

**BOARD OF INQUIRY**

**Turitea Wind  
Farm Proposal**

**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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**MEMORANDUM TO MRP,  
COUNCILS, AND ALL SUBMITTERS.  
COMMENTS ON DRAFT REPORT  
BY MIGHTY RIVER POWER**

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**Introduction**

[1] We thank all parties for your comments on the Board's Draft Report. They have resulted in our conclusion that further deliberations may be ongoing for the reasons given below.

**Legal Issues**

- **Hearing Never Formally Closed**

[2] We accept that the Board has not formally closed the hearing. In the Draft Report we required significant other information from MRP. As a result from all comments on the draft,

we consider there are still some issues and draft conditions outstanding which require a further response from MRP before we close off the final report.

[3] We agree that the definition of the word ‘comment’ in ss148(4) and 149(1)(a) RMA is more expansive than it is in the recent amending legislation (s149Q) (as at 2011) where matters of a ‘minor’ or ‘technical aspect’ of a draft report only may be considered. Under the unamended section, s148(4), the Board may consider ‘any aspect’ of the Draft Report.

- **The National Policy Statement on Renewable Electricity Generation**

[4] We accept that the National Policy Statement (NPS) on Renewable Electricity Generation (May 2011) requires the Board’s re-assessment about aspects of the proposal as if it had been directed to its obligations under the NPS at the time of our initial deliberation. This is a matter of law under s104(1)(b)(i) and will require further comments from the other parties. To this end we accept the content of MRP’s Section Three ‘Request’ included in the ‘Comments’ documents referring to the NPS as well as Mr Henry’s second statement of evidence. As long as due process is followed, these documents may come to the Board as a consent authority under s41(1)(b) RMA which refers to evidential matters under s4(1)(b) of the Commission of Inquiry Act 1908. This Act is incorporated by way of reference within the RMA and states:

**[4B Evidence**

- (1) The Commission may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the inquiry, whether or not it would be admissible in a Court of law.

- **Scope**

[5] As to the scope to further amend the application, we agree that MRP’s proposed revised layout in their comments on the Draft Report may be within scope of the present application. We point out the issue arises out of the iterative development process which is not yet fully complete: see *Project West Wind*<sup>1</sup>. Further comments need to be sought on this issue from the councils and other interested submitters.

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<sup>1</sup> *Meridian Energy Limited & Others v Wellington City Council and Another*. Decision No 031/2007 [Environment Court] paras [460]-584]

- **Natural Justice and Fairness**

[6] MRP identifies in its request, that one of the principal issues the Board must address is the ongoing sustainability and viability implications with respect to the project's scale and configuration as set out in our Draft Report. MRP's proposal is that through this comments process the Board can and should give the parties the opportunity to be heard on a revised layout that the company has prepared to improve the project's sustainability. This is based on the areas of the site indicated within the draft report as being appropriate for the wind farm. Otherwise, MRP suggests, if we do not allow such responses, the Board is breaching the legal principals of natural justice and fairness. Plans indicating MRP's revised layout are attached to its comments document marked Appendix 4.

[7] After deliberation on this issue the Board has decided that:

- the request and comments by MRP, together with the evidence of Mr Henry, are sufficient for the Board's re-assessment of the issues raised by MRP in the light of the evidence it has already given; we do not require further evidence or submissions from the applicant.<sup>2</sup>
- responses are, however, invited from submitters and councils on MRP's proposed revised layout and the NPS; such responses may be lodged with the Project Co-Ordinator within 14 working days of receiving this memorandum – namely 20 June 2011.

- **Other Matters**

- **Transmission Lines**

A submitter, Mr Shilton, has noted in his comments that potentially there is more favourable transmission line route within the reserve and that he had received a favourable response to this alternative route when he discussed it with Mark Henry. MRP is therefore requested to advise the Board on the feasibility of this alternative route.

In addition, MRP is requested to advise the Board of details of a possible transmission line from Turitea to Puketoi which is referred to in the

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<sup>2</sup> See para 31 of MRP's Request document.

comments received from the McBride family as crossing the southern boundary of their property.

- **Decommissioning**

MRP is also requested to respond to the Board on the request in the comments from two submitters that if for any reason MRP elects to decommission an individual turbine (or turbines) ahead of the decommissioning of the overall wind farm, then within say two years of their decommissioning, these individual turbines should be removed.

Responses on these issues also to be received by 20 June 2011.

We look forward to receiving your further comments.

**DATED** at Wellington this 30<sup>th</sup> May 2011



S E Kenderdine

Retired Environment Judge

Chair

Turitea Board of Inquiry