

WEDNESDAY 30 JULY 2008

[10.00 am]

BOARD OF INQUIRY

**Te Mihi Geothermal
Power Station Proposal**

HEARING RESUMES

CHAIRMAN: Good Morning everybody. It always amuses me how cases seem to be like the song 10 Green Bottles on a Wall as it winds its way through, as this one hasn't found, as it winds its way through the heaven the numbers get less and less. Anyway, Mr Robinson.

MR ROBINSON: Thank you sir. I have just asked Ms Dixon to hand out some paper going around the room. They're just taken in with my final submissions. I apologise in advance but we ran out of time, in fact the second echelon was bringing up the rear with additional copies of the conditions for the - for those who are left. So if I could explain what I have given you first. First of all there is modest set of closing submissions. There is an A3 version of Mr Coombs' revised planting plan. Mr Stephenson hand delivered it to the three sets of local submitters last night and the riding instruction I gave him was to tell the residents if you're happy tell me, if you're unhappy tell Ms Cook, and the message that Mr Stephenson relayed back to me was that they were happy and there is a further copy of the planting plan in the body of the conditions, but we printed an A3 version because, of course, it's easier to read in A3 than an A4.

So if I could address my closing submissions. So harking back to my opening, not very long ago, I identified 15 contested issues listed by the parties. Prior to the hearing commencing I discussed each point. As at my opening six of those issues have been resolved or effectively resolved

and during the hearing another five issues have dropped away as a result of firstly, agreement being reached with Geotherm Group and by the McLachlan interests abandoning issues they'd previously advanced.

The point raised by Dr Watson about the risks posed by increasing reservoir pressures, which was item 2 in the list of issues in my opening, remains substantially as I described it in opening, and that is to say those commenting on it have indicated that in their view it is an issue best left to the Peer Review Panel.

As a result of that original list of 15 points there are only three remaining contested issues all relating to Poihipi Power Station air discharges as raised by Mr Lang for the McLachlan interests. In addition, Mr Brockelsby and Mr Hickman raised some issues arising out of the conditions proffered by Contact to address Geotherm Group's issues that I should address and of course we also heard from the local neighbour submitters, speaking briefly to their submissions.

So talking about the local submitters, the neighbours first. They raised a range of previously identified issues. Many of the points raised had already been addressed by Contact's technical witnesses and/or by the conditions proffered by Mr Daysh. The discussions in and outside the hearing were however, useful in focussing on solutions to the residents' remaining issues. I confirm for the record in particular that Contact is pursuing a side agreement to address the concerns of Mrs Ellery regarding the screening of any future pipelines visible from her property and I've also attached, or accompanying my submissions, a revised set of conditions prepared by Mr Daysh that attaches and cross-references Mr Coombs' revised landscape mitigation plan. The latter now incorporates the proposed girth bund and more detail about the planting

process. The revised conditions also pick up on a suggestion of Mr Nugent's and attach the Wairakei general conditions for ease and certainty of meaning. Mr Daysh also tweaked the review condition along the lines suggested by Mr Brockelsby, all the changes from his rebuttal evidence are shown with a red line strike through. So lastly, the revised conditions incorporate the condition amendments that have been suggested in the two memoranda that have been filed. Firstly, related to traffic issues and then related to Geotherm issues.

So turning to the issues raised by Mr Lang. Some context is required. Mr Lang made much in cross-examination of Mr Stevenson of Contact's failure to pursue consultation more actively with Mr McLachlan and he submitted that this was all a bit disingenuous. Mr McLachlan is clearly no ordinary local submitter. As Mr Kilty's evidence made clear Contact has been involved in litigation with Mr McLachlan over issues arising from the purchase of the Poihipi Power Station for the last seven years. To say that relations are a little strained is an understatement. The McLachlan submission raised a series of issues aligning the McLachlan interests with the Geotherm Group project which Mr McLachlan is bidding to purchase. Any neighbour effects issues were not highlighted in the submission.

Lastly, Mr McLachlan's evidence was withdrawn, with the result that Mr Lang's assertions of a near neighbour's concern about air effects were just that, assertions, unsupported by any evidence.

Looking first at the consent area issue. Mr Lang sought to emphasise the fact that the Poihipi air discharge consent covers land currently occupied by the McLachlan interests. Now that's pursuant to a lease or is itself the subject of litigation. In respect of which Contact has no current development plans. He also argued that Contact's effects assessment did

not discuss the effects of air discharges in this wider area. Several points arise from those submissions. Dr Stevenson did not specifically discuss air effects from expansion of the Poihipi facilities but he did discuss the air effects of discharges from the Wairakei steam field concluding that there are essentially no contaminant discharges during normal operation of the steam field. It is not unreasonable to think the same might be the case with any expansion of the Poihipi steam field. Mr Lang mooted the possible need for associated land use consents. He has evidently failed to take into account the (inaudible) of consent for the Poihipi Power Station included the associated steam field works and extends over a significantly larger area than is currently occupied by the Power Station. Mr Lang also failed to note the fact that the proposed consent is a renewal of an existing consent that covers a significantly wider area than is currently utilised by the Power Station and rise of the plant.

CHAIRMAN: Does that wider area correlate with the yellow area, edged yellow on the plan?

MR ROBINSON: No it doesn't because I was comparing the titles last night. The logic of that yellow area, to the extent that there is a logic, is that it follows the system boundary.

[10.10am]

CHAIRMAN: Yes well I thought that when I was looking at it, yes.

MR ROBINSON: And so the existing air discharge consent has an area at the southern end of the yellow area, well it doesn't cover that and it also includes a quite significant area outside the system boundary that is not covered by the Contact application. So that there is the assigned and

some extra. But my point is that it's a renewal of existing air consent that covers the land that Mr Lang expressed concern about and as I say in my submissions, the existence of that consent -

CHAIRMAN: If I can just - I'm just trying to, because when you are reading plans and you produce one plan and then give in another plan it's very hard to correlate them. Well I find it hard anyway. Was the area for the air discharge, that's the area - I haven't got my thing here. What exhibit was that?

MR ROBINSON: D14S.

CHAIRMAN: 14 or something?

MR ROBINSON: Yes I think it was sir.

CHAIRMAN: It's edged in green isn't it or yellow?

MR ROBINSON: Or yellow. I think because there were two air applications, one was in green and I think that's Te Mihi one and one was yellow the Poihipi one.

CHAIRMAN: Was it just simply transposed from the old consent?

MR ROBINSON: No it wasn't and if I could hand up the title map and I apologise that this is the only copy I have.

CHAIRMAN: Because it's an issue I'd like to get a clear understanding of, you know, of where the various areas come to.

MR ROBINSON: This is a map of legal properties and the area hatched in blue is the area covered by the existing air - quality air discharge consent and there is a solid line which correlates with the line on the application.

CHAIRMAN: That's the solid black line?

MR ROBINSON: Yes the solid black line running almost due south from the Poihipi Road intersection. There is a purple area which is the subject of neither application. I'm not sure why the person who provided us with the plan marked it like that. So you can see that there are two land titles at the southern end of the consent area.

CHAIRMAN: Lot 3 and lot 2? You haven't got a copy of this.

MR ROBINSON: But it rings a bell. I thought that there were two areas, two titles that were previously not the subject of consent and several that were - that are currently and are not the subject of this application.

CHAIRMAN: Yes.

MR ROBINSON: But my submission is that the existence of that consent over a section of the McLachlan farming lease doesn't appear to have been a problem for the McLachlan interests to date and Mr McLachlan did not appear to explain why it should be a problem now.

MR NUGENT: Isn't it correct though when Mr Lang was asked to reflect on the extent that he'd be prepared to live with, or his client, that effectively where he was drawing the line was excluding those two southern lots that you've included?

MR ROBINSON: Yes I think that's right and so there is clearly an issue.

MR NUGENT: Yes, but it's really in relation to those two southern lots.

MR ROBINSON: Well he was excluding land to the north as well.

CHAIRMAN: All the land in the farm?

MR ROBINSON: Yes that's right because the plan that he provided to Mr Kilty which was this one, had this very strange strip with indentations parallel - running parallel to Poihipi Road and as I understood his submission he was seeking (inaudible) consent to that area and so -

MR NUGENT: I thought he was prepared to accept it to the 50 micrograms.

CHAIRMAN: That was the monitoring.

MR ROBINSON: That was a different issue related to the allocation. So what he was doing was he had three issues. The first was what area should the consent cover.

CHAIRMAN: Except, what area should the consent cover that relates to infrastructure that discharges --

MR ROBINSON: Exactly.

CHAIRMAN: -- that's the first issue.

MR ROBINSON: That's right. The second issue is what should be the area outside of which objectionable owners should be permitted and that was

where the 50 micrograms per cubic metre came in and thirdly, he wanted a monitoring of this consent. (inaudible), but that's a discrete issue but the first two are clearly interconnected.

MR NUGENT: Yes I agree.

CHAIRMAN: It's a pity Mr Lang isn't here. Overnight I have been thinking about it and there could well be an ulterior motive in not allowing - by having a smaller consent area on which infrastructure could discharge.

MR ROBINSON: That is in fact the point.

CHAIRMAN: He didn't give evidence and wasn't cross-examined on it, it must be an issue which -

MR ROBINSON: Let us just say that I was looking forward to the opportunity to ask Mr McLachlan about those issues. So -

CHAIRMAN: Because it would mean you - I shouldn't identify you with - as an economist's contact, Mr Robinson, but your client I should say would have to get a resource consent if they wanted to put down any well, wouldn't they?

MR ROBINSON: Yes. And - so perhaps if I could return to the issue once I have taken you through the submission and you can understand exactly the point I would make, that effectively Your Honour it is right that that is where I am going, but there is a collateral motive and of course in the absence of evidence, of course, I can't make good the submission but I think it's clear there is an inference to be drawn.

CHAIRMAN: But in any event the thrust of your main submission is that the evidence so far before the Tribunal - before the Board, is that discharges upon production wells or injection wells don't contain any toxic substances.

MR ROBINSON: That's right. In ordinary operation, all field discharges are of no contaminant significance. And of course, Mr Lang did not cross-examine for Dr Stevenson on that point. But in terms of the collateral argument that I'd make, I'd refer the Board to Mr Kilty's evidence which was, "The land whilst associated with Poihipi Power Station, include the ability to expand the area utilised for power station purposes where necessary. The need for such ongoing flexibility –

CHAIRMAN: Where are you reading from?

MR ROBINSON: Paragraph 15, "The need for such ongoing flexibility of operation is a feature of all geothermal developments, especially over a 35 year consent period" and the McLachlan's interest lease reflects that.

CHAIRMAN: You haven't read paragraph (inaudible).

MR ROBINSON: Yes I thought I had sir. So the thrust of the submission of the McLachlan interests is to restrict Contact to the minimum possible area. In the absence of any evidence from Mr McLachlan, their motivation is unclear. In my submission, it should not be seen however that the McLachlan interests have only pastoral farming in mind. The plan Mr Lang put to Mr Kilty highlights in blue an area to the west of the existing Poihipi Power Station facilities and is labeled AS McLachlan proposed power station. It's submitted that it's a reasonable inference that the appearance of the submission is to deprive Contact of the ability, in

practice, to exercise the land rights held in relation to the land occupied by the McLachlan interests. If that is the case, as set to achieve through the RMA process, what they have been unable to achieve in the High Court and the Court of Appeal, Mr Kilty discussed the extensive litigation on the matter in his evidence-in-chief. Mr Lang even went to the extent of suggesting that air discharges be restricted to an existing plant as at 21 July 2008. In this regard Mr Carey discussed well WK607 in his evidence-in-chief. My instructions are that that well enters service today, or at least it was going to subject to weather, air discharges from it would not be authorised by Mr Lang's suggested condition, which points to the absurdity of the position Mr Lang sought to advance. It's submitted that the argument is without merit and should be rejected.

The second point relates to objectionable owners. Mr Lang developed a related point based on the application of the objectionable owner condition arguing that it enabled discharge of objectionable owner on land occupied and farmed by the McLachlan interests. He sought to limit air discharges of objectionable owner to the 50 micrograms per cubic metric contour modeled by Dr Stevenson. The effect of the condition sought by Mr Lang is to limit discharges outside the contour and on the land owned by Contact. It is obviously a nonsense in my submission.

In addition, the Board should be aware that the predominant purpose of the land occupied by the McLachlan interests is operation of the Poihipi Power Station. Again, referring back to Mr Kilty's evidence-in-chief, in the footnote I note that Mr Kilty was not cross-examined on the point and there is no evidence contradicting his summary of the land title position. So what those provisions provide is that if the Poihipi Power Station operation requires the land occupied by the McLachlan interests, to use the power station purposes, there's a mechanism in the lease to achieve

that and this is the clause 10.1 that Mr Kilty discussed. That would be the situation if the station's air discharges cannot be kept consented limits on adjacent leased land. This is not, however, therefore a standard situation where a neighbouring occupant is entitled to insist on a particular standard of air quality on their property. The interests of the McLachlan's were expressly limited in this regard. In the circumstances, it is submitted that no condition is warrant and none observed, that it may well not even be in the interests of the McLachlan's.

Lastly in relation to air monitoring, Mr Lang sought air quality modeling - monitoring specific to Poihipi Power Station. Without any evidence to support such condition, Mr Lang had to resort to inviting Dr Stevenson to agreeing that some monitoring, location and nature unspecified, would be of assistance in verifying the modeling, resolving future disputes and providing an objective measure of the hydrogen sulphide levels. Dr Stevenson accepted that some monitoring may be of assistance for these purposes, but Mr Lang forgot to put his proposed condition to Dr Stevenson, and so it lacks any evidential foundation.

In particular, we do not know if the power station entrance is a useful location from a technical point of view. There are other problems with Mr Lang's suggested condition wording. The power station entrance way has pipeline steam traps in the immediate vicinity. To be useful for calibration of the air description modelling, monitoring needs to be of ambient air quality and not be directly influenced by local points in this discharge. Contact (Inaudible) or properly framed air monitoring condition, specific to the Poihipi area. It suggested the following wording which is based on the monitoring condition in the Te Mihi air discharge consent, if I could just take you through this. Probably take it as read. The key aspect is that it relates to ambient hydrogen sulphide concentrations of

(inaudible) within the consent area on a site to be agreed with the Regional Council.

Now at this point can I ask the Board of Inquiry to go to the draft conditions, because on the more haste less speed gathering, Mr Daysh and I were – he was writing his conditions and I was writing these submissions in parallel, and so they are not the same so that – I'll just find the right one, I'd ask the Board to mark up the draft conditions for the (inaudible) that I have demonstrated, so if I could ask the Board to turn to the Poihipi Power Station air discharge, which is 116790, so -

MR NUGENT: Are they in order?

MR ROBINSON: It's best observed by the fact that the two the two new redline conditions are at the bottom of the page.

CHAIRMAN: What number is it?

MR ROBINSON: 116790. And the glitch, I think at one page Your Honour, two pages further on I saw the – that's it. It was all on the same page.

CHAIRMAN: Yes.

MR ROBINSON: The glitch is at the start of suggested condition 5 where it says from two years after commission of the last stage of the Te Mihi Power Station, which was appropriate for the Te Mihi consent, but has absolutely no meaning in the Poihipi context –

CHAIRMAN: Of this consent, yes.

MR ROBINSON: So if I could ask the Board to amend that condition prior to say from two years after the commencement of this consent and then run on along statutory review. We will correct that in the electronic copy we give to the hearing administrator.

CHAIRMAN: Yes, thank you for that.

MR ROBINSON: And whilst I have that question open, the Board will not we've picked up a point that Mr Nugent raised and inserted some greater guidance further into that condition 5 as to what might be the basis on which the Regional Council might make a decision (inaudible) to the frequency or if there is any monitoring, referring it to comparison with the model conditions.

So in my submission, by proffering that condition Contact have met the substance of Mr Lang's point.

So turning to consequential issues, there are only two of these. They both arose out of the conditions proposed by Contact and Geotherm. Mr Brockelsby noted the potential problem of enforcement and the administration, given that Contact's existing reinjection concerns are not subject to the proposed buffer condition. I should advise the Board that perhaps unsurprisingly that fact was also a point of concern to the Geotherm Group receivers. And sitting behind the party's joint memorandum is a memorandum of agreement containing a commitment by Contact to exercise the existing consent 104710 as if it was subject to the same provisions as have been suggested for the Te Mihi reinjection consent.

The issue raised by Mr Brockelsby should not therefore arise in practice and I hasten to add that I completely understand Mr Brockelsby's point. We haven't, in the speed of stitching the agreement together with Geotherm we hadn't (inaudible). And lastly, Mr Hickman queried the wording for the proposed condition. The point of Council's concern is to be clear that the primary objective of the discharge is not lost sight of. I have discussed the point that Mr Hickman raises with Mr Kirkpatrick. Neither he nor I think that the amendment Mr Hickman suggests is necessary. The condition is clear that the proposed instructions to the care of (inaudible) arise in the context of the consideration of the discharge strategy. General condition 3.3 specifies the primacy of addressing subsidence effects in the discharge strategy. The proposed conditions state also that the exercise of the consent should be undertaken in such a manner the compliance of general condition 3 is achieved. I think putting it frankly, while the intention is clearly that that position be unchanged, both Mr Kirkpatrick and I have a concern that the more words we write in just to try and make that clear, in fact the less clear it becomes.

[10.30am]

So in conclusion, I suggested in opening that the matters left in issue were relatively narrow in compass. Discussions within and around the hearing have been remarkable successful in reducing the matters of contention still further.

It's submitted, in conclusion, that the purpose of the RMA is best served by a significant margin in granting the consents on the terms sought by the applicant.

Those are my submissions in closing. I'm happy to respond to any questions the Board may have.

CHAIRMAN: Yes thank you Mr Robinson. Any questions? No. Thank you Mr Robinson, thank you for your assistance. This brings the proceedings to an end and I would just like to – there's only Mr Hickman and Mr Robinson here now, but I thank you, and my thanks to the other counsel, Mr Kirkpatrick and Mr Lang, and also to the number of expert witnesses who have prepared evidence and have become part of the record and a few of them have been cross-examined. I thank them for their assistance.

And I'd like to publicly thank the neighbours for the way in which they embraced the proceedings and we were able to understand more fully their concerns and Contact should be congratulated in meeting them wherever they arose.

Our decision, of course, will be reserved. Under the Resource Management Act we have to make a draft decision and issue a draft report. Because the matter has finished earlier, I am proposing to keep everyone here until we get that decision finalised, otherwise if I get back into the clutches of the Environment Court I will have other matters to put my mind to as well, which will delay things.

So the truncating of the proceedings, and I've been - not absconded, but I have been taken away from my duties from the Environment Court for this full three weeks, so I'd like to get everything sorted before I return.

One of the matters we have to have regard to of course, is the fact that 20 days have to be allowed, 20 working days I think it is, have to be

allowed for all the submitters to comment and make their comments on the draft report that we issue and we were discussing that yesterday and we have some – a few little curly problems that we have to get around. One is that myself and Commissioner Paine (ph) are going to be overseas – sorry Commissioner Paine is going to be overseas in August, so she will be back in time, but myself and Professor Browne are going to be overseas. I'm taking part of my sabbatical in September and Professor Browne goes overseas on the 4th of September, which means if we want to issue the decision before then, and I do, the final decision, we have to have this decision issued by Monday or Tuesday of next week, which is what we are aiming to do and it will then enable the 20 days to expire and then we will meet in Wellington and issue our final decision early in August – September, sorry.

So that's the timeframe that I'm trying - hoping to meet and I can't guarantee anything because, as you know, timeframes have a habit of slipping away sometimes, but we'll do our best to ensure that that happens so as the decision will be finalised in early September. If there is any problem about that we'll let the parties know. So we will retire and spend the next few days positively trying to get something together.

HEARING ADJOURNED [10.36 AM]