Judge LJ Newhook
Acting Principal Environment Judge

25 September 2011

Dear Judge Newhook

Ref. Final Report and Decision of Turitea Wind Farm (Sept. 2011)

The Noise standard and the Turitea wind farm.

There are a number of very disturbing but interlinked aspects to this issue.

1/ The influence of vested interests in designing the noise standard.

The following excerpts are from the Turitea wind farm hearings. A link to the full transcript is provided. They show the influence of vested interests in designing the noise standard. The West Wind and Te Rere Hau wind farms have generated a deluge of complaints which remain unresolved.

Dr Chiles in his evidence before the Board of Inquiry is questioned on the makeup of the committee devising the new standard. Dr Chiles refuses and the matter is left. The transcript shows Judge Kenderdine does not intervene.

Below the transcript excerpts is the membership of the committee. Mr John Carr of Greta Valley in Canterbury was able to obtain this list and other details of the committee's deliberations under the Official Information Act. The Christchurch Press using this information wrote two articles exposing the standard – see copies attached. This standard is used for the Turitea wind farm.

The Board of Inquiry was informed by me of Mr Carr's revelations about the seriously compromised noise standard, but deliberately ignored the protests of submitters who claimed their amenity values were hopelessly compromised by the application of this standard to the rural residential land surrounding the wind farm. Hundreds of properties are identified in the Final Decision as potentially affected.

2/ The failure to apply high amenity protection.

Both Palmerston North City Council and Tararua District Council have not provided protection for communities in their district plans by designating residential and residential rural areas as high amenity. It is now too late and Palmerston North, a city built on the flood plain of the Manawatu River, can no longer effectively continue development on the much safer higher ground under the consented wind farm. The Board was told about this, but, as in every case where the Board perceived an obstacle in the way of approving the wind farm, the evidence was simply ignored.

The behaviour of PNCC is driven by the secret contract (The Wind Farm Agreement) it has with MRP, and this has been revealed to you in earlier correspondence.

Transcripts can be accessed on the following link:

http://www.mfe.govt.nz/rma/call-in-turitea/hearing-schedule/day-33-hearing-schedule.pdf

Transcript excerpts

DR HUFFMAN: Good afternoon, one quick question. You said that you had a committee without bias and that everyone had provided a technical expert. Can you confirm how that does not show bias?

DR CHILES: In the same way that the experts in this appeal, they are appointed by different parties but they are all acting on the basis of their technical expertise. So within the committee the various bodies appointed essentially independent experts to operate for them.

The only exception which I mentioned was the executives of community boards where they were not able to source an expert, they felt they wanted a resident and so in that instance it was not someone with a technical background.

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MR KLEIN: Sir, could you please clarify what the point – I must have missed that. I did not quite understand maybe. You said one of the Makara residents was on the committee "keeping you honest" were your words I think. I understand your standards were set up as a draft before Makara was fully operational?

DR CHILES: That is correct.

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MR HUDSON: Just one question. You mentioned the list of organisations that are represented and it is noted in the standard, could you just – not now- but leave us the names of the people that did represent those organisations?

DR CHILES: I can if you need it. Generally we work on the basis that those people are confidential within committee.

MR HUDSON: Well if it is confidential then I do not want to breach that. When we asked Mr Hegley he said he worked for EECA which I had not anticipated, so it is that - - -

DR CHILES: As I was saying, there is no point EECA sending along a bureaucrat to come and talk about how to measure decibels.

MR HUDSON: Yes.

DR CHILES: So it is important that all those organisations are represented but they are done so through a technical expert who can then sort of engage meaningfully.

If you need a list, I can provide a list – not if you - - -

MR HUDSON: No, if you prefer not I will not push on that. Thank you.

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Here is the list of committee members who devised the noise standard. Dr Chiles was most anxious that the membership not be divulged and it's easy to see why. The wind industry has devised a standard it wants.

Stephen Chiles, chairman, URS New Zealand Ltd. Represented the NZ Acoustical Society. Now advising Meridian Energy Ltd on Hurunui Wind, **Vested interest**

North Canterbury. **Nevil Hegley**, consultant. Representing Energy Efficiency and Conservation Authority. Has consulted for Mighty River Power and Genesis Energy. Noise consultant for Mighty River Power's Puketoi project.	**Vested interest**
Malcolm Hunt, Malcolm Hunt Associates. Represented NZ Institute of Environmental Health Inc. Prepared the environmental noise effects report for Mt Cass wind farm, North Canterbury, on behalf of Mainpower and Te Rere Hau on behalf of NZ Wind Farms.	**Vested interest**
Miklin Halstead, Marshall Day Acoustics. Represented the NZ Acoustical Society. The business has acted as consultant to a number of the wind energy companies, including Waitahora, Puketoi and Turitea.	**Vested interest**
Paul Botha, Meridian Energy Ltd. Represented the NZ Wind Energy Association. Now working on Meridian's Hurunui Wind, North Canterbury.	**Vested interest**
Fraser Clark, Chief executive of NZ Wind Energy Association.	**Vested interest** **No acoustical training**
Philip Dickinson, Massey University. Represented Massey University. Professor of Acoustics and Human Health, Massey University. It was noted in the standard that Professor Dickinson did not support it.	***The only dissenter*** ***&*** ***The most qualified***
George Dodd, University of Auckland. Represented University of Auckland. Head of Acoustics Testing Service.	
Matthew Borich, Wellington City Council. Represented Local Government NZ. Compliance officer.	Council employee
Vern Goodwin, Southern Monitoring Services. Represented Ministry of Health and Resource Management Law Association.	
Rachel Treston, Represented Ministry of Environment. Senior analyst, resource management tools team.	**No acoustical training**
Ruth Paul, chairman Makara and Ohariu Community Board. Represented Executive of Community Boards.	**No acoustical training**

The committee was funded by the Wind Energy Association and the Energy Efficiency Conservation Authority.

A letter written by Casimiro Cinque, general manger of Solutions Standards New Zealand, was published July 26 2010 in the New Zealand Farmers Weekly. In it he states:

*The development committee consisted of **12** representatives nominated by the following organisations.*

- *Energy Efficiency and Conservation Authority* *Hegley*
- *Executive of Community Boards* *Paul*
- *Local Government New Zealand* *Borich*
- *Massey University* *Dickinson*
- *Ministry for the Environment* *Treston*
- ***Ministry of Health*** ***Goodwin***
- ***New Zealand Acoustical Society*** ***Halstead and Chiles***
- *New Zealand Institute of Environmental Health INC* *Hunt*
- ***New Zealand Wind Energy Association*** ***Clark and Botha***
- ***Resource Management Law Association*** ***Goodwin***
- *The University of Auckland* *Dodd*

The committee was stacked. The 11 organisations quoted by Cinque were covered by the 12 voting participants I have highlighted above. This a national disgrace and, in my opinion tantamount, to fraud.

Note: The key personnel involved in drafting the Turitea wind farm noise conditions.

1/Christopher Day is a founding partner of Marshall Day Acoustics, represented on the 6808 committee by Miklin Halstead.
2/ Nigel Lloyd currently reviewing the Te Rere Hau noise conditions. These are not being met and PNCC is supporting affected residents in a current, and in all probability futile, court action.
3/ Nevil Hegley representing EECA on the NZS6808 2010 committee.
4/ Dr Robert Thorne, Rotorua and Queensland. Developed independent, impartial, peer reviewed and formally-vetted noise management conditions that were placed before the Board on behalf of TAG and Huatau. Dr Thorne, outnumbered by this cabal of acoustics consultants, effectively had no input into the final noise conditions. Two of the three are directly connected to the NZS 6808 2010 Committee.

The Final Decision makes this statement in relation to the noise standard.

[29] One of the conditions agreed to in the final noise caucusing by Messrs Hegley, Lloyd and Day (which we return to discuss later in this chapter) was clause 3.2, which states:

Notwithstanding section 5.3.1 of the new standard *all residential and rural areas in Palmerston North district plan are available for assessment as high amenity areas despite the absence of explicit recognition of them as high amenity areas in the district plan*. (Emphasis added)

[30] Counsel for MRP rightly raised this clause with Dr Chiles as it runs contrary to what is stated in NZ6808:2010. Dr Chiles responded that the 'high amenity' issue was one of the most contentious in the standard and while to him it was 'something of a sideshow' *he identified that a high amenity area has to be 'specifically identified in the district plan, that the limit is for amenity not health, and that it is intended to provide for additional aural protection to residents from wind farm noise'*. (Emphasis added)

[31] The difficulty we have with the noise consultants' approach (and it was signalled during the hearing) is that the high amenity area provision in NZS6808:2010 effectively cannot apply unless it has been adopted into district plan provisions. The conditions under which a high amenity noise limit in NZS6808:2010 is to be applied is referenced back to Clause 5.3.1, which states:

5.3.1 A high amenity noise limit should be considered where a plan promotes a higher degree of protection of amenity related to the sound environment of a particular area, for example where evening and night-time noise limits in the plan for general sound sources are more stringent than 40 dB LAeq(25min) or 40 dBA L10.

[32] There are no high amenity areas defined in the current PNCC District Plan and to the best of our knowledge none exists in the Tararua District Plan. If, at some future date, plan changes were to be promoted for the Turitea foothills to be rezoned as a high amenity area, it is possible that wind farm operators, rural businesses, the farming community and commercial operators would most likely oppose such a proposal. Even if such a proposal was finally approved, this would inevitably take many years with the high probability of appeals to the Environment Court.

[33] Counsel for the PNCC doubted in his closing submissions whether NZS6808:2010 is 'at all' an improvement for potentially affected residents. *He submits: it is certainly a retrograde step for Palmerston North residents in areas with low background noise levels since the district plan does not identify such areas as high aural amenity areas; aural amenity is only one component of overall amenity and it can apply in highly populated areas as well as rural ones.* (Emphasis added)

Mr Lloyd in his evidence before the Board states

"*I have not considered any noise effects on Tararua District Council residents*."

Astonishingly Tararua District Council did not submit on the Turitea application and this was a very convenient lapse as far as the Board and MRP are concerned, but unconscionable from a local authority.

Conclusion.

PNCC and Tararua District Council have the duty to protect ratepayers from wind farm noise but are unable to do so. In PNCC's case the $3 million *plus* contract penalty can be imposed by Mighty River Power. For Tararua District Council, which has been asleep at the wheel, the odds of a successful rezoning to high amenity areas before the courts is signalled in the Final Decision as a foregone failure. Furthermore there was no possibility of rezoning as high amenity as there simply wasn't time to do this. The transcripts show the Board and Judge were clearly fully aware of the situation, but it suited their purposes admirably when giving approval to the wind farm.

Judge Kenderdine makes this statement in the Final Decision.

"Creating an environment where wind farm noise will be clearly noticeable at times of quiet background sound levels is not an option the Board condones, especially where large numbers of residents are affected. It is the Board's view that energy operations in New Zealand will have to learn not to place wind farms so close to residential communities if they are not prepared to accept constraints on noise limits under such conditions".

Submitters I have spoken to see this statement as a derisory and gratuitous insult.

Why did Judge Kenderdine flag this now when she was not prepared to act more rigorously on it in the Turitea Decision?

The Board was advised of the recent changes in policy in Victoria Australia. This was done in accordance with Judge Kenderdine's repeated assertion that the Call-In was an iterative process. The iterative process however in practice only extended to the applicant.

Wind farm setbacks policy to remain

Updated June 27, 2011 09:12:00

The Victorian Government says planning rules enforcing a minimum two-kilometre distance between wind turbines and houses will remain in place even if medical research shows they do not cause health problems.

"Planning Minister Matthew Guy says the State Government setback policy is about protecting people's health.

"The two kilometre setback is in place for a number of reasons in relation to amenity, in relation to noise, in relation to strobe lighting," he said.

"We felt it was [the] right level, the right distance to put in place, as a basic principle and that is what we will be implementing in policy."

http://www.abc.net.au/news/2011-06-27/wind-farm-setbacks-policy-to-remain/2772716

Note: the setback in Victoria is as of right and applies to all properties whether the owners have submitted or not. Furthermore, at hearings property owners would be able to make a case for increased set back distances if they were needed, the two- kilometre setback is the minimum.

The Board makes this statement.

"Nevertheless, the Board did not go as far as accepting Dr Thorne and Professor Dickinson's proposed primary and secondary noise limits as well as their proposed minimum set-backs, instead preferring the evidence of the other experts on these matters."

The Board has rejected the evidence of the most qualified experts in the field and instead accepted without saying why, the "evidence" of those who run the wind industry in New Zealand. Dr Thorne in his submission (attached) makes it clear that it is virtually unheard of for an applicant to design the noise conditions to which it will adhere.

There has been a total failure by both PNCC and TDC under the obligations of the Local Government Act 2002 and I believe it is possible that ratepayers may well have a sound case to sue for damages when wind farm noise causes loss of amenity. The contract between PNCC and MRP hopelessly compromises PNCC and has been drafted with the clear purpose of secretly subverting and making of none effect an Act of parliament.

Yours sincerely,

Paul Stichbury

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Note: The following supplementary and supporting information is attached:

1. Christchurch Press - Opposition to Decision - Making Process
2. Christchurch Press - Revisit Noise Standard
3. Letter from Dr Bob Thorne, a highly qualified noise expert, to clients John and Rosemary Adams
4. Professor Dickinson's objection to the noise standard -3 pages released under the OIA
5. Professor Dickinson's presentation to the Board