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Dated: 6th July 2009

FOR PALMERSTON NORTH CITY COUNCIL

OPENING STATEMENT

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 Turtlea

BEFORE THE BOARD OF INQUIRY

7/7/09

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MAY IT PLEASE THE BOARD

1. Last Thursday afternoon Judge Kenderline requested that all represented parties make a short opening statement on the first day of this hearing. This is that opening statement and is not a comprehensive set of submissions on behalf of Palmerston North City Council (PNCC). ⁵ Those submissions reflect the work of the Council's experts following their analysis insulated from the political arena.

2. Understanding the environmental context is essential to the assessment of any resource consent application and several site visits are required in this case to comprehend that environment well. The proposed wind farm is located within the Turltea Reserve and on surrounding foothills.

3. You may be aware that the decision of PNCC to amend the purpose of the Turltea Reserve to provide for renewable electricity generation was challenged in the High Court in 2006. That challenge was determined in 2007 by the eminent administrative law jurist Baragwanath J. in a case called *Friends of Turltea Reserve Society Incorporated v Palmerston North City Council* (PNCC Document Bundle Volume 2 Tab 4).

4. Unusually for the High Court, Baragwanath J. undertook a site visit. In the opening paragraph of his judgment he notes the Turltea Reserve is a "highly significant landscape feature for the Palmerston North area." He describes it as clearly visible from the City and a "magnificent landform."

5. That summary is apt and, in PNCC's opinion, unarguable.

6. The private land on which turbines are proposed comprise visually significant foothills that are acknowledged by all landscape architects

to be special amenity landscapes². They fall into the same class as the Te Mata ridge line dealt with by the Environment Court in the decision *Motorimu Windfarm Ltd v. Palmerston North City Council*³.

7. The Tureia catchment is pristine and ecologically significant as is the indigenous vegetation.

8. Baragwanath J, in the *Friends of Tureia Reserve*, described the decision of the Council to change the purpose of the Tureia Reserve as a status decision, not an assessment of effects or an assessment for the purposes of the Resource Management Act (see, in particular, paragraphs 149 and 150). This is also unarguable.

9. Therefore every reasonable and informed person understood that at some point a decision maker would undertake a full assessment of the final design MRP came up with and the decision maker would make a determination under the Resource Management Act of the acceptable extent, if any, of wind farm development. The Council considered the decision maker had to be an independent expert body⁴. The Council expected that the decision maker would have all the necessary information to make an informed decision. The responsibility for decision making has fallen on the Board.

10. Baragwanath J. described the future resource management decision to be made by the Council (or its independent commissioners), as being unfettered by prior contractual arrangements⁵. Similarly the Board has an unfettered discretion.

11. Notwithstanding that the Council's decision in October 2006 was a status decision and not an effects assessment, the Council did have some information on effects. That included a preliminary landscape

² The SAL concept comes from the *Pigeon Bay* criteria and refers to significant landscapes which do not qualify as outstanding landscapes
³ Decision W067/2008
⁴ Resolution 18.6 - PNCC Document Bundle Volume 1 pg 48
⁵ *Friends of Tureia Reserve* n 1 at para 104

impact assessment by the landscape architect, Stephen Brown, based on 63 V90 turbines solely within the Turtia Reserve⁶. He assessed the potential visual effects to be moderate to high. While the Council in its decision considered that visual effects, including cumulative effects, were best assessed at the resource consent stage, the decision of the Council records its concerns about potential visual impacts and provided MRP some reasonably clear signals including:

(a) the seriousness of the cumulative effects consideration,⁷ particularly in light of the recently filed Motorimu application;

(b) the special need for careful design to address landscape considerations⁸;

(c) the importance of ensuring turbines on private land do not unreasonably affect neighbouring residential properties⁹.

12. The Board is requested to read the Council decision of October 2006 **(PNCC Document Bundle Volume 1, Tab 1)**.

13. PNCC did conclude on the basis of the preliminary assessment of Mr Brown that there might be an acceptable wind farm design within the Turtia Reserve¹⁰. The evidence of Shannon Bray, one of the two landscape architects for TAG, suggests a 44 turbine wind farm extending to Marima along the Turtia Reserve ridge line¹¹. This would equate using 3 MW turbines, to a total wind farm size of 132 MW. This is one third larger than T3 at 93 MW and broadly similar to the recent Central Wind and Waitahora proposals in Taihape and Southern Hawkes Bay respectively. This evidence of Shannon Bray demonstrates that the preliminary conclusion of PNCC in October 2006 that the

⁶ PNCC Document Bundle Volume 1 Tab 1, s13, pg 27 onwards

⁷ PNCC Document Bundle Volume 1 Tab 1, pg 30, para 13.7

⁸ PNCC Document Bundle Volume 1 Tab 1, pg 31, para 13.11

⁹ PNCC Document Bundle Volume 1 Tab 1, Resolution 18.1, pg 48

¹⁰ PNCC Document Bundle Volume 1 Tab 1, para 13.11

¹¹ For a good presentation of the key ridges and high points see SOE of D! Lucas and in particular the catchments 1 to 22

Turitea Reserve might absorb some wind farm development was not fanciful. Certainly Mr Bray's idea of 'skylining' is an accepted technique to mitigate visual effects and to that extent is consistent with the expectation of the current Turitea Reserve Management Plan that landscape effects of any wind farm would be mitigated. Presently, the balance of PNCC's evidence does not support turbines extending as far along the ridge line as Mr Bray suggests.

14. The period 2005 to 2008 was a dynamic one for the emerging wind farming industry. Wind farms became the focus of close assessment¹². This is common when an activity is new and communities and public organisations endeavour to comprehend its implications. Analysis included the Parliamentary Commissioner for the Environment report on wind farming issues called *Wind Power People and Place*. That report was released in November 2006, one month after the decision to change the status of the Turitea Reserve and in part in response to rising community concern at cumulative effects (**PNCC Document Bundle, Volume 1, Tab 6**).

15. Demand for wind farming space has been felt most acutely in the Manawatu¹³. This community is the canary in the mine in relation to cumulative effects. That concern has been given some validation by comments in the Parliamentary Commissioner for the Environment Report and more recently in the *Motorimu* decision¹⁴.

16. MRP had signals between 2005 and 2008 from several quarters that it was going to be very important to design a wind farm which in its scale and configuration was sensitive to landscape considerations and the amenity of adjoining residents. Regrettably, PNCC considers that MRP has failed to place adequate weight on these considerations in the design process with the consequence that the present scale and configuration of the proposal has serious adverse effects on visually

¹² *Meridian Energy Ltd v. Wellington City Council* W031/2007 and the *Motorimu* decision
¹³ Melhuish SOE Figure 1 and Table 33
¹⁴ *Motorimu* para 196

sensitive landscapes, on a regionally outstanding skyline, and serious amenity impacts on urban and rural residential communities on the eastern side of the Manawatu River. In fact, it might be said that MRP, having had the gate opened by the 2006 decision, then chose to drive a coach and horse through it and that is exhibited by the doubling of the size of the wind farm from that considered in October 2006 as a result of private arrangements with adjoining landowners. While it may have acted with positive intention to achieve a range of objectives, it has nevertheless missed the mark in terms of sustainability. In these choices, the political body of the Council had no hand and has no contractual responsibilities relating to private land other than an inspecific obligation to support negotiations¹⁵. The wind farm project PNCC dealt with in the contract does not (as the term 'wind farm project' is defined in the contract) include turbines outside the Turitea Reserve.

17. Good wind farm design that respects the landscape values and its content, and which does not exceed the landscapes' absorption capacity, is something increasingly important in countries which have similar aspirational targets for renewable energy to New Zealand¹⁶. New Zealand must demonstrate an equally robust concern with design; otherwise communities will suffer and the support for renewable energy will decline. There are signs that this is happening and PNCC considers that these signs are not being read well at a national level¹⁷.

18. Deficiencies in design and appropriate planning in the Manawatu context has been demonstrated by the variable scale and design of wind farms already developed on the Tararua. There is even agreement between Mr Wyatt and other landscape architects that Te

¹⁵ See contract attached to Shaw Rebuttal SOE.

¹⁶ Planning guidance and assessment guidance is found in Scotland and UK. There is extensive work on this subject in the Netherlands. Also see PNCC Document Bundle Volume 1 Tab 4 and 5.

¹⁷ Consider for example ECCA surveys for the period 2004 – 2008 as well as the trajectory of public concern in the Manawatu as exhibited in Table 1 Melhush SOE

Rere Hau has not been a success from a design perspective. This, however, hardly justifies a reduced need for good design south of Pahiatua Track which appears to be in part the view of MRP's experts when considering cumulative effects¹⁸. PNCC says the reverse is true.

19. PNCC's role in this phase of what might be termed the Turitea Windfarm Project is to assist the Board in its inquiry as to how best to achieve sustainable management. PNCC has presented expert evidence on a range of effects that are of significance in this case. This fulfills a commitment to the public in October 2006¹⁹. Environmental justice and the ethic of sustainability is only achieved by good information.

20. Major potential effects associated with TWF include:

- (a) landscape and amenity impacts;
- (b) noise impacts;
- (c) water supply impacts;
- (d) water quality impacts;
- (e) ecological impacts
- (f) construction and traffic impacts.

21. In each of these areas the Council's experts have worked with experts for other parties to narrow the issues. There has been substantial progress on many of these issues such that the Council's position is that conditions are in principle sufficient to address many effects. However, there is likely to be debate about the precise nature of those conditions and the magnitude of any remnant effect. These matters are being worked on continuously. Areas of likely agreement include

¹⁸ Certainly Mr Wyatt considers that there are already numerous turbines on the Tararua Backdrop and the addition of the TWF will not significantly alter the balance particularly in light of Te Rere Hau. This as Ms Williams in her S.42A Report says is antithetical to the notion of cumulative effects

¹⁹ Resolution 18.6 - PNCC Document Bundle Volume 1 Tab 1 page 48

water supply protection, construction, traffic and noise. In relation to water supply protection, key areas of remaining debate include:

- (a) the extent of prior water quality monitoring before physical works;
- (b) whether the general industry standard "Erosion and Sediment Control for the Wellington Region" is sufficient. PNCC says it is not;
- (c) PNCC wants flocculation as a tool in sediment control;
- (d) MRP calculates sediment load at 25 tonnes (Levy rebuttal 4.5), whereas PNCC calculates a yield of 500 - 1,500 tonnes (Male SOE para 45);
- (e) Both parties acknowledge an additional nutrient loading of approximately 400 kgN/year and 35 kgP/year.

22. Concerning noise, the situation can be summarized as follows:

- (a) An acceptable night time standard is 35dBA²⁰. Monitoring data indicates that this standard will seldom be achieved with the consequence that an unspecified amount of turbine de-rating is required of turbines closest to residential areas;
- (b) An acceptable day time standard is 40dBA. Monitoring data indicates that this standard will from time to time not be achieved, with the consequence that an unspecified amount of de-rating will be required of turbines closest to residential areas;
- (c) There are elements of enforceability risk and compliance risk that are being debated although it is noted MRP's environmental compliance system are generally considered excellent.

23. In relation to ecological effects, the Council's position can be summarised as:

(a) Placement of turbines. PNCC considers that those turbines within the Game Ridge Group will have unacceptable effects and should be deleted from the proposal. In addition to sediment issues, this group will fragment the forest.

(b) PNCC also has concerns about the turbines on South Ridge (turbine numbers 28-33). These are located on steep slopes at the headwaters of the reservoir catchment.

(c) PNCC also has concerns about the turbines on Love Ridge (turbine numbers 127-135). Again, these are adjacent to steep slopes and close to water courses which, while outside the reservoir catchment, are pristine. MRP has to construct a road to access these turbines.

(d) Withdrawing these three groups of turbines (Game Ridge, South Ridge and Love Ridge) would have a significant positive result in reducing the cumulative ecological effects of the project.

(e) PNCC has concerns about the soil dumps and cleared vegetation dumps which, while they are now to be placed outside the reservoir catchment, will nevertheless be placed within the catchment of other pristine streams.

(f) PNCC has concerns about catastrophic failure of earthworks, and is still looking for more robust conditions to avoid this risk.

(g) Birds. Because there is insufficient information, it is currently impossible to create a satisfactory condition for a resource consent. PNCC proposes that a bird monitoring program run for a period of years, and that the information from that program

be analysed, and that the consent authority have the power to review conditions to mitigate adverse effects. PNCC understands MRP agrees to this in principle.

24. In relation to landscape effects, there is an unbridgable gulf between the position of experts of all parties including the Board's S.42A expert and the position of MRP's witness Mr Wyatt on the effects of the TWF in its present scale and configuration. PNCC considers that MRP has seriously understated the potential impacts on landscape and amenity. These effects will adversely affect the City's sense of identity and place and the amenity of the suburbs on the eastern side of the City.

25. PNCC does not deny the considerable benefits of renewable energy, and the quality of the wind resource on the ridgelines in particular. All of these matters must go into the mix. However, the *Motorimu* decision is highly relevant to the balancing exercise between these matters and landscape and amenity impacts. That decision deals with similar issues and a landscape only 2.4 km south of the site²¹. Where parallels exist rationality demands a degree of consistency in decision making by the Board. After all, what has changed in the last 8 months since *Motorimu* that could possibly justify a different balancing in relation to effects on amenity of residential properties close to turbines on the foothills.

26. The Eco-park concept is not part of the application. MRP understood this and its implications (see K Price email April 2008, **PNCC Document Bundle Volume 1, Tab 8**). There is no decision on the expenditure of funds of PNCC in accordance with an approved plan. Funds derived from any wind farm development are almost certain to be used for ecological purposes and this would be consistent with the Turltea Reserve Management Plan²² and an environmentally sound

²¹ Baker SOE – Appendix 1, Map 1

²² Amended Turltea Reserve Management Plan attached as appendix 1 to the October 2006 decision PNCC Document Bundle Volume 1 Tab 1 and in particular TRMP s 4, pg 14

idea viewed from an ecological perspective. Significant revenue would still be received from a wind farm of a much smaller scale. The turbines on private land contribute nothing to the ecological qualities of the Reserve and are bereft of any landscape mitigation whatsoever. If the ecological benefits of the Eco-park concept are to be considered under S.104(1)(c), RMA, then PNCC will make submissions on weight.

27. There is some economic evidence for MRP²³. It is short on quantifiable data. The claim by the economist Mr Layton that PNCC's expert, Ms Melhuish, is inviting the Board to be an electricity planning authority is simply wrong and misunderstands the point behind her evidence. The Board is a resource management authority. It is not concerned with viability which is for the boardroom²⁴. PNCC considers the Board should set a limit of acceptable environmental impacts (both assessed individually and cumulatively) having regard to the receiving environment and the ethic of sustainability. This could mean a smaller wind farm which as Ms Melhuish points out will be perfectly economic.

28. Increasingly, the Environment Court in wind farm cases is setting an envelope of acceptable effects and not accepting that there is a simple choice between approving a project in its entirety or not. PNCC will, throughout this process, explore conscientiously a scale of acceptable development that may be consistent with the ethic of sustainable management. Even amongst the experts called by PNCC there is a diversity of views, all of which need to be continuously knitted together as information comes forward to present to the Board a conclusion as to available options that might best serve the lodestar of sustainable management. Therefore, for PNCC this process is a pilgrimage and no person should form the view that the evidence of experts for PNCC as recorded in exchanged statements are their final view. The experts can refine their views in light of the evidence presented to the Board. Any potential solutions PNCC may propose

²³ Brent Layton SOE.

²⁴ NZ Rail v. Marlborough District Council [1994] NZRMA 70, 88 and *Motormu* para 55-58

may include proposed turbines in the Tūritea Reserve and on adjacent land on South Range Road as shown in the plans but is very unlikely to include any private land on the foothills by virtue of the effects on landscape amenity.

29. Environmental wisdom often springs from the community, and community acceptance can be a crude measure of the likely impact on the environment of a proposal. The Committee's views should not be lightly discounted, since the community understands its environment best and must live with any decision. The level of opposition to this proposal is unprecedented in the Manawatu and arguably unparalleled for any wind farm application in New Zealand²⁵. This is a clear signal that the harmonic of sustainability is not being achieved by this proposal in its present form. Even people who were not opposed to the turbines in the Tūritea Reserve and live in neighbouring areas have been shocked at the intensity of turbine development proposed²⁶ and are therefore brought into this process. In its present form, TWF would be imposed without the support of the Council's experts and a substantial part of the Palmerston North community. It is hoped that a solution that may emerge (which in turn will be contingent on any decision of the Board) carries with it much broader support. PNCC is not unmindful of the importance of renewable energy. Its past record speaks for itself.

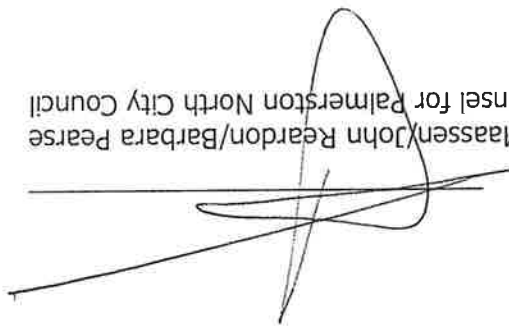
30. Time and again it has been demonstrated that effective decision making can provide sensible outcomes that are more broadly acceptable to the community. PNCC considers that simply approving the proposal in its present form would create an unacceptable legacy and set the bar for future wind farm applications nationwide, in terms of acceptable effects near urban populations, far too low. Arguably it

²⁵ This statement is based on an analysis of submissions on White Hill, Hayes and Mahiniarangi Projects – see Graham *et al* "Public Perceptions of wind energy developments: case studies from New Zealand"; *Energy Policy* (2009)
²⁶ For example Mr and Mrs Lowe who are badly affected residents of Ngahere Park did not oppose a wind farm on the Tūritea Reserve but have exchanged evidence on the effects of their superior quality property

would be a new frontier internationally²⁷. In short, TWF in its scale and configuration is manscape grafted onto landscape in an aesthetically unappealing way and is simply not appropriate close to a city.

31. I would like to express my gratitude to my colleagues Mr Reardon and Ms Pearse and the related experts for their work on particular effects. Mr Reardon has dealt with water supply protection, construction and ecology and Ms Pearse with noise. They will be cross examining counsel of other party's witnesses on those topics.

John Maassen/John Reardon/Barbara Pearse
Counsel for Palmerston North City Council



²⁷ See Melhuish SOE and her conclusion that the scale and context of development for TWF is unprecedented in an international sense

