

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of a Board of Inquiry appointed under s146 of the Resource Management Act 1991 to consider an application by Mighty River Power Limited for resource consents to construct, operate, and maintain a wind farm at Turitea

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**Final Submission of Counsel for Huatau Marae**

**30 March 2010**

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## **MAY IT PLEASE THE BOARD:**

### **INTRODUCTION**

Nga mihi e te Kaiwhakawa, Nga mihi me nga Mema o tenei Poari

Whakamatau ake ahau i te kohu punehunehu e koriporipo noa mai i ahau, ka mau taku titiro ki pae maunga te tu aro nei  
He punga here kaupapa, he punga here tangata, ue ha.

*Despite the surrounding mist, the mountain tops were visible, they provided me with my reference point*

1. This is the final submission by Huatau Marae. We are joined and supported in this submission by Mr John and Mrs Rosemary Adams.
2. Joined and supported in this submission are also a group of residents from Kahuterawa and Greens Roads and the Pahiatua Track. These residents have come together since the redesign was announced by MRP in September 2009. Many of the residents have made submissions to the Board at this latest Hearing on the redesign.
3. Huatau Marae not only serves the needs and aspirations of 140 whanau but has, and will continue to provide a focal gathering point for the wider community under the *kaupapa* of *manaakitanga* and *kaitiakitanga*.

### **Acknowledgments**

4. Huatau Marae has concentrated on Noise, Traffic, and Cultural Issues. Without the resources to cover other areas requisite to this Inquiry Huatau Marae fully supports the energy, efforts, and contributions of the Tararua Aokautere Guardians, Friends of Turitea Reserve, Palmerston North City Council and fellow submitters opposed to this application.

### **Scope of Submission – Noise - Traffic - Cultural**

5. The scope of this submission primarily focuses on evidence presented to the Board on the redesign. For the sake of brevity and succinctness it is not the intent of this submission to restate in full evidence that has been presented to the Board but rather to provide pointers to issues and matters that we truly believe are of great concern to us. Our main emphasis focuses on the adverse effects of noise, traffic, and cultural and a duty to avoid, remedy and mitigate adverse effects.
  
6. There are other issues that we believe should to be raised as a matter of protocol and public record. These issues relate to political reasons perceived surrounding the reasons for this “Call In”, a duty of care owed to ratepayers and residents from regional, district and city councils, and the frustration of being left to our own devices to represent and protect ourselves with limited resources and crippling costs. We are confident that the Board may appreciate some of our concerns so I will leave these issues and matters there.

### **Noise**

7. There is a duty under the Resource Management Act to avoid, remedy or mitigate adverse effects from an activity. But what are these adverse effects in relation to a wind farm and when should we remedy them?
  
8. The adverse effects of wind farm noise can be defined into three broad groups: annoyance, sleep disturbance and health effects. Substantial evidence has been presented to this Inquiry as to the adverse effects of wind farm noise.
  
9. To avoid, remedy or mitigate adverse effects we must look to see what they are. This means understanding what people affected by the noise perceive and interpret as being the cause of the adverse effects. Clearly, from the

evidence presented, there is a wide gap between parties on the understanding and perception of adverse effects.

10. For starters, the noise experts for MRP have not defined “unreasonable noise” for the purposes of section 16 of the RMA nor have they identified adverse effects under section 17.
11. Evidence concerning wind farm noise and the human perception has been placed before the Inquiry by Dr Robert Thorne and others in the published works entitled “Sound, Noise, Flicker and the Human Perception of Wind Farm Activity”. This work seeks to answer queries concerning the definition of unreasonable noise and the adverse effects of wind farm noise, its assessment, prediction and management. Professor Dickinson has made a notable contribution not only to this work but also we believe to this Inquiry. The Papers in the evidential work are all peer reviewed.
12. We have heard from the various acoustic consultants that the New Zealand Standard levels are acceptable or in compliance at Makara. We have heard from residents at Makara and Te Rere Hau that they are badly affected by unreasonable noise causing adverse effects of annoyance, sleep disturbance and health effects in their homes.
13. Many residents at Makara have taken exception to Mr Botha indicating at this Hearing that the tonal issues at Makara have been remedied. From 1 March to 23 March 2010 the Wellington City Council has received 49 further complaints about the noise. Unreasonable noise from Makara should have been stopped in August last year yet it continues.
14. It is clear, therefore, that application of the wind farm standard NZS6808 is not effective in avoiding, remedying or mitigating adverse effects. Some

surety of definition of “unreasonable noise” must be defined before clause 4.4.4 of NZS6808 can be applied.

15. It is equally clear that a practical administrative procedure needs to be put in place to apply the provisions of the Resource Management Act and Council’s District Plan applying NZS6808:1998. The following definition of unreasonable noise is fundamental to this process. From the evidence presented “Unreasonable noise” is a sound or vibration that is:
  - (i) annoying to a reasonable person;
  - (ii) injurious to personal comfort or health, including sleep disturbance;
  - (iii) a disturbance to the quiet enjoyment of land including the grazing of stock or keeping of animals;
  - (iv) observed to have a detrimental affect on wildlife or the environment.
  
16. There has been some serious debate around evidence presented by noise acoustic experts at this Hearing. Their evidence is based on questionable scientific and black box modeling methodologies that arrive at predictions without seriously considering confidence levels. This evidence is well beyond the comprehension of most but at best it exposes differences of best practice in the acoustics industry. One view of acoustics people acting for wind farm applicants is that they can safely set the noise limits unilaterally on behalf of residents.
  
17. The noise experts, apart from Dr. Thorne, offer nothing to avoid, remedy or mitigate adverse noise effects before consents are granted preferring to remedy after consent by applying standards that do not work or de-rating offending turbines which is dubious at the least.
  
18. On the other hand we have provided a comprehensive Noise Management Plan with capability to avoid, remedy and mitigate adverse effects. Huatau Marae have proposed set-back distances for the Turitea Wind Farm Noise

Management Conditions as part of the approval process under NZS6808:1998 clause 4.4.4.

19. We believe that setback distances are a best practice to manage noise because they give certainty of application to the applicant, residents, and approving authority, and incorporate known levels of noise reduction. There will be reduced complaints and reduced compliance monitoring required.
20. When used in association with a comprehensive complaint actioning process the whole system becomes very robust and achieves a certainty of best practice for risk management of adverse effects.
21. The Turitea Wind Farm Noise Management Conditions proposed by Huatau Marae and associated community groups have been robustly developed to provide certainty of application and fairness between the needs of the applicant and needs of residents.
  - (i) A cornerstone definition for unreasonable noise has been developed from the evidence presented at this Hearing.
  - (ii) A setback distance of 2000 metres is recommended as being the distance between the nearest wind turbine within the wind farm and any noise sensitive place such as a dwelling, marae or retreat.
  - (iii) A noise mitigation zone of 3500 metres is proposed for mitigation of unreasonable noise that may affect residents within their homes.
  - (iv) A fast complaint process is recommended applying a noise abatement regime.
  - (v) A shut-down process is defined following substantial validated complaints.

(v) A shut-down process is defined following substantial validated complaints.

(vi) The balance of the conditions are refinements to the processes described in NZS6808 or from the Makara approval conditions. Some compliance conditions implement provisions of NZS 6808 but these are secondary to the setback distances and have been included for objective assessment as part of the complaints process. Definitions and assessment procedures for audible and inaudible noise and vibration are included.

22. Before moving away from noise it would be remiss not comment on matters that we believe compromised our efforts to present noise evidence in a fair and reasonable manner to this Inquiry. MRP effectively engaged two noise experts, one purporting to be a peer reviewer. The role of a peer reviewer has to be highly questionable.

23. Mr Day was sworn as an expert witness. All the evidence presented by Mr Day was clearly not that of a peer reviewer particularly in his rebuttal evidence of Dr.Thorne and others. In a caucusing situation MRP had two noise experts that we believe was an unfair advantage. The evidence presented by Mr. Day in our view should be dismissed from this Inquiry and any appropriate action taken.

#### **Traffic**

24. In the overall scheme of things traffic is probably viewed as a minor matter. However, traffic is a major concern to the residents of Kahuterawa and Greens Roads. Ordinarily, traffic would not have been an issue with the redesign but there are matters that have come to the attention of residents that were not known prior to the redesign announcement.

residents about the reliability or trustworthiness of MRP. This new information has dramatically changed the views of residents who are uneasy and suspicious of MRP.

26. The redesign should have reduced the amount of traffic on Kahuterawa and Greens Roads had the information available before the redesign been correctly represented. Challenges to information presented prompted the traffic expert for the applicant to carry out more research. This new research and methodology is still arguably inconsistent if not flawed.
27. Traffic meetings called by MRP were viewed with some skepticism. The residents felt that the process was already predetermined as to the traffic management plan, conditions and community liaison group. While the residents have contributed to the conditions as agreed by traffic experts the residents would like to contribute further to a process they all believe they have not completed.
28. There is much concern by the residents around traffic volumes, amenity values being destroyed, and health and safety risks by turning country roads into two way highways.
29. We recommend to the Board that if the redesign is consented, in what ever shape or form, that the residents have a future say in the traffic management plan and conditions. Ultimately, the residents would not like to see Kahuterawa and Greens Roads not used by MRP for the construction or operation of the proposed wind farm.

#### **Cultural**

30. It is with sadness to hear Mr. Peter Te Rangi in his representation on 17 March that he was inherently suspicious of processes that are not open or transparent and as a member and beneficiary of Rangitane o Manawatu he

transparent and as a member and beneficiary of Rangitane o Manawatu he was not able to get a copy of the MOU between MRP and Tanenuiarangi o Manawatu for “confidentiality” reasons.

31. Likewise, the same confidentiality treatment for the MOU between MRP and Te Rangimarie Marae has been repeated by Te Rangimarie Marae Trustees with whanau requesting to see the MOU but being declined. We are particularly disappointed with Te Rangimarie Marae’s position because they consecrated Huatau Marae as a *waahi tapu* and respected and supported Huatau Marae during the change of purpose for the Turitea Reserve. The very nature of MRP’s consultation process with iwi, hapu and whanau groups is complicit in damaging relationships between and within hapu and whanau and seriously undermines tikanga Maori.
32. In spite of our disappointment, Huatau Marae remains committed to *tikanga Maori, manaakitanga, and kaitiakitanga* and as a *waahi tapu* holds fast to their right to *tino rangatiratanga* and the “full and exclusive and undisturbed possession of their land” insisting on continued peace and tranquility for Huatau Marae.

## CONCLUSION

33. Huatau Marae, Mr and Mrs Adams and the residents group respect the rights of landowners to use their properties to put turbines on. In return Huatau Marae asks that these landowners reciprocate the same respect by not subjecting them to enduring adverse effects as a result of this activity.
34. Through the course of this Hearing including up until we made our representations on 17 March we have always shown due consideration towards the possibility that this wind farm application may be approved in some shape or form. This consideration has not changed. However, since our noise evidence has been presented to the Hearing we have amended our previously held position. Previously we have worded our

recommendations to the Board by starting with a “decline in its entirety but if this is not possible then we request that the following turbines be removed.....”

Our amended recommendations are respectfully left for the Board to consider;

1. That consideration be given to Kahuterawa and Greens Roads not be used by MRP for the construction or operation of the proposed wind farm;
2. That a 2 km set back position from residences and noise sensitive locations be adopted with mitigation up to 3.5 kms as proposed by Huatau Marae for the Turitea Noise Management Plan; and if this is not possible
3. That the application to establish a wind farm at Turitea be declined in full.

No reira,

Tena koutou, tena koutou, tena koutou katoa.

**Wayne Johnson**  
**Counsel for Huatau Marae**  
**30 March 2010**