
TRANSCRIPT OF PROCEEDINGS

BOARD OF INQUIRY

Hauāuru mā raki

Waikato Wind Farm Proposal

Hearing

HEARING at TUAKAU on 27 APRIL 2009

BOARD OF INQUIRY:

Environment Court Judge Jeffrey Allan Smith

Commissioner Diane Menzies

Ms Gina Rangi

Mr John Lumsden

APPEARANCES

MR T P ROBINSON and MR D RANDAL appeared on behalf of Contact Energy Limited and Contact Wind Limited

MR A S MENZIES appeared on behalf of Waikato Regional Council

MR L E MULDOWNY and MS M MACKINTOSH appeared on behalf of Waikato District Council

MS S M BRADLEY and MR J M PREBBLE appeared on behalf of Department of Conservation

MR R J GARDNER and MS D HARTLEY appeared on behalf of Franklin District Council

SIR WILLIAM BIRCH appeared on behalf of Sunset Views Limited

MR D A KIRKPATRICK and MS N M JORDAN appeared on behalf of David and Pam Walters

MR P R GARDNER appeared on behalf of Federated Farmers of New Zealand, Auckland Province

MR D GLOGAU appeared on behalf of himself

MR R GEMMELL appeared on behalf of himself

MR C BRADLEY appeared on behalf of himself

MRS WRIGHT appeared on behalf of herself

MRS K S HALL appeared on behalf of herself

[10.08 am]

5 HIS HONOUR: I would like to invite Mr Tupaia of Tainui to commence proceedings with a karakia.

KARAKIA

[10.10 am]

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WAIATA

15 HIS HONOUR: Welcome everyone to the first day of this Board of Inquiry relating to the Hauauru ma Raki wind farm proposal. I thought before I take the names of the parties here today I might start by introducing the Board. Given that there has been some comments circulating around I thought I should give a full biography of each of the members of the Board and then discuss a little about the way that the Board's proceedings will, in general terms, be expected to be conducted.

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[10.15 am]

25 I want to introduce you first to Commissioner Diane Menzies, who is seated on my right. Commissioner Menzies holds a degree in horticulture, a post-graduate degree in landscape studies, a masters in dispute resource resolution and an MBA in business administration. As well as that she has a doctorate in resource studies. She is currently the international president of the Federation of Landscape Architects, which is the worldwide organisation for landscape architects, and the first New Zealander to hold that position.

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35 She has been a Commissioner since 2001 and has been involved in a wide range of matters including hydro projects, wind farm projects, prisons, roads and other infrastructural matters as well as the general work of the Environment Court. She has been, as I say, an Environment Court Commissioner from that time and we are very pleased that she is with us and, as you can see, has a very high and wide range of experience to bring to bear to the commission.

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45 On my far left is John Lumsden. Mr Lumsden has been a civil engineer since 1965. He was a structural engineer in Canada for 10 years and a coastal engineer in New Zealand for 15 years after that. He then joined the Centre of Advanced Engineering Studies at the University of Canterbury for 15 years. In 2003 he commenced as a consultant. Both during the time he was at the university and since he has had a wide ranging experience as a commissioner appointed by councils for work

in various applications for resource consent and designations, mainly on infrastructural projects involving both hydro, wind and coastal issues. This has included work relating to the ports as well.

5 Immediately to my left is Mrs Gina Rangi. She holds both a law degree and a bachelor in social sciences and Maori culture. She has spent nine years as a solicitor working both for larger and smaller firms, this has involved mainly environmental and treaty issues. She is on the Maori Broadcasting Agency Board, the Kawerau Peer Review Panel, which is
10 a geothermal interest, and the Maori Land Trust for Tuaropaki including both farming geothermal and media interests.

I myself have qualified as a solicitor and was involved both as a partner in a firm and subsequently as a barrister before being appointed in 2000
15 as an Environment Judge. I am a full time judge, not retired, although I am open to offers. I have been involved in a wide range of infrastructural projects including wind farm, hydro and the like.

I want to make it very clear that the Board involved in this matter have
20 skills that relate specifically to the matters that come up before the Board and I believe we have a wide ranging range of expertise to consider the evidence that is before the Board.

Having said that, I want to now discuss the question of how the
25 proceedings operate in general terms. These cases (involving all the cases the Environment Court sits on) and likewise these call-ins which go to a Board of Inquiry involve matters that are often relating to deeply held beliefs and views.

30 Often lay people hold very strong views about their personal property and about other matters and by that I mean a range of matters - both cultural, ecological and the like – where people can have very strong views.

35 We live in a pluralistic society and that means that a wide range of those views are represented before the Environment Court. It is essential that we are tolerant of one another in this venue. I would expect the more senior members of the local community to take the lead and especially where those people have practical experience both as
40 community leaders and in business.

We are going to adopt the conduct the same as in the Environment
45 Court – that being that there is going to be decorum and proper and full consideration of every person’s view who wish to be represented to this Board. Thus, matters such as interjection, snide comments or other steps (and by that I mean laughing or derogatory comments to people

before or after they have given evidence) will not be tolerated. People should feel free to express their view without any fear of ridicule.

[10.20 am]

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The objective is that everyone has a fair and uninterrupted hearing before the Court. It is essential therefore that you make sure that your cell phones remain off at all times you are within the hall itself. If you need to make a call please go outside to do so or make them in the breaks.

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It is important that everyone has an opportunity to ask questions of a witness if they have either indicated to the Board that they wish to do so or you seek leave from the Board if a new issue arises. Thus, when we come to the stage where each witness is open to questions I will firstly be inviting those who have already advised the Board that they wish to question them and then seeking if anyone else is also wishing to question them before I allow questions to commence. If you want to ask a question and you have not advised the Board already please ensure you do so before the questioning starts.

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We will discuss the progress of the case shortly and that will take some time and we will discuss in that context also preferred times for various parties if they have difficulties and if a particular witness (including expert witnesses) has difficulties at certain times.

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Generally, however, you have had an overall indication of the way in which the Board is envisaging the case proceeding but it is within broad time slots rather than a specific time on a day.

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We are doing our best to ensure that there is a sound reinforcement system here. Is everyone able to hear me clearly at the moment, especially at the back? Now, if at any time you cannot hear clearly could you please approach the hearing manager who is Ms Sophie Moore? Could you stand up, Ms Moore?

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She is responsible for the day to day operation of the Court and if there are any problems, including you cannot hear or there are other difficulties, could you please ensure that you see Ms Moore. If the matter needs to be referred to the Board she will do so. That is your first port of call. Is that clear to everyone?

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Now, with those very brief introductions what I would like to do now is to record firstly the parties who are represented by counsel (and that is in other words a lawyer who is representing a party) and those will probably be most of the parties who are sent to the table. Then I would

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like to record the other parties that are here today so that I have a record of who is here at the commencement of the Board of Inquiry.

So I will invite Contact first to identify counsel. Yes?

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MR ROBINSON: Your Honour, Trevor Robinson and David Randall for Contact Energy Limited and Contact Wind Limited.

10 HIS HONOUR: Thank you, and that is for Contact and Wind Energy Limited, was it?

MR ROBINSON: Contact Wind Limited and Contact Energy Limited.

15 HIS HONOUR: Thank you very much.

Now, there were certain parties whose position essentially agreed with that of the – are any of those represented by counsel today? No. There were some parties who were neutral that, as I understand it, was essentially the councils and DOC, I think, or had a view both ways. If any of those would like to identify themselves?

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MR MENZIES: If the Board pleases, the counsel's name is Menzies.

25 HIS HONOUR: Yes.

MR MENZIES: I appear for Waikato Regional Council as a submitter with a neutral position.

30 HIS HONOUR: Thank you. And your initials, Mr Menzies?

MR MENZIES: A S.

35 HIS HONOUR: Thank you very much, Mr Menzies. I hesitate – I immediately say there is no relationship at all with the commissioner, so it is just fortuitous. Smith is much more common than Menzies, but nevertheless.

40 MR MULDOWNNEY: May it please, your Honour, counsel's name is Muldowney.

[10.25 am]

45 MR MULDOWNNEY: And with me is Ms Mackintosh, M-a-c – you can see it. I am going to get into trouble here.

MR MULDOWNEY: And we appear for Waikato District Council.

5 HIS HONOUR: Thank you. Yes, other appearances? Is there an appearance
for Franklin District Council?

MS BRADLEY: Department of Conservation.

10 HIS HONOUR: Department of Conservation, thank you. Your name was?

MS BRADLEY: Bradley, S M.

HIS HONOUR: Thank you, and with you?

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MS BRADLEY: And Prebble, J M.

MR R GARDNER: Sir, Richard Gardner, Franklin District Council. We will
20 be represented during cross-examination by Ms Dianne Hartley.

HIS HONOUR: Gardner. And you are a council officer, is that right?

25 MR R GARDNER: I am, sir.

HIS HONOUR: That is fine. I will just give you as alternates so that one of
the two of you can be here. So the other person?

30 MR R GARDNER: Ms Dianne Hartley.

HIS HONOUR: Now, are there any other parties who have counsel? Mr
35 Birch, were you going to have counsel representing Sunset Homes?

SIR WILLIAM BIRCH: **(INDISTINCT 10.26.45)**.

MR: I am **(INDISTINCT 10.26.55)** from the **(INDISTINCT)** council.
40 **(INDISTINCT)**.

HIS HONOUR: Right. Well, Mr Kirkpatrick looks like he is here.

MR KIRKPATRICK: Yes, I apologise.

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HIS HONOUR: That is okay.

MR KIRKPATRICK: Both, sir, to my client and for – yes, for both David and Pam Walter.

5 HIS HONOUR: The Walters, yes.

MR KIRKPATRICK: Yes, sir. Kirkpatrick, D A.

HIS HONOUR: Thank you.

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MR KIRKPATRICK: With me and I have spoken with my junior counsel, Jordan N, Natalie.

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HIS HONOUR: Thank you. Mr Kirkpatrick is Queen's counsel?

MR KIRKPATRICK: No, no, sir, and not even the new version, sir. No ordinary barrister, thanks.

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HIS HONOUR: Thank you. Now, I see Mr Gardner smiling. I will invite Mr Gardner next, I think, as legal counsel.

MR P GARDNER: I cannot claim that honour at the moment, I am afraid, sir, but Federated Farmers, anyway – Federated Farmers of New Zealand, Auckland Province, as their agent.

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HIS HONOUR: Thank you. Now, is there anyone seated at the tables I have missed so far? I think I have – no, I think I have got everyone. I do not know what order the parties would like to, but would you just like to in some order stand up and identify yourselves. Any other parties who have an interest and are represented as parties to this area? Yes?

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MR GLOGAU: Sir, David Glogau. G-l-o-g-a-u.

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HIS HONOUR: Thank you. Yes.

MR GLOGAU: Representing myself.

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HIS HONOUR: Thank you, Mr Glogau. Next.

MR GEMMELL: Richard Gemmell. G-e-m-m-e-l-l. I am submitter 61 just representing myself.

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HIS HONOUR: Yes, thank you.

MR BRADLEY: Clayton Bradley.

HIS HONOUR: And you are for yourself, Mr Bradley?

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MR BRADLEY: Yes.

HIS HONOUR: Thank you. I recognise faces I have seen before so I know there is a lot more people. Yes?

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MRS WRIGHT: Mrs Wright.

HIS HONOUR: Mrs Wright. Thank you. Others? No others? Everyone else here is an observer rather than a participant? Going once. Going twice. Gone. Thank you. Now, I appreciate this may seem a little tedious when we are all set to get straight into it but we do need to check up on a number of matters and I am not sure on the order we have so what I will do is identify the matters that I understand the Board needs to address as preliminary or housekeeping matters, then ask counsel or any of the parties for any other issues we need to address.

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[10.30 am]

One is the question of outstanding waiver requests and there is a whole series of those. So the next question is, we have one request from a Mrs Caird who does not seem to be here today, I assume, to withdraw her evidence and provide representation instead. Although that is not quite a waiver request nevertheless it is a request we need to deal with.

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I am not clear as to whether or not there are any other requests. Are there any other requests? For example are there applications for adjournment of the entire hearing? That obviously needs to be addressed before I get onto anything else. No?

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Then there is some questions of special hearing requirements. What I am intending to deal with is under the category of "Order of Witnesses" because the Board has a view in respect of certain matters. I give Mr Robinson a bit of a warning so he can think about it over the next few minutes as particularly in respect of landscape witnesses and ornithological witnesses whether they should be called at the same time for all parties so that we can hear all of that evidence together. And that may in turn, turn to some degree on the question of the waiver in particular respect of Mr Brown's evidence and the further rebuttal evidence yet to be filed. I think, I assume it is coming some time this week.

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I want to discuss also the question of the site visit. A number of parties indicated that they wished to be present when we undertook the ground based site visit and I want to discuss how that might be achieved, particularly by setting up a list of areas. The suggestion will be we break it into a cluster and transmission line portions. It seems to me it may be sensible to have the transmission line associated with the nearby cluster where that is possible. So that is the H to A area, but obviously there is also the transmission line from Limestone Downs to Orton which needs to be addressed as a separate site as an issue probably in parts.

Another question that the Board has that nobody may have a view on but may doubtless want to explore it is the questions of the various versions of some of these representations of the physical environment. Two in particular: Tatuk and KV2. The Board has a view that everyone should see those in operation. I have not been able to get KV2 to work at all so I suspect if I have not been able to, neither has anyone else. It is proprietary software so I suspect it has some system in it which does not enable other people to use it. I think the simplest is to have it played very early in the piece - and I think perhaps today before we get into evidence if possible - or, if not, sometime early in the piece so that everyone can see it operating and the Board in particular.

Although Tatuk does operate I do not know that we get a lot of sense out of it. I must say from the experiences both Commissioner Menzies and I have had in other cases we found it very helpful to have somebody else operating it and us to give directions as to what to do, or other people to ask if we have to do something in particular, so we can have a look through it. I think it would be useful to do it early because that way we get an overview of the site represented in electronic form at least.

So those are the issues I have written down to address what I am going to invite people now is to add anything else to the list that you think should be discussed now. I will start with Contact. Did you have any other issues that you wanted to address?

MR ROBINSON: One issue only, sir. That is whether three of my witnesses, who are not the subject of notices to cross-examine, can be released?

HIS HONOUR: Yes, that is right. I will put that as a separate issue, whether certain witnesses can be released. Thank you.

Now, I have invited Contact, does anyone else – and I will leave this open to everyone – have any other issues they want to add to our shopping list for this morning? Yes?

MR MULDOWNNEY: Sir, Mr Muldowney for the Waikato District Council.
 For the council as a neutral submitter its intention is to, firstly, be
 present during certain parts of the applicant's case to cross-examine
 5 some of their witnesses, and obviously, also to present its own case.
 And I just want to clear that with the Board so as not to create any
 concern around discourtesy - - -

[10.35 am]

10 HIS HONOUR: Well, I have put it under the heading of "coming and going."
 I think I would like to discuss that with everyone because it is an issue
 and I am sure if any of the residents, who are not here today, are
 intending to come later but the problem is that unless they are identified
 15 to the Court we have no idea who is here when and I think that is a
 topic we will discuss generally. Not only for you but so that everyone
 has an understanding of what they can do about coming and going and
 what the consequences are in terms of the Board's procedures because
 there are consequences so thank you for adding that, that is very useful.

20 MR MULDOWNNEY: Yes.

HIS HONOUR: Anything else? Well, shall we start with the waiver requests
 and to that extent I have a list of Tainui Awhiro waiver request and
 25 there is no representative here for Tainui Awhiro today. That makes it
 very interesting.

The Department of Conservation, of course they are represented,
 Mr Clayton and Ms Bradley, the Walters. The Department of
 30 Conservation again I can deal with together rather than separately. And
 Contact Energy, which I am assuming is the late filing for Lister and
 also the late rebuttal on the late rebuttal?

35 MR ROBINSON: That is correct, sir.

HIS HONOUR: Right, so are there any other waivers that have been missed
 because I just want to make sure we have got all the waivers? Yes,
 Mr Glogau?

40 MR GLOGAU: Sir, myself I have got a waiver that I understand is approved.

HIS HONOUR: Yes, that has been approved, and you are quite right that has
 been granted already. These are waivers that have not been granted or
 considered by the Board yet. I will just check with the manager but I
 45 am sure that the Glogau matter was addressed earlier. Yes, so Mr
 Glogau your waiver has already been granted and I understand Contact

have addressed it in rebuttal evidence already on which they are seeking waivers.

5 Now, can I ask Contact, Mr Robinson, in respect of all but your own applications, are you maintaining any opposition to, for example, Tainui Awhiro?

MR ROBINSON: Contact's position is a conditional absence of opposition to the extent that Contact seeks the ability to rebut the late evidence. Its lack of opposition is conditional on obtaining that but otherwise Contact will abide with the decision of the Court.

HIS HONOUR: Is that the case also with Clayton Bradley, Walter, Department of Conservation?

15 MR ROBINSON: The position, working down the list, that is the position with Mr Bradley. With the landscape evidence of Mr Stephen Brown, the Walters and the Tainui Awhiro evidence. So Contact has not sought to rebut the late DOC evidence - - -

20 HIS HONOUR: It is on the basis that it has the right to file its own rebuttal evidence. So, the Department of Conservation?

MR ROBINSON: Contact's position is that it abides the decision.

25 HIS HONOUR: Thank you. Now in respect of the Contact Energy Limited application for waiver there is two aspects for that. The first of the general responses is to everyone, but Mr Stephen Brown's evidence which was filed last week and has been circulated. Is anyone opposing the waiver being granted to Contact Energy in respect of all of that evidence? No opposition?

Now, Mr Kirkpatrick, I think you are appearing for the Walters?

35 MR KIRKPATRICK: Yes.

HIS HONOUR: Are you opposing?

MR KIRKPATRICK: Not at all, sir. And, sir, there is a statement circulated last week (about six pages I think) from Mr Lister. There was also a visit by Mr Lister to the Walter property on Friday and today I have been given a single page supplementary to accompany some revised photomontages. I have already indicated to my friend, sir.

45 No opposition to that evidence – basically they are turn and turn about between Mr Robinson in summary.

HIS HONOUR: It seems the quid pro quo.

MR KIRKPATRICK: Yes, sir.

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HIS HONOUR: I must say – just while you are on your feet, Mr Kirkpatrick – one answer to this because I think generally speaking the Board’s interest is making sure it has the best information available within reason.

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MR KIRKPATRICK: Indeed.

HIS HONOUR: Given that nobody is opposed, I understand that the Board would prefer to receive the evidence given that he is a well known landscape architect and we believe he may add value to the process we are undertaking.

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The answer to that is to make sure there is adequate time between when you get the rebuttal. It seems to me that either we make it today or we give them a couple of days to polish it up, but I will talk to Mr Robinson about that.

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[10.40 am]

One way to address that is to have Mr Lister well later in the evidence from the applicant - perhaps next week for them - and have your witness, Mr Brown, at the same time. I think there is one other landscape - - -

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MR KIRKPATRICK: Ms Peake.

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HIS HONOUR: - - - Ms Peake, as well. And I think the Board as a whole would prefer to hear from them all together because we get a better feel.

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Now, whether that should be hot tubbing as they call it, or sequential. I must say I am more in favour of sequentially hearing them. That is something we can address when we get to that point.

Do you have a problem in principle though of Mr Lister later and having the three of them heard together?

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MR KIRKPATRICK: Not in principle, sir. One of the key issues I think with all three, because of their practices as landscape architects, will be getting their availability coinciding.

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HIS HONOUR: That is why I am mentioning it on day one because we need

to explore whether that is possible.

MR KIRKPATRICK: Yes, sir.

5 HIS HONOUR: Thank you.

MR KIRKPATRICK: Thank you, sir.

10 HIS HONOUR: Now the next party to ask on that is Sunset Homes. Mr Birch, Ms Peake was your witness, was that not right?

SIR WILLIAM BIRCH: Yes, I am sure Ms Peake would agree that it would best to bring the landscapers together if we could.

15 HIS HONOUR: I think it would help everyone to be able to compare and let them hear each other rather than having to come at totally different times to hear one another.

20 So we will need to make some enquiries, but in principle you do not have a problem with that?

SIR WILLIAM BIRCH: I think that could work. That does raise the question, your Honour, about the presentation of the 3D presentation and I understand the preference to try to bring that one early.

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HIS HONOUR: Yes, well we will come to that later. I think once we have made some of these decisions we will need to discuss whether we should or should not do that

30 SIR WILLIAM BIRCH: Just if you want to have a (cough **INDISTINCT 10.41.57**) partner and technology up (**INDISTINCT 10.42.04**) contact that person.

35 HIS HONOUR: Yes, that is not Ms Peake. That was - - -

SIR WILLIAM BIRCH: John van der Leden.

HIS HONOUR: Mr van der Leden, yes.

40 SIR WILLIAM BIRCH: I am sure that he would be available.

HIS HONOUR: Well we will come to that later in the part. I am just trying to deal with waivers at the moment. Thank you, Mr Birch.

45 Does anyone else have a view they want to express about the landscape architects? Well I will just check with the Board but my understanding

is that all the waivers would be granted and we would then make some directions in respect of landscape architects.

5 MR ROBINSON: Sir, if I could draw your attention to one other thing. There is a fourth landscape architect who is giving evidence, Mr Bernard Brown.

HIS HONOUR: Oh, yes.

10 MR ROBINSON: He is from the Raglan perspective – I do not think Mr Brown is present – but he is representing his family trust.

15 HIS HONOUR: That is right, he did not per se give evidence as an expert. As I recall I read that and I do not think he qualifies, but there is no doubt that – I mean he is known I think to most of us on the Board, so there is no doubt he has the expertise. You think it might be useful to include him?

20 MR ROBINSON: Well in terms of the principle that **(INDISTINCT 10.43.13 coughing)** down, if you are going to have sequential evidence from a landscape architect I would suggest that Mr Bernard Brown should be included in that.

25 In terms of the principle I think that I am happy with the principle with the landscape architects being in sequence. Mr Lister does have a time constraint because Ms Bolger **(PH)** who – a point your Honour has already made - that he is in another Environment Court hearing in the week of 18 May so if it was going to be done it would have to be on the basis that he was giving his evidence before the end of next week.

30 HIS HONOUR: Well we will come back to that because I was going to deal with the hearing order et cetera in due course, but it seems to me that subject to the Court making directions to ensure a fair and considered exchange of all of the evidence, given in the ordinary event, 35 Mr Kirkpatrick, your witness would not be called probably until June some time, that there is plenty of time for him to consider any reply from Mr Lister.

40 MR KIRKPATRICK: Absolutely, sir. No problem.

HIS HONOUR: So I will just check with the Board, are we all happy to grant all of those waivers? Yes.

45 The Court grants all of the waivers sought and the only direction I need to make, Mr Robinson, is in respect of yourself. Do you want more time? I do not know what you gave Mr Kirkpatrick.

MR ROBINSON: The answer is that Mr Lister's second rebuttal brief is ready to hand out but I did not want to be so presumptuous as to do so before the matter had been considered as to whether - - -

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[10.45 am]

HIS HONOUR: Right. So they will be distributed today – Mr Lister's rebuttal?

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MR ROBINSON: They are ready to hand out.

HIS HONOUR: Yes, well I will put Mr Lister's rebuttal will be distributed today. If you could give copies to the hearing manager when we take the next break so we can incorporate them.

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MR ROBINSON: Thank you, sir.

HIS HONOUR: Do we have a punch here. If we do not have one we need to find one.

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Sorry, I should have added that there was a request about where the helicopter visit for the Board took place and that was a place somewhere up the rear of the – on the right hand, that corner there is a copy of the route that the helicopter took with the Board on it when it undertook its helicopter site visit. If anyone wants a copy of that it is available at the back, and a pile of the evidence of Mr Lister will also be placed there, Mr Robinson? So that anyone who wishes to have a copy of that evidence can take a copy also.

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Now, I do need to – Mr Robinson, could you make a point of ensuring that is posted to Mr Brown as well, who is not here. Sorry, Mr Kirkpatrick is obviously able to get a copy to Mr Brown and the copy for Ms Peake, Mr Birch can obtain. But I would like Mr Brown to have a copy too.

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MR ROBINSON: I certainly can and with your Honour's leave I would just like to make the point to the audience in the back that these particular simulations are photo montages taken from Mr and Mrs Walter's property.

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HIS HONOUR: This is in response to concerns by Mr and Mrs Walters' expert witness, Mr Brown, about the impacts. Anyone is welcome to have a copy and they will be available at the rear of the building at the break.

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Now I move onto the next question – Mrs Caird has requested to withdraw her evidence and provide representation instead. I must say that the Board’s view would be to grant that. Does anyone have an objection? That is also granted.

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I just need to ask the manager, how do we contact these people? Have you got contact details for Mrs Caird? Could I ask you to contact her and advise her that we have granted that request? Thank you.

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Now, I have got special hearing requirements but I think the better way of calling this is the order of witnesses and in particular problems with hearings. Mr Gardner for example, I presume for Federated Farmers? No, that is Franklin District Council. Sorry, the wrong Mr Gardner. You are not available on the 6th to the 8th of May.

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MR GARDNER: Sir, that has been changed. I am now available.

HIS HONOUR: That is likely to be a continuation of Contacts’ evidence.

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MR GARDNER: Yes, sir.

HIS HONOUR: So, I do not need to worry about that?

MR GARDNER: No, sir, that is correct.

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HIS HONOUR: Thank you. And then a Mrs Ball. Is she here? Given that she says she is not available on Mondays and Tuesdays, I can assume that this is one of those days. So that is a matter we will – if I can just ask the manager to keep an eye on that to make sure we do not schedule her in on a Monday or a Tuesday. Perhaps if you could look out for her on Wednesday so we can include her into the record at that point.

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And Mr Mandeno? He is not here today either? He wishes to be heard as last as possible. Again, all I can do is ask that that be programmed in.

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Are there any other problems? Do certain people have problems at certain times? Mr Birch.

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SIR WILLIAM BIRCH: I have a problem with this Thursday. I have been helping **(PH)** and I might have to shift the whole of the day and I would like to be present when Contact’s evidence in chief **(INDISTINCT 10.49.33)**.

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HIS HONOUR: Well, how are we going to overcome that given that this week is a week where Contact will be giving evidence?

SIR WILLIAM BIRCH: I was uncertain (**INDISTINCT 10.49.47**)

5 HIS HONOUR: Well, most of the witnesses I thought you were wanting to cross-examine. Can I ask Mr Robinson if he could have a look at that issue and see if there is a way we can programme for Thursday witnesses that Sunset have no interest in?

[10.50 am]

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SIR WILLIAM BIRCH: Even if I could compromise and try and split my time between the (**INDISTINCT 10.50.13**) and the afternoon (**INDISTINCT**).

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MR ROBINSON: Sir, I think that Sir William's issue may be able to be addressed in the ordinary course because in the very tentative timetabling that we have undertaken we anticipate that through the middle, Wednesday / Thursday, will be our witnesses on the transmission line which is not an issue of relevance to Sunset. Obviously that is very much best guess at this point but - - -

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HIS HONOUR: Could we try then and put into the Thursday, rather than Wednesday and Thursday, transmission line witnesses. That would overcome your concern would it Mr Birch?

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SIR WILLIAM BIRCH: Very helpful, sir.

HIS HONOUR: Does it create a problem for anyone else? So again I will have to ask the manager to keep an eye on that. It is the cut and thrust of a matter I might overlook. We need to get on now. Are there any other unavailability issues? Sorry, I heard from Mr Birch and forgot to check if anyone else had any particular problems.

30

MR ROBINSON: Sir, I mentioned that we have some witness availability issues. Effectively there are some of our witnesses who cannot appear on particular days and we will arrange the order of witnesses to accommodate that ourselves but we do have a particular constraint. Three of our witnesses need to have given evidence by the conclusion of next week. Based on the very tentative scheduling - - -

35

40

HIS HONOUR: Who are those witnesses?

MR ROBINSON: Ms York, Transmission witness.

45

HIS HONOUR: Yes.

MR ROBINSON: Mr Manins and as I previously noted, Mr Lister who is in the Environment Court in the scheduled third week of the hearing.

5 HIS HONOUR: Well, obviously if things go according to schedule Contact should finish their case at the end of next week, or at least their general case. I think we have to reprogramme that. I want to make it very clear to everyone that is here. The reason I have only given blocks of time is hard experience in the Environment Court that witness pacing does change dramatically through the course of a hearing.

10 Often a lot of effort is put into the initial witnesses by everyone which means they take a lot longer than **(INDISTINCT 10.52.44 cough)** witnesses and the pace can change dramatically depending on who the witness is and what the issues are. To that end – this is a matter that the Board will be reviewing regularly and if you have concerns about when things can occur you need to be here. You cannot assume that we will be dealing with a particular matter on a particular day.

20 If you have raised an issue, such as Mr Birch’s issue, then we can ensure that we provide for you but if we do not hear from you about a particular concern then we will not know how to provide for it. So I do what I call a “health check” regularly, usually at the end of each day, to see how we are going according to the programme, see if anyone has got particular problems, and often I do that in the morning as well to pick up people who may not have been there in the afternoon. So when we check that up if you are finding that things are taking a lot longer that you had expected, or there is a major problem, please either discuss it with the hearing manager, I already introduced you to Ms Moore, or you can raise it during one of the regular health checks.

30 The objective is to make sure that we hear from everyone and that you have a fair opportunity to put your view forward. We try and do it an ordered way so that we hear from the applicant and then those parties that support them and then all the parties that are in opposition. But sometimes it is more important that we hear from you than we do it in the right order. Is everyone clear about that? Thank you.

40 So the other witness we have an interest in, apart from the landscaping witnesses, I do not know if we need to take that any further do we, Mr Kirkpatrick, at this stage? Well, obviously, we would ask you to check if your witness is available say Wednesday/Thursday next week?

MR KIRKPATRICK: Yes, and I will - - -

45 HIS HONOUR: The same for Mr Birch?

MR KIRKPATRICK: Yes, sir.

5 HIS HONOUR: The same to yourself, Mr Robinson, and we need to check with Mr Brown as well. Wednesday to Friday I think we should be safe about in case we take a lot longer than anticipated. Previous experience would indicate we are likely to be about a day to a day and a half but I cannot guarantee that.

10 The other one I am interested in putting together are the birds' witnesses and that would be the DOC witnesses I think, there is more than one, and there is Mr Kessels and somebody else was it?

[10.55 am]

15 MR ROBINSON: Dr Seaton and Mr Tonks.

HIS HONOUR: Do we put the bats in with that as well? Probably. I think they might be dealt with by the same witnesses, are they not?

20 MS PREBBLE: No.

HIS HONOUR: But in any event could I ask you both to liaise to see if there is a time you could agree that those witnesses might all be able to attend together?

25 MS PREBBLE: Sir, we have a witness that is coming over from the UK.

HIS HONOUR: When are they coming?

30 MS PREBBLE: Well, on the basis of the pre-hearing conference we thought that our witnesses would be on about 8 June, in that week.

35 HIS HONOUR: Well, then discuss that with Mr Robinson about whether he could put his ornithological witnesses on at the same time, that is the point I am making.

MS PREBBLE: Sure.

40 HIS HONOUR: So if you have got some constraint like that I would like to work around it.

MS PREBBLE: Thank you, sir.

45 HIS HONOUR: So we are not changing airline tickets and creating all sorts of problems. So if you could discuss that with Mr Robinson and he will get some of his team onto that to see if their witnesses would be

available then. I cannot see it is a problem dealing with the witnesses out of order because you are two of the parties that have an interest in that. It is clearly a matter for the Board, we have to consider it, and our preference would be to hear it in a more regular frame because it is essentially a standalone issue.

And it should be quite clear we have a concern, particularly about migratory birds, that would be fair comment for the Board. And it would also be fair from Mr Kessels' background report that the area of Kaawa to Ahuroa, seems to be identified as an area where there has been particular wading and migratory bird identifications and, obviously, we are very interested in the relationship between the turbines, about the five or six turbines in the area, to that area. So it is the D string I think you are talking about, is it not, or is it the E string? Do people know the area I am talking about?

MS PREBBLE: I think we are talking about the whole wind farm actually.

HIS HONOUR: You might be, about migratory birds, but I am just highlighting it is something that comes out of the Kessels' report which is about that area around the Kaawa Stream area.

MS PREBBLE: Okay, sorry.

HIS HONOUR: Sorry, I was only saying it to help your witnesses. It does not come out in the evidence, it is not until you go to the background reports that that discussion takes place.

Yes, we the Board have raised the question - I know some of the witnesses mention it also – but it is issues about flight height and that sort of issue is not really addressed in a great deal of detail but, of course, is of real interest to the Board.

So is that clear enough? Can I just rely on you to report in one of the regular reporting sessions, housekeeping sessions, on how that is progressing?

MS PREBBLE: Just following on the avifauna issue. Would you also like to hear bats at the same time?

HIS HONOUR: I think we would to hear about bats together as well. In fact I think the witnesses are the same, are they not, Mr Kessels seems to be the same?

MR ROBINSON: Yes, the Department of Conservation had a standalone bat witness but Mr Kessels is handling that aspect for Contact and so, from

my point of view, if Mr Kessels is going to be in that sort of arrangement then - - -

HIS HONOUR: It is better to have everything out - - -

5

MR ROBINSON: It is better to have all the ecological evidence bound into that.

HIS HONOUR: And it seems to me that that might take some of your witnesses into the June weeks which will mean you are more likely to finish next week?

10

MR ROBINSON: Correct.

HIS HONOUR: So once we start into these things we often find they sort themselves out. So if you could work on that. I would probably like a report in the next day or two, if you could, and on landscaping too because it will affect the timing of other matters.

15

Now, the versions of Tatuk and KV2, Mr Robinson, Tatuk is your version, have you got a running version here?

20

MR ROBINSON: Yes, Mr James, who is behind me – left and behind - has linked the data projector. The essential element of Tatuk is that it is a means to addressing inquiries and so, in terms of how your Honour put it to me, it is ideally suited if the Board has specific issues it would like to see on screen, to get a feel for it, Mr James can do that.

25

HIS HONOUR: Well, I wondered if we did a Tatuk flyover, for example following the Board's helicopter visit, that would give everyone at least a representation of what the Board saw and that might be a good introduction to how it works. I have had a look at Tatuk, which I am not sure but it appeared to me to not quite be as versatile as KV2, but nevertheless the same idea, they both are intended to represent similar things.

30

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[11.00 am]

I think the difference for KV2, as I remember it, is that it actually has photographic – take a 3D photograph - Yes, I am not sure how far your witness has gone, Mr Birch, because we could not get it to run. Of course you delivered a hard drive to the manager who could get it to run but it did not help us because we did not get a copy of that.

40

Can I ask you if you could inquire when Mr Van der Leden might be available to run through it with us?

45

SIR WILLIAM BIRCH: **(INDISTINCT 11.00.40)**

5 HIS HONOUR: Well, we will finish this call-over first and then we might take
a break at that point to give everyone an opportunity to gather their
breath and then start on the next round. But it would be quite useful if
we could see Tatuk and KV2 back to back simply because it would give
us an idea of how they both work. Mr Van der Leden, as I understand
10 his evidence, is only about the KV2, is it not? So it might be that we
could call him, swear him, he can show us the system and if anyone has
any questions about it they can ask him them. But we would leave any
general questions with Mr James to talk to later when he gave his
general evidence.

15 MR ROBINSON: Sir, at the moment, in our witness batting order, Mr James
is No 3 and so I would anticipate he would be giving his general
evidence certainly before the end of tomorrow.

20 HIS HONOUR: And that may fit in very well with Mr Williams' position
because he may not be able to get Mr Van der Leden here until
tomorrow. And, for example, if we were looking at tomorrow afternoon
we would just stand any other witnesses aside and then deal with the
two representation witnesses if they were available tomorrow
afternoon. Does that sound sensible?

25 MR ROBINSON: Yes, sir.

HIS HONOUR: And if we have not finished one of your witnesses we would
just interpose them. Does that sound sensible, Mr Birch?

30 SIR WILLIAM BIRCH: Yes, I agree. As for the **(INDISTINCT 11.02.05)**

35 HIS HONOUR: Yes, well, the thing is I thought if we had them both here
then if it comes up again later we can – because I think the manager has
worked out how to operate KV2 - but I would rather somebody showed
us properly first and they can do a bit of training. My hearing manager
will pick these things up very quickly.

40 SIR WILLIAM BIRCH: I think that we will need to organise somebody to
help with the KV2 **(INDISTINCT 11.02.32)**

45 HIS HONOUR: If we have an introduction to both of them early on then if it
comes up we can then go back to them and have a look when it comes
up. I think that is why I thought it would be useful to have it early on
because a witness may say, “Well, actually on the flyover it showed”
and we can go back and have a specific look at it.

SIR WILLIAM BIRCH: Yes, sir.

HIS HONOUR: Does that seem sensible? Does anyone object to that course?

5 Then the next issue is whether we can – I might deal with the coming and going issue. Can I state - I think that was Mr Muldowney who was asking the question. Can I make a general statement and see if everyone agrees?

10 My general view is that parties can come and go as they see fit, provided they recognise appropriate decorum in entering and leaving. Generally, I prefer that in the breaks rather than in the course of the hearing because it is disturbing to others. So I would think if you commit to a session you are there until the next break, and similarly
15 with entering, my preference is that you enter at the break. I am not going to stop people coming to and from the desks, but could they please be sensitive to the fact that we are focussing on evidence and the witnesses in particular, and not create a disturbance.

20 If you are not here, the Board's inquiries proceed in any event, you cannot raise a complaint for unfair action or treatment in relation to something you were not here for at the time, and that might occur because the Board's inquiries take turns all the time, as somebody argues whether a particular piece of evidence should be given, or there
25 might be an objection of a sort.

Generally speaking, if it relates to a particular party who is identified, for example somebody complains that the Franklin District Council evidence is wrong, we would wait to hear from them or ask them to
30 come. But we do not know what you might be interested in if it does not relate directly to you. So that is the risk you take.

Now, I am quite happy, some parties, particularly some of the laypeople here, may be quite happy to get somebody else to represent their
35 interests when they are not here and I would encourage that. In other words, if Mr Glogau wants to represent the interests of Mr Bradley, for example, and they have agreed on all of that then that party can stand up and say, "Well, look, I am concerned about the effect of this on Mr Bradley, he is not here at the moment, but he asked me to look after it".
40 I am quite happy with that and I would suggest that is a sensible way of making sure your interests are protected when you are not here.

[11.05 am]

45 I am even happy, as Mr Gardner has suggested, that there will be times when a staff officer is present and not the lawyer. Of course, as long as

5 the starting member knows what to look out for and when to stand up that is there job, but I am more than happy. All I ask is if you are going to represent somebody else. Preferably identify yourself to Ms Moore, so she knows, otherwise when you stand up can you please say who you are representing if you are not one of the parties that I have listed already.

10 We are going to have a lot of parties coming in and out, I suspect, because we have only got about four of the 50 parties that want to be heard and my preference is, if you are talking to any of those, if they could identify themselves to Ms Moore at the beginning of the session, or otherwise if they are here for the beginning of the day, could they please identify themselves at that time.

15 Does that address your concern Mr Glogau?

MR GLOGAU: It does, sir - - -

20 HIS HONOUR: Is the Board happy with that? The Board is happy with that, as well. So just give me a moment to write this down. "Preference for parties representing other will **(ph)** be absent, the Board proceedings will continue in their absence, no complaint of unfairness.

25 Now, the final issue that I have listed is Mr Robinson's issue about whether certain witnesses of Contact's in particular can be released. There were fewer than we suspected in that list, which I do have somewhere. Are you able to identify the parties that you understand there were no cross-examination of?

30 MR ROBINSON: Yes, sir. The three witnesses in question are Dr David Black whose evidence covers health effects, principally with the transmission line; Mr Jason Hills whose evidence covers telecommunications and interference therewith; and Mr Tom Morten who is a rebuttal witness against the evidence of Ravensdown.

35 HIS HONOUR: Oh, the - - -

MR ROBINSON: Blasting.

40 HIS HONOUR: Yes, the rock – there was a word for it?

MR ROBINSON: Fly rock.

HIS HONOUR: Fly rock, yes.

45 MR ROBINSON: So those are the three that we have got no notice to cross-

examine.

5 HIS HONOUR: Now, can I ask does any party wish to cross-examine those three witnesses; Dr Black on health effects including EMF, Mr Jason Hills that is radio interference, and Mr Tom Morten on the fly rock issues that are to do with Ravensdown who again are not represented today? Thank you.

10 No party seeks to cross-examine them? I will check with the Board. I

MR LUMSDEN: Only have one question concerning the evidence Mr Millais mentioned, and on my list he is shown as not being subject to cross-examination. Maybe I have got a different list?

15 HIS HONOUR: Yes.

MR LUMSDEN: Okay, it has been updated, so he is going be here.

20 HIS HONOUR: Right. So they are the three that we are talking about?

MR LUMSDEN: No.

25 HIS HONOUR: And I have no questions, so those three witnesses are excused. I need to just make a caveat to that Mr Robinson, although the witnesses are excused, of course, I may revert to you if something comes up given that, for reasons beyond me, 45 parties are not here, including Ravensdown. So - - -

30 MR LUMSDEN: Completely understood, sir.

HIS HONOUR: They would have to get leave from me, but I may revert to you if and when that becomes an issue.

35 MR LUMSDEN: Understood. It is fair to say, I was surprised that I had not heard from Mr Chapman who is representing Ravensdown. So certainly, I completely understand that nothing is fixed in concrete, but we will go forward on the basis that they do not need to appear unless there is a need to grant as well.

40 HIS HONOUR: Well, yes. But there will be a point in time when it is too late, ie when your case is closed. We will see in the meantime. At this stage, anyone would need leave from me now, because I have excused them, so they would require leave if they wanted time to question.

45 MR LUMSDEN: Thanks.

[11.10 am]

HIS HONOUR: And they would have to give notice within time as well, which would need to be explained.

5

Right, so that concludes the matters that I have down as preliminary matters. So I want to discuss now how we might proceed for the rest of this week at least.

10

Sorry, the next issue is the question of a site visit. Could I address how that – at the last prehearing conference we identified that we intended to undertake a helicopter visit, that was taken in accordance with the discussion I had at that prehearing conference. The journey taken by the helicopter is at the rear, and you can see that essentially it involved a flyover down the coast of the various turbines, with us landing at a number of sites and taking closer looks at others. We went down as far as Raglan and then across to the far side.

15

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I do not know exactly what the name of the bay was that we got to on the far side, but it was where we were told the surf break was. We then flew up parallel to the coast, some distance off, until we got essentially close to parallel with the position for the bottom – is it **(INDISTINCT 11.11.19)**? Yes, cluster J and the bottom substation. We flew across to that substation and then flew upland and refuelled at an airstrip in that area and then we spent some time around Limestone Downs, then followed the kV line across to Orton, took a look around there and then returned to Auckland.

25

30

It was clear from our last call that a number of parties wished to be present when we undertook the site visit by ground. We tentatively looked at that week of the 18th of May as being a potential week, and discussed the possibility of using several days of that week to hear evidence in Raglan, perhaps including for Tainui Awhiro and also there were a number of other parties – about three other parties, I think, that wished to be heard in Raglan.

35

40

I want to now start assembling a site visit itinerary, and if parties have not been in contact with Mr Robinson already, or one of the members of the team - is there a particular person who is going to be -?

MR ROBINSON: Ms Dixon has been - - -

45

HIS HONOUR: Ms Dixon, stand up. If you do not know her, then Ms Dixon is the person to talk to. Essentially, if you give her a property you want visited, or a place you want visited, she will take the details of that and add it to the list.

Thank you, Ms Dixon.

5 I will be seeking to have that assembled in cluster lists, if I could ask
for that, and where it is a transmission site that is one of the – not really
essentially an eternal but privy limestone substation. In other words
110 kV or one of the others. 33 kVs. Then that prime we associate
with the cluster visits, at least put into the list in the same way so we
can understand where we have to travel to.

10 But it is between the Limestone Downs and Orton and that will need to
be on a separate list. I would like the name of the party, contact
number and the area of interest. I will be expecting Ms Dixon,
probably by the end of the week, to at least give me a draft list of that
15 so we can start assembling a site visit itinerary. The reason for the
phone numbers is given the size of this site visit, there is no guarantee
as to how long it will take us to visit a particular area.

20 I will say again, and I know I sound like a cracked record, this is not an
opportunity for parties to give evidence to the Board on the site. In fact
we are going to go to some lengths to make sure we do not get into
discussion with parties at all and so if you are present, you will
essentially be in a group of people who will be following or leading the
Board around and we will probably stay separate. Do not think we are
25 trying to be rude. It is important to us that we do not hear evidence
which is not recorded and is not something we cannot take into account.
It is in your interests that you give us all the evidence you want to give
us when we are sitting in the inquiry here or in Raglan, and not when
you are on the site. The purpose of the site is to point out particular
30 things that are of relevance. To that extent gaggle 1, which is normally
all of the parties who want to be present on the site, lead off and point
us in certain directions. We follow on and look at the various things we
are asked to look at.

35 **[11.15 am]**

We do have some complications. You will recall Mr Robinson pointed
out that there are some areas of accessibility, turbine sites in particular,
where there are some physical problems and they use some form of
40 four-wheel drive vehicle to get there, and I am not sure how everyone
can get there given that they only have three or four of them. I am not
sure. So those are issues which will have to be addressed and Mr
Robinson, no doubt you will put your thinking cap on as to how we
might get around those sort of problems.

45 Many of the people who spoke to us last time were wanting us to look

at various aspects, either of the substations or of the HV lines as they were close to their property. So those will not require these Polaris or whatever they were ATVs but certain parties, and I am thinking of Sunset Homes, in that regard relates to some of the sites which are close to the boundary.

Now I am not sure how accessible they are. They may be ones that are simply accessible by a four-wheel drive. I think the Board intends to have its own four-wheel drive to travel around in and to that extent we will be looking for something that is capable of general four-wheel drive duties, but it is not going to be suitable for getting into the - it might be better to get a Toyota Hilux or a Defender, so to speak. Sir William?

SIR WILLIAM BIRCH: I think it is closer to farmers – I take it as a neighbour – is kind of a challenge. But is quite accessible from high up from those boundary sites.

HIS HONOUR: I must say it looked to us from our helicopter that as long the weather was pretty – it had not been raining too much, there was a relatively well formed track that would have got to those positions.

SIR WILLIAM BIRCH: And it really would have been for nothing (**PH 11.17.09**) and under that umbrella to - - -

HIS HONOUR: So could I ask you to liaise with Mr Robinson because I think for the most part you would probably be able to agree on those areas that can be accessed readily and those that cannot.

SIR WILLIAM BIRCH: We can also supply a four-wheel drive vehicle.

HIS HONOUR: Thank you. Are there any other matters relating to the site visit? Is it clear to everyone what is intended? Yes, Mr Robinson.

MR ROBINSON: One point of principle about the site visit. There are certainly no issues with your Honour's directions and indications to date. We will make the arrangements. One point of principle and one suggestion. The Board's tentative plan was that you would use the week of 18 May for the site visit.

In terms of pure practicality, the sooner you undertake the site visit the more likely you are to get reasonable weather and vice versa, given the hearing is going until June. Obviously any week you pick is necessarily going to be somewhat haphazard has to whether it is suitable so certainly I would urge you to retain the 18th of May on that purely practical basis.

HIS HONOUR: We may even think about doing it next week, depending if we are making good progress on the case. I have got to say that the 18th is the first week that will fall back into hearing as the Board has problems with finding alternative times for hearing. So it is easier to find time when the Board could attend a site visit because it does not require all the experts and all the counsel to be here than it would hearing time. So if we are not making good progress with the case we would continue on in the week of the 18th.

We are anxious to have the Contact case concluded by that week. But if we are making good progress on other matters we may even, as you say, take the first opportunity we can to do the site visit.

That is why it would be helpful the sooner we can have this itinerary assembled, and the difficulty Ms Dixon has is that of course she has only got a relatively small number of parties here today and we are just having to hope in the next few days that the numbers build up and we can somehow get the detail.

MR ROBINSON: Well certainly she asked me to draw that to your Honour's attention, that it is reasonably obvious that the indications she has had to date almost certainly do not represent the full number of people who we will wish to list.

HIS HONOUR: Well I agree entirely and I do not know how we overcome this problem, that is the point I made before. The Board has to continue in accordance with its hearing. If we have not got satisfaction that we have got everyone who wants to be heard by next week I would stick to the 18th if we have time because that is when we told people we would be doing the site visit.

[11.20 am]

But if they do not contact us with the details I do not know how – I mean some of them you will be aware of them because they made a point of it last time and I remember somebody at Orton in particular being interested and I am sure you know who that is and you can contact them. But there would have been others who said very little who may still want to be there.

MR ROBINSON: The point in principle I wanted to raise with your Honour about the site visit is that Mr Townshend has made certain comments along the lines that no representative of Contact will be welcome on his property but he nevertheless wishes the Board will go on the property for the purpose of the site visit.

HIS HONOUR: Well I make it quite clear that I am not prepared to undertake site visits on the basis of conditional entry. As far as the Board is concerned either we are entitled to go onto a property and see what we want to see and the parties are entitled to be there or we do not go.

Now, Mr Townshend is not here so I cannot – I think there were a number of intemperate comments made by Mr Townshend which unfortunately he is not here today and if he is going to be here we will have to address those issues then.

In the meantime, I agree. I think the whole point raised last time was I made an indication that I preferred that nobody came with the Board for the ground based site visit. A number of parties said they wanted to be there. It is all or nothing.

In other words, anyone who wants to be there should be there. Most indicated they only had an interest in a small portion of the property.

Yes, Mrs?

MRS WRIGHT: I am rather concerned that the site visits would take place next week because that would be rather short notice, particularly for my husband who is very anxious to be there and this all part of stopping the private (PH 11.21.45) parties having an amount of warning and in particular not for a site visit next Monday.

HIS HONOUR: No. Well, I think you for that and that is something you should – could you discuss that with, Ms Wright? Because I do agree with you that at the last pre-hearing conference I indicated it would be the week of the 18th. I did point out that rain and other matters do make a difference.

MRS WRIGHT: I take that.

HIS HONOUR: But I think I would be happy that if we could not do it on the 18th we would find some time between that and the end of the hearing either as a substitute week or we have a couple of lay weeks where we could – well, perhaps with a little bit of force I might be able to get the commissioners all in one place at one time. I do not make any promises at the moment.

I take on board what you are saying and I have got to say I have a concern about doing it next week when we have got so few of the submitters here too and I know at least eight or 10 said they wanted to be there when we undertook the site visit. I think you were one, were

you not? But there were a lot of others as well, some of whom are here today, many whom are not. Thank you. So I take on board your point, Mrs Wright.

5 Are there any other matters? Yes, Mr Kirkpatrick?

MR KIRKPATRICK: Just one small matter, sir, and hopefully it is not one of contention.

10 I understand that the proceedings in the usual way are to be transcribed and I should have raised this earlier, I apologise for it. I note that in the procedures there is a comment that the transcription obviously is there to assist the Board in its deliberations and that is well understood, sir.

15 I should indicate that from counsel's point of view it is enormously helpful to have the transcript, particularly with a case like Contact's which is quite interlocking, to assist in the cross-examination of later witnesses. All I am really asking, sir, is a bit of a plea on my part that the transcript be put on the Board's website as soon as it is available.

20

I know you are - - -

HIS HONOUR: I can go one further than that. There are a couple of problems. One is I make no guarantees to the delivery time of the transcript.

25

MR KIRKPATRICK: I know you cannot do that, sir.

HIS HONOUR: Secondly, I make no guarantee as to its accuracy and do not ask me for my opinion on it, but all I can say is we are using the same transcription service that the Court uses so they have general knowledge and the timeline I think we have put them on the two to three days, is that right?

30

35 MR KIRKPATRICK: Yes, sir.

HIS HONOUR: So it is not the same day, it is on two to three day, and yes, it is our intention that the transcript go on the website and furthermore if you give your details to either Ms – probably the manager would be best, Ms Moore – she will email you a copy of it also.

40

Now, any other party who wants a copy of the transcript needs to indicate an email address to which it could be sent. Remember they are big documents and if you do not have the system you will not be able to do anything with it. So the website is best for those who have limited access and can I say you have to probably have a junior, like Mr

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Kirkpatrick, who is prepared to plough through them. A typical case such as this is probably running to 5000 pages of transcript.

[11.25 am]

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MR KIRKPATRICK: I am aware of the issue, sir.

HIS HONOUR: I know, I am just telling other parties. So you need to be aware that there is a lot of paper generated from transcript. Certainly
10 counsel may find it useful and if you wish to have it please indicate to Ms Moore and she will send it directly to you.

There are often gaps and errors in it but nevertheless we appreciate any
15 comments that are made to improve it et cetera. I do not generally check it myself personally until much later.

MR KIRKPATRICK: Thank you, sir.

HIS HONOUR: So I am assuming – could I ask in the break any counsel or
20 other parties who want a copy give their email address to Ms Moore. It will be on the website when we get it, which is generally about two to three days later.

Are there any other issues?
25

MR ROBINSON: No issues, sir, just a question. Hours of sitting?

HIS HONOUR: That is very good because that is what the commissioner had
30 poked me about talking about next.

Generally speaking it is intended that the Board will sit between 10 and
5 each day. I am prepared to be flexible around that but keep in mind that people have to get here and that can be a problem depending where
35 you are coming from. So subject to flexibility, which will generally occur at the beginning of the day or the end of the day, we will be sitting from 10 am until 5 pm. We take a break generally at 11.30 and at 3.30 pm, a quarter of an hour for morning and afternoon tea.

My understanding is there is tea supplied in the foyer in each break. I
40 do not know, there may even be some comestibles supplied from to time, I am not sure. Is that right? Yes, some biscuits or something as well.

You will be responsible obviously for providing your own lunch which
45 will be a great boon for the local economy. We take the luncheon break generally at 1 pm and it will generally be 1 to 2 although we may make

it 2.15 the first couple of days just to see how long it takes for everyone to get their lunch and get back here in good order. It may depend on how many people descended on the local venues.

5 So that is housekeeping at its most basic level. We will be swearing witnesses as well, assuming we have the where with all to do that. Sorry, do we have another question?

10 MR: Yes, your Honour. We can hear you very well but when people are speaking to you it is quite hard to hear.

HIS HONOUR: Yes. Now can I ask, are these microphones - are they picking up - can we - what I think I will have to ask people to do - is there a microphone at the back of the room?

15 MADAM REGISTRAR: **(INDISTINCT 11.28.10).**

HIS HONOUR: That might be useful but it is on a shorter lead. I do not think you can get the extra length, can you?

20 MADAM REGISTRAR: **(INDISTINCT 11.28.22)**

HIS HONOUR: And could we just get a little bit more reinforcement, I think it is a short point. Because we are facing people, it is easier to hear us than it is if people are facing away – so I think part of that is people getting used to speaking into the mic more. We are probably used to the fact that generally this is only used for transcription, but in this case we have got it going for PA as well. So perhaps that is something we can just reflect on and try and get a bit more volume coming through the reinforcement.

30 Any other matters?

35 MS PREBBLE: Yes, sir.

HIS HONOUR: Yes.

MS PREBBLE: I just wanted to clarify the Department's position - - -

40 HIS HONOUR: Can you hear that at the back?

ALL: No.

45 HIS HONOUR: Can we turn that up a tiny bit? I think it might be the input you need to turn up as well.

MS PREBBLE: I wanted to clarify the Department's position, sir.

HIS HONOUR: Is that better, oh, good, thank you. Carry on.

5 MS PREBBLE: You have described the Department's position as mixed on a number of occasions.

HIS HONOUR: Yes.

10 MS PREBBLE: At this point in time I wanted to alert you to the fact that the Department does not actually think there is enough information, particularly on avifauna effects, for you to make a decision to grant consent, and I wanted to alert you to that fact upfront so you were not surprised later, sir.

15 HIS HONOUR: Yes. The reason I said "mixed" is there were areas that you have concern about, ie avifauna, which you oppose the application on.

MS PREBBLE: Yes.

20

HIS HONOUR: But there are other areas that you have not raised concerns.

MS PREBBLE: There are other areas that we think are matters can be sorted through conditions, but avifauna and bats is an area where we do not.

25

HIS HONOUR: You do not go so far as to say – are you saying that consent should be declined?

[11.30 am]

30

MS PREBBLE: That is for the board to decide, sir, after hearing all the evidence.

35 HIS HONOUR: That is why I said they do not go quite go that far. Because the only logical consequence, if you are saying we cannot grant it because of the avifauna, then if we cannot grant it, then that is saying it should be declined.

MS PREBBLE: That is the logical conclusion, sir.

40

HIS HONOUR: Yes.

MS PREBBLE: If you decide - - -

45 HIS HONOUR: I put you down as "mixed" to be a bit more charitable about where your position actually might be.

MS PREBBLE: If you decide that you should not defer, and make a decision, the Department's position is - - -

5 HER HONOUR: Oh, well, we can discuss that in due course. I do not understand the Board has any doubt. But we will come to that in due course.

MS PREBBLE: We will make submissions on that, sir. Thank you.

10

HIS HONOUR: Yes. Right. Now, Sir William, I suggest you might want to take one of these seats up here, because you will want some room to spread out your papers, I think. Was there anyone else who is – there is some extra room here, so perhaps some of the other parties – Mrs Wright, might want to think about coming onto the front desk, I do not know. Mr Kirkpatrick might not be quite so frightened of the front desk.

15

MR KIRKPATRICK: Just wondering, sir, and I would prompt that whether, in my experience with other Boards of Inquiry, the Board has wanted to maintain a place from which the party questioning a witness or presenting its case might address you, my friend Mr Robinson, obviously has adopted that approach for Contact, and on that basis at least, you may want to keep – that's the hot-seat, as it were - - -

20

HIS HONOUR: Yes, I agree with you.

MR KIRKPATRICK: - - - but obviously it is the Board's decision.

30 HIS HONOUR: Yes. Well perhaps the second row, Sir William, you might want to take a seat there. I would just say that there are three seats there so if people want to be a bit closer to hear what is happening. If you are not hearing so well, my suggestion would be to try and get in one of the rows further to the front. We will keep working on the sound system. I am pretty confident that by the time Mr Robinson's opening submissions have concluded, that we will have the volumes right.

35

Now, we are going to take the morning break, then Mr Robinson is going to regale us all with his opening submission, which are how many pages long, Mr Robinson?

40

MR ROBINSON: Sixty-six, sir.

HIS HONOUR: We will be here until tomorrow discussing those and – I am not kidding – six hours worth – so, perhaps that leads to the impetus in the Environment Court of us talking about limits of 20 pages for

45

opening submissions. So you will be thrilled about that. Once the opening submissions have concluded, there is an order that Mr Robinson has given to the Board. I am unsure as to whether it has been circulated to all the other parties. Have you?

5

MR ROBINSON: It has not, sir, but the order is the last page of – that is the 66th page – so that as soon as I have handed out my submission, all parties will have - - -

10

HIS HONOUR: Well, again, could you put a pile of your submissions at the back sufficient for everyone here, so that they can all take a copy and find out also your order of witnesses.

15

You need to keep in mind, of course, that three of them have been excused, Mr Lister is now going to be in week two, probably Wednesday, and the ornithological and bat people are in June.

So there are adjustments already to that list, just proving the very point this is a fluent situation.

20

We will take the morning adjournment, thank you.

ADJOURNED

[11.33 am]

25

RESUMED

[11.58 am]

HIS HONOUR: Thank you.

30

Now, Mr Robinson, I think we have reached that stage to move to your opening.

MR ROBINSON: Thank you, sir.

35

Just two preliminary points that perhaps I should have raised before the break, the first is that as one of the submitters pointed out to Ms Dixon over the break, there is another reason why next week may not be a wonderful option for a site visit, being the opening week of the duck shooting season.

40

The other thing is a personal request on behalf of myself and perhaps my learned friends, whether with your leave we could dispense with our jackets since it is getting progressively warmer in this building.

45

HIS HONOUR: Yes, I suspect in a few weeks you may be saying the opposite, but nevertheless I am happy for counsel to take off their jackets, or in fact anyone here who wishes to.

MR ROBINSON: Yes, I have attended a hearing in Alexandra where it was minus two in the hearing room.

5 HIS HONOUR: That is right, so I have heard, yes.

[12.00 pm]

10 Sir William seems to assure us it can get cold in here sometimes and I have no reason to doubt him.

MR ROBINSON: Well, if I could hand up my submissions, they have already been handed around.

15 HIS HONOUR: Thank you.

MR ROBINSON: The hearing manager is momentarily - - -

20 HIS HONOUR: No, she is with us now. She is just trying to get the volumes right, so she will just keep working on that as we go.

Now, has everyone who has an interest got a copy of the submissions of Mr Robinson for Contact? Thank you.

25 Now, Mr Robinson, I do not know if you have appeared on a major case in front of me before or not. My preference is to adopt a Socratic method for submissions with counsel, in other words to understand through dialogue your arguments and position.

30 Now, I appreciate not all counsel appreciate that, some do and some do not, I am happy to, as best I can, remain mute until you finish and then go back and start again with areas that interest me, or you may be happy for me to raise issues as we go through.

35 Do you have a view?

MR ROBINSON: I am happy to take - I was going to say interruptions - but to pause if there is something in your Honour's mind, as long as if I feel confident that the answer is in my submissions and arriving shortly, if I could invite your Honour to wait until the specific issue is addressed, but certainly my preference also is to undertake a dialogue with your Honour and indeed the other members of the Board of any issues that are raised in my submissions, and I will endeavour to answer them as best I can.

45 I should forewarn you in advance that in these submissions, in order to

ensure that they did not grow still further from an already forbidding pile of paper, I have largely deferred the discussion of relevant policies and plans to the planning witnesses rather in an attempt to summarise what is a very large volume of interacting policy.

5

HIS HONOUR: Well, I am more than happy, if you feel it - it does not have to be reached shortly, if you feel your submission deals with an issue that is raised, then just tell me and I am more than happy to leave it on that basis, I can just take a note and come back to it if it is not covered.

10

To avoid you feeling like you are in front of the Court of Appeal, my preference is that perhaps I do that with you and the others leave their questions to the end otherwise you are getting a four pronged attack, which I think can prove fairly difficult because we all follow different logic lines. So I will ask the rest of the Board if they could leave their questions to the end.

15

Generally, I am interested in understanding the argument so that it is exposed in a legal fashion which is understandable, rather than the merits of your argument, if you follow me?

20

MR ROBINSON: I understand, sir.

The other thing I should ask the hearing manager to hand out is that I have assembled two rather imposing volumes of cases that are on the hearing manager's desk, that I have written the submissions in a way which means that I do not actually intend to take the Board to particular cases unless questions arise about the application of those cases, so the casebook is very much for reference.

25

30

The logic of the casebook is that the first volume contains a number of decisions on windfarm applications and the second volume addresses a range of other issues that are canvassed in my submissions.

35

HIS HONOUR: Thank you.

MR ROBINSON: So starting at the introduction, the purpose of these submissions is to outline the case that will be presented in support of the applications by Contact Wind Limited, for resource consents related to the proposed Hauauru Ma Raki Windfarm and in support of the related notices of requirement and single resource consent application by Contact Energy Limited for substations and 220 kV transmission lines necessary to connect the proposed windfarm to the national grid.

40

45

[12.05 pm]

I will refer to the project as HMR for short, the two companies collectively as Contact and I will talk about applications for convenience rather than continually adding and notices of requirement unless the particular status of notices of requirement is an issue.

5

I have referred first to the reasons why Contact applications were pulled in by the Minister for the Environment, being firstly that the proposal is relevant to New Zealand's international obligations to the global environment in terms of the Kyoto protocol, including the proposals, contribution towards the achievement of the target, of 90 percent of electricity generation to be from renewable energy sources by 2025 as set out in the New Zealand Energy Strategy to 2050.

10

The Minister considered that the proposal would likely assist New Zealand in meeting its international obligations to the global environment by helping to avoid an increase in carbon dioxide emissions overall on a national scale.

15

Secondly, that the proposal effects are as likely to affect more than one region in the district. The proposal will have direct physical effects on the Frank and the Waikato districts, and the Waikato region. In the Minister's view in terms of security of electricity supply the proposal will have potential effects beyond these areas.

20

The Board in fact have got 96 submissions categorised, 31 support, seven neutral, 43 in opposition, 13 mixed and two not stated.

25

Between them the submitters in opposition to the proposal have put an issue almost every aspect of it, although the issues where opposition is supported by technical evidence, are relatively limited.

30

Against this background, and dare I set out in headlines, the structure of these submissions are talking about, first, the key aspects of the project, secondly, the broader context in which the application is thought to be considered, the nature of the applications, the way the project plan was developed, including consultation.

35

I will outline the consenting framework, within which the applications fit. I will talk quite briefly about the policy and planning context, as I said before, essentially deferring to the planning evidence on that issue. I will discuss the effects based issues raised in relation to the windfarm component, grouping them where possible.

40

And then I will go onto the notices of requirement following the same track, outlining the consenting framework, discussing the transmission specific effects issues, and then summarising the case for the grant of

45

consents and of the motion for designations proposed under part two, and then, as I said before, there is a one page list of witnesses.

5 So talking about the key elements of the project and the related transmission infrastructure, HMR is proposed to be located along approximately 34 kilometres of coastline on the west coast of the Waikato region. Its northern extent is some four kilometres south of Port Waikato, the southern most point is at Tuakau some eight kilometres north of Raglan. Its full name Hauauru Ma Raki, means
10 northwest wind.

The project plan is to construct a maximum of 180 wind turbines, each with a maximum hub height of 100 metres, and a maximum total height of 150 metres. If three megawatt turbines were installed, HMR would
15 have a capacity of 540 megawatts and produce up to 1,600 gigawatt hours of electricity each year. As such, HMR is substantially larger, both in terms of footprint and capacity, than any existing windfarm in New Zealand.

20 I interpolate to note that Meridian's Project Hayes, located in Central Otago, decisions on which are awaited from the Environment Court, is a similar size. But on any view, it is a large renewable energy project.

25 The windfarm footprint is subdivided into nine blocks or clusters and the applications specify a maximum number of wind turbines for each block. I will describe the applications in greater detail shortly.

30 For now, however, I should note that in response to concerns raised by the Board of Inquiry, that Contact may have preserved too greater degree of flexibility to alter turbine positions from the indicative layout shown in the application documentation.

[12.10 pm]

35 Contact has reviewed its position and constrained the areas within which turbines may be located in each block to those shown in Mr James' exhibit CDJ36 of his rebuttal evidence. That is a limitation that will operate in tandem with a proffered condition constraining the extent to which turbines can be moved closer together, and I will come
40 back to deal with that in greater detail and explain exactly what we have done and why.

45 Each wind turbine will be linked by internal 33 kV electricity lines to one of three substations located at Limestone Downs in the north, Matira in the centre, and Te Akau at the southern end of the windfarm footprint.

5 HIS HONOUR: Now, there is some discussion among the Board. I have got a differing understanding of the evidence from reading it. Commissioner Lumsden is relatively confident from Ms Yorke's evidence that the intention is that they will be underground lines. I was not so confident. Are you able to tell me whether Ms Yorke is correct, that they would all be underground?

10 MR ROBINSON: They will not all be underground. The application preserves the flexibility to put some 33 kV lines overground where the - and I am endeavouring to recall the precise way it was put - where its function of the terrain through which the lines would have to travel and the distance from the internal substation, but certainly the intention is that the bulk of the lines would be underground, of the 33 kV lines would be
15 underground, and there is a suggested consent condition in effect to provide a check of the reasons why they are overground rather than underground in any given case.

20 HIS HONOUR: That did not really help me very much, but that is a general problem which we will come back to in due course. But the answer to the question is, no, it is not intended that they will be underground.

MR ROBINSON: Not all, that is correct.

25 HIS HONOUR: So, to that extent, there is some ambivalence in the evidence it seems to me. So you need to make that clear.

13?

30 MR ROBINSON: Sir, just before I go on I should have your Honour, having raised the issue, that clearly Ms Yorke is the correct person to say exactly when it would be proposed that lines be overground.

35 HIS HONOUR: Well, it is interesting that two of us came to different views, mine accorded with what you told me, but I do not know whether other people misunderstood what you were saying too.

13?

40 MR ROBINSON: The three substations will be linked by a 220 kV pole line. A double circuit 220 kV tower line will transmit the electricity produced by HMR from the Limestone Downs' substation some 25 kilometres to a switching station near Orton.

45 The switching station has been located in order that the existing transpower to 20 kV line between Huntly and Otahuhu can be diverted

into and out of the switching station relatively easily. The maximum dimensions of the relevant structures are specified in the evidence of Ms Yorke.

5 HIS HONOUR: And again there, and perhaps I misunderstand it, but I understood that once included in the circuit the entire line back to Te Akau goes on line because there is no separator or switching system at Limestone Downs, it just changes to a bi pole rather than a mono pole?

10

MR ROBINSON: That is a level of detail about the operation of the electrical system that I would not be confident to answer, sir.

15 HIS HONOUR: Well, it leads into the question as to whether it becomes part of the grid or not and is switched in and out of the grid, and what is switched in and out of the grid, but it appeared to me that being a 220 kV, they mention that there was not another transforming system, so I am assuming that it essentially is either in or out, the whole lot.

20 MR ROBINSON: I think - well, I am reaching, but I think the answer is that functionally the diverted section of line into the Orton switchyard and out again would be - functionally, it would be part of the grid, although it is proposed to be constructed by Contact Energy.

25 I think, functionally, on the seaward side of the Orton switchyard it is not necessarily part of the grid, that would be a more administrative issue as to whether the designations were transferred to Transpower or not, but I do not think it necessarily has to be.

30

[12.15 pm]

35 HIS HONOUR: I suppose what I am trying to find out is where is the separation then, once it goes on in Orton, where is the separation to the system, and I had understood it to be where it moves from 33 to 220 so that each of the points of separation in terms of power supply are at Te Akau, Matira and Limestone Downs when it is transformed from 33 to 220. Once it is on to the 220 system it is either in or out.

40 In other words, the 220 system is either in or out at Orton or not.

MR ROBINSON: I believe that that might be correct, but that is a question

- - -

45 HIS HONOUR: Ms Yorke?

MR ROBINSON: Ms Yorke is the appropriate witness to answer that.

HIS HONOUR: Again, that was not clear from the evidence to me and I thought the evidence, again, was a bit ambivalent on that, and I think it is important to us to understand where the point of separation is.

5

14?

MR ROBINSON: The resource consents necessary to construct and operate the windfarm, including the 33 kV lines, have been sought in the name of Contact Wind Limited, a subsidiary of Contact Energy Limited.

10

The notices of requirement for the three substations, a connecting 220 kV pole line, the external 220 kV double circuit line to Orton, the Orton switchyard and the alterations to the existing Huntly to Otahuhu line to connect the switchyard to the grid have been made by the parent company, Contact Energy Limited, which is a requiring authority for this purpose.

15

Contact Energy Limited is one of the largest companies in New Zealand. Mr Frank Geoghegan, Contact's Project Director Generation, will provide a brief outline of the company.

20

But in summary, Contact is an integrated energy company with a diversified portfolio of thermal, geothermal and hydro electricity generation stations located throughout New Zealand. It operates some 22 percent of New Zealand's electricity generation capacity. Contact also supplies electricity, natural gas and LPG to over 600,000 businesses and homes.

25

Contact Wind Limited was created as a special purpose company to undertake the HMR Windfarm venture. The early stages of the project were undertaken by Windfarm Group Limited, and that company retains a commercial interest in the project.

30

The Managing Director of Windfarm Group, Mr Al Yates, who is also a Director of Contact Wind Limited, will outline in his evidence the steps undertaken to pull the project together.

35

Now, looking at the energy context for these applications, in my submission there is little doubt for the secure and reliable system of generation and supply of electricity is of critical importance to the economic and social wellbeing of New Zealanders.

40

HIS HONOUR: Yes, you do not need to give us the quotation. Next paragraph, 18?

45

MR ROBINSON: Yes, it is also clear as electricity demand continues to increase there is an ongoing need for new generation and capacity to be added to the system.

5 I will take that quote from Justice Fogarty's decision as read.

HIS HONOUR: Thank you, yes, 19?

MR ROBINSON: A detailed report attached to the evidence of Mr David
10 Hunt, consulting economist and expert on the operation of the electricity industry, analyses the position.

Mr Hunt's evidence supports the view that electricity demand is likely
15 to continue to increase, and that if that increased demand is not met by additional generation capacity, security margins will progressively erode.

Mr Hunt quotes Electricity Commission projections that electricity
20 demand will increase, on average, by 870 gigawatt hours per annum between now and 2015. This compares to the projected supply from HMR up to 1,600 gigawatt hours or 1,386 gigawatt hours if the more conservative output figures used by Mr Hunt for his assessment are adopted. Mr Hunt analyses the potential sources of the required new electricity generation in the report attached to his evidence.

25 Mr Geoghegan provides, in his evidence, a corporate perspective on these issues and explains how HMR fits into Contact's strategic plans. Those plans have to factor in a range of considerations, including the cost of electricity per unit from HMR compared to other potentially available sources, current constraints in the transmission network and uncertainty regarding the speed and cost with which those constraints
30 will be alleviated, and the impact of the emissions' trading scheme provided for in the Climate Change Response Emissions Trading Amendment Act 2008, now currently the subject of a governmental
35 review.

HIS HONOUR: Yes, it is interesting in a way that there is not really a lot of
40 discussion about the constraints. Obviously the Board is aware that the major constraint in this area is transmission network into Auckland which is a major consumer, and I am interested that your witness did not discuss whether or not such generation is able to get past the constraint because it is normally priced behind the constraint, not in front of it.

45 [12.20 pm]

So, you are obviously relying, it seems to me, although it understated in the evidence, on the fact that there will be a transmission upgrade in the other matter which is before another Board of Inquiry at the same time.

5 MR ROBINSON: The answer to the question is that HMR does not rely on the result of the 400 kV capable notices of requirement, that - - -

HIS HONOUR: If that is the case, why is there no discussion about the constraint?

10

The difference, for example, Mahinerangi, they could supply both sides of the constraint because - well, it is not well known, but with the fact that Manapouri was not producing most of last year because it was under reconstruction. Is that Contact's?

15

MR ROBINSON: Meridian.

HIS HONOUR: And of course the aluminium smelting consumes a huge amount of base load, 500 gigawatt I think - megawatt, sorry - constant
20 24 hour load, so you can supply both sides, you can supply south or north onto the 440 kV or south to supply there, which curiously enough is about, as I recall, somebody will tell us, about one gigawatt.

20

So about the same as Auckland, actually, south, and the flow is 60/40, so 60 percent of the time power is going north and 40 percent coming south. So the arguments about constraints, although addressed in that case, whether it could be used on both sides. Here, we have no evidence at all about constraints and whether there is sufficient consumption south of the constraint.

25

30

MR ROBINSON: The answer is that, in Ms Yorke's evidence, which is one of the key criteria for the choice of the grid connection point was that the line had capacity to accept all of the output from HMR and get it into Auckland.

35

HIS HONOUR: Well, I thank you for that, I do not recall her saying that but I will look again.

MR ROBINSON: And that the way it was framed was that in assessing the
40 alternatives there were a number of alternative route connections, and several of them were rejected at the outset because the line did not have the capacity to accept the electricity and that that was one of the - there were, I think, that was the case anything south of Huntly, so that was why the grid connection was north of Huntly, because there is nothing
45 between Orton and Otahuhu.

40

45

HIS HONOUR: I do not recall that discussion about there being constraints but - - -

5 MS RANGI: Was it a question, though, about capacity in the line, or was that a question about demand?

MR ROBINSON: The capacity in the line, and, because obviously if there is not enough demand at the other end of the line - - -

10 HIS HONOUR: That is a different issue. I accept that. I was just – the issue about dispatch beyond constraints, because of course we know, or I know – I do not know if the Board as a general – I am pretty sure three of us, at least, know that it is priced behind the constraint.

15 MR ROBINSON: Yes.

HIS HONOUR: So, I need to re-read Ms Yorke’s evidence. I do not recall her talking about pricing behind constraints at all.

20 MR ROBINSON: She did not talk about it in terms of pricing issues and that may have been the reason why Your Honour did not identify it. As I say, in her discussion of consideration of alternative, it was on the basis that those lines that could not accept the electricity into Auckland - - -

25 HIS HONOUR: Well that is regarded as a constraint, is it not?

MR ROBINSON: Yes, exactly.

30 HIS HONOUR: Wherever you cannot dispatch all power required free of - because it will not accept it, that is regarded as a constraint, and then you talk about pricing behind the constraint which is beyond the point of restriction, and of course it creates – the computer model that Transpower used – we have got no evidence in this case, but I know from other cases, the model immediately changes the price behind the
35 constraint, often to zero. So, of course that would be no good for a windfarm, but it is just interesting to me, we did not have that type of evidence which we had on the last windfarm in quite some detail.

40 MR ROBINSON: Well, I think the answer is because, to the extent that there are constraints in the system getting electricity into Auckland, HMR connects on the inside of them.

[12.25 pm]

45 HIS HONOUR: Right. That is fine. Thank you. That is helpful. And Ms Yorke is the person who tells us about that.

MR ROBINSON: Yes, and if the Board is left in any doubt I am sure she can expand on it.

5 HIS HONOUR: Yes, thank you.

MR ROBINSON: So, going to paragraph 21, in summary, Contact's strategic view is that geothermal development offers the most cost efficient source of new generation at present, but the amount of new geothermal generation possible is constrained so that even if the developments currently under consideration as likely prospects proceed, they would, at most, meet only three to four years of additional electricity demand. Hence, while Contact has geothermal development plans afoot, it is looking beyond geothermal to the next best source of new generation.

15 As Mr Geoghegan discusses in his Evidence-in-Chief, combined cycled gas generation has been the most efficient source of new generation over the last 10 to 15 years, but with the Maui field having run down, the availability of future gas supplies and the quantity necessary to permit investment in a new power station is uncertain and the price of that gas is even more uncertain.

20 Overlaid on these uncertainties are issues about what allowance should be factored into the future price of carbon emissions. Mr Geoghegan's conclusion is that at the present time renewable generation options are more viable and that while hydro make come back into view as an option to meet increased electricity demand, wind is currently the best option after geothermal.

25 Mr Geoghegan also observes that if windfarm projects are unable to be brought online in a timely way, New Zealand will probably need to resort of imported gas or coal fired generation to provide the required electricity supply which would have obvious and significant consequences in terms of carbon emissions among other things.

30 Now, sitting behind these issues is the global phenomenon that is the enhanced greenhouse effect. In its decision on Project West Wind at Makara, the Environment Court noted the evidence as to current projections of the implications of climate change on sea level rise and ecology with a quote from the evidence to the effect "that climate change is a reality and decision makers throughout the world need to respond to that fact."

35 Parliament has recognised the significance of these issues with the enactment of sections 7(i) and (j) which the Environment Court described in its West Wind Decision as being very powerful,

5 representing some key issues to be weighed against the adverse effects on the local environment. Now, in the footnote, I note that in the Mahinerangi Decision in which Your Honour and Commissioner Menzies were parties, the Court had noted that section 7(i) deals with the effects of climate change on an application rather than the effects of an application on climate change, the former consideration remains, however, is one of the key benefits for renewable generation to be considered under section 7(j).

10 As is also well known, New Zealand is a signatory to the Kyoto protocol with a commitment to reduce greenhouse gas emissions to 1990 levels by 2012. At present, as the witness for EECA, Mr Torrens, notes, emissions are climbing, having almost doubled since 1990. Windfarm generation falls squarely within these considerations because
15 it produces no greenhouse gas emissions. Moreover, the carbon footprint of any significant new windfarm is far outweighed by the CO₂ emissions likely to be reduced as a result of it being brought online.

20 By contrast, if significant blocks of renewable energy are not brought online over time, and New Zealand has to resort to imported gas or coal fired generation to maintain appropriate security margins, greenhouse gas emissions from the electricity sector will inevitably increase further.

25 Mr Geoghegan also discusses in his Evidence-in-Chief the characteristics of a successful wind development. The primary characteristic is the quality of the wind resource. This is discussed in greater detail in the evidence of Mr Manins, consulting wind engineer. In summary, extensive wind monitoring confirms that the wind resource available at the HMR site is a class 2 resource, which makes
30 HMR extremely attractive by international standards but not as attractive as the class 1 resource sites such as those in the Wellington area and in the Tararuas.

[12.30 pm]

35 As Mr Manins observes, however, class 1 sites with proximity to transmission with available capacity, and that are suitable in terms of environmental characteristics are rare and are mostly already being developed.

40 HIS HONOUR: Firstly, to my knowledge, this is the first class 2 application.

MR ROBINSON: Although – sir, I am not sure that is right. My understanding, although it is not in the evidence, I would hasten to add,
45 is that Project Hayes is a class 2 site.

5 HIS HONOUR: Well, Mahinerangi was a class 1 – they are looking at 39 percent efficiency, I think, I am told – sorry – and of course the West Wind Project, Makara, we looked at – probably is class 1AA, and they are talking about something well into the 40 percent efficiency for that site – could be unheard of on a world scale.

MR ROBINSON: I think, sir, nobody who has spent any time in Wellington would be surprised.

10 HIS HONOUR: Oh, well, they do not have a lot of bird life up there for a start. You would have to be a pretty tough bird.

MR ROBINSON: That is right.

15 HIS HONOUR: But the point I am making is that I am not aware – it might be that Lammermoor is class 2 but of course we have not had any decision on that, so I cannot comment. I thought they were looking at running well into the 30s for efficiency. It is just that there is a drop. I mean this is all about how much it costs to produce the power, is it not?

20

MR ROBINSON: Yes, exactly.

25 HIS HONOUR: The less the wind resource, the less potential there is to generate income from the wind, which affects its efficiency overall, because it costs you the same to put a turbine in whether it is on a class 1 or class 10 site.

MR ROBINSON: That is exactly right. And these are perhaps issues you should discuss, sir, with Mr Manins - - -

30

HIS HONOUR: Mr Manins is the person? Thank you.

MR ROBINSON: Who is the person - - -

35 HIS HONOUR: We are at 31 now.

40 MR ROBINSON: One of the features of windfarm developments, and indeed of renewable developments generally, is that they have to be located where the resource is located. That means that it is generally not possible to locate new developments close to points of demand, and thus the ability of the transmission system to accept the new generation output and to transmit it to the points of demand is a critical feature.

45 As Mr Geoghegan identifies in his evidence there has been chronic under investment in the national grid for a number of years and Transpower is currently embarking on a major investment in the grid to

address key pinch-points. The speed with which that occurs and the allocation of the very substantial costs involved is a very important issue in power planning in New Zealand.

5 One of the most attractive features of HMR is that you inject into an existing line feeding directly into Auckland. That means that HMR is not subject to the same transmission issues as other wind farm sites in the Manawatu / Putaruru area and in the South Island.

10 HIS HONOUR: Yes, well I must say for my part I do not know that that was clear to me from the evidence and you have told me Ms Yorke is the person to check that with. I have heard her evidence and I am surprised that picked that up. But that does seem to me fairly essential to your case, really.

15 MR ROBINSON: That is right and I accept that, sir.

HIS HONOUR: Not a lot of point in producing power behind a constraint where there is no demand for it but of course that is a factor I do not think would worry us normally because if you want to produce power that nobody wants I suppose that is up to you. The point you are making is there is a requirement – it only becomes relevant when we start talking about national interest issues.

20

25 MR ROBINSON: Right.

HIS HONOUR: Because if it cannot be despatched then there is no argument about national interest really is there?

30 MR ROBINSON: That is right and it feeds into the part 2 analysis in a number of ways. But the essential point I am making at this point in my submissions is that as a class 2 site, HMR does not have the wind resource of the Tararuras at Makara or indeed at Mahinerangi, but it does have proximity to Auckland.

35 **[12.35 pm]**

HIS HONOUR: Yes, which of course, given the losses in the system, the closer you are to the point of consumption – I cannot remember what the figure is but it is quite substantial. So I accept that and so that is why it seemed to me that you are able to predicate upon the constraint to Auckland being removed, but you have said it is not and I need to explore that further because I thought there had been an assumption that the Transpower upgrade would take place.

40

45 MR ROBINSON: No, because the Transpower upgrade is running between

Whakamaru and South Waikato, and into Auckland, and is designed to – my friend, Mr Kirkpatrick, who was involved in the Board of Inquiry proceedings would be able to give us chapter and verse.

5 But my understanding is that it was intended to relieve the constraint preventing electricity from the Central North Island and South getting into Auckland. HMR is feeding into well inside that constraint and indeed another aspect, inside the Huntly power station.

10 HIS HONOUR: Right. Well, that is something we will have to explore with the people who are involved in that side of things in power. In other cases we have been told for example – Huntly is coal fired is it not?

MR ROBINSON: Yes, it is.

15 HIS HONOUR: You cannot just turn Huntly on and off because it has to be throttled obviously because consumption has to exactly mark demand all the time. Demand has to match supply all the time so a lot of the argument we have had before is you cannot just turn Huntly off.
20 Huntly takes, somebody told me, 24 or 12 hours to wind down and to switch them off you are talking about a three-day start up or something. So essentially it is not a compensation for a wind farm that cannot be throttled down so it has to substitute other load which I presume is hydro load. Then you get into the question of spinning reserve to take
25 it up. So those issues have not been addressed in the evidence.

MR ROBINSON: Not in that level of detail certainly, sir. In terms of what exactly HMR is a substitute and how physically that would occur, that is an issue that – partly an economic issue in terms of the operational
30 marker that I would invite the Board to discuss with Mr Hunt.

HIS HONOUR: Mr Hunt?

MR ROBINSON: Who is the economist and expert in the operation of the - -
35 -

HIS HONOUR: I understand the government decision has been made that identifies that wind will be despatched first so that is, I understand, a current policy. The question is it cannot substitute for thermal because
40 thermal cannot be wound down, instantly.

MR ROBINSON: Well, Mr Hunt is the person to talk about the operation of the market and Mr Geoghegan. who has at various stages managed Contact's thermal portfolio, will be the person you need to talk to about
45 how thermal stations operate and the extent to which they are or are not flexible. So, for instance, I am aware that Contact's own combined

cycle power station at Otahuhu - - -

HIS HONOUR: Yes, well, I wondered if that was not really what was targeted in the sense the one that can come on and offline very quickly, as I understood it, was that Otahuhu line.

5

MR ROBINSON: In my understanding the essential characteristic of a combined cycle plant is that there are two power cycles. One of them – and I think it is the operation of the steam boiler – can be cycled up and down and the other cannot and requires several hours. So I think that this is an issue for Mr Geoghegan because I am - - -

10

HIS HONOUR: Because we know how the despatch system works, you know every quarter of an hour or something they are updating the bids, and with a wind farm it makes it very interesting how this is intended to generate. You are talking about it generating on top but we all know that a wind farm is not a constant supply of power, it goes up and down all the time.

15

MR ROBINSON: That is right and so one of the characteristics of wind is that it operates in a different time cycle to hydro so it is - - -

20

HIS HONOUR: Hopefully.

MR ROBINSON: It is more reliable over the course of a year but where, as is notorious in recent times, if the hydro goes down it could go down by 30 percent.

25

[12.40 pm]

HIS HONOUR: Yes, you are meaning year to year hydro has more variability than wind.

30

MR ROBINSON: But day to day, hour to hour, wind is clearly more variable and so it is an issue of how that is managed in the system and then there is a discussion in Mr Geoghegan's evidence that one of the steps Contact has taken, to respond to the growth in wind farms, is that it has what they call a "fast start" gas fired power station being constructed at Stratford which, I think, can ramp to full load in a matter of minutes from nil.

35

40

HIS HONOUR: Because at the moment hydro has that ability to keep spinning reserve and to bring it on line almost instantly of course.

MR ROBINSON: That is right.

HIS HONOUR: And you can see the scope for balancing as we did in Mahinerangi between the hydro production, which they had there, plus the wind farm and thus there was the potential for them to be balanced between the two. What is not so clear is how a wind farm is going to be balanced in this case. We have not had any evidence about it at all that I can recall but Mr Geoghegan is the person you say we should ask?

MR ROBINSON: Mr Geoghegan can talk to you about the extent to which thermal generation can or cannot cycle in practice. As I say my understanding is certainly the combined cycle plants have - it is either a one third or two thirds of their output can be cycled but there is a base load that is either on or off, but Mr Geoghegan would be able to provide those numbers.

HIS HONOUR: Mr Geoghegan, thank you.

MR ROBINSON: Because I think in a past role at Contact he was the manager of the Otahuhu station.

HIS HONOUR: Thank you. So we will move to 32 now.

MR ROBERTSON: Mr Geoghegan's summary of the position - and this is really your Honour's point, the point your Honour made earlier - is that HMR is unlikely to proceed immediately after consents are granted - assuming of course that consents are granted - because the dollar cost per unit of electricity from HMR is greater than from geothermal developments and other wind farms that can generate more efficiently in economic terms than HMR. That is why, among other things, Contact sought a 10 year lapse period.

As Mr Geoghegan emphasises, however, with the very long lead times required to develop renewable electricity projects, it is critically important to have consents that are able to be exercised when market conditions are favourable. It should be noted that a reference to market conditions is not solely a pricing issue. If geothermal development stalls, for whatever reason, the position could alter significantly. Similarly, if there are delays in upgrading the transmission grid a number of other wind farm developments are unlikely to proceed and security of electricity supply issues for the greater Auckland area might come even more into focus as a priority.

Contact's proposed investment in HMR is in excess of \$1 billion. Clearly Contact will not proceed with that scale of investment unless and until it is economic to do so. From New Zealand's point of view, however, it is very important that if and when HMR is required, as

signalled by the electricity market, that it should be possible to proceed.
Contact - - -

5 HIS HONOUR: The issue is, of course, certainty. Some of the criticisms, as I
understand them, is that we are uncertain is this just a stake in the
ground like all the mussel farm applications we have, two competitors
setting up in the same area? How do we maintain certainty against that
a consent does not require you to build all of the turbines and you might
10 build 50 or 60 and another 50 or 60, or maybe just leave it at 50 or 60?
How do you achieve certainty in outcome given that there is nothing in
the consents that you are suggesting to date requires you to build them
all?

15 MR ROBINSON: It is absolutely right. There is nothing in the consents that
requires them all to be built but there is a very real economic incentive.
One of the issues discussed in Mr Geoghegan's evidence – and I deal
with this in - - -

20 HIS HONOUR: If you deal with it later we will just come - - -

MR ROBINSON: I do not deal with the same point but I use the same
information for a different purpose. But one of the issues discussed by
Mr Geoghegan is, is this all one project or is this 180 separate projects?

25 [12.45 pm]

HIS HONOUR: Well, or maybe eight.

30 MR ROBINSON: Or it maybe eight or some sub – and this is your Honour's
point. And that in HMR's case that because of where it is situated it
has a very substantial transmission component. That transmission
component is in Ms Yorke's evidence, it has been estimated to cost \$33
million for the external transmission line.

35 HIS HONOUR: And probably the same again for the internal?

MR ROBINSON: And probably the same again for the internal.

40 HIS HONOUR: Three substations.

MR ROBINSON: But it is the external line which is the critical element
because that is a fixed unavoidable cost. It does not matter how many
turbines are on the end, that line would have to be built.

45 HIS HONOUR: But with respect, I mean I saw the evidence but \$33 million
is not a lot – it is pin money in terms of the cost of this project.

MR ROBINSON: Well, I think in terms of the overall cost but Mr Geoghegan's point is that you have a project where you are waiting for the economic conditions to be right, that it reaches the point where it provides an adequate economic return. At a purely functional level every turbine less reduces the income available to meet that fixed overhead cost and while, as you say, \$33 million is pin money – or some people - - -

10 HIS HONOUR: Well, in terms of the project. In a \$1 billion project it is only three percent of the cost of the project.

MR ROBINSON: In terms of three – but it is also only one of the unavoidable costs, nearly the most obvious, the most obvious and easily quantifiable. So that there are economic incentives for Contact to build more rather than less so that is part of the answer but ultimately you get into a policy issue. Certainly, sir, I completely agree – well, my understanding at any rate – is that there has been a certain amount of turf claiming in the aquaculture industry and that, in terms of an allocation of valuable property rights or resource development rights, that that has been an issue that the Environment Court has had to grapple with and assisted, or not as the case may be, by the legislature.

But in the case of power planning where you have projects where to get them off the ground if everything goes perfectly you are talking half a dozen years away - where the consenting process is a critical element in being able to push ahead with all of the links of the jigsaw - that if the Environment in other places in this Board of Inquiry is looking for certainty that it is going to happen, in my submission the end result is firstly you are not going to get that certainty and then you are going to get a position where because you cannot be sure that anything is going to be built then nothing is built, because nothing is consented.

To take an example, Mr Geoghegan refers to the fact that after the Mahinerangi case had concluded and that was a case whereas I understood it you had a very good project, you had some transmission issues that might or might not have been a problem, but a very good project – on the face of it all systems go.

TrustPower were quoted as saying if the allocation of costs for the Cook Strait cable upgrade (sort of in excess of \$600 million) was proceeded as planned and South Island generators had to meet that cost that would sink the economics of TrustPower's hydro and wind farm developments in the South Island.

[12.50 pm]

So the consenting is only part of a very large jigsaw that has to be put in place to make these projects work. It is a very important part, but it is only a part.

5

In terms of where your Honour started and invited my comment, no, there is no certainty that HMR will be built and Contact is looking for consents so that it can be built if and when it needs to be.

10 HIS HONOUR: We will come back to the issue later I think – 34?

MR ROBINSON: A rather over long response.

15 34 is really the conclusion of this section of my submissions. Contact's ability to proceed with HMR when market conditions are favourable is also important to the regional community.

20 Mr Butcher has undertaken an analysis of the likely economic benefits and has estimated additional income generated of \$159 million for the Waikato region over the construction period, including an additional 399 jobs.

25 Now I am about to start into a new section, sir. I am not sure how rigidly your Honour would like to keep breaks, and so..?

HIS HONOUR: Well we are still at 10 to 1 so let us move onto it – the first area of - - -

30 MR ROBINSON: So at any resource consent application related to a large scale project, particularly one like a wind farm with a large footprint, there is an understandable reluctance for consent applicants to commit the very substantial resources required for detailed engineering design before consents are obtained, fixing the parameters of the design.

35 Applications are accordingly made on the basis of preliminary designs and sufficient flexibility is sought to enable changes to be made to the project design as part of the detailed design process.

40 In a number of wind farm applications the desired flexibility has been achieved by nominating indicative turbine locations and specifying the extent to which the final location of the turbine can move from that nominated point. A number of wind farms have been consented with conditions specifying 100 metre tolerance from the nominated point.

45 Lack of precise details of what is proposed and where it is proposed to be located can create issues as to whether it is possible adequately to

assess the effects of what is proposed, given the retained flexibility. I have quoted a project from the Project West Wind decision where the Environment Court looked at that issue and decided that it could assess the effects within a 100 metre radius given that margin of flexibility.

5

In the case of HMR, the project team identified at an early point that the landscape did not lend itself to definition of turbine locations defined by circles around a nominated point.

10

As discussed in the rebuttal evidence of Mr James, the steep ridgeline topography of much of the HMR project area means that it is rare to find a sufficiently flat area along the ridgelines to accommodate a 100 metre radius circle. As a result, if turbine locations had been defined in that way it would have created the potential for significantly increased earthworks to occur on steep hillsides.

15

To avoid that situation, rather than defining turbine locations by circles the applications defined turbine consent areas for each block with a nominated maximum number of turbines for each block. While an indicative turbine layout was provided, flexibility to move turbines within the turbine consent areas for the relevant block was retained.

20

Use of the turbine consent area in this way also enabled significant archaeological sites identified in the evidence of Dr Clough to be avoided and for the effect of turbine construction on indigenous vegetation areas to be minimised.

25

In correspondence before Christmas the Board of Inquiry noted that one consequence of proceeding in this way was that the effects of any alternation of turbine locations would need to be addressed. Such an assessment has been undertaken, as is described in the evidence of Mr Lister on visual effects, Mr Hegley on noise, Mr Kessels on indigenous vegetation and Mr Kerley on shadow flicker.

30

In particular Mr Lister has produced alternative photo montages showing the effects of a shifted turbine location from the indicative sites to what Mr Lister identified as the “worst case”. The effect, in Mr Lister’s opinion, was variable, with the increased visual prominence from some locations that each worst case scenario represents being accompanied by a corresponding decrease in visual prominence from other locations.

35

40

[12.55 pm]

45

As I have already noted, Mr James’ rebuttal evidence presents the results of a revision of the turbines consent areas. In many cases areas

were deleted which were not suitable for turbine construction for engineering reasons but which had been included for presentation purposes essentially to create one or two contiguous areas for each block. In other cases provisions have been made to ensure that identifiable potential effects are reduced.

It is submitted that this process of progressive refinement and reduction of the scope of applications is clearly permissible under the Act and indeed is both expected and encouraged as a means to obtain the best possible outcome in environmental terms.

HIS HONOUR: If you could just stop there for a moment because it is correct that what Mr James did in his rebuttal evidence addressed some of the issues the Board had raised several times prior and made it very clear in a letter after it received the last response before Christmas that it was still concerned had not been addressed.

One of the things was the way in which language is used throughout the application to create, in my view, some real doubt in my mind as to what people are talking about. We have people talking about a wind farm, a wind farm site, turbine consent areas and earthworks consent areas, and the Board struggled until it got rebuttal evidence to even understand what an earthworks consent area was. I do not know that I am still clear on what they mean by it given that it includes gully heads and streams and all sorts of archaeological sites.

Then we have Mr Galloway referring to the wind farm site of some 70,000 hectares in three huge blocks that nobody else even mentions. It seems to me there needs to be some clarity by the applicant as to actually what it means when it is talking about a wind farm site and a wind farm, turbine consent areas, earthworks areas and whatever Mr Galloway is talking about, which seems to be something different.

Nevertheless, nobody provides a calculation of the earthworks consent area but it appears to be about 20,000 hectares – quite a large area by any explanation and really there is an absence of any explanation as to why such areas are included.

We are told in generalizations by Mr James later that “We do not intend to do works in most of this area” and nobody tells us what works you are intending to do in them.

Part of the problem I think is that we still have not got and we are going to need – and I may as well tell you know because you are going to need to get working on it – some proper maps that actually show us all the overlays.

At the moment the only plans we have showing the archaeological areas show the turbine consent areas over the top of some of them, and completely contrary to what Mr Clough tells us, and there is a whole range of issues about earthworks, exactly where they are going to go.

5

We have heard about the road going into Limestone Downs, and the impact of that, but we have not got any more information other than what Mr Lister tells us. It appears that within the concept of this earthworks consent area is essentially licence to do almost anything which is unspecified.

10

I do not think we even have the power to grant a consent for something that is unspecified, especially when nobody tell us what they are intending to do, if anything at all, within those areas.

15

If it is part of the application that the earthworks consent area is to get a consent, I think we are going to need 'for what'. And we need to have some maps that actually show us what those effects are, because at the moment, all of the effects that you are planning are encompassed within other areas, ie the turbine consent use, the roads, which includes, if you look at the maps we have seen the cut and fills – or mostly cut, of course, but there is some fill, and the soil disposal areas.

20

I must say, I am struggling to understand what the earthworks consent area is for, why it needs to include 20,000 hectares compared with the 200 hectares for the turbine sites, and even the road – what, you have got 106 kilometres of road, 10 metre wide. It is another 100 hectares, is it not? Maybe 1,000 hectares. Nevertheless, it is a big leap between that and 20,000 hectares.

25

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[1.00 pm]

MR ROBINSON: Well, I think that the best way to proceed given that indication – and obviously the Board has been perfectly clear where its concern has come from, that it has been concerned, and the nature of that concern, and I would like to think that it was obvious that Contact has been endeavouring to address that concern and the way your Honour put it, somewhat clearly at the pre-hearing conference, was that if Contact was to retreat, it needed to do so early and - - -

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HIS HONOUR: Well, it did it so at rebuttal, but I am not so concerned about that because I think the turbine consent area is now clear. And I must say for myself and I think for the Board, we can see the logic of what is done. What we do not know – the question I am immediately asked is, "Well, what is the separation, for example, to archaeological areas?" That is just one example.

45

5 On the earlier maps we saw some of the areas encroached into those. Is there a separation to be provided? I could not find one in any of the evidence. Is it 5 metres, 10 metres? Are they going to fence it? Those are the sort of things I would be expecting to see evidence about.

10 None of that is new. It comes up in all the other applications we deal with on any subject. What surprises us is that there is no discussion of those matters, and the same is true of indigenous vegetation. We have a discussion about indigenous vegetation, and then there is a general statement that much of it is within gorse. But we do not know – we hear that and then somebody says, “Oh, but there is a” – was it a totara, or a puriri or something – “that was 20 metres high” or something. Well, suddenly you are going, “Well, you don't get a 20 metre high puriri in cut over regrowth.”

20 So, as the Commissioner was saying this morning, there are other areas where they are saying “we are going to have to trim trees.” Now, as far as we could tell, they are trimming some trees that might be 15 or 20 metres high back to 10 metres, or 5 metres. It is this detail.

25 I know that you are saying there is a generality here, and there is a huge tension – I thought, leave this before lunch – between the flexibility you desire, so you can try and get around as many problems as possible, and the need for us to understand what the effects are before going and granting a consent, so that we can judge it against – and it is a problem that has come up before. This concept of generic plan based consents – I do not know where that has come from. It is not one that I am aware has been reinforced by the Court in any way.

30 Where I have used SEMP's and those type of things, it is where the parameters are very clear as to the outcomes, and there is no delegation of general power.

35 Here we have what seems to be an attempt to make council officers responsible and that leads us into the Waipa Hydro case where the regional council granted a consent of the sort you are seeking and then refused to grant any of the plans. That left, effectively, the consent holder with no consent because they commenced to build and they were prosecuted and I fined them accordingly, in the hundreds and thousands of dollars.

45 So the difficulty here, is that there are limits to how far power can be delegated – that in my view is very clear. And I am happy to have that discussion, and no doubt you have addressed it later in your submissions. But it is a major issue, especially through the use of plans,

and from the Board's perspective I think the thing is that turbine consent areas are now relatively clear to us, the roads are relatively clear, although you are seeing to move them, but at least the ones that are shown on the diagrams are clear, to that extent.

5

What we are struggling to understand is, you might move a road a couple of metres, but why does that mean you have to go to the bottom of the stream? What is it that you are wanting to do in respect of gully heads? Why do you want the archaeological areas and the significant indigenous vegetation area and the bat area and other areas, why are they to be included in the earthworks consent areas? Those are the things that are concerning the Tribunal, and I suspect, other parties as well.

10

15

That is where the clarity is. So, I agree with you, that the turbine consent areas are certainly clarified in a lot more detail. My understanding is the intention is that it will avoid archaeological areas, it will avoid significant indigenous vegetation, that it is intended to meet the various objectives that people discuss.

20

We have not seen a plan that shows us that, given that we have not had an update of those plans showing the impact on archaeological or significant indigenous vegetation. So we have not seen that and it would be, I think, essential for us to see that on a contour plan properly prepared.

25

Nevertheless, assuming those things, that your objectives in that regard are met, and it seems to us we can clearly understand the turbine consent areas. It enables us in much more detail now to understand the effects of the turbine consent area.

30

[1.05 pm]

What I am really alerting you to is that there is this wind farm site, wind farm – I am using the little fingers to show that they are words that are used freely throughout the evidence – and earthworks consent areas, and we are not sure whether or not it is intended that the wind farm site is beyond what is the wind farm site. Is it intended to be where the wind farms are constructed, or is it some greater area? Is it greater than the earthworks area? Why is there an earthworks area? Those things, I have got to say, are very unclear to us at the moment.

35

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MR ROBINSON: On the basis that it is five past one - - -

45

HIS HONOUR: Yes. That is why I raised it before lunch, to give you some things to talk to your people about over lunch.

MR ROBINSON: Certainly I can see that Mr James' presentation of Tatuk, may, and perhaps should lend itself to a discussion on a point by point basis. In terms of the overall plan point of view we have struggled, I
 5 have to admit, to get all of the information on understandable plans; that to get the kind of detail that your Honour is discussing, requires plans produced at a level of specificity, that it is very easy to lose the context about where you are on the site and how one plan relates to another plan.

10 So, I accept that we have struggled to do that, given the size of the footprint collected but certainly, in terms of my understanding of the point your Honour is putting to me, the way that I have tested it myself so that I am comfortable with what my client is proposing to the Board,
 15 is to sit at Mr James' elbow as he walks down the footprint using Tatuk, saying "where are these things" and in terms of the proposal your Honour put to in effect, have a Tatuk session, along with – and this reminds me - - -

20 HIS HONOUR: KV2, is it?

MR ROBINSON: The KV2 – I undertook, to Sir William, and I apologise for not raising it before now – it just suddenly went through my mind, that Sir William has advised that one of Mr Van der Leden's team are
 25 available to present the KV2 at 2 o'clock tomorrow. And so he and I - -
 -

HIS HONOUR: Perhaps yourself and Mr James – or he and Mr James could do them sequentially then, so maybe we can see the other - - -

30 MR ROBINSON: That's right, and it may be that, given that Mr Van der Leden's assistant is coming from a distance that he should go first.

35 HIS HONOUR: We will leave that to you. It may be a more specific – it may only deal with part of the site. I will leave that to you, but perhaps discuss that with Sir William and see if, in effect, it deals with the entire site or only part of it.

40 MR ROBINSON: But the proposal would be to do that at 2 o'clock tomorrow, and with your Honour's points in my mind I will go away and discuss it with my team.

45 HIS HONOUR: Well, of course, yes, the point I am making is we have a lot more information now about the turbine areas and thank you for that because that is the type of detail we are looking for. We are still not

5 sure if it avoids those but it seems to us the intention is that it will avoid significant indigenous vegetation and archaeological, and probably some other things as well, but I cannot remember exactly what they are. Instability areas for example. I am assuming those things are intended to be met.

10 What we are not clear on is why we have got earthworks consent areas that include all of those problems. I have got to say I have struggled for some time now to understand what an earthworks consent area is and what it has to do with this application. If you are pursuing it, I need to alert you now that it is a major issue for the Board I think.

MR ROBINSON: I understand.

15 HIS HONOUR: We will take the luncheon adjournment and we look forward to continuing. As I understand it we are at 42. Is that right? Is that in accordance with you?

20 MR ROBINSON: Yes, that is correct, sir.

HIS HONOUR: Thank you.

ADJOURNED [1.08 pm]

25 **RESUMED** [2.16 pm]

HIS HONOUR: Now, Mr Robinson, I think we are at 42.

30 MR ROBINSON: Yes, sir, if I just finish the section on turbine consent areas and then go into the earthworks consent areas, and I will endeavour to interpolate some responses to the points that your Honour put to me on the eve of lunch.

35 HIS HONOUR: Thank you.

40 MR ROBINSON: So talking about the turbine consent areas and the refinement thereof. The end result as shown in Mr James' CJD36 is a series of relatively small separated areas in each block within which turbines may be located. As Mr James observes in his rebuttal evidence, the proffered turbine consent areas for HMR provide less flexibility in terms of average area available for turbine location than would have the specification of turbine locations by a 100 metre radius around an identified point.

45 In addition suggested condition to restrict the location of each in relation to the others, each turbine in relation to the others, by definition

of ellipses around each turbine provides a further effective limitation on the movement of the turbine sites within the specified turbine consent areas.

5 So going onto turbine consent areas, at the pre-hearing in March your Honour also queried the approach taken in the application documents to earthworks and the apparent breadth of the areas within which earthworks might be undertaken. Contacts' application specified the properties where earthworks would occur. Areas within those
10 properties were not specified but the applications effectively relied on the fact that all earthworks are ancillary to the creation of the wind farm and are therefore geographically, and I would add functionally, tied to the location of the wind turbines.

15 As Mr James explains in his rebuttal evidence, the earthworks consent area specified in the applications were the subject of one review in response to a section 92 request designed to demonstrate that works were not needed or proposed beyond the limits allowed in high risk erosion areas as that term is defined in the Waikato regional plan.
20 Because the focus of this review was relatively limited, it still identified areas as subject for the applications which Contact did not and does not intend to use for the purposes of earthworks.

25 Mr James has now further revised the proposed earthwork consent areas and amended plans are attached to his rebuttal evidence as his CJD39. The scope of earthworks within the reduced nominated earthworks consent areas are further controlled by suggested consent requirement that works be generally in accordance with the plans provided. Control of the detail is proposed to be achieved through earthwork design and
30 management plans, one for each turbine block approved by the relevant district council. This was the same approach as was used for Project West Wind now under construction and the Mahinerangi wind farm conditions which were finalised in late 2008.

35 I have inserted the final decisions for both wind farms that include the conditions in the case book.

HIS HONOUR: This West Wind is the Makara wind farm - - -

40 MR ROBINSON: Yes it is.

[2.20 pm]

45 HIS HONOUR: It would be fair to say that the situation there is very, very different to here. It is essentially almost rock and they have been able to essentially cut and fill the (INDISTINCT 2.20.03) because it is such

5 a geologically stable area. I am a bit quiet, am I? A geologically stable area and devoid of pretty much vegetation, animals, pretty much anything except wind, and I am just a bit concerned about taking as an example a very different situation and applying it in a much more diverse coastal environment.

10 In saying that that shows the appropriate approach. I mean, one would have expected in light of that for your geoscientist and your technical witness to say this is very stable land. There are no stability issues. He does not say that, he says the opposite in fact. High instability. In fact, we could see for ourselves that you have got sandstone perched on sand which I have never seen before and I am still scratching my head about how that came about - but nevertheless you do not need to be a bible scholar to know that you should not build buildings on sand, and the reality is that the area is quite unusual in a number of ways and that is reinforced by your own geotechnical evidence. It is not a single geological structure, it is multiple geological structures.

15 I have got to say, I think in practical terms, I struggle to find any real geotechnical similarities between the two sites at all. Well, they are in New Zealand, I suppose that is a similarity.

20 MR ROBINSON: Yes, I think that the purpose of my saying it was the same technique is to establish that the technique is clearly lawful. Your Honour makes a valid point as to whether it is appropriate in the particular circumstances of HMR and what I say to you about - - -

25 HIS HONOUR: Why do you say "it is lawful"? I do not know much about the Makara consents. Were they subject to an Environment Court hearing?

30 MR ROBINSON: Yes, they were, and the case I have put in the case book indicates that the conditions were the subject of challenge and a decision. It was not finalised on a consent order basis. I cannot tell your Honour that the earthworks elements were contested because I would have to go back and re-read that decision.

35 HIS HONOUR: So is this 18, Te Runanga, or something else? Which one is it?

40 MR ROBINSON: It is number 6 in the book of conditions.

HIS HONOUR: Number 6.

45 MR ROBINSON: So at the front of that there is a - - -

HIS HONOUR: 5 and 6 or just 6?

MR ROBINSON: 5 is the substantive decision and 6 is the decision on conditions.

5

HIS HONOUR: So does 5 discuss – I mean I confess I did have a look at this when it came out but it was quite a long decision and I do not remember - is there is a discussion about stability issues et cetera?

10 MR ROBINSON: There is a very long discussion about the geological significance of it but I cannot recall, sir, I would have to check whether there was the discussion from a geotechnical stability point of view.

15 HIS HONOUR: Well, even the one about the geological conditions I would be interested in reading that. Because I thought a lot of the argument in Makara was really about impacts on the residential area which is, of course, on the inland side?

20 MR ROBINSON: It is. But there is a large section discussing whether that particular landscape was outstanding because it was a particular natural feature of significance to the geologists. Which perhaps serves to make the point that your Honour was making in a different way, that this is unusual and not comparable to the HMR setting. But equally one of the features that the Board will have noticed going on site at Makara is that
25 the ridgelines that the Project West Wind is being built on are very steep.

30 HIS HONOUR: Yes, interesting though, the greatest cut we saw – and we understand is on the site – of about 20 metres and that is very different to the indicative cuts and fills we have for cuts that we have here of 40 metres which - I actually have not had a case with 40 metre cuts so I am not sure - and it is very different sort of issues.

[2.25 pm]

35

MR ROBINSON: Well, can I suggest that you have that discussion with Mr James, who I understand has also been involved at Makara - yes, he just nodded sagely at the vital moment – and will be able to talk in detail about the different conditions that we work with.

40

45 For present purposes the significant points that I make, in relation to the series of questions your Honour put to me before lunch, are that the earthworks consent areas are intended as a constraint, that no earthworks should occur outside those areas. That what may occur inside those areas is controlled by the conditions and, in particular, the requirement that the earthworks undertaken, and indeed all the works,

are generally in accordance with the plans submitted, namely the indicative layout plan and the indicative earthworks. I have checked with Mr James and he tells me that the only activity not shown on those plans is the installation of underground 33 kV lines, the route for which cannot currently be fixed with certainty.

HIS HONOUR: I had understood, from Ms Yorke again, that it was intended that - to the extent they were laid as opposed to over ground - they would be laid along the alignment for the roads?

MR ROBINSON: That is a question you should ask Mr James but that is his advice to me and that, to the extent that the earthworks consent areas are not immediately contiguous to the indicative plans, that is probably the reason. And the last link in that chain is that 33 kV lines are permitted activities in both districts.

HIS HONOUR: Can I put it to you another way? It may be – and I want everyone to understand I am exploring with Mr Robinson, we have no views, we have read some of the evidence that enables us to comment with some more information – that one possibility is, if the Board was minded to grant consent, it might grant a consent only for the turbine consent areas, soil disposal areas, lay down areas and roads and then say anything outside that you have to go back and get another consent. That is a possible outcome, is it not?

MR ROBINSON: It is.

HIS HONOUR: And that would delete then the earthworks consent areas from any consent.

MR ROBINSON: Well, one of the – as your Honour invited me to – I discussed with my team and one of the options that we discussed was that I should suggest to you that we should delete the earthworks consent areas because, as I say, they were intended to operate as a constraint but they appear to have created more confusion than they would ever have solved.

HIS HONOUR: Well, yes, I agree with that statement and so perhaps it is something you can think about over the next day or so. I mean you have got a little while before you close your case so I do not mean today or tomorrow but during the course of your consent as whether or not what, as I recall we did in Mahinerangi - and I must confess the conditions were only itemised very recently, I think it has only been issued in the last week or two – was that it should be, as you say, generally in accordance with those areas and that to the extent there was any variation from that there would be no greater effect.

5 Now, I accept that that there is still a question about measure there but it obviously avoids the de minimis argument where you move a road a metre or two metres and the net effect is either to reduce soil, the amount of cut or fill, or keep it at the equivalent level thus allowing some flexibility while at the same stage fixing the effects as no worse. And, yes, there are questions. There are going to be arguments around the edges of the grey areas of that as to what it means but clearly it does not mean that you can place them in a completely new place.

10 So that is one possibility of approaching that in another way which would then – but it seems to me if you did that you would need to make sure that your turbine consent areas - road, lay down and soil disposal areas - were all included because if you only allowed turbine consent areas it would not cover all of the other elements, would it?

[2.30 pm]

20 MR ROBINSON: Well, in effect that is the inverse of the exercise Mr James did as part of his rebuttal whereas originally he had wider consent areas there that joined each other but would, in fact, only be used for roading.

25 HIS HONOUR: And 33 kV, which as you pointed out, in some areas is a permitted activity anyway but for the sake of clarity you would be seeking that that be included. But one assumes that means, if the Court accepted that it could be underground or over ground, those possibilities would not allow it to exist on the same alignments?

30 MR ROBINSON: That is right and I think there is a question that I would need to check as to whether the intention is they go entirely by road. I suspect - from what Mr James told me - I suspect it a case that he has provided for potential corridors for 33 kV lines in the earthworks areas that are not - - -

35 HIS HONOUR: Clearly identified as - - -

40 MR ROBINSON: Not identified as such. Certainly I would freely accept that while Mr Daysh has done his best with the conditions that he has annexed to his evidence, inevitably when the microscope goes on particular conditions then there is room for conditions to be sharpened.

So, for instance, over lunch he and I were discussing the fact that the provision for earthworks to avoid sensitive archaeological sites is not as clear as it could be.

5 HIS HONOUR: Well these are the sort of things – I have raised these early with you for obviously reasons so that not only you but other parties have a chance to think about it and I think the sooner the Court - if there is going to be any movement by Contact - the sooner that is clear to everyone the sooner we can deal with it.

10 I have got to say that if the earthworks consent areas were not there and we were including the areas I have earlier mentioned – roads, lay down areas, soil disposal and the turbine sites that are now identified – it would seem to me that we would have a great deal more clarity about where the effects are going to be focused.

15 MR ROBINSON: Well certainly in terms of the suggested condition that works be generally in accordance with those plans that is the intention, and - - -

20 HIS HONOUR: Well I will leave it there for you to take a bye **(ph 2.32.37)**. I do not know if we can advance it any further. We, I think, both know what the issue is now and we can explore it again later. I think we were really talking about - - -

MR ROBINSON: We were up to 48.

25 HIS HONOUR: - - - 48, and the various aspects of it.

30 MR ROBINSON: Yes. Having talked about earthworks, the other principal aspects of the project falling within the jurisdiction of Waikato and/or Franklin District Council are the re-establishment of the disused quarry to supply the project construction needs (that is referred to in the documents as the Whitford Quarry because it is on land owned by the Whifords), concrete batching plants at nominated locations, 33 kV electricity lines collecting the output of each wind turbine transmitting it to one of the three substations and public viewing areas at various
35 nominated locations.

40 HIS HONOUR: And one would have to say that I did not mention those in discussion but those are additional things that you would be seeking to be included if we were going away from earthworks consenting areas generally and of those you know that concrete batching we got given a general indication, quarry we have got a general indication, 33 kV – the aspect we are not clear is where it leaves the roads and uses other corridors (which is not clear from the existing maps we have) and the public viewing areas, although we were told about them I do not know
45 that they are marked on any maps.

MR ROBINSON: They are specified in the annexes to the application, so there are specific points - - -

5 HIS HONOUR: I do not clearly have those in mind and if you are going to take up our suggestion of preparing another map for us at some point it would be useful to have them marked on there because although we can find them it is gaining all these information from different places and trying to assemble it.

10 MR ROBINSON: And in that regard I should say that in terms of a pure evidential position, whether the material is before the Board as distinct from whether it is in a form that the Board finds - - -

15 HIS HONOUR: No, I am not arguing that we do not know what it is. I am just arguing that it would be useful to have it all in one place.

20 MR ROBINSON: Yes. Could I just add that that was really the reason why Mr James put the Tatuk system in evidence, so that all of the material on it is formally in evidence but that of course means the issue is plucking out the precise piece of information you want out of it.

[2.35 pm]

25 HIS HONOUR: Well I can indicate I have had a chat with the Board over lunch and their experience has been largely in accordance with mine, which was that at first it did not work at all. Once we had all the IT people going through it it worked sort of. Once you tried to get down to high levels of detail it seemed to throw the dummy out of the cot and did not want to play anymore.

30 So we were struggling to actually get it to run, or I was, and I think the only other one who persevered to that length was Ms Rangi, who had similar issues that the amount of perseverance required made it easier, at least from my perspective, to keep reading evidence than try and keep the system going.

35

MR ROBINSON: I understand.

40 HIS HONOUR: So to that extent I do not know what the problem was, whether it was a processing power issue or whatever but for my part I have got a reasonably new – it is only three or four months old – so I could not really see that it was a power issue, but it seemed to become very jerky and once you got into a high level of detail like trying to get down to V9 or C3 – that level – it seemed to just not want to play the game anymore, and I am not sure why.

45

MR ROBINSON: Well hopefully when - - -

HIS HONOUR: Operator error.

5 MR ROBINSON: Hopefully when Mr James gives you his demonstration tomorrow afternoon - - -

HIS HONOUR: So that might answer some of those questions. It certainly would be useful for us to have a map where it was all in once place and I have already said that and I am not going to keep repeating it.
10

MR ROBINSON: Yes, I understand.

HIS HONOUR: Well, I probably will every change I get. I think we are at 49 now, are we not?
15

MR ROBINSON: Yes, thank you, sir. Yes, I have noted that one.

The similar approach taken to earthworks and erosion management under the relevant regional council consent conditions – the relevant conditions are largely duplicated in order to integrate with the relevant other proposed district council conditions, so - - -
20

HIS HONOUR: And I point out I do not understand it of any legal problem with having the same conditions in multiple consents. It is wise to have a cross reference to each but sometimes that is necessary, particularly an integrated proposal such as this.
25

MR ROBINSON: Yes, and I have noted the evidence of Mr Blackie for the regional council indicates that the council has considerable experience managing large earthworks construction projects under these sorts of processes.
30

At that point I should probably address the point that your Honour made about the Waipa hydro decision, which I found a very interesting decision because - - -
35

HIS HONOUR: It was a prosecution, of course, I should point out to members of the public who may not be aware of it. It was not related to the grant of consent which had been granted without appeal as I understand it.
40

MR ROBINSON: Yes. The point I put to you is that Mr Blackie talks about the successful operation of these sort of management plan conditions for earthworks and of course Waipa hydro is conspicuous as one of the less successful examples.
45

HIS HONOUR: Putting in mildly.

MR ROBINSON: Yes – in a number of ways. I submit to you that while all
 5 applicants before the RMA are equal there is a difference between the
 level of professionalism and experience that large institutions like
 Transit and related large roading operations like Contact in relation to
 large electricity developments, like Transpower in relation to the
 10 national grid – the difference in experience and professionalism and the
 degree to which they automatically import quality management and
 quality external advice and liaise with councils to produce best practice
 documents, from what is possible for a smaller operator.

So I submit to you that there is a difference, that the theoretical impasse
 15 or the actual impasse that the proprietors of Waipa hydro found
 themselves in could theoretically arise, but ultimately that is the consent
 applicant’s risk. The problem that happened in Waipa hydro as I
 understand it was having reached the impasse the consent holder then
 ignored the consent requirement and proceeded regardless.

20

[2.40 pm]

HIS HONOUR: Yes, that is true. I think the reference to it is more upon the
 25 basis that there has been – as I say, I am not aware of case law and you
 may be able to point me in due course to some – that supports the use of
 what I would call “open ended” conditions, in fact the case Turner v
 Allison is authority to the opposite proposition.

To that extent at least this division as a Court rather than a Board of
 30 Inquiry has generally resisted such an approach. Our division was one
 of the earlier divisions to adopt this approach but it is – for example, if
 you choose Kate Valley, the conditions are so specific about what the
 outcomes are going to be and then allows a plan to achieve those
 outcomes. So it specifies the end outcome but not the means. That is
 35 what plans assist that and I have said that in a number of decisions, that
 management plans can be very useful in allowing flexibility as to the
 means, but you have to be very clear on what the outcome is.

To put it another way, one of the tests the Board will be looking at
 40 when it looks at the conditions is, is this a condition that is clear,
 enforceable and prosecutable? And if it is not – if, for example, say, it
 says something like “where possible” or what was the other words used
 in many of the conditions, “where practicable” – those, unless you can
 show me the contrary, have no meaning that I am aware of in law, and
 45 therefore are unenforceable.

5 So, in practical terms, where somebody says “where possible” I will be asking your engineers and everyone else, “Is it in an engineering sense possible to do these things?” – to which generally every engineer I have met in my life so far says “Yes, of course it is.” We do not need the words “where possible” then. And you follow the problem – and “where practical” again – both of those concepts involve cost effectiveness, and that is a very different issue to technical possibility or practical possibility. Can it be constructed? And unless Mr James is different to every other engineer I have spoken to, he says, “Of course, everything can be constructed.”

15 MR ROBINSON: When I said that, Mr Daysh and I had been discussing the need to sharpen the archaeology condition. It was precisely with reference to wording of that kind that we were having that discussion.

20 HIS HONOUR: Well, I suspect once a person with your eagle eye starts passing your eye over the conditions you will see the sort of problems that – and it is repeated many times in the evidence – where possible, where practical. And the problem is, is that that is not a test that anyone can understand. It requires a value judgment to be made, and that value judgment is for the Board to make, not the parties.

25 Issues of certification – now I accept may involve minor matters of planning judgment, but they are really about whether something technically meets a requirement rather than whether something is possible or practicable.

30 MR ROBINSON: Yes, well one of the points that I will take your Honour to later in my submissions is a discussion of the extent to which – what I have referred to in my submissions as the orthodox view in Turner v Allison – represents the views as – is at least one High Court judgment that I am going to refer you to – but if I could hold that thought - - -

35 HIS HONOUR: Could I say, I think there is an aspect of this too – I need to keep in mind and I may need to hear back from you in due course, because I understand this issue is very much alive in the Transpower matter, and if that is the case, Transpower may give us some guidance from another Board as to the legal thinking on the subject, in which case I think I would want to hear back from you, provided the decision is, of course, out before we complete our hearing.

MR ROBINSON: Mr Kirkpatrick may be able to assist as to when it - - -

45 HIS HONOUR: Well, I can assist you – I understand it is imminent.

MR ROBINSON: Thank you.

HIS HONOUR: In fact I had been relatively hopeful that it might have been out before today, but it will not be obviously, but I do understand it is imminent, and by that I understand within the next three or four weeks.

But we all know that it is one thing on the same – to say ‘Yes, well we are expecting this’ but it might not necessarily happen. But it may assist us if it does come out and I would think I would want to hear from you in light of it if it did come out in the time we are hearing.

MR ROBINSON: Yes. Mr Lister, who has given evidence – given evidence for Contact in this case is also involved in a 400 kV hearing, giving evidence for Transpower and he told me that they had understood that it was more than imminent – it was expected within the last week or two and then had been delayed – completely understandable given the size of the issues. Your Honour will understand that I did view with some trepidation given that I had to open today that it might arrive last Friday.

[2.45 pm]

HIS HONOUR: Yes, well it was always a possibility, and I must say there are a few aspects it may assist us on, and one of them is this aspect of the question of management plans in relation to this and particularly words such as “where possible” and “where practical”. It may also assist us with designations, because it is more about designations, of course, I do not think any consents – Mr Kirkpatrick might correct me.

MR KIRKPATRICK: Rural regional consents, sir.

HIS HONOUR: Oh, right, there is, but largely to do with designation. So I think – all I am saying is I think it would only be fair, if it does come out, for us to look at that and to hear from you again, so I think we should reserve that if it comes up.

MR ROBINSON: Well, sir, certainly there is an element that the Environment Court and other Boards of Inquiry are producing invaluable assistance all the time, but that would seem to be particularly applicable to a significant component to the matters at issue in this matter, in this proceeding.

HIS HONOUR: Yes. Well, the next matter on a Board of Inquiry, as I understand it, is another wind farm down in Wellington. I cannot remember its name.

MR ROBINSON: Turitea.

5 HIS HONOUR: Turitea, yes, and that is well behind this one, so it will not assist us, I do not think, in the time that we have got. I think we are only just at submissions stage. Is that right?

MR: Submissions have closed.

10 HIS HONOUR: Submissions have closed.

MR ROBINSON: I think that the applicant's evidence is due on 1 May, so that they are tracking to a hearing, but behind us.

15 HIS HONOUR: Yes, I agree. I do not want to go too far, but I think we are talking 700-odd submissions, so it is at a different scale and I think there are logistical problems well beyond anything that involve this case.

20 In any event, let's move on.

MR ROBINSON: So, talking about the other regional resource consents, in my submission they are relatively straightforward. There are water takes at nominated locations, two in-stream works being one culvert and one bridge, at nominated locations, discharge consents for process water and stormwater at the proposed quarry, concrete batching plants.

HIS HONOUR: Yes, thank you.

30 MR ROBINSON: So, going on to the notices of requirement, summarising - -
-

HIS HONOUR: I do not think you need to go through them. They are well known.

35 MR ROBINSON: There are eight of them and I have already listed them. But as Mr Geoghegan notes, while each component of the transmission system has a specific purpose, collectively they have a common objective as specified by the notices of requirement quoted at – but it focuses on safe practical and efficient means by which the electricity from the wind farm is able to be transmitted by the operator of the national grid to wholesale and retail customers.

40 HIS HONOUR: Yes. I would probably change it to “be able to be despatched to the national grid” – and this internal/external business I have got a problem with. I am going to discuss that with Mr Geoghegan and

Mr James or Ms Yorke, but nevertheless I think the essential proposition you are making is quite clear, that it serves a purpose of getting power onto the grid.

5 MR ROBINSON: That is right.

HIS HONOUR: That is its purpose.

10 MR ROBINSON: Yes, and the three substations must be located within the area defined in the notice of requirement plans, the maximum heights of the equipment proposed are specified in the suggested draft conditions, that the transmission lines - - -

15 HIS HONOUR: Could I just say that my understanding – there is a significant difference between a requirement and a consent – just saying this for everyone’s sake. Because the requirement process gives what I might consider a consent in principle. Outline development plans are then the exact form of that.

20 Now, you probably know that the latest phase one change has suggested those might now be subject to consent in a general discretionary sense from the council, but at the moment they cannot be refused but they can be modified by the council. So that is the position in respect of a requirement. So it stands much more like the UK grants in principle,
25 which I must say is more what your application for consent is framed as, for general consents.

30 The distinction is that in New Zealand law we do not have a consent in principle, we only have designation or plan changes. So you could have proceeded by way of designation over the entire infrastructure if you had requiring authority status. Now, for whatever reason you have not got that – certainly have not sought designations for the wind farm itself, or the roads et cetera, those are all – that is, you might have status for – we are not in any dispute – you do not have that status at the
35 moment, nor have you applied for requirements?

[2.50 pm]

40 MR ROBINSON: Correct.

HIS HONOUR: You could have sought a plan change, which would have allowed, in general terms, either a controlled restricted activity status for the activity, but you have not sought that.

45 So what we have is, on the one hand, requirements which can be general and the detail is provided with the outline development plan

5 stage, and then consents which specify an activity with effects et cetera, which are identified. And that is the distinction here, is that the requirement process on the face of it is a process where a level of generality is expected. The consent process is not one where a level of generality you would expect.

10 MR ROBINSON: Well, certainly, I think in principle I would agree with your Honour, but I would observe that in the trend of designation cases, particularly since the 2003 amendment has introduced some shifts in the position so that the latest legislative process is more, in my submission, a rounding off of the process to align designations even more closely with consent applications.

15 HIS HONOUR: I see.

MR ROBINSON: So that at the moment we are at a sort of halfway house position in terms of how the current requirement provisions are framed in section 168.

20 HIS HONOUR: Right. That is an interesting comment. I will have to look at that again.

25 MR ROBINSON: Particularly 171, where from a requiring authority point of view, in the good old days the crown would get a one line designation – there is a case about this, Wanganui Base Hospital, or is it Taranaki Base Hospital? I have forgotten which. No conditions, everything was resolved in the exercise of that designation. Everything was resolved through the outline plan.

30 HIS HONOUR: And a good example is most of the airports were just retained for airport purposes, which seems to have been now to include any business activity domain.

35 MR ROBINSON: Indeed, and so post the 2003 amendment, while it has retained the matters to which particular regard must be had, which reflects the old language, it is now primarily an effects assessment subject to part 2.

40 So that while I agree with the proposition your Honour put to me in principle, I think they are closer – and I think that your Honour might have recognised it – they are not identical, clearly not identical, and the continued availability of the outline plan process means that the idea of an agreement of a consent in principle, or a consent with details to be resolved through the outline plan process is still live.

HIS HONOUR: It would be fair to say, with the phase 1 changes if they were passed, it would become even more closely aligned with the consent, would it not?

5

MR ROBINSON: Yes.

HIS HONOUR: Because (a) it is the consent authority then that would be approving, as I understand it, the designation, and secondly, there would be the power to refuse an outline development plan, so it would seem to me to hook it much more closely into a consent.

10

MR ROBINSON: But the point I would make is that I could not let the proposition that your Honour put to me go by in the - - -

15

HIS HONOUR: No, I thank you for that, it is of assistance. But it is fair to say that we do not have really an equivalent of the UK legislation which allows an approval in principle, which I think is more similar to what we would call a plan change here?

20

MR ROBINSON: Yes, that is right.

HIS HONOUR: So we are trying to find, I suppose, practical ways around these issues, given the – as you say, the flexibility and uncertainties which are just part and parcel of the operation of this type of business, versus the need for certainty so people know what the impacts et cetera are?

25

[2.55 pm]

30

MR ROBINSON: That is correct, and one of the issues I will develop in greater detail in relation to ecological concerns, particularly of the Department of Conservation and the director-general, is that ultimately it is an issue about how you manage uncertainty.

35

Although it is very twee to talk about mechanisms; what mechanisms are available, what constraints are there – and this comes full circle around the point where your Honour and I started this discussion, talking about how far can management planning go and remain valid and forceful and prosecutable; those were the three - - -

40

HIS HONOUR: Yes.

MR ROBINSON: - - - your Honour had. But if I could just highlight the fact that I will come back to the issue in that specific context.

45

HIS HONOUR: Yes. Thank you for that. I found that of assistance. 54?

MR ROBINSON: 54. The transmission lines are defined as an indicative line within a nominated corridor. As Ms Yorke explains in her evidence,
5 “The nominated corridor started at 400 metres wide for planning purposes, but in many cases it has been able to be refined with the cooperation of affected landowners so that the bulk of the external line corridor is now 200 metres wide. There is a section between State Highway 22 and the Orton switch yard where greater investigations
10 have occurred, allowing the corridor to be further refined to a width of 100 metres. The suggested conditions include requirement for the designation, if confirmed, to be reduced following detailed design to a maximum of 60 metres”. As Ms Yorke notes, for most of the length of lines the easement will be more in the order of 45 metres.

15
Moving to divisibility of the project - and this is the point discussed with your Honour this morning – I should note one final point in relation to the nature of the applications, other wind farm applications appear to have been advanced on the basis that the project is indivisible, and I refer in particular to a section from the West Wind decision
20 indicating that this appears to have been the way that Meridian pitched its consent applications.

25
To avoid any doubt, Contact has not advanced the HMR applications on the basis that either the whole project must be consented on the terms sought, or consents must be declined.

HIS HONOUR: Sorry, I am disappointed to hear that because I assumed that if you said we cannot survive with less than 150, we only had to get
30 down to 150 and we did not need to keep worrying, but you are really saying you will take whatever – if anything, you will take – so it does mean that essentially if we are prepared to consent one, you will start there and continue on, no doubt, on appeal? But that is the proposition you are pointing to me. I know I am putting it crudely, but essentially
35 you are saying, “We want to know what you consider, if any, would be the appropriate number and where?”

MR ROBINSON: Correct.

40
HIS HONOUR: And that did suggest to me that we are in the end going to get down to blow by blows on individual sites, unless of course we consider the argument is so overwhelming that all of them can be undertaken without any further thought by us.

45
MR ROBINSON: Or none of them.

HIS HONOUR: You will be aware that that would make this a singular case on wind turbines, given the fact that in every other case, including Makara, you have mentioned the Court looks at clusters and groups, and often individual sites within that.

5

MR ROBINSON: Well, that is right. And Makara, the end result of the Court's study was I think that after - that the number of turbines was reduced by the applicant and then reduced some more by the Court.

10 HIS HONOUR: There is one, if I can put it, "kill shot" to this, is there not, and that is that if we do not consent to the transmission line you have got a problem because you have got no - you still want a consent for the turbines if you have got no way of getting the power to the grid?

15 MR ROBINSON: It is funny you may say that, sir. The first paragraph over the page discusses that point.

HIS HONOUR: We will come to it in a moment then. So 56?

20 MR ROBINSON: Stay with 56. So that is not to say that consents have been advanced on the basis that there are sacrificial turbine sites that HMR can afford to lose. As will be discussed in the next section of these submissions, the project plan has been developed after an extensive complex assessment process resulting in the paring back of turbine sites for a range of effects based reasons.

25

If, however, the Board identifies that turbine site on the sites should be amended or deleted on some sound effects based rationale as a matter of law that option is open to the Board.

30

[3.00 pm]

35 HIS HONOUR: So it does mean - because as you aware, there are a number of effects; your own witnesses have identified a number, and significant indigenous vegetation is one, migratory paths of birds is another and we are unclear as to the evidence on that, but nevertheless that is an issue that your own witnesses have identified, we have archaeological sites which is another issue, questions of trimming or removal of indigenous vegetation, and then the coastal environment and stability issues in respect of some of the sites we have seen.

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45 HIS HONOUR: So these are all issues that arise and some of them affect more than - in other words, a site might be affected by more than one of them. Quite a number of sites seem to be unaffected by any of those issues I have mentioned, and I have not read all of the submitters' evidence yet, and obviously we will be continuing reading as the

hearing goes on, but it appears to me there are going to be some sites that do not really give anyone particular concerns. There are others where there are multiple concerns.

5 MR ROBINSON: That is right, sir.

HIS HONOUR: Now, that is as we would expect. All the other cases have had the same problem and often the issue is around the edges. I thought we would have an easy choice, either they are all in or they are all out,
10 but you are really saying to us that we are going to have to undertake an assessment in respect of each site, or each group of sites if we consider they can be dealt with as a group.

MR ROBINSON: That is right, and effectively that depends on the nature of
15 the issue, of course. So for instance, take an example, Sir William Birch's client's sunset views have a particular issue about the turbines in all of (a), parts of (c) and parts of (d) block, but do not have an issue with any of the balance.

HIS HONOUR: Exactly, and what I did was actually - and it would be quite
20 useful if somebody could give me an analysis in due course, I was hoping one of your witness would, but they did not, but it did appear to me that when I looked at all of those things, there are a number of turbine sites that nobody had particularly mentioned or identified as
25 being a problem.

Then there are others that have different problems, and I started to
30 categorise them into the different groups where parties had a problem with this cluster or this - sometimes there is a whole cluster, more often there is a number of turbine sites within each cluster that have a particular problem.

Let us choose significant indigenous vegetation, I think I outlined about
35 three or four that were affected as being either next to or in a significant indigenous vegetation. Archaeological sites, again, ones that were near to, and we are not clear whether they were in or not, archaeological areas or if they were adjacent.

So there is a number like that, but there were a number, it seemed to
40 me, and I have got to say it looked like 70 to 80-odd, that did not appear on the face of it to be covered by any of those constraints. Now, there may be other objections I have not read yet, ie general visual objections. Some of them, maybe the migratory birds might affect these sites, it was not clear to me from the evidence that I have seen so far but
45 I have not read the documents.

5 So, it may be that in the end every single turbine, there is some problem on them, but I have got to say at this stage, without having read all of the submitters evidence, I am not clear that that is an issue for every single turbine site, and you may be able to tell me more, whether you understand every single turbine site is in dispute, apart from a generic thing about there being no wind turbines per se.

10 MR ROBINSON: Well, certainly we get to hear exactly what the relief sought from the Department of Conservation is. Tainui Awhiro have sought decline of all of the applications on archaeological grounds.

HIS HONOUR: That is I and J, is it?

15 MR ROBINSON: No, all of them.

HIS HONOUR: Yes, well, Tainui, of course, generally I thought - Ngati Tahinga, I thought had indicated that they say that the rohe only goes down I and J for Tainui Awhiro.

20 MR ROBINSON: Certainly Contact's understanding is that there is a soft boundary, but that the specific area of interest to Tainui Awhiro is only cluster J.

25 HIS HONOUR: Well, that is something we might have to clarify, whether there is an overlapping rohe, but I understood there was a relatively clear statement attached to, I think, one of your witnesses evidence that Ngati Tahinga said it was very clear, there was no dispute, that their rohe goes - I cannot remember what the name of the stream was - - -

30 MR ROBINSON: It is Tauterei.

35 HIS HONOUR: And that there was no argument about that, so it may be that I have not read the Tainui Awhiro evidence, yet. You might be able to tell me if they are disputing that?

MR ROBINSON: The fairest way I can put it is that it is unclear.

[3.05 pm]

40 HIS HONOUR: Well, that is something that we will have to explore. I mean, cultural issues are something obviously that you are alert to, I have already indicated to you that we are still unclear as to whether the effect of what you are seeking effects any archaeological sites, and if it does to what extent, how, and more particularly, how are buffers and protections of those sites going to be made plain, which does not appear

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to have been addressed and I know that we are obviously already in discussion with Contact witnesses over that.

5 I do not think we need to explore it any further at this point, apart from being alert to it, so we are now at 57?

MR ROBINSON: Yes, sir.

10 So talking about that progressive issue, how many turbines can the project afford to lose, and Mr Geoghegan discusses it, it is very much an issue of degree. Any reduction in output from HMR reduces the revenue available to meet the unavoidable fixed costs, so that is transmission infrastructure, which we have talked about, roading improvements, and thereby puts back the point at which it would be
15 economic to proceed.

At a certain, but currently unknown point, the whole reduce project becomes unviable.

20 HIS HONOUR: I could put it another way, as one of the Commissioners put to me, the other way of looking at that is to say depending on the price of power and the cost you can receive, any project becomes viable.

25 MR ROBINSON: That is right.

HIS HONOUR: There is always going to be a point at which it is worth doing even five or 10 turbines, depending on the marginal price you get for that power.

30 MR ROBINSON: That is exactly right, and that is why no one can say at what point it is economic, because no one knows what the future price path will be. The electricity companies all have their own views - - -

35 HIS HONOUR: Well, I have got to say, the other aspect, of course, that I have had to alert the Board to is there is no guarantee that Contact will necessarily have to cover the infrastructural costs of the grid connection. Certainly, in most other cases, and I have no doubt in this case, Contact would make application to Transpower and there may be an agreed asset transfer, in which case they may receive partial or full
40 reimbursement for the cost of the installation, and that would of course mean that you are down to the cost of the turbine and the 33 kV to your substation.

45 MR ROBINSON: Yes, it will. That is a question you should pose to Mr Geoghegan, because I do not - - -

HIS HONOUR: Mr Geoghegan?

MR ROBINSON: I do not know what the answer to that is.

5 HIS HONOUR: No, well I certainly know, for example, one of the arguments
in the Mahinerangi, and Contact in that case, not represented by you I
hasten to tell everyone else, was the fact that a new transformer would
be required to connect to the grid, and the question of who should pay
for the transformer, and the reality is, of course, that although
10 Transpower had not said “we will pay”, they generally like to own and
operate the assets that are required to connect to the grid, and that is the
reason I am asking about the internal/external transmission lines, and I
need to ask somebody because it appears to me they are all external
once they go through those three substations, but I need to check that
15 with someone because if that is the case, then there is a prospect that
the entire cost of the 220 single pole and the 220 bi pole could be met
by Transpower. I am not saying it would be but could be. In other
words they may decide to acquire it.

20 MR ROBINSON: Yes, and then it becomes an issue of Transpower funding
the policy. My understanding is that Transpower generally looks to
recover its capital expenditure from someone.

HIS HONOUR: I appreciate that. But this is the question about the capital
25 cost to your client.

MR ROBINSON: Yes.

HIS HONOUR: It would shift the capital cost of your client and essentially
30 mean that the cost of that generating and, to be fair, from our
experience with Mahinerangi, where we did have Transpower and the
Electricity Commission before us, there was a strong indication from
them that they were supporting wind power production.

35 Now, it does not mean that they are guaranteeing they will pay for
everything, but one has to say that there is likely to be some
incentivisation with wind power, and it may be that they would acquire
assets that they many not if you were a thermal station, for example.

40 MR ROBINSON: But concluding that section of my submissions, this is the
point where I round off to echo the question your Honour already put to
me, looking at other aspects of the project, that is to say other than the
turbines, some elements are clearly in the dispensable category, and
most obviously the public viewing platforms, others are critical to the
45 project proceeding. The transmission connection to the national grid is
obviously in this category.

HIS HONOUR: It does seem to me that we would be granting a Claytons consent to allow you to have X number of wind turbines with no means of transmitting it to the grid.

5

[3.10 pm]

MR ROBINSON: That is right, and that is why the applications and the notices of requirement were pursued as an integrated package and why Contact Wind Limited and Contact Energy Limited asked the Minister for the Environment to call in the whole proposal.

10

HIS HONOUR: In terms of logical approach, I have suggested, I think already to the Board, that the starting point might be to decide whether we agree with the transmission, and once we have decided that issue, that may, to some extent at least, predicate the wind turbines.

15

MR ROBINSON: That is right.

HIS HONOUR: Because there is a possibility that you might only grant, for example, Limestone to Orton, but not Matira and Te Akau. Now, I have not seen all the evidence and I do not know if anyone is disputing those substations, for example, but I suspect some people are disputing what you call the internal transmission line.

20

25

MR ROBINSON: The answer to your question is that there are two submitters who have clearly opposed the internal transmission line, being Kokonga Farms and the Deane's, there are I think three brothers in partnership.

HIS HONOUR: Yes, now I should say neither of those are here today but we have a letter from Kokonga withdrawing as I understand it. Is that correct?

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MR ROBINSON: I think the answer was that they were withdrawing their request to be heard.

35

HIS HONOUR: No, Kokonga Farms. Have they withdrawn?

MR ROBINSON: They have withdrawn their request to be heard, sir, but the letter I saw from their solicitor - - -

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HIS HONOUR: I see.

MR ROBINSON: - - - specifically said they maintained their submission.

HIS HONOUR: Thank you. I have not had a chance to look at it. So we need to take into account the effects although they are not appearing.

5 MR ROBINSON: That is right, and the Deanes - - -

HIS HONOUR: We did receive advice they are could not get here today or something, is that right? They are still intending to appear in due course. Is that right? So I think they are maintaining an interest in the hearing even though they are not here today.

10 MR ROBINSON: Yes, I would say that it is going to be interesting to see them – the Deanes are represented by Mr Holmes who is, of course, a very experienced RMA practitioner and I will be interested to see how he runs his case given he has not yet given notice to cross-examine any of my witnesses.

HIS HONOUR: Yes, well I cannot comment. I mean there has been a number of surprises about who is not here today. But at the moment we cannot say but thank you for telling me that those – and of course there are quite a number who opposed the Limestone Downs to Orton - - -

20 MR ROBINSON: Yes.

25 HIS HONOUR: - - - including the switchyard in Orton in particular.

MR ROBINSON: Yes that is right. There are a number of submitters who have circulated the evidence in relation both to the external line to the grid connection and to the Orton switchyard.

30 HIS HONOUR: Yes, so those, in a logical way, it would seem that if the Court concluded that it was not prepared to grant transmission lines that does mean it then has to wrestle with the question, is it worth considering the rest of the application given that there is no consented way of getting to the grid?

35 MR ROBINSON: I would have to take instructions.

HIS HONOUR: I am not sure what to do then but I would like your perhaps guidance in due course as to whether it is worth our while struggling through the rest of it if we reach the point that there was no potential grid connection.

40 MR ROBINSON: As I say, I would have to take instructions but the question I will ask my client is whether I have instructions to tell you that if you get to that point, then go no further.

HIS HONOUR: Yes. Well it would be useful for us to know that, but assuming we get to that point, in other words if we answer that in the affirmative, then it seems we are then into other and clusters that can be granted as a whole. If there are then that could be considered and then when we get – if we say, no, there are no clusters that can be considered a whole we are down to saying, which of these clusters may or may not be considered appropriate and then looking at turbine sites.

So there are a range of issues, as we pointed out, and it may be that you might get something less than the 180 you are seeking. And one assumes somewhere between one and 180? But as you say this is not Solomon thing where say, “Oh, well, we give you half” because you have asked. I think in each case your own witnesses have identified issues that affect some of those turbines, not all of them.

MR ROBINSON: That is right. And the other – this is an issue I come to at the very end of my opening submissions, but I should note it now, that the approach I have taken presenting these submissions is to deal with wind farm specific effects.

HIS HONOUR: Yes.

MR ROBINSON: Transmission specific effects. There is the special case of the Walters who on visual grounds say they have cumulative effects of both.

[3.15 pm]

HIS HONOUR: Yes.

MR ROBINSON: But in terms of the overall part 2 assessment, the approach I have taken in this opening is to regard the project as a whole and so that the ultimate section 5 analysis and determination, as I have reasoned it in my own mind and as I have presented these submissions, is as to the whole.

HIS HONOUR: I would be interested to see if anyone disagrees with that because although I think you do need to look at in parts, at the end you need to come back and look at the whole thing again. I do not disagree with that as an approach and I am interested whether other counsel agree with you or not.

MR ROBINSON: Certainly that was my logic, that compartmentalising the case while appropriate for effects assessment purposes is antithetical to all of the trend of case law on section 5 and assisted by the other parties as consideration (PH 3.16.04) of being an overall assessment.

HIS HONOUR: So the difficulty in this, the complexity in this, is that there may be effects and one might say there are these effects. Of course when we come to a part 2 assessment, I do not use the word “weighing”, I use the word “integrating”, the integrating of all of these factors, particularly including matters of national importance etcetera, may mean that consent is granted even though there were adverse effects and I think there was generally a view that if there is any adverse effects, consents are not granted. But unfortunately I have to remind people that case law is against them on that. It is clear that even where there are major effects there can be a consent granted.

The test or the criteria under part 2 require an integration of a whole series of factors and I can probably think of no better case than the Solid Energy case where there was clearly going to be an adverse effect on up to 10 kiwi, there were other adverse effects on wetland. Consent was granted but there was a very very comprehensive suite of conditions, the objective of which was to end up with a better environmental position overall than it started with.

So if there are adverse effects identified the Board would then be going on to examine, is there a way in which there can be an outcome of sustainable management in terms of part 3, notwithstanding clear adverse effects?

That might involve compensatory principles and I notice that now with the acquisition of the Pungapunga wetland there are prospects at least for compensatory ecological compensation. I do not know that there has been any discussion for example about compensatory measures for the migratory birds and things of that sort. But those are the type of things that the Board needs to keep in mind because its objective is to achieve, and we only have one objective I want to be very clear, it is no different to the Environment Court, that is the sustainable management of physical and natural resources as those terms are described in section 5.

So I agree with you that this is a step beyond looking at effects. Of course the work the stronger the effects, the less likely we would come to an integrated decision in favour of granting a proposal. But it is all a question of the evidence on particular issues and the strength of that evidence. Would that be a fair summary? **(PH 3.18.31)**

MR ROBINSON: And later in my submissions I take – I agree completely with the principle your Honour is advancing. Later in my submissions I quote a passage from the Mahinerangi decision where the Court made the converse principle, made the converse point, that whereas the

existence of significant effects does not necessarily mean that consent must be refused, the absence of any significant effects does not equally necessarily mean that consent will be granted.

5 HIS HONOUR: I think I have discussed with you now the major issues that needed to be aired and I will try and bite my tongue a little more as we move through, I think somewhat faster now. We are at 59, I think.

10 MR ROBINSON: Thank you. The HMR project has been developed over a long period of time. Mr Yates describes the process in his evidence. The initial stages of the project development took place as a result of Wind Farm Group Limited entering into preliminary agreements with participating landowners and commencing the collection of wind resource data. The project started as two potential wind farms but with
15 the addition of participating properties between them they have coalesced into one overall wind farm involving 24 landowners.

[3.20 pm]

20 The participating properties are a mix of properties in private ownership and Maori land with multiple beneficiaries holding shares and trusts under the Te Ture Whenua Maori Act.

25 HIS HONOUR: Well I think 60 and 61, in fact inter-iwi consultation, seems to be recovering that as we have already discussed in your evidence. We have read that. I do not think we need to discuss factual matters in great detail. Do we need to discuss consultation with transmission landowners? Again, that is in evidence and we have already read about that. I think it may lead us back to 69 probably where you – if you
30 want to make that point.

MR ROBINSON: Yes, but this is a point - - -

35 HIS HONOUR: Perhaps 68 you need to pick it up, blurring the difference. 68?

MR ROBINSON: Yes, that is right, sir. I will do that, but the previous paragraphs were in the nature of a summary - - -

40 HIS HONOUR: Yes, concentration. We are aware of the evidence on that.

45 MR ROBINSON: So that in relation to transmission and the issues that transmission line owners have of the project, as I have said in 68, one of the issues that I will discuss in greater detail later in the submission is the extent to which, quite understandably, land owners have blurred the difference between property issues, in particular the amount of

5 compensation that they should be entitled to with the presence of the transmission line on their properties in true RMA effects issues. Although Contact's position is that the former and not relevant to the Board of Inquiry's consideration of the notices of requirement, Mr Mills has nevertheless explained in some detail the rationale for the positions that Contact has taken in an endeavour to reach agreement with affected land owners.

10 HIS HONOUR: Yes, to that extent the Transpower decision might assist us.

MR ROBINSON: Indeed.

15 HIS HONOUR: That issue was very much at the centre of arguments and so many of **(INDISTINCT 3.22.05)**

MR ROBINSON: Yes, well, certainly I am aware that Transpower took a strong position that compensation issues were irrelevant and if the Board of Inquiry agrees with them or does not agree with them, that that will be of material interest.

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HIS HONOUR: Yes. 70?

MR ROBINSON: 70. Inevitably, in the application process of this size, there are submitters who have given evidence complaining of the lack of consultation by Contact with respect to land owners.

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Mr and Mrs Bradley, who moved into the area after the project was the subject of initial wide publicity and whose property is some eight kilometres from the wind farm footprint, are in this category.

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HIS HONOUR: Can you tell me what you mean by "wind farm footprint" again?

MR ROBINSON: The nearest turbine consent.

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HIS HONOUR: Area?

MR ROBINSON: Area.

40 HIS HONOUR: So from the nearest – I would rather use those words because, as you have already picked up on, I am concerned a little bit about the use of words "wind farm". "Turbine consent area." That is fine. Thank you. Carry on.

45 MR ROBINSON: And that is an approximation. The exact distances are in Mr Lister's evidence. As are the members of the Raglan community

who have given evidence - and again I use the same terminology so I will correct it. So they are eight to 10 kilometres from the southern end of the nearest wind turbine consent area. But I will refer to the issues to deal specifically with concerns raised by the Bradleys.

5

Talking about the technical focus group, this is another aspect of Contact's consultation involving the three affected councils and the Department of Conservation. It is covered in Mr Daysh's evidence. But, in summary, it involved establishing a forum within which the councils were initially briefed on the project, then invited to review and comment on draft effects assessment reports.

10

HIS HONOUR: I do not know that we need to continue again. This is covered by the - - -

15

MR ROBINSON: Yes, this all in Mr Daysh's evidence - - -

HIS HONOUR: - - - discusses the issues about how they are continuing to progress. So you can move to 74, I think.

20

MR ROBINSON: Yes. Talking about bundling. The various planning witnesses of caucus as directed by the Board of Inquiry have largely agreed the status of the activities, the subject of the application. The principle disagreement between the various planning witnesses is as to the extent to which activities within each jurisdiction should be bundled. That is to say, the extent to which all activities within a particular jurisdiction should be treated as having the status of the most onerous classification. This is an issue in the HMR applications because in each jurisdiction, at least one application is classed as non-complying.

25

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So looking first at the regional council consents. In Waikato Regional Council's jurisdiction, the sole non-complying activity confirmed by the planner's expert report, is the take of 100 percent of the flow of the spring at the quarry site. This option was chosen for convenience. The alternative of tankering in water is available. So, from that point of view, in terms of the juxta position between vital and dispensable to the project plan, the Whitford spring take is clearly in the dispensable category.

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[3.25 pm]

HIS HONOUR: Yes. 76 we can take as read. 77, you discuss Ms Cockerell's view that it is non-complying.

MR ROBINSON: And the rationale for her should be for bundling all of the regional council applications as non-complying. It is because, in her view, firstly the effects of the spring take impact on consideration of the regional resource consents. Second, the regional activities are all inter-related towards achieving the primary purpose of constructing the wind farm and thirdly, the regional consents all overlap to an extent that they should not be artificially split apart.

In each case, Ms Cockerell's reasoning appears to have been orientated towards one of the leading cases on bundling of consent applications discussed earlier in her evidence.

HIS HONOUR: Which one was that, which of the decisions?

MR ROBINSON: I actually list the decisions in the next paragraph, sir.

HIS HONOUR: That is fine. I just wondered whether you thought she was going with kV or one of the others.

MR ROBINSON: She has picked out elements of them all.

HIS HONOUR: Oh, I see. Because you said "orientated towards one of the leading cases".

MR ROBINSON: Sorry. Yes, well each reason is orientated to a case – so three reasons, three cases.

HIS HONOUR: Right. Sorry, I follow you know what you are saying. 79?

MR ROBINSON: Standing back from the specific issue it is submitted that the case law supports the following propositions.

Firstly, with reference to KB Furniture - - -

HIS HONOUR: Yes, well we are familiar – sorry, not all of us are.

MR ROBINSON: An overall approach, an assessment of multiple uses is likely to be appropriate where the difference uses are closely linked or where they could be seen to be directed towards one dominant use or purpose.

The contrary conclusion is likely to follow where different uses are not closely related and where one is carried out in a separate part of the total areas from the others.

5 Second, where there is an overlap between two consents such that the consideration of one may affect the outcome of the other it would generally be appropriate to treat the applications as a whole. That is the decision of Justice Randerson in the body corporate decision.

10 Then where the Court has effects to be considered in relation to each activity are quite distinct there is no need for a holistic approach, assessing the whole application as one activity – and that is the body corporate in the Court of Appeal.

15 HIS HONOUR: You will be aware that this is a sort of developing area of law of the Waitaki decisions, retired Judge Skelton of course, who decided that we could take separately to the other 150-odd consent applications so it has become something of an issue of late as to how you can bundle them and un-bundle them.

20 I thought I may have even issued a decision in Central Plains on that issue.

25 MR ROBINSON: That is right, and from that point of view the point I make next is that any application of those principles has to be case specific and so while we have got all this guidance from key decisions my submissions is that no one factor is decisive.

So for instance, in the example of the Waitaki takes, clearly they were part of one overall dominant purpose, but - - -

30 HIS HONOUR: Well irrigation, bar, hydro – so it was not really one, it was - -

MR ROBINSON: Yes, well a package of - - -

35 HIS HONOUR: Yes, a package of takes from the river.

MR ROBINSON: But the package clearly included the applications that had not yet been made.

40 HIS HONOUR: Well retired Judge Skelton considered you can separate the take because without the take all of the other consents – earthwork, land use consents, construct the canals, the dams et cetera, et cetera – they became irrelevant unless you had the take in the first place.

45 It is a similar issue to what has come up in Central Plains. I think what has happened with bundling is of course given some of these very, very large applications that are integrated (which this would represent one)

KB Furniture – which if you recall was about a retail concern – sort of paled it all and I do not know that the law is clear.

5 I am not normally very keen at all on being the first penguin off an ice shelf and even less keen when I am on a Board of Inquiry rather than the Environment Court, but nevertheless it is a major issue.

10 In other words, should when we are talking a bundle of – what are we talking, 30 or 40 consents in this Court? Not that many?

MR ROBINSON: Not that many. Probably only seven or eight but - - -

[3.30 pm]

15 HIS HONOUR: It must be eight because there are eight designations. I see, you are putting those aside? Yes, probably another seven or eight consents here, some to do with water, most to do with something completely different ie land use activities and earthworks consents.

20 MR ROBINSON: And the guidance that the cases on land use activities, in particular for instance KB Furniture, whether a carpet operation next to (I have forgotten what the juxtaposition was) but I think Justice Thorpe (PH 3.30.40) was talking about one particular activity in terms of the plan at 150 of the relevant road and another at 152 and saying well he
25 did not think you would bundle those because they were at different sites, even though they were right next to each other.

30 You have got the body corporate where you have got one development on one property and whether you are going to separate the car parking from the apartment block. You have got Darby, which I am about to talk about which is about the youth hostel in Wanaka where the fact that the gable was going through the height plane to be non-complying meant that the car park - - -

35 HIS HONOUR: By about 600 mils or something, was it not?

MR ROBINSON: What is this?

40 HIS HONOUR: Was it not by about 600 mils or something?

MR ROBINSON: Yes, it was not a lot, and whether that meant that the parking - which was the objector's real concern – was considered on a non-complying basis. They are not really comparable - - -

45 HIS HONOUR: Can I just have a moment to read the comment you have made about Darby there because it might assist?

MR ROBINSON: Certainly, sir.

HIS HONOUR: Yes, I suppose I have always perhaps, without any case or
 5 statutory authority whatsoever, always thought of the matter as can the
 application be considered in the absence of this element? So if I take
 this element out does it still make sense as an application?

Now there is sometimes that the Court says we would like to know all
 10 of the effects of this because we want to make a decision on integrated
 management. Now that is a different decision to the one about could a
 consent be granted as stand alone?

So quite frequently a consent might be granted as a stand alone but the
 15 Court and the councils normally would prefer to know all of the
 consents required because it enables them to consider all the effects.

I suppose that is the distinction and I know that sounds easy as a test
 20 but the practicalities are not - sometimes it is not so clear. I suppose if
 we are looking at this, could the extraction – the take of water in this
 case – if we took that out, could this application still be considered on
 its own merits?

I think your argument is, well surely we could at least cart in water or
 25 we could apply for a consent somewhere else and if we cannot get such
 a consent or bring the water in we might not be able to operate it but it
 does not mean that the consent itself will **(INDISTINCT 3.33.15)**.

MR ROBINSON: That is effectively the reasoning that Mr Chrisp has taken
 30 in his evidence, testing about are these stand alone in effects and
 purpose? Clearly they are linked to the overall purpose - and
 Ms Cockerell has emphasised that part of an overall dominant purpose
 – but in my submission the test your Honour is advancing is closer to
 35 the mark but part of the problem is we have all this helpful but
 essentially conflicting advice from the superior courts of all of these
 factors where it is almost like if you lined all the factors up any case
 would pass, some and not others, and it is a matter of determining –
 stepping back from it and determining – is this really a stand alone
 application? Does it “make sense”, as your Honour put it, to consider it
 40 in its own light? Does it mean that considering the other application
 ceases to make sense if you have not considered it? And that is
 certainly my submission about how the issue should be approached.

HIS HONOUR: It is not uncommon for the Court to grant a consent where it
 45 knows – and we had this discussion with the Board earlier today –
 where it knows that other consents are required. The most common

example is where it may grant consent to a building platform knowing that no house can be constructed without a building consent.

5 Now, I realise that is another level but, for example, there are other cases where subdivision consents are granted even though there may be a requirement to obtain a resource consent for the construction of a house.

[3.35 pm]

10 I agree there are conflicting decisions and I think there is another one on that very point in the Blueskin Bay in the High Court which did tend to indicate that the private house would be getting separate consent to that for subdivision. I need to look at the case again, it has been a while
15 since I looked at it.

MR ROBINSON: Going back to the point your Honour put to me, retired Judge Skelton's decision on the Waitaki case is precisely that, it was like the whole reason he was going to take off the take was because
20 there were extra consents required, but if they could not get the take there was no point worrying about it.

HIS HONOUR: Exactly, and I must say that when we are dealing with I think Central Plains was 150-odd consents, there is a logic to it. The regional
25 council in that case wanted them all dealt with together and the practical problems with are just the enormous requirements for evidence et cetera. I do not know any of the Board has been involved in that? No. I think they have got an interim decision out now, have they not?

30 MR ROBINSON: That is right.

HIS HONOUR: I do not know if it assists us very much. I think
35 Commissioner Philip Milne was involved in that as commissioner - - -

MR ROBINSON: Yes, he was the chairing commissioner. I wondered, sir, since it has gone half past 3 whether you would like - - -

40 HIS HONOUR: We will take the afternoon break.

ADJOURNED [3.36 pm]

RESUMED [4.00 pm]

45 HIS HONOUR: Be seated, thank you. Now, I think we are really traversing 81. I do not know if we had completely finished it.

MR ROBINSON: Yes, we have had discussion about the legal principles approach to planning that I am bundling.

5 Sir, in coming back to the HRM regional consents. It is submitted that the spring water take, intended primarily for the supply of potable water, is a classic example of a stand alone consent with discreet effects limited to the reach from the springhead to its confluence with the Waikaretu Stream. The evidence of Mr Kessels is that beyond there the
10 additional extraction of the spring flow has negligible impact on the stream.

In addition, as Mr Chrisp points out in his rebuttal evidence, volumes proposed to be extracted from the stream could be tankered in as a
15 permitted activity. In the circumstances it is submitted that it is appropriate to deal with the spring take as a separate activity and to assess each regional consent application on the basis of its status, as I have set out earlier.

20 In the expert agreement Ms Cockerell appears to have reconsidered her position provided the spring take is for potable water supply only and is therefore not integral to the operation of the quarry. It is submitted that the reservation Ms Cockerell makes in the planners' expert report is not material. If a minor proportion of the spring flow taken is used for
25 project purposes that should still make no difference to the classification of the applications because the overlap is minor in extent and the result of the application will have no material effect on the other consents.

30 Turning to the Waikato District Council jurisdiction. If the position is clear on bundling in the regional council jurisdiction one way – as I have submitted it to be – then it is equally clear in the Waikato district jurisdiction in the other direction. The planners' expert report classifies the various land use activities within Waikato district - - -
35

HIS HONOUR: Thank you, take that as read.

MR ROBINSON: Take that as read. So most significantly wind turbines within 1,000 metres of mean high water springs are non-complying.
40 The planners differ in their view as to the status of road improvements. Mr Chrisp and Ms d'Aubert, the planning witness for Waikato district, agree that such improvements are discretionary activities.

45 Ms Cockerell is of the view that they are non-complying activities because they take on the status of the wind farm. It is submitted that Ms Cockerell has misapprehended the nature of the initial inquiry and

has imported the bundling test into the initial classification where that should be a subsequent secondary inquiry.

5 At that second level Mr Chrisp takes the view that, because a significant number of wind turbine sites within Waikato district are located within 1,000 metres of mean high water springs, all the wind turbines and the associated earthworks should be bundled on a non-complying basis. He takes that view that improvements to local roads are a separate activity with a discrete and limited range of effects, not
10 overlapping with those of the wind farm proper, which would therefore be considered separately. Again, Ms Cockerell disagrees.

15 It is submitted that Mr Chrisp's reasoning is sound. The local road improvements are geographically separated from the wind farm with limited adverse effects that can be considered in their own right. The reality is, however, that with a balance of land use activities within Waikato district classified as non-complying the status ascribed to the road improvements is likely to be somewhat academic.

20 Turning to Franklin district, in my submission, the position in Franklin is less clear. The planners have agreed that the following activities in Franklin district are not properly classified as non-complying - concrete batching plants, the Whitford quarry and the public viewing platforms.

25 **[4.05 pm]**

The balance of activities within Franklin District, including construction and operation of wind turbines and related earthworks, are discretionary and improvements to local roads outside the road reserve
30 are restricted discretionary.

35 There is one area of uncertainty noted in the planners' expert report. Earthworks, structures and indigenous vegetation clearance within 60 metres of the first escarpment or cliff above the coastal marine area are non-complying, but the escarpment is not a point that can be fixed with certainty given the variety of coastal topography. The issue was raised and the plan was caucused and Mr Chrisp undertook that Contact would investigate it further.

40 Contact's investigations indicate that there are three turbine sites, which I have listed, that are arguably within the 60 metre setback. Contact proposes to deal with the point by a suggested condition to ensure that the relevant rule was not triggered. In each case only a minor relocation of the turbine site is required to achieve compliance.

5 In terms of bundling, Ms Cockerell again takes the view that the non-complying status with the quarry concrete batching plants and the viewing platforms mean that all activities in Franklin District are non-complying.

10 Mr Chrisp takes a different view, reasoning that the effects of each activity are confined to the immediate locality in which they are located, and that Ms Cockerell's argument to the contrary, based on asserted traffic effects, is not supported by expert evidence, indeed it is contradicted by the conclusion of Mr Galloway, giving evidence on transport issues for Contact.

15 In his rebuttal evidence Mr Chrisp also emphasises the fact that these particular activities are advanced as a means to minimise overall adverse effects, avoiding the need to transport in aggregate and concrete and to reduce any effects of additional tourist traffic in the area. On this basis it is submitted that Mr Chrisp's approach to bundling is to be preferred and that the windfarm and road earthworks within
20 Franklin District are properly considered on a discretionary basis.

HIS HONOUR: That is fine, carry on.

25 MR ROBINSON: Returning to the application of section 104(d), to the extent that activities to the subject of the applications are properly classified as non-complying, whether on a stand alone basis because they are bundled together with other non-complying activities, the applications must pass the so-called gateway tests of section 104(d). Once through
30 the gateway the application is then formed to be considered under the usual tests of section 104.

35 Mr Chrisp has analysed each application on this basis in his evidence. He concludes that each of the activities classified and/or bundled as non-complying are able to pass at least one of the gateway tests, in most cases because the effects are no more than minor.

40 Mr Chrisp's conclusion is the level of effects might reasonably be said to be supported by the relative lack of comment on the evidence and the activities in question.

45 In relation to wind turbines in the Waikato District, bundled to be a non-complying activity, however, as Mr Chrisp accepts, it is unrealistic to think the number of wind turbines proposed could be classified as having less than a minor effect. That was the conclusion of the Environment Court in the Unison Networks case, and it is equally applicable in this case.

HIS HONOUR: See the difficulty is at 97, I think what Mr Chrisp has done is taken each application and analysed that in terms of the test, but of course that follows on, we have to reach a conclusion that that is a correct approach and that Ms Cockerell's approach is not preferable. If we concluded they have to bundle together, the difficulty is many of them may have more than minor effects simply because they are associated with the wind turbine.

MR ROBINSON: That is correct, sir. I accept that. But I think the answer - well, I accept that in relation to - - -

HIS HONOUR: I have got to say, the difficulty from my perspective, because I am not a happy camper with the minor tests, for the reasons I have explained in a number of decisions, is because it is very femoral. What is a minor effect? It is scribbly (**INDISTINCT 4.09.23**), but no more than minor, and you come on, in any event, if we get to the wind turbine, which is non-complying clearly, you accept the effects are more than minor for that, so then we come back to the plan test, the contrary to. In a way, if it passes the contrary to test we do not need to go any further, do we?

MR ROBINSON: I think that is fair comment, sir.

I think that would certainly be my answer in relation to the Franklin District. I think in relation to the regional council, if the Board of Inquiry found that Mr Chrisp's reasoning, and the argument I have presented in these submissions, was unsound and that all of the regional council consents were bundled because of the spring take, my instructions are that Contact would withdraw its spring take application.

[4.10 pm]

HIS HONOUR: Well, it may do, but what I am saying is if they all pass, bundled as however they are, the tests that they are not contrary to the plan, then we do not need to get into breaking them into tiny little pieces, and all of the rest of the things you are talking about here, because they will at least pass one of the tests.

MR ROBINSON: Yes, that is fair, sir.

HIS HONOUR: And what I have usually said is it is difficult to reach a conclusion that anything is contrary to a plan. It can be done, but we are looking at the plan as a whole, so quite often there are provisions that are for it and provisions that are against it, and what this division it - and I understand all the other divisions do, is look at the plan as a whole, and say "Is this overall repugnant to this plan?"

5 And there are cases where that is the case; that the plan sets its chin very firmly against certain things – let’s take subdivision down to two hectares in most areas. Most plans – and I understand the Court often times says, “This is contrary because when we look at the plan as a whole, it has a whole series of policies, objectives et cetera, that has set its face against this.”

10 As I understand your evidence, and I am not saying that everyone else accepts that, it is largely that these plans do not set their face against this as a development – this type of development. Sometimes they are silent on the subject. That is hardly ‘repugnant to’. Sometimes where they do discuss, perhaps very generalised – but there is quite a high standard to get to ‘contrary to’ if you adopt the repugnant test, which I
15 am suggesting is my understanding of the current rule.

MR ROBINSON: I would agree with all of that, sir. And the point I develop shortly is, in relation to the application contrary test, that Mr Crisp’s reasoning in relation to Waikato District is effectively, as Your Honour has said, there are objectives and policies pointing every which way.
20

HIS HONOUR: So, 101, you are saying is looking at a whole – I have suggested that is the approach - - -

25 MR ROBINSON: Yes.

HIS HONOUR: We move to 102 – you are saying in Waikato District – looking at that as a whole, each – which way, overall it is not contrary.

30 MR ROBINSON: That is right, sir.

HIS HONOUR: And you go onto Ms Cockerell, partway through - - -

35 MR ROBINSON: Yes, and the point in section 102 that I particularly wish to emphasise is that, as it said in the expert report, only Mr Crisp has, in fact, undertaken an overall assessment of all of the objectives and policies including, on balance, the Waikato District applications are not contrary to the objectives and policies of the relevant Waikato District plans.

40 HIS HONOUR: I often quote **Picasa (ph)** – “it’s the vibe of the thing.” When we are getting down to ‘contrary’ we are looking at what is the thrust of this plan as a whole, and it is generally going to be very plain. If something is repugnant, it is very plain that the plan as a whole sets its
45 face against certain activities.

MR ROBINSON: But, I remember, a long time ago reading an administrative law case that talked about hitting one between the eyes – the invalidity of a particular action, and I think it is at that category; but of course you can make fine distinctions, analysing each policy, but your Honour
5 game me the example of subdivision on small lots where that is clearly contrary to the plan. The much litigated Auckland urban city limits would - - -

HIS HONOUR: MULs, yes.
10

MR ROBINSON: - - - would also be in that category.

HIS HONOUR: So you are saying Ms Cockerell – I think in 102 you are saying that the – you are making an accusation essentially of
15 selectiveness in which objectives and policies are cited.

MR ROBINSON: Well, I think it is more than an accusation, sir, because the planner’s expert report actually says that is what she has done - - -

HIS HONOUR: I see, thank you. So we do not have to - we can just look - I do not know that we have got all the expert reports. I think they are available to us, but I do not think we have seen them. So, we would obviously have a look at those in light of what you have said, but you say that in fact Ms Cockerell accepts that she has only considered
20 certain objectives and policies.
25

MR ROBINSON: Relevant to the interests of the Director General of Conservation.

HIS HONOUR: Right.
30

MR ROBINSON: And the planners for the council similarly noted that they had not undertaken a full assessment of the application either. But on a fall-back position effectively, I note that Ms Cockerell still feels able to
35 conclude that the proposal needs to include appropriate avoidance, mitigation and remediation measures to ensure that the protection approach in the documents are satisfied.

[4.15 pm]

40 It is accepted for Contact that appropriate avoidance, mitigation or mediation measures, or relevant ecological – ecological in this case – effects needs to be put in place. Thus the difference in a viewpoint maybe somewhat academic.

HIS HONOUR: Well, you are saying if those things are met, it is not contrary to.

5 MR ROBINSON: That is right. And the point I make next is that one would have – and certainly I would have thought that if the Board concludes that appropriate avoidance, remediation and mitigation measures have not been put in place, or could not be put in place with varied conditions, the applications would fail or would probably fail a discretionary activity test in any event.

10 HIS HONOUR: Yes, well that is essential to part 2, of course, so if we are not satisfied that the effects can be avoided, remedied or mitigated, and those are not a bottom line, because there is a huge variability in which of those categories you choose – I use the word ‘appropriate’, if the development is not appropriate, having regard to that, well I agree with you, that is the fundamental test for the Board.

15 MR ROBINSON: So, ultimately I think the whole discussion under section 104(d) is all a bit circular and I draw the parallel with the report that the technical advisory group advising the Minister made in relation to the bill currently before parliament, that recommended deletion of non-complying activity status because it throws up these sort of endless circles.

20 HIS HONOUR: Well, yes, it is not my place to debate the merits, but nevertheless the Court has drawn some very clear distinctions however, between discretionary activities and non-complying. Non-complying indicates that it is generally not appropriate and it may be appropriate in a particular case but it needs to be what is referred to as a true exception.

25 MR ROBINSON: I respond to that point, sir, I think there is a difference – it depends on how the plan is drafted. The issue in Waikato District, under the Operative Waikato District Plan is that it – well, it is what one might call an old style plan that lists a series of activities that are classified for various purposes and then says, “Well anything not listed is non-complying”.

30 HIS HONOUR: Yes.

35 MR ROBINSON: And so, in my submission in that – when plans are drafted in that way I do not think the inference that your Honour has drawn flows. But if you have a plan that is drafted in a different way, that has actually classified an activity as non-complying, either directly or by reference to the nature of the effects that it creates, then I accept the point your Honour is making is a valid one.

HIS HONOUR: And my recollection is there are some cases on that point, including some of mine. I cannot remember what they are – if you could tell me what they are, it would help. How you find them I am not sure now.

MR ROBINSON: Yes, sir.

HIS HONOUR: It is a question of how you search them out of the general melee. But certainly I accept that it does depend on how the plan is geared. I mean, for example, some plans say if you are on the West Coast of the South Island, if it is not a listed activity it is discretionary or restricted discretionary or something. I cannot remember what it is. So, some plans have a default mechanism which actually almost allows things. It is quite interesting. I think some of them even may be as far as controlled, or something.

MR ROBINSON: That is right.

HIS HONOUR: They are very interesting. But I think there are some cases that draw out that point you have made which would help to support that and give me a bit more basis for it. Shall we move to 106?

MR ROBINSON: Yes. I will leave that one to my learned junior.

HIS HONOUR: That is right. That is what learned juniors are for. 106.

MR ROBINSON: So, talking about landscape and visual amenity which is the first and typically – not always but typically the most significant issue in relation to windfarms. I start with a general statement that wind turbines are large structures that are necessarily grouped, generally on elevated sites to capture the optimum wind resource. While, as Mr Lister discusses in his evidence, opinions differ as to the architectural merit of wind turbines, they will inevitably result in a significant change to the landscape character.

As Mr Lister observes, adverse effects on the visual amenity of some properties is a likely effect of any windfarm and the extent to which this occurs, and the degree of effect is a key enquiry. And, sir, I have quoted from Project West Wind.

[4.20 pm]

HIS HONOUR: Yes, or putting it more in the vernacular, as I have said, “you have to break eggs to make an omelette”, or it leads to the same thing, the acceptability of that is really what the core inquiry we are

undertaking is, because there are certain activities - wind farms that are appropriate and some that are not, it is very much in the detail of which ones are appropriate and which ones are not, **(INDISTINCT 4.20.26)**.

5 MR ROBINSON: That is exactly right, so that if the inquiry is to find a wind farm that will have no visual amenity effects on any neighbour, in my submission there would be very few, if any, wind farms ever built, and the answer – the devil’s advocate answer would be, “Maybe that says that wind farms should not be built”, but in my submission that would
10 be the wrong answer in terms of part 2, that it is a scale - that you reach a point when local effects mean that the wind farm is not appropriate in that environment.

15 HIS HONOUR: Yes. Interestingly enough - I do not think there is evidence in this case, but in other cases we have heard in the Court at Mahinerangi they discussed the highly offended rates as well, which interestingly enough were similar to airports, for example. Curiously enough, in a study that Christchurch undertook with some people, there are various things that people like and dislike, the airport was ranked as
20 one of the highest liked items, the lowest were children playing and motor mowers.

It is interesting how perceptions – in other words, people who like things can be – you might have people who - airports as an example, a
25 lot of people like things, you only need to go to the end of any airport runway and see all the cars parked to watch the planes taking off, and yet there can be a group that can be highly offended. Of course the noise from airports is based upon getting a percentage who are highly offended, and curiously enough the rejection rate is similar, about
30 15 percent, as I recall, to 20 percent of people highly offended by windmills in certain places and certain distances, and then there is a level of people who really do not have a view one way or another, and then some people who like them. And I think the statistical response is interesting in that each person reacts in a different way to the same
35 thing.

Mussel farms is another one where a farmer will often look at a mussel farm and say, “There is a good productive use of water”, and somebody else will look and say, “What an ugly, ugly thing”.

40 We have heard similar evidence in relation to wind farms. Some people will look at it and say, “There is a productive use of the land”, and others will look at it and say, “What an ugly industrial item it is”. That just reflects what I said at the very beginning of this case, the pluralistic society we live in, where there is a range of views. It does
45 not mean anyone is right or wrong, it is just the world we live in.

MR ROBINSON: That is right, and the role of the Board is to form a view about where the balance lies.

5 HIS HONOUR: We have to, unfortunately, and that will mean some people feel that they are not listened to and other people will feel they are. Usually everyone is equally insulted, so there we are. So it is our job, I suppose.

10 But nevertheless, when we get to areas of landscape and visual, they are particularly problematic, and we are not speaking of outstanding landscapes generally here, although I know your witness identifies some outstanding natural features but they are not identified in the plan.

15 But I think we will just carry on with 109, because I think it is reflecting the very matters I was about to mention.

MR ROBINSON: But before I go there, could I just reemphasise the point that the Court made - in my 108 - in the Mahinerangi decision that it is relevant - this is the point we have been discussing - that all forms of energy production involve some level of compromise, for the Court to draw attention to the fact that these particular effects would cease if the activity ceases, given the requirement to remove the turbines.

25 Now, going on to 109. Mr Lister has undertaken a comprehensive analysis of landscape and visual effects of the project, including the transmission assets, but I will discuss them separately later in these submissions. His analysis starts with a wide ranging discussion of landscape issues, putting the wind farm footprint – and I acknowledge the point your Honour has made – into a landscape context, moving down to a more specific analysis of landscape and visual amenity issues.

[4.25 pm]

35 Where submitters raised landscape and visual amenity issues, Mr Lister responds specifically to the points raised. Overall, Mr Lister concludes that while the wind farm will result in significant change to the landscape character, he considers it to be appropriate in the landscape setting because, firstly, the area is off the beaten track so the audience is limited, yet it is not so remote that the area is valued as wilderness. In the general sense, a productive rural environment such as this is an appropriate landscape setting for a wind farm.

45 Thirdly, the underlying rural activities and patterns will remain as a coherent surface between the wind turbines. The landscape has a

5 sufficiently expansive scale and relatively harmonious character to accommodate the large scale of the wind farm. The wind turbines will be the same in form and size. Groups of wind turbines are clustered on individual landforms, and wind turbine locations avoid those areas assessed as having higher landscape amenity.

HIS HONOUR: 1.10 to 1.13, on the face of it, just tends to be a repeat of his evidence. Again, I do not know what the gain from a legal perspective.

10 MR ROBINSON: Well, your Honour, if I could observe one of the - - -

HIS HONOUR: Well, it is a paraphrasing of his evidence.

15 MR ROBINSON: It is a paraphrase of his evidence, I accept that. So turning to 1.14 - - -

HIS HONOUR: I think that is where you discuss the other experts?

20 MR ROBINSON: Yes. We have three briefs of evidence on landscape and visual amenity, landscape and visual issues; Ms Peake for Sunset Views, Mr Bernard Brown for the Brown Family Trust, and latterly Mr Steven Brown for Mr and Mrs Walter, in addition I note Mr Van der Leden has provided a digital terrain model of wind farm.

25 Unlike Mr Lister, however, each of the three other landscape and visual amenity experts has looked at the HMR project from a compartmentalised perspective, reflecting an individual interest.

30 In Mr Brown's case - Mr Bernard Brown's case that is - as a resident of Manu Bay near Raglan, and Ms Peake and Mr Steven Brown's case reflect in the particular interest for Sunset Views Limited and Mr and Mrs Walter respectively.

35 Thus, Mr Bernard Brown's perspective relates to the relationship with the wind farm area to the Te Onga **(PH)** coast to the west and south-west of Raglan township. He criticises Mr Lister's methodology and asserts that established landscape criteria are not comprehensive and that the HMR site is not appropriate for a wind farm. He is seeking the three southernmost blocks of turbines, amounting to 43 turbines, be
40 deleted from the project plan.

Mr Lister - - -

45 HIS HONOUR: We seem to be getting very much into a blow by blow about the evidence, but you do mix in there a submission, so I had better just at least deal with the first couple of sentences.

MR ROBINSON: Yes. Mr Lister responds to Mr Bernard Brown in his rebuttal evidence. He points out inconsistencies with previous landscape assessments that Mr Brown has undertaken. More generally it is submitted that Mr Brown's evidence is strained.

While the photo montages produced by Mr Lister indicate that the wind farm will be visible from the coastline west of Raglan, they also show that at eight to ten kilometres from the nearest turbine and out to as far as 40 kilometres there will be a distant view and located on an extensive area of low coastal hills.

HIS HONOUR: I have got say that the rest seems to just be a repetition of evidence we have already got.

MR ROBINSON: Yes. I have to confess that one of the difficulties I had preparing this opening submissions, knowing that the Board will have read through the evidence, was the extent to which I should traverse the evidence, and I appreciate that if - - -

HIS HONOUR: Well, 20 pages is a bit of a clue for the future.

MR ROBINSON: Yes.

HIS HONOUR: We are interested in the legal arguments going to the jurisdiction and power and exercisable discretion of the Court. We can understand the evidence so we generally – if you feel constrained to say anything, it should be at the end of the case. Generally, I prefer brevity over length. Keep in mind the House of Lords rule which is, “If it takes more than two pages it ain't worth saying”.

MR ROBINSON: Yes. As I say, I was some betwixt and between - - -

HIS HONOUR: I think we understand that evidence and, of course, we have taken views by helicopter; we intend to undertake land based views of that, as well, because really what you are talking about is a judgment that we have to exercise about whether those are intrusive or non intrusive et cetera and people have different views, as I said to you before, people respond differently.

[4.30 pm]

MR ROBINSON: All right. Well, I am happy - - -

HIS HONOUR: 118?

MR ROBINSON: To talk about Mr - - -

HIS HONOUR: That looks like another discussion of other people's - - -

5 MR ROBINSON: Well, the submission is about - - -

HIS HONOUR: If we can discuss Mr - - -

10 MR ROBINSON: - - - is that they confused visibility with effects.

HIS HONOUR: Yes.

15 MR ROBINSON: In particular, Mr McCabe talking about effects on his accommodation business. While adverse effects on that business cannot be entirely excluded, one would have thought that eco tourists would be put off more by the residential development in and around Raglan than a distant view of the wind farm.

20 Now, Ms Caird's position has now changed from evidence to a submission as I understood the point made in - - -

HIS HONOUR: Well, I think we should move on from that I think, given that - - -

25 MR ROBINSON: Yes, that is right, because I was dealing with it on the basis that she was presenting evidence.

HIS HONOUR: Well, yes, and so I have given her leave to change. Shall we go to 120, Mr - - -

30

MR ROBINSON: 120. So talking about Ms Peake's interest.

HIS HONOUR: Yes.

35 MR ROBINSON: It is in the northernmost section, particularly on views from and visual amenity at the Sunset Views property located immediately to the south of Port Waikato. So we have a caucused expert report to identify areas of agreement and disagreement. One of the areas of disagreement is the classification of the level of effect from three
40 houses on the Sunset View property. Mr Lister classifies - - -

45 HIS HONOUR: Yes, well, we are aware of what he says, and it seems to me that although there are differences they may not be as - Mr Lister has used his own system for reaching whether they are high or moderate and Ms Peake's used her own system, and it is a problem we commonly have. Nobody is right or wrong, but nevertheless it would be fair to

say, I think, that between the two of them they have relatively identified the effects, it is just a question of ascribing a value to them in the end.

5 MR ROBINSON: Mr Lister's summary of the difference between himself and Ms Peake on this point, to me, was that it was at the margin.

HIS HONOUR: Yes. Well, that is what I would have said, too. Again, that is a judgment we have to exercise in light of - - -

10 MR ROBINSON: Of the evidence you - - -

HIS HONOUR: Yes, of two experienced landscape architects who, as they oft do, do not quite agree on the conclusion, although they do not disagree largely on the factual matters going into it.

15

MR ROBINSON: And I draw attention to - - -

HIS HONOUR: Could you check that is a reasonably fair statement? 1.20. I have to check with my landscape architect. 1.22?

20

MR ROBINSON: I note a significant area of disagreement as to whether landscape features in the northern part of the wind farm footprint warrant recognition for their special landscape amenity - - -

25 HIS HONOUR: I am just not going – I am not prepared to get involved in those arguments. We have them – we have these arguments raging in the South Island about whether they are outstanding, which is very, very high values, and where does that get it us? It is an argument only a lawyer could love really.

30

MR ROBINSON: Yes, sir.

HIS HONOUR: There is no doubt that they have values, that there is high amenity values everyone accepts that. They are not recognised in the plan as outstanding. So generally speaking, the first step I require an expert witness to overcome is show us where the plan is wrong, because we would have as part of it, and I know that the Court has not done this to date but my view is corollary, is we would have to direct the correction of the plan because the plan must recognise and provide for items under section 6. And I know that often there are huge arguments about this but the starting point is, is the plan wrong? If the plan is wrong it has got to be corrected.

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40

I do not think that Mr Lister is going so far as saying the plan is wrong. He just holds the personal view that there are outstanding features.

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COMMISSIONER MENZIES: He is only saying (**INDISTINCT 4.33.45**).

5 HIS HONOUR: Well, he actually says a couple of them are outstanding features, does he not?

MR ROBINSON: I think that he says that - - -

10 HIS HONOUR: - - - area?

MR ROBINSON: He identifies some outstanding features, which in his view are unaffected by the wind farm.

15 HIS HONOUR: Yes.

MR ROBINSON: He identifies this, as Commissioner Menzies point – he identifies some special amenity areas south between Limestone Downs and Sunset Views and Port Waikato, being the limestone rim rock, and the issue of difference between them is whether these are individual elements, as Mr Lister believes, or part of a wider landscape, as Ms Peake contends it has. But effectively - - -

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HIS HONOUR: Nobody disagrees, they are not outstanding. You see what has happened, the reason it is a bit of a hot issue for the Environment Court, carry that forward to the Board, is there has been a tendency of late to create another category of landscape. You have outstanding landscapes, then we have the issues of amenity values that were identified under section 7, but we have had this regard to special amenity areas, iconic landscapes and very high value landscapes. We have got another little box here that somebody has created which is not in the statute.

25

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[4.35 pm]

35 It is not an outstanding landscape, we have regard to it anywhere, under section 5 and section 7, do we not? It is part of the amenity, part of the area, the values - the social and cultural values of people as well, so they are matters we take into account, but I do not think we are starting to create any new boxes for them, it just creates confusion for everyone.

40

MR ROBINSON: Well, I would echo your Honour's point, with due respect to the landscape amenity community, that it was the lawyers who were good at dancing on pinheads.

45 HIS HONOUR: Okay. Well, perhaps that is right. But anyway, one would have to say that there is not a huge difference between them. They

agree it is not outstanding. They have both recognised the values of those areas and described them.

5 MR ROBINSON: That is right, and they described them in different ways, and that - - -

HIS HONOUR: Well, largely similar but not precisely the same.

10 MR ROBINSON: Exactly. Well, yes, that is a fair correction, sir, I would agree with that.

HIS HONOUR: 1.25?

15 MR ROBINSON: And that is a conclusion.

HIS HONOUR: Yes.

MR ROBINSON: Or a lead on. Talking about Mr Van der Leden's - - -

20 HIS HONOUR: Yes.

MR ROBINSON: I draw attention to the point that Mr Lister notes in his rebuttal evidence that the model that "Mr Van der Leden has prepared is useful, but regard also needs to be had to its limitations" and the next sentence is effectively a summary of Mr Lister's rebuttal.

25 HIS HONOUR: Yes. Only two of us have previous experience with KV2, I think – no – and I think that is why we wanted to see it early so we can reach our own views on it. Two of us have had regard to it on the Banks Peninsula decision. It was – sorry?

30 Sorry, the commissioner saw it in another case, she was not involved with me on that one. I have seen it in that, and it would be fair to say it helps, but I do not think anyone is suggesting these things are definitive.

35 MR ROBINSON: That is right.

40 HIS HONOUR: If that is the point you are making, I agree with you.

MR ROBINSON: And I think that Mr Lister is clear – and this is the point I make further on – that he is not saying the photo montages that he produced are definitive either.

45 HIS HONOUR: And neither of us took it to that extent, they are indicative only.

MR ROBINSON: They are aids to assist initially expert assessment and then to assist the Board in making its assessment of what it thinks of the expert views.

5

HIS HONOUR: I must say, I see it more as an aid memoire to remind us of various things we have seen during our other visits, where we have taken visible visits and other ones that will come.

10

Now, Mr Spencer and Sunset?

MR ROBINSON: Mr Spencer is one of the Sunset property owners, so he gives evidence as to the level of amenity. I refer to Mr Lester Wright, the property manager, who discusses the fact that the Sunset View has investigated participating in HMR but withdrew because of the hugely invasive nature of the turbines and their impact on the long term value of the land.

15

HIS HONOUR: Again, we seem to be moving back into evidence. I think 1.28 is in that category.

20

MR ROBINSON: Yes, but 1.28 is a summary of Mr - - -

HIS HONOUR: Could we pick up at 1.29, the second sentence?

25

MR ROBINSON: Yes. So this is a – well, recording the development that Sunset seeks to protect as a restricted discretionary activity. I would rely on the Court of Appeal judgment in the Hawthorne Estate that such a development is not part of the existing environment and any effects HMR might have on it are irrelevant to the present inquiry.

30

In my submission, it is of course open to the owners of Sunset views to refuse to participate on the HMR project on any terms they wish. Similarly, quite open to them to refer to the Board to adverse effects HMR may have on the amenity of the property and, in particular, the three existing dwellings on it. But in my submission the expressed concern in the evidence for that amenity is somewhat overstated and unconvincing in the circumstances.

35

My submission further, some sense of proportion is required as a result of the effects she identifies. Ms Peake seeks some 31 turbines be deleted from the project footprint.

40

So I note a point Mr Lister makes in his rebuttal, some of these turbines are five and six kilometres from the nearest house on Sunset Views and if the criteria apparently being applied by Ms Peake were applied across

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5 the wind farm footprint generally there would be no wind farm in the landscape. Indeed, in my submission, developable wind farm sites would be rare in New Zealand and what sites there were that were viable would be probably be objectionable because they were so far from civilisation they had high wilderness values.

[4.40 pm]

10 I also draw attention to the fact that the block A turbines closest to the most affected Sunset Views dwelling are those on Whareana Farm which is owned by a Maori incorporation with multiple shareholders. In terms of the benefits that the landowners will enjoy if HMR proceeds, as set out in the evidence of Mr Black and Mr Flavell, the impact of dropping turbines in that sector of the wind farm footprint on
15 those landowners needs to be borne in mind.

The Sunset Views evidence is supported at a more general level by the evidence of Mr Carr. Mr Carr gives lay evidence on the visual values of the area focussed on by Ms Peake and healthily produces a large
20 number of photographs to illustrate the points that Mr Lister discusses in his evidence.

25 Undoubtedly, the limestone rim rock shown in Mr Carr's photographs is of some landscape merit, as Mr Lister recognises. Mr Carr's photographs also indicate a range of rural hill country scenes that are typical of large parts of the North Island, but which would not seem to justify any particular landscape weighting.

30 Lastly, in terms of the expert evidence, Mr Stephen Brown's evidence discusses the effect both the wind turbines visible from the Walter property and of the transmission line. Of course, Mr Brown is an experienced expert who, among other things, had an involvement as a peer reviewer of Mr Lister's report pre-application when it was in draft,
35 advising Franklin and Waikato districts.

HIS HONOUR: Now, 1.35, 1.36 and I think 1.37 – we come to submissions again at 1.38, I think?

40 MR ROBINSON: Yes, indeed. If your Honour is happy with the knowledge gained from your own review of the evidence, this is the point I have already made, photo montage is not the be all and end all of landscape and visual assessment. Mr Lister accepts that they assist experts to form opinions and enable laypeople to gain an impression which may
45 otherwise be difficult to gain from written descriptions of what is possible.

HIS HONOUR: Yes, I repeatedly say that I am not aware of any requirement by the Court that they be provided **(PH)** to indicate that they do not assist me very much. Nevertheless, I accept that some people are auditory and some people are visual. It seems to be that applicants are very fond of such things, but I think they are of limited assistance overall. There has been a whole series of criticisms about viewing lengths and the like, and I am aware that the parties are aware of – are well versed in those concerns; light effects, glints et cetera, all of these matter bear upon it. They can at best be aids and I think I just want to make that clear. They do not represent the reality and they are not intended to represent reality. They are an attempt to assist people in understanding, and I agree with you, generally people who are not familiar with these type of operations then what might be of assistance.

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I point out, if they are going to be prepared, my preference is – and I have said this previously at Mahinerangi – you should show all of the effects, not just the turbines, and the roads should be including the cuts. I just point out that, as far as I can, they are not in this case unless I am wrong, and to that extent we are only getting a small portion of the real picture.

20

Nevertheless, I can understand what the other elements are that are involved; the lay down areas, the soil disposal areas and the roads. My understanding is the soil disposal areas are attempted to be shown in many of the photograph montages. I think, as far as I am aware, they are included, although not the roads.

25

So people need to keep in mind that they are only a representation, and a limited representation at that.

30

MR ROBINSON: I think, responding to your Honour, one of the difficulties for an applicant that produces an assessment of visual amenity – and I think this comes back to a point your Honour already made – the visual amenity and landscape issues generally are at that interface where although they are properly the subject of expert evidence, we all have an opinion, some opinions are more informed than others. Speaking for myself, I am a written person and I have difficulty imagining what things will look like. You will forgive a personal observation – so in my household, my wife determines all issues of visual amenity. But that others are very au fait, very able to make their own judgment.

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[4.45 pm]

The difficulty for an applicant who produces an expert view with no visual aids is that it invites the reaction, “Well, that is just your opinion”, and you rapidly reach an impasse at that point.

45

5 HIS HONOUR: Well, it may assist an applicant. Whether it assists us when we get to this level I do not know, and I just point out that there seems to have been an assumption that the Court requires all of this visual aids.

10 I think my preference would be that more money was spent on the hard science of figuring out exactly where it was going, where the roads were being placed et cetera, that would probably be of more assistance. Nevertheless, it is not my decision, it is the applicant's decision. I am just pointing out that there is no requirement from the Court that that be provided, and that has been confirmed in the Mahinerangi decision and the High Court application, you will recall?

15 MR ROBINSON: Yes, indeed. And I suppose, I would equally observe that while I accept and understand the point your Honour is putting to me, in other wind farm cases the Courts have said - excepting the limitations of visualisation - the Court has found such - - -

20 HIS HONOUR: Which decision, I am fascinated to read it. It should be - - -

MR ROBINSON: Motorimu.

HIS HONOUR: Which one?

25

MR ROBINSON: Motorimu, which is in my case book.

HIS HONOUR: Number 3 – I have not read that, so I will have a look.

30 MR ROBINSON: Number 3, and because that was just something I remember reading in passing, I will need to go and find the appropriate - - -

35 HIS HONOUR: If you could find me the paragraphs I would be interested because I – in fact, the only ones I can think of were where comments, probably even more acerbic than mine have been made about them. 1.39?

MR ROBINSON: I will find the reference.

40 HIS HONOUR: Yes. Well, that is what juniors are for, as you said – can find that for you.

45 MR ROBINSON: 1.39. So my submission, with all their flaws the revised photo montages produced by Mr Lister, including the ones tabled this morning, do not support Mr Brown's classification of the level of effect on the Walter property.

There is also an issue about whether the Walter's position is exceptional and - - -

5 HIS HONOUR: Being affected by both the transmission and the turbines?

MR ROBINSON: Mr Stephen Brown's point is rather different. He is saying it is exceptional because of the number of turbines that will be visible in the middle view.

10

HIS HONOUR: I see.

MR ROBINSON: And so Mr Lister has responded referring to examples that may not be identical but certainly indicate some room for questioning of Mr Brown's attitude or position.

15

HIS HONOUR: Yes, and we are 1.40 - - -

MR ROBINSON: 1.40. So ultimately, Mr Brown suggests the removal of up to nine turbines as a result of adverse effects on the view from one property located three kilometres from the wind farm. It is submitted that the Board needs to consider whether this is a proportionate response to the assessed level of effects.

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25 Then there is also the issue about whether the Te Oma Paraka (**PH 4.48.44**) bush might be considered an outstanding natural feature affected by the proposed wind farm.

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HIS HONOUR: Sorry, you need to remind me there, is that on the transmission route, is it?

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MR ROBINSON: Yes, it is. It is immediate - - -

HIS HONOUR: I think I know – I remember now approximately where it is.

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MR ROBINSON: It is where the Limestone Downs were, immediately the section of the external line exiting Limestone Downs submission - substation, moving immediately to the east.

HIS HONOUR: So it is in that first couple of kilometres beyond this Limestone Downs, is it not?

40

MR ROBINSON: Yes, that is correct.

HIS HONOUR: We have seen it now, and I thought it was that one – I am just checking. So you go on, "Mr Brown does not explain ...".

45

MR ROBINSON: Yes. Mr Brown does not explain why he did not venture that opinion when he was peer reviewing Mr Lister's draft report for the councils. Again, this is a difference of view between landscape experts. Mr Lister classifies the relatively high level, but not eminent, conspicuous, particularly because of its excellence in using the test in the Whakatipu Environmental Society case.

[4.50 pm]

Now, before I leave and talk about Mr Townshend – proving that learned juniors can be very quick – can I refer your Honour in the Motorimu case to paragraph 95? I find that my - - -

HIS HONOUR: It is Motorimu, number 3, is it?

MR ROBINSON: Motorimu, tab number 3.

HIS HONOUR: Paragraph 95?

MR ROBINSON: I find that my submission is, in fact, a paraphrase of the Court's comment that – just the first sentence. And then the balance of the paragraph goes on to make the point that your Honour made, that they are different to reality.

HIS HONOUR: Yes, contradicted by the next sentence, but nevertheless you have one fan at least.

MR ROBINSON: Yes.

HIS HONOUR: 1.42?

MR ROBINSON: Yes, 1.42. So of the balance of the evidence, the only evidence council could identify on landscape and visual amenity issues is that of Mr Bradley and Mr Townshend. Mr Townshend's submission and evidence contain a strongly worded and somewhat acerbic denunciation of the project, many of the participants of the Board of Inquiry process, not to mention the process itself. He addresses the visual amenity issues or the visual amenity effects on his property which is located between turbine blocks H and I, and asserts in passing the inadequacy of Mr Lister's assessment but provides no reasoned basis for his views. I note that it appears from Mr Townshend's background in the corporate sector that he has no particular skill or expertise in the assessment of visual amenity.

While lay opinions on landscape - - -

HIS HONOUR: Is this the AFFCO?

MR ROBINSON: Yes.

5

HIS HONOUR: Right. He was the CEO, was he not?

MR ROBINSON: He was the former CEO of AFFCO and former, I think it was operations manager of New Zealand Dairy Group. He is the general manager of Anchor Products, Mr - - -

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HIS HONOUR: Of what products?

MR ROBINSON: Anchor, which was a division of New Zealand Dairy Group pre Fonterra.

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HIS HONOUR: Yes. Well, Mr Townshend is not here, so I am not exactly clear whether he is going to be participating further. Nevertheless, that is a matter we will address when we see him.

20

MR ROBINSON: But my submission is that Mr Townshend presents his views with a singular lack of objectivity and analysis that indicates that they should be afforded little weight compared to the carefully considered professional view of Mr Lister.

25

Mr Bradley's second brief of evidence, entitled "Rebuttal", raises issues regarding the effect on his home that he and his wife has recently built on a high ridge affording panoramic views of the surrounding hill country and the coast.

30

I noted earlier, I said approximately eight kilometres and I should correct that because I now see that Mr Lister – I have recorded Mr Lister's evidence, "The nearest groups of turbines are approximately 7.5 kilometres southwest, eight kilometres west, eight kilometres northwest". So Mr Lister discusses the relevance or the extent to which the panorama from the Bradley property is affected by the wind farm, they have noted already.

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Mr Bradley also complains that the lack of consultation with him and his wife; this is partly the result of the Bradleys having moved into the area after the application process was well underway and partly because they are located outside the five kilometre radius used as the basis for consultation.

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In his second brief of evidence, Mr Bradley criticises the decision to draw a five kilometre circle around the wind farm footprint.

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Ultimately, any cut off of this kind, while designed to cover key stakeholders, will always have the potential to exclude people who feel they should be included. There is a limit, in my submission, to what can reasonably expected of an applicant by way of consultation.

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With his first brief of evidence, Mr Bradley produces an informal survey that he had undertaken. The survey is quite interesting because it illustrates the range of opinion in the community about wind farms. One comment noted by Mr Bradley seems to sum up the human dynamic of wind farms generally, “I would not like to live next to a wind farm, but it needs to go somewhere”, and similarly the comment, “I am not opposed to wind farms but they should not be where people live”.

10

15 HIS HONOUR: Yes. We seem to be back to restating evidence, would you not say?

MR ROBINSON: Yes, sir.

20 HIS HONOUR: Ecology and avifauna – I do not think the last statement is no more than a - - -

[4.55 pm]

25 MR ROBINSON: Yes, I think that that is a summary of Mr Lister’s evidence, sir.

HIS HONOUR: Yes.

30 MR ROBINSON: It is 5 to 5, and I am about to enter a major section of the submissions on ecology and avifauna and so I wondered if you would like a break at this point?

35 HIS HONOUR: Yes. Perhaps I could ask you, overnight if you could, given what is the extreme length of your submissions, if you could go through it and identify those matters that are repeat evidence and try and isolate your submissions.

40 I am happy for you to make a submission in respect of evidence, but I would rather just get to the submission in respect of the evidence and, of course, I am obviously very keen on any legal matters going to the exercise of jurisdiction.

MR ROBINSON: I will take that direction.

HIS HONOUR: Discretion et cetera, and that might speed us up tomorrow. We are on about half of what I expected, but I do not generally get discussion of evidence. So if we could work on that, that might shorten us up tomorrow.

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MR ROBINSON: I will endeavour to be prepared on that basis for the morning, sir.

10 HIS HONOUR: The question - if we are finished with your submissions prior to lunch, the question I was wondering to myself is whether we should swear Mr James and deal with other cross-examination and then come back to deal with the Tatuk and then any questions about that if he finishes before lunch probably, if not we would come to Tatuk and then Mr Van der Leden. It may be that the other alternative is to have
15 Mr James sworn and go through Tatuk before lunch, but Sir William may want Mr Van der Leden here so he can watch Mr James doing the Tatuk. So I am open to any - what would your preference be Sir William?

20 SIR WILLIAM BIRCH: Your Honour, Mr Van der Leden's (INDISTINCT 4.56.45) tomorrow.

HIS HONOUR: He is not available?

25 SIR WILLIAM BIRCH: He is making a member of his staff available.

HIS HONOUR: Right, sorry. Yes, well, that member of the staff - are you happy for Mr James to go through Tatuk if Mr - - -

30 SIR WILLIAM BIRCH: I would prefer that. I mean, my own staff is an expert in - - -

HIS HONOUR: Well, we may be able to swear another witness if we finish before lunch, and I am not saying we will (INDISTINCT 4.57.06). If
35 we do, it may be possible to swear another witness and see if we can deal with them before lunch and then come back to Mr James and Mr Van der Leden's assistant tomorrow after lunch?

40 MR ROBINSON: Well, at the moment the witness order that we have notified to the Board has Mr Geoghegan first off the block, he is a corporate witness that I would not have thought there would be immense cross-examination of a - - -

45 HIS HONOUR: Although, you have pointed a number of questions on our part to him, so we probably need a little bit of time. But in any event, I think we will deal with that tomorrow, we will see how we are going

with your submissions.

MR ROBINSON: Thank you, sir.

5 HIS HONOUR: If we do not have much of a cull we are going to be looking
at it taking right through to lunchtime, at least. Hopefully, we can
move on.

10 Now, I think Tainui have asked if they could conclude today's
deliberations with a karakia and I am happy to do that, so if you would
all like to stand we will finish with a karakia and we will meet
tomorrow at 10.00 am.

KARAKIA

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**MATTER ADJOURNED AT 4.59 UNTIL
TUESDAY, 28 APRIL 2009**