests that I have not identified the submission of Huatau Marae (submission 9) in my evidence in chief. I note that I do make reference to their submission at paragraph 10.20 of that statement. However, Ms Forbes goes on to identify a number of information requests that were contained in that submission. For completeness I note the following actions and commitments undertaken with Huatau Marae to date:

- (a) In consultation with representatives of the Marae, the commissioning and provision of photomontages taken from a position that was agreed as representative of the marae (refer photomontage RVP20 of Mr Wyatt's evidence in chief);
- (b) In consultation with representatives of the Marae, the commissioning and provision of background noise monitoring to understand the existing noise environment at the Marae, and the likely impacts of the wind farm (as described by Mr Hegley); and
- (c) A commitment to seal parts of Greens Road in response to potential dust and road noise issues as may affect the Marae.

5.7 I also note the deletion (post-preparation of our applications but prior to notification) of turbine zone (0126), which was closest to the Marae, following discussions with a number of parties including those associated with the Marae. The nearest turbine (#125) is now at a distance of approximately 1200 metres from the Marae.

5.8 Later in the Report (at paragraph 78), Ms Forbes recommends that the concerns of Huatau Marae, in relation to noise in particular, should be assessed more robustly and assessed in terms of section 6(e) and 7(a) of the RMA. In my opinion Mighty River Power has robustly assessed the effects of noise on Huatau Marae, as described in the evidence of Mr Hegley. As noted above, we have sought further information and clarification from Huatau Marae in relation to the background and history of the Marae, as well as any cultural or spiritual aspects of the wind farm proposal that we may not have considered to date. At the time of writing we have not received any response to these requests from the Huatau Marae.

Rangitāne o Tamaki nui a Rua

5.9 At paragraph 20 of the Report, the submission from Rangitāne o Tamaki nui a Rua (number 578) is discussed and the possible commissioning of a Cultural Values Assessment is noted. I can confirm that such a document has been prepared and has been provided in confidence to Mighty River Power. I note that representatives from Rangitāne o Tamaki nui a Rua have indicated their intention to appear before the Board, and I believe it appropriate for them to best represent the report's findings.

5.10 What I am able to confirm is that the Cultural Values Assessment does not identify any significant cultural sites of a specific nature within the project site. However, the report

confirms that the Tararua Range itself remains culturally significant to Rangitāne o Tamaki nui a Rua. In light of this, Rangitāne o Tamaki nui a Rua has limited their objections to general concerns regarding:

- (a) Visual and aesthetic concerns that the Turitea Wind Farm will detract from the beauty of the natural landscape;
- (b) The possible impact of structures upon flora and fauna and natural features of the area during construction; and
- (c) The need for a condition of consent requiring the removal of the turbines at the end of the wind farm's working life.

5.11 The Cultural Values Assessment notes that the concerns of Rangitāne o Tamaki nui a Rua can be mitigated through the fostering of a positive relationship between Mighty River Power and Rangitāne o Tamaki nui a Rua. To this end, we have reached an Agreement in Principle with Rangitāne o Tamaki nui a Rua regarding the development of a Memorandum of Understanding that will recognise and provide for the matters of importance to both parties.

6. SECTION 42A REPORT OF URS NEW ZEALAND LTD

6.1 At paragraph 58 of the Report, the absence of a Cultural Impact Assessment is described as an information gap and that a more robust assessment of cultural values is required to properly assess the effects of the wind farm. In response, I note that in all our consultation, Mighty River Power prefers to consult directly with affected parties and to encourage them to represent themselves and properly put their positions to the decision makers in a manner that the parties themselves see appropriate.

6.2 I note that thought was given to the commissioning of a Cultural Impact Assessment, but recognising that the RMA does not require such assessments to be undertaken in support of an AEE, the individual approach described above was preferred.

7. ADEQUACY OF INFORMATION

7.1 At paragraph 64, the author identifies two major concerns with regard to iwi and cultural matters. These are described as:

- (a) The comparative invisibility of iwi in the AEE and evidence; and
 - (b) The ambiguity around the relative iwi positions.
- 7.2 The apparent basis for the first concern is addressed in part in paragraph 2.1 of this evidence, in that the author is concerned that submissions from iwi were not discussed in the AEE. This concern is also addressed through the acknowledgements contained within my evidence in chief regarding the submissions received from iwi groups and the on-going nature of Mighty River Power's discussions with the affected groups.
- 7.3 I further note that in addition to consultation being undertaken, through the RMA process, each person or group (including iwi groups) is provided with the opportunity to make submissions on a proposal, and prepare and present evidence. The choice to decide which course of action is most appropriate lies with each iwi group and I note that in this case, these parties have chosen to present their own views to the Hearing through submissions and/or appearances.
- 7.4 With regard to the second concern regarding the ambiguity around the relative iwi positions, this again appears to reflect the author's expectation of formality in the relationships with the various iwi groups. I note that Mighty River Power has many relationships with various iwi groups throughout the North Island and is happy to oblige if formality is sought. However, as noted in paragraph 2.2 of this evidence, the nature of Mighty River Power's relationships with the various iwi groups associated with the Turitea proposal reflects the preferences of those groups in how they like to conduct discussions.

8. SECTION 42A RECOMMENDATIONS

- 8.1 The Report includes a number of recommendations. I recognise these are not made for the benefit of Mighty River Power, and therefore I simply provide my own observations in relation to the following:
- (a) I am surprised that the author strives for certainty about mana whenua status as I do not believe this is an appropriate forum to confirm this (her paragraph 72);
 - (b) I have already described the nature of the relationships Mighty River Power has entered into with iwi groups as being reflective of their preferences, not Mighty River Power's (her paragraph 73);

- (c) I am unclear of the Board's jurisdiction to provide for matters of redress under the Treaty as suggested at her paragraph 74;
- (d) Mighty River Power has developed conditions in conjunction with local iwi, particularly with regard to accidental discovery protocols (paragraph 75 and 76);
- (e) With respect to the recommendation in paragraph 77, Mighty River Power has confirmed the deletion of turbine zone 0055 (TMI reference 124D3) from the proposal and has established protocols around turbine zones 0027 and 0099 (TMI references 124B7 and 124FF respectively);
- (f) Also with respect to paragraph 77 and in relation to the deletion of turbines as sought by Huatau Marae, I note that Mr Thorne has been called to give evidence on their behalf and in this regard. Mr Thorne's evidence is addressed by Mr Hegley; and
- (g) In relation to paragraph 78 of the report, and as described earlier, in my opinion Mighty River Power has robustly assessed the effects of noise on Huatau Marae. I note that other information or commitments have also been provided to Huatau Marae in response to requests they have made. Regardless, further information has also been sought in relation to any cultural or spiritual aspects of the wind farm proposal that we may not have considered to date.

9. CONCLUSIONS

9.1 The Report describes the two major concerns with regard to iwi and cultural matters as being:

- The comparative invisibility of iwi in the AEE and evidence; and
- The ambiguity around the relative iwi positions.

I conclude as follows:

- (a) Consultation and engagement with iwi groups has been a key focus and remains so. Some of the statements in the AEE and evidence regarding iwi and cultural matters were therefore deliberately broad in nature. In its dealings with iwi groups, Mighty River Power prefers to consult directly with affected parties and to encourage them

to represent themselves and properly put their positions to the decision makers in a manner that the parties themselves see appropriate. We are pleased that in this case, these parties have chosen to present their own views to the Board through submissions and/or appearances.

- (b) This evidence updates the status of the relationships with the various iwi groups.

Mark Henry
20 July 2009