

Transpower Counsel
Mr J Stephen Kos
Mt Duncan Laing
Mr James Winchester
(Day 2)



26 March 2008

Audio Transcript

To be read in conjunction with
the tabled evidence / statement.

9.30am start

Chairperson "Good Morning Mr Kos."

Kos "Good morning, your Honour, good morning members of the Board, we thought we would start Sir, with a response to the...some of the questions that the Board asked yesterday, and I will address those that got directed to me, and Mr Laing can address the rest of those that got addressed to him."

Chairperson "Very well, thank you."

Kos "The first and simplest is the status of the timing of the national policy of statements on transmission activities, and your Honour asked if there was a copy available of the formal gazetted document. In fact it's...it turns out, that is the very first document in the case book that the Board, of course, only received yesterday, and so it is document number 1 tab number 1 of the first body of the case book, both the short version and a long version. The position is, that the statement was gazetted on the 13th of March, Clause 2 of the statement, advised that it takes 28 days after gazetting, and the result of that is, your maths is better than mine, and it does take effect on the 10th of April."

Chairperson "Thank you."

Kos "The second question, your Honour, directed to me was in relation to the status of the Government, the various Government policy instruments that were referred to in my part of the Applicant's submissions, and the basis of which the Board should take account, as the answer I'm going to give, in relation to this, is reasonably lengthy. What I propose to do Sir, is to provide the Board with a separate memorandum early next week, which sets up what I'm about to say, but it really... those instruments fall into two categories, the first stand on its own is the National Policy Statement on transmission activities, the regard to which, of course, is obligatory, in terms of 171 (1) (a). The other instruments, and I'll name them in a moment, are all ones, which the Board, in my submission, should consider in respect of two provisions. The first is 171 (1) (d), that is, to say, other relevant considerations, but also in...fundamentally they are relevant as Part II considerations, and under Section 7, in particular Section 7 (i), which is the effects of climate change and section 7 (j) the benefits to be obtained from the use of development of renewable energy.

Now, what are the...these various instruments, and I'll quickly go through those that I refer to. First is the Government Policy Statement on electricity governance, and I refer to that in my submissions of Paragraph 55, that's a statutory instrument made under Section 172zk of the Electricity Act, and compliance with it is mandatory for Transpower, so there is a constraint under which Transpower operates. The same is the case for the second policy instrument I want to refer to, which is the Grid Reliability Standards. They are referred to in my submissions of Paragraph 33, and can be found in the case book, sorry, the common bundle of tab 2, they are made under the electricity, sorry, part of the Electricity Governance Rules, and those rules are made under 172 (h) of the Act, the Electricity Act.

Again, it's binding of Transpower, the reliability standards are binding of Transpower, and so they are very relevant for this Board in considering, amongst other things, the adequacy of considerations by Transpower and whether the work for which approval is sought, is reasonably necessary in terms of Section 171 (1) (c). The third instrument Sir, in this group, is the New Zealand Energy Efficiency and Conservation Strategy Document; that is referred to in my submissions of Paragraph 62. It too is a statutory instrument, made under Sections 8 and 9 of the Energy Efficiency and Conservation Act, and it is a product of a public process prior to final notification. So, those instruments are ones that directly derive from, or are produced under statutory authority, and have application to Transpower, also within this group, the second group instruments, are two that are not made under statutory authority but are none the less very relevant, there is the New Zealand Energy Strategy, referred to in my submissions of Paragraph 55. Although it is not made under a specific statutory provision, it is expressly referred to in the New Zealand Energy Efficiency and Conservation Strategy, which I just referred to. It is also the foundation upon which the Renewable's Bill, especially Part 2 of that Bill, has been introduced to the House, and I'll talk more about that in a moment. The third point I want to make about the New Zealand Energy Strategy, is that it is the progenitor of the proposed National Policy Statement on Renewable Energy, and the Government is proposing to form a Board, and it indicates that it proposes to gazette a National Policy Statement on Renewable Energy later in this year, and that's referred to in sections of Paragraph 62. The last document, which reference is made to, is the Renewable Bill's, the Renewable Bill itself, and the proposed moratorium on thermal generations is a direct product of both the energy strategy and the Bill based on that strategy. The important point about a Bill, because one would usually have some diffidence about discussing a Bill in from of a Board, but the significant factor in relation to this Bill, is that it has wide cross party support when introduced to the House in December, it was supported, not only by the Labour Government, but the Green Party, New Zealand First and most importantly, in terms of real politic, the National party. So, the Energy Strategy and the Bill, although they are not made under Statute are important expressions of collective consciousness or public will in relation to the use of renewable energy, and I submit to the Board that they are an authoritative statement of the benefits of renewable energy, which is a matter the Board is required to consider under Section 7 (j) of the Act. And they are also a reliable guide for the Board, as to the likely direction given both of legislation, given the support for the Bill by all parties, and also the likely form of investment that not only Transpower, with the constraints it operates under, but also generators New Zealand will take. There is authority in the Environment Court, which supports consideration of such instruments, whether it's in statutory or non-statutory form. The two I will refer to today, and just briefly I'll give the Board more on this in the memorandum, are the decision of the Environment Court, comprising your Honour, and Commissioners Catchpole and Easdale of Transit of New Zealand and the Auckland Regional Council, which is decision A100 of 2000, and which the Court took into account a Regional Land Transport Strategy, and a Conservation Management Strategy, which, of course, are both statutory instruments. The second authority I refer to, is decision of a differently constituted Court, Environment Judge Thompson presiding, Commissioners Howie and Edmonds in Unison Networks and Hastings District Council, which is decision W08, sorry, decision W058 of 2006, in which the Court considered another instrument, which we have not referred to, which is the sustainable development of programme of action, which is a governmental, a whole other Government instrument without statutory foundation, and the New Zealand Energy Efficiency and Conservation Strategy NZX, which we have referred to. So, I hope that's of assistance to the Board, in terms of, both the legislative and authority, of a basis of considerations of such instruments."

Chairperson "Thank you. I have to say that I'm...at all clear that, in law, it is proper for the Board to place any reliance on the provisions of a Bill in the Parliament, however wide, maybe

thought to be the support, in general, for that Bill, in terms of real politic, and I would be interested to know if there is any authority that Transpower would like to bring to the Board's attention that demonstrates that, in doing what you urge is appropriate for a decision maker, which is expected to be independent of the Executive Government."

Kos "Well lets...let me answer that in two ways, and that will be dealt with...and I'm grateful for your Honour teasing out these points because, they will assist us to guide the Board, at least from my perspective, and, no doubt, other parties would want to offer the Board guidance of a similar or different form, but there is certain authority that a Bill may be taken into account and indeed given a very early phase of the Waitaki litigation over Project Aqua. There was a decision of Justice Clothly (?unclear) in the Christchurch District Court in which the Bill, which amended the Resource Management Act was especially taken into account by his Honour, at a stage when it had not passed through Parliament, and the issue that arose at that stage was, which was the appropriate forum for determination of a declaratory issue between Meridian Energy and other parties involved in that particular dispute, and his Honour took into account the specific provisions of the Bill, even though it was a Bill and not an Act, at that stage. There will be other authority, which we will be able to direct the Board to, in terms of the issue of independence, which your Honour's raised. It is clear in my submission that, in terms of relevance, the National Policy Statement, which is an express statement of governmental will, is clearly a matter of which the Board is bound to take account of, likewise the Board would need to take account of my respectful submission of any statutory instruments that constrain Transpower and its freedom of action, because that is relevant to what could amount to adequate consideration by Transpower, in terms of 171 (1) (b) and also in relation to 171 (1) (c), whether the work proposed is really necessary for Transpower's objectives, the statutory environment and the statutory constraints, which Transpower operates, must be relevant to this Board's assessment of the adequacy and sufficiency of Transpower's consideration of the designation sought. Apart from that, in my submission, other statutory instruments, that's to say, instruments, which have the basis in Statute must be taken into account under Section 171 (1) (d). They're also relevant, in terms of the Part II considerations that the Board has to take into account, because they do represent, in my submission, authoritative statements as to, for instance, the benefits to be obtained from renewable energy. And beyond that, I don't take the point any further, they are indicative to the Board, they will help the Board to form a view about those benefits, because they are an expression from an authoritative source, the New Zealand Government, which forms that policy and, which has the ability to implement that policy, which the Board can, from my submission, and should take into account."

9.46 am

Chairperson "My question, was not related to those instruments, although I notice on your second iteration of the...of the submission of Transpower, you use the word 'must be' taken into account, and I will invite you to explain that in a moment, but what I wanted to explain was, that my question to you was related to the taking into account or allowing influence to be given to the contents of a Bill that's before the Parliament that has not been enacted, and the risk that a body that is constituted by the Parliament, even though independent of the executive, might be thought to be as if it were anticipating a particular outcome of the Parliamentary process, and that way, to some extent...well perhaps I've said enough to indicate the concern. If that is a matter that was dealt with in Justice Fogerty's judgement, the name of which I'm sure you're about to give us, then that would be helpful too."

Kos "Well, the name in which I'm not, in fact, about to give your Honour, for some reason, unlike Mr Laing, I can't remember authorities of such vintage, that is to say, they are older than two years, but I will re-gather it over the morning adjournment. But I'll cover this... that aspect in detail in the memorandum..."

Chairperson "If you would, please."

Kos "That way, rather than intuitively. I appreciate the question of sensitivity, but on the other hand, in my submission, the Board could not disregard the product of a Parliamentary process in which all parties, and I have to say, at this stage, I can't recall in what position the Act party was in and its two members, but in which all parties expressed widespread support for the objectives underlying the Bill and that's the important aspect, it's not the final detail of the Bill, but it's the ultimate objectives of the Bill, which are relevant, to disregard that when there is the consensus perspective would, in my submission, be utterly wrong, and that leads me to the next question, which was the question your Honour asked about the moratorium. And recognising that there is room between slip between cup and lip, in terms of, in a balance of its current fall and final fall, the proposed moratorium is indeed based on a prohibition of further thermal generation, with an exception for base load generation under statutory regulation of 10 megawatts. That's the provision in the New Zealand Energy strategy. The Bill provides for regulations to the amount. What is important, simply to clarify for the Board, is that the Bill provides for a number of exceptions, beyond simply a 10 megawatt generator, but the detail of that, which is provided for in proposed Section 62 (g) of what will be an amendment to the Electricity Act, is an exemption, which can be granted by the Minister of Energy if he or she is satisfied that the proposed plant is ...there are four key exceptions, the first exception is a non-base load plant, which is below its prescribed limits and that's below the 10 megawatt example. The second exception is that it is necessary or desirable for certain specific purposes and those include emergency for the provision of reserved power. The third is, that it uses an acceptable combination of renewable and fossil fuels, as prescribed in regulations, so that's a general exception, which can provide for balance, and, fourth exception, is that it will be connected and operated in circumstances where an existing thermal plant will be retired and hauled apart, and the specified plant to go with any part of the existing thermal plant it has not required...not retired to significantly decrease of emissions of greenhouse gasses. So, there are a number of exceptions provided for in the Bill, except the final detail of that will have to await the third reading of first."

Chairperson "So, in the event, which hasn't yet arrived, the Board concludes that it is appropriate for it to look at the contents of this Bill. Is the text of the Bill in some of the documents that Transpower has already submitted?"

Kos "I will check that. If it isn't, it will be attached in the memorandum."

Chairperson "Yes, alright, thank you Mr Kos."

Kos "Thank you Sir, I'll hand you over to Mr Laing now."

Chairperson "Thank you. Good morning Mr Laing."

9.54 am

Laing "Good morning, your Honour. If the Board please, there are two outstanding matters from yesterday I'd like to address the Board on, before I continue my submissions. So, I'll come to those straight away. Firstly, your Honour referred to a recent decision of the High Court and Auckland City Council and John Willy Trust, and I've got copies of those decisions, which I propose to hand to you now."

Chairperson "Thank you."

Laing "I was going to hand to you the EDS decision of the Court of Appeal as well, but due to some copying blunder this morning, it hasn't arrived so, and I don't think...that is...I can hand that to you later on, if your Honour pleases, but I don't think it's necessary that you have the EDS decision in front of you, but what I could start by saying is, that the EDS decision, or the decision under the Town and Country Planning Act 1977, clearly set out that the words 'subject to' required greater weight to be given to such matters of national importance in the Town and Country Planning Act. And that approach has been undoubtedly carried over to the consideration of the same words in both Section 104 generally and most importantly for precedent purposes Section 171 sub-section 1. So, in my view, even though the EDS decision is under the former Planning Act it is entitled to very high weight, and is reflected in the case that I referred to you yesterday under the RMA. So, that's in my view, the starting position that the case, under Section 171, dealing with the word 'subject to' is undoubtedly of an origin going right back to the EDS case. So, what influence then does the Woolly decision have on that matter. The Woolly decision deals with the position of restricting of discretionary activities under the RMA, and, that is, of course, an immediately distinguishing factor. But, if I could take the Board to two passages in the decision, one is at Paragraph 44, Page...there's no page I'm afraid, but it's Paragraph 44, where his Honour, Justice Randerson said, "despite the importance of Part 2 in the structure of the Act, I do not consider these provisions..."

Reading Paragraphs 44 and 47 of that decision.

"Now, my submission, that's a situation those words have apposite here. There is no express exclusion or limitation of Part II matters in Section 171 (1). And so in summary my submission is that the Woolly case is too distinguishable and does not require consideration further by the Board. I then turn to..."

Chairperson "So may we...before you turn to your next matter that you're going to address us on Mr Laing, may we go back to the submission that you were making in Paragraphs 209 and 220 to seek whether the result of your consideration of the Woolly case and the EDS case leads you to a...a re-modification of the submissions that you've made, and before I invite you to answer, may I continue, that although you've had some difficulty of getting the text for us of the EDS case, you seemed to have succeeded, and we have attached to the copies you've provided of Woolly (?unclear – Laing talks at same time) ... a copy of the Court of Appeal judgement in 1998."

Laing "Sorry...thank you for pointing that out to me I didn't realise a copy had been... if I can just take you to the relevant part."

Chairperson "If you would please."

Laing "It's Page 260."

Chairperson "Thank you."

Laing "And it's a bit hard to read this with my failing eyesight but it's the...it's really starting at about line 14 onwards, and particularly though about line 35."

10.02 am Reading Page 260 from line 35, then from line 40

"So there are two propositions there, the weight that is given to matters of national importance, which we're subject to, and also the issue as between weight between themselves, which is not...not particularly relevant to our present discussion. So, that is...that Page is the genesis of the...my submission, the overall weight to be given to Part II

matters under the RMA. But, it doesn't...it doesn't deal directly with the proposition that your Honour's referring to, and that is the 220 particularly. But that's a different...my submissions a different matter, the issue of primacy must follow, so, subject to Part II and following that is in 171, are relevant, so, in my submission, really based on that Bungalow Holding's case that must follow, if there is inconsistencies between any matter, in section 171 (1) and Part II, then the former must prevail.

Chairperson "It had been my recollection, and probably unreliable, that in...I haven't done any research on this, it had been my recollection that the line of cases, of which Bungalow is one, suggesting that the words 'subject to' are a code in the way of which you've captured it, derives ultimately from the judgement of the Court of Appeal in this case. Now, plainly, that's not to be found, at least directly in the passages that you've brought to our attention, on Page 260. Is it possible, that in the course of looking through this judgement last night for us, you found any passage in this that would support that proposition?"

Laing "Not directly. I think the way your Honour expressed the matter yesterday to be the EDS decision, is the sort of primeval source of the primacy of Part II, given, however, a different legislative context. So, there is no specific, I have sought nothing specific in the EDS decision that leads to the kind of code wording or anything like that, no, there's not."

Chairperson "From what the judgement says, in line 17 on 260 is this"...

Reading from line 17 Page 260

"And the Environment Court decisions, such as Bungalow, apply that authority, and it is authority...it's a judgement of the Board of Appeal. What I'm trying to understand is this. Does the judgement of Justice Randerson in Woolly, that you've just been helping us with, cast any doubt on the applicability to the RMA in 2008 of the principal that the Court of Appeal enunciated in 1988 in respect of the Town and Country Planning Act in the lines that I've read to you?"

Laing "My submission, as you undoubtedly know, it is a very much a...as really illustrated by the second passage I referred to you, to lead clearly...the Court felt constrained by the wording of Section 77 (b) and 104 (c) to take a view that the words had, subject to Part II, had to be circumscribed in respect of limited or restricted discretionary activities, and in my submission, that is as far as the case goes. It has, in my submission, no application to section 171, which is a different statutory reference to Part II, and not one which is constrained by that provision there. The only possible relevance of the Woolly case would be in terms of resource consents, which is a separate matter."

Chairperson "But, that's not what we are asking you about at the moment.

Laing "So, in my submission, it is a limited exception, based on the wording of the two provisions I've just referred to, and there's no similar wording provided for in Part II, that in section 171 that could possibly limit the application of Part II in that same way."

Chairperson "Well, thank you for your consideration of these judgements for us Mr Laing. I'm grateful, of course, and I'm tempted to hope that you might have the opportunity to explain to us some other time, just how, in practice, it's intended that a decision maker should take into account a matter, or a factor, in declining an application, but not taking into account in allowing an application. But I don't think that will arise in this case, so we'll look forward to your help on another occasion."

Laing "No, and thank you your Honour. I mean, it is, when it is really decided, it is quite a lot of mental gymnastics...have to go into, and I really do fear for any consent authority which has to try and tackle that decision, I certainly found the result very surprising, but there it is. It was a decision of the Environment Court upheld on appeal, but I understand what you're saying and I... intellectually, it doesn't terribly satisfy me, so I don't really think I can take that matter any further at this stage."

Chairperson "No, and thank you. There was another matter you were going to go onto?"

10.10 am

Laing "Yes, this is the outstanding issues about the relevance of the Electricity Commission decision, and if I can just take you on back to...it's my Paragraph 282 of the submissions, and particularly 282 (b) where I say that the Electricity Commission's decision is relevant to the extent discussed above, and discussed above refers to part A of our submissions, but to the extent, that that is not clear. I would firstly say that I do not resile from the decision that I made you...the Board yesterday. That's point one, but I will go on and perhaps try and explain it in slightly different words, if that's helpful to the Board."

Chairperson "Yes, please Mr Laing."

Laing "So leaving aside...if I just leave aside for one moment, which provision in 171 may be relevant to, I can just say why I think the Commission's decision is relevant at all, firstly my submission, it's relevant to explain how the upgrade project evolved through its various manifestations into the specific NORs and resource consent applications that you have before them. So, in that sense, it is background and relevant information to assist your understanding of the upgrade project. So, that's point one. And secondly, my submission, it further illustrates the rigour that has been applied by Transpower and by other bodies to the consideration of transmission alternatives and, just as importantly, to the need of the project. Having said that, can I then refer the Board back to Paragraph 140 of our submissions, which really goes to one or both my points. We say there, 'It is important to understand how both the final form of the upgrade project, as reflected in the NORs, evolved and the project, both original and revised, was further evaluated against other transmission alternatives.' So that, in my submission, encapsulates the particular relevance of the Electricity Commission process. It's not a substitute for this process at all, and we've made that very clear elsewhere in our submissions, but is relevant to your understanding, both the project as it now is, and in terms generally the rigour there has been, in terms of consideration of alternatives. So, if I then go on to say, given that submission, under what provisions is the decision relevant, and my submission undoubtedly...firstly under section 171 (1) (d) as relevant other matters."

Chairperson "That's d for delta?"

Laing "d for delta, if your Honour pleases."

Chairperson "Thank you."

Laing "It has been necessary for your understanding of the project, but as my friend Mr Kos has indicated to you today, it is information relevant, both to the adequacy of alternatives, that's 171(1) (b) and ..."

Chairperson "I'm just wondering whether you had intended to say, 'relevant to the adequacy of consideration of alternatives'?"

- Laing "Yes, that would be more correct if your Honour pleases. And secondly, 171 (1) (c), relevance to...whether...to the work, is really necessary for achieving Transpower's objectives, and in that respect, it's particularly the high level need issue. So that, in my submission, is the relevance, the weight, of course, is a matter for the Board, but in terms that they are my submission matters, which are relevant in those particular contexts."
- 10.16 am
Chairperson "Thank you I understand what it is that you are saying. Now, I want to understand whether there is something that you quite acknowledge that you were not saying?"
- Laing "Yes, well I'm very happy to have that discussion."
- Chairperson "I'm parted, as they say, or second to one side, what you have said, we don't need to go over that again, I understand it."
- Laing "If your Honour pleases."
- Chairperson "What I am wondering, whether Transpower is willing to say, expressly because I'm assuming that it's implicit, is along these lines, that Transpower does not assert that the Board should place weight on the decision of the Electricity Commission, in coming to the Boards ultimate judgement in the matters it must decide."
- Laing "Certainly Sir, in my submission, the relevance is in the process, not the outcome. The Commission's decision was made under different legislation, as indeed we said in our submissions on the original adjournment application, and we do not resile from anything that we said there. If you like, if your Honour pleases, it's...the focus of my submission is very much on the fact that there was a process and what assistance that process can be to you as a Board, in coming to a decision, and I've already made those two submissions. So we...you are correct, we are not asking the Board to rely on the decision itself, in terms of questions of merit, but there has been a decision, and there has been another process there leading to that decision, and it is in that context that I say that the decision has relevance overall to your deliberations, and I hope that that is consistent with what we said to you in our opening yesterday. I certainly don't think it's inconsistent, but I'm happy to clarify on that basis."
- Chairperson "Thank you Mr Laing. Do we now...have we dealt with the matters that I've troubled you with overnight?"
- Laing "There's one more."
- Chairperson "Thank you."
- 10.20 am
Laing "Your Honour raised the issue about the relevance of the call in, and whether you were required or entitled to take into account the wording of the call in or the...and the statutory framework is such that it only relates to...this is 147 (4). It says section 101 to 103 applies subject to the following..."
- Chairperson "Just pause if you would for a moment and I'll just get the text in front of me."
- Laing "Yes, thank you if your Honour pleases, that would be helpful. 147 sub-section 4."
- Chairperson "Thank you."

- Laing Reading 147 sub-section 4...
...Section 101 to 103 applies something to the following...."But that is only applicable to...in my reading of that to section 101, (1) to (3). It doesn't change the criteria that the Board must have regard to, during the course of this Hearing, or as to the merits, that is. It's perhaps a surprising result, but that's...I don't think the words are in anyway unclear."
- Chairperson "Yes, well, as I indicated earlier, we should avoid expressing any surprise or difficulty or anticipation in the celebrations of the Parliament."
- Laing "So, that concludes the preliminary matters, and if I can..."
- Chairperson "Good. Thank you Mr Laing."
- Laing "Right, well, there is one other matter...I'm just checking with Mr Kos, because I have some better copies of the photographs of the pylons before and after."
- Chairperson "Oh, thank you."
- Laing "I'll just glance at them to make sure in fact they are the right ones...I'll just get Mr Rice to hand those to you now."
- Chairperson "Well, only when you're sure that they're the right documents."
- Laing "Well, I think ultimately, your Honour, you'll have to be the judge of that, but they seem to look a lot better to me."
- 10.23 am
Chairperson "And Mr Rice, would you mind showing to the Counsel the documents that you're going to bring to us, so they know what we're being shown."
- Laing "They certainly look clearer to me your Honour."
- Chairperson "That's much clearer."
- Laing "If you're still having difficulty, we can see if we can get something better, but they're much clearer."
- Chairperson "Yes."
- Laing "If I can now return to the written submissions, that's at Page 79, and I'm about to embark again, as it happens, on Section 6 (c)."

Reading Page 79 Paragraph 330
- 10.30 am Page 81 Paragraph 343 Interpolation
...do not prevent access to and along its banks..."And I don't think reference has been made to Lake Maraetai to date, but that is down the southern end of the line near Whakamaru. It's a hydro lake there."
- Reading
- 10.34 am Page 83 Paragraph 348c Interpolation
...at Page 551..."And I did refer to this yesterday, that obviously the route selection process has had what is very important factors avoiding known sites, both of cultural

interest, and as I'll come to later on imperative interest...as course...as I have already indicated, that avoidance has not been absolute, it is simply that, in my submission, the best route has been taken to achieve that outcome."

10.35 am Reading

Page 84 Paragraph 351 Interpolation

...by prior research and through the consultation programme..."And you will be hearing from Mr Mikaere, in particular, on the consultation strategies adopted by Transpower and its outcomes."

Page 85 Paragraph 356 Interpolation

...at Pages 12-13..."I've then set out the passage of the Greensill Case. I don't think I'm going to read that. It's simply making a point that, if there is not a willingness to share information, then the Court or deciding authority must obviously make the best they can do of the matter. On the other hand, we expressed earlier tangata whenua are not a decision-making authority and cannot simply assert a proposition and leave the tribunal bereft of the evidence to enable, except for provision being made in protection of waahi tapu."

Reading

10.39 am Page 86 Paragraph 359 Interpolation

...of towers within the River, or near its banks..."And, if I can also interrupt myself there, to say that you will hear evidence about a claim that Waikato Tainui has to the river, and I will come to deal with that shortly, because, in my submission, it is not a matter that either this Board or indeed Transpower can meaningfully address in the course of the current Hearing, notwithstanding the sincerity of the position of Waikato Tainui."

Reading

10.45 am
Chairperson Page 87 Paragraph 364 Interjection

"I'm wondering if you'll just allow me to interrupt you there. I recognise that building up a submission like this takes a while and goes bit by bit, and I'm wondering whether Paragraph 364 relates back to follow Paragraph 359."

Laing "Yes."

Chairperson "Because that's referring to the Dairy Factory,"

Laing "Yes."

Chairperson "But, the passage of 362 was the television translator at Raglan."

Laing "Yes."

Chairperson "So, when in 364 you're talking about impacts in relationship of Maori people to the Waikato River, I wonder if that can be related to the Dairy Factory not the translator in Raglan when the Waikato River doesn't go there."

Laing "I'm referring back to 363 and 364."

Chairperson "Yes, I see."

- Laing "So that's, if you're Honour pleases, I'm...maybe I'm guilty of going back to...I think that 363 and 364 should be taken together."
- Chairperson "It's not a matter of guilt, it's a matter of my understanding of the way you've structured it."
- 10.41 am
Laing "363 and 364 should be taken together."
- Chairperson "Thank you."
- 10.45 am
Laing Reading
Page 88 Paragraph 368 Interpolation
...evidence of Mr Mikaere at Paragraphs 105 to 175..."And, there is a number of them and I think it's best that Mr Mikaere deals with them when he comes to give his evidence. In my submission, he does comprehensively deal with those submissions."
Reading
- 10.48 am Page 88 Paragraph 372 Interpolation
...in his rebuttal statement..."And, I have to say, that hasn't been filed with the Board yet, it's work in progress, but clearly that is a matter he will cover."
- 10.49 am Page 89 Paragraph 373 Interpolation
...resource consents sought by the Applicant..."And, again, I...he refers to resource consents, but I do believe he is simply referring to the project as a whole."
Reading
Page 89 Paragraph 374 bullet point 2 Interpolation
...and will propose an appropriate condition..."And, having said that, this is very much a work in progress with Waikato Tainui, but this Hearing does have a considerable way to go and I'm hoping that that is something that we can announce to the Board will be resolved in the course of this Hearing. That is, of course, an expression of hope, not an undertaking."
Reading
- 10.53 am Page 90 Paragraph 375 bullet point 4 Interpolation
...access has been granted to additional properties..."And, in my submission that is appropriately a matter of appropriate condition. And, I think it is absolutely common knowledge, because of the opposition to these projects, some land owners have decided not to allow Transpower to have access for any purpose, and as Mr Druskovich will say in his evidence, he, in some cases has had to rely on aerial photographs or other records to make an assessment, but subject to that situation the matter can be appropriately dealt with by way of conditions in my submission."
Reading
- Laing "I now come on to protection of Historic Evidence, Section 6 (f). In Paragraph 377, I set out the definition of historic heritage, and I'm not going to read it, but it is obviously of wide importance, and covers matters of..."

Reading lists (a) and (b)

... (b) (iv) surroundings associated with the natural and physical resources...“And I have to say those last words give me some cause for concern as to how they should be interpreted.”

Reading

10.55 am Page 91 Paragraph 378 Interpolation
 ...which are addressed in sections 6 (e) and (g)...“And I say that notwithstanding the reference to sites of significance to Maori there, there’s obviously a degree of overlap between 6 (e) and (g), but the focus of (g) must be in relation to the historic heritage significance in my submission.”

Reading

10.59 am Page 92 Paragraph 384 Interpolation
 ...and recording relevant heritage information...“And, of course, the recording of information is a relevant mitigation measure in my submission.”

Reading

11.00 am MORNING TEA BREAK

11.23 am Laing Reading

11.27 am Chairperson Page 95 Paragraph 401 Interjection
 “Now when you say, ‘conditions have been proposed’, that’s in the past tense?”

Laing “Sorry, I should say proposed to, proposed to kaitiaki groups.”

Chairperson “I see.”

Laing “But, will be put before your Board in due course.”

Chairperson “Thank you.”

Laing “Perhaps that makes it clearer. And obviously the wording of such condition would be ideally discussed with Waikato Tainui groups, and that is a process that, I have to say, is still proceeding.”

Chairperson “Thank you.”

Laing Reading

Page 96 Paragraph 402 Interpolation
 ...first from the point of view of preservation...“And, I think that’s...there’s a surplus ‘preserving’ there, if your Honour pleases to delete that word.”

Reading

Page 96 Paragraph 403 Interpolation

In much the same way, with the present case...“And, this seems to be the glitch Page. Can I ask you to delete the question marks, and the word ‘on’. So, I’ll read it again.”

Reading

11.31 am

Page 96 Paragraph 406 Interpolation

...the total number of lines and corridors...“And that was the important part of a submission directed to the Board yesterday.”

Reading

11.36 am

Page 99 Paragraph 418 Interpolation

...a long term view should be maintained...“And again, consistently with the submissions that were directed to the Board yesterday, that in my submission is the case here as well. The long term view is necessary, given the nature and importance of the project.”

Reading

Chairperson

Page 99 Paragraph 421 Interjection

“Is this the Pegasus Bay case?”

Laing

“Yes.”

Chairperson

“Thank you.”

Laing

“Yes, that is correct.”

Laing

Reading

Page 100 Paragraph 423 Interpolation

...a Notice of Requirement over that resource...“And that’s directed to one of the submissions you’ll no doubt hear in due course.”

11.42

Page 101 Paragraph 431 Interpolation

...non renewable energy generation. “And that’s a Genesis Power Case in the Court of Appeal, and I only make that submission in case it becomes important later on that the fact that, of course, the Upgrade Project transmit energy from a variety of sources, and I’m just anticipating that it may be argued that there is a disbenefit in terms of Section 7 (j), but, in my submission, the Court of Appeal authority is very clear on that point.”

Chairperson

Page 101 Paragraph 431 Interjection

“Thank you Mr Laing. Just so there is no misunderstanding, it is my expectation that when the Board has heard the cases of all the submitters, it will afford Transpower the opportunity to address those cases in reply, so that the...well, of course, you’re free to make submissions in the course of anticipation, you will also have the opportunity to address against the reality of what submissions may be made in that position.”

Laing

“Yes, thank you, your Honour, I’m just foreshadowing some of the themes so the Board has...to use a colloquial expression...a taste of things to come, and I think it’s not intended that we, obviously we have not attempted to comprehensively analyse the submitters’ cases, and in many cases that would be somewhat pointless, given that many cases,

there is no evidence, and we are relying very limited submissions as well, so thank you, certainly the opportunity will be taken in due course.”

Reading

Page 102 Paragraph 438 Interpolation

From the decision of the High Court...“and I emphasize that’s not the same High Court decision in 437, it’s the earlier High Court decision.”

11.45 am

Chairperson

“Yes, so that’s Justice Roland Young’s decision?”

Laing

“That’s...if your Honour pleases, yes.”

Reading

11.50 am

Page 104 Paragraph 446 Interpolation

...the principles of the Treaty of Waitangi...“So, the two things are related. One is a consultation...comes under a number of potential or predicable Treaty principles. Secondly the converse is true. There has been a consultation, that is a...one indication that there has been, the decision maker has to take into account the principles.”

Reading

Page 105 Paragraph 450 Interpolation

...met with all Marae as required...“And I think that is a very important acknowledgement in this case, as to the adequacy and thoroughness of Transpower’s consultation with Maori.”

Reading

11.53 am

Page 105 Paragraph 452 Interpolation

... extensive consultation that has occurred...“As an aside, it seems to be very doubtful whether the Trust has even read Transpower’s evidence.”

Reading

Page 107 Paragraph 459 Interpolation

...to engage with the other party...“It’s the same point I made earlier, in respect of other principles.”

Reading

Page 107 Paragraph 463 Interpolation

...and disturbance of watercourses...“And if I could just pause there. As I explained yesterday, there are...there is obviously access required to build each tower, and that access is outside the NOR corridor. In some cases, consents will be required, for instance, putting in culverts that are temporary or permanent, and there may be other consents required for land use purposes. But, as I also mentioned yesterday, there is still information to be gathered by Transpower to enable those things to be applied for, whether on a global or individual property basis, and that is the reason those consents are not before you, at this Hearing.”

Chairperson

“So I suppose we have somewhere a list of the consent applications that are before the Board?”

- Laing "Yes, and I come onto describe them and outline, although not in an order of technical detail, because I will be leaving that to Transpower's witnesses to further describe for you, but I do outline them shortly."
- Chairperson "Thank you."
- Reading
- 12.03 am Page 109 Paragraph 472 Interpolation
... to lapse prior to that date..."So, I think that's a fairly obvious reason why that would be an exercise in futility."
- Reading
- Page 110 Paragraph 474 Interpolation
...and are therefore not repeated..."I think perhaps for the avoidance of doubt, I should simply note that that's subject to our discussion late into certain discretionary activities we had this morning, if your Honour pleases."
- Reading
- 12.10 am Page 113 Paragraph 488 Interpolation
...not contrary to any of these provisions..."And I can add something, there's something missed out there. This is dealt with in the evidence of Transpower."
- Reading
- Paragraph 491 Interpolation
...the board must grant or refuse the consent..."Sorry that's... that should say, 'the Board must grant consent', not, must grant or refuse consent."
- Reading
- Page 114 Paragraph 493 Interpolation
...it has restricted its discretion..."And that, obviously, is where there may be some impact in this case of the Woolly Trust decision. And I'm content to just note in that context that, consistent with the High Court decision, the Section 2 matters will only be relevant if the Board is proposing to grant the applications, and not obviously relevant if it proposed to refuse those applications, but I acknowledge the interpretation of analytical difficulties that does involve, or could involve in certain circumstances, but to the extent that it is relevant, I would propose that we further deal with that in our final submissions to the Board, if it becomes a relevant matter."
- Chairperson "Now just bear this in mind, won't you Mr Laing, that the opportunity to address at the end, is in reply to cases of the parties that will follow. They, in turn, are entitled to know what Transpower's case is when they address the Board, and it's just a matter of picking the right time for anything further that you wish to say about that."
- Laing "Yes, well, I hope I have made my position clear on that topic for those who are here today, and anybody else who wishes to address the Court on that topic, and certainly it's my submission that, that the consents can and should be granted and that the Court may (unclear?) Part 2 to reach that conclusion. So, that is my omnibus submission on that point. If any party has a different view, then my submission is that...is promptly a matter for

reply, and we will deal with it in that context, but I think I've really...probably said everything useful on that topic, as far as opening is concerned."

Chairperson "Thank you."

Laing "And that's consistent with the...obviously the planned evidence you will be hearing in the forthcoming weeks as well."

Reading

12.20 am Page116 Paragraph 505 Interpolation
...is a matter of fact, rather than law..."And part of the existing environment in my submission is the ARI-PAK line, which is to be removed, and that is obviously a matter that will be subject to some evidence, in terms of the comparison between the effects of the current line and the effects of the 400kV line cable line. So that concludes my section of submissions, except for one matter of correction to the Board please, is, I mentioned, into relation to Taupo District Council that there was a transitional plan and a proposed plan. What I had not picked up was, that the proposed plan had, in fact, been made operative very late last year. I apologise for that. I obviously did the Taupo District Council a disservice, but would you please just note, that where in the submissions there is a reference to two plans, there is only one now operative plan."

Chairperson "Page 59...is that the correct position?"

Laing "Page 59?"

Chairperson "Yes, I think in your interpolation about there still being a transitional plan?"

Laing "Correct."

Chairperson "And, delete the 's' at the end of the word plans in the last line. "

Laing "Yes."

Chairperson "Thank you."

Laing "So, if there aren't any necessary questions of my section of the submissions, I would now ask Mr Winchester to address you."

Chairperson "Just before we do that, you've just completed addressing us about the existing environment. Is there anything relevant to the Board's duties in...to consideration of the environment that is not existing, but perhaps authorised? You know the mind of..."

Laing "Absolutely, the Hawthorn Case and I...the short answer is, I do not know, but I will make sure that is covered, even by supplementary evidence by our witnesses. I'm not aware of any specific matters on the route, apart perhaps, from resource consents held by one of the quarrying companies. In that, I don't think they've yet been implemented, so Ms Allen deals with that in her evidence generally, and I think we can...and I will make sure that matter, if it hasn't fully been addressed, it's certainly been taken into account, in relation in the matter, such as acquiring (unclear) of that nature, if there is anything else that we can draw the Board's attention to, we will do."

Chairperson "Thank you, thank you Mr Laing."

- Laing "Thank you for that, I'll make sure that's attended to."
- 12.24 am
Chairperson "Thank you. Mr Winchester may we invite you to address us please?"
- Winchester "Thank you, your Honour, members of the Board, my part of the submissions deals mostly with environmental effects, as I say at Paragraph 506..."
- Reading
- 12.29 am Page119 Paragraph 512 Interpolation
..in light of the existing environment..."And, I'll note the discussion that you just had with my friend Mr Laing, and I'll take your Honour through the case that we're dealing with, the existing Act omitted environment and perhaps seek to explain how it might in present context."
- Reading
- Page 119 Paragraph 513 Interpolation
...established over time in response to its existence..."And, I think it's been in existence since the 1950's Sir, so there is really a long established pattern of land use around it."
- Reading
- 12.31 am Page 119 Paragraph 514 Interpolation
...on sensitive activities where appropriate..."And, I observe that point and I'll come to it later in the submissions. It doesn't apply just to visual issues Sir, there are other areas where the existing ARI-PAK route has some effects and risks, which will be removed by the newer line, and an example of that is the ARI-PAK line at the top of Brookby Ridge, and the new alignment avoids the Ardmore Airport protection area, whereas the existing line breaches that protection area and I will take you through that in more detail Sir. It's just to illustrate, it doesn't relate solely to visual effects."
- Page 120 Paragraph 516 Interpolation
...of towers known as monopoles..."And, I think the evidence of Mr Noble is probably the first witness who will come to the issue in that, and provide a graphic example of the difference between a monopole and a steel lattice tower."
- Reading
- 12.33 am LUNCH BREAK
- 1.50 pm
Winchester Reading Page 120 Paragraph 517
- Page 123 Paragraph 528 (a) Interpolation
...of the existing transmission lines..."And, I refer to the ARI-PAK line, and indeed, the Otahuhu-Whakamaru A, B and C lines, which are, in some instances...are in relatively close proximity to the proposed line."
- Reading
- Page 123 Paragraph 528 (h) Interpolation

...or mitigated by way of conditions...“And, I can perhaps, just pause at that point Sir, and deal, in part, with the issue of Hawthorn. In some ways it’s very difficult, in my submission, to compose a view of the environment in accordance with the Court of Appeal’s decision in Hawthorn, given the long term nature of the project, in that it’s going to be a stage project developed over time, and the environment will, inevitably change, to some extent, over that time. Transpower has sought, as far as possible, in designing a project and considering the various parameters, including the scope of the designation, to internalise the effects, largely in the designation boundary, albeit that it’s not possible to deal with all environmental effects solely by that approach. One thing that can be said, in terms of future changes to the environment, people will certainly be on notice about the state of the environment and certainly the likely, or actual presence of the proposed transmission line, and associated facilities as a result of the designations, should they be approved. So, to the extent that there is somewhat of a crystal ball gazing exercise, on the one hand, a degree of certainty, should the designations be approved...what the environment is going to be like along the line, and an exercise of judgement, based on what is on District Plans, and perhaps adopting the point of view of a reasonable person as to how they might audit their affairs, or develop land in the knowledge that a transmission line exists, or is proposed, and I’m not sure beyond that Sir, what more could be said, in relation to the Hawthorn style approach to looking at the future of site environment.”

Chairperson “Thank you, Mr Winchester.”

Reading

2.03 pm

Page 124 Paragraph 532 Interpolation

...are proposed down either side of the valley...“And, I can perhaps demonstrate that situation if...with reference to the Map Book, series 1 to 4, and maps 10 (a) and 10 (b).”

Finishes reading 532 ...land between the lines...“And, perhaps the...well, either map shows it adequately, in my submission. You have, on map 10 (a) the shaded red corridor, which is the proposed new line, and way to the west of the line there are three dotted lines running relatively close together, and those are the Otahuhu-Whakamaru A, B and C lines. This whole issue of islanding essentially relates to sterilisation of the land in between the two respective corridors, and what we’re saying here, is that there is enough of a gap between these two corridors such, that the land in between these lines, is not going to be precluded from reasonable use by an unduly narrow gap. People will still be able to access and use that within that relatively broad corridor.”

Reading

Chairperson Paragraph 537. “Did we...will we be able to make findings from the evidence about the precise location within the easement corridor of the transmission lines themselves, or is that something that you’ll need further surveying work in the event of approval?”

Winchester “No, Sir, the evidence covers a wide range of different possibilities in terms of both location of lines and the load and ambient conditions, under which the line operates and which, in turn, affects the strength of magnetic and electric fields, and the predictions are based on worse case assumptions. And, I’ll take your Honour through that evidence. Hopefully, that will give you an indication of the full range of possibilities that have been taken into account, but the essence of Transpower’s case is that, whatever loading of the line, the limits will be complied within all points of the designation boundary.”

Chairperson “Well, thank you, that will be, of course, a matter of interest to us.”

- Winchester "Yes."
- Chairperson "But, we can't assume, can we, that the lines will be precisely 32.5 metres from the edge of the corridor?"
- Winchester "No, Sir, we can't, and that's a matter where I also come to later in my...in my submissions, and is covered in evidence about the tolerance, which is being sought within the designation for tower moves."
- Chairperson "Thank you."
- Winchester Reading
- 2.11 pm Page 125 Paragraph 539 Interpolation
...and the highest demand occurring coincidentally..."So, what that means is, in very warm and still weather, where the lines expand and therefore sag further, and in a situation where you have peak demand for electricity supply, and therefore the current running through the line is higher."

Reading
- 2.14 pm Page 126 Paragraph 541 Interpolation
...the designation boundary in 2042..."And that, obviously, assumes that the centre line will be right down the middle of the easement."

Reading

Page 127 Paragraph 548 Interpolation
...that this association reflects causality..."So, if I can just interpolate, often in the RMA field there are clear cause and effect issues here. In this situation, there is a substantial discharge between any effect and any possible cause, based on magnetic fields. There is no direct connection and the term that is used is an association."

Reading
- 2.20 pm Page 125 Paragraph 551 Interpolation
...on an appropriate level of precaution..."And, that just one thing that's just worth noting further about, the application of a precautionary approach, and it is set out clearly in the World Health Organisation monograph...is that 'a precautionary approach is all very well on its own, but there is a balancing exercise that needs to be undertaken, whereby the benefits of electricity need to be taken in to account.' So what the World health Organisation has recommended is, that precautionary measures should be adopted, where practicable, and where they are low cost measures, which do not overcome, or adversely impact, on the benefits to be derived from the use of electricity."
- Chairperson Page 128. "Are you saying that's covered in the WHO Monograph?"
- Winchester "It is, and there will be evidence given on that, by most of the health experts."

Reading

Paragraph 553 Interpolation
...of the Netherlands..."So, he is going to be presenting a European perspective on appropriate guidelines and levels."

Reading

2.30 pm

Page 131 Paragraph 563 Interpolation

...the visual effects of towers...“So, really, the point of that is, that it's a balancing exercise, taking into account a range of factors, and obviously you can't please everyone.”

Reading

Page 133 Paragraph 568 Interpolation

...to address identified risks...“And just in relation to Paragraphs (c) and (d) of 568, I would observe that the only expert evidence by certifiably qualified health professionals before the Board is that of Transpower. There is, in fact, no evidence from any public health expert being tendered to the Board. And, in terms of Paragraph (c), dealing with this perception of effects issue, some submitters have suggested that there needs to be a 300 metre wide corridor, based on the possibility of health effects, and in my submission, that is based on that perception of an effect, which simply would not, or does not, exist.”

Chairperson

“Are you saying that perception does not exist?”

Winchester

“The effect does not exist Sir, so the request or the call for a 300 metre wide corridor based on perception, not on effect.”

Page 138 Paragraph 584 Interpolation

...but it should be proportionate...“And, I will perhaps pause there, and interpolate, and return to the point of this 300 metre corridor, in my submission, that would be a disproportionate approach, given the potential risk. I do note it's...I do note, in Paragraph 585.”

2.44 pm

Reading

Chairperson

Page 138 Paragraph 586. “Who was the judge that delivered the decision in the Telstra Case, please Sir?”

Winchester

“It will be in the case book. I don't have that right at hand, your Honour. I can advise you of that perhaps after the afternoon break.”

Chairperson

“Very well.”

Winchester

“I'm advised by my friend that it was Chief Justice Preston.”

Chairperson

“Thank you, I thought that the language might have been his. Thank you.”

Winchester

Reading

2.45 pm

Page 139 Paragraph 589 Interpolation

...of EMF emission from the proposed line...“And, in fact, I should...a point...I should ask you to strike the word 'emissions', because it, in fact...rather a 'field' than an emission.”

2.52 pm

Chairperson

Page 141 Paragraph 602. “Is that in relation to Ardmore?”

Winchester

“Yes, Sir, not in relation to Auckland International Airport, they don't have any impact on that.”

- Chairperson "So, in the second to last sentence of that Paragraph, lie to the east of the Airport."
- Winchester "Ardmore Airport."
- Chairperson "Shall I Insert Ardmore?"
- Winchester "Yes, I think that makes it crystal clear."
- Chairperson "Yes, thank you."
- Winchester "Thank you, I'm obliged to you."
- Winchester "And, if the Board is interested, the maps, which show these relevant towers, are in Map Book series 1-4, 3 (a) and 3 (b). So, you'll note on that 3 (a), you can see the...roughly in the centre of the Page, towers 16 (a) and 16 (b), which are the single circuit towers, which are considerably shorter and have been specifically designed to ensure compliance with the protection service. The ARI-PAK towers are not shown. The line is depicted, the dotted line, but it's on considerably higher ground as it crosses that Brookby Ridge."
- Chairperson "Thank you."
- Winchester "And, I understand from my friend Mr Kos, there is also a specific map which shows the protection surfaces, both Auckland and Ardmore, and it is five from the end in the same volume...two from the end, so that shows the extent of those respective controls. And, you'll also note, depicted on that particular plan in dotted lines, are the existing transmission lines, which run through both of those areas."
- Chairperson "Thank you."
- 2.55 pm
Winchester Reading
- Page 142 Paragraph 603 Interpolation
...the civil aviation rules..."And, I understand, in relation to that particular issue, its provision of real time information to aviators dealing with meteorological conditions through some form of electronic device, which relays this information to aviators. And, that's going to be covered in the evidence of Mr Sullivan."
- Reading
- 2.59 pm Page 143 Paragraph 608 Interpolation
...the world on similar projects..."And, it's probably worth mentioning at this point, in terms of the cost incentives for the alliance contract, there is a possibility that, which through bringing in international experience, through this alliancing approach, that there will be environmental improvements, in terms of design, construction techniques, and thereby reduced impacts and, of course, there is an incentive on the contractor to achieve these types of improvements."
- Reading
- 3.02 pm Page 144 Paragraph 611 Interpolation
...which address various relevant matters..."And, I set out an indicative range of the plans, which are likely to be implemented, and it will, obviously, depend upon the final form of the alliance contract as to how these stack up, but certainly, the areas, which these plans

covered, will, in one way or another, be covered in various Construction Management Plans.”

Reading

Paragraph 612 Interpolation

...timeliness targets are implemented...“And, of course, any conditions on the designations, should they be grounded, and resource consents would be absolutely benchmark measures for these Management Plans. And, for the assistance of the Board, I’ve included a diagram in Paragraph 613, which shows the relationship between these different plans, which will need to be developed, and the coverage of those plans and where they fit in. And, it’s simply a reflection of the scale of the inter-related nature of the project that this sort of level of detail is going to be required.”

Reading

Page 145 Paragraph 622 (e) Interpolation

...uncertainty may now be reduced...“Indeed, I echo the comments of my friend Mr Kos about the importance and value of a site visit.”

3.05 pm

Reading

Chairperson Page 146 Paragraph 622 Interjection

“I just would like to ask a question arising from that interpolation observation, please Mr Winchester, but I just want to complete noting the point before I ask my question if I may. I’d like to have your advice, as Counsel, about the extent of which, it would be appropriate for the Board to make any findings of fact concerning people having made investment decisions, on the basis of which, anything that the Board observes in the course of a visit to the route.”

Winchester

“Well, Sir, I’m not suggesting that the Board need rely on site visit to make any finding of facts in that regard, it is simply part of the context, in terms of the patented land use, and development up and down the line, which can be observed by the Board, as a matter of fact. I understand...Transpower will be providing some evidence on property related issues, and it may be that that will provide a better basis for the Court in reaching conclusions about peoples’ investment decisions.”

Chairperson

“Thank you, my understanding of that southland judgement of Justice Foggerty’s in the last year or two, and you obviously remember the one.”

Winchester

“Yes, I think it’s the Shearing case.”

Chairperson

“Yes, Shearing or Shearer or something like that. Yes, seems to make it inadmissible for a decision maker to make findings, based on the decision makers own observations rather than evidence, given at a Hearing, which is exposed to testing by usual methods.”

Winchester

“Yes, and at the risk of speculating about the finding in that case Sir, my understanding was that it is not for the judicial decision maker to substitute its own views, based on a site visit, where to do so would conflict with evidence provided to the Court, or that decision maker.”

Chairperson

“Well, of course you may be right, I’m sure of that. What I am doing, is sounding a reservation about the notion, that as important as a site or route visit might be, that it might provide evidence, or a basis for findings, that people have continued to make investment

decisions since the line was established, or published, seems to be a reservation consistent with Justice Fogerty's judgement."

Winchester "Yes, I accept that Sir, and I think that reservation is appropriate. Really, the point being made is simply one of context that's really apparent, that there have been changes in land use, and continues to be changes in land use along the line. There will, no doubt, be evidence given about that and indeed, there is evidence being given by submitters about investment decisions, which have been made, or are proposed to be made, even...bearing in mind the existence of the Notices of Requirement. So, it may be, that there is a...there is certainly an evidential foundation for the Court to make some conclusions about that, without the need to necessarily reach such conclusions, independently based on site visit."

Chairperson "Thank you."

3.10 pm Reading

Chairperson Page 147 Paragraph 626. "Do you include in that, what is sometimes referred to as Steam Radio, that is to say, ordinary old fashioned AM broadcasts?"

Winchester "No, Sir, I don't. I believe that is a separate category of effect, which is dealt with in the evidence of Transpower. But, no, electromagnetic interference does not deal with radio effect as I understand."

Chairperson "I see, well, I'm not going to give evidence myself, but I think that it's common experience for people driving past transmission lines, that the radio seems to be performing rather badly in those localities."

Winchester "I often find it's a great improvement."

Chairperson "Oh, good, you must have the right brand."

Winchester "Well, Sir, I probably can't take that any further, but it's my understanding, it's perhaps something different from electromagnetic interference, which causes that effect, and it may be what's known as RFI, which is Radio Frequency Interference."

Chairperson "That sounds more like it. Will that not be created or generated by the proposed line?"

Winchester "Yes, potentially, and as I recall, Transpower's evidence, there will be evidence given on that particular issue."

Chairperson "Thank you."

Reading

3.19 pm Page 148 Paragraph 631 Interpolation
...agreed to meet with Transpower engineers..."And, I think your Honour raised that point, with regard to under the calculation of EMF, in terms of this tolerance of town locations, and I can advise that the Notices of Requirement include, or incorporate, intolerance for a move of up to five meters either side for an identified transmission tower, and up to forty meters from an identified site up or down the corridor."

Chairperson "40 metres?"

- Winchester "Yes. And, there is a situation Sir, in which I'll take you to later in the submissions, where that tolerance is perhaps tested, and perhaps there may be some room for further tolerance being able to be built for the purpose of further mitigating identified environmental effects, but I'll take your Honour to that, obviously a tantalising prospect before the afternoon adjournment."
- Reading
- 3.29 pm Page 152 Paragraph 652 Interpolation
...in or near to those areas to be considered..."And, I refer to the towers, I think, Mr Kos drew your attention to yesterday."
- Reading
- 3.30 pm Page 153 Paragraph 654 Interpolation
...an important part of minimising effects..."And, I think I referred to that earlier, in relation to the various Management Plans, which we developed, one of which, was a Land Owner Management and Consultation Plan, which we put in place to process and deal directly with land owners and various protocols in that respect."
- Reading
- 3.32 pm AFTERNOON TEA BREAK
- 4.00 pm
Chairperson "Thank you, Mr Winchester."
- Winchester "Before I start again at 658, in response to your question on radio interference, I did get the terminology right, RFI, that issue is dealt with in the evidence of Mr Ross Cooper, that evidence is that...Transpower will comply with the relevant New Zealand Standard on RFI. And, accordingly, there should not be a significant issue with regard to radio interference."
- Reading
- 4.04 pm Page 154 Paragraph 663 Interpolation
"I need to make a correction there Sir, the Notice of Requirement were explicit about plantation forestry and it is 100 metres rather than 125 metres. The 125 relates to the transposition sites where the lines are rotated, so extra width is required at those areas. So, that should be 100 metres. I apologise."
- Rutherford "Sorry, what was that figure again."
- Winchester "125 metres for Transmission and 100 metres for Forestry."
- 4.06 pm Reading
"This completes the section where key environmental issues are covered and I would like to now turn to what, in our submission, are the relevant issues for the Board's consideration. In terms of context, it's worthwhile going through in some detail, so you can have some appreciation of why Transpower feels that those matters are relevant."

- Chairperson "Does this fall into the same category as we looked at this morning, in anticipation of matters that might be raised by submitters?"
- Winchester "Well, Sir, these are matters that have been raised by submitters and have been addressed in Transpower's evidence. In terms of the merits...of those concerns that have been raised, this is more of a legal analysis than those matters that are not relevant to the Board's consideration."
- Chairperson "Thank you."
- Winchester Reading
- 4.10 pm Page 156 Paragraph 672
Winchester ...lasting effect on property values..."In that case I think it was the Hampton Down's Case. "Before I go any further Sir, it has been noted, that concerns have been expressed in the media, by at least one submitter, and media, regarding the appropriateness and ethics of Transpower's property purchase programme continuing. Simply for the record, Transpower has always regarded this process as being an open process that is transparent. It is well known by the communities through which it will go, and the observation that needs to be made, is surprising, that the particular submitter was not aware of this, given his involvement as a representative in a community society."
- 4.11 pm
Chairperson "I wonder whether you have said all you need to on that point. The Board is going to have enough to do in addressing the matters that are raised in issue before it in an ordinary way of being the content of submissions. We don't need to trawl through many media reports, or anything of that kind, to find any extra burdens for our attention."
- Winchester "Quite so, Sir."
- Chairperson "So, if it's in the media, we are not interested."
- Winchester "Thank you, I'm obliged for that indication Sir.
Reading
- 4.15 pm Page 159 Paragraph 673 Interpolation
...freehold interest in properties..."So, as you can see from that list, there is a comprehensive and wide range of...set of concerns about property related matters across the entire spectrum."
Reading
- 4.21 pm Page 162 Paragraph 685 Interpolation
...for the proposed line..."And, that relates to this five metre tolerance, either side of the towers, and forty metres up and down the line."
Reading
- 4.25 pm Page 164 Paragraph 693 Interpolation
Winchester "It seems there is a degree of discretion for Board, particularly on mitigating identified adverse effects, and that's apparent from both the Porirua City and the Norwest Community Action Croup Case. There is a significant indication about the resource consent jurisdiction, a couple of those seem to be, your Honours, the Darrick and Haslam

Cases and possibly also the Epsom Normal School Case. There seems to be a degree of flexibility what is within the scope of an application and what goes beyond the scope of what was notified.”

Chairperson “Is there anything of a recent High Court decision on topic...Court of Appeal.”

Winchester “Shell New Zealand and Porirua City Council, no hard and fast rule to changing a resource consent detail there...are no hard and fast facts and circumstances, to changes that are being made to mitigate effects and there is no prejudice to any submitter, any person who have not had the opportunity to submit, then that is within the scope. And, there is jurisdiction to make the change. So, largely it is on all fours with what the Environment Court has said about its ability to modify designations to address identified adverse effects.”

4.29 Reading

Winchester Page 165 Paragraph 698 Interpolation
...in the next few days...”Sir, I’d be grateful for an indication as to the Board’s willingness to consider that, such a set of conditions, whether that’s consider appropriate at this stage.”

Chairperson “Well, it’s part of Transpower’s case, it’s not a matter of whether the Board’s willing, it’s a matter of Transpower’s entitlement to put the whole of its case, which in turn, with the conditions upon which, it asks the Board to consider its proposal, so it’s part of the proposal and the proposed conditions should be made available to the submitters by the earliest practical opportunity, so that they can address them in due course, in the presentation of their cases. I suppose it should be open to the Board to allow people the opportunity. There may be submitters who on seeing the proposed conditions, no longer wish to pursue their conditions or at least in some of the respect of the grounds.

Winchester “Absolutely.”

Chairperson “So the earlier the submitters can see the proposed conditions, the better it would be, and in the same way, the Board ought to have the proposed conditions too, if only as a matter of record that these are the conditions upon which Transpower asks the Board to consider its proposal and in that regard there are a couple of questions that I would like to pursue with you just because they relate to this question of conditions and possibly, these might be seen as examples of maybe a greater bulk than these samples. In 598...refer to value of bonding metal structures to avoid risks of stray current. Would the Board expect to find in the conditions, a requirement by Transpower to see a condition requiring bonding straps? It is important to the Board to see a draft set of conditions, so that the Board know what Transpower is asking the Board to accept as being in the conditions, a process in which the submitters can take part and what matters Transpower is seeking to put into a separate category of Management Plans of one or another of different kinds, from the contents of which, the submitters may be excluded in part. In this case, the Board is an ad hoc decision maker, which would not, in any event, be involved in the Management Plans. I take it and it would seem inconsistent. And, it would seem inconsistent to have the setting up of a Board to conduct a public process, such as this, if any matter of any significance at all was to be ring-fenced and taken out of the general judgements that the Boards going to have to attempt to make.”

Winchester “I accept that Sir, and it’s certainly not Transpower’s intention to. I was about to take you through this matter, and I note that conditions are being worked on as we speak.”

- Chairperson "In respect to 608...it is...whether Transpower seek to persuade the Board because of its requirement for some process that Transpower may wish to pursue for the implementation of the designation by way of an alliance contract. I suppose it's to be inferred that, by urging the Board to the values of these alliance contracts, that Transpower is implicitly saying that's what it's going to do and if the Board was going to be persuaded by that submission, it would need some assurance...some enforceable assurance, whether it be by condition or some other way. I'm open to being told, but it does seem that, just to use it as a ground for making representations for the requirement, might leave it hanging in the air, the Board need legal enforceable assurance."
- Winchester "If your Honour regards it as being material to the issue of compliance with consents and designation conditions, then I will seek instructions from Transpower for the appropriate response. I can advise from the bar, that the alliance contract...appropriate response...it is addressed by Mr Rasul in his evidence so, there is evidence before the Board about the alliance contracting process, and perhaps, that is an issue that your Honour could direct to that witness."
- Chairperson "That seems to be implying that the Board has a mind of its own on this topic. At this stage, we certainly do not. What I'm doing, is seeking to identify what is the strength of the point that is being made about it on behalf of Transpower? Is it a bit of puffery, that we can just pass over and ignore, or is it being put forward as a serious ground for the Board to adopt the requirement, so, it falls to Transpower, not for the Board to take an initiative on the matter and I'm not meaning to be offensive when I say, at the moment, it just looks like a bit of puffery. It doesn't seem to carry any more substance than that."
- Winchester "I accept that Sir, and I can probably say that it is context, and I think I gave your Honour the indication earlier when I was dealing with that particular issue that irrespective of how the final contract is organised any person giving effect to the designations is going to be required to comply with the conditions that might be imposed, That's a fundamental basis for Transpower's approach and the alliance contract probably doesn't take that any further, other than it will be a contractual requirement to comply with any designation, resource consent conditions."
- Chairperson "It's a feature of the particular process that led to call in, and the decision by the Board that distinguish this case from norm. In the normal case, the Councils, that make the first instance decision, are the very same Councils that have the ability responsibility and duty to enforce compliance. Of course, we haven't heard yet...for the Councils have an ability...the responsibility, and maybe they would seek to ensure compliance with conditions that the Board imposes, in the same way that they would in the conditions that they have themselves imposed. I don't know, that's something we may or may not be told. It does place the Board in a different position if it was the normal first instance decision maker."
- Winchester "That's true Sir. Other than the local authorities' powers would only be to recommend conditions, the Board's powers do differ, in that you are the absolute decision maker...absolute decision maker. Transpower proceed on the assumptions that councils would take that seriously. Check to make sure Transpower was complying."
- Chairperson "Make sure they tell us."
- 4.45 Reading
- 4.48

Chairperson "Just in the last sentence, you presented to us, Page 166 Paragraph 702...omitted aspect of changes, using that as a reason why entrusted to Management Plan, but omitting submitters and their wish to be involved in that regard."

Winchester "Repeat what said earlier about Management Plan goes hand in hand, not a substitute, required to be consistent with bottom lines. Really, what Transpower sees is a set of controls that set out the perimeters, EMF, Noise etc a hybrid approach, Sir, what the Notice of Requirement provides for."

Chairperson "Thank you."

Reading

Kos "The four folders of rebuttal evidence will be updated as we proceed." And you'll see when you see the folders Sir, there are a number of spare tabs within it and we'll simple update a new index Page provided as we go along."

Chairperson "Most helpful."

Kos "Subject to that Sir, I'll call Mr Coad, unless you'd like to hear him in the morning."

Chairperson "I think we'll hear him in the morning."

Kos "I thought you might."

Chairperson "Thank you very much. The Hearing is now adjourned till half past nine tomorrow morning."

4.58 pm ADJOURNED