



1 May 2012

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Dear Mr Grainger

**Official Information Act request: Effects of Mixed Ownership Model**

You wrote to us on 29 March 2012 seeking information assessing the effects of the upcoming Mixed Ownership Model on Mighty River Power.

In my response on 26 April 2012, I sought to give you as much information as I could, while at the same time flagging that much of the information falling within the scope of your request would be withheld for a range of reasons under the Act.

Looking again at your request and my response, and now the further email received from Mr Alex Harris, it appears that my response – in particular, the reference to “some documentation” – may have led you to understand that we had identified and reviewed all relevant documents then, for each one, determined the specific withholding reasons which are believed to apply. This is not the case, and so I apologise for any confusion caused.

Your request appeared to be concerned principally with our assessment of the Mixed Ownership Model in relation to the removal from coverage of the Official Information Act, the Treaty of Waitangi, and “administrative requirements”, even though the request was expressly not limited to such questions and sought “any memos, emails, reports, papers, or other documents or forms of information that Mighty River Power has assessing the effects of these upcoming reforms”.

By way of clarification, there is no one document or group of documents that assesses the opportunities and effects of the Mixed Ownership Model on Mighty River Power. Rather, any assessment of opportunities and effects has occurred, and continues to occur, in the context of wider ongoing commercial strategy development for the company.

When the Government announced work toward a Mixed Ownership Model in January 2011 and identified Mighty River Power as one of the potential candidates, we began to consider and

assess the potential opportunities, effects and implications of that policy and the potential related initial public offer (IPO) within the wider context of our business.

A project team (resourced internally and comprising project management, legal, commercial and communications functions) was set up in mid-2011, as an extension of wider, ongoing commercial strategy development, and was charged additionally with preparing the company for the transition to the Mixed Ownership Model. That team, in liaison with our Board and executive management, has worked with officials at the Treasury, shareholding Ministers, investment banks, external legal advisers, accountants, auditors and other consultants appointed by the Crown and relevant to the preparation required for an IPO.

The range of topics with which that team has been and continues to be engaged is extensive - ranging from potential commercial strategies, organisational design and HR implications, through to the actual due diligence process, offer structure and documentation, and capital structure issues. All of the matters considered by that team are addressed in the context of the company's wider commercial strategies, encompass preparation for an IPO and necessarily involve assessment of the opportunities and effects of the new ownership structure on the company.

There is, however, no clear delineation between any assessment of opportunities and effects of the Mixed Ownership Model and the company's wider business strategies. It is not possible, therefore, to separate the two for the purposes of responding to your information request. By way of example, almost every document and communication produced by that project team alone in the last nine months could potentially come within the scope of your request. I have asked for some rough estimates of the volume of their correspondence, and have been advised that that team alone would have generated approximately 15 000 emails. While there will be some duplication in that figure, that does not even take into account the correspondence between members of the executive team and other staff members and with and between board members, or Word and other documents prepared (of which there is a large number). I am sure that you will appreciate the magnitude of the task required to bring those documents together and individually assess them for release to you or withholding, let alone to separate their contents into categories of relevance and irrelevance.

It is company's view that the Official Information Act does not require us to undertake that task. In addition to the reasons for withholding already given, section 18(f) allows us to refuse a request where complying with the request would require substantial collation and research. It is our view that that threshold is met in relation to your request. We are required to consider whether your request could be met by extending the timeframe, or fixing a charge, and to consider consulting with you about such a decision. We have done so but believe section 18(f) is properly applied in this case.

It would perhaps have been preferable to make reference to the volume of material, and section 18(f), in my letter of 26 April 2012, but I wanted first to assist you by providing what was readily to hand, seeking to answer the questions relating to your specific areas of apparent interest by way of summary, and indicating that even if we were to go through all that documentation, that at this stage of the process much of that information would be withheld for the reasons referred to in my letter.

In our view the approach taken is also supported by section 16 of the Act. Section 16(2) provides that we are obliged to provide information in the form requested unless to do so would "impair efficient administration". I have no doubt that that would be the case in relation to your request. For a small dedicated team to have to stop work at a critical time in the company's preparation for a major and complex transaction such as an IPO in order to process an extremely wide ranging OIA request (which could properly be refused pursuant to section 18) would impair efficient administration. In those circumstances, Mighty River Power is entitled to make information available in an alternative way, such as by way of giving a summary or excerpt. I had tried to do this by providing a narrative response relating to your specific areas of interest.

If you would like to narrow your request to more specific areas, we are happy to consider such a request. You are entitled to ask the Ombudsman to investigate Mighty River Power's response to your request.

Yours sincerely



**Glenn Rockell**

Acting General Counsel