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**BEFORE THE BOARD OF INQUIRY**

*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 and operate a Windfarm at Turitea

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**MEMORANDUM OF COUNSEL  
FOR PALMERSTON NORTH CITY COUNCIL REGARDING WIND AS A  
NATURAL FEATURE**

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## **MAY IT PLEASE THE BOARD**

1. While natural forces and processes (often called dynamic elements) can and often do contribute to the distinctive or outstanding qualities of a natural feature the natural feature comprises the physical elements capable of modification and not the processes or forces per se. Parliament did not intend to protect the elements forces and processes distinct from the modifiable physical form. Thus, special geothermal processes that contribute to a distinctive Central North Island landscape may result in an outstanding natural feature however, the geothermal resource is not protected by s.6(b). Similarly a particularly strong coastal current is not protected separate from the physical biotic and abiotic qualities that result in the coastal marine area.
2. *Long Bay's* test (at para [135]) which builds on *Wakatipu* indicates for s.6(b) something that is physical or something that is able to be modified is required. The list of factors indicating naturalness are all things that are something physical or capable of modification.
3. It is also consistent with the following passage from *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council* [1999] NZRMA 209 at para [59]:

“Turning to the facts of this case, the first and most important alleged adverse effect is the effect of the proposed mussel farms on the “natural character of the coastal environment”. This of course is a matter of national importance under section 6 of the Act. That section obliges us to recognise and provide for three relevant matters of national importance:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area),... and the protection of [it] from inappropriate... use, and development.
- (b) The protection of outstanding natural features and landscapes from inappropriate... use, and development...
- ...
- (d) The maintenance and enhancement of public access to and along the coastal marine area....

**The first two of these both have, at least in the present context, a strong visual or landscape component."**

[Emphasis added]

4. It is submitted the wind contributes to the distinctive and special qualities of the Turitea Reserve but is not a resource of itself protected by s.6(b).

John Maassen