

BOARD OF INQUIRY

**Hauāuru mā raki
Wind Farm Proposal**

TRANSCRIPT OF PROCEEDINGS

BOARD OF INQUIRY

Hauāuru mā raki

Waikato Wind Farm Proposal

Hearing

HEARING at TUAKAU on 22 May 2009

BOARD OF INQUIRY:

Environment Court Judge Jeffrey Allan Smith
Commissioner Diane Menzies
Ms Gina Rangi
Mr John Lumsden

APPEARANCES

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

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

SIR W F BIRCH appeared on behalf of Sunset Views Limited

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

LIST OF WITNESSES

<THOMAS TAMATI FLAVELL, sworn [10.13 am]1537
 <EXAMINATION BY MR ROBINSON [10.13 am]1537
 <CROSS-EXAMINATION BY MR R GARDNER [10.14 am]1538
 <CROSS-EXAMINATION BY SIR WILLIAM BIRCH [10.21 am].1542
 <THE WITNESS WITHDREW [11.32 am].....1581

[10.06 am]

DISCUSSION

5 [10.10 am]

MIHI

10 <THOMAS TAMATI FLAVELL, sworn [10.13 am]

<EXAMINATION BY MR ROBINSON [10.13 am]

MR ROBINSON: Mr Flavell, can you confirm for the record that your full name is Thomas Tamati Flavell?

15

MR FLAVELL: Yes.

MR ROBINSON: And you have a brief of evidence in the proceeding?

20 MR FLAVELL: Pardon?

MR ROBINSON: Do you have a brief of evidence that you prepared in the proceeding?

25 MR FLAVELL: Yes.

MR ROBINSON: And is there anything in that brief that you want to change or clarify?

30 MR FLAVELL: No, nothing.

MR ROBINSON: Can you confirm that what is set out in the brief is true and correct to the best of your knowledge and belief?

35 MR FLAVELL: Yes.

MR ROBINSON: Can you please answer any questions that the people present have for you?

40 HIS HONOUR: Now, there were only two parties that gave notice as I recall and I think they were Mr Gardner for Federated Farmers and Sir William. So Mr Gardner, I invite you first.

<CROSS-EXAMINATION BY MR R GARDNER**[10.14 am]**

MR R GARDNER: Thank you, your Honour, and good morning to you and
5 good morning to members of the Board and good morning, Mr
Flavell.

MR FLAVELL: Good morning.

MR R GARDNER: I am Richard Gardner, I am representing Federated
10 Farmers, which is a farmer based organisation as you may know, and
our concerns are really with the transmission, or what is called the
external transmission line between Limestone Downs and Orini.

MR FLAVELL: Yes.

MR R GARDNER: That is the area of our concern. The question I have was
15 in paragraph 18 of your evidence and you say there, “The working
party also had a look at the transmission line route where it crosses
over the back of the farm”?

20

MR FLAVELL: Yes.

MR R GARDNER: So that transmission line route – and you say you do not
25 have any issues with it, yes?

25

MR FLAVELL: No, we do not.

MR R GARDNER: No. But that transmission line, that is not the external
30 transmission line, is it? It is a transmission line within the – between
the turbine clusters, is it not? Is that right?

30

[10.15 am]

MR FLAVELL: It is actually the transmission line running from the
35 substation at Limestone Downs across the valley out to Orton. Is that
the one we are talking about?

MR R GARDNER: So it runs – it is the external transmission line, you say?

40 MR FLAVELL: Yes.

MR R GARDNER: I understand. So - - -

HIS HONOUR: The Limestone Downs to Orton line, is it?

45

MR FLAVELL: Yes, it is part of that.

HIS HONOUR: To Orton, not the Matira line?

MR FLAVELL: No, not the Matira line. No. I suppose they cross over but -
5

HIS HONOUR: If somebody could show us, just to check, so that Mr Flavell
can identify it if he can. Is it that part there that is shown in relation
to E block. Is E block on Pukerewa? Is that right?

10 MR FLAVELL: Yes.

HIS HONOUR: Could you go out, so we could see the two substations please?
We just need to track it to the two substations. My understanding is it
is from Matira to Limestone Downs there. Yes, so it is the Matira, Mr
15 Flavell? It is that line from Matira to Limestone Downs, is it not?

MR FLAVELL: Yes, that is the one, yes – sorry.

MR R GARDNER: So it is the - - -
20

HIS HONOUR: Well, what is confusing people is the word internal.

MR R GARDNER: Yes.

25 HIS HONOUR: It is the Matira to Limestone Downs transmission line.

MR R GARDNER: That is a good way of putting it. Thank you for that, sir.
I have to say, I have struggled with this external line. We have taken
the view that the whole project is just one project, but that is the word
30 that popped up and I thought Mr Flavell may be familiar with that.

So just to confirm, it is the Matira to – so it is not part of the line that
runs between Limestone Downs and the national grid?

35 MR FLAVELL: Matira, yes.

MR R GARDNER: Sorry?

MR FLAVELL: Matira.
40

MR R GARDNER: That is right. So you say you have not got any issues
with it, is that because your group is speaking for your iwi in you
Pukerewa A Block. Is that because you are benefitting from the
turbines on the land?
45

MR FLAVELL: Is that what you – can you say that again?

MR R GARDNER: You just say in paragraph 18 that you do not have any issues with that transmission line, yes?

5 MR FLAVELL: No, we do not.

MR R GARDNER: No issues with it?

MR FLAVELL: No.

10

MR R GARDNER: But that is going to – that is balanced by the fact you have got turbines on the land, is that correct?

MR FLAVELL: Yes.

15

MR R GARDNER: So you have been able to sort of say, “Well, I am benefitting from the turbines so I am not worried about the transmission lines”?

20

MR FLAVELL: Well, if you are talking about monetary terms – no. The turbines and the transmission lines, they are equally – shared equally so there is no overlap on those, at all.

MR R GARDNER: That is right. So you take them together and say, “We are benefitting from this”?

25

MR FLAVELL: Yes.

MR R GARDNER: That is right. Thank you for that. You understand though that there is a transmission line that runs between Limestone Downs and Orton, where the farmers there with the transmission lines are not benefitting monetarily from Contact’s proposal? Do you understand that?

30

35 MR FLAVELL: Yes, I am not too sure on that part, sir.

MR R GARDNER: No. Okay.

MR FLAVELL: But I understand what you are saying, yes.

40

MR R GARDNER: Yes. I think that is the understanding because as I understand it, Contact is able to come along and not so much put a proposition to the farmers there, as they have to you, which gives them a monetary benefit, but they are able to come along and use the law and say, “We demand to go across this land”. This is my understanding of what is happening, do you understand that?

45

MR FLAVELL: Yes.

MR R GARDNER: And do you understand that – sorry?

5

MR FLAVELL: Yes, sort of.

MR R GARDNER: Yes. So that is essentially, as I understand it, what is happening. Mr Robinson will correct when he comes to re-examine you, I am sure, if I am wrong.

10

But do you understand that might lead to a bit of a division in the community?

MR FLAVELL: Divert the community, you mean?

15

MR R GARDNER: Sorry?

MR FLAVELL: Division in the community?

20

MR R GARDNER: Yes, people on the transmission line might be opposed to Contact's proposal because they are not able to benefit.

MR FLAVELL: Some are. They are opposed to it now. Some sort of – well, I am going to say it straight – some, more or less, want more money, you know?

25

MR R GARDNER: Yes.

MR FLAVELL: I am going to say it straight – I am not going to - - -

30

MR R GARDNER: Yes. I am just interested in the community's response, and you understand that some people are for it and some people are against it, are they not?

35

MR FLAVELL: I do, yes.

MR R GARDNER: So there is a split in the community, is there not?

MR FLAVELL: Yes.

40

MR R GARDNER: And you were here on Wednesday, were you, when Mr Reeves in particular spoke about - - -

MR FLAVELL: Yes, I was here.

45

MR R GARDNER: And did you agree with him that there was a split in the community in that sense?

5 MR FLAVELL: Well, to tell you the truth I was not taking much notice of what Mr Reeves was saying because I was at the back and he was talking at the front and I could not hear him properly.

MR R GARDNER: All right.

10 MR FLAVELL: I should have spoken up.

MR R GARDNER: But you would agree with me though, there is a division in the community, is there not, about this proposal and particularly the Limestone Downs to Orton transmission line owners are opposed to it, are they not?
15

[10.20 am]

20 MR FLAVELL: I cannot understand what you are saying. What was that?

HIS HONOUR: I think the difficulty is you are asking this witness questions that really you could ask any member of the community. They are not really taking us anywhere, at all.

25 MR R GARDNER: Well, it comes - - -

HIS HONOUR: We know that members of the community are opposed to the line because they are giving evidence to us and we have read the evidence. So I do not know where your questions are leading us?
30

MR R GARDNER: No. I have reached, I think, as far as I wanted to go anyway, sir. But it is to do with the community spoken about in section 5 of the RMA which I think is a concern the Board has. I just wanted to illustrate the split in the community through this witness, sir, and I think I have achieved that.
35

At least, I have gone as far as I need to go, anyway, in that respect. So that is all I need. Thank you very much, indeed, Mr Flavell. That is useful, I hope. And thank you, sir, that is all I have.
40

<CROSS-EXAMINATION BY SIR WILLIAM BIRCH [10.21 am]

SIR WILLIAM BIRCH: Nau mai, haere mai, tena koe, te rangatira.

45 MR FLAVELL: Kia ora.

5 SIR WILLIAM BIRCH: I have got quite a lot of questions to ask you, Mr Flavell. Mostly to try and establish the extent of the consultation and the work of the working group, and please do not take any of my questions personally, I just want to try and establish the process that was followed, and as you are the only member of the Maori community that we are going to have giving evidence during this process, you are the only one that can supply the information that I am looking for.

10 MR FLAVELL: I will do my best, sir.

15 SIR WILLIAM BIRCH: So can I start then with just a little bit of your own background? You are of the Waikato Tainui Maniopoto iwi and your hapu is Ngati Tahinga?

MR FLAVELL: Yes.

20 SIR WILLIAM BIRCH: And you are a shareholder and member of the trust committee for the Pukerewa A Block?

MR FLAVELL: Yes.

25 SIR WILLIAM BIRCH: Indeed, I think you have got an even bigger role – you are chair, I think, of the trust committee, or the -?

MR FLAVELL: I chair the trust committee, yes.

SIR WILLIAM BIRCH: You chair the trust committee?

30 MR FLAVELL: Yes, on Pukerewa A Block.

SIR WILLIAM BIRCH: Yes.

35 MR FLAVELL: I was actually co-opted onto it.

SIR WILLIAM BIRCH: And the Pukerewa A Block is quite a big farm, it is over a thousand hectares?

MR FLAVELL: Over a thousand hectares.

40 SIR WILLIAM BIRCH: Compared with say Whareana, which I want to talk about, as well. That is, I think, 256 hectares, much smaller?

MR FLAVELL: Yes. Whareana, they have actually got their own trust committee, so I am not too sure how they operate on that part. All I am concerned about is the Pukerewa part. I do not go out of my depth.

5

SIR WILLIAM BIRCH: I understand that.

MR FLAVELL: And if there is anything else they want to know, we just get together and discuss it, that is as far as it goes.

10

SIR WILLIAM BIRCH: It is owned by the members of the same hapu?

MR FLAVELL: Whareana.

15

SIR WILLIAM BIRCH: And you would be familiar with the historic associations of the Ngati Tahinga people?

MR FLAVELL: Yes, much so.

20

SIR WILLIAM BIRCH: And Ngati Karewa, as well, I guess?

MR FLAVELL: Yes.

25

SIR WILLIAM BIRCH: Could you describe perhaps the connections of the Ngati Tahinga and Ngati Karewa people with the Pukerewa and the Whareana area?

MR FLAVELL: I will just give you a brief one because there is so much. We could be here for a week if I had to go on about it.

30

SIR WILLIAM BIRCH: I am sure the Board would be very interested.

MR FLAVELL: It is just that Ngati Tahinga and Ngati Karewa, they are more or less one in the same hapu.

35

HIS HONOUR: Sorry, Ngati Tahinga and Ngati Karewa are the same?

MR FLAVELL: Yes, well, more or less the same hapu. And Pukerewa is included in that, right down to – well, I am going to say right down to Raglan. Tainui Awhiro is down that side but I am certain that Ngati Tahinga goes all the way down to Raglan, as well, But do not quote me on that because I am not the historian. My matua, Richard Thompson, is the historian on that and he would be more versed in that than I would. So that is all I can say about that really.

45

[10.25 am]

5 SIR WILLIAM BIRCH: You understand that Richard Thompson is not providing evidence. He has prepared a cultural assessment.

MR FLAVELL: Yes.

10 SIR WILLIAM BIRCH: But he is not providing evidence to the Board. We understand, I think it is not a black and white boundary between the various areas of the hapus?

15 MR FLAVELL: No. Like I said in my statement here, that we do not have an issue with Tainui Awhiro and Ngati Tahinga – we do not have an issue with that, at all.

SIR WILLIAM BIRCH: There is a - - -

HIS HONOUR: Sorry, if I could – I just want to explore that briefly.

20 MR FLAVELL: Between the two - - -

HIS HONOUR: The two rohes, at least towards Raglan there is a degree of overlap between Tainui Awhiro and Ngati Tahinga?

25 MR FLAVELL: Well, yes, some people might think there is an overlap, but I do not think it is that at all. Ngati Tahinga and Tainui Awhiro are one of the same, the same hapus.

HIS HONOUR: I see. Right.

30 MR FLAVELL: People might think differently, but I think it is the same hapu.

HIS HONOUR: Right.

35 SIR WILLIAM BIRCH: You are not able to give us a little bit of the background of the involvement of the Ngati Tahinga, Ngati Karewa people during the Waikato wars?

40 MR FLAVELL: No, I am not, I am sorry.

SIR WILLIAM BIRCH: But you could confirm they took quite a distinctive position as opposed to Tainui iwi?

45 MR FLAVELL: No, I am sorry, I cannot give you that.

SIR WILLIAM BIRCH: You do not want to go into that?

HIS HONOUR: He says he cannot I think.

5 MR FLAVELL: To me it is a tapu subject and I am not in the position to say anything about it.

SIR WILLIAM BIRCH: We would need to ask Percy Kukutai (ph 10.26.49) or somebody like that?

10 MR FLAVELL: Well, you need to ask people who know and I know a little bit but I do not want to give any information out because of that.

HIS HONOUR: Would Mr Richard Thompson know?

15 MR FLAVELL: Mr Richard Thompson - - -

HIS HONOUR: Is he a person who could talk about that?

20 MR FLAVELL: He would actually know just about everything about it, yes, he would.

SIR WILLIAM BIRCH: Thank you, Thomas. So you are one of the shareholders and chairman of the Trust for Pukerewa but you are not a part owner of Whareana?

25

MR FLAVELL: No, I am not.

SIR WILLIAM BIRCH: There is quite a difference in the extent that there are archaeological sites on Pukerewa as compared with Whareana and Ramsdens. Dr Clough's evidence identified the sites on Pukerewa and according to his evidence there are only 10 sites in the whole of Pukerewa and, of those, only three are affected by the wind farm - the turbines and the roading proposals, is that your understanding?

35 MR FLAVELL: That is correct, yes.

SIR WILLIAM BIRCH: Compared to Whareana and Ramsdens where there are 27 on Dr Clough's table?

40 MR FLAVELL: Well, yes, that area probably was more occupied than Pukerewa was, I do not know.

SIR WILLIAM BIRCH: And of those over half are going to be either destroyed or partially affected by the works. Are you familiar with that extent of the - - -

45

MR FLAVELL: On Pukerewa?

SIR WILLIAM BIRCH: No, on Whareana.

5 MR FLAVELL: On Whareana, oh, we are there again. No, well, I am sure he has taken every precaution to not damage those historic sites.

10 SIR WILLIAM BIRCH: The point being that it is much more intensive evidence of the Maori community's involvement and habitation on Whareana?

MR FLAVELL: Yes, Whareana. It is more than Pukerewa, yes.

15 SIR WILLIAM BIRCH: And quite recent, I think. Can you give us any indication of how recent in time the occupation ceased on Whareana?

MR FLAVELL: No, I cannot I am sorry. I am not sure on that. I am sorry, I cannot.

20 SIR WILLIAM BIRCH: But Mr Thompson could if we had the opportunity?

MR FLAVELL: Yes, Mr Thompson could give you that.

25 SIR WILLIAM BIRCH: I note that your evidence concentrates quite a bit on explaining that there are, I think, about 183 shareholders in Pukerewa?

MR FLAVELL: Yes.

30 SIR WILLIAM BIRCH: And the income from the farm does not go very far amongst a large number of shareholders?

[10.30 am]

35 MR FLAVELL: No, it does not.

40 SIR WILLIAM BIRCH: You say, in paragraph 11, "Spread over 180 shareholders it does not go very far". And in paragraph 14, you say that, "Obviously, more income for the shareholders is also a good idea"?

MR FLAVELL: Yes.

45 SIR WILLIAM BIRCH: I take it from those comments that the Pukerewa Trust is welcoming of the wind farm because of the income it is going to produce?

MR FLAVELL: Not only of the income it is going to produce for the shareholders. If you look further down in my evidence it also says, “That there was numerous meetings we had with shareholders and it was a unanimous decision that they wanted the turbines on the property”.

SIR WILLIAM BIRCH: Was it unanimous?

MR FLAVELL: It was unanimous, yes, with the shareholders. And I think at that time there was 53 shareholders present.

HIS HONOUR: Present at the hui?

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: Although you do say at paragraph - - -

MR FLAVELL: 22, yes.

SIR WILLIAM BIRCH: - - - 23, Mr Flavell, that “There have been more meetings of the shareholders since then. I believe that hardly any shareholders are now opposing to our participating”.

MR FLAVELL: Yes, that is right, that is what it says in my statement.

SIR WILLIAM BIRCH: So there may be some shareholders that are still not supportive?

MR FLAVELL: A small minority of them, yes. But then before we actually started there was more than a small minority that was against it but then - after having these meetings and looking at various parts of the farm and seeing where they are and how they look, they look pretty and all that - and they sort of swayed them to a decision that they wanted them on the farm.

SIR WILLIAM BIRCH: Thank you. You refer in paragraph 15 to the fact that you participated as a member of the working party?

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: And you say that Richard Thompson , Paul Brown, Selwyn Shaw from Huakina were also members of the working party?

MR FLAVELL: Yes.

5 SIR WILLIAM BIRCH: I want to just go to Mr Yates' evidence, your Honour, where the minutes of the working party are recorded and where the working group consultation plan is recorded as well. Now, I wonder if we could supply a copy of that to Mr Flavell. It is volume 1.

10 HIS HONOUR: Yes, you can approach the witness. Now, whereabouts do we find it in there?

SIR WILLIAM BIRCH: The appendices number is 36, sir.

HIS HONOUR: Page 36?

15 SIR WILLIAM BIRCH: Page 36 of the appendices. It is exhibit ARY06.

HIS HONOUR: At the bottom right hand side you will see there are page numbers, Mr Flavell, and it is 36 is the first one they are asking you to look at.

20

MR FLAVELL: Yes.

25 SIR WILLIAM BIRCH: And page 36 sets out the working group consultation plan and its objectives, "To bring representatives of all the relevant local Maoris parties together to discuss the project, clearly understand the role of each hapu within the rohe, and investigate archaeological sites et cetera". And then further down parties included in the working group, "It is proposed that the working group will include the following parties". Mr Yates from the Wind Farm Group, he was
30 a member?

MR FLAVELL: Pardon?

35 SIR WILLIAM BIRCH: You were a member of the - - -

MR FLAVELL: Yes, I am in there, yes. I was a member of that working group.

40 SIR WILLIAM BIRCH: Can you confirm that Alan Yates was a member?

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: Angeline Greensill, was she a member?

45 MR FLAVELL: Not in this working party, no. She was asked but she did not come at any time at all.

SIR WILLIAM BIRCH: Lucy Tukua and Paul Brown and Selwyn Shaw were members, were they not?

5 MR FLAVELL: Yes, they were there. Paul Brown and Selwyn Shaw were there in the actual travelling around having a look at all the sites on the farm. Lucy Tukua was not there at all but the rest were.

[10.35 am]

10 SIR WILLIAM BIRCH: So Lucy Tukua was not a member?

MR FLAVELL: No.

15 SIR WILLIAM BIRCH: Paul Brown was?

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: And Selwyn Shaw was?

20 MR FLAVELL: And Selwyn Shaw was, yes.

SIR WILLIAM BIRCH: And yourself. Was Richard Thompson there?

25 MR FLAVELL: He was not there at that time. Richard Thompson was not there at that time. He came in – I cannot remember the date that he came in.

SIR WILLIAM BIRCH: Subsequently he became a member?

30 MR FLAVELL: Yes, he was not too far behind that.

SIR WILLIAM BIRCH: And Wayne Mills from Contact Energy was a member?

35 MR FLAVELL: Mr Mills, he is a member of that, yes.

SIR WILLIAM BIRCH: And then on the next page, page 37, the suggested process included – the fifth bullet point down – which is “set out a date for a site visit”, did that site visit take place?

40 MR FLAVELL: Yes, set a date for the site visit, yes.

45 SIR WILLIAM BIRCH: And the next bullet point “establish an hourly rate for the remuneration for archaeological visits and meetings at \$55 per hour per person including travel time”. Was that the basis on which payments were made to the members of the working group?

MR FLAVELL: Yes, they were.

5 SIR WILLIAM BIRCH: And then below that there is the proposal “To present and consult the community, contract, school support packages, local employment and contract a priority”. Were there packages of support offered to the local schools?

10 MR FLAVELL: Local schools?

SIR WILLIAM BIRCH: Yes.

15 MR FLAVELL: There was discussion on that and then they were aware that they were going to get packages for the - - -

SIR WILLIAM BIRCH: Have those packages been agreed with local schools?

20 MR FLAVELL: Very much so, yes.

SIR WILLIAM BIRCH: Were there any other payments offered to the local Maori community by Contact as part of the working group consultation?

25 MR FLAVELL: I am not aware of that, no.

SIR WILLIAM BIRCH: Were there any payments offered to the Pukerewa Trust if and when a consent was issued by the Board of Inquiry?

30 MR FLAVELL: No.

SIR WILLIAM BIRCH: But there are payments to be made in respect of the turbines?

35 MR FLAVELL: Yes.

SIR WILLIAM BIRCH: When would the first of those payments be made?

40 MR FLAVELL: When they are up and running, I am not sure I can answer that.

SIR WILLIAM BIRCH: You would need to go back to the agreement to answer that?

45 MR FLAVELL: I cannot remember.

SIR WILLIAM BIRCH: There was an agreement.. You finally, after some discussion, agreed on a name for the project. That was the name that is currently being used?

5 MR FLAVELL: Now, yes.

SIR WILLIAM BIRCH: That was suggested by the working group, was it not?

10 MR FLAVELL: It was suggested by the working group and I think it was put out into the community as well.

15 SIR WILLIAM BIRCH: About three quarters of the way down that page 37, there is a suggestion that you will discuss any cultural visual amenities that Gavin Lister should be aware of in order that iwi might describe particular values associated with the areas landscapes and identify significant landscape features. Did you have the opportunity of discussing those with Mr Lister?

20 **[10.40 am]**

MR FLAVELL: I did not, no. I did not have a need, no.

25 SIR WILLIAM BIRCH: Did any members of the working group discuss it with Mr Lister?

MR FLAVELL: Well, more than likely because – no, I cannot remember having discussions with him at all.

30 HIS HONOUR: Would you be surprised to hear that Mr Lister told the Board that he had not actually examined the cultural landscape issues?

MR FLAVELL: He had not? I do not - - -

35 HIS HONOUR: Would you be surprised to hear that given that statement there that he would be given information?

MR FLAVELL: Well, yes, I am actually.

40 SIR WILLIAM BIRCH: Then the next bullet point down below that, Mr Flavell, is “For full onsite archaeological review with members of the working group including Tom Flavell and Paul Brown for all affected archaeological sites defined by Clough and Associates”. Were you able to do that?

45 MR FLAVELL: Yes.

SIR WILLIAM BIRCH: Did you visit all of the identified sites?

MR FLAVELL: Well, yes, we did. We visited all those sites.

5

SIR WILLIAM BIRCH: How long did that take?

MR FLAVELL: Practically all day.

10

SIR WILLIAM BIRCH: Practical, one - - -

MR FLAVELL: Well, I am saying around from 8.30 until 8 pm at night.

SIR WILLIAM BIRCH: Thank you.

15

MR FLAVELL: It was fairly dark.

SIR WILLIAM BIRCH: Could I go now to page 39, two pages over? This is
a minute of the working group which was held on 2 July 2007,
according to the heading. Have you seen this minute previously?

20

MR FLAVELL: Yes, I have.

SIR WILLIAM BIRCH: Did the working group establish that any quorum
was required for the meetings?

25

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: Can you tell us what the quorum was?

30

MR FLAVELL: The quorum for a meeting is four - four or more.

SIR WILLIAM BIRCH: Four or more?

35

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: Of the working group?

MR FLAVELL: The working group party.

40

SIR WILLIAM BIRCH: And of those four was it any four members?

MR FLAVELL: Any four members of that working party.

45

SIR WILLIAM BIRCH: And we see present at this meeting there was
yourself?

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: Selwyn Shaw from the Maori community?

5

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: And then four members representing Contact?

10

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: Al Yates, Stephen Daysh, Wayne Mills and Barry Baquié, from Dr Clough's firm?

15

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: So of the six members present, two were from the Maori community?

20

MR FLAVELL: Yes, myself and Selwyn Shaw.

SIR WILLIAM BIRCH: I notice that the minute records that Lucy Tukua called in sick. Was she a member of the working group or not?

25

MR FLAVELL: Well, she was actually asked to come onto the working party group.

SIR WILLIAM BIRCH: But was not able to attend?

30

MR FLAVELL: She was not able to attend because of that reason.

SIR WILLIAM BIRCH: Was this the first meeting of the working group?

MR FLAVELL: As far as I can remember, yes, it was the first meeting that we ever had but we had smaller ones in between.

35

SIR WILLIAM BIRCH: This was at the Tuakau Marae Ngataierua?

MR FLAVELL: Yes, Ngataierua.

40

SIR WILLIAM BIRCH: I notice that amongst the action items further down the – well, there is really two points about this that I just want to question on you. The third bullet point says, "That Al to discuss with Lucy the possibility of finding someone from within the area, region, who has the ability and experience to write cultural heritage reports"?

45

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: That led to you asking Richard Thompson to write that, was that the outcome?

5

[10.45 am]

MR FLAVELL: Well, there was actually two in the pipeline. There was Percy Kukutai and Richard Thompson. And Percy's agenda was pretty full, he was always on the move, and Richard Thompson offered to write the cultural heritage on the area.

10

SIR WILLIAM BIRCH: So, as a result of this meeting, you approached Richard Thompson?

15

MR FLAVELL: Later on, yes, we did.

SIR WILLIAM BIRCH: And asked him to, yes.

The next bullet point says, "AI" – this would be Al Yates – "to print out maps of the wind farm areas to include archaeological sites on record and extra sites found by Clough and Associates, proposed wind turbine positions, proposed earthworks relating to the roads and wind turbines and other structures such as substations and transmission lines". Did you receive those printouts?

20

25

MR FLAVELL: Yes, we did.

SIR WILLIAM BIRCH: Do you still have copies of those printouts?

30

MR FLAVELL: Yes, I have actually but I had to light a fire the other day so I used one. No, I do have them.

SIR WILLIAM BIRCH: The date of this meeting was 2 July 2007?

35

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: Were you given, for example, Dr Clough's July 2006 assessment of the Whareana archaeological sites?

40

MR FLAVELL: No, I was not.

SIR WILLIAM BIRCH: Had you previously seen those before they were tabled or introduced as evidence here?

45

MR FLAVELL: Yes, I have, I have some parts of it.

SIR WILLIAM BIRCH: I want to ensure that we are talking about - - -

HIS HONOUR: Sorry, when did you say you received them?

5

MR FLAVELL: I did not. I just received them.

HIS HONOUR: Just?

10

MR FLAVELL: Well, not now, no, but within that 2006, 2007.

HIS HONOUR: You did get the Whareana - - -

MR FLAVELL: I got some Whareana reports, yes.

15

SIR WILLIAM BIRCH: Your Honour, I wonder whether we could provide a copy of the report to - - -

HIS HONOUR: This the Whareana report which I think is 2, is it?

20

SIR WILLIAM BIRCH: Yes. This I think is now exhibit 1 and 1A.

HIS HONOUR: Exhibit 1, sorry.

25

SIR WILLIAM BIRCH: Could you identify the Whareana wind farm project archaeological assessment amongst those?

MR FLAVELL: Are we in this - - -

30

SIR WILLIAM BIRCH: It is on the outside I think. There are two covers, Mr Flavell, one is called the "Whareana Wind Farm Project" archaeological report and the other one is the "Waimai Wind Farm Project". I am only going to ask you questions about Whareana.

35

MR FLAVELL: What do you want me to look at?

SIR WILLIAM BIRCH: I just want you to turn to page 3 which shows a photograph.

40

MR FLAVELL: Is that the one with "Sunset, Ramsden and Snodgrass?"

SIR WILLIAM BIRCH: That is right, yes.

MR FLAVELL: Yes.

45

SIR WILLIAM BIRCH: That identifies the Whareana property, does it not?

MR FLAVELL: Yes, it does.

5 SIR WILLIAM BIRCH: The southern boundary of that is the boundary with
the Ramsden property?

MR FLAVELL: Yes.

10 SIR WILLIAM BIRCH: And the northern boundary runs up to the Muriwai
(ph 10.49.00) Stream I think?

MR FLAVELL: Yes.

15 SIR WILLIAM BIRCH: The Whareana and the Ramsden properties are the
two that you visited during your site visit?

MR FLAVELL: Yes.

20 SIR WILLIAM BIRCH: You went right over those properties?

MR FLAVELL: I am sorry, no, I did not visit Whareana. I started at
Limestone Downs but I have been given copies of Whareana and I
have looked at them.

25 SIR WILLIAM BIRCH: Did you visit Whareana on that day of the site visit?

MR FLAVELL: Not on that day, no, I did not. I did not go with the working
party group then.

30 SIR WILLIAM BIRCH: Have you subsequently visited Whareana?

MR FLAVELL: Not at the moment, no, I have not.

35 SIR WILLIAM BIRCH: You have not been on Whareana?

MR FLAVELL: I might have as a child but not of late.

SIR WILLIAM BIRCH: But you have not been - - -

40 MR FLAVELL: I know where the area is, I know where it is, I am quite
familiar with - - -

SIR WILLIAM BIRCH: You have not been on there with the archaeologists?

45 MR FLAVELL: No, I have not.

SIR WILLIAM BIRCH: Or the landscaper either?

[10.50 am]

5 MR FLAVELL: Or the landscaper.

SIR WILLIAM BIRCH: No. Can we just turn over to the photographs is the best way to identify or perhaps to - - -

10 HIS HONOUR: Which page are you taking us to?

SIR WILLIAM BIRCH: Perhaps if we go to page 9 first, sir, which is the map of Whareana Pa.

15 MR FLAVELL: Page 9?

SIR WILLIAM BIRCH: Page 9.

20 HIS HONOUR: Which is a map of the Whareana Pa site.

SIR WILLIAM BIRCH: You were present yesterday when Dr Clough outlined his view of the importance of Whareana Pa?

25 MR FLAVELL: Yes, I was.

SIR WILLIAM BIRCH: It is one of the major cultural and archaeological sites affected by the wind farm, do you agree with that?

30 MR FLAVELL: Yes, Whareana would be the area that is steeped in historical sites and all that, Whareana would be the one.

SIR WILLIAM BIRCH: Do you recognise, even if it takes you back to your boyhood, the - - -

35 MR FLAVELL: Yes, it does actually.

SIR WILLIAM BIRCH: The photographs on page 10?

40 MR FLAVELL: Yes, now I am familiar with it.

DISCUSSION

45 SIR WILLIAM BIRCH: So you are not surprised that there are 14 archaeological sites on those ridges?

MR FLAVELL: On the ridges, no. No, there is.

SIR WILLIAM BIRCH: And the photographs on page 10 would bring back memories of when you visited the site as a boy

5 MR FLAVELL: Yes, well, I cannot really tell as a young fellow running through these hills, I cannot remember what I was doing, who I was with, Sir William, I cannot really say.

10 SIR WILLIAM BIRCH: So you have not had the opportunity of examining the impact of the roads and the earthworks - - -

MR FLAVELL: No, I have not.

15 SIR WILLIAM BIRCH: - - - on Whareana?

MR FLAVELL: No, all I noticed was in the photograph when Dr Clough was explaining things to us.

20 SIR WILLIAM BIRCH: But you have a full understanding - - -

MR FLAVELL: And the maps I had got off Whareana at my **(INDISTINCT 10.53.37)**

25 SIR WILLIAM BIRCH: - - - have a full understanding of the importance. Can you throw any light on the questions, which have been asked previously of the archaeologists, about the history of the excavations into the limestone, which are photographed on page 11? This may be of some interest if you know anything of the history of that excavation.

30 MR FLAVELL: On the caves?

SIR WILLIAM BIRCH: Page 11 of the Whareana.

35 MR FLAVELL: Yes, I am on page 11.

SIR WILLIAM BIRCH: The photograph of the excavations into the limestone.

40 HIS HONOUR: This is at the Whareana Pa site.

MR FLAVELL: Yes. What do you want me to do?

45 SIR WILLIAM BIRCH: Do you know the background to those excavations?

MR FLAVELL: No, I do not.

SIR WILLIAM BIRCH: No?

MR FLAVELL: No.

5

SIR WILLIAM BIRCH: Thank you very much, Mr Flavell. Can I just try and

- - -

10 HIS HONOUR: Is that the end of exhibit? I will get the registrar to take the
exhibit back otherwise. Have you finished with the Whareana report?

SIR WILLIAM BIRCH: Yes, thank you.

15 HIS HONOUR: Thank you. Thank you, Mr Flavell.

[10.55 am]

20 SIR WILLIAM BIRCH: I am just trying to clarify, Mr Flavell, whether the
information that you were given in July 2007, as a member of the
working group, which showed the proposed wind turbine positions,
the proposed earthworks relating to the roads and the wind turbines,
in respect of Whareana are the same as are now shown in the
application? I appreciate it is a difficult question but the answer is
25 very important to me to know whether the information you were
supplied, as a result of this meeting in July 2007, is the same
information as we are getting in the application? Would you know
that?

30 MR FLAVELL: Yes, I - - -

SIR WILLIAM BIRCH: Perhaps, your Honour, if it is possible to turn on the
earthworks consent areas and show those to Mr - - -

35 HIS HONOUR: Yes, thank you. As originally proposed or as amended? I
presume as originally proposed if we are talking about what was
talked - - -

SIR WILLIAM BIRCH: Yes.

40 HIS HONOUR: The first question I think I need to ask, Mr Flavell, is before
this hearing started had you seen this Tatuk program? Had somebody
gone through this with you? This is this program you see on the - - -

45 MR FLAVELL: Yes.

HIS HONOUR: Have you seen that previously?

MR FLAVELL: Not so much, no, I have not.

5 HIS HONOUR: Did anyone show you maps of where the roads and things - -
-

MR FLAVELL: Oh, yes, I had shown – there were maps.

10 HIS HONOUR: They were pieces of paper with maps on.

MR FLAVELL: Yes.

15 HIS HONOUR: It is a black line which makes things very confusing but that
is probably an example. You need to understand that all of the area
within the black line is earthworks consent areas, as originally applied
for, so that any earthworks could take place anywhere within those
black lines.

20 SIR WILLIAM BIRCH: My question really is, did you have any idea that the
application for a consent by Contact was for such an extensive area of
earthworks?

MR FLAVELL: No, I was not.

25 HIS HONOUR: Perhaps it might be better to take Mr Flavell to an area that
he was involved in. Could we go back to E please with those same
overviews on so he can see – and I am particularly interested in E12
because if Sir William does not ask a question about the urupa I
certainly will. So if we could look at about E12 area. Now, just leave
30 it there. Now, you see the earthworks consent area there, which is
that area within the black lines, it is the purple area, the green hatched
area, and everything out to the black lines.

35 MR FLAVELL: Yes.

HIS HONOUR: Now, you recognise where E12 is? You can see the urupa is
under that green hatch which is actually a fill area?

40 MR FLAVELL: Yes.

HIS HONOUR: So this is an area you will be well familiar with, that is the
urupa there. Can we zoom in on the urupa a bit more please so that
Mr Flavell is clear as to where that is? It is the red hatched area, part
of which is under the green hatch.

45 MR FLAVELL: Yes.

HIS HONOUR: So are you familiar with where we are looking at Pukerewa now?

5 MR FLAVELL: Yes, I am.

HIS HONOUR: So ask your question again, Sir William, with an area that Mr Flavell is very familiar with.

10 SIR WILLIAM BIRCH: This is part of your farm area?

MR FLAVELL: Pukerewa, yes.

SIR WILLIAM BIRCH: Have you seen these drawings previously?

15 MR FLAVELL: Yes, I have.

SIR WILLIAM BIRCH: Were you aware that Contact was applying, in its original application, for consent to carry out earthworks around the area framed by that black line?

20

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: And you were not concerned about the extent of the earthworks?

25

MR FLAVELL: Well, it did not seem to affect it as much that I am looking at the map here.

30 HIS HONOUR: We just need you to speak up a bit. It is quite important that we hear your answers.

MR FLAVELL: It does seem to affect it as much by looking at this map here and where the urupa is and E12 is a turbine, obviously, and - - -

35

[11.00 am]

SIR WILLIAM BIRCH: Did you think that the only work would be where the turbine was going to be built?

40

MR FLAVELL: No, I did not. No, I knew there was going to be work other than where the turbines are going to be built.

HIS HONOUR: Were you aware that there was going to be a fill area, at least on the maps, over the urupa?

45

MR FLAVELL: A fill area?

HIS HONOUR: That is the green hatch?

5 MR FLAVELL: Yes. The spoils, yes.

HIS HONOUR: Soil, in other words, over the – that is what the map says. I do not think that was ever the intention but did you ever see that fill area over the urupa?

10

MR FLAVELL: No, I did not. No, I did not see that part.

15 SIR WILLIAM BIRCH: Did anybody from Contact accompany you on the ground and show specifically how extensive the earthworks was going to be or did they just leave it to you to interpret the maps?

MR FLAVELL: No, they never did. In the working party group when we went around the farms it was explained then where the earthworks were going to be.

20

SIR WILLIAM BIRCH: How extensive they were?

MR FLAVELL: How extensive they were going to be, and not into historic sites, and they had to move a road 100 metres away from one site, and all that.

25

SIR WILLIAM BIRCH: Do you know how wide the roads are going to be?

MR FLAVELL: No, I am not sure.

30

SIR WILLIAM BIRCH: You do not know the dimensions?

MR FLAVELL: No, I do not. I do not know the dimensions, no.

35 SIR WILLIAM BIRCH: So over all the sites that you visited as the working group with Contact, they explained the extent of the earthworks?

MR FLAVELL: Yes, we went through it.

40 SIR WILLIAM BIRCH: You say in your evidence that you visited all the archaeological sites, but you have since said you did not visit Whareana?

MR FLAVELL: I did not visit Whareana, no.

45

SIR WILLIAM BIRCH: So that part of your evidence is not entirely correct, is it?

MR FLAVELL: In my evidence - - -

5

HIS HONOUR: I think he told, when he answered the questions, that he joined them at Limestone Downs. So I am taking it that you visited the points south of Limestone Downs. Did you go to I and J, as well?

10 MR FLAVELL: Is that at Limestone Downs?

HIS HONOUR: Well, Limestone Downs – I am assuming you did not go to areas A or C?

15 MR FLAVELL: No, I did not.

HIS HONOUR: You would have gone to D and E, did you, and F and G, is that right?

20 MR FLAVELL: Yes, that is - - -

HIS HONOUR: And to H?

MR FLAVELL: And H.

25

HIS HONOUR: Did you go to I and J, they are further down? Can you remember?

MR FLAVELL: Yes, I went there.

30

HIS HONOUR: You went there?

MR FLAVELL: We are talking about the farms, are we not? Like J Jackson's, John Jackson?

35

HIS HONOUR: I think that is the Jackson farm.

MR FLAVELL: Yes, we did. Well, I did, yes.

40 HIS HONOUR: The Jackson farm. And what is J called – whose farm is that, Sir William? Cluster J?

MR FLAVELL: There are two Jacksons, John, Joe Jackson.

45 HIS HONOUR: We have got another Jackson as well?

MR FLAVELL: Yes, two Jacksons.

HIS HONOUR: So you went to both of those farms?

5 MR FLAVELL: Yes, we did.

HIS HONOUR: So it was really everything south of Limestone Downs?

10 MR FLAVELL: Everything south of Limestone Downs we actually visited.

SIR WILLIAM BIRCH: But you have not seen the Tatuk model – the computer model that we are now looking at? You were not shown that at that time?

15 MR FLAVELL: No, I was not shown that one.

SIR WILLIAM BIRCH: You had maps? You had maps supplied by - - -

20 MR FLAVELL: I had maps, yes.

SIR WILLIAM BIRCH: But you are not able to confirm that they are the same maps as we are looking at today on the screen?

25 MR FLAVELL: No, they are not. No.

SIR WILLIAM BIRCH: Were you given an appreciation of how big the wind turbines are during your visits?

30 MR FLAVELL: Like, yes. Well, it extends from Port Waikato down towards the Raglan area so it is a fairly big extension.

SIR WILLIAM BIRCH: I am really talking about the size of the wind turbine itself. Did you have any appreciation of how big it is, the wind turbine?

35 MR FLAVELL: Yes, I did. Yes.

SIR WILLIAM BIRCH: Do you know the height?

40 MR FLAVELL: Of a turbine? 100 metres.

SIR WILLIAM BIRCH: The top of the blades is 150 metres.

45 MR FLAVELL: Top of the blades 150, yes.

[11.05 am]

SIR WILLIAM BIRCH: Were you able to visit a - - -

5 MR FLAVELL: No, I did not go down actually. No.

SIR WILLIAM BIRCH: You have not seen a wind turbine?

10 MR FLAVELL: I have seen them, yes. But you know, I have not seen a – but
I have seen - - -

SIR WILLIAM BIRCH: From a distance?

15 MR FLAVELL: No, up close.

SIR WILLIAM BIRCH: Which turbines were you able to see.

MR FLAVELL: Well, I did not go to Te Apiti and the one down - - -

20 SIR WILLIAM BIRCH: You visited Te Apiti.

MR FLAVELL: No, I did not. I did not go down and visit those ones.

SIR WILLIAM BIRCH: Did you visit a wind farm?

25 MR FLAVELL: No, I did not visit a wind farm. A simple reason, because I
come in on the – I was not even on the trust and I was not involved in
the -.

30 SIR WILLIAM BIRCH: Did you hear the landscape architect giving evidence
earlier in the week, Stephen Brown, say that the height of the wind
turbines proposed for Pukerewa are over half the height of Sky
Tower?

35 MR FLAVELL: No, I did not hear that. No.

SIR WILLIAM BIRCH: Do you appreciate that is how high they are?

40 MR FLAVELL: Half the height of the Sky Tower?

SIR WILLIAM BIRCH: The wind turbine to the top of the blade will be over
half the height of the Sky Tower.

45 MR FLAVELL: Yes.

SIR WILLIAM BIRCH: Does that surprise you?

MR FLAVELL: No.

SIR WILLIAM BIRCH: You were expecting that?

5

MR FLAVELL: Well, the higher the better, they say. I do not know.

SIR WILLIAM BIRCH: Reach for the sky?

10

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: Could we turn to the next set of minutes which are on page 41 of the appendices?

15

MR FLAVELL: Page?

SIR WILLIAM BIRCH: 41, two pages over. In note that you were present at this meeting, Mr Flavell, on the 25th of July 2007?

20

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: And this time Richard Thompson was present?

MR FLAVELL: Yes

25

SIR WILLIAM BIRCH: And Selwyn Shaw(PH 11.07.16)?

MR FLAVELL: Selwyn Shaw, yes.

30

SIR WILLIAM BIRCH: And it was from this meeting on that Richard prepared his cultural report, was it not? Could we turn to the next minutes on page 44? I note at this meeting there were three members of the local Maori community including yourself?

35

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: And four members of Contact?

MR FLAVELL: Yes.

40

SIR WILLIAM BIRCH: And about two thirds down the page there is reference to Historic Places Trust application?

MR FLAVELL: Yes

45

SIR WILLIAM BIRCH: The application for the Historic Places Trust Authority was made by Contact, was it not, it was not made by the Weka Group(PH 11.08.42).

5 MR FLAVELL: Can you say that again, please?

SIR WILLIAM BIRCH: During the course of this meeting did you discuss who should make the application to the Historic Place Trust?

10 MR FLAVELL: Yes, we did, yes.

SIR WILLIAM BIRCH: What was the outcome of that discussion?

15 MR FLAVELL: That is when we put together - when Richard Thompson came on - he was on board then and that is when he - come together and started putting the CPA together.

SIR WILLIAM BIRCH: And some arrangement was made with the Historic Places Trust or that the Trust could visit the sites?

20

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: And are you aware of any arrangements made with the Trust with regard to their cost and payments?

25

MR FLAVELL: Working part - are we talking about the working party group now?

SIR WILLIAM BIRCH: Yes did you discuss the working - - -

30

MR FLAVELL: Or which are we talking about?

SIR WILLIAM BIRCH: Historic Places Trust.

35

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: Was there any discussion about meeting the Historic Places Trust's costs and making payment to them?

40

MR FLAVELL: I am not aware of that, no.

SIR WILLIAM BIRCH: It was not discussed?

MR FLAVELL: It was not discussed, no.

45

SIR WILLIAM BIRCH: You are not aware of any payments made to the Trust?

MR FLAVELL: No I am not.

5

[11.10 pm]

10 SIR WILLIAM BIRCH: Those three minutes are the only minutes of that form but we turn over to page 55 of Mr Yates' appendices, we have a copy of a letter to Rod Clough which is, I think, Dr Clough from Clough Associates dated the 5th of November 2007. It says, "thank you for making the meeting at Te Akau last week" and then it refers to minutes, "please find below a copy of the minutes and the meeting on the 1st of November. Please feel free to make any changes or additions. Following on from reading the notes the annexure items are". Were you present at that meeting?

15

MR FLAVELL: At Te Akau, yes I was.

20 SIR WILLIAM BIRCH: Who else was present, do you recall?

MR FLAVELL: At that meeting at Te Akau was Richard, myself and representatives from Contact Energy?

25 SIR WILLIAM BIRCH: Representatives?

MR FLAVELL: Yes.

30 SIR WILLIAM BIRCH: Do you recall how many representatives?

MR FLAVELL: It was Elliot, Mr Yates, Mr Chris and I cannot remember anymore, I am sorry.

35 SIR WILLIAM BIRCH: These minutes, although they are not really in the form of minutes, they refer to the minutes. Under the heading Ngati Tahinga hui hapu notes that a hui is proposed in order to prove the use of the CVA?

MR FLAVELL: Yes.

40

SIR WILLIAM BIRCH: And to approve the windfarm booked for Sunday the 25th of November Pukerewa?

MR FLAVELL: Yes.

45

SIR WILLIAM BIRCH: Did that hui take place?

MR FLAVELL: It took place at - actually I was not present at that meeting, no on that day I was not.

5 SIR WILLIAM BIRCH: You were not present at this meeting?

MR FLAVELL: No, I was not, no.

SIR WILLIAM BIRCH: Are you aware of whether the hui took place?

10

MR FLAVELL: Yes, I was.

SIR WILLIAM BIRCH: Did it take place at Pukerewa?

15

MR FLAVELL: Pardon?

SIR WILLIAM BIRCH: Did it take place at Pukerewa?

MR FLAVELL: No, it took place at Wereroa **(PH)** Marae.

20

SIR WILLIAM BIRCH: And did it take place on the date suggested?

MR FLAVELL: Yes, it did.

25

SIR WILLIAM BIRCH: And do you recall how many Maori people were present at the hui?

MR FLAVELL: Given the feedback - it was known that practically the community of Waikaretu Valley plus some from Te Akau were present at that meeting. It was actually a full hall, well a full wharekai.

30

SIR WILLIAM BIRCH: So it was quite a representative group from Ngati - -

-

35

MR FLAVELL: There was a cross section, yes.

SIR WILLIAM BIRCH: Are you familiar with the lease document that has been negotiated by your Trust with Contact?

40

MR FLAVELL: The lease document?

SIR WILLIAM BIRCH: Lease document?

45

MR FLAVELL: Yes, I have - yes it was in the hands of our lawyer.

SIR WILLIAM BIRCH: In fact you were probably a signature to it as a chairman?

5 MR FLAVELL: No, I was not actually, I was not chairman then I was not even thought of then. I was not chairman at that time, no.

SIR WILLIAM BIRCH: But I guess the document was carefully considered by the lawyers for the Trust?

10 MR FLAVELL: Yes, it was.

SIR WILLIAM BIRCH: And you have employed a firm of solicitors or lawyers to advise you on these documents?

15 MR FLAVELL: Yes, we did.

SIR WILLIAM BIRCH: Do you recall whether the term of the lease - when does the lease expire.

20 **[11.15 am]**

MR FLAVELL: No I cannot remember, I am not - - -

25 SIR WILLIAM BIRCH: Are you aware that at least some of these lease documents and I am just not sure about your one, but I am asking you, provides a provision for the transfer of the lease without the consent of the owners of the property?

30 MR FLAVELL: Can you explain that to me please, what does it mean?

SIR WILLIAM BIRCH: It is a wee bit hard to explain as well.

MR FLAVELL: Yes, but - - -

35 HIS HONOUR: I presume that could only mean that the lessee could transfer their interest in the lease to another party without your consent, ie that Contact could sell to, lets say, Meridian. Meridian could take over the lease.

40 MR FLAVELL: I see, yes. No, no that - - -

HIS HONOUR: Is that the prospect you are making?

SIR WILLIAM BIRCH: It is exactly the question?

45 MR FLAVELL: That is better, that is good. No.

HIS HONOUR: I am not saying it necessarily has to be Meridian I am presuming the constraint could be anyone.

5 SIR WILLIAM BIRCH: Well it - - -

MR FLAVELL: Well, that is not being sold to anyone it is Contact Energy - it is within the - whoever's lease and that is - - -

10 HIS HONOUR: But do know whether your lease is of that type or not or do you have - - -

MR FLAVELL: No it is not.

15 HIS HONOUR: Sorry?

MR FLAVELL: We have consent to - - -

HIS HONOUR: You have to consent?

20

MR FLAVELL: Yes.

SIR WILLIAM BIRCH: To the transfer of the **rules(PH 11.16.19)** of Contact?

25 MR FLAVELL: Yes.

HIS HONOUR: I am presuming it is on the normal basis which it cannot be unreasonably withheld. The consent I think there is a restraint on that - if you recall the wording, yes. Well, that is the standard term so the one you were talking about is unusual but it sounds as though Mr Flavell is referring to the normal which is - - -

30

SIR WILLIAM BIRCH: Shall not be unreasonably withheld.

35 HIS HONOUR: The lessor must be obtained but it cannot be unreasonably withheld. That is from some Act or service. Copied or Act or some other Act which says that it imports that provision even though it is not stated explicitly.

40 SIR WILLIAM BIRCH: I would very much like to be able to confirm the contents of that lease, your Honour, but - - -

HIS HONOUR: Well, I think you are. I have allowed you to go this far but I feel that you are straying into territory which is none of the Court's business, so the arrangements that might be made between parties - - -

45

SIR WILLIAM BIRCH: And I appreciate that and I really do not want to press the matter any further.

5 HIS HONOUR: Really does not appear upon anything we have to consider. I do not think the question of subsequent lessees is of course a matter that we just take for granted. There is no guarantee that Contact will necessarily be the party that builds this work and it is just a given really.

10 SIR WILLIAM BIRCH: Perhaps just as a final question that I can put it to you Mr Flavell, are you aware that there is a possibility that some other energy company could well end up building the windfarm?

15 MR FLAVELL: Some other company could what, what was that?

HIS HONOUR: I think the point, and I will go so that you understand.

MR FLAVELL: Yes.

20 HIS HONOUR: I think the point that Sir William is trying to put to you is that the people you have had the discussions with may not be the people who eventually build the windfarm.

25 MR FLAVELL: I see.

HIS HONOUR: And that those new partners may be relying on the precise terms of the HPT (Historic Places Trust) consents and the wording of any consents that might granted here rather than on discussion in the formal discussions they have held with you. I think that is the proposition. Do you understand that it is in terms of the consent from the HPT and anything that might be granted by this board which would control at least subsequent owners not any informal arrangements they might have with you?

35 MR FLAVELL: Yes, I understand.

SIR WILLIAM BIRCH: Thank you for that, Judge.

40 HIS HONOUR: The proposition he is putting, is that consents - the wording of consents are very important because they set out the parameters of what might be - - -

MR FLAVELL: Yes.

45 SIR WILLIAM BIRCH: Essentially I was seeking to establish whether Mr Flavell was aware of that possibility?

MR FLAVELL: Of that, yes, I am.

SIR WILLIAM BIRCH: I have no further questions.

5

HIS HONOUR: Thank you, Mr Robinson?

MR ROBINSON: No re-examination.

10

MR LUMSDEN: No, I have no questions. Thank you, Mr Flavell.

HIS HONOUR: Commissioner Rangi? Commissioner Menzies, I think
Commissioner Rangi would just like an opportunity to think about her
questions.

15

COMMISSIONER MENZIES: I am sorry, I cannot help. No questions, thank
you.

HIS HONOUR: Perhaps I will ask my questions, first.

20

[11.20 am]

The Board, if you have been here over the past few weeks is aware of
the Maori Cultural issues that arise as a result of an application of this
sort and is particularly anxious to ensure that it has identified the
relevant cultural values, some of which derive from archaeological
matters but others relate to other taonga of the various hapu in this
area and their relationship with these areas, both historically and in
the future. And I take it that both the trust you represent and also
Ngati Tahinga as a whole has an interest in those matters also?

25

30

MR FLAVELL: Yes.

HIS HONOUR: And it would be fair to say that your expectation is that the
wind farm would be developed in a way that was sensitive, both to
the archaeological sites and also to the other tikanga of - - -

35

MR FLAVELL: Yes, of the - - -

HIS HONOUR: Not only your immediate hapu but the wider Tainui interests.
Would that be fair?

40

MR FLAVELL: Yes, it is. Yes.

HIS HONOUR: And with many of things it is a question, to some extent, of trust between the parties - that the other party is going to recognise your legitimate interests and pursue them?

5 MR FLAVELL: Well, that is right, yes. It is, yes.

HIS HONOUR: So, for example, even though the fill is shown over the urupa, it was immediately accepted when that was put to someone that that was a mistake and that was not the intention?

10

MR FLAVELL: No, I was aware of that.

HIS HONOUR: Nevertheless, you would understand that the Board is anxious to make sure that no subsequent party said, "No, that is what the consent says and that is what the Historic Places Trust consent says and therefore we can do it". You can understand the Board's concern?

15

MR FLAVELL: Yes, I can.

20

HIS HONOUR: And I take it your concern is the same?

MR FLAVELL: Yes. Exactly the same, yes.

25

HIS HONOUR: And to that extent you would have heard Mrs Greensill saying to us the other day that those concerns, she believed, were the same type of concerns that Ngati Tahinga and yourself would have?

MR FLAVELL: Yes.

30

HIS HONOUR: So that is fair, is it not?

MR FLAVELL: Exactly, yes, that is right.

35

HIS HONOUR: Do you agree with Mrs Greensill that there is no problem between Tainui Awhiro and Ngati Tahinga in working together in these matters?

MR FLAVELL: No, nothing at all, nothing whatsoever.

40

HIS HONOUR: In fact I have taken from Mrs Greensill that many of the various hapus in fact have common relationships?

MR FLAVELL: Yes, we are all associated.

45

HIS HONOUR: And you would know Mrs Greensill well, I am assuming?

MR FLAVELL: Yes.

5 HIS HONOUR: And we noted that everyone was greeting each other during
the meeting so there is no strain between yourself and Tainui Awhiro?

MR FLAVELL: And any other hapu, no, there is nothing at all.

10 HIS HONOUR: You may have heard that the Board has been considering
appointing, itself, an independent person to look at cultural matters
and particularly the various - both historical and cultural layers
relating to both - well, I would say all of the relevant hapu, and I think
that it is probably broadly speaking Tainui.

15 MR FLAVELL: And that would be most welcome too.

HIS HONOUR: That would be welcome. That is the question I was really
driving to, because it does not seem any harm could come of this.

20 MR FLAVELL: Nothing whatsoever, no.

HIS HONOUR: And, on the other hand, it may better identify particularly
what the effects are and ways in which that might be approached.
25 Now, I want to make it clear that the Board is aware that these
turbines have a value to not only Pukerewa block A but also wider to
Ngati Tahinga. Those are benefits that we should take into account,
you agree?

30 MR FLAVELL: Exactly, yes.

HIS HONOUR: And those are matters that you would also like us to
understand clearly?

35 MR FLAVELL: Yes.

HIS HONOUR: So we are not only looking at historical relationships but
present and future relationships, are we not?

40 MR FLAVELL: That is right, yes, we are.

HIS HONOUR: And do I take it that I can broadly see that, at least for
Pukerewa A block, and probably for Ngati Tahinga, they see the wind
farm as a productive use of their hau, the land at least, the whenua. Is
45 that fair?

MR FLAVELL: Yes, exactly. We see it as a productive use of the hau, which is the wind.

5 HIS HONOUR: Yes, so it is a productive use just as planting kumara or - - -

MR FLAVELL: Exactly.

10 HIS HONOUR: And the general farming activity that you undertake on a site?

MR FLAVELL: That is right, yes.

15 HIS HONOUR: I think that covers everything I had to ask. Can I just check for one moment?

MR FLAVELL: Does the Board know the meaning of “Hauauru ma Raki”? Do they know the meaning of the name?

[11.25 am]

20 HIS HONOUR: I understood it, the hau was the wind.

MR FLAVELL: Gina knows.

25 HIS HONOUR: Yes, that is right, we have had it explained to us by Gina and also I might say - - -

MR FLAVELL: I just thought I would ask.

30 MS RANGI: If you wanted to explain.

MR FLAVELL: No, that is fine.

35 HIS HONOUR: So I think the only other question I had probably relates to these too, which is that it may be that taking into account the various considerations, and there are some cultural and some archaeological, there is a whole lot of other issues you probably may or may not have heard about - that the wind farm is reconfigured to a different size. To date we have not heard any particular arguments about E, so
40 assuming that the Pukerewa block, at least, was continued to be included, it might be that the farm was a different size, number of turbines. If that was the case I take it that you are still, for the trustees, have an interest in at least your block being developed?

45 MR FLAVELL: Yes, that would be right.

HIS HONOUR: And that might change other elements of the configuration and transmission line but, from your perspective, you do not see any reason, at least for Pukerewa, why that should not be developed as its own cluster, so to speak?

5

MR FLAVELL: That is right.

HIS HONOUR: From that point on that is up to Contact, but I am just checking your position so we are clear. Those are all my questions. Now, Commissioner Rangi?

10

MS RANGI: Kia ora.

MR FLAVELL: Tena koe.

15

MS RANGI: I only have a few questions and most of these have already been answered. I was interested about the marae. My understanding is that is a different trust from Pukerewa?

20

MR FLAVELL: Yes, they have got their own Marae Trust.

MS RANGI: And the turbine closest to the marae is on the Marae Trust reservation?

25

MR FLAVELL: Yes, it is about 100 metres from the marae itself.

MS RANGI: Was the marae block part of the wider trust block at some point and was it partitioned out from the Pukerewa Trust?

30

MR FLAVELL: Yes, it was actually given to them. Because where there marae is now, on top of that hill, it was called - actually that area there was called Kai Nanenane, where the marae is. That is where they used to get the goats way back in the 1800s and that is where they used to kill wild goats up there, that is why it was called Kai Nanenane, and it was partitioned off for that particular reason to build a marae there. It is called a marae but it is not a marae as such. Wiriroa is the marae in Waikaretu. That is what we call - Hiraua is called a "papa kainga" where people can go and stay, if you like, whanau and all that. But occasionally they have tangis there as well, but that is what it was there for.

35

40

MS RANGI: So the urupa that we – we went on a site visit and - - -

MR FLAVELL: On the hill, yes.

45

MS RANGI: - - - we saw the urupa which was fenced off. Is that the urupa for Pukerewa?

MR FLAVELL: Pukerewa's urupa, yes.

5

MS RANGI: I understand that an application has been made to the Maori Land Court for the lease for Pukerewa Farm, is that correct?

MR FLAVELL: A lease?

10

MS RANGI: The lease between Pukerewa Farm Trustees and Contact Energy?

MR FLAVELL: The Maori Land Court?

15

MS RANGI: Yes.

MR FLAVELL: I cannot recall that one. Did you hear - - -

20

MS RANGI: I thought that the Maori Land Court needed to approve the agreement between Contact and Pukerewa, is that correct?

MR FLAVELL: No, this is multi-owned, Pukerewa. It was under the Maori Land Court, Maori Affairs, but then we got it back and then - - -

25

MS RANGI: Okay.

MR FLAVELL: And it is now ours. It is our own.

30

MS RANGI: Did anyone do a site visit of that transmission line between – it starts at Te Akau, moves up to Matira, then to Limestone Downs and then out to Orton?

MR FLAVELL: It was.

35

MS RANGI: Did anyone go along that line from the hapu?

MR FLAVELL: I think representatives, Richard and a few of them, went across that line. I did not go across the access.

40

HIS HONOUR: Is that Mr Thompson's report?

MS RANGI: Mr Thompson?

45

HIS HONOUR: Yes, Richard Thompson, sorry.

[11.30 am]

5 MS RANGI: My last question is in the working group consultation plan it says that one of the aims of the working group was to enter into a formal written tangata whenua agreement to the project. Did that ever happen? Well, I read that to be something different from the agreements with the landowners, so this is something that the working party was going to develop. An agreement with Contact which would include agreement on any mitigation projects that might be appropriate.

10

MR FLAVELL: Yes, I think it did happen, that one. Yes, it was written down and I think Richard Thompson, again, he sort of worked on that very close.

15

MS RANGI: Was that approved by the working group?

MR FLAVELL: It was approved by the working group, yes. I think it was, yes.

20

MS RANGI: Were you at that meeting when it - - -

MR FLAVELL: No, I was not. No, I was not at the meeting.

25 MS RANGI: Do you know who from the hapu was at that meeting when it was approved?

MR FLAVELL: I cannot remember, no.

30 MS RANGI: Thank you. Are there any questions arising?

HIS HONOUR: Mrs Hall, you want to ask a question?

35 MRS HALL: No, I do not want to ask a question, I just want the Board to be aware that on my property I am seeing 15 of Pukerewas and Whitford's wind turbines. That is all I want to make again.

HIS HONOUR: Thank you very much, Mr Flavell.

40 MR FLAVELL: Thank you very much.

HIS HONOUR: Thank you for assistance.

45 MR FLAVELL: Kia ora. No reira, tena koutou, tena koutou, tena katou katoa. Kia ora. Lunch break.

<THE WITNESS WITHDREW

[11.32 am]

HOUSEKEEPING DISCUSSION

5 HIS HONOUR: I have just discussed with the Board what we should do from
this point. What we have decided to do is adjourn so we can
consider. We are moderately advanced in our considerations and we
think, with a little more time, we should be able to deliver a decision
10 about 2 or shortly after that. So I think the best course is to adjourn at
this point until 2 pm, and I think really in the prospect that we can
make sure that we get this decision today.

15 So I take it everyone agrees that although we are losing a bit of
traction on the substantive hearing otherwise is the – the next witness,
as I understand it, is Mr Yates and that is likely to be at least a day so
we would only get through half the witness anyway. So I think we
should consider first what we are going to do. Whether we would
start Mr Yates afterwards, if we decide not to adjourn, is a matter we
will have to consider at that point in time. It depends, in part, how
20 long it will take for the decision and the fact that we would likely
need to finish around half past 3 anyway. So I do not see the point in
calling the witness for half an hour or an hour. We have to re-
examine and I am not going to take you off the hook at this stage, Mr
Robinson, but you can probably guess that it is unlikely we would
25 advance a major witness today, even if we do not adjourn.

MR ROBINSON: Certainly, sir, in all the circumstances I would be concerned
about Mr Yates being held over.

30 HIS HONOUR: Exactly, it would be at least two weeks. We will examine
that, if you have got a brief witness we might talk about that later, we
will just have to see. I think, at this stage, I cannot guarantee we will
necessarily convene at exactly 2.

35 If it is half past, every minute means it is much less likely we would
continue the next witness even if we are not adjourned. If we
adjourn, everyone would understand there is little point in calling
another witness if we are adjourning. Thank you.

40 **ADJOURNED**

[11.34 am]

RESUMED

[2.23 pm]

45 HIS HONOUR: Now, I am going to move in a moment into a procedural
decision by the Board in respect of an application for adjournment,
but I want to restate again the position that has been reached with the

consent of the parties in respect of the matter, and I want this to be recorded as a preamble.

5 It is in the matter of Board of Inquiry on the Hauauru ma Raki wind farm proposal in the matter of an application before the Board of Inquiry for an adjournment.

10 The preamble – this will not form part of the decision but it will be recorded in case issues arise in due course.

[2.25 pm]

15 An application for an adjournment was lodged with the Board of Inquiry on the 18th of May. Given the requirement to give an opportunity for all parties to be heard on this and the need to consider the application for adjournment, the Board indicated that it would have to hear various submissions and then issue a written decision in due course.

20 The Department of Conservation advised that certain of its witnesses, in particular one expert, needed to make travel arrangements to New Zealand from the United Kingdom and asked if the Board may be able to issue a decision prior to Friday the 22nd of May 2009.

25 The Board advised that there were a significant number of issues it needed to consider, but nevertheless recognised the difficulty that this application placed the organisation of further witnesses in. As a result the Board sought from all the parties who appeared before the Board in respect of this matter, consent toward issuing an oral
30 decision on the explicit basis that it may change both its reasoning and the contents of the decision on reflection and that it was not bound to the form of the oral decision issued.

35 It did, however, indicate that it would reach a final decision in respect of the application itself, ie the conclusion, and also in the event that it did grant an adjournment, the conditions upon which that adjournment would be granted. The Board also indicated that if it considered that it would require further reports it would set out the terms of those for the parties.

40 Accordingly, the following oral decision does not constitute the final decision of the Board but is done simply, (a) to provide a framework for the final decision, and (b) to give the parties an indication only of the reasoning of the Board.

45

Given the severe time constraints on the Board, I am not necessarily satisfied that we have covered all the matters we would wish to address and certainly we will not have covered all of the range of matters that we may wish to discuss in that decision.

5

Nevertheless, the intent is to assist the parties and I understand that the oral decision has been sought from the Board explicitly on that basis.

10

I now move to the formal decision.

**DECISION ON REQUEST BY CONTACT ENERGY LIMITED FOR
ADJOURNMENT OF HEARING**

15

GRANTED

FORMAL DECISION TO BE ISSUED IN WRITING

MATTER ADJOURNED AT 3.12 PM ACCORDINGLY

20