

BOARD OF INQUIRY

**Turitea Wind
Farm Proposal**

TRANSCRIPT OF PROCEEDINGS

BOARD OF INQUIRY

Turitea Wind Farm Proposal

Hearing

HEARING at PALMERSTON NORTH on 6 JULY 2009

BOARD OF INQUIRY:

Environment Court Judge S.E. Kenderdine

Mr D. Bunting

Mr R. Heerdegen

Mr J. Hudson

Mr C. Shenton

APPEARANCES

MS E. JAMIESON and MR J. HARDY appeared on behalf of the Director General of Conservation

MS L. BLOMFIELD appeared on behalf of Horizons Regional council

MR N.R.W. DAVIDSON QC, MS K.R. PRICE, MS H.C. ANDREWS, and MS K.M. BELL appeared on behalf of Mighty River Power Limited

MS P. DAVIDSON and MR K. JOHNSTON appeared on behalf of Ngawai Farm Limited, Mr J. Poff, Mr M. Alley and Mr and Mrs J. Love

MR J. MAASSEN, MR REARDON and MS PEARSE appeared on behalf of Palmerston North City Council

MR K. LOW appeared on behalf of Tararua-Aokautere Guardians Inc (TAG)

MR J. BENT appeared on behalf of himself

MR McCLELLAND appeared on behalf of Tararua-Aokautere Guardians Inc (TAG) and Friends of Turitea Reserve Inc. (FOTR)

LIST OF WITNESSES

<MARTIN DOUGLAS HEFFERNAN, sworn [3.07 pm]..... 25
 <EXAMINATION BY MR DAVIDSON [3.07 pm]..... 25
 <CROSS-EXAMINATION BY MR MAASSEN [3.25 pm]..... 30
 <CROSS-EXAMINATION BY MR McCLELLAND [4.38 pm]..... 49
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[10.01 am]

5 REGISTRAR: Welcome to the Board of Inquiry on the Turitea Wind Farm.
The Board will now take appearances, after which the chair will open
the proceedings.

10 MR DAVIDSON: Yes, may it please your Honour and members of the Board,
Davidson is my name, Nick Davidson. I am appearing with Karen Price
on my left, Helen Andrews behind me and Kathleen Bell on the red
table.

HER HONOUR: Thank you, Mr Davidson.

15 MR MAASSEN: Good morning, member of the Board. My name is
John Maassen and I appear for the Palmerston North City Council, a
submitter, with Mr Reardon, spelt R-e-a-r-d-o-n, and Ms Pearse, with
an S. Thank you.

20 HER HONOUR: Thank you. Good morning, Mr Maassen.

MR MAASSEN: Thank you, your Honour.

25 MS DAVIDSON: If the Board pleases, counsel's name is Ms Davidson, I
appear with Mr Johnston, he is unfortunately in Auckland on Monday
and Tuesday for the submitters Ngawai Farm Ltd, Mr Joseph Poff, Dr
Maurice and Mrs Dorothy Ellie, and Mr John and Mrs Katherine Love.

30 HER HONOUR: Thank you, Ms Davidson.

MS BLOMFIELD: May it please the members of the Board, my name is
Ms Blomfield and I appear for the Horizons Regional Council.

35 HER HONOUR: Thank you. Anyone else?

MS JAMIESON: May it please the Board, counsel's name is Ms Jamieson
and I appear together with my friend Mr Hardy for the Director General
of Conservation.

40 HER HONOUR: Thank you, Ms Jamieson. And anyone else?

45 MR LOW: Yes, may it please the Court, my name is Kevin Low, I am the
president of the Tararua-AokautereGuardians. I am here representing
the joint case, the community case for Tararua Guardians including
some material to be reserved. I must apologise for our counsel who has
been caught in traffic and will be here shortly.

HER HONOUR: All right, thank you, very much.

5 MR BENT: My name is John Bent, I am a submitter and I would like to request the leave of the Board to not be present at all times?

10 HER HONOUR: By all means. We will take those kinds of submissions later in the proceedings if that is agreeable with you. Because, first of all, I would like to welcome you all to this Board of Inquiry and, first of all, to introduce to you the members of the Board themselves so that you have some idea of whom you are talking to.

15 Kia ora koutou katoa. Ko Shona Kenderdine taku ingoa. Ko te tia mana ko Board of Inquiry mo Turitea. So welcome to the Board of Inquiry into the Turitea Wind Farm, all of you. And I would like to introduce to you, first of all, David Bunting, he is not on the website, I think Dr Kloosterman as the engineer is still there, as is Judge Thompson, but as some of you may know there have been a change in personnel. I have taken over from Judge Thompson who has had to replace Principal Judge, Judge Bollard, who died sadly and suddenly about six weeks ago, and Judge Thompson has had to fill his place.

20 Dr Kloosterman has given way to David Bunting on my right. David is a civil engineer graduate of Canterbury University, has been a commissioner with the Environment Court since 2007, prior to that he was the manager of the international business of a major engineering company and consulting company overseas, Opus. He had the responsibility for infrastructure projects in the UK, Australia, Canada and many developing countries in the Asia/Pacific region, so he is extremely well qualified. He has been on the Board of the Institute of Professional Engineers and various other registration boards and the Chartered Professional Engineers Council which he was the foundation member.

35 To my right again is Richard Heerdegen, who has an MA in geography from Victoria University and a Master of Science in hydrology from the Penn. State University. He has been a lecturer in geography at Massey University. He is in fact an environmental scientist, both in terms of practice and his qualifications. He studied at the research of the Institute of Hydrology, UK, where he worked at the CSIRO in the Northern Territory of Australia and the Coastal Research Institute at the University of Rhode Island.

45 He is a former member of the Manawatu-Maunganui Catchment Board, he is a former chair of the Rangitikei, Hawkes Bay Conservation Board and he is a former chair of the Palmerston North City Environmental

Trust. He was an expert witness for DOC in the Whanganui River minimum flow hearing some time ago. He has also been a Hearing Commissioner, appointed by the Minister of Conservation, into restricted coastal activities throughout this region. He is an adjunct professor at the moment at the University of the Sunshine Coast in Australia. So he too is extremely well qualified to appear on this Board.

To my extreme left is John Hudson, who is a landscape architect, principal of his own practice, who has worked in the area of infrastructure, landscape and visual assessments and resource consents for 30 years. He is past president of the New Zealand Institute of Landscape Architects, a fellow of the institute and a registered member of the institute. While president, he instigated many of the sort of process registration issues which make the institute the professional body it is today.

While working in the area of infrastructure, John has gained specialist experience in relation to landscape and visual assessments with particular and more recent experience in wind farms throughout New Zealand.

And to my left is Chris Shenton. He is a historical researcher and resource management aggregate for Te Runanga o Ngati Apa, Ngati Tumanga on the Whanganui River. He is a descendant of Te Iwi o Whanganui, Ngati Apa and Ngati Hauiti. He is a graduate of Massey University with a BA majoring in history and he is a certified independent hearing commissioner.

Chris has worked with several iwi groups in the Whanganui and Rangitikei regions in terms of developing capacity to deal with resource management obligations, also involved in developing content for resource management sections in Treaty settlement processes. So he, too, is very well qualified.

I would like now to move on to more general issues. I want to introduce also the support team who are basically here to support the very extensive number of submitters who have come to this hearing.

40 **[10.10 am]**

First of all, Kevin Currie and Ellie Butcher from the Ministry for the Environment. Mr Currie has been a senior advisor for the Ministry for the Environment in the call-in processes, he will only be here briefly today, but he is here to see this project launched and then he moves on to higher things, I think it is, Mr Currie.

5 Also Caroline van Halderen, she is the project coordinator, many of you will have had communications from her, and Kirsty van Reenen (PH), they are your support group, if you like, on the ground and they will handle any enquiries and difficulties that you may have as submitters.

10 I want to introduce to you, too, our Registrar Hetish Lochan and he is very experienced in dealing with these big enquiry matters and you will find him very helpful also.

15 As far as the hearing procedures themselves go, we intend to proceed in a relatively informal way, you are free to come and go throughout the process of this hearing as you wish. Please advise either the registrar or the project group themselves as to your movements if you have any difficulty with appearances when you have been allocated a hearing.

20 Cross-examination is limited to those parties who have advised the project co-ordination team that you are cross-examining. We will take questions from the floor from submitters through the chair throughout the proceedings. We have ascertained that the best way of proceeding in this rather lengthy hearing by grouping the submitters and we would like those of you, rather than have 200 individuals coming before us, those of you who have put in submissions, which are relatively associated with other submissions, to approach the project team who will be sitting at the door, as they are now, and see if you can group into individual groups with a spokesperson so that we have instead of 250 people standing up we probably can reduce that down to 20 or five or whatever you decide you come to.

30 And one of the ways of dealing with that, of course, some of you have very particular interests. If you identify those interests then it will be easy to group you into various groups of people. So if you remember to approach the team at the door, those of you in the back who are making submissions at some point, we have your written submissions, we will be reading those but when you come to appear here if you could form into groups that would be very efficient and I am sure helpful to everybody.

40 The order of hearing for the first three days that we are sitting here, we will have opening submissions from Mighty River Power. After that we will have a very brief statement from the representatives of the parties who are mostly the lawyers and then we will have the witnesses that are being called by Mighty River throughout the next few days.

45 We are reconvening on 27 July after this first sitting. The reasons for that are that the section 42A reports came in late, this disadvantaged

Mighty River Power. They have requested an extension of time, which has been granted, to give them time to reassess their own rebuttal evidence in respect of what came in, in the section 42A reports.

5 When we reconvene we are leading with those section 42A reports and
those witnesses will be available for questioning then also. That is just
to give you some indication of how the hearing schedule has changed.
We do not expect the hearing to be lengthened by that procedure
because by the grouping of the expert witnesses we will have quite an
10 extensive reduction, we anticipate from other hearings where we have
done this, in terms of time. You will get all the landscape witnesses
together, you will have all the engineers together, the water quality
people together and that allows for differences in evidence to be
ascertained much more rapidly than if they are spread out throughout
15 the hearings as the various parties give their evidence.

[10.15 am]

20 So we hope that you find this helpful. It has certainly been helpful both
overseas, where it originated, and in New Zealand in some of the
hearings that we have had so far. We, for example, in the Makara wind
farm hearing, which I presided over, we grouped the noise witnesses
and they were able to come to a considered opinion fairly quickly on
what was likely to be a very contentious issue and was a contentious
25 issue.

Any PowerPoint presentations that submitters would like to make, if
you please make arrangements with Hetish, the registrar, about that or
with the support team, we would be grateful for that.

30 Transcripts will be available over the 24 hour period. Where they come
in the night before, or when we have finished a hearing, I would like
counsel to check their accuracy please and to report to the Board the
next morning so that any misprints or mishearings by the transcript
35 people may be corrected and then they are on the record.

40 Tomorrow morning we begin at 9 o'clock, not 10 o'clock, and
throughout the rest of the hearing we will resume at 9, except on the
mornings we begin, because we have some counsel getting in late and
some members of the Board may be travelling, so 9 o'clock most days,
10 o'clock for the opening proceedings.

45 You may wish to know, if you have not already accessed the website,
what witnesses are being called today and throughout the next three
days. This has been put on the website but I will just read out again, it
was helpfully supplied by Mighty River Power and the support team.

The first proceeding today will be the opening submissions, as I said, and a brief statement by various representatives of the parties.

5 Dr Marin Heffernan and Mr Gavin Williamson, they will be giving evidence today. Tomorrow Mr Jason Hills, Mr Philip Wong Too, Mr Thomas Layton and Mr Paul Baker. On Wednesday, 8 July, Marian Melhuish, Mr Brian Leyland and Dr David Black and then the proceedings will retire at 3.30, I think, to allow the Board to return to their homes.

10 In terms of the grouping of the various witnesses into categories I will not read out their names but I will just give you a brief indication that Mighty River Power have supplied us with a list of how the breakdown will occur which I think is very helpful for you to know.

15 The construction and decommissioning effects, that will be the second group of witnesses when we reconvene. After that there will be traffic, after that again there will be noise, then the ecological witnesses will come, the consultation witnesses, the perception social issues, that group, the public perception social issues group. The visual landscape will be the eighth group available then there will be the commercial contract issues and, finally, the planning and we hope to be through all of that by – what is the date, Ms Price, do you think?

25 MS PRICE: It would be 28 August I think.

HER HONOUR: We hope to finished with these proceedings on 28 August. Now, I see some of you frowning in the back. If you have got any issues please advise the project team and otherwise we will proceed now. Thank you, Mr Davidson.

[10.20 am]

35 MR DAVIDSON: I was looking for a lectern on my desk here so I seem to have got something rather more than I expected.

HER HONOUR: You have two options here. Just what is most comfortable for you, Mr Davidson.

40 MR DAVIDSON: Thank you. Well, perhaps I will reserve that one for later, thank you.

HER HONOUR: That is for lecturing.

45 MR DAVIDSON: And that is not the purpose of my opening.

HER HONOUR: Can I ask that people speak up.

MR DAVIDSON.: Can I test that by speaking now.

5 HER HONOUR: Yes, thank you.

MR DAVIDSON: Can you hear me now?

10 HER HONOUR: Could you hear me earlier?

MR DAVIDSON: Yes, your Honour, members of the Board, this opening is in effect a joint opening for two reasons, one is that you will get very tired of my voice over the next hour and a half or so and secondly, Ms Price has in many respects a far more detailed knowledge than I who have come recently to the case. On those issues and some issues the Board may raise in the course of my opening, I will be referring to her or others of our team. As your Honour has indicated, the staggered nature of the hearing means that many of us will come and go in the course of it and I am certainly in that category, and being allocated to certain areas of the case.

15

20

In opening, I am conscious that the Board obviously wants to gain the overview of the applicant in presenting this case, but also to ensure that those who are behind me, who may not have had access to the papers and the background, have a full understanding of what is to come. So I am leaning, unless your Honour directs otherwise, in favour of perhaps rather more than I would do in opening when you have papers before you.

25

We have made some progress, or I hope it is progress, with regard to one or two issues that have vexed the preliminary exchanges, including Mr Coombs' evidence, as a result of some accord with my learned friend here, we have prepared a memorandum, I think it is available now is it, which records that in respect of your Honour's or the Boards' ruling regarding rebuttal evidence we have managed to deal with what still was a problem for us and I have an agreed position if we may put that to the Board in a few moments time.

30

35

40 HER HONOUR: Yes, of course.

MR DAVIDSON: So as far as possible, I will speak to these submissions without culling from them information which I think those listening at the back of this room will need to have.

45 HER HONOUR: I think could you speak up because there are several people who are not hearing, I am sorry.

MR DAVIDSON: Is the microphone on?

HER HONOUR: If you will just bear with us a little bit we will make sure that you will hear at the back.

5

MR DAVIDSON: Can I just test that to see if that is - - -

HER HONOUR: Yes of course.

10 MR DAVIDSON: You can hear me? Is that better? I will just have to speak up as best I can. In this introduction which has some broad prospectus of the application we begin with the fact that we have the fundamental and vital need for more electricity. It is critical to our lives, both in
15 business and our personal lives, and the health system through our hospital, indeed this room. And it is essential and it is an underpinning part of this application that it is essential that we have more electricity for economic growth, aside from other elements should it relate to wind power in itself.

20

[10.25 am]

We know, indeed I submit now that it is beyond dispute, that we ...

MR DAVIDSON READS SUBMISSION

25

... consented and if necessary appealed and held their consents.

MR DAVIDSON: This does not dictate, I am adding, interpolating now for the Board, the obvious comment, it does not dictate or influence the
30 result before this Board, but it is for the applicant a pointer to the challenges and the case it must mount to gain a consent and to hold it.

It is, of course, a national issue that we ensure that the supply is sufficient for demand and environmentally sustainable. It is a national
35 issue and a national challenge and the Courts, the Boards, the Courts of different jurisdictions, have emphatically endorsed this fundamental position. The passage from the upland landscape case in Central Otago is a short pithy reminder of the fact, the notorious fact, that there is an ongoing risk of demand for electricity not being matched for supply.

40

The Court also takes cognisance of the notorious fact that where supply cannot meet demand in electrical systems there has to be a partial shutdown of the distribution networks. For these reasons it is in the public interest for power supply companies to increase generating
45 capacity. The question is not whether generating capacity should be increased but rather by what means and where.

5 And that brings the applicant to the question of local effects. They
 must have all proper emphasis but they should not and must not present
 an impassable or unduly weighted barrier for development. And that
 consideration is particularly pertinent in this matter before you, called
 in and referred to the Board as a matter of national significance. Those
 national effects should - it is submitted, be kept firmly in line when
 measuring local effects. Mighty River has rightly recognised squarely
 10 that there are these local effects and has concentrated a great deal of
 attention on minimising them and ameliorating their impact at the same
 time as it seeks to champion a major contribution to the country's
 sustainable energy needs.

15 Now the applications by Mighty River are to three councils, obviously
 Palmerston North city, Tararua and Manawatu/Wanganui. It is for the
 wind farm at Turitea and Tararua ranges. We have to obtain consents
 in relation to a range of considerations: vegetation clearance, discharge
 of dust, wastewater, clean pool and stormwater, the establishment and
 operation of the wind farm, storage of diesel, earthworks, land
 20 disturbance, road upgrades, exceeding noise standards in certain
 locations, exceeding height requirements, modification of a significant
 natural feature and construction of the electricity transmission line and
 substations.

25 **[10.30 am]**

The intent therefore is by this submission to introduce the company, the
 wind farm, the proposers, the resource consents, the experts, the
 statutory context and legal issues, aspects of the submitter concerns
 30 which are so clearly identified. Issues relevant to the reports
 commissioned by the Board under section 42A and the consent
 conditions recommended and set out the principal submission which
 underpins the case.

35 *That submission is that the applications satisfy the relevant ...*

MR DAVIDSON CONTINUES READING SUBMISSIONS

40 **[10.35 am]**

... against the project's substantial benefits and positive effects.

45 MR DAVIDSON: So if I may just pause for a moment in this very brief part
 of the opening, what Mighty River is acknowledging is that it has had
 to - has to cross a series of environmental hurdles, it has had to face up
 to them and so far in this opening, I have not gone to the extremely

positive elements of this proposal, except to indicate where the land lies, namely the need for sustainable generation. We are not showing - the applicant is not shying away from the hurdles it has to face.

5 So Mighty River Power, state owned electricity retailer and generator formed with reorganisation of the sector and disbandment of ECNZ in 1999. It is substantial - its contribution is substantial, its generation assets account for up to 22 percent of New Zealand's peak energy demand, and under the government's energy objectives Mighty River is doing what it is asked to do, to diversify and increase its renewable generation through the Turitea wind farm, amongst other things. It considers Turitea as a significant element in the wind development programme and a very major step towards achieving its goal of developing 500 megawatts of wind generation by 2015.

10
15 *Mindful of the effects or potential on the environment, Mighty River...*

MR DAVIDSON CONTINUES READING SUBMISSIONS

20 **[10.40 am]**

... the proposal nor the necessary discussions with the department.

25 MR DAVIDSON: So I have tried to put that matter, your Honour and members of the Board in perspective. It's not part of the mitigation package, but you can bring to account that it is integral to the whole basis upon which Mighty River is here. It is here because it successfully tended as part of that process and revenue stream for an eco-park is ensured, endorsed by the council and what is actually holding up the progression of this matter, apart from whatever the council maybe doing or not doing, is clearly now only the consenting that is required for this project.

30
35 *The next matter which has a great moment in the hearing, in our ...*

MR DAVIDSON CONTINUES READING SUBMISSIONS

[11.00 am]

40 *... responses for those concerns, it has been an ongoing process.*

45 MR DAVIDSON: I do not expect, your Honour and members of the Board, there to be any formal complaint that the matter now before you is in any way beyond the scope of the application, it is a reduced application but at paragraphs 4.34 through to 4.37 the authority for staying within

scope, of course, is that is the four known authorities, I will not read them now.

5 I will go to 4.38 and say that the removal of the soil disposal sites, realignments and removal of the turbine all fall squarely within the scope of the original applications and there is no need for renotification. There is no increase in scale or density, they are mitigation measures and they reduce the area affected by the wind farm. So I now formally seek to amend the applications to include each of the three
10 modifications.

HER HONOUR: Thank you.

15 MR DAVIDSON: The key elements of the proposal are Mr Henry's evidence and Mr James' technical engineering evidence detail, but we are talking here about a maximum of 126 possible zones, within which a maximum of 121 turbines will be constructed, reflecting the 10 deleted from the original application with up to 81 zones within the reserve and up to 65 zones on adjacent private land. There are three bladed turbines with a
20 maximum hub height of 80 metres and a maximum blade length of 45 metres. There is a maximum store capacity of 333 megawatts, depending on final turbine inspection.

25 Individual transformers are placed at each turbine, within the turbine or adjacent, depending on the final turbine selection. While the size varies, it is routinely between 2.5 wide, 2.5 high by 4 metres in length. Two internal substations, one within the - at the Browns Flat area another in an area of pine plantation.

30 On site workshops and control rooms, three monitoring masts of up to 80 metres, two overhead transmission lines, one 6.1 kilometres long linking the internal substations, and the other 5.2 kilometres from the Browns Flat substation within the reserve to the existing Linton substation.

35 The road network would have 33 kilometres of new roads and upgrading of 24 kilometres within the wind farm site, 0.7 kilometres of Greens Road and 1.7 of the local (**ph 11.03.08**) Farm Drive.

40 Four stream crossings, a fifth is no longer necessary, an internal reticulation network underground and overhead lines where undergrounding not possible generally along the access tracks connecting the turbines and the substations.

45 Two batching facilities to be used during construction, which are temporary. The removal of 25 hectares of indigenous vegetation,

excluding grassland and pasture parents (**ph 11.03.37**) within the reserve and three hectares outside the reserve.

5 Disposal of 940,000 cubic metres of excess excavation material at sites identified over an area of 40 hectares, ongoing maintenance activities and site reinstatement.

10 The consents required that are submitted, I am not aware of an issue with other parties as for this as yet. Mr Pollock's evidence details that the consent status 4.42 we conclude and submit is a discretionary activity. There are some activities permitted and there are controlled and restricted discretionary activities, but as a bundle they batch as authorities shows as a discretionary activity.

15 HER HONOUR: Can I just halt you there? Can I ask - I am not aware of a map referring back to your paragraph M, the disposal of 940,000 cubic metres of excess excavation material and identified disposal areas within the site. Is there a map of that process?

20 MR DAVIDSON: Yes, we have that, ma'am, and I am conscious that as we are approaching - well, not yet at the break, I imagine 11.30 is our break, is it?

25 HER HONOUR: Yes, it is.

[11.05 am]

30 MR DAVIDSON: I intend to put a map up as we move to the detail of the proposal in the next part of my submissions. But we have a map, we can show that.

35 MS PRICE: Ma'am, the specific map that you are requesting about the soil disposal sites was part of the further information that was put in for the section 42A reviewer, so it has all been served on the Court, but you will be getting another copy.

HER HONOUR: Thank you very much.

40 MR DAVIDSON: Still addressing the law, your Honour, there was the board at 44.43.

You have there, of course, the jurisdiction to grant or refuse ...

45 MR DAVIDSON CONTINUES READING SUBMISSIONS

[11.20 am]

... of the skyline of the Tararua ranges within the proposed 1 plan.

5 MR DAVIDSON: I would ask Ms Price to deal with this, your Honour.

10 MS PRICE: Your Honour, just with this preliminary matter on Mr Coombs' evidence, I have handed to the project coordinator today a joint memorandum of counsel signed between Mighty River Power and Palmerston North City Council whereby the challenge to Mr Coombs' evidence is now withdrawn and what we have agreed is that all of the evidence is acceptable to Palmerston North City Council apart from paragraphs 4.14 through to paragraph 4.17.

15 That memorandum has a redacted copy of those two pages supplied with it and Mr Maassen has reserved the right to cross-examine on those paragraphs should he wish, and that is agreed with Mighty River Power.

20 HER HONOUR: Thank you. Could I have a copy of that memorandum, please? Could it be handed up now? Thank you. I think we will continue and it will come, thank you.

25 MS PRICE: Your Honour will be aware that you issued a direction on this in late June and I just wanted to address you briefly on the reasons why the evidence is so important to Mighty River Power.

30 Because the challenge from PNCC had related to so many briefs, we had not gone into all the detail relating to each of the briefs as to why that evidence was so important. It comes down to the Proposed One Plan change provisions to replicate the regional policy statement and that is a critical element of the landscape evidence that we wish to put before you.

35 Mr Coombs, in particular, is important because it explains how the provisions were merely rolled over and are not supported by assessment at the time. Given the critical nature of the landscape evidence the Court will hear, allowing Mr Coombs' evidence by consent will allow the most holistic consideration of all the landscape witnesses' evidence and provide the proper context, I believe, for the Board's consideration.

40 HER HONOUR: Yes, well that was not clear in any of the documentation, was it, that it was rolled over? So that might have made a difference. Thank you.

45 MS PRICE: Thank you, your Honour.

5 HIS HONOUR: But there is nothing stopping Mighty River Power, is there, at
sometime in the future, perhaps moving in the direction of acquiring
these consents somewhere further down the track, which put together if
we approve the Mighty River Power proposal actually would make it
economic presumably even more economic.

10 MR DAVIDSON: Correct, Ma'am - well I don't know whether in fact it
would or would not, but you are right as to the possibility being
averted to and no doubt that is a matter which will be raised in the
evidence for Mighty River as to whether these are – I mean the
argument to be advanced – we can't have it both ways, we can't say
"it's not part of the environment" and then it comes in.

15 The only way we could have it both ways is to obtain consents, and
then take the course you are suggesting, but they have to go through
another process. In other words not to rely on the existing consents
necessarily. I do understand that, we did anticipate this would come up.
There are various ways in which it can be dealt with.

20 So that is the first of these legs, the second is at 7.11

"Subdivision Consents", there's been caucusing and based on ...

25 MR DAVIDSON CONTINUES READING SUBMISSIONS

[12.25 pm]

... closure of existing unsafe intersections on the Pahiatua Track.

30 HER HONOUR: I think in respect of paragraph F that it was a Mighty River
Power witness who indicated that the 2007 New Zealand Energy
Efficiency and Conservation Strategy is being replaced by one in 2009.

35 MR DAVIDSON: Yes.

HER HONOUR: Is that likely to be very different? I am familiar with the
2007 one.

40 MR DAVIDSON: Well, we do not think it is, ma'am, we have actually got
submissions on this.

HER HONOUR: Oh, right.

45 MR DAVIDSON: And I think I can say that that although it is not evidence
from the bar, Ms Price does have an expert knowledge of this issue,
which she is going to address in these submissions.

HER HONOUR: Thank you.

MR DAVIDSON: So we do have the answer to your question in here.

5 HER HONOUR: Thank you.

MR DAVIDSON: So these things here, which it is easy to layout and to read
and say, well, there is a list of sites. If one stands back from this and
just reflects on the benefits which are set out in 7.20 and 7.29, these are
10 major, these are of huge significance and they are cumulative in their
effect. They have local, regional and national importance of a huge
dimension.

So 7.30, these applications, I will be coming to the consent process as
15 something we have to get over. They are an opportunity to achieve
these benefits. They are all matters which need to be considered and
put into the crucible containing the evidential material to be weighed
against the alleged and more site specific potential effects. So we
address this right from the start.

20 And we know from Meridian that the above factors, in our view, are
very powerful. They represent some key issues to be weighed against
the adverse effects on the local environment. That is the law statement
of principle which applies but yields, of course, to the expert
25 knowledge of a Board such as this. It is seldom that the appellate
courts will intrude into the reasoning of a Board such this or a Court.
The facts are regarded rightly as being within the expertise of a panel
such as this, made up with a spectrum of expertise which no Court can
replicate.

30

[12.30 pm]

So in that sense any applicant in a case such as this has one shot before
35 people who do understand the evidence at an expert and scientific level.
But what we do know is what the law says when experts come to make
their decisions is that these considerations are to be regarded as of very
high influence. They are not in themselves determinative, the other
issues have to be brought to account, but they are in the balance and
this is a weight that has to be recognised in the overall analysis.

40

So at 7.31 we go into more detail regarding site specific issues and
some of these, in particular the landscape and visual, are considered to
be more than minor. So we face up to that. Overall it is submitted on
45 balance and under that overall judgment the proposal's site specific
effects are considerably outweighed by its positive effects and national
importance.

5 So coming to landscape, because it is going to figure obviously significantly in this hearing, the potential landscape and visual effects, particularly in conjunction with other wind farms are of critical importance and concern in this case. So we have witnesses Brown, Wyatt and Coombs (**PH 12.31.41**) to undertake a robust and comprehensive assessment of the various issues arising in this regard.

10 We have Mr Anstey's evidence for the council, Mr Bray and Ms Lucas for TAG and FTR. Mr Brown has concluded that due to the contrast between the more natural forest dominated internal qualities of Turitea Reserve and its more modest periphery the landscape of and around the wind farm does not qualify as outstanding under section 6B.

15 *But it has values consistent with an amenity landscape. Both Messrs ...*

MR DAVIDSON CONTINUES READING SUBMISSIONS

[12.50 pm]

20 *... to ask Ms Price to deal with this next section of the submission.*

HER HONOUR: Ms Price, I wonder whether it would be appropriate to stop here, so that we begin a whole new section – it is 5 to 1?

25 MS PRICE: Yes, your Honour, I agree.

HER HONOUR: Right. Thank you.

30 **ADJOURNED** [12.52 pm]

RESUMED [2.15 pm]

35 HIS HONOUR: Yes?

MS PRICE: Thank you, your Honour.

40 It turns to me now to address some of the statutory and planning instruments which you will be cognisant of. They are relevant again in relation to part 2 of the Act.

Prior to Mighty River Power's applications being lodged ...

45 MS PRICE READS SUBMISSIONS

[2.25 pm]

... which were provided to the section 42(a) reviewer some weeks ago.

5 MS PRICE: And I would like to introduce those now to the Board so that you have copies before you.

HER HONOUR: You will confirm that they will come through a witness at some point?

10

MS PRICE: Yes, that is the information, which was provided to the section 42(a) reviewer and was served.

HER HONOUR: Thank you. All right.

15

MS PRICE: As your Honour has already noticed:

The volumes going into the soil disposal sites have increased and ...

20

MS PRICE CONTINUES READING SUBMISSIONS

... consent conditions to be presented as discussed further below.

25

MS PRICE: Now, your Honour, just in relation to those soil disposal plans, they will be addressed in the evidence of Mr Chris James, who is scheduled to appear on the 27th of April.

HER HONOUR: Thank you.

30

MS PRICE: And it has been agreed with my friends at the Palmerston North city council that there will be a further round of caucusing occurring between all the various experts that are affected by these and that will include the aquatic ecologists and the sediment and water controls and quality specialists.

35

HER HONOUR: Yes.

MS PRICE: So we hope to come with a fairly agreed position on the effects and - - -

40

HER HONOUR: Thank you. I think it is fair to say that one wind farm that I was involved with they had a storm event, which necessitated the – no, let me put it another way. They had some construction requirements, which required them to re-route a stream. There was a very severe storm event and, of course, the rain ran down the old stream and caused unscheduled chaos right across the catchment. And this is the sort of

45

thing that needs to be avoided in a very sensitive area like this, so I am very interested to see what you propose.

5 MS PRICE: Yes, well, our approach has been, as a result of getting the evidence to get everything out of the water catchment, and we are in the process of assessing the effects on the other water catchments, which of course are not sensitive because of the water quality issues, but nevertheless remain a sensitive effect we need to assess.

10 HER HONOUR: Thank you.

[2.30 pm]

15 MS PRICE: And I will now hand over to my senior colleague for his next bit before I join you later.

MR DAVIDSON: Yes, Your Honour, member of the Board, I am going to go through from 70 through to 88 and ask Ms Price to conclude.

20 That is to suppose I – we have of course a casebook for you but as we have said in our citations in the submission we have not given you the casebook yet, but you will have it at the end.

25 Now section 105, going to discharge of permits, to a degree this has been introduced already by Ms Price. Of the discharge permits we have to look at the discharge and sensitivity and so forth. All relevant discharges and sensitivity in the receiving environment is covered in the evidence, including the material which you have just heard will be assessed and provided as the earthworks change.

30 *Evidence concludes that taking into account the design of...*

MR DAVIDSON CONTINUES READING SUBMISSIONS

35 [2.45 pm]

... across communities as a whole.

40 MR DAVIDSON: And we now turn to submitter concerns, Ms Price will address that. I think there are only six pages of submission to go, we should be there by the break.

HER HONOUR: Thank you very much, Mr Davidson.

45 MS PRICE: Apologies for my voice which has decided to develop a lurgy today. I will address you on submitter concerns.

Might River Power takes seriously the matters raised ...

MS PRICE CONTINUES READING SUBMISSIONS

5

[3.00 pm]

... careful attention to local and other effects as required by the Act.

10 HER HONOUR: Thank you very much, that is a very comprehensive submission and I am sure helpful to all those here.

MS PRICE: Thank you, your Honour. Your Honour, I would like to apply for leave. I understand we are scheduled now to have the brief opening submissions from the other lawyers but I do have a witness availability issue and that is I do need to have Dr Doug Heffernan on to give his evidence and be subject to cross-examination this afternoon. So with your leave and by consent with the other counsel, I would like to call him as soon as possible after the afternoon tea adjournment?

15

20

HER HONOUR: Have you sought consent from the counsel?

MS PRICE: No.

25 HER HONOUR: Mr McClelland?

MR McCLELLAND: I have got no problem with that, ma'am.

HER HONOUR: Mr Maassen?

30

MR MAASSEN: No problem, thank you.

HER HONOUR: Other counsel?

35 MS: I have no objection, thank you, ma'am.

HER HONOUR: All right. Thank you. All right, there is your answer.

40 I think we are not scheduled to take the afternoon adjournment until 3.30, so why do we not start with Dr Heffernan now?

MS PRICE: Excellent, thank you.

45 HER HONOUR: Excuse me, just a moment, Ms Price. Commissioner Bunting has a question for you.

MR BUNTING: I just have one question on your submission, you referred to the Tararua District Council but they are not represented here. Do you know what their position is, or are you in a position to give us any indication?

5

MS PRICE: The Tararua District Council is not here, but in the course of hearing all the conditions and agreeing the consents that were necessary, they have been part of all the discussions and Mr Pollock has attempted in his evidence to cover the issues of Tararua District Council and there was an exchange of letters with them which agrees that the position represented by Mr Pollock's evidence is that for the Tararua District Council.

10

MR BUNTING: Thank you very much.

15

MR HEERDEGEN: On page 45 there is a statement at the top that Mighty River Power and several other generators undertook due diligence with respect to potential acquisition of the Motorimu Wind Farm. Could you please explain how that process took place, whether it took place by virtue of invitation or by the various generators seeking due diligence with a prospect to purchase?

20

[3.05 pm]

MS PRICE: Commissioner, we thought this would be a matter of interest to you so we are proposing to have our first witness address you on this point of the due diligence, and I think that might be the most appropriate way to answer your question.

25

MR HEERDEGEN: Okay, thank you very much. And a second question, which again may well be answered by someone else, on page 77, subsection D, it said that the benefits of the Turitea Wind Farm will reduce the electricity generation costs in the Manawatu region. And I was wondering if you could explain, give that electricity goes into the national grid and is resold by resellers with basically common tariffs to various types of clients, how this particularly benefits the Manawatu as distinct from New Zealand as a whole?

30

MS PRICE: Again, I think our first five witnesses are the most appropriate to deal with that question. They can give you a far better answer than I can.

35

MR HEERDEGEN: All right.

MS PRICE: So I think we should do that with our first witness, if that is acceptable?

40

45

MR HEERDEGEN: Thank you.

MR DAVIDSON: This is the evidence of Dr Heffernan.

5

<MICHAEL DOUGLAS HEFFERNAN, sworn [3.07 pm]

<EXAMINATION BY MR DAVIDSON [3.07 pm]

10 MR DAVIDSON: Dr Heffernan, do you confirm that your full name is Martin Douglas Heffernan, you are the chief executive of Mighty River Power Limited, and would you confirm as true and correct the contents of the brief of evidence lodged with the Board of Inquiry.

15 DR HEFFERNAN: Yes, I can confirm my name and the contents.

MR DAVIDSON: There are two matters that have been raised by the Board in the course of our opening. I want to deal with the first question of Motorimu. Can you advise the Board the circumstances in which
20 Mighty River Power looked at Motorimu as a potential commercial project?

MR MAASSEN: Your Honour, if I could just be heard on an objection to that question? It takes the council by surprise that the topic of viability of
25 Motorimu is going to be a subject of discussion in this hearing. The Environment Court decided eight months ago that it was not satisfied that even with the deletion of the turbines it did the project would not be viable. And as far as I am aware there is only one statement of evidence as to viability and that was a statement in rebuttal by
30 Mr Wong Too in response to a very short paragraph of Ms Melhuish.

The witness, Mr Pollock, the planning witness for MRP, took Motorimu into account as part of the receiving environment in his evidence but made one qualification only, that is that issues of viability
35 would be dealt with in submissions.

So if my friend is to be permitted to ask witnesses in oral questions issues of viability, I need to signal that that is a fundamental shift, it is a matter of serious consideration and the council is highly prejudiced,
40 including the fact that I am not in a position to cross-examine this witness on issues of viability which are not dealt with in his evidence.

[3.10 pm]

45 HER HONOUR: Mr Davidson?

MR DAVIDSON: I will respond to that. While I would certainly not want to take any that put my friend at a disadvantage, prejudice can be dealt with a number of ways, this issue is squarely in the ring. One, it has to be dealt with as a consideration of the existing environment. Secondly, both in the questions that the Board has raised with me, your Honour, and questions just raised with Ms Price as to the circumstances surrounding Motorimu, require an answer.

The way this developed, apart from the submission that was made, was I think a clear indication that this Board would be interested in the circumstances in which Mighty River, if it was consented, would seek or might seek to acquire an interest in Motorimu. So it became, notwithstanding the submission made to you about the existing environment, it became an add-on because it has been consented. After all, the submission we made to you is that it should be taken out of play.

The question that has come to me can be answered in a simplistic way, Dr Heffernan is ready for this, to say whether a condition could be imposed which said, "If consented Mighty River would not seek to acquire nor operate the consents on Motorimu". That in a sense disposes of the issue, but not completely. We are now into the territory of what else could happen with Motorimu if the contemplation is would Mighty River potentially use it, the answer that the witness will give is the answer to the question I have just put.

There are two issues; one, can it be taken out of play completely by condition – that is the import of the question your Honour put to me I think – and the second is in what circumstances would in any event Mighty River take an interest, or had it taken interest, because it goes with the point.

There is a third leg – there were three questions I intended to ask Dr Heffernan – and that is well what about somebody else, because I apprehend that is what the Board would say. Well, what about someone else? Now, a proper question obviously and a proper answer can be given by Dr Heffernan, there is no disadvantage to my friend because he is getting evidence from the prime source, not of opinion but what actually happened with Mighty River.

So he can call whatever witness he likes to reply, but this is primary evidence and it is critical – it is very important evidence. So he can take time or whatever, but we are not here in my submission to block what has now opened up as proper line of inquiry.

HER HONOUR: Mr Maassen?

MR MAASSEN: Well, ma'am, I maintain the objection. As I understand what my friend is going to ask Dr Heffernan is (a) what arrangements it might make in respect of Motorimu, and that in itself may not present any particular prejudice.

But I understood from the third leg of that question he was inviting the expert – sorry, Dr Heffernan to express an opinion as to who else might be interested. Well, that is seriously prejudicial, there has been no time to prepare cross-examination to ascertain whether such an opinion is sound or can be reliable for the Board and that similarly there is no possibility of rebuttal evidence unless that is dealt with by way of leave. And I have a concern about rebuttal evidence coming in which then Dr Heffernan does not have a chance to consider, so it become a very messy event. And I refer again to paragraph 43 of the Pollock statement of evidence and I will read it if you would not mind?

[3.15 pm]

“I understand relevant case law requires that any resource consents which have been granted but not yet implemented should be taken into account as part of the existing environment if it is likely they will be implemented. Issues regarding the likelihood of these consents being implemented are addressed in legal submissions”. However, in order to ensure appropriately conservative consideration of potential effects he goes on to say he will deal with that in his planning evidence.

So that is how we have approached the case and I can simply record this evidence is highly prejudicial.

HER HONOUR: Yes, well, thank you. One of the issues, of course, is that the Board has raised this question because it appeared to be fairly squarely on the table very early in the submissions of Mr Davidson and now it has been confirmed by an independent Board member who is interested.

I think in terms of Dr Heffernan being speculative about who may or may not move to acquire the Motorimu consents, that is easily dealt with in legal submissions, Mr Maassen. But as far as the primary question is concerned, this is a Board of Inquiry, irrespective of what Mr Pollock has said, I think it is a legitimate question for the Board to ask, but I will grant you leave to call rebuttal evidence if you feel that that is necessary, and even if that means recalling Dr Heffernan.

MR MAASSEN: As your Honour pleases.

HER HONOUR: Thank you.

MR DAVIDSON: Dr Heffernan, I am just going to go back to the question as to whether Mighty River Power did take an interest in Motorimu and in what circumstances?
5

DR HEFFERNAN: Yes, we did take an interest in Motorimu as a result of a process that Allco ran following the impact of, I guess the global financial crisis on Allco the company, which got into a situation where it could not – its parent got into a problem where it actually was basically bankrupt, financially washed out. So it was trying to sell all of its assets and they included consents for wind farms here in New Zealand and in some cases land arrangements. So along with a number of generators we were invited into a process to see whether we were interested in acquiring their interests at Motorimu.
10
15

When we went through that process we assessed them as they stood, in isolation, standalone, or as an addition to Turitea should we be successful. In neither case could we see any value in the Motorimu consents. Essentially they will not work commercially. That is our strong view.
20

Our understanding is all parties that were in that process came to exactly the same conclusion and that is why Allco still hold ownership, or at least its receivers still hold ownership of those consents.
25

The commercial issue is that the consent conditions that were imposed at Motorimu limit the technology to uneconomic small turbines less than one megawatt in scale and to a small scale wind farm. So both the technology is limited in size and the number of turbines limited in size and the number of turbines limited in quantity.
30

Essentially for any wind farm to be economic you need both a commercial size in turbines to get economic solutions in the market, the world market for supply of turbines, and you need to get scale of the farm size to spread the fixed costs of the infrastructure across the whole of the development, that is the roading and the electrical infrastructure that connects within the wind farm and to the grid. They are relevant for every wind farm including Turitea, but at Motorimu the consent outcome effectively killed the project commercially.
35
40

MR DAVIDSON: Just to develop one part of your answer. To those who would query if there was advantage in acquiring even what you say a standalone uneconomic wind farm would be in conjunction with an established infrastructure, for example Turitea, what do you say?
45

[3.20 pm]

5 DR HEFFERNAN: Well, one of the things that we considered was if we were to acquire the Motorimu consents and to develop the Turitea Wind Farm would that make Motorimu economic? The answer was no. When we look at any other wind developer none of them have the proximity to the Motorimu site that Turitea does, so they cannot get the scale benefits of the infrastructure. They do not have common infrastructure to spread the cost of Motorimu across. Only Turitea offers the potential for that, but even then we could not see it work for us. If it cannot work for us we can see no way it could work for other parties, that is my strong opinion.

15 MR DAVIDSON: It was raised this morning, but are you able here at this stage of the hearing to indicate Mighty River's preparedness to accept a condition which would preclude attempted acquisition or attempted joining with Motorimu?

20 MR HEFFERNAN: Yes, I can confirm we would agree to such a condition.

MR DAVIDSON: Sir, I am not sure whether I developed the question as you asked?

25 MR: I am satisfied with the answers, thank you.

MR DAVIDSON: Now, the only other matter, Dr Heffernan is the matter raised with regard to page 77 of the opening and subparagraph 11.4D, the question of reduction of generation costs in the Manawatu region. How does that work?

30 MR HEFFERNAN: Well, in short, and Dr Layton will also be able to give advice on this, but the way the wholesale electricity market works, that is the market into which generators compete, essentially it has got differential prices right across the transmission grid. The differences occur largely from the relative import or export of energy.

40 In New Zealand typically wholesale prices are lower in the bottom of the South Island and higher in the top of the North Island. Essentially you have a south to northward flow, transmission losses are taken account of in the market which means electricity is more expensive in Auckland than it is in Invercargill. In addition, like any commodity, any market, where you have over supply prices tend to be depressed relative to where you have under supply.

45 So if you are in a region where you are either self sufficient or an exporter you are in effect in an over supply situation and therefore

prices tend to be depressed relative to a situation where you are dependant on importing the power from other sources.

5 I have a particular experience with this with our recent geothermal power plant at Kawerau, the eastern Bay of Plenty has traditionally been a net importer of power and the wholesale prices in the Bay of Plenty are higher than they are elsewhere in the central North Island. Subsequent to the commissioning of our geothermal power plant the level of import into the eastern Bay of Plenty declined significantly and
10 the wholesale prices have declined relative to the rest of the central North Island. It is essentially a balance of supply and demand.

15 That translates through into retail prices, all retailers have to pay the same wholesale price as each other in order to meet their customers demands. If the wholesale price is depressed then they are all able to access lower priced electricity at the wholesale level and pass that on to consumers at a retail level. So over supply or self sufficiency creates a net benefit for consumers in a region automatically within the New Zealand electricity market.
20

MR DAVIDSON: Just to finish the answer then a reduction is reduction in measurable terms, can you provide the Board some indication of the advantage that may be gained in this regard?

25 MR HEFFERNAN: I think wholesale prices are – maybe Paul Baker is better able to answer this but my recent recollection is that wholesale prices tend to vary something like 15 percent between the south and the north, so it is of the order of five to ten percent is the sort of effect you get locally from excess supply, that is the experience we had in the Bay of
30 Plenty.

MR DAVIDSON: Thank you, Dr Heffernan. Answer any questions please.

35 HER HONOUR: Yes?

<CROSS-EXAMINATION BY MR MAASSEN [3.25 pm]

40 MR MAASSEN: Dr Heffernan, I just want to go through a couple of topics with you if I can and the first is your expectations in relation to this process. Did you read the decision of Justice Baragwanath and Friends of Turitea Reserve case in which the change of purpose was challenged?

45 MR HEFFERNAN: I did read it some time ago.

- 5 MR MAASSEN: Do you recall that his Honour made the observation that in changing the status of the reserve's purpose the council was not making an effects assessment it was making a status decision?
- MR HEFFERNAN: Yes, I recall that and that is exactly how we understood that process was, what it was due to address.
- 10 MR MAASSEN: The other comment which his Honour Justice Baragwanath made, or finding he made, was that the council as decision maker would be unfettered by the contractual arrangements in deciding whether and to what extent it would grant resource consent to a wind farm, do you recall that?
- 15 MR HEFFERNAN: I do not recall that particular point but I understand the issue.
- MR MAASSEN: Yes. Is it your expectation that the Board would similarly be unfettered in making its determination?
- 20 MR HEFFERNAN: Absolutely.
- MR MAASSEN: I now want to deal with a separate topic which is assumptions. My assumptions are that as the CEO of MRP you would have general oversight of projects that are being carried out?
- 25 MR HEFFERNAN: Correct.
- MR MAASSEN: That you would have a reasonably comprehensive team of resource management and legal specialists available to you?
- 30 MR HEFFERNAN: That is correct.
- MR MAASSEN: And they would report to you from time to time in terms of progress in development of the project?
- 35 MR HEFFERNAN: Yes.
- MR MAASSEN: And they would keep you informed from time to time as to matters which were relevant or likely to impact on the consent-ability of any project?
- 40 MR HEFFERNAN: Typically on an exceptions basis, yes.
- 45 MR MAASSEN: Yes. I now want to show you a document that has been constructed based on events and it is a timeline, and I want to take you

through this timeline. You will not recognise this document because it is not yours, but I am going to show it to you.

5 HER HONOUR: Mr Maassen, we are due to adjourn for an afternoon adjournment. By all means put this to witness but he must have time to look at it and may I suggest that the next quarter of an hour or the time he needs to look at it is appropriate?

10 MR MAASSEN: Yes, thank you, your Honour. Could I ask the witness also to, if I may, confer with my friend and ask him to read two other documents during the break so that he has had the opportunity to read those before he is asked questions on them, as well?

15 HER HONOUR: Yes. Thank you. We will take the afternoon adjournment.

ADJOURNED [3.29 pm]

RESUMED [3.50 pm]

20 MR MAASSEN: The Board members should have a timeline in front of them, about to be produced, and this is one of a number of documents that Dr Heffernan has been asked to consider.

25 DR HEFFERNAN: Thank you.

MR MAASSEN: Now, over the afternoon adjournment, have you had a chance, Dr Heffernan, to look at that timeline which is not to scale but identifies main events?

30 DR HEFFERNAN: Yes, I have.

MR MAASSEN: Are you able to indicate whether or not that timeline is consistent with your understanding of the events as they unfolded in relation to Turitea wind farm?

35 DR HEFFERNAN: I can – I am much more familiar with the timelines around those matters pertaining particularly to Turitea, and the arrangements between the Palmerston North City Council and Mighty River. I am less able, without reference to other material, to confirm precisely the dates around Motorimu.

40 MR MAASSEN: Yes. You will recall that the development agreement was entered into in September 2005 between the council and Mighty River Power Limited?

45

DR HEFFERNAN: Yes and the subsequent contract modification I think, in October or so of 2006 following the council's decision to change the purpose of the reserve.

5

MR MAASSEN: Preceding the decision of the council on 30 October 2006, was a period of reasonably extensive consultation with the community. Is that your understanding?

10 DR HEFFERNAN: Yes, in relation to the change of purpose of the reserve, yes.

MR MAASSEN: Yes. And approximately two weeks prior to the final meeting of the council, the company Allco, or its subsidiary Motorimu Wind Farms Limited made an application for a resource consent. Does that accord with your understanding?

15

DR HEFFERNAN: Frankly I cannot recall.

20 MR MAASSEN: Can you recall whether the existence of that application presented any concern for members of your staff?

DR HEFFERNAN: I am sure they are always looking at developments that are going on. I cannot recall any particular concern, but as you indicated earlier we do have a good team of experts, both on the staff and through service providers that would be being aware of everything that was going on within the wider environment.

25

MR MAASSEN: Thank you. And then on the 30th of October 2006, is the decision of the council to change the purpose of the reserve. See that?

30

DR HEFFERNAN: Yes.

MR MAASSEN: I am now going to take you to a document which is the record of the council's decision and that document, as you have discovered over the afternoon adjournment, is in volume 1 of the council's document bundle – tab 1, and members of the Board will have a copy of that. I have asked you specifically to look at section 13 of that decision, which deals with visual effects and runs from pages 28 to 31. Have you had a chance to digest that material over the adjournment?

35

40

[3.55 pm]

DR HEFFERNAN: I think so, yes.

45

MR MAASSEN: Yes. My first question is, do you have a recollection of this information being brought to your attention?

5 DR HEFFERNAN: I do not recall the information in this particular form but the issues that relate to the council decision – yes, broadly.

MR MAASSEN: While we agreed that the council was making a status decision in October 2006, it did have some information about potential effects in a general form, did it not?
10

DR HEFFERNAN: Yes, I think our approach to the process was very much as you outlined, that there was a two stage process, in that until there was a confirmation that the reserve purpose was changed, we had no confidence that the project would proceed. So therefore, the level of information and enquiry we did around the potential Turitea wind farm was limited until such time as that purpose was changed.
15

MR MAASSEN: But your company instructed Stephen Brown to do a preliminary assessment?
20

DR HEFFERNAN: Preliminary, yes.

MR MAASSEN: And that was based on a 63 V90 turbine configuration within the Turitea Reserve alone?
25

DR HEFFERNAN: Very much a desktop assessment of that, yes.

MR MAASSEN: Do you recall whether or not he did photo montages?
30

DR HEFFERNAN: Frankly, no I do not. I am sure there are other witnesses who will.

MR MAASSEN: Yes, that is all right. I was just asking whether you can recall. And, as it is recorded in the decision of the council, Mr Brown indicated that potential effects might be in the moderate to high category?
35

DR HEFFERNAN: (**INDISTINCT 3.57.04**) taken to it, please.
40

MR MAASSEN: Sorry, yes, certainly. If I could just take you to that passage

DR HEFFERNAN: 13.4 is it?
45

MR MAASSEN: Yes, thank you. I was looking at it, but did not quite see it, so thank you for that. So, the last sentence says, of paragraph 13.4 “Visual effects are rated to be moderate to high visual impacts.” See that?

5

DR HEFFERNAN: Yes.

MR MAASSEN: And then at paragraph 13.6, Mr Brown noted an assessment in relation to cumulative effects and referred to “a proliferation of too many turbines or too many wind farms can ultimately transform a bucolic landscape into an energy production landscape”. See that?

10

DR HEFFERNAN: Yes.

MR MAASSEN: In paragraph 13.7, the council identifies cumulative effects as being an area of significant concern, does it not?

15

DR HEFFERNAN: Yes.

MR MAASSEN: But says that it is singularly disadvantaged in dealing with that issue because it is simply not aware of what else is coming forward and what other wind farm development might proceed on the Tararua Ranges.

20

DR HEFFERNAN: Yes, I understand that concern which we always understood was not relevant to the change of purpose of the reserve, but was a matter for the Resource Management Act.

25

MR MAASSEN: Yes, and do you think that it is an appropriate matter for MRP to have taken into account issues relating to cumulative effects?

30

DR HEFFERNAN: Absolutely which is partly why we had not undertaken that work until we were confident that the reserve purpose had changed.

MR MAASSEN: Yes, thank you. And in paragraph 13.9 the council deals with what were a lot of submissions to the council about concerns at impacts on adjoining property owners from turbines prospectively located in private land, that is what that topic deals with.

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[4.00 pm]

I referred you to the resolution of the council at page 48 of the same document that we are on now and there is a direction to the Chief Executive of the Council to advise Mighty River Power that it expects in the selection of the location a number of turbines on any private land that Mighty River Power ensure adjoining owners enjoyment of their

45

properties is not unreasonably affected. Do you see that?

5 DR HEFFERNAN: Yes, I see that, and I am familiar with that and I am aware that this was a matter that was considered by my team in looking at the development of the Turitea wind farm beyond just the reserve and has been taken into account through subsequent consultation in the community.

10 MR MAASSEN: All right. Well, you may not be the right person to ask this question, but I will ask it of you, and if you are not then you can at least put in train the work to obtain information that might be relevant to this topic.

15 Your counsel, yours being Mighty River Power's counsel, opened on the basis that this had been a very extensive iterative process of site selection, do you recall that?

DR HEFFERNAN: Yes.

20 MR MAASSEN: And at each significant milestone the company has evaluated potential effects and considered them in the balance as part of its preparation of a resource consent, do you recall that?

25 DR HEFFERNAN: True.

MR MAASSEN: In the statement of evidence of Mr Henry, he says that that process was completed and then the AEE prepared. Mr Wyatt in his evidence says that he was instructed in April 2008 in relation to AEE.

30 My questions are these. First of all, are there any reports in the possession of Mighty River Power that demonstrate the consideration of visual impacts on adjoining residents prior to the commissioning of an AEE, and if the answer to that question is you do not know, then that is fine, but I will ask you a subsidiary question.

35 DR HEFFERNAN: Yes. Look, I do not know.

40 MR MAASSEN: Would you as the Chief Executive have any difficulty if such reports exist to make them available?

DR HEFFERNAN: It is a question I cannot answer. I do not know what the nature of the reports are or for what purpose they might have been secured. I think it is an almost impossible question to answer.

45 MR MAASSEN: Okay. So if you could please identify at some point, whether through your counsel or some other way, who - - -

DR HEFFERNAN: Mr Henry.

5 MR MAASSEN: Mr Henry? Well, if he could provide information as to the existence or otherwise of those reports sooner rather than later, and whether the company is prepared to disclose them, I would be grateful.

DR HEFFERNAN: Mr Henry is definitely the right person to address that.

10 MR MAASSEN: Yes. So if I was to ask you another question about that process, you would probably have to say you do not know either because it is too much down into the detail, is that true?

15 DR HEFFERNAN: Again, possibly. I would need to know what the question was.

20 MR MAASSEN: Well, my question is this - Mr Brown provided a preliminary report to the council from your company, which was a preliminary effects assessment. But he is not giving an effects assessment in this case, it is a Mr Wyatt, and Mr Wyatt was instructed in April 2008.

[4.05 pm]

25 My question is, who was the expert in the expert team who was sufficiently expert on assessment of landscape absorption capacity, sensitivity and effects on neighbouring properties when the decision was made as to final site selection prior to the engagement of Mr Wyatt?

30

DR HEFFERNAN: You are correct, it is a level of detail well beyond my knowledge, but I will point out again that work done at the council's request for the purpose of the reserve – purpose change – was a different nature and detail of work than is required for an AEE out of the Resource Management Act.

35

40 MR MAASSEN: Would you have expected, as a chief executive of Mighty River Power, that in the iterative and detailed process that your counsel have described, there would have been a person of great expertise or decent expertise in landscape matters in the team?

DR HEFFERNAN: Yes.

45 MR MAASSEN: And would you have expected them to have documented their rationales as they went through?

DR HEFFERNAN: Yes, I would expect so.

5 MR MAASSEN: Yes, thank you. Well, we have gone through the documents of the council, but we also see from the timeline that the Parliamentary Commissioner for the Environment produced a report one month after the council made its decision. Was that something that you are familiar with or was it something that you are only aware of because I have brought it to your attention?

10 DR HEFFERNAN: No, I had actually read the Parliamentary Commissioner for the Environment report, a copy of which you gave me and the extract to read, but I had actually previously read the whole report.

15 MR MAASSEN: Yes. Well, the Parliamentary Commissioner for the Environment is an officer of parliament, isn't he?

DR HEFFERNAN: He at that time?

20 MR MAASSEN: She at that time. She now.

DR HEFFERNAN: Yes.

MR MAASSEN: Is that correct?

25 DR HEFFERNAN: Yes.

30 MR MAASSEN: And this report, and I am not suggesting it is a statutory report in the same way as the plan, but this report is addressing issues about wind farm impacts and how they might be addressed as an emerging technology in New Zealand. That is what the report purports to do, is that right?

35 DR HEFFERNAN: That is my understanding of what the PCE was attempting to do.

MR MAASSEN: Yes.

40 DR HEFFERNAN: But as you rightly point out, they do not have statutory authority in this area.

MR MAASSEN: No. And that report, in parts, was responding to concerns from the community, including concerns emanating from the Manawatu?

45 DR HEFFERNAN: I do not have any evidence to say yes or no to that.

MR MAASSEN: Right. Okay. I do not need to deal with that because it is a matter of record in the text and I will take the Board to it at an appropriate time, but if you take it from me that the Manawatu is discussed in detail in this report.

5

I have asked you to look at page 61, which is in tab 6 of the report. Now, I accept that this is an isolated part of the report and the Board should consider the report in its entirety, but the report in the concluding paragraphs of page 61 identifies the importance of the location, scale and design of wind farms, particularly in sensitive locations. Do you see that?

10

DR HEFFERNAN: Yes, I can see that. I can see the report, yes.

15

MR MAASSEN: Yes. And you would equally expect that these matters would be considered, not necessarily weighted heavily, but considered by your development team in the preparation of the Turitea Wind Farm?

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[4.10 pm]

DR HEFFERNAN: Well, you are correct. I mean, we as a company, we consider opinions from a vast array of sources in regard to any of the development opportunities that we consider, but ultimately we must be drawn back to meeting the requirements of the Act and working within those.

25

MR MAASSEN: Thank you. And finally I referred you to a decision in volume 2 of the bundle, which is the blue covered document - sorry, bundle or ring binder - and, in particular, the decision of the joint hearings commissioners at tab 3, which was the consideration of the application by Motorimu Wind Farm Limited at the consent authority stage, that is before the Environment Court considered the matter. And I asked you in particular to read the consideration from paragraphs 7.72, Localised Visual Effects, to 7.81 under Cumulative Effects, didn't I?

30

35

DR HEFFERNAN: Yes.

40

MR MAASSEN: Now, each of those discussions were likely to have some relevance to the ultimate design, or at least some relevance, yes, to the design of TWF, wouldn't they?

DR HEFFERNAN: Turitea Wind Farm?

45

MR MAASSEN: Yes.

DR HEFFERNAN: I am not in a position to comment on the direct relevance of Motorimu as a location to Turitea.

5 MR MAASSEN: Yes.

DR HEFFERNAN: But certainly my team would have been aware of and familiar with the decision.

10 MR MAASSEN: Yes.

DR HEFFERNAN: Of the commissioners at Motorimu.

15 MR MAASSEN: And the position is that your company made a submission to that application and, as far as I am aware, made representations to the Consent Authority and equally appeared in the Environment Court on subsequent appeal?

20 DR HEFFERNAN: I think you are correct - - -

MR MAASSEN: Well, certainly - - -

25 DR HEFFERNAN: I certainly cannot remember but I, yes – there is something in there that suggests that you are correct.

30 MR MAASSEN: Okay. Well, I will refer the Board to the decision in the record of appearances for that. But can I now turn then to a different topic? If I could ask you please to refer to your statement of evidence - - -

HER HONOUR: Just before you do that, shall we introduce this as an exhibit, Mr Maassen?

35 MR MAASSEN: Yes, thank you, your Honour. What numbering would you like to use?

HER HONOUR: One.

40 MR MAASSEN: All right. Sometimes we change, with A being someone else's and one being the applicant's, but if we stick to that that will be grand. Thank you, your Honour.

45 **EXHIBIT #1 – TIMELINE FOR WINDFARM DEVELOPMENT IN THE MANAWATU PREPARED BY PNCC**

MR MAASSEN: Paragraph 4.2, last sentence says, “It” – meaning MRP – “has publicly committed to openness and integrity in all of its doings with both local, regional, national communities and so forth”. Do you see that?

5

DR HEFFERNAN: Yes, I do.

MR MAASSEN: And if I turn you over the page to page 9, item C, “Business principles”, you talk about honesty and forthrightness.

10

[4.15 pm]

I want to ask you a couple of questions, not in challenging that but inviting you to respond in the spirit of those statements. The first is, are you aware of the existence or otherwise of a report by a social impact assessor that MRP engaged to evaluate the evidence of the council’s social impact assessor, Mr Baines?

15

DR HEFFERNAN: I am not aware of the report. My recollection is that – and I have read Mr Baines’ evidence – but I understand we were getting some work done in relation to Mr Baines’ evidence.

20

MR MAASSEN: Yes, well evidence will be given that a range of experts were instructed by your firm, and that you have in your possession a report from a woman called Di Buchan as well as Dr Phillips, but only Dr Phillips’ evidence has seen the light of day in this case.

25

My question is, and you are entitled to claim privilege for this document, and you are entitled to take level advice, but my question is, would you be willing to produce that report, and if the answer is “I would like to take advice on that” could you at least let the Board know the answer to that question either personally or through your council?

30

DR HEFFERNAN: I can undertake to do the latter, yes.

35

MR MAASSEN: Thank you. I appreciate that Mr Brown has provided an assessment and on your analysis it was quite a different analysis than what is proposed here. But I think it would be useful if the Board was able to make a comparison and consider his conclusions with the benefit of that information in its entirety.

40

So, again, my question is, would you be content to release that report, parts of which are now in the public arena in the council decision, and if you could please communicate your answer to that question through counsel?

45

DR HEFFERNAN: Well, I can address it now.

MR MAASSEN: You can address it now?

5 DR HEFFERNAN: Yes. I mean, as you pointed out, or I reiterate what I said earlier, the work that Mr Brown did was for a different purpose than for the purpose of filing an assessment of environmental effects under the RMA. I have got no secrets about any such report, but it was clearly done for another purpose, than for this hearing.

10 MR MAASSEN: So you would have no difficulty in disclosing that document?

DR HEFFERNAN: I would need to take advice on that, but I think you just need to bear in mind it was done for a different purpose.

15 MR MAASSEN: All right. Well, if it is released then the Board can – they are very expert – they can make those distinctions and they can consider those matters, but that is the invitation that I am extending to you.

20 DR HEFFERNAN: Yes. My only concern is that – you know, we set a standard for the work that we do and that we put forward for an RMA application and I am, as a Chief Executive, not very happy with work going forward that does not actually meet that standard for that purpose.

25 MR MAASSEN: All right, so did you evaluate Mr Wyatt's initial assessment to satisfy yourself that it met an acceptable standard?

DR HEFFERNAN: No, I rely on my team, as I indicated earlier on.

30 MR MAASSEN: I now want to refer to a new subject which is Motorimu – it came up very new and it is quite recent, so if you will bear with me because I was not expecting your evidence - - -

DR HEFFERNAN: Nor was I.

35 MR MAASSEN: That probably explains why my friend said the situation was fluid. Do we have an AEE? I want to refer you to your resource consent application, August 2008. Oh, if you have got a copy there. I am referring now to page 95.

[4.20 pm]

40 DR HEFFERNAN: 6.3.4?

45 MR MAASSEN: Correct. And in particular I invite you to read the second to last paragraph in page 95.

HER HONOUR: Sorry, Mr Maassen, which volume did you say?

MR MAASSEN: The formal application documents.

HER HONOUR: And that is number 1.

5

MR MAASSEN: It is not in my document bundle. It is a separate document that you should have. It is an MRP document.

MR: It looks like that one.

10

HER HONOUR: Yes it does. But what volume is it, 2 or 3? They have got numbers.

MR MAASSEN: My copy, your Honour, does not have a volume number.

15

MR: On the inside cover it is part A.

MR MAASSEN: Part A, yes. On the inside cover it indicates it is part A.

20

HER HONOUR: Right, yes. Thank you.

MR MAASSEN: Yes. I am in fact in part B but it is the same document, page 95. In this document which you went to the council with and which was notified, talks about the existing and potential future wind farms and identifies specifically the Motorimu application, does it not?

25

DR HEFFERNAN: Yes.

MR MAASSEN: And that is under the heading, "Cumulative landscape and visual amenity effects, para 6.3.4". Got that? This may not be a question for you, but do you know whether any person attending this hearing or interested in it, would have appreciated until today that the position of the applicant, Mighty River Power, is that in fact Motorimu does not contribute because it is simply not viable? Contribute to the receiving environment.

35

DR HEFFERNAN: I think I defer to the evidence of my counsel who gave evidence this morning and the way in which Motorimu was treated. Our view is that – essentially what we are saying in regard to Motorimu is effectively you can take it off the table for the commercial reasons that I outlined in response to the first question. But, as counsel indicated, it has been dealt to as if it is on the table in the evidence that has been put forward.

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MR MAASSEN: Well, I am talking about, you know, those objectives you said about being a company which is open and transparent and wanting

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5 a good process, and you have gone to the public to engage with them on the subject of cumulative effects in part, have you not? And you have said “despite Motorimu and all the other wind farms, our assessment is that the cumulative effects are not undue,” and the submitters in part have engaged on that topic through their submissions, have they not?

DR HEFFERNAN: Yes. I am sorry, I am missing the point.

10 MR MAASSEN: Yes, well, that was more of a statement, but if you accept that, what comment do you make about the fairness of the process that in opening today for the first time Mighty River Power says, “actually, we do not even need to worry about Motorimu because it is not on the table. It is simply not a viable project”?

15 DR HEFFERNAN: Well, I think it is important again you are referring to your timescale.

MR MAASSEN: Mm’mh.

20 DR HEFFERNAN: At the time at which the AEE was submitted, Allco were not suffering the impacts of the global financial crisis.

[4.25 pm]

25 MR MAASSEN: Right.

DR HEFFERNAN: And so the events around Motorimu are events that are subsequent to the AEE being filed. I put it to you in response that it would be less than honest for us to not make available to Board of Inquiry information around Motorimu that is current as of today. These are events that have changed since the August ‘08 filing of the AEE.

30

MR MAASSEN: Well when did you receive or consider a proposal to acquire the Motorimu site?

35

DR HEFFERNAN: We have received proposals since around about the time they imploded. I cannot remember when exactly that was but it would have been late 2008.

40 MR MAASSEN: So at least by late 2008, the position was that you understood or at least evaluated the viability of the Motorimu proposal?

DR HEFFERNAN: No, what I said was we had received approaches from Allco, that is, I don’t know exactly when evaluation was undertaken, or when we knew what position of other parties in such a process was. All we knew was pretty obvious, it was in the newspaper that Allco was in

45

severe financial difficulty and were looking to sell their assets or liabilities here in New Zealand.

5 MR MAASSEN: Yes. So Allco was one of those companies that Australian infrastructure companies that rapidly descended from Allco to Park co' and then 'No-co'. Is that the position?

DR HEFFERNAN: Yes, I think related to their level of indebtedness, yes.

10 MR MAASSEN: Would you accept that the economics of electricity generation are affected by a wide range of factors, not least of which is the spot wholesale prices?

15 DR HEFFERNAN: No, actually. Spot wholesale prices is one of the less influential matters on making an investment in infrastructure which has got a 25 to 100 year life. The spot market is a half hourly market and is a poor indication of the likely returns you will get from such a long life infrastructure investment.

20 MR MAASSEN: So investing is really if you are into energy for the long term? You have a long-term gain?

DR HEFFERNAN: Absolutely.

25 MR MAASSEN: And the things that are happening around in terms of individual movements of the components is not so important as where you predict matters will go in the future?

30 DR HEFFERNAN: No, what I said was the wholesale spot price of the day is not important. In a renewable energy project such as wind, it is absolutely important what the cost of that equipment is, because it is largely a very high capital cost, low operating cost infrastructure. And so the conditions, economic conditions at the time you invest are very, very important.

35 MR MAASSEN: Did you read the decision of the Environment Court in the Motorimu case?

DR HEFFERNAN: Not the whole decision, no.

40 MR MAASSEN: Well, if I can come back to that topic if I need to, at another time. One other topic I wanted to ask you about before I finish my questions is on the range of interests which MRP has, which I think you deal with in paragraphs - at least paragraphs 6.22 and 6.23. So you have a number of prospective sites throughout the North and South Island, in paragraph 6.22.

45

DR HEFFERNAN: Correct.

5 MR MAASSEN: And they vary in size, do they, in capacity?

DR HEFFERNAN: They vary in size, capacity and more particularly they vary in the quality of the wind resource, and access to the transmission grid.

10 MR MAASSEN: Yes, with clearly the Turitea being at the top tier of wind resource?

[4.30 pm]

15 DR HEFFERNAN: Yes, absolutely, Turitea is in all our prospective wind developments is the flagship, potential wind farm because of the outstanding nature of the wind resource, because it does have access to the transmission grid and existence of Turitea in our potential portfolio actually is providing the underpinning to invest in the organisational capability to get involved in wind prospects other than Turitea itself.

20

MR MAASSEN: Right.

DR HEFFERNAN: Without Turitea we would not have been able to do that.

25

MR MAASSEN: So the sheer involvement and intensiveness of the process that has been behind things that proceeded today, has developed your capacity and expertise in this topic?

30 DR HEFFERNAN: Yes, the very contested process we went through with Palmerston North City Council in 2005, in which our environmental reputation was a pre-condition for qualifying for the last round of that process. It wasn't until we had won that tender that we made the commitment to wind development that we subsequently did.

35 MR MAASSEN: So in terms of paragraph 6.22 can you give us an idea of the range in a very general sense of sizes that you are looking at?

40 DR HEFFERNAN: Yes. With the exception of Long Gully which is in 6.23 which I can talk about a little bit more, most of these prospects will be well in excess of 100 megawatts, up to the scale at the upper end of Turitea. But scale is only about one thing. Wind quality is always number one. Access to the transmission grid is vital. Without that, it doesn't matter what the quality or the scale is, and in none of those projects do we have either the wind quality that you do in Turitea and

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none of them do we have transmission access secured such as we do at Turitea.

5 MR MAASSEN: Thank you. Now I just want to drill down a little bit more to that. You said well in excess of 100 megawatts. Can I have the range. Is it between 100 megawatts and 330, or - -

10 DR HEFFERNAN: I prefer to defer to someone who will accurately answer that - - -

MR MAASSEN: Okay.

DR HEFFERNAN: - - - rather than me guess off the back of my memory.

15 MR MAASSEN: Per wind farm you are talking about there?

DR HEFFERNAN: Yes. Per wind farm.

20 MR MAASSEN: And in relation to Long Gully I think it is a much smaller project, it is about 12 megawatts, is that right?

25 DR HEFFERNAN: Yes, Long Gully is actually an approach that we are taking, which is actually driven by a response to the parliamentary commissioner for environment report, of 2006. Where we understand that there may be particular small-scale developments that sit in behind distribution level networks, rather than the transmission high voltage group. Whereby accommodation of both access to the low voltage group which is lower cost, and if they have reasonable access to civil work and keep the infrastructure cost of those very small scale developments down and make them viable. At this stage it is an exception, depending on its success, there are two or three other sub 15-
30 megawatt distributional level connection that might get off the ground.

35 MR MAASSEN: You are aware though, are you not, that your competitors or colleagues as you might want to prefer to call them, Contact Energy and Meridian, one has proposed the central wind proposal which I think is in the order of 120 megawatts, is that correct?

40 DR HEFFERNAN: I defer to your knowledge.

MR MAASSEN: And Waitahora, do you know the scale of that?

DR HEFFERNAN: Yes, I do.

45 MR MAASSEN: What is that?

DR HEFFERNAN: Well, Waitahora is part of a large potential development in that region, and in our view, without development of adjacent wind farms, still needs to get transmission, sorry access to the transmission grid. And that is very remote from that site. And in our view we are
5 looking at one of the sites here is Puketoi, which is adjacent to that, and the real challenge for companies such as us is what level investment to make in a resource consent process prior to getting confidence about transmission grid access. And I think in that case it is something in excess of 40 kilometres all the way from the other side of the ranges
10 through to this area around Palmerston North. So it is very challenging.

[4.35 pm]

MR MAASSEN: And so what was the answer to the question about scale or
15 the size of the wind farm?

DR HEFFERNAN: Because, well, sorry, there was an indirect answer. The transmission grid connection that Waitahora will need will be a large, long connection, and therefore the scale of any development in that area or developments will need to be of large size in order to justify the
20 transmission grid that will need to be built specifically to connect those wind farms to the national grid. The consent itself does not mean for - I think in that case for Contact it does not mean it will go ahead unless you can get a transmission grid connection, and that in turn will depend on other wind farms to absorb the cost of that transmission. That is our
25 view.

MR MAASSEN: I understand that point. My question was, and I will come
30 back to that point, what was the size of the wind farm that - - -

DR HEFFERNAN: I cannot recall. I am sure you know.

MR MAASSEN: Around the 120 megawatt size?

DR HEFFERNAN: That is probably - - -

MR MAASSEN: And what you are saying is that actually while that one
40 resource consent application was being sought, the reality behind that in terms of the industry is that they are only conceiving of this as being viable if there is a lot more?

DR HEFFERNAN: That is our view, in that if there are other developments made in that region including Puketoi, then that would make it a much more economic development for Contact Energy.
45

MR MAASSEN: One of the things that you can do with wind energy is add to it from time to time, can't you?

5 DR HEFFERNAN: Yes, but again if you have to invest up front in the transmission capacity and if you have to do that at a very high voltage, 220 kv, then you absolutely need to have initial scale to justify that. Where those incremental developments are done they are typically what is known in the industry as embedded, so they sit within the local
10 distribution network, typically connected at voltages of 33, 66 kv. To invest in the transmission grid is a fundamental step up, and I am not aware of any connections where that is done on an incremental basis.

MR MAASSEN: So with T1, T2, and T3, that was in incremental steps,
15 weren't they?

DR HEFFERNAN: Yes, because Tararua was well embedded and able to be accommodated within the local group.

20 MR MAASSEN: Thank you. Thank you, Dr Heffernan, thank you, your Honour.

HER HONOUR: Thank you. Any other questions from any other parties?

25 <CROSS-EXAMINATION BY MR McCLELLAND [4.38 pm]

MR McCLELLAND: Yes, can you hear me? I just want to check a couple of things quickly. Were you the one that went on Radio Live and said this wind farm was to be the same size as Te Apiti? (INDISTINCT
30 4.38.51)

DR HEFFERNAN: I don't recall the actual interview but I think I do recall being asked about the type of turbines that were likely to be used and I do not ever recall being asked about the size of the wind farm. But I do
35 recall being asked about the size of wind turbines, and I said that I expected that the type of technology would be similar to Te Apiti and therefore of a similar scale.

MR McCLELLAND: And I have only got a couple of points that I need to
40 clarify with you. You are a state owned company, aren't you?

DR HEFFERNAN: My company is, yes.

MR McCLELLAND: Yes. The government has indicated that it wants you to
45 produce more money?

DR HEFFERNAN: It has made that comment in regard to the SOE portfolio generally, rather than about any specific company.

5 MR McCLELLAND: But the direction, whether indirect or direct, is that your company along with others, should be producing more money for the government?

10 DR HEFFERNAN: Well I think it is in the SOE Act actually, which I think is referred to in my evidence, that we are expected to operate as if we were a private sector company and get returns commensurate with that sector. In the case of Mighty River, actually the evidence is that is what we have been achieving over the last decade.

15 MR McCLELLAND: And obviously if you get consent here that would assist your company to meet the government's needs in that regard?

DR HEFFERNAN: If we got our economic assessments right, yes.

[4.40 pm]

20 MR McCLELLAND: Yes. Now in your statement of evidence, you refer to the code of expert witnesses, don't you?

25 DR HEFFERNAN: Yes.

MR McCLELLAND: You are giving evidence as an expert obviously. Paragraph 1.8.

30 DR HEFFERNAN: Yes, in regard to expertise and experience as outlined in my qualifications.

MR McCLELLAND: It is not only that. You are holding yourself out as an expert, that is why you are saying you are complying with it?

35 DR HEFFERNAN: Yes. There is clearly some areas where I am not a particular technical expert in some areas.

MR McCLELLAND: But all of this you have a very clear interest in the outcome, don't you?

40 DR HEFFERNAN: Absolutely.

45 MR McCLELLAND: Yes. So how can you then say that you are complying with the code of expert evidence when you have to give evidence in a - the code says you have to give evidence in an arbitrary and independent way? You can't, can you?

DR HEFFERNAN: I think my record is that I have been able to do that.

5 MR McCLELLAND: But don't you see that you have an interest in the
outcome of this proceeding, so you cannot therefore be giving evidence
in an impartial or objective way, can you?

10 DR HEFFERNAN: As a witness, I am trying to make sure that I can deal with
any - in my evidence I am trying to put factual information in front
rather than biased information, and that is the response to any
questions, cross-examination I receive.

15 MR McCLELLAND: Yes, but the difficulty is when, as an expert, as
someone who is meant to give impartial and objective opinions for the
benefit of the Court, or the Board in this case.

20 MR DAVIDSON: I decided to get to my feet because I know the process is
not as strict as many procedures would be in Court, but to be fair to the
witness, the witness is saying the extent to which he is giving evidence
which relates to expertise, he did so under the code. Otherwise his
evidence has to be honest evidence. But his evidence is not entirely
expert evidence, and that point has not been drawn out of the questions.
25 Dr Heffernan can handle himself, I realise that, but if this is the line of
cross on the obligation declared an expert witness it is going to run
through every single witness we have here to a degree. They don't all
give expert evidence on every topic.

30 HER HONOUR: Yes, I will uphold the objection, Mr McClelland. I think
that is an unfortunate line of questioning for this witness and at the end
of the day the veracity of this witness is a question for the Board.

35 MR McCLELLAND: Absolutely, I accept that. But I also thought it
appropriate to draw this witness's attention to the provisions of the code
of expert witnesses.

40 HER HONOUR: But the kind of objection you are raising, Mr McClelland,
can be shafted home to probably every executive of every wind farm
that we are likely to hear, either as a Board or Environment Court. And
it is very difficult to just discount somebody of the expertise that the
doctor has.

45 MR McCLELLAND: I accept that, your Honour, but from my experience, the
chief executives do not hold themselves out as experts and do not
acknowledge that their evidence has been given in accordance with the
code. But I won't take that any further.

HER HONOUR: Thank you.

MR McCLELLAND: Now, in paragraph 7.1 of your statement you talk about this, you describe this as a world class wind resource. Do you accept that that is something of a catch phrase for applicants such as your company applying for wind consent for wind farm?

DR HEFFERNAN: It is used in a number of applications, and that is simply a reflection of - New Zealand has, by and large, some of the best wind resource for wind generation anywhere in the globe.

MR McCLELLAND: Yes, and I am just looking at things here for the project Mill Creek where it said that it is one of the best sites for wind generation globally, that was Meridian. The South Wairarapa area, this is Genesis, is described as one of the best wind farm sites in the world. A similar claim is made by Contact in respect of Waitahora project. So really, as you say, it does not take the matter much further so far as New Zealand is concerned.

20 **[4.45 pm]**

DR HEFFERNAN: Look I agree. I would refer to Mr Wong Too as being a much more authoritative expert in regard to the relativity of wind class both within New Zealand and within the globe. But I am taking him at his word.

MR McCLELLAND: Yes, thank you.

HER HONOUR: Any further questions from anyone? No, thank you. Thank you, Mr Davidson.

<RE-EXAMINATION BY MR DAVIDSON **[4.46 pm]**

MR DAVIDSON: Just sort of rewinding the sequence of questions a bit. You answered a question regarding the contested process with council. Do you know who you were up against in that process?

DR HEFFERNAN: Yes, yes, we did. And I am being hesitant because I am not sure whether that was ever made public. I just cannot recall. But we did know and we knew we had a very strong competitor who had a local presence.

MR DAVIDSON: And you had presumably from the answer you had to get through the door as I understood your answer, before you then made the commitment?

5 DR HEFFERNAN: As I recall the process, and I was involved in presentations to the council at the time, we did not get into, if you like, a short list unless we had been through a grilling and been able to demonstrate that we could undertake the development at Turitea in an environmentally responsible way. That was a prerequisite for getting involved in a wind farm at Turitea.

10 MR DAVIDSON: Now you heard the submission made this morning with regard to the evidence given in the Motorimu case as to what would work or would not work?

DR HEFFERNAN: Yes.

15 MR DAVIDSON: Part of the submission we made to the Board today?

DR HEFFERNAN: Yes.

20 MR DAVIDSON: If you look at this time line here, now there is a bit of a clutter around sort of April, August, September 2008. And in response to questions from my learned friend, there has been raised the quarterly commissioner for the environment and the AEE. And on this record we have the application by Mighty River Power in August 2008, the appeal hearing in April, Motorimu in April that year. Do you see that?

25 DR HEFFERNAN: Yes.

MR DAVIDSON: And the decision of the Environment Court came out in September 2008 after you made your application?

30 DR HEFFERNAN: Correct.

35 MR DAVIDSON: In the AEE which precedes Motorimu, I just want to see the passage that my learned friend took you to. I do not think he did not read to you, that is fair enough, nor did you read it out. Page 95, part of paragraph 6.3.4 on landscape and visual amenity effects, the passage he referred you to in the penultimate paragraph in page 95, refers to the potential for existing potential wind farms, including the 113 Motorimu turbines.

40 So on the face of it, stating the obvious, but it is referring to the potential of the whole of the Motorimu project there. Now, the next passage states that the addition or removal of Turitea will make very little difference to an area in which views of wind farms are common. Is there any suggestion that the comment that follows as to the additional cumulative impact is therefore considered minor is not

45

inclusive of Motorimu? In other words, it is a statement made in the context of Turitea and Motorimu.

5 DR HEFFERNAN: That is the context in which that statement is made.

MR DAVIDSON: Has there been any change in Mighty River Power's position as to that statement?

10 DR HEFFERNAN: No.

MR DAVIDSON: In this case. So that has been in the AEE since the beginning?

15 [4.50 pm]

DR HEFFERNAN: Correct.

20 MR DAVIDSON: And going further back in time, you were taken to around the council's decision, which is in volume 1 of the PNCC bundle, and you were taken to some paragraphs here, and the date of this, of course, is October 2006. You were taken to paragraph 13.9. Go to 13.9, the issue I want you to, it was raised by my learned friend, it refers to concerns held by submitters about potential turbines on private land. Do you see that?

25 DR HEFFERNAN: Mm'hm.

30 MR DAVIDSON: Can you tell the Board if you were aware of those concerns at the time of the council's decision being taken? It was a big decision obviously on the reserve.

35 DR HEFFERNAN: I think my recollection is that there has always been a council concern from their regulatory and policy perspective, so outside commercial, about turbine proximity.

MR DAVIDSON: Yes. It refers also, the same paragraph, to the fact that council is aware of negotiations by Mighty River by private landowners, so do you recall that?

40 DR HEFFERNAN: Yes.

45 MR DAVIDSON: And 13.1, which again my friend took you to, addresses the potential visual impact wind turbines in the Turitea reserve. So just trying to clarify this, given the question, the document you have been taken to indicates the council is reporting as it were, to itself, on this Turitea reserve change, development, whatever. The passages refer

clearly to the fact negotiations had been going on with private landowners outside the reserve. Did Mighty River Power ever attempt to conceal those things were proceeding, going on?

5 DR HEFFERNAN: I think and my recollection is right from the time of the
initial award of contract with the council, so back in 2005 we had
discussed with council officers that we were interested in including
additional sites adjacent to the reserve in order to get the scale and to
utilise the fantastic resource that exists at Turitea. So that was always
10 open and known about.

MR DAVIDSON: Right. And the passage in the same document at page 48,
you were taken to by my friend at paragraph 8.8, referred to the council
directing the chief executive to advise Mighty River Power when you
15 selected the locations of the number of turbines private land outside the
reserve you would ensure adjoining owners enjoyment is not
unreasonably adversely affected.

DR HEFFERNAN: Yes. Again, if I can put it this way, that was not a
20 surprise to us from our communications with PNCC.

MR DAVIDSON: I have only got one more question, but I regret I seem to
have lost my reference.

25 HER HONOUR: Well, while we ask questions, would you like to find your
reference?

MR DAVIDSON: Thank you. I appreciate that.

30 HER HONOUR: Mr Hudson? Any questions? Yes?

MR BUNTING: I just have one question. You said when you bid for this you
had no wind operating experience as a company. And yet you won the
project. What were the factors do you think that went in your favour so
35 that you were awarded the contract.

DR HEFFERNAN: Well, we had no wind operating experience. We did have
some technical capability on staff, but much more than we do now. But
in my recollection there are really two fundamental parameters. One is
40 our ability, because the council were primarily concerned about the
reserve and building wind farms within the reserve, was around our
capability, our reputation of delivering an environmentally sound
outcome. And so that really spoke to our reputation about how we
managed large scale infrastructure energy projects. So I think that was
45 the fundamental. And as I said before, we didn't get to if you like, bid
at the table without being able to satisfy that.

5 Then the second element was really around the commercial and how we structured in particular an arrangement which incorporated the eco park objectives of the council. So it was I guess our ability to integrate economic and financial considerations into an environmental improvement and objective that the PNCC had. My recollection over the two winning strands of our proposal.

10 MR BUNTING: Thank you very much. Ma'am.

HER HONOUR: No, I have no questions either. Thank you, Dr Heffernan. Yes?

15 MR DAVIDSON: I have found my place, only one question. Volume 1 of the PNCC bundle, tab 6, this is the parliamentary commissioner and just to clarify. Do you recall reading this report?

20 DR HEFFERNAN: Yes, I have read it and it is in my bookcase. I can remember what it looks like.

MR DAVIDSON: Okay. Page 61, you were taken to this passage with regard to the whole question of a decision developers decision makers locating considering location scale. Do you see that?

25 DR HEFFERNAN: Yes.

MR DAVIDSON: And you were taken to the passage about national benefit versus local impact?

30 DR HEFFERNAN: Correct.

35 MR DAVIDSON: The last paragraph, you didn't read, you were referred to it, but not read, it refers to recognising these complexities providing the community values, and avoiding or taking care of high value sensitive locations are key aspects of positive wind farm. Now that is a statement of the commissioner of course, were given such weight as the **(INDISTINCT 4.57.32)** Did that resonate with you? Or was that part of your thinking at the time?

40 DR HEFFERNAN: It has always been our thinking in the way that we undertake our energy development, generation development projects. It has been a cornerstone of the way we have approached geothermal development and successfully. And it is part of the way we think of renewable energy development generally.

45 MR DAVIDSON: That is all I have doctor, thank you. Ma'am.

HER HONOUR: Thank you very much Dr Heffernan.

<THE WITNESS WITHDREW

[4.58 pm]

5

HER HONOUR: Yes?

MR MAASSEN: Thank you, ma'am, if I could distribute my opening statement, is that convenient?

10

HER HONOUR: By all means, it is five o'clock. Would you like to give your opening statement tomorrow morning?

MR MAASSEN: I would be very happy to start it now if you wish. Otherwise I am equally happy to do it first thing in the morning, your Honour.

15

HER HONOUR: Well I think first thing in the morning, Mr Maassen. Would be most appropriate.

20

MR MAASSEN: Thank you, your Honour, thank you.

HER HONOUR: Thank you very much. We will adjourn.

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HOUSEKEEPING

HER HONOUR: We will see you at nine o'clock in the morning.

**MATTER ADJOURNED AT 4.58 PM UNTIL
TUESDAY, 7 JULY 2009**

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